

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2022/0469
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Responsible Officer:	Jordan Davies
Land to be developed (Address):	Lot 11 DP 1207743, 1102 Barrenjoey Road PALM BEACH NSW 2108
Proposed Development:	Construction of shop top housing
Zoning:	B1 Neighbourhood Centre
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	NBLPP
Land and Environment Court Action:	No
Owner:	Asia Digital Investments Pty Ltd
Applicant:	Reform Projects Pty Ltd

Application Lodged:	04/04/2022
Integrated Development:	Yes
Designated Development:	No
State Reporting Category:	Mixed
Notified:	30/09/2022 to 14/10/2022
Advertised:	30/09/2022
Submissions Received:	93
Clause 4.6 Variation:	4.3 Height of buildings: 34.94%
Recommendation:	Approval

Estimated Cost of Works:	\$ 13,585,491.00
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EXECUTIVE SUMMARY

This development application seeks consent for demolition works and construction of a shop-top housing development comprising of five (5) residential units and a basement carpark.

The application is referred to the Northern Beaches Local Planning Panel (NBLPP) due to development breaching the 8.5m building height standard by up to 34.95% and the application receiving a total of 93 submissions.

The 4.6 request for the non-compliance with height standard arises due to the active consent which is an approval for a similar height and scale of development that could be constructed at any time. In addition, central portions of the roof which breach the height limit are a result of previous site excavation and some of the additional height is due to the existing flooding at the site frontage. The

variation to the height breach is acceptable given the existing consent on the land for a similar scale of development and the proposal is considered to be a superior outcome for the site in terms of heritage, urban design and response to character..

Concerns raised in the objections predominantly relate to visual impact upon the character of the locality due to the height and size of the development, impact upon the adjoining heritage item, the exceedance of the LEP building height, parking concerns, geotechnical risks, view impacts, overshadowing and privacy impacts upon adjoining private properties.

Critical assessment issues include the building height breach, visual bulk and scale of the development and impact upon the adjoining heritage item Barrenjoey House. Of relevance to the consideration of the height and form of the development is the existing active consent for a three storey shop-top housing development on the land (N0119/14 approved by Pittwater Council). Whilst the assessment of the current development application is not reliant upon or bound by the parameters of this existing consent, the reality of the situation is that the existing consent means that a three (3) storey shop top housing development could be constructed at any time.

As considered by the Design Sustainability Advisory Panel and Council's Heritage Advisor following amendments to the current application, the proposed development is a superior outcome in regard to the urban design and public domain interface, responding to the Palm Beach seaside village character and interrelationship with the adjoining heritage item Barrenjoey House when compared to the existing consent. The interface between the ground floor commercial tenancies and the street is well resolved with a generous amount of outdoor dining and a public plaza to the north-western corner of the site to activate the neighbourhood centre whilst opening up a view corridor to Barrenjoey House approaching from the south.

Notwithstanding the existing consent on the land, the consent authority can be satisfied that the written request to vary the height limit under Clause 4.6 outlines sufficient environmental planning grounds to warrant departure from the development standard as discussed in the detailed assessment within this report. The first floor eave line of the proposal has been matched to the eave line of Barrenjoey House and the upper level is contained within the roof form as a response to the character of the area and heritage item, which consists of shop top housing developments of a similar three storey scale within the other B1 Zone down the road to the south.

A detailed assessment has been undertaken within this report regarding the amenity impacts upon the immediately adjoining residential properties to the east and south and the assessment finds the reasonable retention of amenity for these properties. The applicant has provided sufficient information from a qualified geotechnical engineer to address geotechnical risk for the site during construction and the recommendations of the geotechnical report will be referenced in the proposed conditions.

This report concludes with a recommendation that the NBLPP grant approval to the development application, subject to conditions.

PROPOSED DEVELOPMENT IN DETAIL

The proposed development is for the demolition of the remaining structures on the site and construction of a Shop Top Housing development comprising of ground floor retail/commercial space and five (5) residential units on the upper two floors. Specifically, the development comprises of:

- Demolition of the existing structures that remain on the site and site preparation works;
- Basement - Construction of a single level basement carpark consisting of 21 Parking Spaces;
- Ground Floor - Two commercial tenancies on the ground floor comprising of 371.9m² of

Commercial GFA. Back of house services and bathrooms. Residential entry lobby. Outdoor dining/terrace area. Landscaping works within the front setback including a public plaza in the north-western corner of the site.

- First floor - Three (3) residential apartments consisting of 2 x 3 bedroom units and 1 x 2 bedroom units.
- Second Floor - Two (2) residential apartments consisting of 1 x 3 bedroom unit and 1 x 4 bedroom unit.
- Roof - Roof consisting of skylights and designated area of mechanical plant with associated screening and landscape planter box along the eastern edge.
- Associated landscaping works around the site.

ASSESSMENT INTRODUCTION

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

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

SUMMARY OF ASSESSMENT ISSUES

Assessment - Concurrence – NSW Roads and Maritime Services - SEPP Infrastructure (cl 101 Development with frontage to classified road)

Pittwater Local Environmental Plan 2014 - 4.6 Exceptions to development standards

Pittwater Local Environmental Plan 2014 - 5.10 Heritage conservation

Pittwater Local Environmental Plan 2014 - 5.21 Flood planning

Pittwater Local Environmental Plan 2014 - 7.1 Acid sulfate soils

Pittwater Local Environmental Plan 2014 - 7.2 Earthworks

Pittwater Local Environmental Plan 2014 - 7.7 Geotechnical hazards

Pittwater 21 Development Control Plan - B2.6 Dwelling Density and Subdivision - Shop Top Housing

Pittwater 21 Development Control Plan - B6.3 Off-Street Vehicle Parking Requirements

Pittwater 21 Development Control Plan - C1.3 View Sharing

Pittwater 21 Development Control Plan - C1.4 Solar Access

Pittwater 21 Development Control Plan - C1.5 Visual Privacy

Pittwater 21 Development Control Plan - D12.5 Front building line

SITE DESCRIPTION

Property Description:	Lot 11 DP 1207743 , 1102 Barrenjoey Road PALM BEACH NSW 2108
Detailed Site Description:	<p>The subject site consists of one (1) allotment located on the eastern side of Barrenjoey Road.</p> <p>The site is irregular in shape with a frontage of 45m along Barrenjoey Road and a depth of 24m. There is an irregular triangular portion of land in the north-eastern corner which is included in the site. There is also a small section of road reserve which contained a substation (now moved) in the south-western corner. This forms part of the road reserve. The site has a surveyed area of 138.1m².</p> <p>The site is located within the B1 Neighbourhood Centre zone and formally accommodated a single storey building that was used as a fish and chip shop. The building has since been demolished (under another consent which exists on the land). The site now is vacant, with the exception of a retaining wall that has been constructed approximately 6m from the rear boundary of the site.</p> <p>The site is flat for the front 18m and has been previously been disturbed as a result of the use of the site for a commercial purpose for the preceding time. The site then has a retaining wall, with a steep slope up to the rear (eastern) boundary. There is an elevated rock shelf and boulder which straddles the southern boundary of the site and extends into the adjacent land.</p> <p>The site is void of any significant native trees, there are some palm trees which exist in the south-western corner.</p> <p>Detailed Description of Adjoining/Surrounding Development</p> <p>Adjoining and surrounding development is characterised by a mixture of development. This site is one of three sites that is zoned B1 in this small local neighbourhood centre. Immediately adjoining the site to the north is the building known as 'Barrenjoey House' which is a locally listed heritage item and operates as a restaurant and guest accommodation. Barrenjoey House is a two storey building with a pitched roof. Further north (at the end of the B1 Zone) are single storey commercial premises. Beyond that to the north begins the C4 Zone consisting of residential dwellings. To the east of the site are three (3) residential dwelling lots zoned C4, with residential dwellings under construction or about to commence construction. To the south is an existing two storey residential dwelling on land zoned C4. Across the road to the west is a large public carpark and public open space. This parking area services the Palm Beach Wharf which is located at the northern end of the capark.</p>

Map:



SITE HISTORY

The land has been used for commercial purposes for an extended period of time. A search of Council's records has revealed the following relevant history:

- Use of the site as a fish and chip shop for an extended period of time with various applications in early 2000 to conduct alterations and additions to the premises.
- **N0119/14** Development Consent Granted by Pittwater Council for 'Demolition of all existing structures and construction of shop-top housing development comprising of 3 tenancies, 4 residential units and underground parking'. The consent was granted on 13 November 2014. The development was approved as a three (3) storey shop top housing development with a maximum height of 10.3m and the design consistent of a flat roof.
- On 6 November 2019, Council confirmed in writing to the applicant that Council is satisfied the geotechnical works undertaken on site so far constitute physical commencement and that as physical commencement of N0119/14 has occurred, that consent will not lapse.
- **PLM2020/0276** - Prelodgment meeting was held with Council which sought Council's feedback on the modification of the development consent N0119/14. The pre-lodgement application was considered by the Design Sustainability Advisory Panel (DSAP) and Council's experts. Council's opinion of the modification application was that the development was not substantially the same and that there were issues with the architectural design of the proposed modifications.
- **MOD2021/0203** - Modification application was submitted to Council and was again considered by Council's experts and the DSAP. The feedback provided by Council was that the application was not considered substantially the same and the DSAP maintained design issues, primarily that the design did not address the architectural character of Palm Beach in a satisfactory way. This modification application was subsequently withdrawn by the applicant.

Current Application

- The current application **DA2022/0469** was submitted to Council on 4 April 2022. The application was referred to the DSAP panel once more and considered by Council staff.

- Additional information was requested in regards to geotechnical information, architectural changes resulting from the feedback of the DSAP panel and Council's Heritage Advisor, information on contamination and acid sulphate soils and landscape design. The applicant provided a response with an amended set of plans and updated supporting documentation, as well as amended Clause 4.6 variation request.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

Section 4.15 Matters for Consideration	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on “Environmental Planning Instruments” in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	There are no current draft environmental planning instruments.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Pittwater 21 Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2021 (EP&A Regulation 2021)	<p><u>Part 4, Division 2</u> of the EP&A Regulation 2021 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent.</p> <p><u>Clause 29</u> of the EP&A Regulation 2021 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This documentation has been submitted.</p> <p><u>Clauses 36 and 94</u> of the EP&A Regulation 2021 allow Council to request additional information. Additional information was requested in relation geotechnical requirements, design changes resulting from the advice of the Design Panel and Heritage Advisor, stormwater and parking, waste storage design, acid sulphate soils and the landscape design.</p> <p>The information was subsequently provided to Council and considered as part of the assessment of the application.</p> <p><u>Clause 61</u> of the EP&A Regulation 2021 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition of consent.</p> <p><u>Clauses 62 and/or 64</u> of the EP&A Regulation 2021 requires the consent authority to consider the upgrading of a building</p>

Section 4.15 Matters for Consideration	Comments
	<p>(including fire safety upgrade of development). This clause is not relevant to this application.</p> <p><u>Clause 69</u> of the EP&A Regulation 2021 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition of consent.</p> <p><u>Clause 69</u> of the EP&A Regulation 2021 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.</p>
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	<p>(i) Environmental Impact The environmental impacts of the proposed development on the natural and built environment are addressed under the Pittwater 21 Development Control Plan section in this report.</p> <p>(ii) Social Impact The proposed development will not have a detrimental social impact in the locality considering the character of the proposal. The proposal will provide for increased public use of the site by creating new shops within the B1 Zone and a public plaza in the corner of the site for the public to use.</p> <p>(iii) Economic Impact The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.</p>
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on “Notification & Submissions Received” in this report.
Section 4.15 (1) (e) – the public interest	No matters have arisen in this assessment that would justify the refusal of the application in the public interest.

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited from 30/09/2022 to 14/10/2022 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2021 and the Community Participation Plan.

As a result of the public exhibition process council is in receipt of 93 submission/s from:

Name:	Address:
Josh Mott	Address Unknown
Guy Coburn	131 Cabarita Road AVALON BEACH NSW 2107
Erin Broady	16 Catalina Crescent AVALON BEACH NSW 2107
Simon Shute	10 / 2 Seaview Avenue NEWPORT NSW 2106
Olivia Scutts	Address Unknown
Mrs Katherine Anne Boaler	21 Albert Road AVALON BEACH NSW 2107
Ms Julie Irene Malcolm	6 Careel Head Road AVALON BEACH NSW 2107
Ms Caroline Jean Maine	7 Capua Place AVALON BEACH NSW 2107
Lucinda O'Brien	324 Whale Beach Road PALM BEACH NSW 2108
Ms Margot Linda Lavelle	84 Gladstone Street NEWPORT NSW 2106
Mrs Alicia Jacqueline Campbell	34 Kanimbla Crescent BILGOLA PLATEAU NSW 2107
Mrs Julie Liane Johnstone	27 Patrick Street AVALON BEACH NSW 2107
Darren Yip	Address Unknown
Mimi Sheppard	Address Unknown
Mrs Deborah Bonnie Chadwick	11 Loombah Road DOVER HEIGHTS NSW 2030
Mr John David Thornborough	1004 Barrenjoey Road PALM BEACH NSW 2108
Chris Birt	138 Pacific Place PALM BEACH NSW 2108
Pamela Mary Paton	6 Cynthea Road PALM BEACH NSW 2108
Mr David Thomson	33 Plateau Road AVALON BEACH NSW 2107
Stuart Cameron	4 / 660 Barrenjoey Road AVALON BEACH NSW 2107
The Palm Beach & Whale Beach Association Inc	PO Box 2 PALM BEACH NSW 2108
Ms Leonie Desree Leonard	636 Barrenjoey Road AVALON BEACH NSW 2107
Ken Allen	Address Unknown
Mr Paul Geoffrey Spon-Smith	102 Iluka Road PALM BEACH NSW 2108
Mrs Angelina Claire Zhmurovsky	23 Palm Beach Road PALM BEACH NSW 2108
Ms Janette Mary O'Neil	72 Iluka Road PALM BEACH NSW 2108
Ms Janet Gladys Nash	10 Waruda Street KIRRIBILLI NSW 2061
Ms Anna Maria Monticelli	11 Ebor Road PALM BEACH NSW 2108
Mrs Jill Elizabeth Karhan	6 Bowden Street WOOLLAHRA NSW 2025
Mr Richard Lee Birrell	812 Barrenjoey Road PALM BEACH NSW 2108
Adam John Rytenskild	Po Box 561 AVALON BEACH NSW 2107
Ms Virginia Anne Pursell	43 Ferry Road GLEBE NSW 2037
Ms Susann Lynn Crivelli	167 Whale Beach Road WHALE BEACH NSW 2107
Mr Philip Francis Quirk	3 Woorak Road PALM BEACH NSW 2108
Steve Jacobs	Address Unknown

Name:	Address:
BBC Consulting Planners	Level 2 55 Mountain Street ULTIMO NSW 2007
Ms Prudence Abby Rydstrand	1100 Barrenjoey Road PALM BEACH NSW 2108
Mr Robert Donald Mackinnon	16 Norma Road PALM BEACH NSW 2108
Dentons Australia Limited	77 Castlereagh Street SYDNEY NSW 2000
Mr Edward Glasford Campbell Ms Gabrielle Campbell	21 A Palm Beach Road PALM BEACH NSW 2108
Ms Diana Dennison	1 Nabilla Road PALM BEACH NSW 2108
Mr Ian Spencer	8 Albert Road AVALON BEACH NSW 2107
Robyn Kathleen Gardner	8 Careel Head Road AVALON BEACH NSW 2107
Gail Margaret Broady	41 Patrick Street AVALON BEACH NSW 2107
Francesca Elder	93 A Myola Road NEWPORT NSW 2106
Mrs Susannah Lisa Goudie	45 Careel Head Road AVALON BEACH NSW 2107
Diane Carpenter	25 Central Road AVALON BEACH NSW 2107
Karl Hungus	Address Unknown
Mrs Elizabeth Jane Collis	49 Chisholm Avenue AVALON BEACH NSW 2107
Mrs Marie Therese Coleman	1 / 30 Gladstone Street NEWPORT NSW 2106
Mr Iain Allan Leeson	PO Box 470 AVALON BEACH NSW 2107
Mr Christopher John Power	55 Riviera Avenue AVALON BEACH NSW 2107
Ms Joanne Elizabeth Flew	10 Nabilla Road PALM BEACH NSW 2108
Alice Bryant	1056 Barrenjoey Road PALM BEACH NSW 2108
Anna Ortado	22 Norma Road PALM BEACH NSW 2108
Kim Hosking	Address Unknown
Ms Megan Louise Saussey	134 Grandview Drive NEWPORT NSW 2106
Ms Catherine Lesley Briggs	7 / 702 Barrenjoey Road AVALON BEACH NSW 2107
Ms Jodie Giteau	131 Gondola Road NORTH NARRABEEN NSW 2101
Ms Janine Gisela Moller	87 Plateau Road BILGOLA PLATEAU NSW 2107
Skye Beckett	3 Sanctuary Avenue AVALON BEACH NSW 2107
Ms Kerry Anne Jones	192 Central Road AVALON BEACH NSW 2107
Mrs Linda Clair Moss	133 Whale Beach Road AVALON BEACH NSW 2107
Tarryn Woods	Address Unknown
India Turner	6 Joseph Street AVALON BEACH NSW 2107
Ms Justine Megan Wray	6 Burrawong Road AVALON BEACH NSW 2107
Mr Michael Albert Groenheyde	66 George Street AVALON BEACH NSW 2107
Mrs Rowena Jane Wiseman	63 Marine Parade AVALON BEACH NSW 2107
Mr Robert Scott King	9 Ralston Road PALM BEACH NSW 2108
Mrs Annabel Selby-Jones	48 Marine Parade AVALON BEACH NSW 2107
Mr Leon Jesse Edwards	146 Avalon Parade AVALON BEACH NSW 2107
Ms Jasmine Edwina Hopcraft	32 Dress Circle Road AVALON BEACH NSW 2107

Name:	Address:
Ms Sarah Jane Fischer	37 Careel Head Road AVALON BEACH NSW 2107
Emelie Watkins	130 Avalon Parade AVALON BEACH NSW 2107
Lachlan Mills	59 Binburra Avenue AVALON BEACH NSW 2107
Terry Wilson	Address Unknown
Mr Brian William Hobson	14 Beauty Drive WHALE BEACH NSW 2107
Ms Catherine Alexandra Young	905 Barrenjoey Road PALM BEACH NSW 2108
Kathryn Rice	Address Unknown
Victoria Jane Binns	8 Monash Avenue GREAT MACKEREL BEACH NSW 2108
Mrs Mare Lowenstein	163 Hastings Parade NORTH BONDI NSW 2026
Gabrielle LePlatrier	49 Monash Avenue GREAT MACKEREL BEACH NSW 2108
Ms Cristen Elizabeth Giles	23 Plateau Road AVALON BEACH NSW 2107
Ruby Lowenstein	Address Unknown
Mrs Carolyn Ann Mercer	6 Bangalla Street WARRAWEE NSW 2074
Ms Amanda Jane Brodie	10 Riverview Road AVALON BEACH NSW 2107
Mrs Suzanne Price Richards	13 Bilga Avenue BILGOLA PLATEAU NSW 2107
Ms Phillipa Marion Gordon Barnett	1137 Barrenjoey Road PALM BEACH NSW 2108
Mr Eric Leon Gumley	724 Barrenjoey Road AVALON BEACH NSW 2107
Mr Peter Frederick Verrills	21 Iluka Road PALM BEACH NSW 2108
Prue Rydstrand	1102 Barrenjoey Road PALM BEACH NSW 2108
Mr Sebastian Hartog	4 / 46 Marine Parade AVALON BEACH NSW 2107
Withheld	PALM BEACH NSW 2108

The application was notified and advertised for a period of 28 days between 15 April to 13 May 2022. As a result of the initial notification period, a total of 40 submissions were received objecting to the proposed development.

The applicant submitted amended plans and supporting documentation following Council's initial assessment. The application was re-notified and re-advertised for 14 days between 30 September 2022 to 14 October 2022. An additional 53 submissions were received.

There was a total of 93 Submissions across the two notification periods.

The following issues were raised in the submissions:

- Non-compliance with building height and insufficient planning grounds to warrant departure from the 8.5m height limit
- Impact upon the adjoining heritage item Barrenjoey House and bulk and scale overwhelms Barrenjoey House
- The bulk, scale and architectural design is out of character for the locality
- View impacts arising from the development
- Privacy impacts arising from the development
- Solar Access impacts arising from the development
- The proposal does adequately address geotechnical risks and does not satisfy the Pittwater

LEP with regard to geotechnical risks for adjoining properties.

- Non-compliance with the parking rates of the Pittwater DCP
- Acoustic impacts arising from mechanical plant and groundwater pump during construction.
- Visual impact of the roofscape for the rear properties.
- Impact of commercial exhaust near eastern boundary.
- Potential for roof to be used for entertainment given stairs lead to the roof.
- Removal of existing landscape hedge along rear (eastern boundary) and concerns replacement planting will not achieve appropriate height. Excavation creating safety issue between properties due to the level change.
- Concern with bin storage area design at the street frontage

The above issues are addressed as follows:

- **Non-compliance with building height and insufficient planning grounds to warrant departure from the 8.5m height limit**

Comment: As assessment against the requirements of Clause 4.6 of the LEP is detailed later in this assessment report, including the applicant's planning grounds to warrant departure from the development standard. For the reasons detailed later in this report, the assessment has found there to be sufficient planning grounds, as well as the proposal being supported by Council heritage advisor and the Design Sustainability Advisory Panel who considered the issue of building height and scale.

- **Impact upon the adjoining heritage item Barrenjoey House and bulk and scale overwhelms Barrenjoey House**

Comment: The impact to the adjoining heritage item has been considered in detail by Council's heritage advisor and their comments are detailed later in this assessment report. The proposal has been through several design iterations and found to be a satisfactory outcome when compared to the existing active consent on the land for a similar scale of development.

- **The bulk, scale and architectural design is out of character for the locality**

Comment: As stated above, the design has been through several iterations through the pre-lodgement and assessment process, with the architectural design and response to the seaside village character forming part of the key consideration of the development. The proposed three storey form, with the third floor contained within a pitched roof form, has been considered by both the DSAP and Council's heritage advisor as an appropriate response to the character of the area.

The site is one of three sites within a small B1 Zone and adjoins the heritage item which is a two storey form with a pitched roof. The B1 Zone at present has fairly limited development, with the most northern site consisting of a small shop. The proposal is a comparable height to previous approvals on the land and has strategically matched the eave line of Barrenjoey House to maintain consistency in the building height at the street edge.

