

## **CLAUSE 4.6 - REVISED**

### **Height of Building**

**20-26 Avon Road, Dee  
Why**

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## TABLE OF CONTENTS

|   |           |
|---|-----------|
| <b>TABLE OF CONTENTS.....</b>   | <b>3</b>  |
| <b>1 Clause 4.6 exception for Height of Building .....</b>  | <b>4</b>  |
| 1.1 Overview.....   | 4         |
| 1.2 Key design amendments.....  | 4         |
| <b>2 Site Analysis.....</b>   | <b>10</b> |
| 2.1 Site description.....   | 10        |
| 2.2 Location description.....   | 10        |
| <b>3 Assessment.....</b>  | <b>18</b> |
| 3.1 Objectives of clause 4.6 .....  | 18        |
| 3.2 4.6 (3)(a) - compliance with the development standard is unreasonable or<br>unnecessary in the circumstances .....                          | 18        |
| 3.3 4.6 (3)(b) sufficient environmental planning grounds to justify contravening the<br>development standard.....                               | 19        |
| 3.3.1 Ground 1 – Compatibility with the height and scale of surrounding and nearby<br>development is achieved.....                              | 19        |
| 3.3.2 Ground 2 – Compliance with the flood planning level contributes to the height<br>of the proposed building.....                            | 20        |
| 3.3.3 Ground 3 - Appropriate amenity outcomes are achieved.....   | 20        |
| 3.3.4 Ground 4 – the proposal is of good design and satisfies the relevant objectives<br>of the Environmental Planning and Assessment Act ..... | 21        |
| 3.3.5 Ground 5 - Two additional dwellings in a location planned for more housing .....  | 22        |
| 3.4 4.6 (4)(a)(ii) - the public interest .....  | 24        |
| 3.4.1 Objectives of the Development Standard.....   | 24        |
| 3.4.2 Objectives of the zone.....   | 31        |
| 3.5 Secretary’s considerations .....  | 32        |
| 3.6 Conclusion .....  | 32        |

# 1 Clause 4.6 exception for Height of Building

## 1.1 Overview

Clause 4.6 of the Warringah LEP 2011 is applicable to the proposal and provides a mechanism to allow for an exception to a development standard. The proposal contravenes LEP Clause 4.3 height of buildings which prescribes an 11m standard and an exception is sought.

The exception relates to the 4<sup>th</sup> storey (named Level 3) of the proposed building.

The proposed dwellings at the upper level exceed the standard by up to 2.92m on the western side and 3.02m on the eastern side relative to RL 19.480 (being the maximum roof ridge height) and the slope of the land.

A modest section of the planter at the upper level also exceeds the height plane (as shown within figure 4) within a range of approximately 90mm to 520mm on the eastern side and 30mm to 90mm on the western side. The planter has an RL of approximately 17.110 (being 0.760m above the floor level which is RL 16.350).

The upper level is significantly recessed and has a lesser area than the floor below, calculated by the project architect to be 316m<sup>2</sup>, which is 21% of the site area.

Figures 1 to 5 below provide illustrations indicating the nature and extent of the building height variation, relative to the slope of the land.

