

APPLICATION FOR MODIFICATION ASSESSMENT REPORT

Application Number:	Mod2023/0473
Responsible Officer:	Claire Ryan
Land to be developed (Address):	Lot 171 DP 16212, 8 Rickard Road NORTH NARRABEEN NSW 2101 Lot 173 DP 16212, 4 Rickard Road NORTH NARRABEEN NSW 2101 Lot 172 DP 16212, 6 Rickard Road NORTH NARRABEEN NSW 2101 Lot 174 DP 16212, 2 Rickard Road NORTH NARRABEEN NSW 2101
Proposed Development:	Modification of Development Consent Land and Environment Court for N0267/16 granted by the Land and Environment Court for Demolition of all existing structures and the construction of a shoptop housing development, comprising 3 commercial units, 20 residential units and off-street parking.
Zoning:	E1 Local Centre
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Land and Environment Court Action:	Yes
Applicant:	Anthony Joseph Gleeson

Application Lodged:	11/09/2023
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Refer to Development Application
Notified:	27/09/2023 to 11/10/2023
Advertised:	Not Advertised
Submissions Received:	4
Clause 4.6 Variation:	Nil
Recommendation:	Approval

PROPOSED DEVELOPMENT IN DETAIL

The proposal seeks consent to modify Development Consent N0267/16, which granted consent for demolition and construction of a shop top housing development. The proposed modifications are:

- Reconfiguration of the basement level and flood storage tanks,
- Reconfiguration of the fire exit at the ground floor,

- Extension of first floor units 3, 4, and 5 to the north,
- Extension of first floor units 7 and 8 towards the west,
- Extension of second floor units 13, 14, and 15 to the north, and
- Extension of second floor units 17 and 18 towards the west.

Conditions B36, B52, B54, C17, C18, E14, E15, and E16 have been amended and Conditions A1A, A1b, C22 and C23 have been added, in accordance with the above design changes.

The above description is accurate to amended plans received on 4 October 2024, addressing the flood storage concerns raised by Council's Flood Engineer. The plans also removed additional height originally proposed on the plans. In accordance with Council's Community Participation Plan, the plans did not require re-notification, as they result in lesser environmental impact than the original notified plans.

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

Environmental Planning and Assessment Act 1979 - Section 4.56 - Environmental Planning and Assessment Act 1979 - Section 4.56 - with S4.15 Assessment
 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 - 7.10 Essential services
 Pittwater 21 Development Control Plan - B6.3 Off-Street Vehicle Parking Requirements
 Pittwater 21 Development Control Plan - C1.4 Solar Access
 Pittwater 21 Development Control Plan - C1.5 Visual Privacy
 Pittwater 21 Development Control Plan - D11.9 Building envelope

SITE DESCRIPTION

Property Description:	Lot 171 DP 16212 , 8 Rickard Road NORTH NARRABEEN NSW 2101
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	<p>Lot 173 DP 16212 , 4 Rickard Road NORTH NARRABEEN NSW 2101</p> <p>Lot 172 DP 16212 , 6 Rickard Road NORTH NARRABEEN NSW 2101</p> <p>Lot 174 DP 16212 , 2 Rickard Road NORTH NARRABEEN NSW 2101</p>
Detailed Site Description:	<p>The subject site consists of four allotments located on the northern side of Rickard Road, North Narrabeen.</p> <p>The site is irregular in shape with frontages of 46.93 metres along Rickard Road and 39.15 metres along Minarto Lane. The site has a surveyed area of 1,952.5m².</p> <p>The site is located within the E1 Local Centre zone and accommodates a single detached dwelling house on each existing lot, with garages and sheds.</p> <p>The site is relatively level and contains some mature vegetation.</p> <p>Detailed Description of Adjoining/Surrounding Development</p> <p>Adjoining and surrounding development is characterised by residential, commercial and mixed use developments.</p>

Map:



SITE HISTORY

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

N0300/11 for demolition of the existing dwellings and construction of a shop top housing development

was refused by Council on 3 October 2012.

N0267/16 for demolition of existing structures and construction of a shop top housing development was refused by Council on 14 November 2016. The appeal of the refusal was upheld by the NSW Land and Environment Court by way of conciliation agreement on 28 April 2017. The consent was to lapse on 28 April 2022, except that the extended consent period provided under Clause 4.53(1)(c) of the *Environmental Planning and Assessment Act 1979* applies and brings the lapse date to 28 April 2024.

In order to enact the consent, the Applicant undertook soil testing work on 24 April 2024 and survey work on 26 April 2024, both being before the consent lapse date. Clause 96 (1) of the *Environmental Planning and Assessment Act 2021* provides that work is not taken to have been physically commenced by carrying out survey work, creating a bore hole for soil testing, or marking the ground to indicate how land will be developed. However, Clause 96 (2) provides that 96 (1) does not apply to a development consent granted before 15 May 2020, as in this case.

It is concluded that, for the purpose of assessing this modification application, the consent N0267/16 has been commenced and has not lapsed.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

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 and is attached taking into all relevant provisions of the Environmental Planning and Assessment Act 1979 and associated regulations;
- A site inspection was conducted and consideration has been given to the impacts of the development upon all lands whether nearby, adjoining or at a distance;
- Consideration was given to all documentation provided (up to the time of determination) by the applicant, persons who have made submissions regarding the application and any advice given by relevant Council / Government / Authority Officers on the proposal;

In this regard, the consideration of the application adopts the previous assessment detailed in the Assessment Report for N0267/16 in full, with amendments detailed and assessed as follows:

The relevant matters for consideration under Section 4.56 of the Environmental Planning and Assessment Act, 1979, are:

Section 4.56- Other Modifications	Comments
(1) A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to and in accordance with the regulations, modify the consent if:	
(a) it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which consent was originally granted	The development, as proposed, has been found to be such that Council is satisfied that the proposed works are substantially the same as those already approved under N0267/16, as the works do not alter the approved shop top housing use, nor the number of units or retail premises, and generally retain the approved built form.