In regards to the wider locality of Palm Beach, further to the south of the site there is a larger B1 Zone which contains two developments of a similar nature that comprise of a three storey form, with the third level contained within the roof form (this B1 Zone also has an 8.5m height limit). These buildings are 250m and 450m to the south of the subject site. It is therefore not unprecedented in Palm Beach to have a three storey shop top housing development within the

B1 Zone and this demonstrates there are similar development in the Palm Beach Locality. An advantage of the proposed development is that the building is set into the slope of the land and the rear half of the development is compliant with the height limit. Whilst the other examples of three storey development in Palm Beach B1 Zones are on level sites.

For the above reasons, the proposed development is considered compatible with the both the surrounding and nearby development in Palm Beach B1 Zones.

- **View impacts arising from the development**

Comment: A detailed assessment is undertaken against the Pittwater DCP controls with regard to view sharing. The proposal is found to result in a satisfactory view sharing outcome for surrounding properties.

- **Privacy impacts arising from the development**

Comment: A discussion regarding privacy outcomes for the adjoining properties is undertaken later in this assessment report. Obscure glazing to 1.7m above the floor level is used for the south facing bedroom windows and views are obscured between the eastern neighbour as a result of the change in topography and landscape planting along the rear boundary.

- **Solar Access impacts arising from the development**

Comment: A discussion regarding solar access outcomes against the requirements of the DCP is undertaken later in this report. The proposal is found to be consistent with the requirements of the DCP with the adjoining property retaining a compliant amount of solar access and the non-compliant building height does not result in direct additional overshadowing of private open space when compared to a fully compliant scenario.

- **The proposal does adequately address geotechnical risks and does not satisfy the Pittwater LEP with regard to geotechnical risks for adjoining properties.**

Comment: Submissions have been made from the adjoining southern property regarding geotechnical risks associated with the application, particularly works and excavation around the elevated rock shelf which straddles the common boundary. The applicant has provided geotechnical report prepared by a suitably qualified engineer to address geotechnical risks and describe construction methodologies to ensure risk is managed to an appropriate level. This report and the recommendations within it will need to be complied with as a condition of consent. The applicant's geotechnical consultant has also provided a supplementary response to the concerns raised by the geotechnical consultant engaged by the adjoining southern property. This supplementary response describes additional contingencies to further mitigate risks regarding excavation in proximity to the rock outcrop straddling the common boundary and the recommendations of this response will also form conditions of consent.

- **Non-compliance with the parking rates of the Pittwater DCP**

Comment: Council's Traffic Engineer has considered the proposal with regards to the parking rates within the Pittwater DCP, noting a shortfall of 3 spaces for the commercial floor area within the development. Council's engineers are satisfied with the quantum and arrangement of parking which comprises of 21 parking spaces within the basement (10 spaces for residential, 2 visitor and 9 commercial spaces) subject to a condition requiring parking space C7 to be converted to an accessible space and relocation of the bicycle spaces to an area that would not conflict with the C7 space being accessible. See Council's traffic engineers comments later in this report. The shortfall of 3 parking spaces is not considered by Council's traffic engineers to warrant refusal of the application.

- **Acoustic impacts arising from mechanical plant and groundwater pump during construction.**

Comment: Council's environment and health officer has reviewed the proposal and recommended conditions for acoustic treatment of the mechanical plant prior to the issue of the CC. See their comments later in this assessment report. The conditions of consent in relation to noise from pumps for dewatering has been recommended.

- **Visual impact of the roofscape for the rear properties.**

Comment: The roofscape has been revised to concentrate and centralise the require mechanical plant within the centre of the building roof, provides 1.7m height screening and a landscape planter along the eastern edge of the roof-plant area comprising of Lilli Pilli's capable of reaching a mature height of 2m. These measures are considered to appropriately manage the visual impact of the roofscape from the properties above. To fully enclose the the mechanical plant area with a roof above could cause issues with cooling of the equipment and ventilation.

- **Impact of exhaust riser near eastern boundary.**

Comment: Council's Environment and Health Team have reviewed the location of the exhaust riser which services the basement carpark and have recommended conditions in regards to noise attenuation and emissions. Conditions have been recommended to limit impacts in line with EPA Standards.

- **Potential for roof to be used for entertainment given stairs lead to the roof.**

Comment: The roof is not proposed to form part of communal open space and is not approved as such. An access hatch is provided to the roof for maintenance purposes.

- **Removal of existing landscape hedge along rear (eastern boundary) which provides a screen between the B1 and C4 zone and concerns replacement planting will not achieve appropriate height. Excavation creating safety issue between properties due to the level change.**

Comment: The landscape hedge is an exempt species that may be removed without consent from Council. A planter along the rear (eastern boundary) is proposed to replace the existing hedge with a species capable of reaching 2m along the rear boundary to act as a green buffer. Council's landscape officer is satisfied of the planters soil depth to facilitate this screening. A 1.6m boundary fence is proposed as shown on the section plan to address safety along the rear boundary.

- **Concern with bin storage area design at the street frontage**

Comment: The bin storage and collection area has been designed in consultation with Council's Waste Services Team, who are satisfied with the location of the bin holding area. Landscape planting is proposed to the south of the bin holding area to screen from view for the adjoining property, noting bins will only be stored here for collection day and returned to the basement outside of collection day.

REFERRALS

Internal Referral Body	Comments
Design and Sustainability Advisory Panel	<p><u>Supported subject to minor amendments</u></p> <p>The application was referred to the Design Sustainability Panel (DSAP) for feedback, comments and advice. There were a number of recommended changes to the proposal to improve the urban design outcome and architecture of the development and overall, the proposal was supported in principle by the panel subject to their recommendations.</p> <p>The comments of the Panel and the applicant's responses are detailed below:</p> <p><u>General Opening Comment by the DSAP:</u></p> <p><i>"The Panel notes that the revised design as set out in this Development Application is a significant improvement on the development consent granted under N0119/14 on 13 November 2014 by Pittwater Council that remains current.</i></p> <p><i>This new development application has been substantially modified in response to Council and DSAP's feedback associated with an application that was submitted to modify N0119/14. The Panel notes and appreciates this application has responded to the key issues previously made.</i></p> <p><i>Generally, the overall composition, bulk and form of the revised development can be supported subject to the recommendations set out below."</i></p> <p><i>1. Further assessment of the impact on outlook and views from the future dwelling under construction on 1110 Barrenjoey Road and other properties immediately uphill to the east of the proposal should be taken to ensure that the roof areas that exceed the height limit do not intrude into the Pittwater Park setting.</i></p> <p><u>Comment:</u> The roof plan has been amended to nominate a centralised area designated for the required roof plant and includes perimeter screening around around the roof plant, plus a landscape planter along the eastern edge of the roof plant to soften views towards the plant area. By containing the roof plant to the centre of the building and including screening and planting, this limits the visual impact whilst still allowing functionality of the building, taking into consideration this is a B1 Zone that permits commercial forms of development that require a certain level of servicing that need to ventilate the building.</p> <p>Council is satisfied that quality outlook and water views are</p>

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	<p>maintained from the adjoining rear properties despite the exceedance in height from the western portion of the roof.</p> <p><i>2. Ensure appropriate street planting is provided to break the scale of the built form when viewed from public places</i></p> <p><u>Comment:</u> Street tree planting has been incorporated into the design and Council's landscape officer is satisfied with the landscape design.</p> <p><i>3. Redesign the roofscape: Refer Dwelling Planning and Amenity</i></p> <p><u>Comment:</u> This is addressed above in Point 1, with services centralised within roofscape, screening added and a landscape planter.</p> <p><i>4. Underground the power lines to facilitate tree planting canopies in the front setback to extend over the public domain.</i></p> <p><u>Comment:</u> Undergrounding of powerlines has since been undertaken at the site frontage which has been undertaken outside of the DA process.</p> <p><i>5. Reconsider the access corridor to the residential lift.</i></p> <p><u>Comment:</u> The guidance given by the Panel is not entirely clear regarding this issue. The applicant has maintained the access corridor as proposed and this issue would not warrant refusal of the application.</p> <p><i>6. Ensure adequate depth and areas of planters for landscape and street planting where required after further investigation of the nature of the public domain interface in consultation with Council.</i></p> <p><u>Comment:</u> Planter depths have been clarified to the satisfaction of Council's Landscape Officer with sufficient soil depth provided at the street edge planters as demonstrated in the section plans.</p> <p><i>7. Provide a pitched roof form or a green roof to the section of flat roof to the southern boundary. This will reduce long term maintenance issues and improve the outlook from adjoining areas.</i></p> <p><u>Comment:</u> The application has been amended to incorporate pitched roof forms at the northern and southern side elevations to improve outlook and reduce building bulk presenting to the side boundaries, as well as reduce bulk as viewed from the street.</p> <p><i>8. Redesign roofscape and consider green roof to the east to screen rooftop plant (engaging with neighbours would be ideally part of this). Ensure carefully integrated PV arrangement is included and roof plant is designed as though it was a considered 'sky elevation'. Conceal roof plant from visibility.</i></p>

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	<p><u>Comment:</u> See above comments in Point 1 regarding this item. PV has been placed on flat sections of the roof plant to limit visibility.</p> <p><i>9. Locate bin storage to street level as recommended by Council but ensure access to that storage is from the driveway (flat rollover section) and does not reduce the extent of activated shop frontage currently proposed</i></p> <p><u>Comment:</u> Waste storage and collection has been amended to the satisfaction of Council's Waste Team. Extent of active shopfront is maintained.</p> <p><i>10. Consider re-planning the bedrooms in the northeast corner to face the vestigial triangle of land to the north. Private open space could be provided for a part of this.</i></p> <p><u>Comment:</u> A window has been introduced on the northern elevation to face the green triangle of land. The area does not form part of private open space and adequate POS is provided in accordance with the ADG.</p> <p><i>11. Relocate the booster to the current location of the gas meters. (Note: Electrification of the project will enable this gas infrastructure and project cost item to be eliminated.)</i></p> <p><u>Comment:</u> The fire booster cupboard has been relocated from the public plaza at the northern end of the development to the southern side of the driveway entrance.</p> <p><i>12. Consider a more 'urban' street edge condition – the area taken up by the garden beds is extremely valuable outdoor dining. This might also consider retractable awning that will be needed in summer.</i></p> <p><u>Comment:</u> Retractable awning adjacent to the public plaza has been proposed. The landscape plans have been updated to address the street edge treatment to allow for additional outdoor dining if desired in the future.</p> <p><i>13. Redesign the publicly accessible courtyard and paving treatment to be more usable and habitable at all times of the day and year.</i></p> <p><u>Comment:</u> Retractable awnings and a central tree, along with fixed seating have been introduced to enhance usability of the public plaza.</p> <p><i>14. Relocate commercial kitchen exhaust ducts as far from adjacent residential boundaries as possible. Consider the central mechanical plant zone on the roof and ensure it is not visible from the public domain.</i></p> <p><u>Comment:</u> Council's environment and health officer has reviewed the mechanical plant as part of the proposal and is satisfied of its location and has recommended conditions regarding acoustic treatment of the</p>

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	<p>plant and exhaust riser. The design of the central roof plant is discussed in point 1 above.</p> <p><i>15. The BASIX Certificate of average NatHERS 6.1 does not express a commitment to best practice sustainability.</i></p> <p><i>16. As guidance to achieving a commitment to best practice sustainability, the Panel encourages consideration of ways to achieve the minimum targets set out for 3 storeys multi-unit developments in the BASIX Higher Standards document.</i> https://pp.planningportal.nsw.gov.au/draftplans/under-consideration/basix-higher-standards</p> <p><i>17. Avoid gas for the entire project: full electrification including the commercial kitchens.</i></p> <p><i>18. Prioritise roof space for PV. This could include integrated PV roof tiles, which will be almost indistinguishable from standard roof tiles, while providing a significant proportion of the power for the common areas.</i></p> <p><i>19. Include best practice passive design through built form where possible, including:</i></p> <ul style="list-style-type: none"> <i>- high performance windows and doors</i> <i>- adjustable awnings to public domain front setbacks</i> <p><u>Comment:</u> The Panel encouraged the use of additional environmental and sustainability measures, some of which have been incorporated including the use of skylights and lightwells for passive heating/cooling and incorporating PV cells. The applicant has provided a valid BASIX Certificate that demonstrates the legislative requirements are met and therefore, the failure to exclude gas from the development could not be used as a reason for refusal based on current legislation.</p> <p><i>20. Maximise urban tree canopy</i></p> <p><u>Comment:</u> Additional tree planting at the street frontage has been incorporated.</p> <p><i>21. Utilise green roofing to flat areas</i></p> <p><u>Comment:</u> The side elevations of the roof have been changed to pitched roof forms. A landscape planter has been incorporated into the roofscape to soften views to the mechanical plant area central to the roof.</p> <p>Concluding Comment by DSAP</p> <p><i>The Panel supports the proposal subject to the recommendations above being incorporated.</i></p> <p><u>Comment:</u> Those matters of importance have been incorporated into the amended plans as recommended by DSAP. The matters not incorporated into the plans do not warrant refusal of the application or</p>

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	raise fundamental issues that prevent Council from supporting the application.
Building Assessment - Fire and Disability upgrades	<p>Supported - Subject to conditions</p> <p>The application has been investigated with respects to aspects relevant to the Building Certification and Fire Safety Department. There are no objections to approval of the development subject to inclusion of the attached conditions of approval and consideration of the notes below.</p> <p>Note: The proposed development may not comply with some requirements of the BCA and the Premises Standards. Issues such as this however may be determined at Construction Certificate Stage.</p>
Environmental Health (Acid Sulphate)	<p>Supported - Subject to conditions</p> <p>Report from 1 Dec 2020 "E33618Blet" by the geotechnical consultant demonstrates a low likelihood of acid sulfate soils on the site. Limited borehole testing was done at the time due to obstruction from hard stands and other structures. Since then, the premises has been demolished, and all structures removed from site. In 2020, test pits/holes were dug in the south-east, south-west and north-western corners of what is proposed to be an underground carpark. Depth of investigations were done to and through sandstone, revealing the soil stratum which will be excavated.</p> <p>Given the information available, Environmental Health concur with the conclusions of the report, that acid sulfate soils are low risk and no management plan is required for the proposed works.</p>
Environmental Health (Contaminated Lands)	<p>Supported - Subject to conditions</p> <p>This submission is accompanied by a Waste Classification report, dated 21st April 2022, prepared by EPIC Environmental which assesses the likelihood of contamination being present on the site with the report containing the following conclusion:</p> <ul style="list-style-type: none"> • Laboratory analysis and field observations indicated that the subject soils are suitable for classification as General Solid Waste (non-putrescible) <p>Specifically Epic Environmental Pty Ltd found: Following the completion of the waste classification assessment the following conclusions have been made:</p> <ul style="list-style-type: none"> • Intrusive soil sampling was completed from seven boreholes to a maximum depth of 1.0 mbgl • Samples were analysed at Envirolab for TPH, TRH, BTEX, PAH, heavy metals, PCBs, OCPs and asbestos

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	<ul style="list-style-type: none"> • Laboratory analysis and field observations indicated that the subject soils are suitable for classification as General Solid Waste (non-putrescible) • Prior to the offsite disposal of the subject soils, if materials uncovered onsite do not match the description contained within this report, further assessment will be required by an experienced environmental consultant. <p>Environmental Health supports the proposal subject to conditions.</p>
Environmental Health (Industrial)	<p>Supported - Subject to conditions</p> <p>Shop top housing proposed for 1102 Barrenjoey Road. Environmental Health has two main concerns regarding noise amenity impacts for residential occupations directly to the East of the development:</p> <ul style="list-style-type: none"> · exhaust/ventilation riser on east boundary; and · mechanical plant on roof. <p>It is noted that screening will be provided for rooftop plant, hence our opinion is that the installations can be acoustically treated where required. We see fit that an acoustic analyses and report are done prior to CC being issued, recommendations of which are to be complied-with in accordance with <i>Noise Policy for Industry 2017</i> and <i>Pittwater DCP</i>.</p>
Landscape Officer	<p>Supported - Subject to conditions</p> <p>The development application is for the construction of a Shop Top Housing development.</p> <p>Council's Landscape Referral have assessed the application against the following relevant landscape controls and policies:</p> <ul style="list-style-type: none"> • State Environmental Planning Policy No. 65 - Design Quality of Residential Apartment Development (SEPP65) under: clause 28(2) (a) (b) and (c), • the associated Apartment Design Guide (ADG), including Principle 5: Landscape, and the objectives of control 3E Deep Soil Zones, 4O Landscape Design, 4P Planting on Structures, and • Pittwater Local Environmental Plan and the following Pittwater Development Control Plan (PDCP) controls (but not limited to): C2.1 Landscaping <p>Updated Landscape Plans are submitted in response to the previous Landscape Referral concerns raised. The Landscape Plans are updated to include satisfactory landscape treatment, including: tree planting to soften the built form as viewed from the streetscape; appropriate pavement to support accessibility to the 'public plaza' and</p>

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	<p>commercial tenancies; and deep soil zone to the eastern boundary is planted as required to qualify as deep soil rather than external paved terraces.</p> <p>The updated Landscape Plans generally satisfy the concerns with a number of exceptions that shall be resolved by imposed conditions of consent should the development application be approved, including: provision of adequate soil depth to support the proposed tree planting to the Barrenjoey Road streetscape; eastern boundary planter above the boundary retaining structural walling shall be increased in depth and width to support adequate screen planting to replace the existing exempt species boundary screen planting; and southern boundary landscape area shall support the addition of taller vegetation.</p> <p>The existing property does not support any prescribed trees under PDCP, and the existing vegetation consisting of exempt species palms, shrubs and hedges may be removed without Council consent.</p> <p>Should the development application be approved, Landscape Referral provide conditions of consent.</p>
NECC (Bushland and Biodiversity)	<p>Supported - Subject to conditions</p> <p>The proposed development has been assess against the following applicable biodiversity-related legislation and controls:</p> <ul style="list-style-type: none"> • SEPP (Coastal Management) - Coastal Environment Area • Pittwater LEP Clause 7.6 - Biodiversity Protection • Pittwater DCP B4.4 - Flora and Fauna Enhancement Category 2 and Wildlife Corridor <p>The proposal does not require removal of prescribed native trees or vegetation, nor is it likely to impact upon nearby biodiversity values. Subject to recommended conditions, the Biodiversity Referrals Team find the application to be consistent against applicable biodiversity controls.</p>
NECC (Coast and Catchments)	<p>Supported - Subject to conditions</p> <p>The application has been assessed in consideration of the Coastal Management Act 2016, State Environmental Planning Policy (Resilience and Hazards) 2021 and has also been assessed against requirements of the Pittwater LEP 2014 and Pittwater 21 DCP.</p> <p>Coastal Management Act 2016 The subject site has been identified as being within the coastal zone and therefore <i>Coastal Management Act 2016</i> is applicable to the proposed development. The proposed development is in line with the objects, as set out under Clause 3 of the <i>Coastal Management Act 2016</i>.</p>

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	<p>State Environmental Planning Policy (Resilience & Hazards) 2021</p> <p>The subject land has been included on the 'Coastal Environment Area' and 'Coastal Use Area' maps under the State Environmental Planning Policy (Resilience & Hazards) 2021 (SEPP R & H). Hence, Clauses 2.10, 2.11 and 2.12 of the CM (R & H) apply for this DA.</p> <p>Comment:</p> <p>On internal assessment and as assessed in the submitted Statement of Environmental Effects (SEE) report prepared by BBF Town Planners dated March 2022, the DA satisfies requirements under clauses 2.10, 2.11 and 2.12 of the SEPP R&H.</p> <p>As such, it is considered that the application does comply with the requirements of the State Environmental Planning Policy (Resilience & Hazards) 2021.</p> <p>Pittwater LEP 2014 and Pittwater 21 DCP</p> <p>Estuarine Risk Management</p> <p>The subject property has also been identified as affected by estuarine wave action and tidal inundation on Council's Estuarine Hazard Mapping. As such, the Estuarine Risk Management Policy for Development in Pittwater (Appendix 7, Pittwater 21 DCP) and the relevant B3.7 Estuarine Hazard Controls will apply to any proposed development of the site.</p> <p>On internal assessment, the ground floor level for the proposed development is above the applicable EPL for the site. The proposed development is therefore not required to satisfy the relevant estuarine risk management requirements of P21 DCP.</p>
NECC (Development Engineering)	<p>Supported - Subject to conditions</p> <p>Initial Comments</p>

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	<p>The proposal is for demolition works and the construction of shop top housing with basement level parking. The proposed driveway location involves the relocation of the substation but a new location is not shown. The new location for the substation shall be shown on the plans. Concurrence from Austgrid for the proposed location will be required.</p> <p>Driveway sections have only been provided internally. The Applicant shall provide a Engineering long-sections at both edges of the proposed access driveway to the proposed garage and demonstrate compliance with AS2890. The footpath area grades shall not exceed 5%.</p> <p>Additional Information Provided on 26/9/2022 The summited driveway sections is satisfactory subject to conditions. The stormwater plans with the proposal to connect to the existing pipeline in Barrenjoey Road is satisfactory. No objections to approval subject to conditions as recommended.</p>
NECC (Stormwater and Floodplain Engineering – Flood risk)	<p>Supported - Subject to conditions</p> <p>The proposed development generally complies with the flood controls in the LEP and DCP.</p> <p>The development proposes to demolish existing structures and construct mixed used development with a basement carpark.</p> <p>The site is classified as Medium flood risk with 1% AEP and PMF flood level of 2.7 and 2.8 m AHD respectively. The FPL level for the site is RL 3.2m AHD.</p> <p>In flood emergency, shelter in place is possible as the majority of the habitable floor area is located above the PMF flood level.</p> <p>The front area that is below the FPL is generally compliant as it is within the first 5m of the commercial shop front entrances.</p> <p>The driveway ramp has a crest at the FPL.</p>
NECC (Water Management)	<p>Supported - Subject to conditions</p> <p>The proposal was assessed under the current creek and water management legislation framework, the relevant parts of the LEP, DCP and Council Water Management for Development Policy. The Creek Management Study 2004 principles, NRAR waterfront land principles and Protection of Waterways and Riparian Lands Policy were also considered in the assessment.</p> <p>The supplied reports and plans were assessed and submissions considered.</p> <p>The supplied documentation is generally satisfactory.</p>

