

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2022/0919
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Responsible Officer:	Adam Susko
Land to be developed (Address):	Lot 188 DP 16719, 3 Gondola Road NORTH NARRABEEN NSW 2101
Proposed Development:	Demolition works and construction of shop top housing
Zoning:	B2 Local Centre
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	NBLPP
Land and Environment Court Action:	Yes
Owner:	Crowther Investments (NSW) Pty Ltd
Applicant:	MacKenzie Architects International

Application Lodged:	06/07/2022
Integrated Development:	Yes
Designated Development:	No
State Reporting Category:	Mixed
Notified:	22/07/2022 to 19/08/2022
Advertised:	22/07/2022
Submissions Received:	0
Clause 4.6 Variation:	4.3 Height of buildings: 91%
Recommendation:	Refusal

Estimated Cost of Works:	\$ 5,152,585.00
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EXECUTIVE SUMMARY

This application seeks consent for demolition works and the construction of a shop top housing development.

The application is referred to the Northern Beaches Local Planning Panel (NBLPP) for determination as the proposal breaches the 8.5m height of building development standard by up to 91%, reaching a maximum of 16.3m above existing ground level.

The applicant relies upon the special height provisions for flood affected sites under the PLEP 2014, however as the proposal exceeds the allowable height under those provisions, it does not benefit from them, and so the standard building height applies. Nevertheless, the Clause 4.6 variation request is not well founded and is based on an incorrect height under the building height development standard.

The height variation results in an excessively proportioned and visually dominant building that is incongruent with its surroundings and represents the tallest building (existing or approved) in the local centre, which is out of character.

The development has a significant shortfall in landscaped area, deep soil area, and commercial floor space which renders it inconsistent with the zone objectives.

The proportions of the building are anticipated to have a severe overshadowing and visual bulk impact when viewed from the street and adjoining properties. The analysis and justifications provided by the Applicant do not accurately consider these factors, noting that two adjoining developments are in fact unbuilt, with one consent having lapsed.

The building results in a poor streetscape outcome, and a poor level of amenity for future occupiers when measured against Design Quality Principles of SEPP 65 and the ADG.

The development jeopardises public and private safety through its unusual ground floor layout and is therefore inconsistent with the principles of Crime Prevention Through Environmental Design.

The proposal does not satisfy the threshold provisions of the SEPP (Resilience and Hazards) 2021, in that a consent authority could not be satisfied that the risk of hydrocarbon contamination from the adjacent petrol station can be appropriately remediated or managed to mitigate the risk of vapour intrusion into the basement car park.

The proposal is also not supported by the Design and Sustainability Advisory Panel, Environmental Health, Landscaping, Development Engineering, Flood Engineering, and Waste Services.

When the concerns detailed within this report were raised with the Applicant, they lodged a Class 1 Deemed Refusal application in the Land and Environment Court of NSW.

The development is not suitable for the site and is not worthy of approval. This report concludes with the recommendation that the NBLPP, as the consent authority, should **REFUSE** the application.

PROPOSED DEVELOPMENT IN DETAIL

The application seeks consent for demolition works and the construction of a shop top housing development.

The proposed development is five (5) storeys in height, over one (1) level of basement parking and accommodates one (1) commercial premises, eight (8) x two (2) bedroom apartments and a rooftop communal area for future occupants.

The high-hazard flood affectation of the site requires the floor level of the ground floor to be raised above the Flood Planning Level (FPL). This results in the upper basement level projecting out of the ground by more than 1.2m, and it therefore constitutes a storey of the building.

During the course of the assessment, Council wrote to the Applicant advising that significant issues had arisen that required their consideration and response.

The Applicant requested an extension of time, which was granted.

The Applicant proceeded to lodge the Class 1 Deemed Refusal application with the Land and Environment Court of NSW.

ASSESSMENT INTRODUCTION

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

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

SUMMARY OF ASSESSMENT ISSUES

Pittwater Local Environmental Plan 2014 - Zone B2 Local Centre

Pittwater Local Environmental Plan 2014 - 4.6 Exceptions to development standards

Pittwater Local Environmental Plan 2014 - 5.21 Flood planning

Pittwater 21 Development Control Plan - A4.11 North Narrabeen Locality

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

Pittwater 21 Development Control Plan - B8.1 Construction and Demolition - Excavation and Landfill

Pittwater 21 Development Control Plan - C1.1 Landscaping

Pittwater 21 Development Control Plan - C1.6 Acoustic Privacy

SITE DESCRIPTION

Property Description:	Lot 188 DP 16719 , 3 Gondola Road NORTH NARRABEEN NSW 2101
Detailed Site Description:	The subject site is legally identified as Lot 188 DP 16719 and is known as 3 Gondola Road, North Narrabeen. The site falls within the B2 Local Centre zone pursuant to the Pittwater Local Environmental Plan 2014. The site falls to the southern side of Gondola Road and is trapezoidal in shape with a frontage measuring 18.29m, depths of 38m and an overall surveyed area of 638.7m². The site presently accommodates a two storey commercial development to the street with a two storey open-air car park to the rear. The site is barren of any noteworthy landscaping and is generally flat.

The site is identified as flood prone land with a Flood Planning Level (FPL) of RL4.4.

Surrounding developments consist of a vacant corner lot to the east, which has an uncommenced approval for the construction of shop top housing; four lots to the south accommodating residential dwellings, also approved for the construction of shop top housing; and a business premises to the west currently used as a scrap metals business.

Map:



SITE HISTORY

A search of Council's records has revealed that there are no recent or relevant applications for this site.

The land has been used for industrial / commercial purposes for an extended period of time.

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 Matters for Consideration	Comments
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)	Part 4, <u>Division 2</u> of the EP&A Regulation 2021 requires the consent authority to consider "Prescribed conditions" of development consent. These matters could be addressed via a condition of consent. <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. <u>Clauses 36 and 94</u> of the EP&A Regulation 2021 allow Council to request additional information. Council wrote to the Applicant on 7 November 2022 outlining the numerous concerns with the application. An extension of time was given to respond. No formal response to this request was ever received, and instead the Applicant commenced proceedings in the Land and Environment Court of NSW. <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 could be addressed via a condition of consent if the application were considered worthy of approval. <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 could be addressed via a condition of consent if the application were considered worthy of approval.
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	(i) Environmental Impact There is an unknown environmental impact of the development in terms of hydrocarbon contamination in the ground. The excavation of the basement will intercept the water table, but this has been accepted by Water NSW. The environmental impacts of the proposed development are assessed within this report. In summary the impacts are unacceptable and warrant the refusal of the application. (ii) Social Impact The proposed development will not have a detrimental social impact in the locality considering the character of the proposal. (iii) Economic Impact The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and

Section 4.15 Matters for Consideration	Comments
	proposed land use.
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered unsuitable for the proposed development in its current form. The building is too big, bulky and out of character and provides a poor level of amenity to future occupants. The approval of the development would set an undesirable precedent for other similar developments within the local centre.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	There were no submissions raised in response to the advertising and notification of the application.
Section 4.15 (1) (e) – the public interest	This assessment has found the proposal to be contrary to the relevant requirements of the Pittwater Local Environmental Plan 2014 and the Pittwater 21 Development Control Plan and will result in a development which will create an undesirable precedent, such that it would undermine the desired future character of the area and be contrary to the expectations of the community. In this regard, the development, as proposed, is not considered to be 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 22/07/2022 to 19/08/2022 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 of the application Council received no submissions.