Section 4.56- Other Modifications	Comments
and before that consent as originally granted was modified (if at all), and	
(b) it has notified the application in accordance with: (i) the regulations, if the regulations so require, or (ii) a development control plan, if the consent authority is a council that has made a development control plan under section 72 that requires the notification or advertising of applications for modification of a development consent, and	The application has been publicly exhibited in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2021, and the Northern Beaches Community Participation Plan.
(c) it has notified, or made reasonable attempts to notify, each person who made a submission in respect of the relevant development application of the proposed modification by sending written notice to the last address known to the consent authority of the objector or other person, and	Written notices of this application have been sent to the last address known to Council of the objectors or other persons who made a submission in respect of N0267/16.
(d) it has considered any submissions made concerning the proposed modification within any period prescribed by the regulations or provided by the development control plan, as the case may be.	See discussion on "Notification & Submissions Received" in this report.

Section 4.15 Assessment

In accordance with Section 4.56 of the Environmental Planning and Assessment Act 1979, in determining an modification application made under Section 4.55 the consent authority must take into consideration such of the matters referred to in section 4.15(1) as are of relevance to the development the subject of the application.

The relevant matters for consideration under Section 4.15 of 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 2000 (EP&A Regulation 2000)	<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 to flood management. Sufficient information was provided in September 2024.</p> <p><u>Clause 61</u> of the EP&A Regulation 2021 requires the consent authority to consider AS 2601 - 2001: 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 (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	<p>(i) 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) The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p>

Section 4.15 'Matters for Consideration'	Comments
and economic impacts in the locality	(iii) The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.
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 application has been publicly exhibited from 27/09/2023 to 11/10/2023 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 4 submission/s from:

Name:	Address:
Mr Matthew John Owens	2 / 10 Rickard Road NORTH NARRABEEN NSW 2101
Matthew Peter Flint	3 / 9 - 11 Gondola Road NORTH NARRABEEN NSW 2101
Mr Stephen Michael Arnold	5 / 9 - 11 Gondola Road NORTH NARRABEEN NSW 2101
Matthew Kelly	7 Rickard Road NORTH NARRABEEN NSW 2101

The following issues were raised in the submissions:

- Loss of solar access.
- Loss of visual privacy.
- Loss of air flow.
- Concern about increase in noise as a result of greater density.
- Concern about flood management.
- Concern about pedestrian safety, street parking, and increased traffic congestion.
- Concern about waste management.
- Concern about damage to or loss of items or places of Aboriginal heritage significance.

The above issues are addressed as follows:

Amenity - Solar Access, Visual Privacy, Air Flow, and Noise

Submissions raised concern that the modified development will unreasonably impact on solar access, visual privacy, and air flow, particularly with respect to Unit 2 of 10 Rickard Road. Concern was also raised about increased noise as a result of the increased density of the site.

Comment:

The proposed modifications are acceptable with respect to solar access and visual privacy for the reasons detailed in the sections of this report relating to Clauses C1.4 Solar Access and C1.5 Visual Privacy of the Pittwater 21 DCP. The proposed modifications are anticipated to result in much the same outcome with respect to air flow to surrounding properties, by way of modulated design and adequate building separation. The modified development does not include any additional units, thereby retaining the approved density and anticipated noise.

Flood Management

Submissions raised concern with respect to flood management, given the site is flood-affected.

Comment:

The approved development and modified development have both been reviewed by Council's Flood Engineer. The Flood Engineer is supportive of the proposed modifications, subject to conditions of consent. The Flood Engineer is satisfied the modified development is compliant with the flood management requirements applicable to the site.

Traffic, Parking, and Safety

Submissions raised concern that the development will result in increased traffic congestion, and raised concern about the impact on street parking and pedestrian safety.

Comment:

The modified development does not include any additional units (thereby retaining the approved density), and does not require any additional parking spaces. The modified development is compliant in this regard, and therefore does not result in any increased traffic congestion, loss of street parking, or impact on pedestrian safety beyond the approved development.

Waste Management

Submissions raised concern that the development would lead to vehicular conflict as a result of bin collection.

Comment:

The modified development does not alter the approved outcome with respect to waste management or bin storage, so is of no increased impact beyond the approved development in this regard.

Aboriginal Heritage

Submissions raised concern that the proposed development may result in damage to or loss of items or places of Aboriginal heritage significance.

Comment:

The subject site is not mapped as being of potential significance with respect to Aboriginal heritage. The proposed modifications do not result in any additional impact beyond the approved development in this regard.

REFERRALS

Internal Referral Body	Comments
Building Assessment - Fire and Disability upgrades	<p>The application has been investigated with respect to aspects relevant to the Building Certification and Fire Safety Department. There are no objections to approval of the development.</p> <p>Note: The proposed development may not comply with some</p>