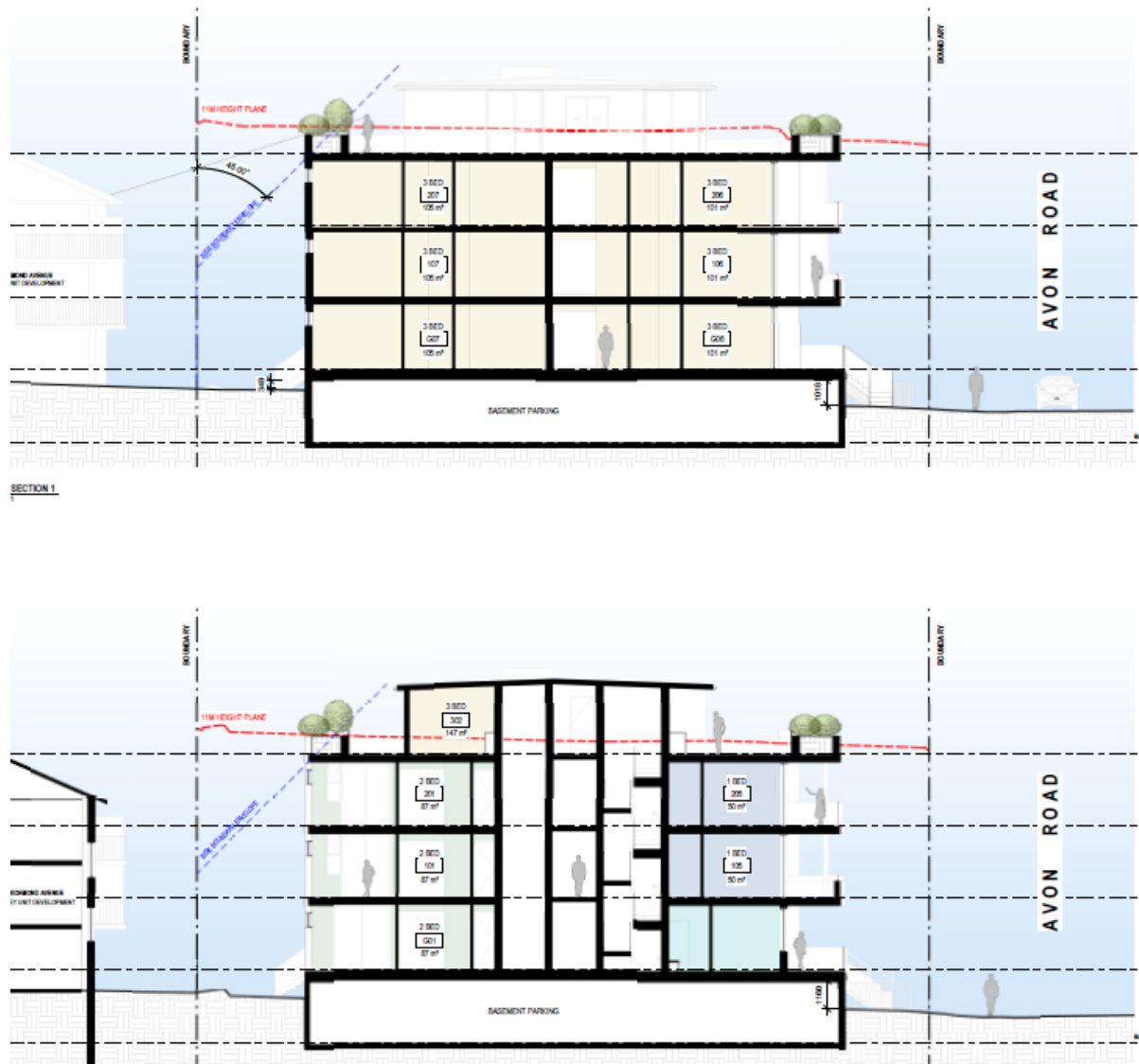
## 1.2 Key design amendments

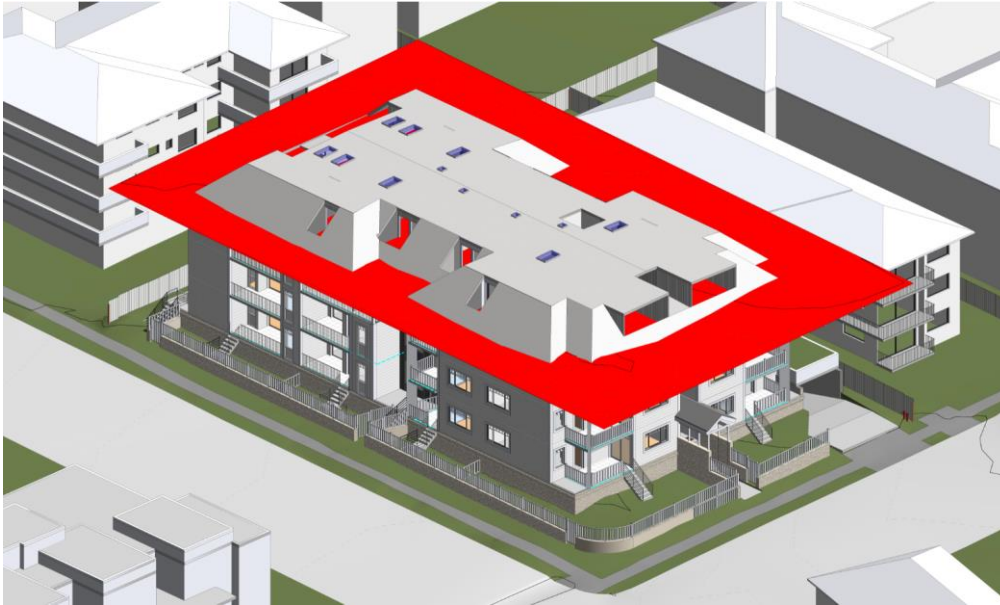
This updated clause 4.6 submission responds to the amended plans dated 27 January 2022. Changes relating to the height of building exception are summarised as follows:

- Increased building setbacks to the site boundaries:
  - Ground level, levels 1 and 2 - eastern and western boundary setbacks increased.
  - Level 3 – northern, eastern, and western boundary setbacks increased;
- Reduction in the area of the building floorplates:
  - Levels 1 to 2 reduce from 845m<sup>2</sup> to 808m<sup>2</sup> (37m<sup>2</sup>);
  - Level 3 (which exceeds the building height) reduces from 422m<sup>2</sup> to 316m<sup>2</sup> (106m<sup>2</sup>).
- Number of dwellings within the upper level reduced from 4 to 2.
- Steeply pitched (41.5 degrees) roof removed, replaced with perimeter planter and upper level significantly recessed. Low profile (2 degrees) roof over the floor area within the recessed upper level.
- Previous 'pop-out' style balconies removed, upper level balcony is concealed by proposed perimeter planter.
- 20mm reduction in the roof ridge level from RL 19.500 to RL 19.480

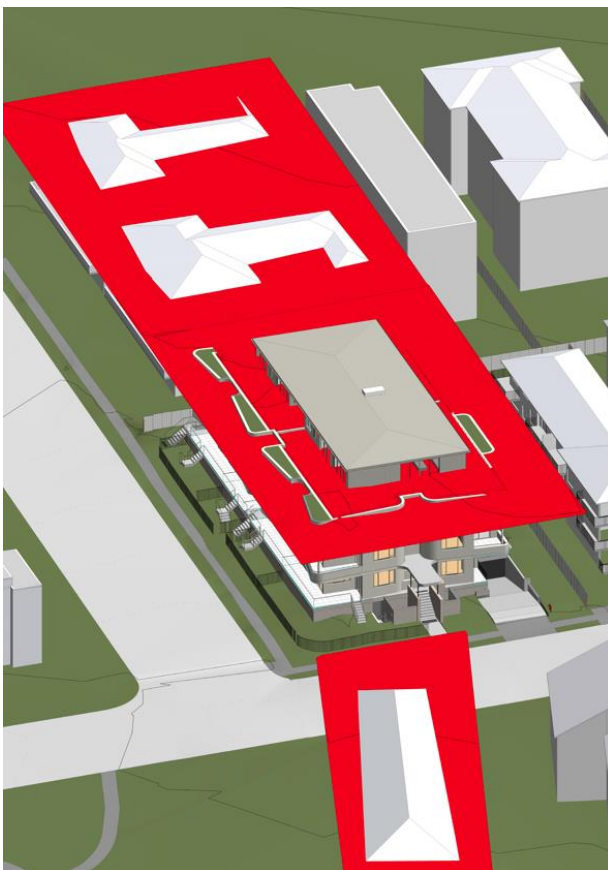


Figure 1 – long sections of the proposed building and the extent to which they relate to the 11m height plane





**Figure 3 – original DA design - height blanket diagram indicating the extent of the proposal that exceeded the 11m height plane**



**Figure 4 – amended DA design - height blanket diagram indicating the extent of the proposed building that exceeds the 11m height plane; also the extent of existing exceedances at 18 Avon Rd and 26 Richmond Ave**



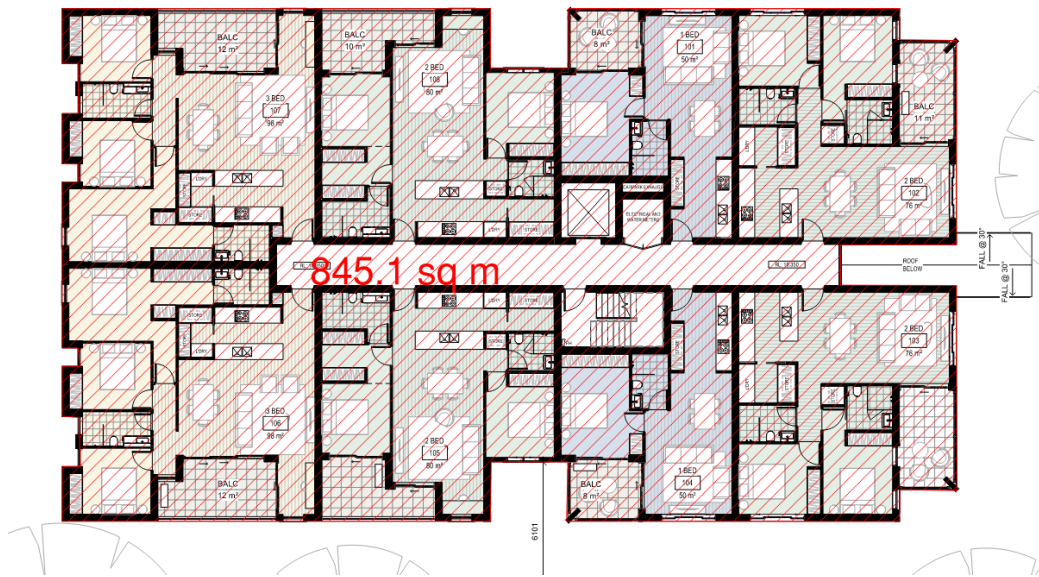


Figure 5 – original extent of proposed floor plates for ground, levels 1 and 2 – approx. 845m<sup>2</sup> (Inclusive of balconies)