REFERRALS

Internal Referral Body	Comments
Design and Sustainability Advisory Panel	Not Supported The application was reviewed by the DSAP in a meeting held with the Applicant. The Panel was not satisfied with the contextual relationship of the building to its surroundings, particularly by way of building height and eastern aspect over a scrap metal yard. The Panel was not satisfied with the landscape outcome and noted that the garden to the southwest is inaccessible and unmaintainable. The Panel noted that the building performed extremely poorly on a NatHERS scale and that the score would likely further reduce, to an unacceptable level, upon the addition of mechanical ventilation in the basement. The Panel found that the site is suitable for a shop top housing

Internal Referral Body	Comments
	development, but the proposed yield was too significant and was catalytic to many of the problems with the application. A building of one four (4) residential units would likely achieve a significantly higher level of amenity, superior streetscape outcome, and would likely conform better with the relevant design controls.
Building Assessment - Fire and Disability upgrades	Supported, with conditions 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. 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.
Environmental Health (Acid Sulphate)	Supported, with conditions For the construction of a basement carpark, excavations to 4.0 m below ground level, an acid sulfate soils assessment was conducted in line with ASSMAC (1998). The findings and recommendations are that an Acid Sulfate Soils Management Plan (ASSMP) is required to be prepared and implemented to manage the risk of potential environmental and structural harm.
Environmental Health (Contaminated Lands)	Not Supported A preliminary site investigation report has been provided with the development application for the proposed excavation to 4m below ground level to construct an underground carpark. Due to the risk of hydrocarbon contamination from the adjacent petrol station which is a major risk of vapour intrusion for the basement carpark, a detailed site investigation is required as recommended by the contamination consultant. To satisfy Council's obligations under the SEPP (Resilience and Hazards) 2021, the applicant must provide a Detailed Site Investigation (EPA NSW <i>Contaminated Land Guidelines</i>) at the development application stage in accordance with the NSW EPA document "Consultants reporting on contaminated land". There is currently insufficient evidence for Council to assess and determine the suitability of the site and any appropriate contamination management measures for the proposed development. The proposal is unsupported at this time.
Environmental Health (Industrial)	Supported, with Conditions Proposed shop top housing development includes an acoustic assessment covering the projected noise amenity impact of a carpark, mechanical plant and communal spaces. The report has provided criteria and objectives for protection of internal noise amenity of residents on-site, those construction

Internal Referral Body	Comments
	outcomes must become part of the design prior to the Construction Certificate being issued -see condition below. Of primary concern are the location of mechanical plant and commercial exhaust discharge. We recommend that all exhaust discharge be done vertically at the roof, and not horizontally into public spaces. Beyond this, we have no concerns about amenity impacts of the development. <u>Planner comment:</u> the application does not seek consent for any mechanical plant of exhaust discharge on the roof of the development. Were the application to be worthy for approval (of which it is not) these matters may be addressable.
Landscape Officer	<i>Not supported</i> The development application is for demolition works and construction of shop top housing, and associated works, as described and illustrated in the reports and plans. Council's Landscape Referral have assessed the application against the following relevant landscape controls and policies: • State Environmental Planning Policy No. 65 - Design Quality of Residential Apartment Development (SEPP 65) and the Apartment Design Guide under SEPP 65, • the associated Apartment Design Guide, including Principle 5: Landscape, and the objectives of control 3E Deep Soil Zones, 4O Landscape Design, 4P Planting on Structures, and • Pittwater Local Environment Plan, and the following Pittwater 21 DCP controls (but not limited to); B4.22 Preservation of Trees and Bushland Vegetation, C1.1 & 2.1 Landscaping, and D11 North Narrabeen Locality It is noted the front awning of the development will impact the viability of the proposed deep soil zones in the front setback. The Apartment Design Guide states that "deep soil zones are areas of soil not covered by buildings or structures within a development". Landscape Referral calculates the front awning reduces the available deep soil in the front setback by approximately 52%, and reduces the available deep soil for the site to approximately 4.8%. The awning will also hinder tree planting in the front setback, which is required to soften the built form and satisfy the relevant controls. To include deep soil areas in the calculations, no overhead obstructions shall be present. The raised rooftop planter is generally supported; however, some locations have insufficient internal widths to sustain sufficient planting. The minimum internal width of the planter at any pinch point (in particular along the western side and the central location on the northern side) shall be increased to 800mm.
NECC (Coast and Catchments)	<i>Supported, with conditions</i> The application has been assessed in consideration of the <i>Coastal</i>

Internal Referral Body	Comments
	<i>Management Act 2016</i>, State Environmental Planning Policy (Resilience and Hazards) 2021 and has also been assessed against requirements of the Pittwater LEP 2014 and Pittwater 21 DCP. <u>Coastal Management Act 2016</u> 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>. <u>State Environmental Planning Policy (Resilience & Hazards) 2021</u> The subject land has been included on the 'Coastal Environment Area' under the State Environmental Planning Policy (Resilience & Hazards) 2021. Hence, Clauses 2.10 and 2.12 of the CM (R & H) apply for this DA. Comment: On internal assessment and as assessed in the submitted Statement of Environmental Effects, the development application satisfies requirements under clauses 2.10 and 2.12 of the SEPP R&H. As such, it is considered that the application does comply with the coastal requirements of the State Environmental Planning Policy (Resilience & Hazards) 2021. <u>Pittwater LEP 2014 and Pittwater 21 DCP</u> No other coastal related issues identified. As such, it is considered that the application does comply with the requirements of the coastal relevant clauses of the Pittwater LEP 2014 and Pittwater 21 DCP.
NECC (Development Engineering)	<i>Not supported</i> The application for shop top housing has been reviewed whilst the stormwater management plan is supported , it is noted that an existing Ausgrid power pole is located in the middle of the proposed driveway / basement ramp. Confirmation is to be obtained from Ausgrid that the power pole may be relocated by the applicant at their expense. The application is therefore not supported until this matter is resolved.
NECC (Stormwater and Floodplain Engineering – Flood risk)	<i>Not supported</i> The development proposes to demolish existing commercial buildings to construct a mixed use buildings with basement carpark. The site is affected by 1% AEP and PMF. The site is subjected to various Flood Planning Level (FPL) control levels. The development is generally meets Council's control, however more information is required to confirm that the outdoor lift can be protected during flood event.

Internal Referral Body	Comments
	The proposed development is considered non-compliant with Section B3.11 of Council's DCP.
NECC (Water Management)	<i>Supported, with conditions</i> This application has been assessed in consideration of the supplied plans and reports, the Northern Beaches Water Management for Development Policy (WM Policy), and other relevant policies and legislation. The proposal would likely intercept groundwater as indicated in the supplied Geotechnical Report. Developments that will intercept the water table are classified as Integrated Development and will require concurrence from the NSW Natural Resources Access Regulator under the Water Management Act 2000. Sediment and erosion controls must be installed prior to any work on site and maintained until the work is complete and groundcover re-established. Council proactively inspects construction sites to ensure sediment controls are in place.
Traffic Engineer	<i>Supported, with conditions</i> The proposal seeks consent for demolition of the existing structure and the construction of a shop top housing development comprising 8 residential apartments and a ground floor retail (commercial) tenancy over 2 levels of car parking for 22 vehicles. The development provides 22 car parking spaces and generates a total traffic generation of 6 vehicle trips per hour. As per rates in the RMS Traffic generating guidelines the proposed development will generate less traffic than the existing development although the traffic from the proposed primarily residential development will tend to be outbound in the morning and inbound in the evening while the existing commercial development would generate primarily inbound traffic movements in the morning and outbound traffic in the evening. There are no concerns in terms of traffic generation. The development has 16 residential spaces including 2 accessible; 3 visitor spaces including 1 accessible; and 3 commercial spaces including 1 accessible space. The entry and exit to basement is to be managed to traffic signals which is acceptable. A power pole is in conflict with the driveway location which requires Ausgrid consent to be removed.
Waste Officer	<i>Not supported</i> The proposed residential waste storage bin room does not comply with Councils' design guidelines.

Internal Referral Body	Comments
	Council provides a "wheel out/wheel in" service for all bins from multiple occupancy properties. The placement of bins at the kerbside for collection is not permitted. A suitably sized, located and accessible bin room must be provided in accordance with Councils' Design Guidelines for Waste Storage Facilities'. Specific non-compliances with this proposal: • The bin room is too far from the property boundary with the street. - <i>Unacceptable. Maximum permitted distance is 6.5 metres. (A variance to this distance may be considered for constrained sites).</i> • Access to the bin room is via the vehicular driveway. <i>Unacceptable. Access to the bin room must be via a pathway that is separate from the vehicular driveway. This pathway must be 1200mm wide, have a maximum gradient of 1 in 8 and contain no steps or kerbs.</i> • Access to the bin room is blocked by a security door. <i>Unacceptable. Access for servicing the bins must be unimpeded by locked doors, security grills etc.</i> • Access doors to all bin rooms and passageways used to move bins must be 1200mm wide.