Internal Referral Body	Comments
	requirements of the BCA. Issues such as these however may be determined at Construction Certificate stage.
Landscape Officer	<p>The application is for modification to development consent N0267/16.</p> <p>The proposed amendments will slightly reduce the deep soil area to the east of Tenancy B to facilitate the change to the fire exit, and reduce some areas of on slab landscaping on the first floor. The proposed planting scheme has remained relatively unchanged as a result of the proposed modifications; however, the quantity of trees on the first floor have been reduced which shall be amended to match the original planting numbers approved under N0267/16. As part of this modification condition C.17. shall be amended to capture the required planting scheme adjustments.</p>
NECC (Flooding)	<p>The proposal is for modifications to development application N0267/16. The proposed works include extension to the basement car park and interior alterations to the ground and 1st floor. There are also alterations to the proposed flood storage tanks.</p> <p>The flood characteristics defined by the Land and Environment Court (Case Number 2016/302237, Annex A) are as follows:</p> <ul style="list-style-type: none"> • Flood Planning Level: 4.25m AHD • Probable Maximum Flood (PMF) Level, with Sea Level Rise: 5.3m AHD <p>The alterations to the storage tanks are sufficient to bring the flood storage above the volume required by the Court Approved plans.</p> <p>Subject to the retention of the conditions attached to N0267/16, and the conditions attached, the proposal generally complies with Section B3.11 of the Pittwater DCP and Clause 5.21 of the Pittwater LEP. The conditions attached replace the relevant conditions in TRIM Ref PW5647177.</p>
Strategic and Place Planning (Urban Design)	<p>Urban Design may be in a position to support the proposal if the following issues are addressed:</p> <ol style="list-style-type: none"> 1. Provide privacy screen (1.8m wide and 1.8m high) at the north-western corner to the northern "terrace" of Units 8 and 18 to provide privacy for overlooking issue into the swimming pool area of the next door neighbour. 2. Increase the boundary setback to the "terrace" area of Unit 17 to 6m to provide privacy for overlooking issue into the swimming pool area of the next door neighbor. 3. Ensure that the "timber clad balcony structure" walls indicated at the "terraces" of Units 4,5,14 and 15 facing the terrace garden common area will act as a see-through privacy screen to provide better amenity (sunlight and visual privacy).

Internal Referral Body	Comments
	<p>Previous Urban Design Comments:</p> <p>This advice is provided as an internal referral from the Urban Design Unit to the Development Assessment Officer for consideration and coordination with the overall assessment.</p> <p>The application was previously approved at a Section 34 Conciliation Conference (File No. 2016/302237) under the provisions of the Land and Environment Court (LEC) Act 1979. The original DA (N0267/16) was refused by Council on 14 November 2016. This application seeks consent to major modifications to the approved 4 storey shop top housing development as follow:</p> <ul style="list-style-type: none"> • Basement - Reconfiguration of approved basement parking to accommodate 40 cars, lift, stairs, services, and storage • Ground Floor - Reconfiguration of existing entry to provide new fire exit • First Floor - Reconfiguration of approved units into larger units with additional bedrooms, including conversion of Unit 4 to accessible unit • Second Floor - Reconfiguration of approved units into larger units with additional bedrooms, including conversion of Unit 14 to accessible unit <p>Urban Design cannot support the proposed modifications for the following reasons:</p> <ol style="list-style-type: none"> 1. The proposed modifications have resulted in the reduction of building setbacks on the western and northern boundaries to increase some of the unit sizes. As such, the proposal does not comply with SEPP 65/ Apartment Design Guide requirements of building separation distances as approved by the LEC previously. 2. The proposed bigger building footplate has also resulted in the loss of landscaping on the site resulting in the loss of overall amenity. <p>Please note: Regarding any view impacts and any impacts on solar amenity and overshadowing these matters will be dealt with under the evaluation of Council Planning Officer. Any impacts of non-compliances regarding heritage will be dealt with under the evaluation of Council Heritage Officers, and any Landscape non-compliances will be dealt with under the evaluation of Council Landscape Officers.</p>
Traffic Engineer	<p>The modification includes a reconfiguration of the basement to accommodate 40 parking spaces rather than the 35 spaces approved under DA N0267/16. The total number of parking spaces on the site will increase from currently approved 50 to 55 with the parking layout on the ground floor level remaining unchanged.</p> <p>The increase in basement parking is achieved by reconfiguring the parking layout including increasing the number of tandem parking</p>

Internal Referral Body	Comments
	<p>spaces from 12 x to 24 spaces. The development mix remains unchanged with 20 residential units (2 x 3 bed, 12 x 2 bed and 6 x 1 bed) with a gross lettable commercial floor area of 440.9m2 with the courts approval requiring that each one bedroom unit have one parking space (condition B.16), each 2 or three bedroom unit having two parking spaces (condition B.17), that there be 15 retail visitor spaces (condition B.18) and 6 residential visitor parking spaces (condition B.19) a total of 55 parking spaces is required. The courts approval also requires that each pair of tandem spaces be assigned to the same residential unit.</p> <p>Although the clause 6.3 of the Pittwater DCP limits tandem parking to 10% of the total supply for 2 or more bedroom units given the constraints outlined above in the court's consent the layout proposed in the modification is not opposed. This will however mean that 12 of the 14 two and three bedroom units will rely upon tandem parking spaces.</p> <p>The Pittwater DCP requires that 3% of parking spaces be for disabled use. As there are 55 spaces 2 must be for disable use. There are two disabled parking spaces on the modified plans with both being designed in accordance with AS/NZS 2890.6 subject to a shared zone bollard being installed adjacent to each space. This will be conditioned.</p> <p>For business development, there is a DCP requirement that motorcycle parking at a rate of 1 Motorcycle space for each 100 vehicle spaces is required i.e 1 Motorcycle space is required. The modification plans propose 3 motorcycle bays which is supported.</p> <p>There is also a DCP requirement for bicycle parking at a rate of 1 rack for each 3 dwellings and a minimum of 4 bicycle racks for the commercial component. This equates to a requirement for 11 bicycle racks. The amended plans do not show sufficient bicycle parking however there appears to be space available within the basement to accommodate the required bicycle parking. This will be conditioned.</p> <p>Condition B.36 of the court's consent references two visitor wash bays. The modified plans only incorporate one wash bay which is sufficient to meet the DCP requirement however condition 36 will require amendment as follows.</p> <p>"The car wash bay is to be graded and to drain to the sewerage system. The perimeter of the wash bay is to be suitably bunded to prevent stormwater entering the sewer."</p>

External Referral Body	Comments
Ausgrid - SEPP (Transport and Infrastructure) 2021, s2.48	The proposal was referred to Ausgrid who provided a response stating that the proposal is acceptable subject to compliance with the relevant

External Referral Body	Comments
	Ausgrid Network Standards and SafeWork NSW Codes of Practice. These recommendations will be included as a condition of consent.