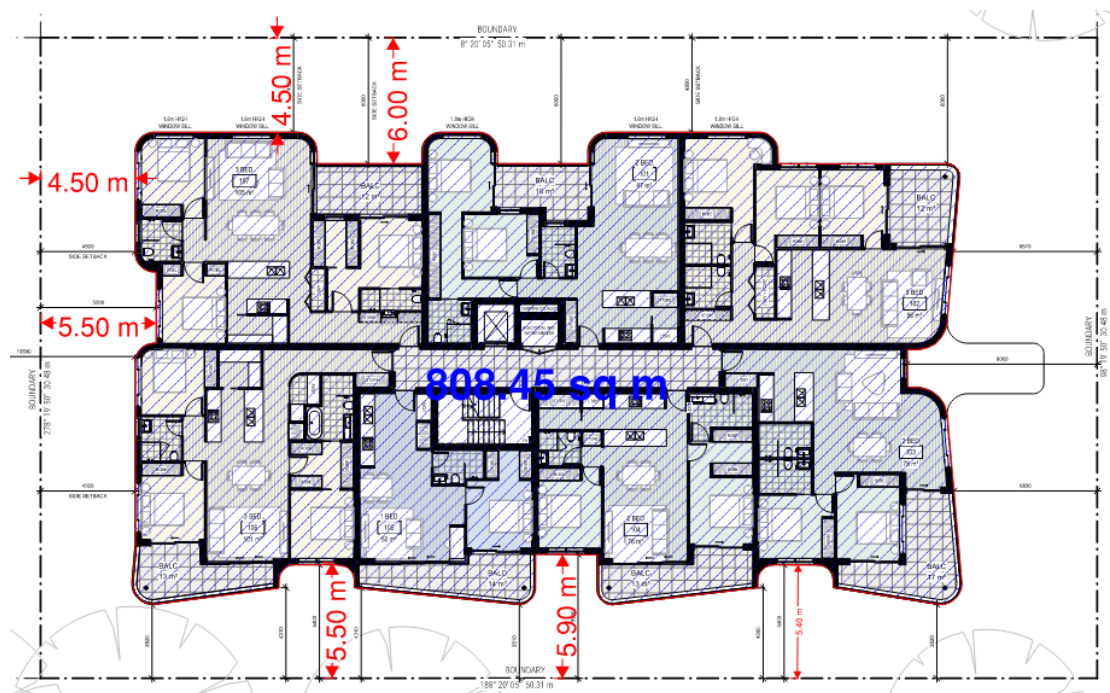


Figure 6 – amended floor plate extent of levels 1 and 2 - approx. 808m<sup>2</sup> (Inclusive of balconies)



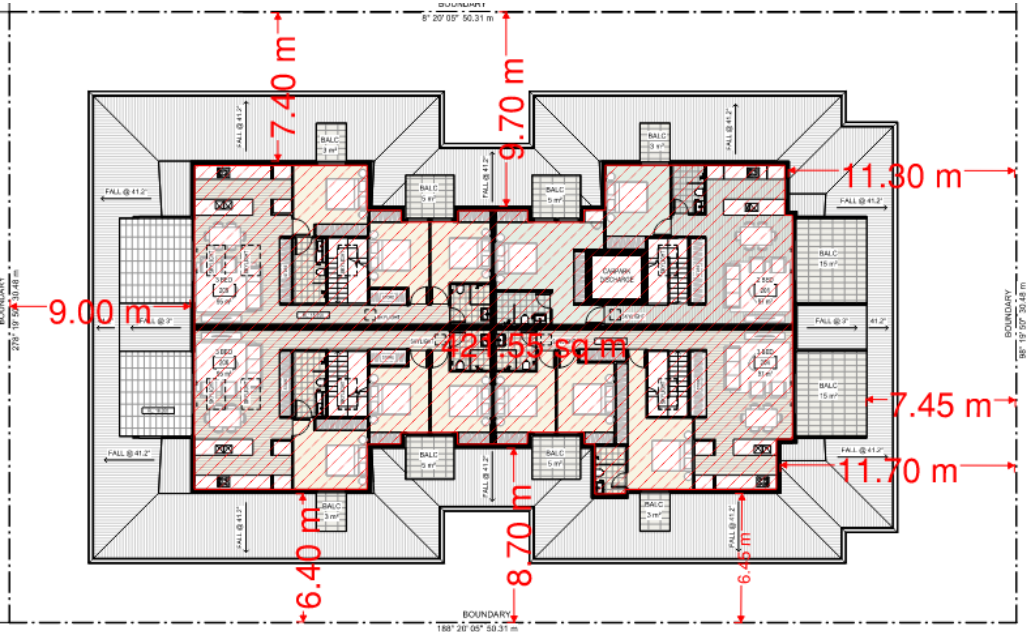


Figure 7 – extent of original upper level floor plate (Level 3) – approx. 422m<sup>2</sup> (exclusive of balconies)