External Referral Body	Comments
Ausgrid - SEPP (Transport and Infrastructure) 2021, s2.48	Supported, with conditions The proposal was referred to Ausgrid who raised no objections to the development, subject to conditions as recommended.
Nominated Integrated Development - WaterNSW - Water Management Act 2000, s90(2) - Water management works approval to construct and use a specified water supply/drainage/flood work at a specified location	Supported, with conditions WaterNSW has reviewed the proposal and supports the development, subject to their General Terms of Approval which shall accompany any set of conditions.

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 three (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 four (4) or more dwellings.

As previously outlined, the proposed development is for the erection of a five (5) storey residential flat 'housing' development plus basement car parking for the provisions of eight (8) self-contained dwellings (note: as the lower ground level projects more than 1.2m above ground level it has been included as a storey for the purpose of this assessment).

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 2021 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 does not have an appointed Design Review Panel.

The proposal has been assessed by Council's Design and Sustainability Advisory Panel (DSAP) who do not support the proposal, as detailed earlier in this report.

DESIGN QUALITY PRINCIPLES

Principle 1: Context and Neighbourhood Character

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

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

Comment:

The site is bound by other land zoned for B2 Local Centre landuses and presently accommodates a variety of uses in buildings of eclectic styles and proportions. The immediate surrounding context consists of restaurants, a drive-thru liquor retail outlet, a service station, a scrap metal yard, dwelling houses, vacant land, and residential flat buildings / shop top housing.

Generally, buildings are one to two storeys in height, except for a three storey building to the west along Verona Street. Colloquially, the vicinity would likely be described as a 'low-key' hub.

Notwithstanding the above, it is considered that the most pertinent characteristic of the area is its vulnerability to flooding, as experienced in 2022. This constraints largely poses as the catalyst for building designs (i.e., the elevation of habitable floor space above natural ground level).

The development proposed is not consistent with the context and neighbourhood character. The building is excessive in height, having a 12.5m high presentation to the street, and a maximum height of over 16.0m in a zone which permits a building height of only 8.5m. The proposal seeks to rely on two court approvals for mixed development on adjoining properties to justify its size, scale and height, however neither of those approved developments have been commenced, and the larger of the two has lapsed (that being 2-8 Rickard Road). Regardless of that, an assessment of context and neighbourhood character has been based on the existing development in the area.

The flank and rear elevations of the building are large, devoid of visual interest, and will be excessively dominant when viewed from the street and from neighbouring properties.

The inability to establish trees anywhere on the site is incongruent with the established character of the area, particularly by way of the first floor street-projecting slab, and the inaccessible 'garden' in the south-western corner of the site.

The building has some interesting features, however on balance, it is considered likely to have a detrimental impact on the context and neighbourhood character, rather than protect or positively contribute to it. The proposal therefore fails to satisfy Principle 1.

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 height, setbacks and absence of landscaping are all incongruent with both the existing and desired character of the street. The building does have a reasonably articulated front facade, however that articulation is largely caused by a non-complying projecting slab which in turn inhibits the ability for any medium to large planting to occur on the site.

Because of the height of the building, it will be visually prominent from a wide catchment and will be incongruent with the built form and scale of all other developments in the B2 zone. To provide a benchmark as to the proposed scale of the building, the palm tree to the west on the site known as 1 Gondola Road (being a Canary Island Date Palm *Phoenix canariensis*) is identified in the survey plan and arborist report of being 15.0m in height. The development will generally be equivalent in height to these palm trees - and taller than them for the lift overrun and pergola.

A photograph taken from *Google Streetview* at the T-juncture of Gondola Road and Pittwater Road is copied below to show the height of the trees in the context of the local centre.



Figure 1: Photograph from *Google Streetview* at the T-juncture of Gondola Road and Pittwater Road (looking west) showing two palm trees in the background

The built form and scale of the building is excessive and incongruent with its surroundings and thus fails to satisfy Principle 2.

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 provision of eight (8) residential units within the B2 zone is in itself not a reason for concern, however, because of the orientation of the site and the design of the building, it is considered that an unsatisfactory level of amenity for residents of each apartment is provided. This is discussed in more detail under Principle 6 *Amenity*.

Principle 4: Sustainability

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

Comment:

The application is accompanied by limited details to demonstrate or explain the sustainability credentials of the development. At a basic passive level, an inadequate number of apartments receive cross-ventilation and half of the apartments only receive afternoon sun (due west facing). The proposed roof terrace level will provide a unsatisfactory amenity for future occupants, given the expansive areas of paving and pebbles and having regard to their thermal properties and the urban heat island effect.

The architectural plans do not detail any electric vehicle charging or photovoltaic cells. Sub-standard fabric selections have been made, with only clear float glazing and low levels of insulation, as reflected in the NatHERS results which are very low (average of 5.2 stars), even if compliant. The building is not electrified and relies on gas cooktops and hot water.

It is unclear whether the sustainability metrics proposed are realistic. For example, DWGA2102 Issue A includes a 'BASIX commitments summary notes' in table form. That table indicates that there is no mechanical ventilation throughout the entire building, including basements, lobbies or communal areas. It is understood that basement car parks will require ventilation and this has not been factored into the design (in terms of ventilation shafts) and, once considered in a BASIX or NatHERS Certificate, the ratings of the building would likely further reduce. The BASIX Certificate indicates that all areas in apartments will be air conditioned, however no condenser units or mechanical equipment is shown on the plans.

The proposal fails Principle 4. There is no apparent impediment to designing a more sustainable building in this location.

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 development does not provide an adequate quantum of deep soil landscaping. The front garden area is overhung by a projecting concrete roof slab which negates the ability for substantial planting. The garden to the south-western corner is inaccessible and cannot be maintained, enjoyed, or is even visible from any apartments. The planter boxes on the rooftop are minimal in their dimensions and expanse across the roof and do little to enhance occupant amenity.

The development would clearly be the tallest development within the B2 precinct, and that combined with the absence of landscaping, results in an unattractive development that is not a contextual fit to the locality.

Principle 6: Amenity

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

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

Comment:

The development is found to provide a poor level of amenity to future occupiers of the units. Most (75%) of the units are single aspect (with Units U103 and U203 being the exception) and therefore have limited solar access and minimal to no cross ventilation. Units U101, 102, 201 and 202 overlook a concrete roof on the site and into a scrap metal yard beyond that. Were that site to be developed in a similar manner to this proposal, these units would have their solar access removed entirely and their only aspect would be onto a solid wall 3.0m away. The kitchens of each unit are located deep within the floor plate and would be unlikely to ever receive sunlight, instead forcing occupants to rely on artificial lighting.

The entry experience into the building for occupants is poor, uninviting, unsafe and is not private. The wayfinding through the building is poor and occupants are forced to use lifts rather than stairs from the basement, unless they negotiate two separate stairwells on opposite sides of the building.

The aforementioned flooding constraints are not causal of these issues. The flooding matters aside, this is a rectangular site that is no different to any other site in terms of constraints. The poor level of amenity is not justified and is not supported. The proposal fails Principle 6.

Principle 7: Safety

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

A positive relationship between public and private spaces is achieved through clearly defined secure

access points and well lit and visible areas that are easily maintained and appropriate to the location and purpose.

Comment:

The development provides an environment for residential occupiers and their guests, users of the commercial space, and the general public that lacks safety and comfort. The entryway into the site is publicly accessible and unimpeded by gates, doors or the like. The entry corridor is long (21.0m) and has several 'nooks' that are not visible when an occupant walks down the corridor. The unsatisfactory pedestrian environment is exacerbated by the variety of rooms connected to the corridor.