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

The proposed development was lodged on 11 September 2023. At this time, the *State Environmental Planning Policy No. 65 – Design Quality for Residential Apartment Development* (SEPP 65), which has since been repealed by the *State Environmental Planning Policy (Housing) 2021*, applied. As such, assessment under SEPP 65 is provided as follows.

Clause 4 Application of Policy

Clause 4 of 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.

The proposed development is for the modification of an approved new three-storey residential flat building development, plus basement car parking. The development includes 20 dwellings. As such, the provisions of SEPP 65 are applicable to the assessment of this application.

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 Determination of development application

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). No referral to DSAP was necessary.

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:

As approved.

Principle 2: Built Form and Scale

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

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

Comment:

The proposed modifications increase the approved built form to portions of the northern and western elevations. However, the modifications are acceptable for the reasons detailed throughout this report. The modifications retain a suitable built form of a bulk and scale consistent with existing and approved developments in the locality, and as anticipated for the site

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:

As approved.

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:

As approved.

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, coordinating 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:

As approved.

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:

As approved.

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:

As approved.

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:

As approved.

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:

As approved.

APARTMENT DESIGN GUIDE

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

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?	As approved.
Orientation	Does the development respond to the streetscape and site and optimise solar access within the development and to neighbouring properties?	As approved.
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?	As approved.
Communal and Public Open Space	Appropriate communal open space is to be provided as follows:	As approved.

	<ol style="list-style-type: none"> Communal open space has a minimum area equal to 25% of the site Developments achieve a minimum of 50% direct sunlight to the principal usable parts of the communal open space for a minimum of 2 hours between 9 am and 3pm on 21 June (mid winter) 													
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	As approved.
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>The proposed modifications reduce building separation at Units 3, 4, 5, 7, 8, 13, 14, 15, 17 and 18, towards the north and west. The reduced setbacks are established as acceptable for the reasons detailed in the section of this report relating to Clause C1.5 Visual Privacy of the Pittwater 21 DCP.</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												

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>	As approved.
Vehicle Access	<p>Are the vehicle access points designed and located to achieve safety, minimise conflicts between pedestrians and vehicles and create high quality streetscapes?</p>	As approved.
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>	As approved.
Part 4 Designing the Building		
Amenity		
Solar and Daylight Access	<p>To optimise the number of apartments receiving sunlight to habitable rooms, primary windows and private open space:</p> <ul style="list-style-type: none"> Living rooms and private open spaces of at least 70% of apartments in a building are to receive a minimum of 2 hours direct sunlight between 9 am and 3 pm at mid winter. 	As approved.
	<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. 	As approved.

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.	As approved.												
	<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.	Not Applicable.												
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	As approved.
Minimum ceiling height														
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Attic spaces	1.8m at edge of room with a 30 degree minimum ceiling slope													
If located in mixed used areas	3.3m for ground and first floor to promote future flexibility of use													
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>	Apartment type	Minimum internal area	Studio	35m ²	1 bedroom	50m ²	2 bedroom	70m ²	3 bedroom	90m ²	As approved.		
Apartment type	Minimum internal area													
Studio	35m ²													
1 bedroom	50m ²													
2 bedroom	70m ²													
3 bedroom	90m ²													

	<p>A fourth bedroom and further additional bedrooms increase the minimum internal area by 12m² each.</p> <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>Habitable room depths are limited to a maximum of 2.5 x the ceiling height.</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>Master bedrooms have a minimum area of 10m² and other bedrooms 9m² (excluding wardrobe space).</p> <p>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.</p> <p>Living rooms or combined living/dining rooms have a minimum width of:</p> <ul style="list-style-type: none"> • 3.6m for studio and 1 bedroom apartments • 4m for 2 and 3 bedroom apartments 																
	The width of cross-over or cross-through apartments are at least 4m internally to avoid deep narrow apartment layouts	Not Applicable.															
Private Open Space and Balconies	<p>All apartments are required to have primary balconies as follows:</p> <table border="1"> <thead> <tr> <th>Dwelling Type</th><th>Minimum Area</th><th>Minimum Depth</th></tr> </thead> <tbody> <tr> <td>Studio apartments</td><td>4m²</td><td>-</td></tr> <tr> <td>1 bedroom apartments</td><td>8m²</td><td>2m</td></tr> <tr> <td>2 bedroom apartments</td><td>10m²</td><td>2m</td></tr> <tr> <td>3+ bedroom apartments</td><td>12m²</td><td>2.4m</td></tr> </tbody> </table> <p>The minimum balcony depth to be counted as contributing to the balcony area is 1m.</p>	Dwelling Type	Minimum Area	Minimum Depth	Studio apartments	4m ²	-	1 bedroom apartments	8m ²	2m	2 bedroom apartments	10m ²	2m	3+ bedroom apartments	12m ²	2.4m	As approved.
Dwelling Type	Minimum Area	Minimum Depth															
Studio apartments	4m ²	-															
1 bedroom apartments	8m ²	2m															
2 bedroom apartments	10m ²	2m															
3+ bedroom apartments	12m ²	2.4m															
	For apartments at ground level or on a podium or similar structure, a private open space is provided instead of a balcony. It must have a minimum area of 15m ² and a minimum depth of 3m.	Not Applicable.															
Common Circulation and Spaces	The maximum number of apartments off a circulation core on a single level is eight.	As approved.															