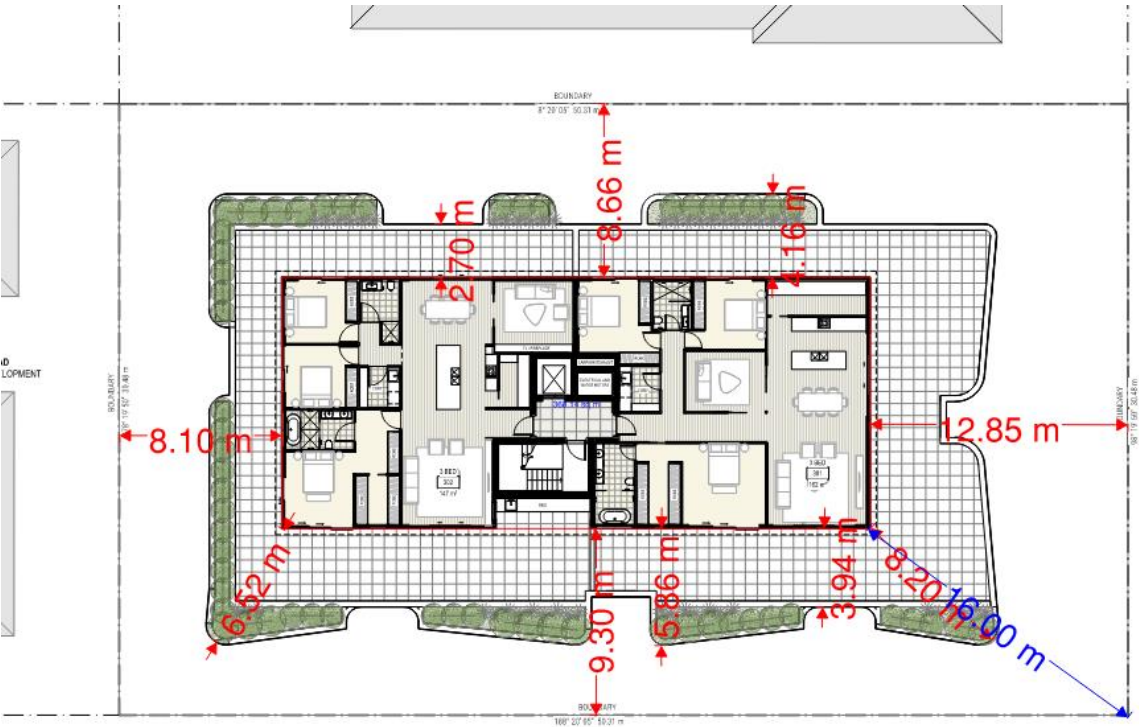


Figure 8 – extent of amended upper level floor plate (Level 3) – approx. 316m<sup>2</sup> (exclusive of the surrounding balcony)

## 2 Site Analysis

### 2.1 Site description

The site is located at 20-26 Avon Road, Dee Why. The development site comprises 4 Torrens Title allotments known as 20, 22, 24 and 26 Avon Rd, Dee Why and legally described as Lots 1, 2, 3, and 4 in Deposited Plan 104820.

Each lot has rectangular dimensions of 12.575m in width and 30.48m in length and an area of 383.2m<sup>2</sup>.

The land slopes moderately from south west to north east, displaying a level difference of approximately 1.3m (approximately RL 6.8 at the south west to RL 5.5 at the north east).

Currently there are 5 driveway crossings serving the 4 dwelling houses, 4 to Avon Rd and 1 to Richmond Ave.

The four existing dwelling houses orientate east to west to Avon Rd. Number 26 Avon Road is the corner allotment which contains a two-storey dwelling house with minimal set-back to Richmond Ave.

The site forms a consolidated corner allotment addressing the 'T' intersection of Avon Road and Richmond Avenue.

The total area of the development site is 1,533 m<sup>2</sup> with an eastern frontage of 50.3m to Avon Road. The northern boundary runs along Richmond Ave and measures 30.48m. The site has no significant or notable natural features to retain.

The site has two residential boundary interfaces. Adjacent to the south is 50 Dee Why Pde (18 Avon Rd). Adjacent to the west is 17 Richmond Ave.

The property is affected by flooding and there is a flood planning level applicable to the site.

Driveways adjoin the southern and western boundary within the adjacent properties which are both residential flat buildings. The site adjoins two roadways providing increased separation to the adjoining residential properties to the east and north and the site's existing landscape and built form quality is relatively poor and dilapidated.

### 2.2 Location description

Like the subject site, the surrounding land is zoned R3 under the WLEP 2011 within a long-established medium density residential setting.

The site is located within an area that is mostly characterised by older style three to four storey, walk-up, residential flat buildings, intermixed with some contemporary flat buildings (for example at 19-23 Richmond Ave) on the northern periphery of the area generally known as the Dee Why town centre. The distribution of flat building development within the local context is depicted on architectural plan DA015.

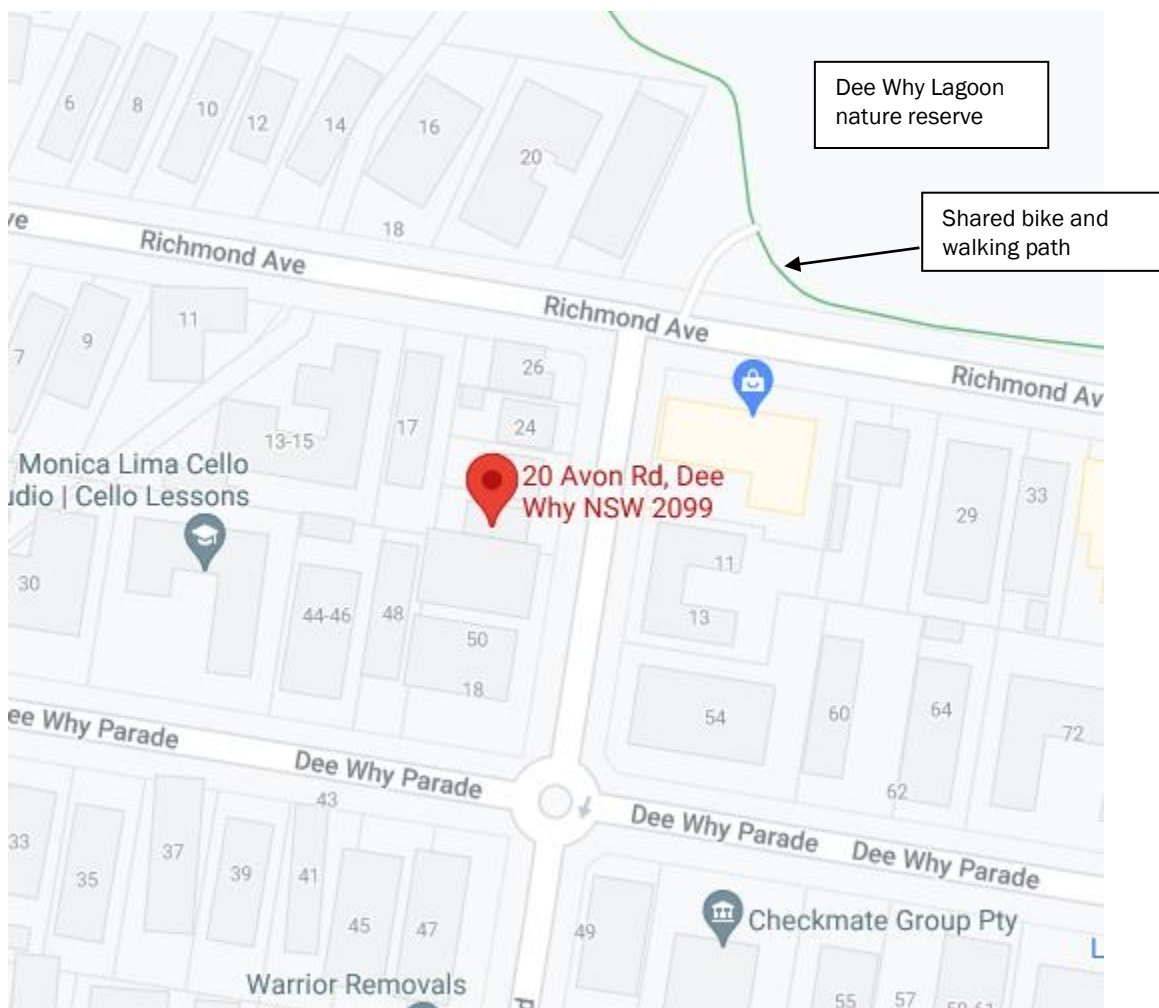
The site is also directly south of a large, vegetated reserve surrounding Dee Why Lagoon known on council's maps as the Dee Why Lagoon reserve, sections of which (natural areas close to the waterway) are identified as 'wildlife refuge no. 373'.