The entryway into the building is not well resolved with respect to safety, and therefore Principle 7 is not satisfied.

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 provision of eight (8) x two (2) bedroom units in this locality is considered acceptable, considering that the dominant residential typology is three (3) bedroom-plus detached dwelling houses.

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:

For the reasons described above and throughout this report, it cannot be concluded that the development satisfies Principle 9.

APARTMENT DESIGN GUIDE

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

Development Control	Criteria / Guideline	Comments
Part 3 Siting the Development		
Site Analysis	Does the development relate well to its context	Inconsistent

	and is it sited appropriately?	The building would be the tallest building within the local centre and has an inadequate landscaped treatment. The provision of commercial floor space is inadequate. The development will dominate the skyline and streetscape and would materially change the established character of the locale were it to be approved and constructed.
Orientation	Does the development respond to the streetscape and site and optimise solar access within the development and to neighbouring properties?	Inconsistent From the street kerb, the building appears to be 12.5m high (from natural ground level). The eastern site is vacant. The western site is a two storey building (approx. 7.0m high) with a 20m front setback. The buildings to the north are generally single storey. The height and front setback treatment of the development is incongruent with the streetscape. The shadow diagrams do not represent the structures that exist on neighbouring properties and therefore shading impacts on surrounding buildings are not able to be accurately assessed.
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?	Inconsistent Refer to discussion in Principle 7 above.
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%	Inconsistent (acceptable on merit) The site requires 159.6m² of communal and public open space.

	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)	The rooftop communal terrace has a usable area of 112m². Part 3D of the ADG allows communal open space to be supplemented by landscaping (i.e., the planter boxes) which brings the area closer to 163m². The ADG control leans towards requiring deep soil landscaping as opposed to planter boxes, however in this instance, given the site's proximity to Narrabeen Lagoon and its recreational areas, a shortfall in the usable communal open space on the site can be accepted.												
Deep Soil Zones	Deep soil zones are to meet the following minimum requirements: <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	Inconsistent Part 3E of the ADG describes deep soil zones as <i>areas of soil not covered by buildings or structures within a development</i>. At 7%, the site requires 44.7m² of deep soil landscaping. As the site is less than 650m², there is no 'minimum dimension' (which does not include soil depth). The development is calculated as having approximately 17m² of deep soil planting in the front setback. A large portion of the garden does not constitute deep soil, as it is covered by building or structure. Even if this whole area was considered deep soil, it would reach only approximately 37m². The south-western corner of the site has deep soil,
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													

however it is inaccessible and is not conducive to plantings, given that it is always in shadow and that there is no way to water or maintain plants. Even if it was included, the 7% deep soil requirement would not be achieved.

There is no impediment on the site achieving compliance with the control and hence the variation is not supported.

Visual Privacy

Minimum required separation distances from buildings to the side and rear boundaries are as follows:

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

Note: Separation distances between buildings on the same site should combine required building separations depending on the type of rooms.

Gallery access circulation should be treated as habitable space when measuring privacy separation distances between neighbouring properties.

Inconsistent
SEPP 65 (4)(1)(b) determines that the proposal is a 5 storey building.

Units 103, 104 and 203 and 204 generally comply with the visual privacy requirements as they have a primary orientation to the street.

Units 101, 102 and 201 and 202 have a primary western orientation and the primary balcony and bedrooms have a 3.0m setback to the boundary.

At 5 storeys, the building should be setback 9.0m from the boundary. At a less stringent assessment, the building could be 6.0m from the boundary. However, even at the lesser of the two, the building does not comply with the requirement by more than 50%.

The development fails to provide an adequate provision of amenity to future occupants having regard to the development potential of the adjoining

		site, and is prejudicial to the reasonable development of that site.
Pedestrian Access and entries	Do the building entries and pedestrian access connect to and addresses the public domain and are they accessible and easy to identify? Large sites are to provide pedestrian links for access to streets and connection to destinations.	Inconsistent The entry-way into the building is easily identifiable, noting the above-mentioned security and CPTED concerns raised about this solution. The development requires an external lift for persons with a disability to gain access to the ground floor level. The lift is in a flood precinct and is below the FPL and PMF. In the event of a flood, the lift would be inoperable and therefore persons bound to a wheelchair would not be able to enter or exit the site. It therefore cannot be said that the development is 'accessible'. Further, the second pedestrian access to the west of the site adjacent to the driveway is confusing and convoluted. The assessment officer and the DSAP have been unable to figure out how the staircase and pathway works. Council's Waste Officers would be required to find this entry, navigate the pathway, and carry heavy bins down ten (10) steps, which is an unacceptable access and servicing solution.
Vehicle Access	Are the vehicle access points designed and located to achieve safety, minimise conflicts between pedestrians and vehicles and create high quality streetscapes?	Consistent The driveway into the site is unusual and unsightly, however, it is necessary

		from a flooding and traffic engineering stand point. It is therefore considered acceptable.
Bicycle and Car Parking	For development in the following locations: - 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 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. The car parking needs for a development must be provided off street. Parking and facilities are provided for other modes of transport. Visual and environmental impacts are minimised.	Consistent Council's Traffic Engineer has advised that a satisfactory provision of car and bicycle parking has been provided.
Part 4 Designing the Building		
Amenity		
Solar and Daylight Access	To optimise the number of apartments receiving sunlight to habitable rooms, primary windows and private open space: 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.	Consistent Six of then eight units comply, equating to 75%.
	A maximum of 15% of apartments in a building receive no direct sunlight between 9 am and 3 pm at mid winter.	Consistent
Natural Ventilation	The number of apartments with natural cross ventilation is maximised to create a comfortable indoor environment for residents by: 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	Inconsistent Units 103 and 203 are assessed as achieving natural cross-ventilation. This represents only 25%, which does not comply, and is not supported.

	these levels allows adequate natural ventilation and cannot be fully enclosed. Overall depth of a cross-over or cross-through apartment must not exceed 18m, measured glass line to glass line.	Consistent Units 103 and 203 are less than 18.0m in depth.												
Ceiling Heights	Measured from finished floor level to finished ceiling level, minimum ceiling heights are: <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	Consistent It is noted that the residential units have a FFL-CL of 2.9m, which is partially causal of the excessive building height.
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	Apartments are required to have the following minimum internal areas: <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> The minimum internal areas include only one bathroom. Additional bathrooms increase the minimum internal area by 5m² each. A fourth bedroom and further additional bedrooms increase the minimum internal area by 12m² each. Every habitable room must have a window in an external wall with a total minimum glass area of not less than 10% of the floor area of the room. Daylight and air may not be borrowed from other rooms. Habitable room depths are limited to a maximum of 2.5 x the ceiling height.	Apartment type	Minimum internal area	Studio	35m ²	1 bedroom	50m ²	2 bedroom	70m ²	3 bedroom	90m ²	Consistent All apartments are two bedrooms and two bathrooms and exceed 75m². Consistent Inconsistent The apartments are measured to have a FFL-		
Apartment type	Minimum internal area													
Studio	35m ²													
1 bedroom	50m ²													
2 bedroom	70m ²													
3 bedroom	90m ²													

		CL of 2.9m, which requires that room depths be no greater than 7.25m. It is calculated that in every apartment, the combined kitchen / living / dining rooms have a depth greater than 7.25m, achieving depths of between 8.6m and 10.0m.															
	In open plan layouts (where the living, dining and kitchen are combined) the maximum habitable room depth is 8m from a window.	Inconsistent The rear-most wall of each open plan living area is at a distance of more than 8.0m from a window. All apartments fail to achieve this criteria.															
	Master bedrooms have a minimum area of 10m2 and other bedrooms 9m2 (excluding wardrobe space).	Consistent															
	Bedrooms have a minimum dimension of 3.0m and must include built in wardrobes or have space for freestanding wardrobes, in addition to the 3.0m minimum dimension.	Consistent															
	Living rooms or combined living/dining rooms have a minimum width of: • 3.6m for studio and 1 bedroom apartments • 4m for 2 and 3 bedroom apartments	Consistent															
	The width of cross-over or cross-through apartments are at least 4m internally to avoid deep narrow apartment layouts	Consistent															
Private Open Space and Balconies	All apartments are required to have primary balconies as follows: <table><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	Consistent
	Dwelling Type	Minimum Area	Minimum Depth														
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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.	Not Applicable															