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	<p>Water Quality The proposed stormwater system is integrating an online rainwater tank (stormwater harvesting and reuse), stormwater pit gross pollutant traps and a filtration cartridges system prior discharge off site. The proposed stormwater management strategy will capture the pollutant loading (sediment and nutrient) and is as such considered as a water quality treatment chain subject to conditions.</p> <p>Dewatering 1. Tailwater (surface water, rainwater, minor seepage): Please contact catchment@northernbeaches.nsw.gov.au for advice on Council's water quality requirements for a single instance of dewatering tailwater that collects in an excavation during works. A Council dewatering permit application must be made for expected multiple instances or continuous dewatering of tailwater. 2. Groundwater: The geotechnical report from JK (25 May 2022 Ref: 33618YJrpt) is indicating that the water table is likely to interact with the proposed excavation level for the basement. Based on dewatering flowrate estimation, the report is recommending that "A dewatering licence will need to be obtained from the WaterNSW for all temporary dewatering activities".</p> <p>Council is requiring that before construction start:</p> <ul style="list-style-type: none"> • An application for interference with an aquifer is required to WaterNSW • All approval and supporting documentation (WaterNSW) be sent to Council • A permit from Council is required for any dewatering of groundwater (Contact catchment@northernbeaches.nsw.gov.au for more information about Council permits). <p>Sediment management Due to the sensitivity of the downstream environment it is imperative that an erosion and sediment management strategy is developed and implemented to ensure protection of this area during construction.</p>
Road Reserve	<p>Supported - No conditions</p> <p>There is no impact on existing road infrastructure assets. The removal of the substation kiosk is noted. The previously suggested closure and sale of the redundant road reserve area used by the substation has not been considered.</p> <p>Of concern is the compliance with accessibility requirements in regards to the "landscaped" ramp to the commercial terraces from the public footpath. This should be reviewed by Council's Planning Team.</p> <p><i>*Note from Planner - The accessibility has been considered and the</i></p>

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	plans have been updated to include pavers to facilitate accessibly entry into the site.		
Strategic and Place Planning (Heritage Officer)	Supported - Subject to conditions		
	HERITAGE COMMENTS		
	Discussion of reason for referral		
	The proposal has been referred to as the site adjoins a local heritage item and is located opposite another, which are both listed in Schedule 5 of Pittwater LEP 2013:		
	Item 2270076 - “Barrenjoey House” (restaurant and accommodation) - 1108 Barrenjoey Road		
	Item 2270037 - Norfolk Island Pines – Barrenjoey Road, Pittwater Park (opposite Barrenjoey House)		
	Details of heritage items affected		
	Details of these heritage items in the vicinity, as contained within the Heritage Inventory are: "Barrenjoey House" <u>Statement of Significance</u> Barrenjoey House is historically significant as it has been in nearly continuous use as a restaurant and guest house since it was built in 1923 by Albert Verrills. It was also the first place in Palm Beach to have a telephone and as such it holds social significance for the Palm Beach community. <u>Physical Description</u> This plastered two-storey plastered brick building with pitched roof was built as a guest house in 1923. It features a sunny dining room with windows the length of one wall overlooking the water and a large terrace with canvas canopy for outdoor dining. The interior retains traditional character including wallpaper and emu chandeliers.		
	Norfolk Island Pines <u>Statement of Significance</u> The Norfolk Island Pines are of local historic and aesthetic significance as a fine representative example of the widespread use of this species for ornamental plantings in coastal areas. <u>Physical Description</u> A fine planting of mature specimens of Araucaria heterophylla (Norfolk Island Pine) in Pittwater Park, adjacent to the public wharf at Palm Beach and across Barrenjoey Road from Barrenjoey House. The trees are along the western and southern edges of this park which includes a children’s playground and car park. The trees provide welcome shade for picnickers using the Pittwater beach		
	Other relevant heritage listings		
	Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005	No	
Australian Heritage Register	No		

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	NSW State Heritage Register	No	
	National Trust of Aust (NSW) Register	No	
	RAIA Register of 20th Century Buildings of Significance	No	
	Other	No	
	Consideration of Application		
	<p>The site is not a heritage item but is located adjacent to a heritage item and within a key urban setting of Palm Beach. The heritage item critically affected by the proposal is Barrenjoey House, whose significance is not in dispute and for which its historical details and aspects of that significance can be found in Council's heritage inventory entry for the property. Across Barrenjoey Road the stand of Norfolk Island Pines along the western and southern ends of the Park and associated carpark area is also listed. The significance of these trees is also not disputed.</p>		
	<p>The original proposal for this application could not be supported on heritage grounds, for a number of reasons. These comments respond to a new proposal for development of the subject site, following earlier schemes and a modification proposal relating to the former (and current) development approval for the site. The applicant has sought to develop a new design proposal for the site, with consideration for its site in Palm Beach and its current context.</p>		
	<p>The scheme now submitted follows extended discussions with Council officers in which all participants have sought to achieve a mutually satisfactory and better development outcome for the property and the Palm Beach locality in which it is so prominent. The heritage issues which surround the proposal, given this site, together with its contextual importance and adjacency to Barrenjoey House, are front and centre in its assessment.</p>		
	<p>While saying that, it must be acknowledged that the site is not a heritage item but is located adjacent to a heritage item and within a key urban setting of Palm Beach. The proposed development of the site is both enabled by the applicable planning controls under the LEP, and qualified by the heritage and planning controls flowing from Council's LEP and DCP. This referral comment reviews and considers earlier heritage comment and the stages of negotiation following.</p>		
	<p>As the now lodged plans show, Council's concerns that the building should be "broken up" in design, and should better relate to the height and key scalar lines and elements of Barrenjoey House, have been taken seriously and explored to the advantage of what is now submitted. The central, forward-standing "breakfront" element is also broken up into three elements and at each end the building</p>		

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	<p>is stepped back, adding a small public foreground space adjacent to Barrenjoey House, and stepping back the car parking access at the southern end. While overall the central breakfront is still wider than Barrenjoey House, it is broken up so that no one element is comparable in façade length to the heritage listed building. Above, in the third (in-roof attic) level, the dormer forms are also broken up and are now simplified, and more understated in their design.</p> <p>Overall, the character of the building is less overtly allusive to historical or fashionable styling which was an earlier concern. The scale of the colonnaded main elevation is helped by the proportions of its column spacing, the varied balustrade treatment and valances to reduce opening heights. Suggestions are made below to a revision in the materials and finishes schedule, that would hopefully achieve a better contextual relationship in addition to the measures that have been adopted.</p> <p>In summary, the achievement of a development outcome which defers to the local historical importance and until now, the prominence of Barrenjoey House in the “western village” of Palm Beach, is qualified by the zoning of the site and the permissibility of development which can only present a challenge to the existing scale, character and “atmosphere” of the “village”.</p> <p>With the implementation of all the recommended measures that have been put to the proponents, the proposal is supported for planning assessment as a better heritage outcome for the site than earlier proposals. In this, the support of Council’s DSAP must be noted, and these heritage comments added to their consideration.</p> <p>The scheme before Council as a new proposal, is far preferable to the scheme earlier approved for the site, and in heritage terms, would be supported in preference to that proposal.</p> <p>It is suggested that the presentation of the building could be assisted by an alternative roofing material for the main roof planes, such as traditional slate or some of the reconstituted slate products which used in a “proper” traditional fixing method, have similar advantages in appearance, recessive-ness, colour and scale. Metal would be appropriate and in keeping for the attic dormer forms in mid grey toning. Concrete tiles are not supported as appropriate for this building and context.</p> <p>The proposed colour scheme references that of Barrenjoey House (currently) and might be subtly differentiated by use of a darker sandstone cream wall colour, encouraging the building to visually recede.</p> <p>It is noted that this proposal also involves relocation of an electricity substation to the other side of Barrenjoey Road, to be located within the Council carpark. This relocation will not impact upon the heritage listed row of Norfolk Island Pine trees as they are located</p>

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	<p>along the waters edge. Therefore, this relocation will not have an adverse impact upon this heritage item. it is suggested however, that consideration should be given to the possibility of moving the substation to the southern side of the carpark entrance, to minimise its visual impact on views when driving north along Barrenjoey Road.</p> <p>Therefore, taking everything into consideration, the proposal can now be supported on heritage grounds, subject to the imposition of a condition requiring full details of external finishes, materials and colours to be submitted for approval prior to issue of CC.</p> <p>Further Comments</p> <p><u>Consider against the provisions of CL5.10 of PLEP 2013:</u> Is a Conservation Management Plan (CMP) Required? No Has a CMP been provided? N/A Is a Heritage Impact Statement required? Yes Has a Heritage Impact Statement been provided? Yes</p>
Traffic Engineer	<p>Supported - Subject to conditions</p> <p>Referral comments 25/11/22</p> <p>The developers planner has proposed that the shortfall in retail parking be addressed by allocating parking spaces on site for car share use. The dedication of car share spaces to offset a shortfall in retail parking is not supported with the car share space(s) considered likely to be underutilised in this locality where there is a low car share membership base and a low demand for car share use. Car share parking has previously been accepted in lieu of parking only in locations where there is a high demand for car share use, only for residential parking spaces (usually associated with boarding house use) and only on sites where there were significant space constraint issues. In this location the use of car share spaces is not supported.</p> <p>Upon reconsideration the retail parking provisions are considered acceptable. The parking proposal for this DA is considered an improved outcome with better layout and design and more functional than the previously approved N0119/14 for shop top housing development.</p> <p>It is also the understood that all other development referral issues have been resolved either through design review of conditions for approval. Subject to conversion of parking space C7 to an accessible parking space and relocation of the vertical bicycle parking (both of which can be conditioned) the development is now considered acceptable from a traffic and parking perspective.</p>

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	<p data-bbox="520 320 895 349">Referral comments 2/11/22</p> <p data-bbox="520 461 1433 703">The amended plans do not include any changes to address the shortfall of retail parking spaces. The current proposal provides 9 retail parking spaces which is 3 less than the required 12 retail spaces. A minimum of 1 accessible retail space is also required under the DCP. Council's previous comments suggested that it may be possible to provide 1 accessible retail space if the existing vertical bicycle parking situated at the southern end of the site was relocated.</p> <p data-bbox="520 707 1433 846">The supplementary Statement of Environmental Effects (SOEE) does mention that there would be no objection should there be a suitably worded condition requiring the conversion of the commercial space C7 to an accessible commercial space.</p> <p data-bbox="520 958 1433 1303">The supplementary SOEE maintains that users of the commercial car parking space will be persons already parked in the public car park near the site when they visit the area, and can offset the shortfall in parking. The Pittwater Park Carpark (north) is for Western Foreshore Permit holders only, which provides a parking facility for residents of Great Mackerel Beach and Coasters Retreat. The Pittwater Park Carpark (south) provides sections of 4hour parking and 8hour parking which is shared by commuters travelling between Central Coast and Palm Beach, local residents, recreational users and visitors to the area.</p> <p data-bbox="520 1415 1433 1733">The proposed development contains two retail premises compared to the previous single takeaway business which operated from this location. Due to the existing high demand for parking in the vicinity of the Palm Beach ferry wharf, it is required that the necessary retail parking spaces be provided on-site which caters for both the staff and visitor parking needs of the retail premises. Alternatively an overall decrease in parking spaces could be considered for the development if there is a reduction in proposed dwellings. The current proposal is therefore not supported.</p> <p data-bbox="520 1845 895 1874">Referral comments 31/5/22</p> <p data-bbox="520 1953 1433 2123">The proposed shop-top housing development contains two commercial premises (total 371m²) and five residential units (1 x 2 bedroom unit and 4 x 3 bedroom units), with basement parking for a total of 21 vehicles (9 retail, 10 residential including 2 adaptable spaces; 2 residential visitor including a disabled space). Vehicular</p>

Internal Referral Body	Comments
	<p>access is via a 3.6m ramp under signal control, prioritising vehicles entering the site with marked waiting bays on the basement level and at the entry ramp within the property.</p> <p>Residential and Retail Parking Council's Pittwater 21 DCP requires the provision 24 car parking spaces, with 10 for residential use, 2 for residential visitor use and 12 for retail use. A total of 21 parking spaces is proposed, consisting of 9 retail, 10 residential including 2 adaptable spaces, and 2 residential visitor including a disabled space. In comparison the previously approved development (Consent No: N0119/14) also provides parking for 21 vehicles (11 retail including 1 disabled space, 8 residential, and 2 residential visitor spaces). The approved development however consists of three restaurant premises but with a lower GFA (total 324m2) and one less dwelling with four residential units (with 3 or more bedrooms).</p> <p>The 12 residential parking spaces provided in the new proposal meets Council's DCP requirements for residential use, however is deficient in terms of retail parking with only 9 spaces proposed, a shortfall of 3 spaces. The DCP also requires that retail premises provide accessible parking spaces for people with disabilities at the rate of 3% of the required spaces, with a minimum of 1 space. The current proposal does not provide any retail accessible parking space, and under the current parking layout, conversion of an existing space to accommodate a compliant accessible parking space would result in the loss of an additional parking (given the need for an unload bay) and a net shortfall of 4 retail spaces. However, it may be possible to provide the required accessible retail parking space if the vertical bicycle parking was relocated and the parking along the southern side of the development was reconfigured to include the accessible parking.</p> <p>The Traffic and Parking Impact Assessment tries to justify the shortfall in retail parking by suggesting that visitors associated with the retail component of the development will use the on-street parking. It further adds that for safety reasons the basement car park will be restricted to retail staff car parking and residential uses only (visitor and residential parking). The DCP requires that parking spaces for retail premises be accessible to the public and restricting retail spaces to use by staff only is therefore inappropriate and contrary to the DCP. The car parking needs for the development must be provided off-street, as visitors cannot rely on the availability of on-street parking due to the high demand for parking in the vicinity of the Palm Beach ferry wharf.</p> <p>Traffic Generation</p> <p>The future traffic generation has been assessed in accordance with Roads and Maritime Services (RMS) 'Guide to Traffic Generating Developments 2002'. The Traffic and Parking Impact Assessment</p>

Internal Referral Body	Comments
	<p>estimates that 14 trips occur during the PM peak hour period for the existing development, 19 trips for the approved development and 24 trips (21 retail trips not 20 as reported, 3 residential trips). The new development will result in an increase of 23 trips from the existing, and 4 trips from the approved development.</p> <p>The existing fish and chip restaurant has a gravel parking area for two vehicles. The parking seems to be used entirely for staff as the access is chained and signposted as No Parking. Vehicle trips during the PM peak hour period could therefore be considered as 2 trips. No morning traffic is associated with the existing development as the premises are closed prior to 11:30am. As a result, Council believes that a more representative figure for traffic generation due to the new development will be an increase of 24 trips from the existing, and 5 trips from the approved during the AM peak hour period.</p> <p>Construction Traffic Management</p> <p>TfNSW has reviewed the application and will not permit a construction zone on Barrenjoey Road. The frontage of the development has an existing Loading Zone and 1 hour timed parking. TfNSW requires that all demolition and construction vehicles are to be contained wholly within the site and vehicles must enter the site before stopping. Further information or a Construction Traffic Management Plan (CTMP) must therefore be provided to demonstrate that the development can be constructed without impacting the Main Road, and existing on-street loading and parking facilities.</p> <p>Summary</p> <p>The proposal is not acceptable as it does not satisfy the parking requirements of the Pittwater 21 DCP. The development has a shortfall in parking (up to 4 retail spaces), and proposes to restrict parking for retail visitors.</p> <p>Due to the high demand for parking in the area, additional parking spaces need to be provided on site. A review of the parking layout and/or reduced dwellings or bedrooms, should be considered in order to meet the parking requirements for the development.</p>
Waste Officer	<p>Supported - Subject to conditions</p> <p>Waste Management Assessment - amended plans (26/9/2022) Can now be supported, with conditions.</p> <p>Waste Management Assessment (19/04/2022) Recommendation - Unacceptable.</p> <p>The proposal does not meet the requirements of Councils' Design Guidelines for Waste Management Facilities. Specifically:</p>

Internal Referral Body	Comments
	<p>1) The residential bin storage room is located in the basement. Unacceptable. Council will be providing a wheel out/wheel in service for the bins. The owners of the building are not to present the bins at the kerbside for collection. The residential bin storage room must be at street level and within 6.5 metres of the property boundary with the street.</p> <p>2) The use of the vehicular driveway is required to access the residential bin storage room. Unacceptable. Access to any bin storage room must be via a path that is separate from the vehicular driveway. This pathway must be 1200mm wide, have a flat smooth non-slip surface and a maximum gradient of 1 in 8.</p> <p>Ray Creer Waste Services Officer</p>

External Referral Body	Comments
Ausgrid - SEPP (Transport and Infrastructure) 2021, s2.48	<p>Supported - Subject to conditions</p> <p>The proposal was referred to Ausgrid who provided a response stating that the proposal is acceptable subject to compliance with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice. These recommendations will be included as a condition of consent.</p> <p>Ausgrid have also considered the proximity of the development to the existing substation which is located within the road reserve (outside of the land holding of the subject site). Ausgrid have acknowledged the substation is to be relocated. The applicant has provided details as to the relocation of the substation and consultation has occurred with Council's road asset team regarding the relocation to an alternate location. Conditions have been recommended regarding the relocation of the substation.</p>
Nominated Integrated Development – WaterNSW - Water Management Act 2000 (s91 Permit for Temporary Construction Dewatering)	<p>Supported - General Terms of Approval Issued</p> <p>The application was referred to Water NSW as Nominated Integrated Development under the Water Management Act 2000, as the proposed basement excavation works would require dewatering.</p> <p>Water NSW have reviewed the proposal and have issued General Terms of Approval (GTA's) which will be included as development consent conditions.</p>

ENVIRONMENTAL PLANNING INSTRUMENTS (EPIs)*

All, Environmental Planning Instruments (SEPPs and LEPs), Development Controls Plans and Council Policies have been considered in the merit assessment of this application.

In this regard, whilst all provisions of each Environmental Planning Instruments (SEPPs and LEPs),

Development Controls Plans and Council Policies have been considered in the assessment, many provisions contained within the document are not relevant or are enacting, definitions and operational provisions which the proposal is considered to be acceptable against.

As such, an assessment is provided against the controls relevant to the merit consideration of the application hereunder.

State Environmental Planning Policies (SEPPs) and State Regional Environmental Plans (SREPs)

SEPP 65 - Design Quality of Residential Apartment Development

Clause 4 of State Environmental Planning Policy No. 65 – Design Quality for Residential Apartment Development (SEPP 65) stipulates that:

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

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

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

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

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

As previously outlined the proposed development is for the erection of a three (3) storey residential flat 'housing' development plus basement car parking for the provisions of five (5) self-contained dwellings.

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

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

Clause 28 of SEPP 65 requires:

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

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

DESIGN REVIEW PANEL

Northern Beaches Council has an appointed Design and Sustainability Advisory Panel (DSAP). Refer to the DSAP referral comments section within this report.

DESIGN QUALITY PRINCIPLES

Principle 1: Context and Neighbourhood Character

Good design responds and contributes to its context. Context is the key natural and built features of an area, their relationship and the character they create when combined. It also includes social, economic, health and environmental conditions.

Responding to context involves identifying the desirable elements of an area's existing or future character. Well designed buildings respond to and enhance the qualities and identity of the area including the adjacent sites, streetscape and neighbourhood. Consideration of local context is important for all sites, including sites in established areas, those undergoing change or identified for change.

Comment:

The building has been designed as a three storey building, with a pitched roof containing the third storey to be sympathetic to the adjoining heritage item and the desired locality which requires a unique seaside village character to be taken into account. The building has open balconies and recessing elements to break down the scale and length of the building. The site zoned B1 Neighbourhood centre and although taller than the surrounding residential buildings, the development will contribute in a positive way to the character of the B1 Zone and surrounding area, providing a high quality facade and transition to the public domain by including at grade outdoor dining, a public plaza and opportunity for commercial activation of the B1 Zone.

Principle 2: Built Form and Scale

Good design achieves a scale, bulk and height appropriate to the existing or desired future character of the street and surrounding buildings.

Good design also achieves an appropriate built form for a site and the building's purpose in terms of building alignments, proportions, building type, articulation and the manipulation of building elements. Appropriate built form defines the public domain, contributes to the character of streetscapes and parks, including their views and vistas, and provides internal amenity and outlook.

Comment:

In considering the scale and bulk of the proposal, it is relevant to consider that there is an active consent for a three storey development on the site could be legally constructed. The design of the proposal is considered superior to the current consent that exists on the land, with the third storey being incorporated into a pitched roof form to minimise the visual presence of the third storey from the street level. The building alignment is consistent and compatible with the street character, with a greater setback to the street than the adjoining heritage item Barrenjoey House and the front of the building consisting of open balconies, with the façade recessed into the site. The slope of the roof closely reflects the natural slope of the land from the front to the rear of the site, with the rear half of the building cut into the slope of the land to minimise building height stepping up the site.

The first storey eave line has been matched to that of Barrenjoey House to provide a consistent relationship in terms of the eave line as read from the street.

Principle 3: Density

Good design achieves a high level of amenity for residents and each apartment, resulting in a density appropriate to the site and its context.

Appropriate densities are consistent with the area's existing or projected population. Appropriate densities can be sustained by existing or proposed infrastructure, public transport, access to jobs, community facilities and the environment.

Comment:

The building contains five (5) residential units which is within the maximum permitted density under the PLEP 2014 (which allows up to 7 units). The sizing of 2, 3 and 4 bedroom units is appropriate given the location of the site and likely demographic in the locality. The shop top housing provides additional housing choice in Palm Beach, which is predominately detached residential dwellings.

Principle 4: Sustainability

Good design combines positive environmental, social and economic outcomes. Good sustainable design includes use of natural cross ventilation and sunlight for the amenity and liveability of residents and passive thermal design for ventilation, heating and cooling reducing reliance on technology and operation costs. Other elements include recycling and reuse of materials and waste, use of sustainable materials, and deep soil zones for groundwater recharge and vegetation.

Comment:

All units are cross ventilated and appropriate solar access and shading is provided given the western orientation of the site. Photovoltaic cells are used on the roof. Deep soil zones are provided in the site in accordance with the DCP and ADG requirements.

Principle 5: Landscape

Good design recognises that together landscape and buildings operate as an integrated and sustainable system, resulting in attractive developments with good amenity. A positive image and contextual fit of well designed developments is achieved by contributing to the landscape character of the streetscape and neighbourhood.