The immediate visual catchment of the site is characterised by a mix of 3 and 4 storey residential flat buildings. The predominant character is brick, 'walk-up' flats, with pitched

tile roofs, above ground level carparking and surface driveways. This character is intermixed with some contemporary three to four storey residential flat buildings and some residual brick and tile dwelling houses.

The street front setbacks of most nearby properties are characterised by a mix of established hardstand car parking areas, low height front fences and turfed / garden areas. An avenue of established red gum street-trees makes a positive contribution to the streetscape amenity and is a notable characteristic throughout sections of the local area of Dee Why.

The figures on the following pages depict the character of the property and its existing development.



**Figure 9 – Location of the site within its wider context (courtesy Google Maps)**



**Figure 10 – Alignment, orientation, and spatial layout of the subject site (courtesy Northern Beaches Council)**





**Figure 11 - the subject site**



**Figure 12 – southern adjoining property 50 Dee Why Pde (18 Avon Rd). 4 Storey residential flat building, ground level car parking and no landscaped setting**



**Figure 13 - Intersection Avon Road and Dee Why Pde. 50 Dee Why Pde (18 Avon Rd) is to the north west of the intersection**



**Figure 14 - Avon Road street trees are a positive streetscape characteristic**





**Figure 15 - 11-13 Avon Road is a 3 storey brick residential flat building with pitched tile roof and ground level carparking opposite the site to the east**



**Figure 16 - 26 Richmond Avenue is a 4 storey brick residential flat building with tile roof. It is located opposite, to the north of the site and directly adjoins the public reserve.**





**Figure 17 - adjoining western boundary interface with 17 Richmond Avenue**



**Figure 18 - Richmond Avenue streetscape looking east towards the subject site**



**Figure 19 - 19-23 Richmond Avenue opposite the site to the east is a contemporary residential flat building with recessed building elements that breach the building height plane.**

## 3 Assessment

### 3.1 Objectives of clause 4.6

The objectives of clause 4.6 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.*

Within the spirit of these objectives, the matters in support of the proposed exception are demonstrated by the characteristics of the proposal and circumstances of the case as set out below.

As required by clause 4.6 (3) the following is a *written request* for the consent authority's consideration.

### 3.2 4.6 (3)(a) - compliance with the development standard is unreasonable or unnecessary in the circumstances

Having regard for the decision of *Wehbe vs Pittwater Council (2007) LEC 827*, and in accordance with 4.6 (3)(a) compliance with the development standard is unreasonable or unnecessary in the circumstances of the case because the objectives of the height standard are satisfied.

In the decision of *Wehbe vs Pittwater Council (2007) LEC 827*, Preston CJ summarised the five (5) different ways in which an objection under SEPP 1 has been well founded and that approval of the objection may be consistent with the aims of the policy. The first possible way is relevant to the subject matter and is repeated below:

*1<sup>st</sup> 'The most commonly invoked way is to establish that compliance with the development standards is unreasonable or unnecessary because the objectives of the development standard are achieved notwithstanding non-compliance with the standard.*

*The rationale is that development standards are not ends in themselves but means of achieving ends. The ends are environmental or planning objectives. If the proposed development proffers an alternative means of achieving the objective, strict compliance with the standard would be unnecessary and unreasonable'.*

The objectives of the height standard are addressed within section 3.4.1 below. In summary, the proposed height exception does not threaten the proposal's ability to achieve:

- a medium density development, providing increased housing in a highly desirable location within walking and cycling distance of amenities;
- a development within a landscape setting that is compatible with the three-to-four storey residential flat building character within the local area;

- appropriate amenity outcomes to the neighbouring properties in terms of privacy, overshadowing, view sharing and visual presentation;
- a residential flat building compatible with its setting that will enhance the built form and landscape quality on the site to the benefit the adjoining streetscapes and nearby nature reserve.

### **3.3 4.6 (3)(b) sufficient environmental planning grounds to justify contravening the development standard**

In accordance with 4.6 (3)(b) there are sufficient environmental planning grounds to justify the exception to the development standard.

The environmental planning grounds in support of the exception are listed as follows and described below.

- Ground 1 – compatibility with the height and scale of surrounding and nearby development is achieved.
- Ground 2 - compliance with the flood planning level contributes to the height of the proposed building.
- Ground 3 – appropriate amenity outcomes are achieved.
- Ground 4 – the proposal is of good design and satisfies the objectives of the Environmental Planning and Assessment Act.
- Ground 5 – two additional dwellings in a location planned for more housing.

#### **3.3.1 Ground 1 – Compatibility with the height and scale of surrounding and nearby development is achieved**

It is noted that objective (a) of the standard is *‘to ensure that buildings are compatible with the height and scale of surrounding and nearby development’*.

In my opinion this objective seeks for the design to respond to its context, which in this case, comprises a mix of 3 and 4 storey residential flat buildings (figure 21), rather than just adhere to the numerical standard which may not (and typically, does not) relate to the specific heights of buildings in a location.

Other 4 storey buildings within the local area, for example 18 Avon Rd, exceed the height standard. In this context, compatibility does not mean being the same (as found in the *Project Venture v Pittwater* planning principle).

The proposed fourth storey element of the design provides a height that is compatible with the established mix of 3-to-4 storey residential flat building development within the site’s visual setting and within the broader local area that comprises the R3 zone within Dee Why, being generally the area that extends from Pittwater Rd in the west to Dee Why Beach in the east (figure 22).

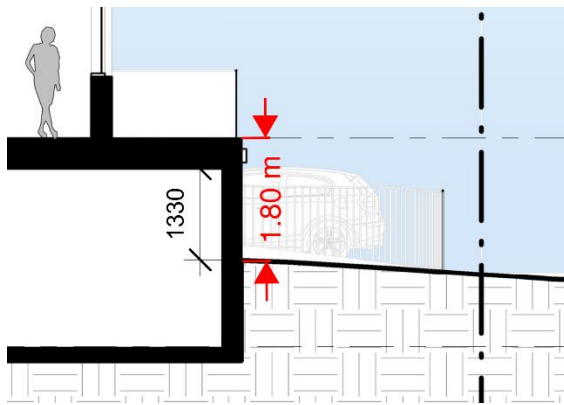
Given this 3-to-4 storey flat building context, the proposed building height will not be out of scale to a casual observer and the proposal will be *‘compatible with surrounding and nearby development’*.

### 3.3.2 Ground 2 – Compliance with the flood planning level contributes to the height of the proposed building

The topography of the site is irregular with a fall of approximately 1.55 metres (RL 6.79 to RL 5.24) generally in a north easterly direction, diagonally from the south western corner of the site.