	For buildings of 10 storeys and over, the maximum number of apartments sharing a single lift is 40.	Not Applicable.										
Storage	<div>In addition to storage in kitchens, bathrooms and bedrooms, the following storage is provided:</div> <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 apartments</td><td>8m²</td></tr><tr><td>3+ bedroom apartments</td><td>10m²</td></tr></table> <div>At least 50% of the required storage is to be located within the apartment.</div>	Dwelling Type	Storage size volume	Studio apartments	4m ²	1 bedroom apartments	6m ²	2 bedroom apartments	8m ²	3+ bedroom apartments	10m ²	As approved.
Dwelling Type	Storage size volume											
Studio apartments	4m ²											
1 bedroom apartments	6m ²											
2 bedroom apartments	8m ²											
3+ bedroom apartments	10m ²											
Acoustic Privacy	Noise sources such as garage doors, driveways, service areas, plant rooms, building services, mechanical equipment, active communal open spaces and circulation areas should be located at least 3m away from bedrooms.	As approved.										
Noise and Pollution	Siting, layout and design of the building is to minimise the impacts of external noise and pollution and mitigate noise transmission.	As approved.										
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.	The modified development provides an improved apartment mix. The approved development contains twelve one-bedroom apartments and eight two-bedroom apartments. The modified development includes six one-bedroom apartments, twelve two-bedroom apartments, and two three-bedroom apartments										
Ground Floor Apartments	Do the ground floor apartments deliver amenity and safety for their residents?	Not Applicable.										
Facades	Ensure that building facades provide visual interest along the street and neighbouring buildings while respecting the character of the local area.	As approved.										
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	As approved.										

	any unreasonable amenity impacts caused by the use of the roof top.																																				
Landscape Design	Was a landscape plan submitted and does it respond well to the existing site conditions and context.	As approved.																																			
Planting on Structures	<div>When planting on structures the following are recommended as minimum standards for a range of plant sizes:</div> <table><tr><th>Plant type</th><th>Definition</th><th>Soil Volume</th><th>Soil Depth</th><th>Soil Area</th></tr><tr><td>Large Trees</td><td>12-18m high, up to 16m crown spread at maturity</td><td>150m³</td><td>1,200mm</td><td>10m x 10m or equivalent</td></tr><tr><td>Medium Trees</td><td>8-12m high, up to 8m crown spread at maturity</td><td>35m³</td><td>1,000mm</td><td>6m x 6m or equivalent</td></tr><tr><td>Small trees</td><td>6-8m high, up to 4m crown spread at maturity</td><td>9m³</td><td>800mm</td><td>3.5m x 3.5m or equivalent</td></tr><tr><td>Shrubs</td><td></td><td></td><td>500-600mm</td><td></td></tr><tr><td>Ground Cover</td><td></td><td></td><td>300-450mm</td><td></td></tr><tr><td>Turf</td><td></td><td></td><td>200mm</td><td></td></tr></table>	Plant type	Definition	Soil Volume	Soil Depth	Soil Area	Large Trees	12-18m high, up to 16m crown spread at maturity	150m ³	1,200mm	10m x 10m or equivalent	Medium Trees	8-12m high, up to 8m crown spread at maturity	35m ³	1,000mm	6m x 6m or equivalent	Small trees	6-8m high, up to 4m crown spread at maturity	9m ³	800mm	3.5m x 3.5m or equivalent	Shrubs			500-600mm		Ground Cover			300-450mm		Turf			200mm		As approved.
Plant type	Definition	Soil Volume	Soil Depth	Soil Area																																	
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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	As approved.																																			
Adaptable Reuse	New additions to existing buildings are contemporary and complementary and enhance an area's identity and sense of place.	Not Applicable.																																			
Mixed Use	<div>Can the development be accessed through public transport and does it positively contribute to the public domain?</div> <div>Non-residential uses should be located on lower levels of buildings in areas where residential use may not be appropriate or desirable.</div>	As approved.																																			
Awnings and Signage	Locate awnings along streets with high pedestrian activity, active frontages and over building entries.	Not applicable.																																			

	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.	
Performance		
Energy Efficiency	Have the requirements in the BASIX certificate been shown in the submitted plans?	BASIX Certificate commitments are included on the architectural plans.
Water Management and Conservation	Has water management taken into account all the water measures including water infiltration, potable water, rainwater, wastewater, stormwater and groundwater?	As approved.
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?	As approved.
Building Maintenance	Does the development incorporate a design and material selection that ensures the longevity and sustainability of the building?	The building materials selected for the subject development are of a high quality and will achieve a longevity that is both sustainable and expected for a development of this nature.

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 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.

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 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 approved development is supported by a geotechnical risk assessment report and the modified development is supported by plans that demonstrate the proposed development is of acceptably low risk in relation to the above matters. As such, the proposed development is not anticipated to result in adverse impact.

- 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:

The development is designed, sited and will be managed to avoid an adverse impact, in accordance with the above at (1).

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 impact referred to in paragraph (a), or*
 - ii) *if that impact cannot be reasonably avoided—the development is designed, sited and will be managed to minimise that impact, or*
 - iii) *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 approved development is supported by a geotechnical risk assessment report and plans that demonstrate the proposed development is of acceptably low risk in relation to the matters above at (a). The modifications do not alter the development to the extent that risk is increased. As such, the proposed development is designed, sited and will be managed so as not to result in adverse impact to the matters above at (b). The proposal has been considered in relation to the coastal and built environment, bulk and scale throughout the assessment, as demonstrated within this report.

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:

Given the above, the consent authority can be satisfied that the proposed development is designed such that it will not result in increased risk of coastal hazards on the subject site or surrounding land.

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

Development Standard	Requirement	Approved	Proposed	% Variation	Complies
Height of Buildings:	Max. 8m above FPL (4.25) RL 12.25	8.7m above FPL RL 12.95	Unchanged	As approved	As approved

Compliance Assessment

Clause	Compliance with Requirements
2.7 Demolition requires development consent	Yes
4.3 Height of buildings	Yes
5.21 Flood planning	Yes
7.1 Acid sulfate soils	Yes
7.2 Earthworks	Yes
7.10 Essential services	Yes

Detailed Assessment

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:

The modified development has been referred to Council's Flood Engineer, who has reviewed the development in relation to the above matters. The Engineer is supportive of the works, subject to conditions of consent, which have been included in the recommendation of this report. Accordingly, the consent authority can be satisfied with respect to the above matters at (a) through (e).