Good landscape design enhances the development's environmental performance by retaining positive natural features which contribute to the local context, co-ordinating water and soil management, solar access, micro-climate, tree canopy, habitat values, and preserving green networks. Good landscape design optimises usability, privacy and opportunities for social interaction, equitable access, respect for neighbours' amenity, provides for practical establishment and long term management.

Comment:

The proposal has been provided with a landscape plan that has responded to the initial comments provided by Council's landscape officer and the DSAP. The landscape plan includes a central tree in the public plaza in the north-western corner, along with planting within the front setback to soften the building facade and contribute to the landscape quality of the area.

Principle 6: Amenity

Good design positively influences internal and external amenity for residents and neighbours. Achieving good amenity contributes to positive living environments and resident well being.

Good amenity combines appropriate room dimensions and shapes, access to sunlight, natural ventilation, outlook, visual and acoustic privacy, storage, indoor and outdoor space, efficient layouts and service areas, and ease of access for all age groups and degrees of mobility.

Comment:

The building has mitigated privacy and direct overlooking of the adjoining properties to the east and the

south. Privacy treatment to 1.7m above Finished Floor Level for the one south facing windows has been incorporated. Balconies have been orientated towards the street to mitigate privacy. The proposal maintains an appropriate amount of sunlight for the adjoining properties in accordance with Council's controls.

Principle 7: Safety

Good design optimises safety and security, within the development and the public domain. It provides for quality public and private spaces that are clearly defined and fit for the intended purpose. Opportunities to maximise passive surveillance of public and communal areas promote safety.

A positive relationship between public and private spaces is achieved through clearly defined secure access points and well lit and visible areas that are easily maintained and appropriate to the location and purpose.

Comment:

The building entrance is clear and well defined, with the public/private domain clearly identified within the site. The public plaza in the north-western corner of the site is clearly accessible for the public and does not attempt to close this space off for private use, given its openness to the street.

Principle 8: Housing Diversity and Social Interaction

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

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

Comment:

The sizing of 2, 3 and 4 bedroom units is appropriate given the location of the site and likely demographic in the locality. The shop top housing provides additional housing choice in Palm Beach, which is predominately detached residential dwellings.

Principle 9: Aesthetics

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

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

Comment:

The materials and colours chosen have been guided by heritage advice to respond to the adjoining Barrenjoey House. The desirable elements of palm beach, including pitched roof forms and open balconies, have been replicated for the development to speak to the character of the area and the seaside village feel.

APARTMENT DESIGN GUIDE

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

Development Control	Criteria / Guideline	Comments
Part 3 Siting the Development		
Site Analysis	Does the development relate well to its context and is it sited appropriately?	Yes - The proposal is orientated, sited and setback appropriately in accordance with the controls and site constraints. The proposal being a shop-top housing development is appropriate for the B1 Zone and would be an expected form of development in this zoning.
Orientation	Does the development respond to the streetscape and site and optimise solar access within the development and to neighbouring properties?	Yes - Designed to optimise the western aspect looking over the water views of Pittwater and solar access is appropriate given the orientation and use of deep balconies which have been designed to respond to the character and enhance amenity of the development. Solar access is maintained in accordance with Council's controls for the adjoining property.
Public Domain Interface	Does the development transition well between the private and public domain without compromising safety and security? Is the amenity of the public domain retained and enhanced?	Yes - The ground floor commercial is at-grade to allow ease of transition into the commercial spaces and usability of the areas beneath the balconies for undercover dining. The public domain is enhanced and a public plaza at the north-western corner is provided to further contribute to the public domain.
Communal and Public Open Space	Appropriate communal open space is to be provided as follows: 1. Communal open space has a minimum area equal to 25% of the site 2. Developments achieve a minimum of 50%	No - Not communal open space is provided, however, a public plaza is provided in the north-western corner. Given the site location across from a

	<p>direct sunlight to the principal usable parts of the communal open space for a minimum of 2 hours between 9 am and 3pm on 21 June (mid winter)</p>	<p>reserve, and the number of units (5) with each having oversized balconies, Council can support the development without a designated communal open space area.</p>												
Deep Soil Zones	<p>Deep soil zones are to meet the following minimum requirements:</p> <table border="1"> <thead> <tr> <th>Site area</th><th>Minimum dimensions</th><th>Deep soil zone (% of site area)</th></tr> </thead> <tbody> <tr> <td>Less than 650m²</td><td>-</td><td rowspan="4">7%</td></tr> <tr> <td>650m² – 1,500m²</td><td>3m</td></tr> <tr> <td>Greater than 1,500m²</td><td>6m</td></tr> <tr> <td>Greater than 1,500m² with significant existing tree cover</td><td>6m</td></tr> </tbody> </table>	Site area	Minimum dimensions	Deep soil zone (% of site area)	Less than 650m ²	-	7%	650m ² – 1,500m ²	3m	Greater than 1,500m ²	6m	Greater than 1,500m ² with significant existing tree cover	6m	<p>Yes - 21.4% of the site comprises of deep soil which includes the triangular portion in the north-eastern corner and the landscaped terraces private open space along the eastern boundary.</p>
Site area	Minimum dimensions	Deep soil zone (% of site area)												
Less than 650m ²	-	7%												
650m ² – 1,500m ²	3m													
Greater than 1,500m ²	6m													
Greater than 1,500m ² with significant existing tree cover	6m													
Visual Privacy	<p>Minimum required separation distances from buildings to the side and rear boundaries are as follows:</p> <table border="1"> <thead> <tr> <th>Building height</th><th>Habitable rooms and balconies</th><th>Non-habitable rooms</th></tr> </thead> <tbody> <tr> <td>Up to 12m (4 storeys)</td><td>6m</td><td>3m</td></tr> <tr> <td>Up to 25m (5-8 storeys)</td><td>9m</td><td>4.5m</td></tr> <tr> <td>Over 25m (9+ storeys)</td><td>12m</td><td>6m</td></tr> </tbody> </table> <p>Note: Separation distances between buildings on the same site should combine required building separations depending on the type of rooms.</p> <p>Gallery access circulation should be treated as habitable space when measuring privacy separation distances between neighbouring properties.</p>	Building height	Habitable rooms and balconies	Non-habitable rooms	Up to 12m (4 storeys)	6m	3m	Up to 25m (5-8 storeys)	9m	4.5m	Over 25m (9+ storeys)	12m	6m	<p>Meets outcomes - The upper floor is setback from the southern boundary at 4.67m, exceeding the DCP requirement of 3m. The windows are provided with obscure glazing below 1.7m to mitigate direct overlooking from the bedroom and bathrooms of Unit 5. The short section of balcony off Unit A3 (0.8m depth off a bedroom) can be treated with a privacy screen to 1.7m to mitigate overlooking (as a recommended condition).</p> <p>The setback to the upper floor eastern boundary is in accordance with the DCP setback control of 3m, and given the significant level change between the site and sites to the rear, there will be no overlooking</p>
Building height	Habitable rooms and balconies	Non-habitable rooms												
Up to 12m (4 storeys)	6m	3m												
Up to 25m (5-8 storeys)	9m	4.5m												
Over 25m (9+ storeys)	12m	6m												

		directly between sites. The landscape plan nominates an 800mm wide landscape planter along the eastern boundary which will further restrict views between sites and will be planted with a continuous row of evergreen shrubs capable of a mature 2m height, which will be sufficient to mitigate views between sites given the slope.
Pedestrian Access and entries	<p>Do the building entries and pedestrian access connect to and addresses the public domain and are they accessible and easy to identify?</p> <p>Large sites are to provide pedestrian links for access to streets and connection to destinations.</p>	Yes - Pedestrian entrance is clear at the front of the site. A skylight is used over the top of the stairwell to bring light down into the stairwell.
Vehicle Access	Are the vehicle access points designed and located to achieve safety, minimise conflicts between pedestrians and vehicles and create high quality streetscapes?	Yes - A single vehicle access point is used for the site which as been designed to the satisfaction of Council's Engineers.
Bicycle and Car Parking	<p>For development in the following locations:</p> <ul style="list-style-type: none"> On sites that are within 80m of a railway station or light rail stop in the Sydney Metropolitan Area; or On land zoned, and sites within 400m of land zoned, B3 Commercial Core, B4 Mixed Use or equivalent in a nominated regional centre <p>The minimum car parking requirement for residents and visitors is set out in the Guide to Traffic Generating Developments, or the car parking requirement prescribed by the relevant council, whichever is less.</p> <p>The car parking needs for a development must be provided off street.</p> <p>Parking and facilities are provided for other modes of transport.</p> <p>Visual and environmental impacts are minimised.</p>	Yes - Council's traffic engineers are satisfied with the quantum of parking within the development and bicycle parking is within the basement for residents.
Part 4 Designing the Building		
Amenity		
Solar and Daylight	To optimise the number of apartments receiving	Partial compliance -

Access	<p>sunlight to habitable rooms, primary windows and private open space:</p> <ul style="list-style-type: none"> Living rooms and private open spaces of at least 70% of apartments in a building are to receive a minimum of 2 hours direct sunlight between 9 am and 3 pm at mid winter. 	<p>100% of balconies (5/5) will receive a minimum of 2 hours solar access between 1pm and 3pm. 3/5 (60%) will receive 2 hours solar access between 1pm and 3pm. This is partially as a result of the recessed facade glazing and deeper balconies which contribute to the character of the building and compliment the character of the area. The remaining 2 apartments (2 and 3) are provided with generous balconies that receive sunlight after 12pm, with full sunlight to the living room windows expected during the afternoon period overlooking the Pittwater. The technical non-compliance can be supported given the direct west orientation of the site, the purposeful design of the deeper balconies and the fact the building will have high amenity and outlook over the the Pittwater and public reserve to the west.</p>
	<ul style="list-style-type: none"> A maximum of 15% of apartments in a building receive no direct sunlight between 9 am and 3 pm at mid winter. 	<p>Yes - All apartments will receive sunlight to at least their private open space comprising of the balcony.</p>
Natural Ventilation	<p>The number of apartments with natural cross ventilation is maximised to create a comfortable indoor environment for residents by:</p> <ul style="list-style-type: none"> At least 60% of apartments are naturally cross ventilated in the first nine storeys of the building. Apartments at ten storeys or greater are deemed to be cross ventilated only if any enclosure of the balconies at these levels allows adequate natural ventilation and cannot be fully enclosed. 	<p>Yes - All cross ventilated, including the central apartment on Level 1 which has a lightwell with stack effect ventilation.</p>
	<ul style="list-style-type: none"> Overall depth of a cross-over or cross-through apartment must not exceed 18m, measured glass line to glass line. 	<p>Yes - Max unit depth is 16m.</p>

Ceiling Heights	<p>Measured from finished floor level to finished ceiling level, minimum ceiling heights are:</p> <table><tr><th colspan="2">Minimum ceiling height</th></tr><tr><td>Habitable rooms</td><td>2.7m</td></tr><tr><td>Non-habitable</td><td>2.4m</td></tr><tr><td>For 2 storey apartments</td><td>2.7m for main living area floor 2.4m for second floor, where its area does not exceed 50% of the apartment area</td></tr><tr><td>Attic spaces</td><td>1.8m at edge of room with a 30 degree minimum ceiling slope</td></tr><tr><td>If located in mixed used areas</td><td>3.3m for ground and first floor to promote future flexibility of use</td></tr></table>	Minimum ceiling height		Habitable rooms	2.7m	Non-habitable	2.4m	For 2 storey apartments	2.7m for main living area floor 2.4m for second floor, where its area does not exceed 50% of the apartment area	Attic spaces	1.8m at edge of room with a 30 degree minimum ceiling slope	If located in mixed used areas	3.3m for ground and first floor to promote future flexibility of use	<p>Yes - The commercial level has ceiling of 3.8m for the front half, with a ceiling of 3.1m for the back of house section which has been raised up to respond to the flood planning level. On average, compliance ceiling heights are provided and this will provide enough flexibility for future uses. The residential component has a 2.7m floor to ceiling and 3.3m floor to floor to allow enough room for services.</p>
Minimum ceiling height														
Habitable rooms	2.7m													
Non-habitable	2.4m													
For 2 storey apartments	2.7m for main living area floor 2.4m for second floor, where its area does not exceed 50% of the apartment area													
Attic spaces	1.8m at edge of room with a 30 degree minimum ceiling slope													
If located in mixed used areas	3.3m for ground and first floor to promote future flexibility of use													
Apartment Size and Layout	<p>Apartments are required to have the following minimum internal areas:</p> <table><tr><th>Apartment type</th><th>Minimum internal area</th></tr><tr><td>Studio</td><td>35m²</td></tr><tr><td>1 bedroom</td><td>50m²</td></tr><tr><td>2 bedroom</td><td>70m²</td></tr><tr><td>3 bedroom</td><td>90m²</td></tr></table> <p>The minimum internal areas include only one bathroom. Additional bathrooms increase the minimum internal area by 5m² each.</p> <p>A fourth bedroom and further additional bedrooms increase the minimum internal area by 12m² each.</p>	Apartment type	Minimum internal area	Studio	35m ²	1 bedroom	50m ²	2 bedroom	70m ²	3 bedroom	90m ²	<p>Yes - All exceed requirement.</p>		
	Apartment type	Minimum internal area												
	Studio	35m ²												
	1 bedroom	50m ²												
	2 bedroom	70m ²												
3 bedroom	90m ²													
<p>Every habitable room must have a window in an external wall with a total minimum glass area of not less than 10% of the floor area of the room. Daylight and air may not be borrowed from other rooms.</p>	<p>Yes - All habitable rooms have windows.</p>													
<p>Habitable room depths are limited to a maximum of 2.5 x the ceiling height.</p>	<p>Yes - Room depths appropriate</p>													
<p>In open plan layouts (where the living, dining and kitchen are combined) the maximum habitable room depth is 8m from a window.</p>	<p>Partial non-compliance - The room depths for the open plan living/kitchen of unit 3 is 8.5m slightly exceeds the ADG, however, this room is much wider than the</p>													

		minimum width (6.4m wide) and therefore, given the additional width is acceptable.															
	Master bedrooms have a minimum area of 10m ² and other bedrooms 9m ² (excluding wardrobe space).	Yes - Achieves minimum dimensions.															
	Bedrooms have a minimum dimension of 3.0m and must include built in wardrobes or have space for freestanding wardrobes, in addition to the 3.0m minimum dimension.	Yes - Achieves minimum dimensions.															
	Living rooms or combined living/dining rooms have a minimum width of: <ul style="list-style-type: none">3.6m for studio and 1 bedroom apartments4m for 2 and 3 bedroom apartments	Yes - Achieves minimum dimensions.															
	The width of cross-over or cross-through apartments are at least 4m internally to avoid deep narrow apartment layouts	Yes - Achieves minimum dimensions.															
Private Open Space and Balconies	All apartments are required to have primary balconies as follows: <table><tr><th>Dwelling Type</th><th>Minimum Area</th><th>Minimum Depth</th></tr><tr><td>Studio apartments</td><td>4m²</td><td>-</td></tr><tr><td>1 bedroom apartments</td><td>8m²</td><td>2m</td></tr><tr><td>2 bedroom apartments</td><td>10m²</td><td>2m</td></tr><tr><td>3+ bedroom apartments</td><td>12m²</td><td>2.4m</td></tr></table>	Dwelling Type	Minimum Area	Minimum Depth	Studio apartments	4m ²	-	1 bedroom apartments	8m ²	2m	2 bedroom apartments	10m ²	2m	3+ bedroom apartments	12m ²	2.4m	Yes - Achieves minimum dimensions and area.
	Dwelling Type	Minimum Area	Minimum Depth														
	Studio apartments	4m ²	-														
	1 bedroom apartments	8m ²	2m														
2 bedroom apartments	10m ²	2m															
3+ bedroom apartments	12m ²	2.4m															
	The minimum balcony depth to be counted as contributing to the balcony area is 1m																
	For apartments at ground level or on a podium or similar structure, a private open space is provided instead of a balcony. It must have a minimum area of 15m ² and a minimum depth of 3m.	N/A															
Common Circulation and Spaces	The maximum number of apartments off a circulation core on a single level is eight.	Yes - Five units only.															
	For buildings of 10 storeys and over, the maximum number of apartments sharing a single lift is 40.	N/A															
Storage	In addition to storage in kitchens, bathrooms and bedrooms, the following storage is provided: <table><tr><th>Dwelling Type</th><th>Storage size volume</th></tr><tr><td>Studio apartments</td><td>4m²</td></tr><tr><td>1 bedroom apartments</td><td>6m²</td></tr><tr><td>2 bedroom</td><td>8m²</td></tr></table>	Dwelling Type	Storage size volume	Studio apartments	4m ²	1 bedroom apartments	6m ²	2 bedroom	8m ²	Yes - Adequate storage is provided and nominated storage areas also located in the basement.							
	Dwelling Type	Storage size volume															
	Studio apartments	4m ²															
	1 bedroom apartments	6m ²															
2 bedroom	8m ²																

	apartments				
	3+ bedroom apartments	10m ²			
	At least 50% of the required storage is to be located within the apartment.				
Acoustic Privacy	Noise sources such as garage doors, driveways, service areas, plant rooms, building services, mechanical equipment, active communal open spaces and circulation areas should be located at least 3m away from bedrooms.				Yes - The building has been designed having consideration to mechanical equipment (located on roof) and active areas (located on ground floor only).
Noise and Pollution	Siting, layout and design of the building is to minimise the impacts of external noise and pollution and mitigate noise transmission.				Yes - Appropriately designed to avoid noise transmission between rooms
Configuration					
Apartment Mix	Ensure the development provides a range of apartment types and sizes that is appropriate in supporting the needs of the community now and into the future and in the suitable locations within the building.				Yes - Appropriate mix given the site location and potential residents who may wish to reside, this provides housing choice in an area that is predominantly detached dwellings.
Ground Floor Apartments	Do the ground floor apartments deliver amenity and safety for their residents?				N/A
Facades	Ensure that building facades provide visual interest along the street and neighbouring buildings while respecting the character of the local area.				Yes - Consideration has been given to the character of the area to create visual interest and appropriately respond to the adjoining heritage item.
Roof Design	Ensure the roof design responds to the street and adjacent buildings and also incorporates sustainability features. Can the roof top be used for common open space? This is not suitable where there will be any unreasonable amenity impacts caused by the use of the roof top.				Yes - Roof has been designed to be sympathetic to the adjoining heritage item and incorporates PV cells on the flat central section
Landscape Design	Was a landscape plan submitted and does it respond well to the existing site conditions and context.				Yes - Landscape plan submitted which satisfies Councils requirements.
Planting on Structures	When planting on structures the following are recommended as minimum standards for a range of plant sizes:				Yes - Soil depths can be achieved and conditions recommended to ensure this occurs.
	Plant	Definition	Soil	Soil	Soil Area

	type		Volume	Depth	
	Large Trees	12-18m high, up to 16m crown spread at maturity	150m ³	1,200mm	10m x 10m or equivalent
	Medium Trees	8-12m high, up to 8m crown spread at maturity	35m ³	1,000mm	6m x 6m or equivalent
	Small trees	6-8m high, up to 4m crown spread at maturity	9m ³	800mm	3.5m x 3.5m or equivalent
	Shrubs			500-600mm	
	Ground Cover			300-450mm	
	Turf			200mm	
Universal Design	Do at least 20% of the apartments in the development incorporate the Livable Housing Guideline's silver level universal design features				Yes - There is at least one unit (20%) is adaptable.
Adaptable Reuse	New additions to existing buildings are contemporary and complementary and enhance an area's identity and sense of place.				N/A
Mixed Use	Can the development be accessed through public transport and does it positively contribute to the public domain? Non-residential uses should be located on lower levels of buildings in areas where residential use may not be appropriate or desirable.				Yes - The proposal contributes to the B1 Zoning and local center objectives.
Awnings and Signage	Locate awnings along streets with high pedestrian activity, active frontages and over building entries. Awnings are to complement the building design and contribute to the identity of the development. Signage must respond to the existing streetscape character and context.				Yes - Cover is provided under the balconies for the commercial uses below.
Performance					
Energy Efficiency	Have the requirements in the BASIX certificate been shown in the submitted plans?				Yes - BASIX certificate provided and proposal capable of complying

Water Management and Conservation	Has water management taken into account all the water measures including water infiltration, potable water, rainwater, wastewater, stormwater and groundwater?	Yes - BASIX certificate covers water management.
Waste Management	Has a waste management plan been submitted as part of the development application demonstrating safe and convenient collection and storage of waste and recycling?	Yes - Waste management plan has been submitted and Council's waste team are satisfied with the waste storage and collection arrangements.
Building Maintenance	Does the development incorporate a design and material selection that ensures the longevity and sustainability of the building?	Yes - Robust materials have been chosen.

STANDARDS THAT CANNOT BE USED TO REFUSE DEVELOPMENT CONSENT

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

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

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

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

Comment: The application is consistent with the above requirements and is recommended for approval.

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

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

(3) To remove doubt:

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

Note. The provisions of this clause do not impose any limitations on the grounds on which a consent

authority may grant or modify development consent.

Comment: Council is satisfied that regard has been given to the design principles outlined in the ADG and objectives of the design criteria, as addressed above.

SEPP (Building Sustainability Index: BASIX) 2004

A BASIX certificate has been submitted with the application (see Certificate No.1186733M_03 dated 1 February 2023).

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

Commitment	Required Target	Proposed
Water	40	40
Thermal Comfort	Pass	Pass
Energy	50	50

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

SEPP (Transport and Infrastructure) 2021

Ausgrid

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

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

Comment:

The proposal was referred to Ausgrid who raised no objections, subject to conditions which have been included in the recommendation of this report.

Roads and Maritime Service (RMS)

Section 2.118 - Development with frontage to classified road states:

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

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

- (b) the safety, efficiency and ongoing operation of the classified road will not be adversely affected by the development as a result of—*
- (i) the design of the vehicular access to the land, or*
 - (ii) the emission of smoke or dust from the development, or*
 - (iii) the nature, volume or frequency of vehicles using the classified road to gain access to the land, and*

Comment:

The application has been referred to Transport for NSW for comment given the access is off Barrnejoey Road (classified road). TfNSW have provided a response advising they raise no objections, subject to recommended conditions which will be included within the consent conditions.