The required Flood Planning Level is RL 7.350 (including free-board) which the proposed ground floor level of the building complies with.

Whilst the topography of the land does not itself prevent strict compliance being achieved with the standard, compliance with the Flood Planning Level contributes upto approximately 1.8m to the height of the proposed building.



**Figure 20 – excerpt of section 3 from sheet DA203 of the architectural plans showing the extent to which the building's ground floor level must be raised to comply with the flood planning level**

### 3.3.3 Ground 3 - Appropriate amenity outcomes are achieved

The features of the amended building design have resulted in a building that satisfies amenity outcomes to the neighbouring properties in terms of privacy, and overshadowing.

- The proposed exceedance results in appropriate shading impact. Overshadowing is no longer in contention.
- The proposed exceedance does not result in inappropriate view sharing impacts. View sharing is satisfied and is not in contention
- The proposed exceedance does not result in an inappropriate visual presentation to surrounding land. The upper level is significantly inset from the perimeter of the building (figure 8), the proposed boundary setbacks meet and exceed DCP control B5 'side boundary setbacks', significant deep soil landscaped area is contained within the setbacks (4.5 meters wide along the western side) and provision is made for the planting of these areas.
- The proposed exceedance does not result in inappropriate privacy impacts. Privacy in relation to the western neighbour at 17 Richmond Ave is no longer in contention. In relation privacy to the southern boundary interface with 18 Avon Road:
  - The boundary setback is 4.5m which is compliant with the side setback controls under Section B5 of DCP.



- The southern building separation is approx. 10.6m from building to building.
- Only bathroom and bedroom windows face the southern boundary, and their principal purpose is to allow light and ventilation to these rooms, rather than gain a view, enabling privacy to be managed through blinds, curtains etc.
- No private open spaces or living rooms are proposed to face south to 18 Avon Road except for the fourth floor which is recessed (with a 13.8m building to building separation) and incorporates a planter along most of its southern edge. These characteristics provide appropriate privacy to residents to the south of the subject site.
- A driveway and garages are contained at the ground floor level of 18 Avon Road. There aren't any garden areas, private open space, or communal open spaces at this level adjacent to the subject site.
- The proposed building floor levels are offset (figure 1) from those within 18 Avon Road which assists in avoiding direct sightlines between the existing and proposed dwellings.
- In my opinion the level of amenity in relation to visual privacy to the southern neighbouring property is reasonable. If the consent authority is of a different opinion, fixed privacy screens could be added to the bedroom windows within the first three building levels.

### **3.3.4 Ground 4 – the proposal is of good design and satisfies the relevant objectives of the Environmental Planning and Assessment Act**

Having regard to *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118, the proposal is consistent with the following objectives at under Section 1.3 of the Environmental Planning and Assessment Act 1979 (the Act):

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

*(g) to promote good design and amenity of the built environment, through consistent streetscape alignment and increased landscaping at the street edge.*

**In response to (c),** the proposal will facilitate the orderly and economic use and development of the land, in an appropriate location, in a manner that is desired by the prevailing planning provisions because it will facilitate consolidation of four individual allotments, renewal of the land, additional housing in a highly desirable location, to meet contemporary living needs, and renewal of the housing to meet building sustainability (BASIX) and contemporary flood level compliance.

**In response to (g),** the proposal results in a residential development that will promote good design and amenity of the built environment.

The built form outcome has been developed through detailed site, context, privacy, view sharing and shadow analysis to ensure an appropriate contextual and streetscape fit.

The proposed building height and scale relates to the site conditions including the mix of 3-to-4 storey flat buildings within the local area, relatively flat land, and the relatively tall established trees within the local area.

The proposed upper building level has been designed to be visually recessive minimising its visibility from surrounding land.

It incorporates a significantly reduced floorplate and significantly increased boundary setbacks to facilitate achieving a compatible built form and streetscape. The upper level (GFA of approx. 316m<sup>2</sup>) occupies approximately 39% of the area of the lower floor plate (which is approx. 808m<sup>2</sup>, inclusive of balconies) and is significantly further set back from the site boundaries than the levels below (figures 6 and 8). Such design characteristics avoid adverse amenity impacts to neighbouring properties in terms of sunlight, privacy, and views. It also makes the upper level a visually recessive element of the building and reduces the number of locations from which the upper level can be seen.

An improved streetscape outcome is achieved for the land through, street setbacks that are compatible with the adjoining developments at 18 Avon Rd and 17 Richmond Ave, the removal of 4 existing driveways on Avon Rd, deep soil areas and planting around the proposed building.

In my opinion the proposed building form is appropriately articulated, noting the various indentations incorporated within the first 3 building levels, angular balconies, low-profile roof form, and elevated planting to the perimeter at the upper level.

These points support the case that the overall proposal provides a contextually responsive design, which is a planning ground because it promotes good design and amenity of the built environment, consistent with s 1.3(1)(g) of the EPA Act.

### **3.3.5 *Ground 5 - Two additional dwellings in a location planned for more housing***

Dee Why has long been established as a major centre serving the Northern Beaches region (the North District Plan designates Dee Why-Brookvale as a strategic centre). In serving this role it has been planned to accommodate housing growth and become 'a thriving cosmopolitan centre by the sea' (which is priority 25 of the Northern Beaches Local Strategic Planning Statement 2020).

The site and location is serviced by the necessary utility and social infrastructure.

The site is close to the Dee Why major/strategic centre which contains public transport links, shops, and services.

The site is close to Dee Why Beach and other recreational opportunities including children's playgrounds, parks and sportsfields.

The site is in short walking and cycling distance to all of the above.

The provision of two additional 3 bedroom dwellings on the site makes appropriate use of the infrastructure available in the location and is an environmental planning ground because such an outcome is consistent with strategic planning policy.





Figure 21 - 3-to-4 storey residential flat building development within the site's local setting