Common Circulation and Spaces	The maximum number of apartments off a circulation core on a single level is eight.	Consistent										
	For buildings of 10 storeys and over, the maximum number of apartments sharing a single lift is 40.	Not Applicable										
Storage	In addition to storage in kitchens, bathrooms and bedrooms, the following storage is provided:	Consistent										
	<table><tr><th>Dwelling Type</th><th>Storage size volume</th></tr><tr><td>Studio apartments</td><td>4m³</td></tr><tr><td>1 bedroom apartments</td><td>6m³</td></tr><tr><td>2 bedroom apartments</td><td>8m³</td></tr><tr><td>3+ bedroom apartments</td><td>10m³</td></tr></table>		Dwelling Type	Storage size volume	Studio apartments	4m³	1 bedroom apartments	6m³	2 bedroom apartments	8m³	3+ bedroom apartments	10m³
	Dwelling Type		Storage size volume									
	Studio apartments		4m³									
	1 bedroom apartments		6m³									
2 bedroom apartments	8m³											
3+ bedroom apartments	10m³											
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.	Consistent										
Noise and Pollution	Siting, layout and design of the building is to minimise the impacts of external noise and pollution and mitigate noise transmission.	Consistent										
Configuration												
Apartment Mix	Ensure the development provides a range of apartment types and sizes that is appropriate in supporting the needs of the community now and into the future and in the suitable locations within the building.	Consistent The provision of two bedroom apartments within a locality dominated by detached dwelling houses is contextually appropriate.										
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.	Consistent Notwithstanding the proportions of the building or the lack of landscaping provided - the general architectural typology used is appropriate for the character of the area.										
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	Inconsistent The roof is at a level much higher than other buildings. The provision of rooftop										

	any unreasonable amenity impacts caused by the use of the roof top.	communal space in this location is not considered appropriate, given the proximity to neighbouring properties, and the inability to shade the majority of the trafficable space. The use of the space may give rise to adverse acoustic and visual privacy issues. The roof space has not been maximised for sustainability. The space also shows no infrastructure that would generally be seen on a roof top.																				
Landscape Design	Was a landscape plan submitted and does it respond well to the existing site conditions and context.	Inconsistent A landscape plan was submitted with the application. No objections are raised to the species selection. The shortfall in landscaped area (addressed earlier in this report) negates the ability for any landscaping to be contextually appropriate.																				
Planting on Structures	When planting on structures the following are recommended as minimum standards for a range of plant sizes: <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</td><td>9m³</td><td>800mm</td><td>3.5m x 3.5m or equivalent</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	9m ³	800mm	3.5m x 3.5m or equivalent	Consistent The rooftop planter boxes have a depth of approximately 1.0m, however that does not take into account waterproofing etc. Some elements of the rooftop planter boxes are appropriate for plantings - others are too narrow to accommodate any meaningful planting.
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																		
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	<table><tr><td></td><td>spread at maturity</td><td></td><td></td><td></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>		spread at maturity				Shrubs			500-600mm		Ground Cover			300-450mm		Turf			200mm		
	spread at maturity																					
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	Consistent																				
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	Can the development be accessed through public transport and does it positively contribute to the public domain? Non-residential uses should be located on lower levels of buildings in areas where residential use may not be appropriate or desirable.	Consistent No objections are raised to the mixed-use nature of the building, however the visual impacts of the proposal in combination with the lack of commercial GLFA are unacceptable.																				
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.	Not Applicable																				
Performance																						
Energy Efficiency	Have the requirements in the BASIX certificate been shown in the submitted plans?	Inconsistent The BASIX Certificate indicates that all apartments will be air conditioned, which requires mechanical equipment and condensers to be placed in the building or on the roof. Such elements have not been shown. Adding these elements to the balconies of each unit would reduce the usable area to less than then required 10m ² , and adding to the roof may increase an already excessive building height.																				
Water Management and Conservation	Has water management taken into account all the water measures including water infiltration, potable water, rainwater, wastewater, stormwater	Appears Consistent																				

	and groundwater?	
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?	Inconsistent Refer to referral comments from Council's Waste Officer.
Building Maintenance	Does the development incorporate a design and material selection that ensures the longevity and sustainability of the building?	Appears Consistent

STANDARDS THAT CANNOT BE USED TO REFUSE DEVELOPMENT CONSENT

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

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

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

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

Comment:

The application is not recommended for refusal on these grounds.

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

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

(3) To remove doubt:

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

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

Comment:

The application is being refused on the grounds of inconsistency with the design quality principles and the objectives specified in the ADG, inter alia other non-compliances with Council's own controls.

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.

SEPP (Resilience and Hazards) 2021

Refer to commentary from Council's Environmental Health - Contaminated Lands Officers. The concerns raised in their referral warrant the refusal of the application.

Pittwater Local Environmental Plan 2014

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

Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings	8.5m applies (Noting that CL 4.3 (2A) of PLEP 2014 only allows a max height of 10.4m or RL12.4m, which is 8.0m above the FPL of RL4.4, where the 8.0m is not exceeded, see below)	Roof: 12.4m (RL14.5) Upper roof: 15.3m (RL16.9)	45% 80% 91%	No No No

		Lift overrun: 16.3m (RL18.4)		
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*Note: Clause 4.3 (2A) of the PLEP 2014 reads:

(2A) Despite subclause (2), development on land—

(a) at or below the flood planning level or identified as “Coastal Erosion/Wave Inundation” on the [Coastal Risk Planning Map](#), and

(b) that has a maximum building height of 8.5 metres shown for that land on the [Height of Buildings Map](#),

may exceed a height of 8.5 metres, but not be more than 8.0 metres above the flood planning level.

The nominated Flood Planning Level (FPL) is RL4.4, which would therefore permit the maximum building height, under (2A) to be up to **RL12.4**.

Importantly, it is noted that the building exceeds this height (up to RL18.4), therefore the building height control reverts back to a standard 8.5m.

Compliance Assessment

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

Detailed Assessment

Zone B2 Local Centre

The site falls within the B2 Local Centre zone pursuant to the Pittwater Local Environmental Plan 2014. The B2 zone permits development for the purpose of *Shop-top Housing*, defined as:

Shop-top Housing means one of more dwellings located above the ground floor of a building, where at least the ground floor is used for commercial premises or health services facilities.

The proposed land use satisfies the definition and is permitted.

4.6 Exceptions to development standards

Description of Non-compliance

Development standard:	Height of Buildings
Requirement:	8.5m (note: refer to earlier commentary under the <i>Principal Development Standards</i> section of this report)
Proposed:	16.3m
Percentage variation to requirement:	91%

Assessment of Request to Vary a Development Standard

The following assessment of the variation to Clause 4.3 Height of Buildings development standard, has taken into consideration the judgements 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 not demonstrated that the objectives of the development standard are achieved.

In this regard, the Applicant's written request has not adequately demonstrated that compliance with the development standard is unreasonable or unnecessary in the circumstances of this case as required by cl 4.6(3)(a).

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

Comment:

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

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

s 1.3 of the EPA Act reads as follows:

1.3 Objects of Act(cf previous s 5)

The objects of this Act are as follows:

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

(j) to provide increased opportunity for community participation in environmental planning and assessment.

The applicant notes that the site is affected by high hazard flooding, which consequently results in a higher ground floor level. Clause 4.3(2A) of the PLEP 2014 anticipates such affectation having an impact on building heights, and allows for a variation to the standard requirements of Clause 4.3.

In this particular instance, Clause 4.3(2A) would allow the building to be 1.7m higher than if the site were not flood affected. The applicant requests the building to be 7.8m higher than what the control permits.