SEPP (Resilience and Hazards) 2021

Chapter 2 – Coastal Management

The site is subject to Chapter 2 of the SEPP. Accordingly, an assessment under Chapter 2 has been carried out as follows:

Division 1 Coastal Wetlands and littoral rainforest area

2.7 Development on certain land within coastal wetlands and littoral rainforests area

- 1) The following may be carried out on land identified as “coastal wetlands” or “littoral rainforest” on the Coastal Wetlands and Littoral Rainforests Area Map only with development consent:
 - a) the clearing of native vegetation within the meaning of Part 5A of the Local Land Services Act 2013,
 - b) the harm of marine vegetation within the meaning of Division 4 of Part 7 of the Fisheries Management Act 1994,
 - c) the carrying out of any of the following:
 - i) earthworks (including the depositing of material on land),
 - ii) constructing a levee,
 - iii) draining the land,
 - iv) environmental protection works,
 - d) any other development

Comment:

The land is not identified as coastal wetlands or containing littoral rainforest.

2.8 Development on land in proximity to coastal wetlands or littoral rainforest

- 1) Development consent must not be granted to development on land identified as “proximity area for coastal wetlands” or “proximity area for littoral rainforest” on the Coastal Wetlands and Littoral Rainforests Area Map unless the consent authority is satisfied that the proposed development will not significantly impact on:
 - a) the biophysical, hydrological or ecological integrity of the adjacent coastal wetland or littoral rainforest, or
 - b) the quantity and quality of surface and ground water flows to and from the adjacent coastal wetland or littoral rainforest.

Comment:

The land is not identified as being in proximity to coastal wetlands or littoral rainforest area.

Division 2 Coastal Vulnerability Area

2.9 Development on land within the coastal vulnerability area

Development consent must not be granted to development on land that is within the area identified as “coastal vulnerability area” on the Coastal Vulnerability Area Map unless the consent authority is satisfied that:

- a) if the proposed development comprises the erection of a building or works—the building or works are engineered to withstand current and projected coastal hazards for the design life of the building or works, and
- b) the proposed development:
 - i) is not likely to alter coastal processes to the detriment of the natural environment or
 - ii) other land, and
 - iii) is not likely to reduce the public amenity, access to and use of any beach, foreshore, rock platform or headland adjacent to the proposed development, and incorporates appropriate measures to manage risk to life and public safety from coastal hazards, and
- c) measures are in place to ensure that there are appropriate responses to, and management of, anticipated coastal processes and current and future coastal hazards.

Comment:

The land is not identified as being subject to the coastal vulnerability area.

Division 3 Coastal environment area

2.10 Development on land within the coastal environment area

- 1) Development consent must not be granted to development on land that is within the coastal environment area unless the consent authority has considered whether the proposed development is likely to cause an adverse impact on the following:
 - a) the integrity and resilience of the biophysical, hydrological (surface and groundwater) and ecological environment,
 - b) coastal environmental values and natural coastal processes,
 - c) the water quality of the marine estate (within the meaning of the Marine Estate Management Act 2014), in particular, the cumulative impacts of the proposed development on any of the sensitive coastal lakes identified in Schedule 1,
 - d) marine vegetation, native vegetation and fauna and their habitats, undeveloped headlands and rock platforms,
 - e) existing public open space and safe access to and along the foreshore, beach, headland or rock platform for members of the public, including persons with a disability,
 - f) Aboriginal cultural heritage, practices and places,
 - g) the use of the surf zone.

Comment:

The land is well setback from the Pittwater Foreshore, across the other side of Barrenjoey Road. Council's water management team and Coast and Catchments team have reviewed the application with regard to the matters listed (a) to (g) and are satisfied the development will not have an adverse impact on the coastal environment.

- 2) Development consent must not be granted to development on land to which this clause applies unless the consent authority is satisfied that:
- a) the development is designed, sited and will be managed to avoid an adverse impact referred to in subsection (1), or
 - b) if that impact cannot be reasonably avoided—the development is designed, sited and will be managed to minimise that impact, or
 - c) if that impact cannot be minimised—the development will be managed to mitigate that impact.

Comment:

Council is satisfied that the design of the building avoids impacts to the coastal environment and water run off/sediment erosion control can be managed via conditions of consent.

Division 4 Coastal use area

2.11 Development on land within the coastal use area

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

Comment:

The development will not result in increased overshadowing of the foreshore area, impede coastal access, impact upon aboriginal cultural heritage and takes into account the surrounding built environment, including the locally listed heritage item adjoining the site. The development is located within an established residential and neighbourhood centre site that is within a built up area of Palm Beach and therefore, will not be detrimental to the scenic qualities of the coastline or impact upon long distance views of the coastline. Council is satisfied the development has been designed to avoid adverse impacts on the matters listed i) to v).

Division 5 General

2.12 Development in coastal zone generally—development not to increase risk of coastal hazards

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.

Comment:

The development will not increase the risk of coastal hazards.

As such, it is considered that the application complies with the requirements of Chapter 2 of the State Environmental Planning Policy (Resilience and Hazards) 2021.

Chapter 4 – Remediation of Land

Sub-section 4.6 (1)(a) of Chapter 4 requires the consent authority to consider whether land is contaminated.

In response to the above requirements of Chapter 4, the applicant has submitted a Waste Classification Report dated 21 April 2022 and prepared by Epic Environmental. In its conclusion, the investigation states:

Following the completion of the waste classification assessment the following conclusions have been made:

- *Intrusive soil sampling was completed from seven boreholes to a maximum depth of 1.0 mbgl*
- *Samples were analysed at Envirolab for TPH, TRH, BTEX, PAH, heavy metals, PCBs, OCPs and asbestos*
- *Laboratory analysis and field observations indicated that the subject soils are suitable for classification as General Solid Waste (non-putrescible)*
- *Prior to the offsite disposal of the subject soils, if materials uncovered onsite do not match the description contained within this report, further assessment will be required by an experienced environmental consultant.*

Therefore, as the Investigation concludes that there are no substances on site that would require remediation of the land and therefore, the land would be suitable for the proposed shop-top housing development.

Council's Environment and Health Officer have reviewed this report (which was requested from Council following initial assessment) and is satisfied the site is suitable for the intended use.

Pittwater Local Environmental Plan 2014

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

Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings:	8.5m	Eave at street edge -	34.95%	No

		7.2m Top of roof parapet (max height) - 11.47m Western extent of roof - 4.1m		
Density controls for certain residential accommodation	1 dwelling per 150sqm of site area (max 7 dwellings)	1 dwelling per 228sqm (5 dwellings)	N/A	Yes

Compliance Assessment

Clause	Compliance with Requirements
1.9A Suspension of covenants, agreements and instruments	Yes
4.3 Height of buildings	No
4.5A Density controls for certain residential accommodation	Yes
4.6 Exceptions to development standards	Yes
5.10 Heritage conservation	Yes
5.21 Flood planning	Yes
7.1 Acid sulfate soils	Yes
7.2 Earthworks	Yes
7.6 Biodiversity protection	Yes
7.7 Geotechnical hazards	Yes
7.10 Essential services	Yes

Detailed Assessment

4.6 Exceptions to development standards

Description of non-compliance:

Development standard:	Height of buildings
Requirement:	8.5m
Proposed:	11.47m (maximum)
Percentage variation to requirement:	34.94%

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

Clause 4.6 Exceptions to development standards:

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

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

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

Comment:

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

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

- (a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*
- (b) that there are sufficient environmental planning grounds to justify contravening the development standard.*

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

(a) the consent authority is satisfied that:

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

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

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

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

Comment:

The Applicant's written request has demonstrated that the objectives of the development standard are achieved, notwithstanding the non-compliance with the development standard.

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

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

Comment:

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

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

s 1.3 of the EPA Act reads as follows:

1.3 Objects of Act(cf previous s 5)

The objects of this Act are as follows:

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

The applicants written request argues, in part:

Ground 1 - Better environmental planning, urban design, heritage conservation and public benefit outcomes

Approval of the building height variation will facilitate development which provides far superior environmental, urban design, heritage conservation and public benefit outcomes compared to the

development approved and physically commenced pursuant to Development Consent N0119/14. In forming this opinion, I note that approval of the development will facilitate the following environment, urban design, heritage conservation and public benefit outcomes

- The 3 storey building incorporates pitched roof forms and is of a design which is both sympathetic to its context and contemporary in its use of materials and forms in response to local climate and the “seaside village” character anticipated by the Palm Beach Locality Statement.
- The adoption of a design which relates to the built form proportions, eave levels and control lines of Barrenjoey House whilst maintaining contextually appropriate setbacks.
- The creation of a publicly accessible plaza, open to the sky, at the northern end of the site to facilitate the provision of a feature tree whilst providing broader public benefit in terms of its usage and the maintenance of views to the southern façade of Barrenjoey House.
- The provision of additional landscaping adjacent to the southern boundary of the property where the development interfaces with the adjoining dwelling house.
- The provision of a deep and generously proportioned colonnade adjacent to the frontage of the property including level access to the adjacent commercial tenancies.

Ground 2 – Flooding

The ability to lower the height of the development is frustrated by localised flooding which occurs adjacent to the front boundary with such flooding requiring a Flood Planning Level (FPL) of RL 3.2m AHD being approximately 640mm above the ground level at the front of the property. This has necessitated the raising of the rear of the retail floor space relative to the levels established along the front boundary to achieve acceptable flood mitigation outcomes in accordance with the flood planning provisions within PDGP.

The flooding contributes to making strict compliance with the building height standard more difficult to achieve and to that extent is an environmental planning ground put forward in support of the extent of the building height breach proposed.

Ground 3 – Prior excavation of the site distorts extent of building height breach

The prior excavation of the site within the footprint of the existing building distorts the height of buildings development standard plane overlaid above the site when compared to the natural undisturbed topography of the land. When the original undisturbed levels of the site are interpolated across the building footprint the extent of building height breach, particularly beyond the proposed street facing building parapet, would be significantly reduced as depicted in Figure 2.

Consistent with the finding of O’Neill C at paragraph 73 of *Merman Investments Pty Ltd v Woollahra Municipal Council* [2021] NSWLEC 1582 such circumstance can properly be described as an environmental planning ground within the meaning of cl 4.6(3)(b) of LEP 2014 as it relates to the extent of building height breach proposed.

Ground 4 - Objectives of the Act

Objective (c) to promote the orderly and economic use and development of land

For the reasons outlined in this submission, approval of the variation to the building height standard will promote the orderly and economic use and development of the land through achieving superior environmental, urban design, heritage conservation and public benefit outcomes compared to the development approved and physically commenced pursuant to Development Consent N0119/14. Strict compliance would require the deletion of the entire upper level of the development, representing 2 Apartments, with such outcome neither orderly nor economic have regard to the development consent already physically commenced on the site. Strict compliance would likely result in the previously

approved development being completed and occupied which, given the detailing of the previous approval, would result in inferior environmental outcomes to and from development and not represent the orderly development of land.

Approval of the building height variation will promote the achievement of this objective.

Objective (f) to promote the sustainable management of built and cultural heritage (including Aboriginal cultural heritage)

For the reasons outlined in this submission, approval of the variation to the building height standard will promote superior heritage conservation outcomes having regard to the development's immediate built form relationship with the heritage listed Barrenjoey House.

Approval of the building height variation will promote the achievement of this objective.

Objective (g) to promote good design and amenity of the built environment

For the reasons outlined in this submission, approval of the building height variation will facilitate development which provides far superior environmental, urban design, heritage conservation and public benefit outcomes compared to the development approved and physically commenced pursuant to Development Consent N0119/14. In this regard, I note that the extent of building height non-compliance is increased through the provision of characteristically pitched roof forms with the variation able to be significantly reduced through the adoption of a flat roof form consistent with that previously approved pursuant to Development Consent N0119/14. Such outcome would not, in my opinion, represent good design nor promote the amenity of the built environment.

Approval of the building height variation will promote the achievement of this objective.

Objective (h) to promote the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants

As previously indicated, the ability to lower the height of the development is frustrated by localised flooding which occurs adjacent to the front boundary with such flooding requiring a Flood Planning Level (FPL) of RL 3.2m AHD being approximately 640 mm above the ground level at the front of the property. This has necessitated the raising of the rear of the retail floor space relative to the levels established along the front boundary to achieve acceptable flood mitigation outcomes in accordance with the flood planning provisions within PDCP.

The flooding constraint contributes to making strict compliance with the building height standard more difficult to achieve. The floor levels adopted provide for the protection of the health and safety of their occupants.

Approval of the building height variation will promote the achievement of this objective.

Council's Comment on Planning Grounds

The existing consent and built form outcome

Council has reviewed the four (4) planning grounds put forward by the applicant. Both Council, Council's Heritage advisor and the Design Sustainability Advisory Panel are in agreement that the proposed development will be a superior architectural and urban design outcome when compared to design approved by the existing consent on the land (N0119/14) and therefore achieving the objective (g) to promote good design and amenity of the built environment. Whilst it could be argued that Council should not have regard to the existing three (3) storey consent on the land and enforce strict compliance with the height control, the reality of the situation is that the existing approved development has physically commenced through geotechnical works and could be constructed at any time. This may ultimately result in a lesser outcome than what is proposed under this application in terms of heritage,

urban design and streetscape. Furthermore, the previous application was considered under the same height control (being 8.5m at the time within the Pittwater DCP) and the same desired future character statement for Palm Beach. Whilst it could be argued that strict compliance with the height limit should be enforced and no regard should be had for the existing approval on the land, this is considered to be counter productive to achieving a good urban design and heritage outcome for the site given the reality of the situation and existing approval on the site.

The previous approval was 10.3m from the existing ground level and had a flat roof (see extract of approved plan below). Whilst the proposed development is higher at 11.47m, the additional 1.17m in height is a result of the pitched roof which has been introduced to the development as a response to the Palm Beach character, of which there are many houses with pitched traditional roof forms in the locality, along with similar styles of development in the B1 Zone to the south. Although taller than the previous approval by 1.17m, the third level being contained within the pitched roof form is considered by the DSAP and Council's heritage advisor as a superior outcome in terms of character and context. The two images below are extracts from the approved plans N0119/14.



Built form character

In considering the merits of the upper level the surrounding and nearby character of the B1 Zone and Palm Beach is considered. The site is one of three sites within a small B1 Zone and adjoins the heritage item which is a two storey form with a pitched roof. The B1 Zone at present has fairly limited development, with the most northern site consisting of a small shop. The proposal is a comparable height to previous approvals on the land and has strategically matched the eave line of Barrenjoey House to maintain consistency in the building height at the street edge.

In regards to the wider locality of Palm Beach, further to the south of the site there is a larger B1 Zone which contains two developments of a similar nature that comprise of a three storey form, with the third level contained within the roof form (this B1 Zone also has an 8.5m height limit). These buildings are 250m and 450m to the south of the subject site. It is therefore not unprecedented in Palm Beach to have a three storey shop top housing development within the B1 Zone and this demonstrates there are similar development in the Palm Beach Locality. An advantage of the proposed development is that the building is set into the slope of the land and the rear half of the development is compliant with the height limit. Whilst the other examples of three storey development in Palm Beach B1 Zones are on level sites.

For the above reasons, the proposed development is considered compatible with the both the surrounding and nearby development in Palm Beach B1 Zones.

Good design and amenity

Having regard to the particular element that breaches the building height limit (the third storey and roof form) it has been demonstrated that the breaching element does not have any unreasonable impacts on the surrounding properties with regards to privacy, solar access or view impacts. The way the upper level has been designed to limit amenity impacts achieves objectives *(g) to promote good design and amenity of the built environment* EP&A Act 1979.

Prior site excavation

The prior excavation of the site has influenced the extent of the building which breach the height limit as the building height plane has been measured from the currently existing ground level in accordance with the decision in *Merman Investments Pty Ltd v Woollahra Municipal Council*. A larger portion of the site was historically naturally sloping towards the rear (eastern) boundary which has been since excavated following construction of a retaining wall as site preparation for the previous consent on the land. Whilst the front portion of the site has historically been leveled (comprising most recently the fish and chip shop) the design attempts to respond to the previously sloping nature of the site by incorporating a pitched roof design which slopes upwards towards the rear of the site. The prior excavation of the site is considered to be a contributing factor to the extent of the height breach and is an environmental planning ground that contributes to justifying the height breach.

Flooding

It is agreed that site flooding partially contributes to the increased building height and is an environmental planning ground. A portion of the ground floor level at the rear needs to be raised to comply with the flood planning levels, whilst still having to provide a reasonable floor to ceiling height for servicing at the rear of the commercial tenancies. The height of the commercial floor level in turn influences the RL's of the floors above and therefore increased in building height. The response to flood planning for the site achieves objective *(h) to promote the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants* EP&A Act 1979.

In this regard, the applicant's written request has demonstrated that the proposed development is an orderly and economic use and development of the land, and that the structure is of a good design that will reasonably protect and improve the amenity of the surrounding built environment, therefore satisfying cls 1.3 (c) and (g) of the EPA Act. The consent authority can be satisfied that there are sufficient environmental planning ground taking considering the application on its own merits, as well as taking into consideration the previous consent on the land.

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

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

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

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

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

Comment:

In considering whether or not the proposed development will be in the public interest, consideration must be given to the underlying objectives of the Height of Buildings development standard and the objectives of the B1 Neighbourhood Centre zone. An assessment against these objectives is provided below.

Objectives of development standard

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

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

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

Comment:

For the reasons discussed above, the proposed development is of similar height a consent that currently exists upon the land which is a three storey form. The third level has been incorporated within a pitched roof form to respond to the traditional pitched roof forms in the area and provide an outcome that is in character with the adjoining heritage item. The overall building bulk and third storey has been contained within a pitched roof form, including the side elevations into a roof form. The angle of the roof slopes back with the natural gradient of the land and gradient of the adjoining property at 1100 Barrenjoey Road. The first floor eave line has strategically been matched to the eave line of Barrenjoey House to maintain consistency in the height adjoining the road. It is noted that the first floor eave adjoining the streetscape is below the 8.5m height limit, with the non-compliant portion located further into the site.

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

development,

Comment:

The site is one of three sites within a small B1 Zone and adjoins the heritage item which is a two storey form with a pitched roof. The B1 Zone at present has fairly limited development, with the most northern side consisting of a small shop. The proposal is a comparable height to previous approvals on the land and has strategically matched the eave line of Barrenjoey House to maintain consistency in the building height at the street edge.

In regards to the wider locality of Palm Beach, further to the south of the site there is another larger B1 Zone which contains developments of a similar nature that comprise of two stories, with a third level within the roof form (this B1 Zone also with an 8.5m height limit). These sites are 250m and 450m to the south of the subject site. It is therefore not unprecedented in Palm Beach to have a three storey shop top housing development within the B1 Zone and demonstrates there is similar development in the area. The advantage of the proposed development is that it is set into the slope of the land and the rear half of the development is compliant with the height limit. Whilst the other examples of three storey development in Palm Beach B1 Zones are on level sites.

For the above reason, the proposed development is considered compatible with the both the surrounding and nearby development in Palm Beach.

c) to minimise any overshadowing of neighbouring properties,

Comment:

An assessment of the overshadowing impacts is undertaken later in this assessment report. The proposal maintains 3 hours solar access to the adjoining property at 1100 Barrenjoey Road despite the exceedance in building height. See detailed discussion later in this report.

d) to allow for the reasonable sharing of views,

Comment:

An assessment of the view impacts is undertaken later in this assessment report. The proposal maintains an appropriate view sharing outcome in accordance with the *Tenacity* Planning Principle for adjoining properties, despite the exceedance in building height. See detailed discussion later in this report regarding view impacts for 1100 Barrenjoey Road. The approved dwelling to the rear (1110 Barrenjoey Road, recently consent granted for a dwelling) will maintain views of the Pittwater over the site due to the elevation. The ground level detached cabin/studio adjacent to the western boundary of 1110 Barrenjoey Road would be impacted in any development of the site including a fully compliant development or the existing approved development.

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

Comment:

The site has been previously disturbed and leveled, with no particularly sensitive qualities that should be preserved in terms of topography. Given the zoning of the land (B1 Neighborhood Centre) excavation to create the basements and achieve an dwelling yield consistent with the density provisions of the LEP is considered reasonable in the

circumstances. The proposal maintains a low scale at the rear boundary to minimise visual impact for the rear property.

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

Comment:

As discussed in detail within the heritage comments and comments made by the DSAP, the proposal is designed having regard to the adjoining heritage item Barrenjoey House through an appropriate architectural response including using a pitched roof which contributes to the overall building height. The site, being zoned B1, does not contain any significant natural environmental features that need to be avoided and the development has been set into the slope of the land to minimise the overall scale and height of the proposal moving up the hill.

Zone objectives

The underlying objectives of the B1 Neighbourhood Centre zone are:

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

Comment: The proposal provides for two (2) new commercial spaces that are varied in size to meet the needs of the surrounding neighbourhood and businesses.

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

Comment: The development has been designed with an attractive entrance to the commercial floor level, which is at-grade and inviting to enhance the activation of the B1 Zone. Good passive surveillance is achieved for the street to enhance safety.

Conclusion:

For the reasons detailed above, the proposal is considered to be consistent with the objectives of the B1 Neighbourhood Centre zone.

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

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

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

5.10 Heritage conservation

Subclause (4) requires that:

(4) Effect of proposed development on heritage significance

The consent authority must, before granting consent under this clause in respect of a heritage item or heritage conservation area, consider the effect of the proposed development on the heritage significance of the item or area concerned. This subclause applies regardless of whether a heritage management document is prepared under subclause (5) or a heritage conservation management plan is submitted under subclause (6).

A detailed assessment is carried out later in this report under the Heritage Referral comments by Council's Heritage Advisor. The application has been considered given it is directly adjacent to the Heritage Item Barrenjoey House. The subject land is not within a heritage conservation area or a heritage item.

The heritage assessment concludes that the building design has taking into account the heritage significance of the adjoining item is a satisfactory way and this is detailed in the response later in this report. Therefore, Council is satisfied that the application satisfies the requirements of the LEP.

5.21 Flood planning

Under this clause, development consent must not be granted to development on land the consent authority considers to be within the flood planning area unless the consent authority is satisfied 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.*

Comment:

Council's flood engineers are satisfied the development has been designed to be compatible with the flood behavior of the land and there are design measures in place to protect life and property. The flood engineers are satisfied the proposal meets the conditions (a) to (e) above and support the proposal, subject to conditions of consent.