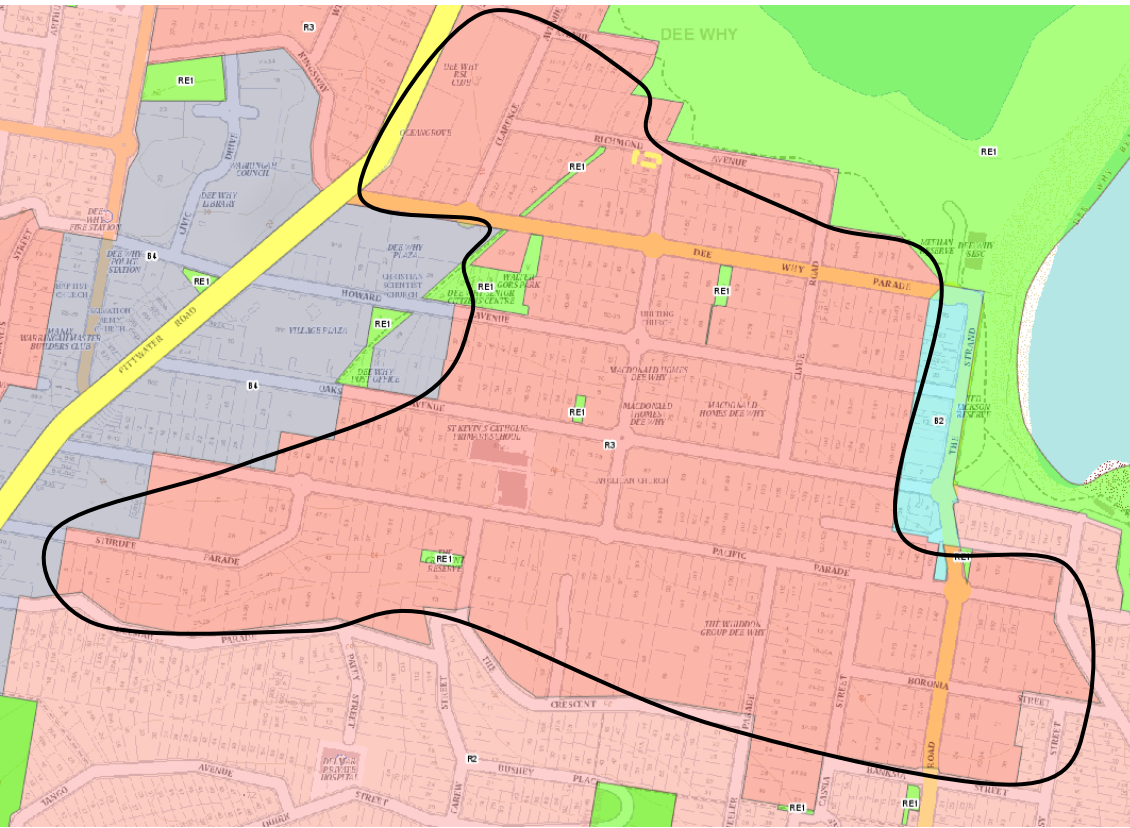


Figure 22 - the R3 medium density zone between Pittwater Rd and Dee Why Beach is predominantly characterised by a mix of 3-to-4 storey flat buildings

### **3.4 4.6 (4)(a)(ii) - the public interest**

#### **3.4.1 Objectives of the Development Standard**

In accordance with 4.6 (4)(a)(ii) the proposed development will be in the public interest because it is consistent with the objectives of the Height of Buildings development standard which are repeated and responded to below:

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

**In response:**

The objective seeks for the design to respond to its context, which in this case, comprises a mix of 3 and 4 storey residential flat buildings (figure 21), rather than just adhere to the numerical standard which typically, does not relate to the specific heights of buildings in a location.

The proposed development's height and bulk is similar to the 3-to-4 storey residential flat buildings within the site's visual catchment and to nearby development noting:

- its proposed roof ridge height is RL19.480 with the top of the perimeter planter box at approximately 17.350 (1m above the upper floor level)
- The adjoining development to the south at 18 Avon (50 Dee Why Parade) has a pitched tile roof with a ridge height RL19.07
- The development opposite to the north at 26 Richmond Avenue is 4 storeys with a pitched tile roof.
- The development to the east at 19-23 Richmond Avenue has a flat roof with elements that project above the height plane.

In my opinion the proposal achieves a form and scale on the site that is harmonious with that of the residential flat buildings within the local area. The design of the proposal is successful in ensuring that the height of the building is compatible noting:

- The heavily recessed position of the upper level.
- Generous boundary setbacks that respond to the pattern of adjoining buildings at 18 Avon Rd and 17 Richmond Ave.
- The proposal's landscaped setting, which is enhanced by concealed basement car parking.
- Appropriate articulation and presentation of the building form.

These matters are described in more detail in response to environmental planning ground 4.

***(b) to minimise visual impact, disruption of views, loss of privacy and loss of solar access,***

Relevant to *visual impact*, Objective (b) of the building height development standard states:

***'(b) to minimise ... visual impact'***

**In response:**

- The site and surrounding land has a small, immediate visual catchment as a result of being located on relatively flat land within a built-up and long established medium density area characterised predominantly by residential flat buildings.
- Views to the proposed development will be from adjacent roads including Richmond Ave, Avon Rd.
- The site is also visible from the south western section of the Dee Why Lagoon reserve. Views from this location to the subject site include a foreground characterised by many significant sized and established trees within the reserve, large street trees, the streetscape, and surrounding residential development.
- A perspective image is provided within the architectural plan set illustrating the proposed streetscape presentation of the site as viewed from the eastern side of Avon Rd. The image communicates the height, form, and context of the proposal as it relates to buildings to the south and north of the site within a streetscape setting. The proposed design presents a high-quality building that will improve the land's streetscape presentation in a manner that is anticipated by the prevailing planning objectives for the renewal of the land.
- The significantly increased setbacks to the upper level facilitate achieving a compatible built form. They make the upper level a visually recessive element of the building, reduces the number of locations from which the upper level can be seen, which in turn allow for the lower 3 levels of the design and the surrounding landscaped elements to be visually dominant (figure 23).
- Within this visual context the proposal presents an appropriately articulated design and building form with a visual impact that will be compatible with both 3-4 storey residential flat buildings that are characteristic of the Dee Why R3 medium density area.
- The number of viewing locations from which the upper-level building element can be seen is very limited. From where it can be seen, it presents as a recessive building element that will not be visually intrusive from these locations.



**Figure 23 – perspective image from the eastern side of Avon Rd**

Relevant to view sharing, Objective (b) of the building height development standard states:

***‘(b) to minimise ... disruption of views’***

**In response:**

- The proposed building height exception does not result in the disruption of views. View sharing is not a contention in this matter.
- Water views are not available from the adjacent properties to the west and south.
- The proposed height exception does not give rise to unreasonable view impacts.
- Furthermore:
  - The 6.5m primary front setback to Richmond Ave will optimise the north eastern aspect to the reserve from 17 Richmond Avenue and adjacent properties to the west.
  - The 5.4m (approx.) secondary front setback to Avon Rd will optimise the north eastern aspect to the reserve from 18 Avon Rd.

Relevant to privacy, Objective (b) of the building height development standard states:

***‘(b) to minimise ... loss of privacy’***

**In response:**

The proposal is appropriately designed to address privacy considerations. The following features of the design and its relationship with adjoining land are noted:

- Building setbacks meet and exceed the DCP controls for southern and western side boundaries.
- There will be no privacy impacts to the east and north of the site with appropriate building separation facilitated by boundary setbacks and the adjacent roadways.
- In relation privacy and to the southern boundary interface with 18 Avon Road, in my opinion this is satisfied as previously addressed within Section 3.3.3 of this report.
- Privacy in relation to the western neighbour at 17 Richmond Ave complies through appropriate side boundary setback, building separation and window design.