A building height control of 8.5m is largely accepted as accommodating a two storey building, traditionally with a pitched roof. In this instance, the building is up to five storeys (including the upper basement that projects more than 1.2m above ground level therefore constituting a storey, and the habitable roof terrace) and the entire second floor and roof terrace area projects beyond the prescribed 8.5m building height control. A diagram of this is below.



Figure 2: Working plan by assessment officer with green shading depicting natural ground, and red shading depicting portions of the building over 8.5m in height

Therefore, it is not accepted that it is a flood affectation which is causing the building height variation, rather it is the fact that the building is a storey higher than what is anticipated by the controls. On that basis, it is not concurred with that the flood affectation of the land forms an adequate environmental planning ground for a 91% variation to the control requirements.

The applicant's written request continues, providing a second environmental planning ground - *contextually responsive building design*.

The request notes five (5) nearby examples of residential flat building / shop top housing developments that are three (3) to four (4) storeys in height, including:

- 2-8 Rickard Road, North Narrabeen
- 10 Rickard Road, North Narrabeen

- 9-11 Gondola Road, North Narrabeen
- 1 Gondola Road, North Narrabeen
- 1473 Gondola Road, North Narrabeen

It is not considered that the proposal is contextually responsive to the above examples, or the wider surroundings. Comments for each specific site are below:

- **2-8 Rickard Road, North Narrabeen**
This consent has not been enacted and is considered to have lapsed, therefore, it is not a relevant matter.
- **10 Rickard Road, North Narrabeen**
This consent is from 2005 and provides for a three (3) storey shop top housing development comprising of two (2) residential units. The building has a maximum height of 10.02m above natural ground level to RL12.02. The proposal reaches RL18.4 and is therefore 6.4m higher than 10 Rickard Road.
- **9-11 Gondola Road, North Narrabeen**
This consent is from 2004 and provides a three (3) storey mixed-use development comprising of residential units and commercial spaces. The development is compliant with the 8m above FPL requirement and achieves a maximum height of 10m to RL11.22. The proposal is 7.18m higher than 9-11 Gondola Road.
- **1 Gondola Road, North Narrabeen**
This consent has not been enacted and the building does not exist, therefore, it is not a relevant matter.
- **1473 Pittwater Road, North Narrabeen**
This consent is from 2015. The context of this site is different as it is a corner site on Pittwater Road, and the P21DCP locality statement requires the site to act as a 'gateway' site. Condition B1 requires no portion of the building to exceed RL12.91, and Condition B4 requires that habitable floor space be located above a FPL of RL4.27. The building achieves a maximum height of 8.64m above the nominated FPL. The proposal, at RL18.4, is 5.49m higher than 1473 Pittwater Road.

The proposal is significantly higher than all relevant examples given. The height is not congruent with anything else in the surrounding context. As such, it is not concurred with that '*contextual compatibility/consistency*' forms an adequate environmental planning ground for a 91% variation to the control requirements.

The applicant's written request has failed to demonstrate that the proposal is an orderly and economic use of the land; that it is good design; or that it will reasonably protect and improve the amenity of the surrounding built environment. The proposal fails to satisfy clauses 1.3 (c) and (g) of the EPA Act. The applicant's written request also fails to demonstrate that there are sufficient environmental planning grounds to justify contravening the development standard as required by cl 4.6 (3)(b).

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

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

(ii) the proposed development will be in the public interest because it is consistent with the objectives of

the particular standard and the objectives for development within the zone in which the development is proposed to be carried out

Comment:

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

Objectives of Development Standard

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

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

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

Comment:

The Desired Future Character statement is silent on what is expected of mixed use buildings in terms of height, and consideration of desired character, therefore one must revert to the applicable planning controls which, in this instance, permit a building up to 8.5m in height. The height of the proposal, in conjunction with a lack of deep soil landscaping, significantly inhibits the building's ability to be consistent with the desired character of the locality.

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

Comment:

The building will be the tallest within the entire North Narrabeen B2 Local Centre and will be excessively visually prominent from the immediate surrounding locale, and from other dwellings on the North Narrabeen/Elanora Heights escarpment. The height and scale is vastly incongruent with surrounding and nearby development and does not satisfy this objective.

c) to minimise any overshadowing of neighbouring properties,

Comment:

The application is accompanied by shadow diagrams, however these diagrams depict buildings that don't exist. Council is therefore unable to accurately assess the overshadowing impacts caused by the development to existing neighbouring properties.

d) to allow for the reasonable sharing of views,

Comment:

No detailed view loss analysis has been provided by the Applicant. The site is on the floor of a valley / natural amphitheatre whereby periphery properties do have views towards Narrabeen Lagoon. The development may impede on these views, but that impingement is not considered to be significant or of such a magnitude that would warrant the refusal of the application.

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

Comment:

The site is flat and has no topographical features. The topography of the site does not warrant any variation to the building height control.

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

Comment:

The proposal is not considered to have an adverse visual impact on the natural environment or heritage items.

Zone Objectives

The underlying objectives of the B2 Local Centre zone are:

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

Comment:

The proposal provides one commercial / retail premises at ground floor. The ratio of commercial to residential floor space is insufficient to appropriately contribute to the 'Local Centre' opportunities of the zone.

- *To encourage employment opportunities in accessible locations.*

Comment:

The site is in reasonable proximity to public transport and in that regard, is an accessible location.

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

Comment:

The proposal does not discourage public transport patronage.

- *To provide an environment for pedestrians that is safe, comfortable and interesting.*

Comment:

The height of the development is excessively dominant and would diminish the character of the area when viewed from the eye-height of pedestrians. The layout of the ground floor of the building is not considered conducive to a safe environment.

- *To create urban form that relates favourably in scale and in architectural and landscape treatment to neighbouring land uses and to the natural environment.*

Comment:

For the reasons explained above, the development does not achieve this objective.

- *To minimise conflict between land uses in the zone and adjoining zones and ensure the amenity of any adjoining or nearby residential land uses.*

Comment:

Whilst the proposal is not expected to conflict with any adjacent zones, the design of the building would conflict with adjoining sites and their land uses. Specifically, to the south there are detached dwelling houses (that may also be used for some commercial purposes) which would have a 12.4m high solid concrete wall which is expected to be visually bulky and detrimental to current solar access. The relationship between the western facing units and the adjoining scrap metal yard has not been considered by the Applicant, and it is expected that these relationships would conflict.

Conclusion:

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

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

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

Planning Circular PS20-002 dated 5 May 2020, as issued by the NSW Department of Planning, advises that the concurrence of the Director-General may be assumed for exceptions to development standards under environmental planning instruments that adopt Clause 4.6 of the Standard Instrument. Given the inconsistency of the variation to the objectives of the zone, the concurrence of the Director-General for the variation to the Height of buildings Development Standard cannot be assumed.

5.21 Flood planning

Flood planning matters pertaining to the property have been reviewed by Council's Flooding Team.

The underlying objectives of this particular control are as follows:

- *a) to minimise the flood risk to life and property associated with the use of the land;*
- *b) to allow development on land that is compatible with the flood function and behaviour on the land, taking into account projected changes as a result of climate change;*
- *c) to avoid adverse or cumulative impacts on flood behaviour and the environment; and*
- *d) to enable to safe occupation and efficient evacuation of people in the event of a flood.*

It is objective (d) which is problematic in this circumstance.

Pedestrian access to the site is via a 13 riser staircase or an external lift from the kerb level (RL2.0) to ground floor level (RL4.4). Details of the lift have not been provided, however it appears to be an external rising platform structure, as opposed to a traditional enclosed lift. As no details of the lift have been provided, Council cannot be satisfied that the lift would continue to operate if it were partially

submerged in water (given the flood rating of the site), and therefore cannot be satisfied that less-abled persons would be able to safely and efficiently enter or exit the site.

In the absence of further details regarding accessibility the consent authority cannot be satisfied that the proposal meets the objective.