In deciding whether to grant development consent on land to which this clause applies, the consent authority must consider the following matters:

- (a) the impact of the development on projected changes to flood behaviour as a result of climate change,*
- (b) the intended design and scale of buildings resulting from the development,*
- (c) whether the development incorporates measures to minimise the risk to life and ensure the safe evacuation of people in the event of a flood,*
- (d) the potential to modify, relocate or remove buildings resulting from development if the surrounding area is impacted by flooding or coastal erosion.*

Comment:

Council is satisfied that the development will not adversely impact the flood behavior of the land taking into account climate change. The scale of the development accounts for flooding in a innovative way by allowing the front portion of the commercial space to be floodable, to allow at-grade transition to the

street and reduce building height at the front of the site. Council is satisfied matters (a) to (d) have been addressed.

7.1 Acid sulfate soils

Clause 7.1 - 'Acid sulfate soils' requires Council to ensure that development does not disturb, expose or drain acid sulfate soils and cause environmental damage. In this regard, development consent is required for the carrying out of works described on land shown on the Acid Sulfate Soils Map as being of the class specified for those works.

The site is located in an area identified as Acid Sulfate Soil Class 5 (lowest risk), as indicated on Council's Acid Sulfate Soils Planning Map.

Works within 500 metres of adjacent Class 1, 2, 3 or 4 land that is below 5 metres Australian Height Datum and by which the watertable is likely to be lowered below 1 metre Australian Height Datum on adjacent Class 1, 2, 3 or 4 land is required to be assessed to determine if any impact will occur.

The development proposes to excavate the site to approximately 10.5m maximum (at the rear of the site, including basement parking) below the natural ground level. As such, a Preliminary Acid Sulfate Soil Assessment has been undertaken by JK Environments dated 1 December 2020. In the assessment, JK Environments found there to be low likelihood of acid sulphate soils.

In this regard, JK Environments advise that an Acid Sulfate Soil Management Plan (ASSMP) is not considered to be necessary for the development of the site. The Preliminary Assessment was referred to Council's Environmental Health Officer who concurred with the findings and imposed a condition which requires the applicant to notify the principal certifying authority of any new evidence of the presence of acid sulfate soils.

This condition and the recommendations made in the Preliminary Assessment have been included in the recommendation of this report.

7.2 Earthworks

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

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

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

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

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

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

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

Comment: The excavated material will be processed according to the Waste Management Plan for the

development. A condition has been included in the recommendation of this report requiring any fill to be of a suitable quality.

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

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

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

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

(f) the likelihood of disturbing relics

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

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

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

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

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

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

Comment: The proposed earth works will not result in an adverse impact on Barrenjoey House and a condition of consent for a dilapidation report will be recommended. The geotechnical report makes recommendations regarding the basement excavation.

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

7.7 Geotechnical hazards

Under Clause 7.7 Geotechnical Hazards, before determining a development application for development on land to which this clause applies, the consent authority must consider the following matters to decide whether or not the development takes into account all geotechnical risks:

- (a) site layout, including access,*
- (b) the development's design and construction methods,*
- (c) the amount of cut and fill that will be required for the development,*

- (d) waste water management, stormwater and drainage across the land,*
- (e) the geotechnical constraints of the site,*
- (f) any appropriate measures proposed to avoid, minimise or mitigate the impacts of the development.*

Comment:

The proposed development is supported by a geotechnical risk assessment, architectural plans, an excavation plan, and stormwater management plans that demonstrate all geotechnical risks have been taken into account. The application has been reviewed by Council's Development Engineer, who is supportive of the proposal, subject to conditions of consent.

Development consent must not be granted to development on land to which this clause applies unless:

- (a) the consent authority is satisfied that the development will appropriately manage waste water, stormwater and drainage across the land so as not to affect the rate, volume and quality of water leaving the land, and*

Comment:

The proposed development is supported by a geotechnical risk assessment and stormwater management plans that demonstrate waste water, stormwater and drainage are suitably managed on site. The application has been reviewed by Council's Development Engineer, who is supportive of the proposal, subject to conditions of consent.

- (b) the consent authority is satisfied that:*

- (i) the development is designed, sited, and will be managed to avoid any geotechnical risk and significant adverse impact on the development and the land surrounding the development, or*
- (ii) if that risk or impact cannot be reasonably avoided - the development is designed, sited and will be managed to minimise that risk or impact, or*
- (iii) if that risk or impact cannot be minimised - the development will be managed to mitigate that risk or impact.*

Comment:

The application has been reviewed by Council's Development Engineer, who is supportive of the proposal, subject to conditions of consent. As such, Council can be satisfied that the proposed development has been designed, sited, and will be managed to avoid any geotechnical risk and significant adverse impact on the development and the land surrounding the development.

Additional information and a geotechnical advice letter dated 31 January 2023 has been provided in direct response to the concerns by the southern neighbour in relation to the elevated rock shelf and boulders which straddle the property boundary. The additional recommendations within the supplementary reports will be referred as documents to be complied with as conditions of consent.

Given the additional responses provided by a suitably qualified engineer to address this concern and the required certification forms have been signed off as required by the Pittwater DCP, Council can be satisfied that the risks can be appropriately managed for the development.

Pittwater 21 Development Control Plan

Built Form Controls

Built Form Control	Requirement	Proposed	% Variation*	Complies
Front building line	3.5m or established building line - whichever is the greater	Ground - 2m terrace / 6m facade First - 2m terrace / 4.3m facade	0%-42%	No - See discussion later in report

		Second - 3.1m terrace / 6.1m facade		
Rear building line	3m - where adjoining residential zone (East)	3m	N/A	Yes
Side building line	3m - where adjoining residential zone (South)	4.4m	N/A	Yes
	Nil - Where adjoining B1 Zone (North)	1m	N/A	Yes
Landscaped area	For shop top housing 20% of the site area (228.3m ²)	21.4% (244.7m ²)	N/A	Yes

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A1.7 Considerations before consent is granted	Yes	Yes
A4.12 Palm Beach Locality	Yes	Yes
B1.2 Heritage Conservation - Development in the vicinity of heritage items, heritage conservation areas, archaeological sites or potential archaeological sites	Yes	Yes
B1.4 Aboriginal Heritage Significance	Yes	Yes
B2.6 Dwelling Density and Subdivision - Shop Top Housing	Yes	Yes
B3.1 Landslip Hazard	Yes	Yes
B3.6 Contaminated Land and Potentially Contaminated Land	Yes	Yes
B3.8 Estuarine Hazard - Medium Density Residential	Yes	Yes
B3.11 Flood Prone Land	Yes	Yes
B3.12 Climate Change (Sea Level Rise and Increased Rainfall Volume)	Yes	Yes
B4.4 Flora and Fauna Habitat Enhancement Category 2 and Wildlife Corridor	Yes	Yes
B5.15 Stormwater	Yes	Yes
B6.1 Access driveways and Works on the Public Road Reserve	Yes	Yes
B6.2 Internal Driveways	Yes	Yes
B6.3 Off-Street Vehicle Parking Requirements	Yes	Yes
B6.7 Transport and Traffic Management	Yes	Yes
B8.1 Construction and Demolition - Excavation and Landfill	Yes	Yes
B8.3 Construction and Demolition - Waste Minimisation	Yes	Yes
B8.4 Construction and Demolition - Site Fencing and Security	Yes	Yes
B8.5 Construction and Demolition - Works in the Public Domain	Yes	Yes
B8.6 Construction and Demolition - Traffic Management Plan	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
C1.1 Landscaping	Yes	Yes
C1.2 Safety and Security	Yes	Yes
C1.3 View Sharing	Yes	Yes
C1.4 Solar Access	Yes	Yes
C1.5 Visual Privacy	Yes	Yes
C1.6 Acoustic Privacy	Yes	Yes
C1.7 Private Open Space	Yes	Yes
C1.9 Adaptable Housing and Accessibility	Yes	Yes
C1.10 Building Facades	Yes	Yes
C1.12 Waste and Recycling Facilities	Yes	Yes
C1.13 Pollution Control	Yes	Yes
C1.15 Storage Facilities	Yes	Yes
C1.23 Eaves	Yes	Yes
C1.24 Public Road Reserve - Landscaping and Infrastructure	Yes	Yes
C1.25 Plant, Equipment Boxes and Lift Over-Run	Yes	Yes
C2.1 Landscaping	Yes	Yes
C2.3 Awnings	Yes	Yes
C2.10 Pollution Control	Yes	Yes
C2.12 Protection of Residential Amenity	Yes	Yes
C2.16 Undergrounding of Utility Services	Yes	Yes
C2.20 Public Road Reserve - Landscaping and Infrastructure	Yes	Yes
C2.22 Plant, Equipment Boxes and Lift Over-Run	Yes	Yes
D12.1 Character as viewed from a public place	Yes	Yes
D12.3 Building colours and materials	Yes	Yes
D12.5 Front building line	No	Yes
D12.6 Side and rear building line	Yes	Yes
D12.14 Scenic Protection Category One Areas	Yes	Yes

Detailed Assessment

B2.6 Dwelling Density and Subdivision - Shop Top Housing

The control requires that 25% of the GFA within the development be designated to commercial floor area.

The proposed development contains 387.1m² (371.9m² tenancy + 15.2m² facilities) of commercial GFA, which equates to 27.4% of total GFA for the site (total GFA is 1414.7m²). The proposal complies with the requirements of the clause.

B6.3 Off-Street Vehicle Parking Requirements

See detailed assessment by Council's traffic engineer earlier within the report. Council's engineers are

satisfied with the quantum and arrangement of parking which comprises of 21 parking spaces within the basement (10 spaces for residential, 2 visitor and 9 commercial spaces) subject to a condition requiring parking space C7 to be converted to an accessible space and relocation of the bicycle spaces to an area that would not conflict with the C7 space being accessible. See Council's traffic engineers comments above in this report.

The five (5) units requires 2 parking spaces each in accordance with the DCP. A total of 10 spaces have been nominated within the basement for the residential use.

C1.3 View Sharing

Merit consideration

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

- *A reasonable sharing of views amongst dwellings.*

Comment:

In determining the extent of potential view loss to adjoining and nearby properties, the four (4) planning principles outlined within the Land and Environment Court Case of Tenacity Consulting Pty Ltd Vs Warringah Council (2004) NSWLEC 140, are applied to the proposal.

1. Nature of the views affected

"The first step is the assessment of the views to be affected. Water views are valued more highly than land views. Iconic views (e.g. of the Opera House, the Harbour Bridge or North Head) are valued more highly than views without icons. Whole views are valued more highly than partial views, e.g. a water view in which the interface between land and water is visible is more valuable than one in which it is obscured".

Comment to Principle 1:

The view impact is considered from the adjoining property to the south at 1100 Barrenjoey Road, Palm Beach. A height pole was erected to represent the most south-western corner of the development (balcony off Unit 3) and a site inspection was undertaken to ascertain the available views from the property. The available views currently from the property are of Pittwater Park and heritage listed Pine Trees to the north-west, Palm Beach Wharf to the North-west, the Pittwater and distant views of Ku-ring-gai Chase National Park escarpment. Some water views of the Pittwater are also available from the property looking directly west (from the upper level bedroom).

The views which will be impacted from the property are views of Pittwater Park, some filtered views of the Pittwater and some views of Palm Beach wharf. Primarily the impacted views are from the upper floor bedroom, as seen in figures 4 and 5 below. The height pole sits behind the Palm Trees on the site , which will be removed as part of the development.



Figure 1 - View from living room, standing looking north-west in a standing position. Photo - Assessing Officer.



Figure 2 - View from balcony adjoining living room, standing looking north-west in a standing position. Height pole mostly obscured behind palm trees. Photo - Assessing Officer.



Figure 3 - View from sitting room/2nd living room, standing looking north-west in a standing position. Photo - Assessing Officer.



Figure 4 - View from master bedroom (upper floor), standing looking north-west and west in a standing position. Photo - Assessing Officer. Height pole mostly obscured behind palm trees.



Figure 5 - View from master bedroom (upper floor), standing looking north-west in a seated position. Photo - Assessing Officer.

2. What part of the affected property are the views obtained

“The second step is to consider from what part of the property the views are obtained. For example the protection of views across side boundaries is more difficult than the protection of views from front and rear boundaries. In addition, whether the view is enjoyed from a standing or sitting position may also be relevant. Sitting views are more difficult to protect than standing views. The expectation to retain side views and sitting views is often unrealistic”.

Comment to Principle 2:

The water views and views of Palm Beach wharf which are impacted are from the Master Bedroom, Figures 4 and 5. The view which is impacted is over a side boundary. The views are impacted in a seated and standing position.

The views to be impacted from the living room and deck adjoining the living room are of filtered portion of Pittwater Park. The view which is impacted is over the side boundary in a seated and standing position.

3. Extent of impact

“The third step is to assess the extent of the impact. This should be done for the whole of the property, not just for the view that is affected. The impact on views from living areas is more significant than from bedrooms or service areas (though views from kitchens are highly valued because people spend so much time in them). The impact may be assessed quantitatively, but in many cases this can be meaningless. For example, it is unhelpful to say that the view loss is 20% if it includes one of the sails of the Opera House. It is usually more useful to assess the view loss qualitatively as negligible, minor, moderate, severe or devastating”.

Comment to Principle 3:

The view impact from the living room and deck off the living room is considered to be minor. Only a portion of filtered views to Pittwater Park are impacted.

The view impact from the sitting room/2nd living room are considered to be negligible, the full view of the park, water, heritage trees and the wharf is maintained.

The view impact from the master bedroom is considered moderate. Views directly west to the Pittwater are maintained, whilst a portion of filtered views to the north-west comprising of Pittwater Park, the water and Palm Beach Wharf are lost out of the north facing window.

However, out of the west facing window, there are some views of the Pittwater maintained looking north-west. On balance of the views retained and the views impacted, the overall impact of the master bedroom is considered moderate.

Taking into consideration those views retained from the living areas and the views impacted from the master bedroom, the overall impact is considered to be minor.

4. Reasonableness of the proposal that is causing the impact

“The fourth step is to assess the reasonableness of the proposal that is causing the impact. A development that complies with all planning controls would be considered more reasonable than one that breaches them. Where an impact on views arises as a result of non-compliance with one or more planning controls, even a moderate impact may be considered unreasonable. With a complying proposal, the question should be asked whether a more skilful design could provide the applicant with the same development potential and amenity and reduce the impact on the views of neighbours. If the answer to that question is no, then the view impact of a complying development would probably be considered acceptable and the view sharing reasonable.”

Comment to Principle 4:

The proposed portion of the development which causes the view impact is compliant with the building height limit (at the front of the site). Concern has been raised that the view impact is as a direct result of the balcony of unit A3 having a 2m setback to the front boundary, non-compliant with the 3.5m setback requirement. However, as shown in the below marked up plan, the balcony has a substantial 10m setback to the southern boundary and has an undeveloped portion of land that has an increased front boundary setback that retains the same view corridor if the proposal were to be developed up to the 3.5m setback to the south of the balcony. Whilst a portion of the balcony is within the front setback, the remaining 10m southern portion of the site has an increased setback beyond the control and therefore does not result in a further impact when compared to what could be developed within the planning controls.

The balcony which impacts the bedroom views is considered minor given the views are quite filtered and are obtained across a side boundary and from a bedroom (noting that some water views are still retained from this room). The balcony does not impact water views from the living

areas or the deck.

As the proposal pulls the southern corner away from the front setback (in excess of the control) the proposal has demonstrated a skillful design to minimise view impacts whilst still provide the intended architectural outcome for the development. Deleting or reducing the balcony back to 3.5m to protect filtered views from a bedroom across a side boundary is not considered a better overall planning strategy for the site and would interrupt the architectural symmetry of the façade.

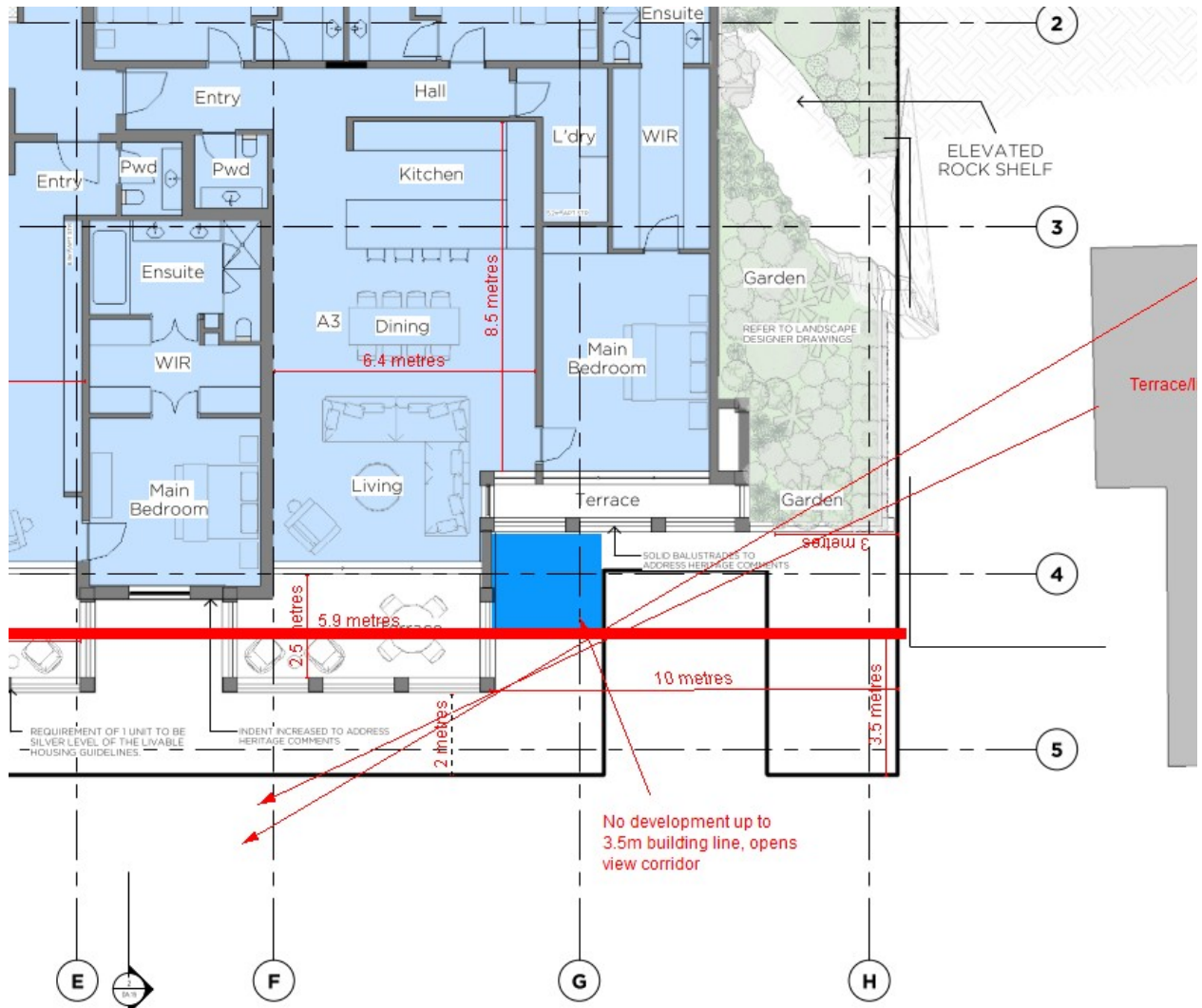


Figure 6 - Marked up plan of level 2 showing view corridors and setbacks - Marked up by assessing officer.

- Views and vistas from roads and public places to water, headland, beach and/or bush views are to be protected, maintained and where possible, enhanced.

Comment:

Views from a public place are not impacted. A view corridor to Barrenjoey House approaching the site from the south will be retained as the north-western corner of the building has been stepped back to open up a view corridor from the road.

- Canopy trees take priority over views.

Comment:

The proposal does not seek to remove canopy trees in favor of views.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of P21DCP and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

C1.4 Solar Access

Solar access is considered for the immediately adjoining residential property to the south. The requirement of the PDCP is that this property will maintain a minimum of 3 hours solar access to 50% of the glazed area of the living room windows and 50% of the principle private open space between 9am and 3pm.

Shadow diagrams have been provided which show that there will be some overshadowing of the adjoining property prior to 12pm (which partially already occurs due to the site topography and orientation). However, following this between 12pm and 3pm (for three hours) the adjoining southern property will maintain solar access to at least 50% the living room windows and private open spaces areas consisting of a an at-grade grass area and an elevated terrace. The shadow diagrams also show the overshadowing outcome from development which is compliant with the 8.5m building height control across the building footprint (i.e an 8.5m height stepping up with the site topography). The comparison shows that the solar access outcome between the two scenarios is not materially different and at 12pm, is a better outcome than a 8.5m building height spread across the site. Notwithstanding this comparison, the adjoining property will maintain solar access in accordance with the controls.