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:

The modified development has been referred to Council's Flood Engineer, who has reviewed the

development in relation to the above matters. The Engineer is supportive of the works, subject to conditions of consent, which have been included in the recommendation of this report. Accordingly, the consent authority can be satisfied with respect to the above matters at (a) through (d).

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 3, as indicated on Council's Acid Sulfate Soils Planning Map. The modified development is not anticipated to result in risk associated with acid sulfate soils.

7.2 Earthworks

The objective of Clause 7.2 Earthworks requires development to ensure that earthworks for which development consent is required will not have a detrimental impact on environmental functions and processes, neighbouring uses, cultural or heritage items or features of the surrounding land.

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

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

Comment:

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

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

Comment:

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

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

Comment:

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

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

Comment:

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

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

Comment:

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

(f) the likelihood of disturbing relics

Comment:

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

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

environmentally sensitive area

Comment:

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

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

Comment:

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

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

Comment:

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

7.10 Essential services

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

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

Comment:

The subject site is supplied with the above essential services. The approved development and proposed modifications retain and rely upon these services.

Pittwater 21 Development Control Plan

Built Form Controls

Built Form Control	Requirement	Approved	Proposed	Complies
Front building line	Min. 3.5m	Rickard Road: Stairs: Min. 900mm Building: 1.1m-3m	Unchanged	As approved
		Minarto Lane: 1.1m-1.75m	Unchanged	As approved
Side building line	Nil	North: 0m-3m	0m-2m	Yes
		West: 0m-3m	0m-1.15m	Yes
Building envelope	4.5m	North: Max. 1.5m outside envelope	Max. 3.3m outside envelope	No
		West: Max. 1.5m outside envelope	Max. 2.5m outside envelope	No

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A1.7 Considerations before consent is granted	Yes	Yes
A4.11 North Narrabeen Locality	Yes	Yes
B3.6 Contaminated Land and Potentially Contaminated Land	Yes	Yes
B3.11 Flood Prone Land	Yes	Yes
B3.12 Climate Change (Sea Level Rise and Increased Rainfall Volume)	Yes	Yes
B4.5 Landscape and Flora and Fauna Enhancement Category 3 Land	Yes	Yes
B5.5 Rainwater Tanks - Business, Light Industrial and Other Development	Yes	Yes
B5.15 Stormwater	Yes	Yes
B6.3 Off-Street Vehicle Parking Requirements	No	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
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
C1.10 Building Facades	Yes	Yes
C1.13 Pollution Control	Yes	Yes
C1.15 Storage Facilities	Yes	Yes
C1.18 Car/Vehicle/Boat Wash Bays	Yes	Yes
C2.1 Landscaping	Yes	Yes
C2.2 Safety and Security	Yes	Yes
C2.5 View Sharing	Yes	Yes
C2.7 Building Facades	Yes	Yes
C2.10 Pollution Control	Yes	Yes
C2.12 Protection of Residential Amenity	Yes	Yes
C2.15 Car/Vehicle/Boat Wash Bays	Yes	Yes
D11.1 Character as viewed from a public place	Yes	Yes
D11.2 Scenic protection - General	Yes	Yes
D11.3 Building colours and materials	Yes	Yes
D11.6 Front building line	Yes	Yes
D11.7 Side and rear building line	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
D11.9 Building envelope	No	Yes

Detailed Assessment

B6.3 Off-Street Vehicle Parking Requirements

The modified development requires parking as follows:

Residential:

- 1 space per unit with one bedroom (6 spaces)
- 2 spaces per unit with two or more bedrooms (28 spaces)
- 1 accessible space per adaptable dwelling (2 spaces)
- Total required: 34 spaces, including 2 accessible spaces
- Total provided: 34 spaces, including 1 accessible spaces (as approved)

Visitor:

- 1 space per 3 dwellings
- Total required: 7 spaces
- Total provided: 5 spaces (as approved*)

* The approved development included five dedicated visitor spaces, which are maintained in the modified development. The approved development also included two car wash bays that doubled as visitor parking spaces, one of which is retained in the modified development, as only one car wash bay is required.

Retail:

- 1 space per 30m² of gross leasable area
- 3% of spaces to be accessible
- Total required: 15 spaces, including 1 accessible space
- Total provided: 15 spaces, including 1 accessible space

Bicycle:

- 1 bicycle rack per 3 dwellings (7 racks)
- 1 bicycle rack per 1000m² of business gross floor area, or 4 racks, whichever is greater (4 racks)
- Total required: 11 racks
- Total provided: 7 specified racks in the basement (see assessment below)

Motorcycle:

- 1 motorcycle space per 100 car spaces
- Total required: 1 space
- Total provided: 3 spaces

Wash Bay:

- 1 car wash bay for developments with 10 or more dwellings
- Total required: 1
- Total provided: 1 (reduction from 2 approved)

The proposed modifications retain the approved outcome with respect to parking, other than in relation to bicycle parking. The approved development provided a compliant number of bicycle parking racks. The modified plans indicate seven bicycle parking racks to service the residential users of the site, and an additional 'bicycle parking' area at the ground floor to service the retail users of the site, though this area does not specify the number of racks to be included. This area is of dimensions capable of providing the additional four required bicycle racks to support the retail users of the site. This is addressed via a recommended condition of consent.

C1.4 Solar Access

Submissions raised concern that the proposed modifications will result in additional and unreasonable overshadowing impacts on adjoining properties. The proposed development retains the approved development's impact with respect to overshadowing of adjoining properties as relevant to the requirements of this control. The plans are supported by shadow diagrams that demonstrate the only additional impact from the proposed works was due to the increased building height, and not due to the increased bulk at the northern and western elevations. Given the additional building height is no longer proposed, the overshadowing impact to adjoining properties is unchanged and therefore acceptable.

C1.5 Visual Privacy

Submissions raised concern that the proposed modifications will result in additional and unreasonable visual privacy impacts on adjoining properties. The proposal includes additional floor space and balconies closer to the northern and western side boundaries. Accordingly, the underlying outcomes of the control are addressed as follows.