Pittwater 21 Development Control Plan

Built Form Controls

Built Form Control	Requirement	Proposed	Complies
Front building line	3.5m	Min. 3.5m	Yes
Rear building line	South - Nil	Nil	Yes
Side building line	East - Nil	Nil	Yes
	West - Nil	Nil	Yes
Landscaped Area	35m ² /dwelling = 280m ²	102.63m ²	No

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A1.7 Considerations before consent is granted	Yes	Yes
A4.11 North Narrabeen Locality	No	No
B1.3 Heritage Conservation - General	Yes	Yes
B1.4 Aboriginal Heritage Significance	Yes	Yes
B2.6 Dwelling Density and Subdivision - Shop Top Housing	No	No
B3.6 Contaminated Land and Potentially Contaminated Land	No	No
B3.11 Flood Prone Land	No	No
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
B4.22 Preservation of Trees and Bushland Vegetation	Yes	Yes
B5.13 Development on Waterfront Land	Yes	Yes
B5.15 Stormwater	Yes	Yes
B6.1 Access driveways and Works on the Public Road Reserve	Yes	Yes
B6.2 Internal Driveways	Yes	Yes
B6.3 Off-Street Vehicle Parking Requirements	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	No	No
C1.2 Safety and Security	No	No
C1.3 View Sharing	Yes	Yes
C1.4 Solar Access	No	No
C1.5 Visual Privacy	No	No
C1.6 Acoustic Privacy	No	No
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
C2.12 Protection of Residential Amenity	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

Detailed Assessment

A4.11 North Narrabeen Locality

The desired future character of the North Narrabeen locality is:

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

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

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

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

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

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

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

The proposal is inconsistent with the desired character as it does not afford the expected commercial floor space; is of a height much greater than existing tree canopy levels; and presents as a bulky building that dominates the locality. The design has inadequate landscaping and natural features to assist the building in blending in with the natural environment or, to enhance its appearance commensurate to the existing development on site.

B2.6 Dwelling Density and Subdivision - Shop Top Housing

The commercial component of the development must be equivalent to 25% of the total gross floor area of the building.

DWG A1003 A indicates that the commercial premises has a GLFA of 119.97m². DWG A3000 A indicates that the building has a total GFA of 1,015.38m².

The commercial premises represents **11.8%** of the total floor area of the building and therefore seeks to vary the control requirements by **53%**.

The underlying objectives of the control are:

- *Achieve the desired future character of the Locality.*
- *The density and scale of development reflects the infrastructure capability of the area.*
- *Design opportunities and site layout efficiencies are improved through amalgamation of allotments.*
- *The development does not adversely impact upon adjoining residential development.*
- *An appropriate mix of residential and commercial development is provided, ensuring the functionality of commercial centres.*
- *Meet the economic and employment needs of Pittwater Community.*

The development is within the local centre zone, which generally envisages a distribution of commercial to residential floor area, as opposed to the expectations within a medium density residential zone. The ratio of commercial floor space proposed is not acceptable and derogates from the expectation that commercial floor space will be provided within a local centre zone. The proposal jeopardises and prejudices the functionality of the commercial centre.

B8.1 Construction and Demolition - Excavation and Landfill

The extent of excavation proposed is considered reasonable for a shop top housing development within the B2 zone. It is noted that the architectural plans do not provide any allowance for drainage or support to the exterior of the basement walls, which are proposed to be built hard-up against the sites boundaries.

Were approval to be recommended for this application, which it is not, conditions would be imposed in the conditions which ensured that any ground stabilisation or drainage infrastructure be contained within the curtilage of the site, and not on neighbouring sites.

C1.1 Landscaping

This clause requires that for shop top housing developments, that a minimum landscaped area of 20% of the site area, or 35m² per dwelling (whichever is the greater) be provided.

The PLEP 2014 Dictionary defines *landscaped area* as:

Landscaped Area means a part of a site used for growing plants, grasses and trees, but does not include any building, structure or hard paved area.

The definition differs from the deep soil calculation provided under the ADG insofar as a minimum vertical limitation is not imposed by clause C1.1.

The clause requires the greater of 127.75m² or 280m² landscaped area to be provided - thereby being the latter.

The proposal provides 50.12m² of landscaped area at ground level, and 52.51m² in planter boxes at the roof terrace. Therefore, the 102.63m² proposed represents a 63.4% variation to the control requirements.

The variation is not supported for the same reasons detailed in the SEPP 65 Design Principle and ADG guidance.

C1.6 Acoustic Privacy

The application is reliant on the building being air-conditioned, however the relevant condensers and mechanical equipment is not shown on the plans. Given the absence of detail in knowing where the air-conditioning will be, Council cannot be satisfied that the equipment would not unreasonably intrude on the acoustic privacy expected by future occupants and neighbours.

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 inconsistent 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 \$51,526 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$5,152,585.

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, in this regard the application is not considered to be acceptable and is recommended for refusal.

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

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

Council is not 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 CONCLUSIONS

The proposal is an inappropriate and unsuitable development for the site, being incongruent with its surroundings, and would be detrimental to the character of the area and would set an undesirable and poor precedent for future development in the local centre.

The building is too high, too bulky and too big for the site, which renders the site unsuitable for the size, scale and intensity of development proposed under this application. A development with a lesser floorspace and apartment yield would likely overcome many of the concerns raised in this report.

Fundamentally, the proposal represents an overdevelopment of the site.

Importantly, the proposal has not adequately addressed the height controls applying to the site, and it is pivotal in the assessment and determination to note that it does not benefit from the special height provisions for flood affected sites under the PLEP 2014 (i.e. 8.0m above the flood planning level), which means the normal height standard of 8.5m applies to the proposal. Furthermore, the Clause 4.6 variation has been assessed as not well founded and incorrectly based on the special height provisions, when it should be based on the normal height control.

The proposal is not supported on numerous planning, design and environmental grounds as detailed in this report and approval of the application is not in the public interest, despite the lack of public submissions.

The application also cannot be approved as the point of satisfaction as to the potential contamination of the land has not been established.

The application currently sits with the Land and Environment Court of NSW for ultimate determination, however at this stage it is recommended that the Panel proceed to **REFUSE** the application for the reasons set out in the recommendations of this report.

It is considered that the proposed development does not satisfy the appropriate controls and that all processes and assessments have been satisfactorily addressed.

RECOMMENDATION

THAT the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council , as the consent authority REFUSE Development Consent to Development Application No DA2022/0919 for the Demolition works and construction of shop top housing on land at Lot 188 DP 16719,3 Gondola Road, NORTH NARRABEEN, for the reasons outlined as follows:

1. 1. **Building Height**

The development proposes a building height that is 91% in excess of the maximum permitted height.

Particulars

Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979, the proposal is inconsistent with the provisions of Clause 4.3 *Height of Buildings* of the Pittwater Local Environmental Plan 2014.

2. **Request for Variation**

The written request submitted to vary the building height development standard does not identify sufficient environmental planning grounds that would warrant a variation to the development standard. The written request does not adequately demonstrate that compliance with the standard is unreasonable or unnecessary in the circumstances of the application, and it is not well-founded.

Particulars

Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979, the proposal is inconsistent with the provisions of Clause 4.6 *Exceptions to Development Standards* of the Pittwater Local Environmental Plan 2014.

3. **Objectives of the B4 Mixed Use zone**

The development is inconsistent with the objectives of the B4 Mixed Use zone as detailed in the Land Use Table of the Pittwater Local Environmental Plan 2014. Specifically, the ratio of commercial to residential floor space is unacceptable and does not strengthen or encourage retail vitality or active day and evening economies.

Particulars

Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979, the proposal is inconsistent with the provisions of the *B4 Mixed Use zone* of the Pittwater Local Environmental Plan 2014.

4. **Site Suitability – Contaminated Lands**

Inadequate information has been submitted to demonstrate that due to the risk of hydrocarbon contamination resultant of the adjacent petrol station, that the basement car parking areas would not be exposed to major vapour intrusion.

Particulars

Pursuant to Section 4.15(1)(a)(i) and (iii) of the Environmental Planning and Assessment Act 1979, the consent authority is not satisfied that the land is suitable in its contaminated state (or will be suitable, after remediation) for the purpose of which the development is proposed to be carried out. The proposal is inconsistent with Clause 4.6 (1) and (3) of the State Environmental Planning Policy (Resilience and Hazards) 2021, and with Part B3.6 Contaminated Land and Potentially Contaminated Land of the Pittwater 21 Development Control Plan 2014.