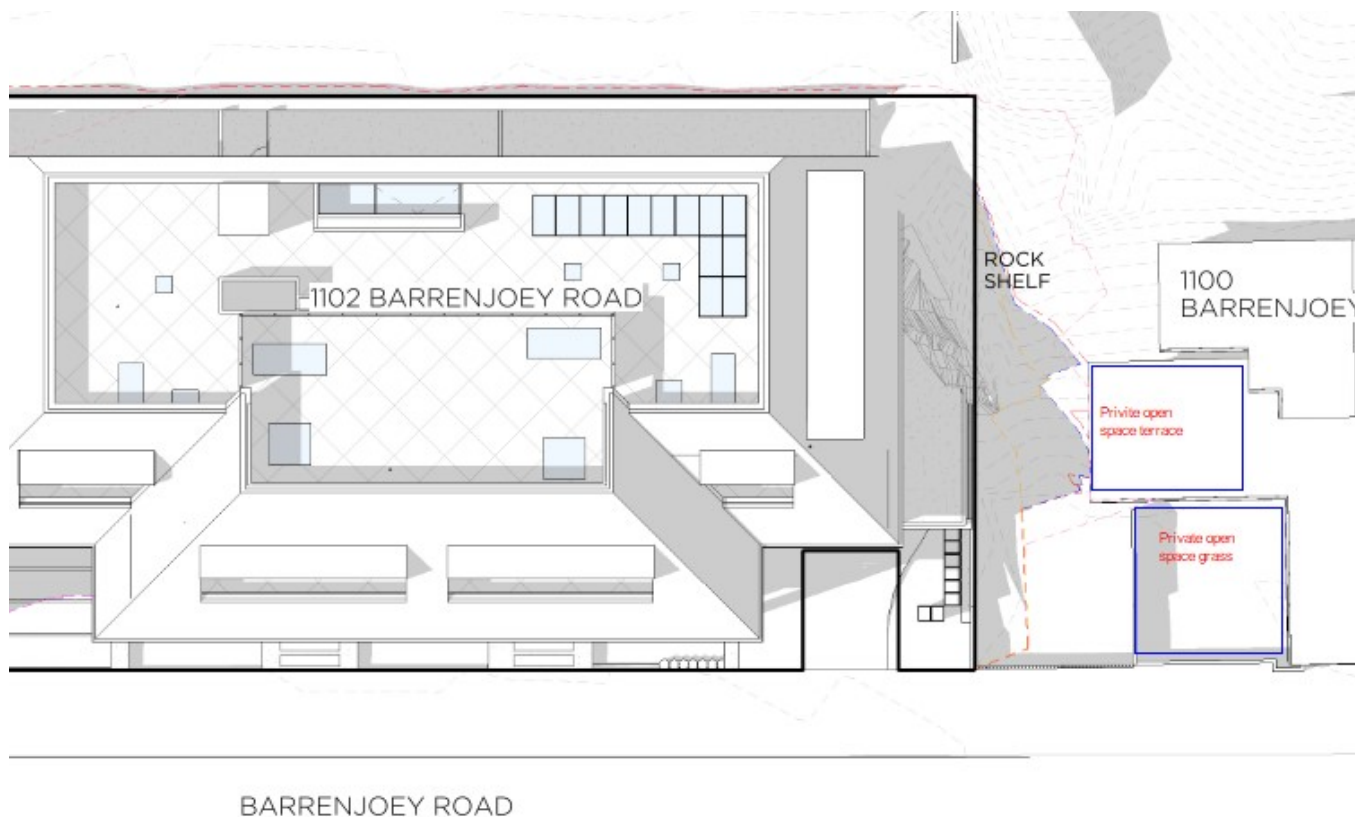


Figure 1 - Extract of shadow diagram showing extent of 12pm shadow, with shadow reducing after this time

C1.5 Visual Privacy

The upper floor is setback from the southern boundary at 4.67m, exceeding the DCP requirement of 3m. The windows are provided with obscure glazing below 1.7m to mitigate direct overlooking from the bedroom and bathrooms of Unit 5. The short section of balcony off Unit A3 (0.8m depth off a bedroom) can be treated with a privacy screen to 1.7m to mitigate overlooking (as a recommended condition).

The setback to the upper floor eastern boundary is in accordance with the DCP setback control of 3m, and given the significant level change between the site and sites to the rear, there will be no overlooking directly between sites. The landscape plan nominates an 800mm wide landscape planter along the eastern boundary which will further restrict views between sites and will be planted with a continuous row of evergreen shrubs capable of a mature 2m height, which will be sufficient to mitigate views between sites given the slope.

D12.5 Front building line

Description of non-compliance

The DCP requires a front setback of 3.5m. The front setback of the development is varied, with the facade and glass line of the development being more than compliant with the control. However, the three balconies off Level 1 are setback 2m from the front boundary, therefore, not complying with the control.



WATER COMMITMENTS	
Item	Comments
1	Water use to be reported
2	Water use to be reported
3	Water use to be reported
4	Water use to be reported
5	Water use to be reported
6	Water use to be reported
7	Water use to be reported
8	Water use to be reported
9	Water use to be reported
10	Water use to be reported

BARRENJOEY ROAD

Figure 1 - Extract showing non compliant portions of the front setback, red line represents 3.5m setback control.

Merit Consideration

Notwithstanding, the proposal is considered to be acceptable, subject to the following merit assessment:

Achieve the desired future character of the Locality.

The design has responded to the adjoining heritage item in a satisfactory way, including having regard to the existing three storey approved shop top housing development on the land. The balconies contribute to the open, coastal style of the architecture that is predominant in Palm Beach, with the glass line of the building set well behind the front setback.

Equitable preservation of views and vistas to and/or from public/private places.

A detailed assessment is undertaken earlier in this report regarding view sharing having regard to the proposed setback to the balcony. The proposal is found to have a reasonable view sharing outcome.

The amenity of residential development adjoining a main road is maintained.

The amenity of the development will be acceptable and there is adequate open space in the form of rear gardens for the Level 1 units to retreat to.

Vegetation is retained and enhanced to visually reduce the built form.

The proposal maintains areas of landscaped area to allow for appropriate vegetation and no native trees are proposed to be removed.

Vehicle manoeuvring in a forward direction is facilitated.

Forward exit from the basement is achieved.

To preserve and enhance the rural and bushland character of the locality.

The site is zoned B1 Local Centre and shop-top housing is an anticipated form of development. Tree planting is proposed within the front boundary to compliment the edge of the building and surrounding character.

To enhance the existing streetscapes and promote a scale and density that is in keeping with the height of the natural environment.

The proposal enhances the existing streetscape and offers new additional commercial spaces, whilst two levels of residential with the upper storey within the roof form. Having regard to the three storey approval on the land, the proposal is of similar bulk and scale however is considered an improved architectural outcome. The eave line of the balconies are within the 8.5m height limit presenting to the street edge, with the massing of the building more central to the site to reduce visual bulk and scale.

To encourage attractive street frontages and improve pedestrian amenity.

The balcony design and transition from the commercial spaces onto the public footpath is an attractive outcome for the B1 Zone and activates the site frontage, including all weather protection beneath the balconies for outdoor dining and gathering.

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

The proposal respond to the spatial characteristics of the existing environment by providing sufficient building articulation, and landscaped features across the site. It is noted the adjoining heritage building in the B1 zone has a nil setback, therefore, the proposal is further recessed than the heritage item to retain visibility of the heritage item driving from the south.

In light of the above, the proposed variation is considered consistent with the outcomes of the control within the PDCP and outcomes of the PLEP. Therefore, the variation is supported on merit.

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

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

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

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

POLICY CONTROLS

Northern Beaches Section 7.12 Contributions Plan 2022

The proposal is subject to the application of Northern Beaches Section 7.12 Contributions Plan 2022.

A monetary contribution of \$135,855 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$13,585,491.

CONCLUSION

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

- Environmental Planning and Assessment Act 1979;
- Environmental Planning and Assessment Regulation 2021;
- All relevant and draft Environmental Planning Instruments;
- Pittwater Local Environment Plan;
- Pittwater Development Control Plan; and
- Codes and Policies of Council.

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

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

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

Council is satisfied that:

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

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

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

PLANNING CONCLUSION

This proposal, for demolition works and construction of a shop-top housing development has been referred to the Northern Beaches Local Planning Panel (NBLPP) due to a building height breach of 34.95% and receiving 93 unique submissions.

The concerns raised in the objections have been addressed within this assessment report and resolved

by inclusion of condition to construct in accordance with the recommendations of the geotechnical report and additional addendum reports to mitigate geotechnical risks to an acceptable level, mitigate noise impacts and mitigate privacy through the proposed window design and landscape treatment to the eastern boundary.

The critical assessment issues are building height and bulk, response to the character of Palm Beach and impact upon the adjoining heritage item Barrenjoey House. For the reasons outlined within this report and in accordance with the assessment provided by the DSAP and Council's Heritage Advisor, the proposal is found to be acceptable and provides a high level resolution for the site given the existing consent that applies to the land (which is required to be surrendered upon commencement of the subject application).

Overall, the development is a high quality design that performs well against the relevant controls and will not result in unreasonable impacts on adjoining or nearby properties, or the natural environment. The proposal has therefore been recommended for approval.

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

RECOMMENDATION

That Northern Beaches Council as the consent authority vary clause 4.3 Height of Building development standard pursuant to clause 4.6 of the PLEP 2014 as the applicant's written request has adequately addressed the merits required to be demonstrated by subclause (3) and the proposed development will be in the public interest and is consistent with the objectives of the standard and the objectives for development within the zone in which the development is proposed to be carried out.

Accordingly the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority grant Development Consent to DA2022/0469 for Construction of shop top housing on land at Lot 11 DP 1207743, 1102 Barrenjoey Road, PALM BEACH, subject to the conditions printed below:

DEVELOPMENT CONSENT OPERATIONAL CONDITIONS

1. **Approved Plans and Supporting Documentation**

The development must be carried out in compliance with the endorsed stamped plans and documentation listed below, except as amended by any other condition of consent:

a) Approved Plans

Architectural Plans - Endorsed with Council's stamp		
Drawing No.	Dated	Prepared By
DA.03 Rev B	12/09/22	Rob Mills Architecture
DA.04 Rev A	12/09/22	Rob Mills Architecture
DA.04.1 Rev B	12/09/22	Rob Mills Architecture
DA.05 Rev B	12/09/22	Rob Mills Architecture
DA.06 Rev C	12/09/22	Rob Mills Architecture
DA.07 Rev B	12/09/22	Rob Mills Architecture
DA.08 Rev B	12/09/22	Rob Mills Architecture
DA.10 Rev B	12/09/22	Rob Mills Architecture
DA.11 Rev B	12/09/22	Rob Mills Architecture
DA.15 Rev B	12/09/22	Rob Mills Architecture
DA.16 Rev B	12/09/22	Rob Mills Architecture
DA.60 Rev B	12/09/22	Rob Mills Architecture

Engineering Plans		
Drawing No.	Dated	Prepared By
C000 Rev B	26/11/21	Van Der Meer Consulting
C001 Rev B	26/11/21	Van Der Meer Consulting
C201 Rev B	26/11/21	Van Der Meer Consulting
C210 Rev B	26/11/21	Van Der Meer Consulting
C401 Rev B	26/11/21	Van Der Meer Consulting

C402 Rev B	26/11/21	Van Der Meer Consulting
C403 Rev B	26/11/21	Van Der Meer Consulting
C310 Rev A	16/09/22	Van der Meer Consulting
C311 Rev A	16/09/22	Van der Meer Consulting
C305 Rev A	16/09/22	Van der Meer Consulting

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
Floodplain Management Report SY202-105 Rev B	24/11/21	Van Der Meer Consulting
BCA Report 22007-1	5/03/22	Code Consultancy Group
BASIX Certificate No.1186733M_03	1/02/23	ESD Synergy
Statement of Compliance for People with a Disability Job 220238	07/04/22	Accessible Building Solutions
Waste Classification Report SC00089.01	21/04/22	Epic Environmental
Seepage Analysis and Geotechnical Assessment Ref 33618YJrptrev3	16/09/22	JK Geotechnics
Geotechnical Advice Letter, 33618Ylet2rev3	31/01/2023	JK Geotechnics

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

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

Landscape Plans		
Drawing No.	Dated	Prepared By
LCP-01 Rev F	11/11/22	Fifth Season Landscapes
LCP-02 Rev F	11/11/22	Fifth Season Landscapes
LCP-03 Rev D	11/11/22	Fifth Season Landscapes
LCP-04 Rev A	09/09/22	Fifth Season Landscapes
PLT-01 Rev D	11/11/22	Fifth Season Landscapes
PLT-02 Rev F	11/11/22	Fifth Season Landscapes
PLT-03 Rev C	11/11/22	Fifth Season Landscapes
PLT-04 Rev A	09/09/22	Fifth Season Landscapes

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

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

2. **Compliance with Other Department, Authority or Service Requirements**

The development must be carried out in compliance with all recommendations and requirements, excluding general advice, within the following:

Other Department, Authority or Service	EDMS Reference	Dated
Ausgrid	2022/277984	9/05/22
Water NSW General Terms of Approval IDAS1143840_GTA	2022/360754	14/06/22
Transport for NSW SYD22/00432/01	2022/270028	3/05/22

(NOTE: For a copy of the above referenced document/s, please see Application Tracking on Council's website www.northernbeaches.nsw.gov.au)

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

3. **No Approval for Specific Use of Ground Floor Commercial Tenancies**

No approval is granted under this Development Consent any specific use of the ground floor commercial tenancies. The use of the ground floor commercial tenancies must be in accordance with the SEPP (Exempt and Complying Development Codes) 2008 or a separate development consent issued by Council.

Reason: To ensure the correct approval pathways are followed for the future use of the commercial tenancies.

4. **Prescribed Conditions**

- (a) All building works must be carried out in accordance with the requirements of the Building Code of Australia (BCA).
- (b) BASIX affected development must comply with the schedule of BASIX commitments specified within the submitted BASIX Certificate (demonstrated compliance upon plans/specifications is required prior to the issue of the Construction Certificate);
- (c) A sign must be erected in a prominent position on any site on which building work, subdivision work or demolition work is being carried out:
 - (i) showing the name, address and telephone number of the Principal Certifying Authority for the work, and
 - (ii) showing the name of the principal contractor (if any) for any building work and a telephone number on which that person may be contacted outside working hours, and
 - (iii) stating that unauthorised entry to the work site is prohibited.Any such sign is to be maintained while the building work, subdivision work or demolition work is being carried out, but must be removed when the work has been completed.
- (d) Residential building work within the meaning of the Home Building Act 1989 must not be carried out unless the Principal Certifying Authority for the development to which the work relates (not being the Council) has given the Council written notice of the following information:

- (i) in the case of work for which a principal contractor is required to be appointed:
 - A. the name and licence number of the principal contractor, and
 - B. the name of the insurer by which the work is insured under Part 6 of that Act,
- (ii) in the case of work to be done by an owner-builder:
 - A. the name of the owner-builder, and
 - B. if the owner-builder is required to hold an owner-builder permit under that Act, the number of the owner-builder permit.

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

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

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

Reason: Legislative requirement.

5. General Requirements

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

Demolition and excavation works are restricted to:

- 8.00 am to 5.00 pm Monday to Friday only.

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

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

The person responsible for the development site is to erect or install on or around the development area such temporary structures or appliances (wholly within the development site) as are necessary to protect persons or property and to prevent unauthorised access to the site in order for the land or premises to be maintained in a safe or healthy condition. Upon completion of the development, such temporary structures or appliances are to be removed within 7 days.
- (l) A "Road Opening Permit" must be obtained from Council, and all appropriate charges paid, prior to commencement of any work on Council property. The owner/applicant shall be responsible for all public utilities and services in the area of the work, shall notify all relevant Authorities, and bear all costs associated with any repairs and/or adjustments as those Authorities may deem necessary.

- (m) The works must comply with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice.
- (n) Requirements for new swimming pools/spas or existing swimming pools/spas affected by building works.
 - (1) Child resistant fencing is to be provided to any swimming pool or lockable cover to any spa containing water and is to be consistent with the following;

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

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

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

FEES / CHARGES / CONTRIBUTIONS

6. **Policy Controls**

Northern Beaches Section 7.12 Contributions Plan 2022

A monetary contribution of \$135,854.91 is payable to Northern Beaches Council for the provision of local infrastructure and services pursuant to section 7.12 of the Environmental Planning & Assessment Act 1979 and the Northern Beaches Section 7.12 Contributions Plan (as amended).

The monetary contribution is based on a development cost of \$13,585,491.00.

The total amount payable will be adjusted at the time the payment is made, in accordance with the provisions of the Northern Beaches Section 7.12 Contributions Plan (as amended).

Details demonstrating compliance, by way of written receipts issued by Council, are to be submitted to the Certifier prior to issue of any Construction Certificate or, if relevant, the Subdivision Certificate (whichever occurs first).

A copy of the Contributions Plan is available for inspection at 725 Pittwater Road, Dee Why or on Council's website at Northern Beaches Council - Development Contributions.

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

7. **Security Bond**

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

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

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

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

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

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

The applicant is to lodge a Bond of \$15 000 as security against any damage or failure to complete the construction of any vehicular crossings, kerb and gutter, any footpath works and removal of any redundant driveways required as part of this consent.

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

Reason: Protection of Council's infrastructure.

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

9. **Amended Plans**

Co-ordinated Plans shall be issued to the Certifying Authority prior to the issue of a Construction Certificate to include the following details:

i) the ground floor paved areas to the 'public plaza' and commercial tenancy entries within the property fronting Barrenjoey Road shall be documented in accordance with the Landscape Plans indicating full pavement except where garden planters are proposed.

Certification shall be provided to the Certifying Authority that these amendments have been documented.

Reason: Landscape amenity.

10. **Amended Landscape Plans**

Amended Landscape Plans shall be issued to the Certifier prior to the issue of a Construction Certificate to include the following details:

- i) the minimum soil depth over the carpark basement for the planter works to the Barrenjoey Road frontage within the property shall be at least 800mm excluding drainage and waterproofing, and if required raised above ground level and finished with sandstone facing and capping,
- ii) the eastern rear boundary planter above the boundary retaining structural walling shall be increased in depth to 600mm excluding drainage and waterproofing, and a minimum internal width of 900mm and designed and constructed as part of the boundary retaining structural walling
- iii) the eastern boundary at grade planting shall be supplemented with the addition of 6 x *Livistona australis* planted at a 1m trunk height minimum, and the *Cyathea cooperi* shall be substituted with *Cyathea australis*,
- iv) the southern boundary landscape area shall be supplemented with the addition of 4 x *Elaeocarpus reticulatus* planted at a pre-ordered 75 litre container, and 3 x *Cyathea australis*,
- v) the nominated *Murraya paniculata* along the eastern rear boundary planter shall be planted at a pre-ordered 300mm container or larger,
- vi) the nominated *Rhapiolepis indica* shall not be planted and shall be substituted with a non-invasive species of similar size and form.

Certification shall be provided to the Certifier that these amendments have been documented.

Reason: Landscape amenity.

11. **Public Domain Plan**

As part of any works within the road reserve, a Public Domain Plan shall be submitted to the Certifier, with sufficient detail design information including the following:

- i) alignment levels showing existing and proposed levels for altered driveway crossovers, and kerbs and gutters,
- ii) existing and proposed pavement levels, with proposed gradients no more than a 2.5% fall from building openings to top of kerb, and to match existing levels along adjoining properties,
- iii) details of any utility alignment and level changes,
- iv) details of the proposed pavement finish from building to kerb for the unpaved section, to match the existing paving unit,
- vi) existing utility pit lids are to be altered to paver infill types to accommodate the proposed pavement type.

Any work carried out upon public land shall have all the necessary Section 138 of the NSW Roads Act prior approvals and permits from Council in place prior to commencement to conduct such works.

Reason: Compliance with Council standards for works on public land.

12. **On Slab Landscape Works**

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

Landscape treatment details shall be submitted to the Certifier prior to the issue of the Construction Certificate indicating the proposed soil type, planting, automatic irrigation, services connections, and maintenance activity schedule. The following soil depths on slab are required to support landscaping as proposed: 600mm minimum.

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

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

13. **Stormwater Disposal**

The applicant is to demonstrate how stormwater from the new development within this consent is disposed of to an existing approved system or in accordance with Northern Beaches Council's Water management for Development Policy. Details by an appropriately qualified and practicing Civil Engineer demonstrating that the existing approved stormwater system can accommodate the additional flows, or compliance with the Council's specification are to be submitted to the Certifying Authority for approval prior to the issue of the Construction Certificate.

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

14. **Geotechnical Report Recommendations have been Incorporated into Designs and Structural Plans**

The recommendations of the risk assessment required to manage the hazards as identified in the Geotechnical Report prepared by JK Geotechnical dated 16/9/2022 and Geotechnical Advice Letter 33618Ylet2rev3 dated 31/01/2023 are to be incorporated into the construction plans. A detailed construction methodology for the retention of the southern boundary is to be included in the structural drawings. Prior to issue of the Construction Certificate, Form 2 of the Geotechnical Risk Management Policy for Pittwater (Appendix 5 of P21 DCP) is to be completed and submitted to the Accredited Certifier. Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of the Construction Certificate.

Reason: To ensure geotechnical risk is mitigated appropriately.

15. **Flooding**

In order to protect property and occupants from flood risk the following is required:

Flood Effects Caused by Development – A2

There is to be no filling of the land or any other reduction of the available flood storage which results in a net loss of storage below the 1% AEP flood level of 2.7 m AHD.

Building Components and Structural Soundness – B1

All new development below the Flood Planning Level of shall be designed and constructed as flood compatible buildings in accordance with Reducing Vulnerability of Buildings to Flood Damage: Guidance on Building in Flood Prone Areas, Hawkesbury-Nepean Floodplain Management Steering Committee (2006).

Building Components and Structural Soundness – B2

All new development must be designed to ensure structural integrity up to the Flood Planning Level (RL 3.2m AHD), taking into account the forces of floodwater, wave action, flowing water with debris, buoyancy and immersion.

Building Components and Structural Soundness – B3

All new electrical equipment, power points, wiring, fuel lines, sewerage systems or any other service pipes and connections must be waterproofed and/or located above the Flood Planning Level. All existing electrical equipment and power points located below the Flood Planning Level must have residual current devices installed to cut electricity supply during flood events.

Floor Levels – C1

New floor levels within the development shall be set at or above the Flood Planning Level (FPL) of RL 3.2m AHD. The front area can be below the FPL as long as it is within the first 5m of the commercial shop front entrances.

Car parking – D6

All access, ventilation and any other potential water entry points, including entry ramp crests to the basement car park shall be at or above the Flood Planning Level of RL 3.2m AHD.

Storage of Goods – G1

Storage areas for hazardous or potentially polluting materials shall not be located below the Flood Planning Level unless adequately protected from floodwaters in accordance with industry standards.

Recommendations

The development must comply with the recommendations outlined in the Floodplain Management Report Palm Beach Mixed Use Development 1102 Barrenjoey Road Palm Beach prepared by van der meer dated 24/11/2021.

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

Reason: To reduce the impact of flooding and flood liability on owners and occupiers of flood-prone property and reduce public and private losses in accordance with Council and NSW Government policy.

16. **Erosion and Sediment Control Plan**

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

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

Details demonstrating compliance are to be submitted to the Certifying Authority for approval

prior to the issue of the Construction Certificate.

Reason: Protection of the receiving environment.

17. **Detailed Design of Stormwater Treatment Measures - Major**

A certificate from a Civil Engineer, stating that the stormwater treatment measures have been designed in accordance with the Stormwater plan (van der Meer Consulting, SY202-105 rev B 26.11.21) and Council's Water Management for Development Policy.

The certificate shall include the results of the water quality model (MUSIC or equivalent), the water quality is to meet (as a minimum) with table 5 (General Stormwater Quality Requirements) of the water policy for development.

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

Reason: Protection of the receiving environment.

18. **Car Parking Standards**

The driveway/access ramp grades, access and car parking facilities must comply with the Australian/New Zealand Standard AS/NZS 2890.1:2004 - Parking facilities - Off-street car parking. The dimensions of car parking bays and aisle widths in the car park are to comply with Australian/New Zealand Standard for Off-Street Parking AS/NZS 2890.1-2004, noting that the shared area adjacent to the accessible parking space (space 19 -C7) will be slightly below standard.