Habitable rooms and outdoor living areas of dwellings optimise visual privacy through good design.

Comment:

The proposed modifications include extensions of the approved units as follows:

- Units 3-5 and 13-15 to the north, and
- Units 7, 8, 17 and 18 to the west.

A condition of consent has been included in the recommendation, requiring compliant building separation to be provided for Units 7 and 17, so the extensions to those units need no further consideration.

With respect to Units 3, 4 and 5 to the north at the ground floor, the proposed extensions are set behind the approved courtyard walls, which prevent direct view to the properties to the north.

With respect to Units 13, 14, and 15 to the north at the first floor, the proposed extensions, consideration is given to the properties adjoining the subject site to the north. The properties to the north of the subject site are developed as follows:

- 1 Gondola Road: Vacant lot
- 3 Gondola Road: Two-storey commercial development
- 5 Gondola Road: Two-storey commercial development
- 7 Gondola Road: Single-storey detached dwelling house

Given the above (and that none of the extensions align with the dwelling house at 7 Gondola Road), the proposed modifications do not pose an unreasonable visual privacy impact to the properties adjoining the subject site to the north in their current states.

It is noted that 1 Gondola Road has an approval for a shop top housing development (DA2018/1210), which has not commenced, though is valid until 4 October 2026. It is also noted that 1 and 3 Gondola Road are subject to a current development application under assessment at the time of writing this report (DA2024/0460). Both the approved and proposed developments include blank walls to their southern elevations adjoining the site, which means that the proposed extensions would not result in unreasonable visual privacy to those properties.

With respect to Units 8 and 18 to the west, the extended portions are for blank walls, or terraces with privacy screening to a height of 1.8 metres above finished floor level. Further, a condition of consent has been included in the recommendation to extend the privacy screening along a portion of the northern elevation of those terraces, so as to prevent a cross view to the west. As such, the extension of these units do not pose an unreasonable privacy outcome to the adjoining dwellings to the west.

As such, the proposed modifications, though increasing the built form, are well designed so as not to result in unreasonable visual impact to adjoining properties.

A sense of territory and safety is provided for residents.

Comment:

Given the above, the modified development retains a suitable sense of territory and safety for residents of both the subject site and adjoining sites.

D11.9 Building envelope

The modified development includes increased breaches to the building envelope control of 3.3 metres to the western elevation and 2.5 metres to the northern elevation. Accordingly, the development is considered against the outcomes of the control as follows.

To achieve the desired future character of the Locality.

Comment:

The modified development remains consistent with the requirements of Clause A4.11 North Narrabeen Locality, which details the desired future character of the subject site and surrounds.

To enhance the existing streetscapes and promote a building scale and density that is below the height of the trees of the natural environment.

Comment:

The modified development remains of a scale and density anticipated for the subject site, and is set below the general height of the trees in the surrounding natural environment.

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

Comment:

The modified development does not increase the approved height of the development. The non-compliance arises due to increase in built form to portions of the northern and western side elevations. The resultant development responds to, reinforces, and sensitively relates to the spatial characteristics of the site and surrounds, being of comparable (and in some cases, smaller) form than other existing and approved developments in the locality.

The bulk and scale of the built form is minimised.

Comment:

The modified development minimises bulk and scale with the inclusion of significant points of building modulation and articulation. The portions of reduced side setback are minor in nature in the context of the development as a whole, and do not result in unreasonable visual bulk.

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

Comment:

The modified development is designed and sited so as not to unreasonably obstruct views to or from public or private places.

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

Comment:

The modified development (as amended by conditions of consent) is designed and sited so as to retain reasonable privacy, amenity and solar access to the subject site and adjoining sites.

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

Comment:

The modified development is within the approved building footprint, so does not alter the approved landscaped area and planting outcome

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

Section 7.12 contributions were levied on the Development Application.

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

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

RECOMMENDATION

THAT Council as the consent authority grant approval to Modification Application No. Mod2023/0473 for Modification of Development Consent Land and Environment Court for N0267/16 granted by the Land and Environment Court for Demolition of all existing structures and the construction of a shoptop housing development, comprising 3 commercial units, 20 residential units and off-street parking. on land at Lot 171 DP 16212,8 Rickard Road, NORTH NARRABEEN, Lot 173 DP 16212,4 Rickard Road, NORTH NARRABEEN, Lot 172 DP 16212,6 Rickard Road, NORTH NARRABEEN, Lot 174 DP 16212,2 Rickard Road, NORTH NARRABEEN, subject to the conditions printed below:

Modification Summary

The development consent is modified as follows:

MODIFICATION SUMMARY TABLE

Application Number	Determination Date	Modification description
PAN-365986 Mod2023/0476	The date of this notice of determination	<p>Modifications to the development to expand certain units.</p> <p>Additional Conditions:</p> <ul style="list-style-type: none"> • A1A • A1B • C22 • C23 <p>Modified Conditions:</p> <ul style="list-style-type: none"> • B36 • B52 • B54 • C17 • C18 • E14

- E15
- E16

Modified Conditions

A. Add Condition A1A Modification of Consent - Approved Plans and Supporting Documentation, to read as follows:

Development must be carried out in accordance with the following approved plans (stamped by Council) and supporting documentation, except where the conditions of this consent expressly require otherwise.