5. Design Quality Principles

(a) Principle 1 – Context and Character

The building is too big for the site and is proportionally incongruent with all other developments within the zone, and immediately adjacent zones. The development sets a poor precedent and would jeopardise the future success of the locality when considered against the underlying zone objectives and desired future character statement.

(b) Principle 2 – Built Form and Scale

The building is too tall and will tower over all adjacent developments. The development has inadequate areas of deep soil planting. The flank facades of the building do little to ameliorate the buildings proportions when viewed from the undeveloped neighbouring properties.

(c) Principle 4 – Sustainability

The development is not of a good sustainable design. The BASIX and NatHERS Certificates submitted are misleading and do not represent the building's performance in actuality given the absence of basement ventilation, and the reliance on air-conditioning which is not sought for on the plans.

(d) Principle 5 – Landscape

The development provides an inadequate provision of landscaped area and deep soil area. The architecture of the building inhibits the provided deep soil areas from accommodating large plantings. The landscaping proposed is contextually incongruent with the locality.

(e) Principle 6 – Amenity

The development provides a poor level of amenity to future occupiers.

(f) Principle 7 – Safety

The developments does not provide a safe pedestrian environment for residents, users of the commercial space or pedestrians in general. The publicly accessible and complexly laid out ground floor plan jeopardises public safety.

(g) Principle 9 – Aesthetics

Because of the reasons above, the aesthetics of the building are flawed and

unacceptable.

Particulars

In accordance with Clause 28(2)(b) of the State Environmental Planning Policy 65 (Design Quality of Residential Apartment Development), the development is inconsistent with the Design Quality Principles detailed in Schedule 1. Pursuant to Section 4.15(1)(a) (i) of the Environmental Planning and Assessment Act 1979, the proposal is inconsistent with the provisions of the SEPP.

6. Apartment Design Guide

(a) Part 3A – Site Analysis

The development has not adequately assessed the context of the site. Inadequate justification is provided that design decisions have been based on relationships with the surrounding context and site opportunities and constraints.

(b) Part 3B – Orientation

The development is not orientated to protect the solar amenity of neighbours or future occupants; does not address the contextual constraint of existing next to a scrap metal yard; and does not respond to the desired streetscape character.

(c) Part 3C – Public Domain Interface

The development has a poor public domain interface given the uninviting building entrance, building height, minimal landscaping and prominence of driveway infrastructure into the site.

(d) Part 3E – Deep Soil Zones

The development provides an insufficient area of deep soil landscaping, at only 17m².

(e) Part 3F – Visual Privacy

The building provides inadequate spatial separation to the west to provide an acceptable level of visual privacy. Half of the apartments are set back only 3m from the western boundary. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979, the proposed development is inconsistent with the provisions of Part C1.5 *Visual Privacy* of the Pittwater 21 Development Control Plan 2014.

(f) Part 3G – Pedestrian Access and Entries

The entryway into the building is not safe. Inadequate information is supplied regarding the front lift to demonstrate that it can be used in the event of flooding, to ensure the safe ingress or egress of wheelchair bound persons. The entry into the building is convoluted and unsafe for Council's waste collectors who would have to navigate complex pathways and proceed to carry heavy bins down ten steps to kerb level.

(g) Part 4B – Natural Ventilation

Only 25% of apartments are naturally cross-ventilated, instead of a minimum of 60%.

(h) Part 4D – Apartment Size and Layout

Habitable room depths exceed more than 2.5 x the ceiling height in every apartment. Kitchens would likely never receive direct solar access. The maximum room depths are greater than 8m.

(i) Part 4N – Roof Design

The use of the roof as trafficable space is not appropriate for the site. The roof has not been maximised for sustainability, and the plans do not adequately detail infrastructure that would likely be required on the roof (i.e., air-conditioners, exhaust ducts).

(j) Part 4O – Landscape Design

The shortfall in landscaped area inhibits the ability for any landscape plan to demonstrate compatibility with the character of the locality.

(k) Part 4U – Energy Efficiency

The requirements of the BASIX Certificate are not reflected on the architectural plans – specifically the air-conditioning units that are relied on throughout the building are not shown.

(l) Part 4W – Waste Management

Council's Waste Officers cannot easily or safely enter the building or remove bins from the site. The development relies on waste officers to traverse the driveway or a complex pathway. The storage room is too far from the property boundary. The waste areas are behind locked security doors.

Particulars

In accordance with Clause 28(2)(c) of the State Environmental Planning Policy 65 (Design Quality of Residential Apartment Development), the development is inconsistent with the design criteria detailed in the Apartment Design Guide. Pursuant to Section 4.15 (1)(a)(i) of the Environmental Planning and Assessment Act 1979, the proposal is inconsistent with the provisions of the SEPP.

7. Public Interest

The building is excessively proportioned and if approved, would create an undesirable precedent for development such that it would undermine the desired future character of the area and be contrary to the expectations of the community.

Particulars

Pursuant to Section 4.15(1)(e) of the Environmental Planning and Assessment Act

1979, the proposal is not in the public interest.

8. Flood Planning

Pedestrian access to the site for disabled persons is via an external lift that would, in the event of flooding, be submerged. No details are provided as to how this lift can operate in such a situation. Council cannot be satisfied as to the safe occupation and efficient evacuation of people in the event of a flood.

Particulars

Pursuant to Section 4.15(1)(a)(i) and (iii) of the Environmental Planning and Assessment Act 1979, the proposal is inconsistent with the provisions of Clause 5.21 *Flood Planning* of the Pittwater Local Environmental Plan 2014 and Part B3.11 *Flood Prone Land* of the Pittwater 21 Development Control Plan 2014.

9. North Narrabeen Desired Future Character

The height of the building, its lack of landscaping, and minimal contribution to commercial floor space are inconsistent with the desired future character of the North Narrabeen locality.

Particulars

Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979, the proposed development is inconsistent with the provisions of Part A4.11 *North Narrabeen Locality* of the Pittwater 21 Development Control Plan 2014.

10. Commercial Floor Space

The development provides an inadequate provision of commercial floor space in contrast to the amount of residential floor space.

Particulars

Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979, the proposed development is inconsistent with the provisions of Part B2.6 *Dwelling Density and Subdivision – Shop Top Housing* of the Pittwater 21 Development Control Plan 2014.

11. Landscaping

The development provides an inadequate provision of landscaping throughout (not limited to deep soil landscaping). The variation is detrimental to the existing and desired character of the locality.

Particulars

Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979, the proposed development is inconsistent with the provisions of Part C1.1 *Landscaping* of the Pittwater 21 Development Control Plan 2014.

12. Safety

The ground floor of the building is unsafe and contrary to the principles of CPTED.

Particulars

Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979, the proposed development is inconsistent with the provisions of Part C1.2 *Safety and Security* of the Pittwater 21 Development Control Plan 2014.

13. Solar Access

The application is not accompanied by adequate shadow diagrams. The diagrams supplied show adjacent buildings that do not exist – including one that is not yet built, and another where development consent has lapsed. Inadequate information is provided to assess solar access implications on existing developments.

Particulars

Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979, the proposed development is inconsistent with the provisions of Part C1.4 *Solar Access* of the Pittwater 21 Development Control Plan 2014.

14. Acoustic Privacy

The plans rely on air-conditioning units but do not show where the required equipment would be housed. Inadequate information is provided to make an assessment as to whether the air-conditioning equipment would harm the acoustic privacy of neighbours or future occupiers.

Pursuant

Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979, the proposed development is inconsistent with the provisions of Part C1.6 *Acoustic Privacy* of the Pittwater 21 Development Control Plan 2014.

15. Aims of Plan

Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the Clause 1.2 *Aims of The Plan* of the Pittwater Local Environmental Plan 2014.

2. Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the Clause 1.2 *Aims of The Plan* of the Pittwater Local Environmental Plan 2014.