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

Reason: To ensure compliance with Australian Standards relating to manoeuvring, access and parking of vehicles.

19. **Construction Traffic Management Plan**

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

Due to traffic congestion issues in peak period truck movements should be limited during the major commuter peak times being 8.00-9.30am and 4.30-6.00pm. Truck movements must be agreed with Council's Traffic Engineer prior to submission of the CTMP.

The CTMP must address following:

- The proposed phases of construction works on the site, and the expected duration of each construction phase
- The proposed order in which works on the site will be undertaken, and the method statements on how various stages of construction will be undertaken
- Make provision for all construction materials to be stored on site, at all times
- The proposed areas within the site to be used for the storage of excavated materials, construction materials and waste containers during the construction period
- The proposed method of access to and egress from the site for construction vehicles, including access routes and truck routes through the Council area and the location and type of temporary vehicular crossing for the purpose of minimising traffic congestion and noise in the area, with no access across public parks or reserves being allowed

- The proposed method of loading and unloading excavation and construction machinery, excavation and building materials, formwork and the erection of any part of the structure within the site. Wherever possible mobile cranes should be located wholly within the site
- Make provision for parking onsite. All Staff and Contractors are to use the basement parking once available
- Temporary truck standing/ queuing locations in a public roadway/ domain in the vicinity of the site are not permitted unless approved by Council prior
- Include a Traffic Control Plan prepared by a person with suitable RMS accreditation for any activities involving the management of vehicle and pedestrian safety
- The proposed manner in which adjoining property owners will be kept advised of the timeframes for completion of each phase of development/construction process. It must also specify that a minimum Fourteen (14) days notification must be provided to adjoining property owners prior to the implementation of any temporary traffic control measure
- Include a site plan showing the location of any site sheds, location of requested Work Zones, anticipated use of cranes and concrete pumps, structures proposed on the footpath areas (hoardings, scaffolding or shoring) and any tree protection zones around Council street trees
- Take into consideration the combined construction activities of other development in the surrounding area. To this end, the consultant preparing the CTMP must engage and consult with developers undertaking major development works within a 250m radius of the subject site to ensure that appropriate measures are in place to prevent the combined impact of construction activities, such as (but not limited to) concrete pours, crane lifts and dump truck routes. These communications must be documented and submitted to Council prior to work commencing on site
- The proposed method/device to remove loose material from all vehicles and/or machinery before entering the road reserve, any run-off from the washing down of vehicles shall be directed to the sediment control system within the site
- Specify that the roadway (including footpath) must be kept in a serviceable condition for the duration of construction. At the direction of Council, undertake remedial treatments such as patching at no cost to Council
- The proposed method of support to any excavation adjacent to adjoining properties, or the road reserve. The proposed method of support is to be designed and certified by an appropriately qualified and practising Structural Engineer, or equivalent
- Proposed protection for Council and adjoining properties
- The location and operation of any on site crane

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

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

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

20. **Removal of Redundant Driveways**

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

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

Reason: To maximise on street car parking by removing driveways that are no longer needed in accordance with Council policy.

21. **Vehicle Access & Parking**

All internal driveways, vehicle turning areas, garages and vehicle parking space/ loading bay dimensions must be designed and constructed to comply with the relevant section of AS 2890 (Off-street Parking standards).

With respect to this, the following revision(s) must be undertaken;

- parking space C7 (space 19) shall be converted to an accessible retail parking space with a hatched shared area adjacent that is slightly substandard at 2.19m in width
- the vertical bicycle parking situated at the southern end of the site shall be relocated to another suitable area within the basement car park level so as not to impede access to/from the shared area by persons with a disability.

All internal driveways and vehicle access ramps must have ramp grades and transitions complying with AS 2890.1. To ensure the gradient requirements and height clearances are satisfied, a driveway profile must be prepared for all internal ramps showing ramp lengths, grades, surface RL's and overhead clearances, taken from the crest of the ramp to the base. The driveway profile must be taken along the steepest grade of travel or sections having significant changes in grades, where scraping or height restrictions could potentially occur and is to demonstrate compliance with AS 2890 for the respective type of vehicle.

Plans prepared by a suitably qualified Engineer shall be submitted to the Certifying Authority prior to the issue of a Construction Certificate.

Reason: To ensure compliance with Australian Standards relating to manoeuvring, access and parking of vehicles.

22. **Acoustic Treatment**

The common walls between the bedrooms of one unit and the living rooms or bathrooms of an adjoining unit are to be constructed to a minimum of 10Rw (sound reduction index) units above the minimum requirement specified in the Building Code of Australia for separating wall construction applicable to this building. Details are to be provided to the Certifier prior to the issue of a Construction Certificate.

Reason: To provide for internal acoustic amenity.

23. **Privacy Screen**

A 1.7 metre privacy screen (measured from finished floor level) is to be erected for the entire length of the outermost southern edge of the balcony located off the main bedroom of Unit 3 as shown on the approved plans. The privacy screen shall be of fixed panels or louver style construction (with a maximum spacing of 20mm), in materials that complement the design of the approved development and in accordance with recommendations of a heritage expert.

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

Reason: In order to maintain privacy to the adjoining / nearby property.

24. **Building Code of Australia Fire Safety Requirements**

The Building Code of Australia fire safety measures for the building as detailed and recommended in the BCA Assessment Report prepared by Code Consultancy Group, dated 5/3/2022, Report Ref No. 22007-1 and including any proposed Performance Solutions are to be considered as part of the assessment of the Construction Certificate. Details demonstrating compliance are to be provided to the Certifying Authority prior to the issue of the Construction Certificate.

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

25. **Building Code of Australia Access**

Access and facilities to and within the building are to be provided for Persons with a Disability and are to comply with the Building Code of Australia and AS 1428.1. Details are to be provided to the Certifying Authority prior to the issue of the Construction Certificate and be implemented prior to occupation of the building.

Reason: To ensure adequate provision is made for access to and within the building for Persons with a disability.

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

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

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

1. A vehicular crossing 5.5 meters wide to be constructed in accordance with concept plans by Van der Meer Consulting, job number SY202-105, drawing number C310, C311, dated 16/9/2022 and council specifications.
2. Sight distances are to be in accordance with A2890.1.
3. Kerb and gutter construction along the frontage of the site.
4. Reconstruction of the footpath along the frontage of the site as required.
5. Site stormwater connection to the new kerb inlet pit in Barrenjoey Road.
6. Concurrence from TfNSW for the drainage works and gutter crossing.
7. Road reserve along the southern edge of the proposed drive to be graded to match existing levels of the adjacent driveway.
8. A services plan indicating all services in the road reserve. Where any services are to be adjusted as a result of the works, approval from the relevant service authority is to be

provided.

The fee associated with the assessment and approval of the application is to be in accordance with Council's Fee and Charges.

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

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

27. **Structural Adequacy and Excavation Work**

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

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

Reason: To provide public and private safety.

28. **External finishes, materials and colours**

Full details of external finishes, materials and colours are to be submitted to Council's Heritage Officer for approval prior to the issue of a Construction Certificate. Details demonstrating compliance with this condition are to be provided to the Principal Certifying Authority.

Reason: To ensure compatibility with the historical character of Palm Beach and the heritage context of the adjoining "Barrenjoey House".

29. **Noise - Design of Mechanical Plant and Exhaust Riser**

Prior to the issue of a Construction Certificate, the design, specifications and location of noise generating mechanical plant are to be provided to the Principal Certifier. An acoustic assessment is to be undertaken by a suitably qualified professional such as an acoustic engineer to determine any acoustic treatments to control noise emissions from all rooftop mechanical plant and the exhaust riser in accordance with *Noise Policy for Industry 2017*.

Any design recommendations made by the consultant must be implemented into the plans prior to issuing the Construction Certificate in order to achieve compliance with noted conditions of this consent.

Details demonstrating compliance are to be submitted to the satisfaction of the Principal Certifier.

Reason: To maintain residential acoustic amenity.

30. **Compliance with Standards**

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

Standards.

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

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

31. **Surrender of Existing Consent**

The applicant shall surrender to Council Development Consent N0119/14 in accordance with the requirements of the Environmental Planning and Assessment Act 1979.

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

Reason: To prevent inconsistencies between consent applying the site.

32. **Waste and Recycling Requirements**

Details demonstrating compliance with Northern Beaches Waste Management Guidelines, are to be submitted to and approved by the Certifying Authority prior to the issue of any Construction Certificate.

Note: If the proposal, when compliant with the Northern Beaches Waste Management Guidelines, causes inconsistencies with other parts of the approval i.e. architectural or landscaped plans, a modification(s) to the development may be required.

Reason: To ensure adequate and appropriate waste and recycling facilities are provided.

CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT

33. **Work Zones and Permits**

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

A separate application is required with a Traffic Management Plan for standing of construction vehicles in a trafficable lane and a Roads and Maritime Services Work Zone Permit shall be obtained for State Roads.

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

34. **Road Occupancy Licence**

Prior to commencement of the associated works, the applicant shall obtain a Road Occupancy License from Transport Management Centre for any works that may impact on traffic flows.

Reason: Requirement of TMC for any works that impact on traffic flow.

35. **Demolition Traffic Management Plan**

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

Due to traffic congestion throughout the area, truck movements should be limited during the

major commuter peak times being 8.00-9.30am and 4.30-6.00pm.

The DTMP must:-

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

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

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

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

36. **Pre-Construction Dilapidation Report**

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

Property: 1100 Barrenjoey Road Palm Beach and 1108 Barrenjoey Road Palm Beach
(Barrenjoey House)

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

must be provided to Council, the Principal Certifying Authority and the owners of the affected properties prior to any works commencing.

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

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

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

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

CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK

37. Protection of Rock Outcrops

The existing rock outcrop outside of the area of approved works is to be preserved and protected, proposed as a elevated rock outcrop, at all times during demolition excavation and construction works.

Reason: Preservation of significant environmental features.

38. Road Reserve

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

Reason: Public safety.

39. Wildlife Protection

If construction activity associated with this development results in injury or displacement of a native mammal, bird, reptile or amphibian, a registered wildlife rescue and rehabilitation organisation must be contacted for advice.

Reason: To protect native wildlife.

40. Installation and Maintenance of Sediment and Erosion Controls

Council proactively regulates construction sites for sediment management.

Sediment and erosion controls must be installed in accordance with Landcom's 'Managing Urban Stormwater: Soils and Construction' (2004) and the Erosion and Sediment Control Plan prepared prior to commencement of any other works on site.

Erosion and sediment controls are to be adequately maintained and monitored at all times, particularly after periods of rain, and shall remain in proper operation until all development activities have been completed and vegetation cover has been re-established across 70 percent of the site, and the remaining areas have been stabilised with ongoing measures such as jute mesh or matting.

Reason: Protection of the receiving environment.

41. **Substitution of Stormwater Treatment Measures**

The substitution of an "equivalent" device for the stormwater treatment measure approved under the Development Consent must be submitted to the Principal Certifying Authority for approval prior to installation.

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

42. **Dewatering Management**

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

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

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

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

Reason: Protection of the receiving environment and groundwater resources.

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

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

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

44. **Staff and Contractor Parking**

The applicant is to make provision for parking for all construction staff and contractors for the duration of the project. All Staff and Contractors are to use the basement parking once available. All necessary facilities are to be provided to accommodate this requirement including lighting in the basement, security cameras, etc.

Reason: To ensure minimum impact of construction activity on local parking amenity.

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

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

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

46. **Ongoing Management**

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

Reason: To ensure public safety.

47. **Survey Certificate**

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

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

(b) At ground level to ensure the finished floor levels are in accordance with the approved levels, prior to concrete slab being poured/flooring being laid.

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

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

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

48. **Civil Works Supervision**

The Applicant shall ensure all civil works approved in the Section 138 approval are supervised by an appropriately qualified and practising Civil Engineer.

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

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

49. **Requirement to Notify about New Contamination Evidence**

Any new information revealed during demolition works that has the potential to alter previous conclusions about site contamination or hazardous materials shall be immediately notified to the Council and the Principal Certifier.

Reason: To protect human health and the environment.

50. **Assesment of excavated soil before removal from site and disposal**

In accordance with the Waste Classification report recommendations, dated 21st April 2022, prepared by EPIC Environmental Pty Ltd excavated soil is to be assessed by a suitably qualified person for contamination (and appropriate storage/treatment/disposal) before removal from site. Documentation being provided to the Principle Certifier before further work proceeds of site.

Reason: To protect the the Environment

51. **Noise from dewatering pump during construction**

The pump required for any dewatering of the basement shall not produce noise levels that exceed 5dBA above the background noise when measured from the nearest property boundary.

Reason: To ensure that the development does not impact on the acoustic privacy of surrounding residential properties.

52. **Waste/Recycling Requirements (Waste Plan Submitted)**

During demolition and/or construction the proposal/works shall be generally consistent with the submitted Waste Management Plan titled dated Waste Management Plan prepared by Reform Projects, as submitted with this application and referenced in Condition 1.

Reason: To ensure waste is minimised and adequate and appropriate waste and recycling facilities are provided.

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

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

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

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

54. **Landscape Completion**

Landscape works are to be implemented in accordance with the approved Amended Landscape Plans.

Prior to the issue of an Occupation Certificate, details (from a landscape architect or landscape designer) shall be submitted to the Principal Certifier, certifying that the landscape works have been completed in accordance with any conditions of consent.

Reason: Landscape amenity

55. **Stormwater Disposal**

The stormwater drainage works shall be certified as compliant with all relevant Australian Standards and Codes by a suitably qualified person. Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of an Occupation Certificate.

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

56. **Protection of Habitat Features**

All natural landscape features, including any rock outcrops, native vegetation and/or watercourses, are to remain undisturbed except where affected by necessary works detailed on approved plans.

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

Reason: To protect wildlife habitat.

57. **No Weeds Imported On To The Site**

No Priority or environmental weeds (as specified in the Northern Beaches Local Weed Management Plan 2019 – 2023) are to be imported on to the site prior to or during construction works.

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

Reason: To reduce the risk of site works contributing to spread of Priority and environmental weeds.

58. **Priority Weed Removal and Management**

All Priority weeds as specified in the Northern Beaches Local Weed Management Plan 2019 – 2023) within the development footprint are to be removed.

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

Reason: To reduce the risk of site works contributing to spread of Priority weeds.

59. **Positive Covenant, Restriction as to User and Registration of Encumbrances for Stormwater Treatment Measures**

A positive covenant shall be created on the title of the land requiring the proprietor of the land to maintain the stormwater treatment measures in accordance with the standard requirements of Council, the manufacturer and as required by the Stormwater Treatment Measures Operation and Maintenance Plan.

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

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

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

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

60. **Stormwater Treatment Measures Operation and Maintenance Plan**

An Operation and Maintenance Plan is to be prepared to ensure the proposed stormwater treatment measures remain effective.

The Plan must be attached to the Positive Covenant (and the community or strata management statement if applicable) and contain the following:

1. Detail on the stormwater treatment measures:
 - a) Work as executed drawings
 - b) Intent of the stormwater treatment measures including modelled pollutant removal rates
 - c) Site detail showing catchment for each device
 - d) Vegetation species list associated with each type of vegetated stormwater treatment measure
 - e) Impervious area restrictions to maintain the water balance for the site
 - f) Funding arrangements for the maintenance of all stormwater treatment measures
 - g) Identification of maintenance and management responsibilities
 - h) Maintenance and emergency contact information
2. Maintenance schedule and procedure - establishment period of one year following commissioning of the stormwater treatment measure:
 - a) Activity description, and duration and frequency of visitsAdditionally for vegetated devices:
 - b) Monitoring and assessment to achieve an 80 percent survival rate for plantings
 - c) Management of weeds, pests and erosion, with weed and sediment cover limited to a maximum of 5 percent of the total area of the stormwater treatment measure
3. Maintenance schedule and procedure - ongoing
 - a) Activity description, and duration and frequency of visits
 - b) Routine maintenance requirements
 - c) Work Health and Safety requirements
 - d) Waste management and disposal
 - e) Traffic control (if required)
 - f) Renewal, decommissioning and replacement timelines and activities of all stormwater treatment measures (please note that a DA may be required if an alternative stormwater treatment measure is proposed)
 - g) Requirements for inspection and maintenance records, noting that these records are required to be maintained and made available to Council upon request.

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

Reason: Protection of the receiving environment.

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

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

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

Reason: Protection of the receiving environment.

62. **Strata Management Statement**

The Strata Management Statement must specifically list the stormwater treatment measures that will be maintained under strata title. The statement must also include the Stormwater

Treatment Measure Operation and Maintenance Plan.

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

Reason: To ensure maintenance of all stormwater management assets and protection of the receiving environment.

63. **Allocation of parking spaces (strata title)**

All carparking spaces are to be assigned to individual units. All residential units must be assigned two parking spaces. Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of any Occupation Certificate.

Reason: To ensure adequate parking availability for residents.

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

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

Reason: To ensure parking availability.

65. **Disabled Parking Spaces**

Where disabled parking spaces are provided they must be in accordance with AS2890.6:2009.

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

Reason: To ensure compliance with Australian Standards.

66. **Shared Zone Bollard**

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

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

Reason: To ensure compliance with Australian Standards.

67. **Post-Construction Dilapidation Report**

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

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

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

Details demonstrating compliance with this condition are to be submitted to the Principal

Certifying Authority prior to the issuing of any Occupation Certificate.

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

68. **Mechanical Ventilation certification**

Prior to the issuing of an Occupation Certificate, certification is to be provided from the installer of the mechanical ventilation system that the design, construction and installation of the mechanical ventilation system is compliant with the requirements of AS1668 The use of mechanical ventilation.

Details demonstrating compliance are to be submitted to the Principal Certifier.

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

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

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

The Applicant shall create on the Title a positive covenant in respect to the ongoing maintenance of the pump-out facility on the property being developed. Northern Beaches Council shall be nominated in the instrument as the only party authorised to release, vary or modify the instrument. Northern Beaches Council's delegate shall sign these documents prior to the submission to the NSW Land Registry Services. Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of the final Occupation Certificate.

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

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

Reason: To ensure adequate provision is made for the stormwater pump out system to be maintained to an appropriate operational standard.

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

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

Reason: To ensure geotechnical risk is mitigated appropriately.

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

The Applicant shall submit a suitably qualified Civil Engineer's certification that the completed works have been constructed in accordance with this consent and the approved Section 138 plans. Works as Executed data certified by a registered surveyor prepared in accordance with Council's 'Guideline for preparing Works as Executed data (details overdrawn on a copy of the

approved civil plans) for Council Assets' in an approved format shall be submitted to Council for approval prior to the release of any security deposits.

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

72. Acoustic Report Certification

Prior to any Occupation Certificate being issued, a further acoustic assessment is to be undertaken by a qualified and experienced person(s) to confirm compliance with any recommendations within the acoustic report used for release of the Construction Certificate.

Any recommendations made by the consultant must be implemented prior to issuing the Occupation Certificate in order to achieve compliance with noted conditions of this consent. The updated acoustic assessment is to be submitted to Council at the satisfaction of the Principal Certifier.

Reason: To protect residential acoustic amenity.

73. Garbage and Recycling Facilities

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

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

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

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

74. Unit Numbering for Multi Unit Developments (Residential, Commercial and Industrial)

The units within the development are to be numbered in accordance with NSW Address Policy and User Manual.

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

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

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

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

Reason: To ensure consistent numbering for emergency services access.

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

The proposal shall be constructed in accordance with the Northern Beaches Waste Management Guidelines.

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

Reason: To ensure waste and recycling facilities are provided.

76. **Waste/Recycling Compliance Documentation**

Evidence of disposal for recycling from the construction/demolition works shall be submitted to the Certifying Authority prior to the issue of any interim / final Occupation Certificate.

Reason: To ensure waste is minimised and recycled.

77. **Positive Covenant for Council and Contractor Indemnity**

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

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

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

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

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

Reason: To create encumbrances on the land.

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

79. **Landscape Maintenance**

If any landscape materials/components or planting under this consent fails, they are to be replaced with similar materials/components. Trees, shrubs and groundcovers required to be planted under this consent are to be mulched, watered and fertilised as required at the time of planting. If any tree, shrub or groundcover required to be planted under this consent fails, they are to be replaced with similar species to maintain the landscape theme and be generally in accordance with the approved Landscape Plans and any conditions of consent.

A maintenance activity schedule for on-going maintenance of planters on slab shall be incorporated to monitor and replenish soil levels as a result of soil shrinkage over time.

The approved landscape area shall in perpetuity remain as planting under the development consent.

Reason: To maintain local environmental amenity.

80. **Protection of Habitat Features**

All natural landscape features, including any rock outcrops, native vegetation, soil and/or watercourses, are to remain undisturbed except where affected by necessary works detailed on approved plans.

Reason: To protect wildlife habitat.

81. **Maintenance of Stormwater Treatment Measures - Major**

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

Vegetated stormwater treatment measures must maintain an 80 percent survival rate of plantings and limit weed cover to no more than 10 percent of the total area of the stormwater treatment measure.

Where replacement cartridges or other necessary components for the system become unavailable, an alternative system is required to be retrofitted into the development to achieve an equivalent pollutant reduction outcome. Evidence supporting the replacement must be retained on site and made available to Council as required.

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

Reason: Protection of the receiving environment.

82. **Parking Enclosure**

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

Reason: To ensure accessibility is maintained.

83. **Landscaping adjoining vehicular access**

The applicant must ensure that the planting chosen for any land immediately adjacent to the driveway and adjacent to any driveway intersections must not exceed a height of 1.1m

Reason: To maintain unobstructed sight distance for motorists.

84. **Sight lines within carparks**

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

Reason: To maintain unobstructed sight distance for motorists.

85. **Transfer of bins between the basement binroom and the street level holding bay.**

The vehicular driveway must not be used to transfer bins between the basement binroom and the street level holding bay.

Reason: To prevent conflict between vehicles and pedestrians on the vehicular driveway.

86. **Commercial Waste and Recycling Storage**

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

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

87. **Amenity**

The implementation of this development shall not adversely affect the amenity of the neighbourhood or interfere unreasonably with the comfort or repose of a person who is outside the premises by reason of the emission or discharge of noise, fumes, vapour, odour, steam, soot, ash, dust, waste water, waste products, grit, oil or other harmful products.

Reason: To ensure the surrounding area and people within the neighbourhood are not affected adversely and to ensure compliance with the Protection of the Environment Operations Act 1997.