Approved Plans				
Plan Number	Revision Number	Plan Title	Drawn By	Date of Plan
DA01	S1	Roof Plan	Design Vines	26 July 2023
DA02	S1	Basement Floor	Design Vines	26 July 2023
DA03	S1	Ground Floor	Design Vines	26 July 2023
DA04	S1	First Floor	Design Vines	26 July 2023
DA05	S1	Second Floor	Design Vines	26 July 2023
DA06	S1	Elevations	Design Vines	26 July 2023
DA07	S1	Elevations	Design Vines	26 July 2023
DA08	S1	Sections	Design Vines	26 July 2023
L-01	D	Landscape Plan Ground Floor	Space Landscape Designs	24 July 2023
L-02	C	Landscape Plan First Floor Residential	Space Landscape Designs	24 July 2023
L-03	A	Landscape Details and Specifications	Space Landscape Designs	24 July 2023

Approved Reports and Documentation			
Document Title	Version Number	Prepared By	Date of Document
BASIX Certificate 382273M_05	-	Efficient Living	7 August 2023
NatHERS Certificate 1365610	-	Efficient Living	27 June 2023
Flood Storage Certification	B	Hyve Designs	5 September 2024

In the event of any inconsistency between the approved plans, reports and documentation, the approved plans prevail.

In the event of any inconsistency with the approved plans and a condition of this consent, the condition prevails.

Reason: To ensure all parties are aware of the approved plans and supporting documentation that applies to the development.

B. Add Condition A1B Compliance with Other Department, Authority or Service Requirements to read as follows:

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	Ausgrid Referral Response - Underground Cables	19 September 2023
	Ausgrid Referral Response - Overhead Cables	19 September 2023

(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.

C. Modify Condition B36 to read as follows:

The car wash bay is to be graded and are to drain to the sewerage system. The perimeter of the wash bay is to be suitably bunded to prevent stormwater entering the sewer.

D. Modify Condition B52 to read as follows:

A Section 88B instrument is to remain on the title to refer to the following flood-related features of the development that are required for the life of the development:

- a. flood storage tanks and associated pump system,
- b. flood warning system and
- c. flood doors (on all external doors set below 4.25 mAHD).

Reason: To maintain flood resilience.

E. Modify Condition B54 to read as follows:

The narrow windows on the northern façade associated with Bedroom 1 of Units 6 and 16, are to be fixed and are to comprise translucent glazing.

F. Modify Condition C17 to read as follows:

Prior to the issuance of any Construction Certificate, the architectural and landscape plans are to be amended, as follows:

- a. The stairs between the terrace garden on the first floor and the ground floor courtyard are to be deleted.
- b. The terrace garden along the northern and western boundaries at the first floor is to be non-trafficable (with the exception of access for maintenance) and is to be one continual area with no dividing walls or fences.
- c. Lineal planting arrangements within the first floor terrace garden should be avoided and plants are to be arranged and spaced so that at completion of works, they present as a grown completed landscape.

Plant material should be arranged through pre-order plant contracts to achieve required advanced sizes.
d. 9 x Magnolia grandiflora 'Teddy Bear', at minimum 45 litre container size, are to be installed on the first floor.

e. Substitute the 2 x Dianella 'Cassa Blue' adjacent to the southern terrace of Unit 08 with 1 x Callistemon viminalis 'Slim'.

G. Modify Condition C18 to read as follows:

Prior to the issuance of any Construction Certificate, the architectural plans are to be amended, as follows:

- a. Deleted.
- b. The protruding terrace 'pods' on the Rickard Road and Minarto Lane facades, associated with the Living Room of Units 3 and 13 and Bedroom 1 of Units 1, 8, 11, and 18, are not to protrude more than 500mm from the associated façade.
- c. The cupboard/BIR in Bedroom 2 in Units 9 and 19 is to be relocated, so that the minimum dimensions of the rooms are 3m in both directions, excluding the depth of the cupboard/BIR.

H. Add Condition C22 to read as follows:

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 to the parking layout on the plans:

- 34 residential spaces that must be linemarked as 'resident only', including 2 spaces marked and signposted for disabled parking
- 5 residential visitor spaces that must be linemarked as 'residential visitor'
- 15 commercial visitor spaces that must be linemarked as 'commercial parking', including 1 space marked and signposted for disabled parking
- 1 car wash bay that must be linemarked as 'visitor/wash bay'
- 3 motorcycle spaces that must be linemarked as 'motorcycle only'
- 11 bicycle racks including pavement marking denoting 'bicycle parking'

All spaces to be marked and dimensioned in compliance with the requirements of AS/NZS 2890.

These amendment(s) must be clearly marked on the plans submitted to the Certifier prior to the issue of a Construction Certificate.

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

I. Add Condition C23 Amendments to the Approved Plans to read as follows:

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

- A privacy screen is to be erected along the northern elevation of the northern terraces of Units 8 and 18. Each screen is to extend from the north-western corner of the terrace to a width of 1.8 metres, and to a height of 1.8 metres above finished floor level.
- The western setback of the terrace of Unit 17 is to be increased to 6 metres from the western boundary.
- The "timber clad balcony structure" walls on the western elevation of the terraces of Units 4 and 14, and the eastern elevations of the terraces of Units 5 and 15 are to be semi-open, by way of a

20-millimetre gap between each timber slat, to ensure privacy of nearby residences, while allowing better internal solar amenity.

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

Reason: To require amendments to the plans endorsed by the consent authority following assessment of the development.

J. Modify Condition E14 to read as follows:

Certification is to be provided by a licenced surveyor that the flood storage offset tanks have been constructed to provide the appropriate volume of flood storage (930 m3).

K. Modify Condition E15 to read as follows:

Certification is to be provided by a suitably qualified person that all of the flood-related features of the development have been installed and are fully operable in accordance with the Flood Emergency Response Plan as referenced in this consent and amended by this consent.

L. Modify Condition E16 to read as follows:

A Section 88B instrument is to be placed on the title to refer to the following flood-related features of the development that are required for the life of the development:

- a. flood storage tanks and associated pump system,
- b. flood warning system and
- c. flood doors (on all external doors set below 4.25 mAHD).

Reason: To maintain flood resilience.

In signing this report, I declare that I do not have a Conflict of Interest.

Signed



Claire Ryan, Principal Planner

The application is determined on 09/10/2024, under the delegated authority of:



Thomas Prosser, Acting Development Assessment Manager