Figure 24 – original DA plan set - balconies and windows within the western elevation



Figure 25 – amended DA plan set - highlight windows and privacy screens within the western elevation

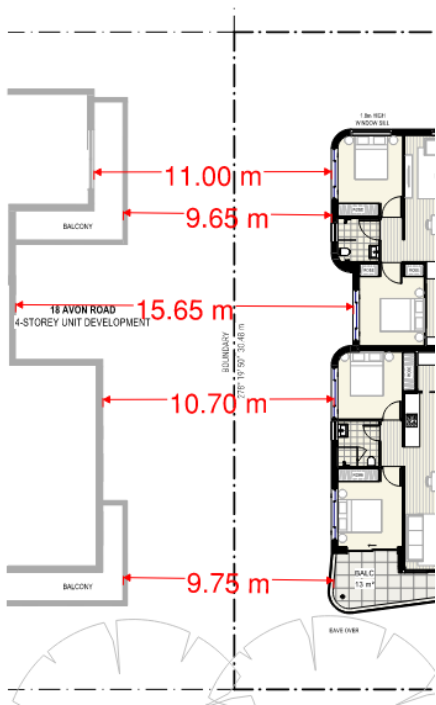


Figure 26 – proposed building separation with the residential flat building to the south at 18 Avon Rd



Relevant to overshadowing, Objective (b) states:

***‘(b) to minimise ... loss of solar access’***

**In response:**

- The proposed shading extent satisfies DCP control D6 and the Apartment Design Guide.
- The proposed upper level ‘minimises’ its shading impact by being significantly inset from the property boundaries, and in doing so, does not cause excessive shading.
- Overshadowing is no longer in contention in the matter.

***(c) to minimise any adverse impact of development on the scenic quality of Warringah’s coastal and bush environments,***

The proposal is assessed as being consistent with objective (c) noting that:

- As previously identified, the site is to the south of a large, vegetated reserve known as the Dee Why Lagoon reserve (source: Council’s online mapping). The land is zoned RE1 Public Recreation.
- Between the subject site and the lagoon waterway there is natural vegetation around the edge and managed parkland containing recreational facilities like a shared walking and cycling path. The closest section to the site is shown within figure 28 below.
- The proposed upper level ‘minimises’ any potential for adverse scenic quality impacts on the location through:
  - presenting to both adjoining streets and nearby public spaces with a characteristic building form that is within a landscaped setting
  - providing 586m<sup>2</sup> square metres of landscaped area around the perimeter of the site which is more generous than its immediate neighbours to the south and west, that will be densely planted.
  - removal of 4 existing vehicle crossings and driveways (4 within Avon Rd) and consolidate into 1 vehicle crossing/driveway enabling more street tree planting.
  - heavily recessing the upper level and providing a perimeter planter (figure 23). The significantly increased setbacks to the upper level make it a visually recessive element of the building, reduces the number of locations from which the upper level can be seen, which in turn allow for the lower 3 levels of the design and the surrounding landscaped elements to be visually dominant.

Along with the proposal’s generous street setbacks, these measures will minimise any adverse impact on the scenic quality of the local environment.

***(d) to manage the visual impact of development when viewed from public places such as parks and reserves, roads and community facilities.***

The proposal is assessed as being consistent with objective (d) noting that:

- The proposed upper level is significantly inset and will be a visually recessive element of the building when it is viewed from the surrounding streets and the nature reserve

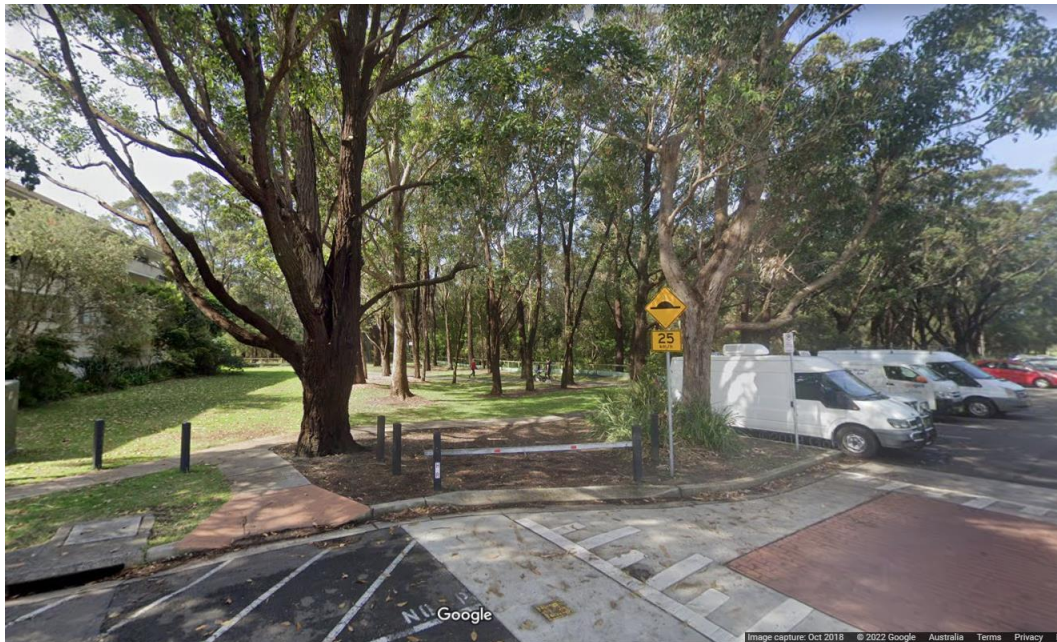
(noting that one of the viewing points from within the reserve is approx. 47m from the site (figure 27). It does not threaten or compromise the proposal's ability to achieve a development within a landscape setting.

- Compliance is achieved with DCP controls B5 side boundary setbacks, B7 front boundary setbacks, and appropriate landscaping is proposed to the perimeter of the site.
- The design is appropriate for a corner allotment, by presenting to both adjacent streets.
- The proposed building envelope is appropriate when considering the pattern of development within the local context.
- The proposal provides a new and enhanced landscape regime. It includes 586m<sup>2</sup> square metres of landscaped area around the perimeter of the site (plan sheet DA401); it involves the planting of landscaped areas with species selected from Council's Native Species Guide (Curl Curl Ward which the site is within); it will remove five existing vehicle crossings and driveways and consolidate into one vehicle crossing/driveway, overall resulting in an improvement to the site's visual presentation to the adjoining streets and the nature reserve.
- The proposal retains and supports the growth of more street trees because of driveway consolidation and the generous street front setbacks.



**Figure 27 - The dashed line marks the shared pathway within the nature reserve. It is approx. 47m from the splayed corner of the site. The proposed upper level is setback approx.16m from this corner (a distance of 63m) and will be a visually recessive element of the building when viewed from the reserve (source: SIX Maps)**





**Figure 28 - the south western section of Dee Why Lagoon reserve that is opposite subject site (Google Streetview October 2018)**

### **3.4.2 Objectives of the zone**

The proposed development will be in the public interest because it is consistent with the objectives for development within the R3 medium density residential zone under the Warringah Local Environmental Plan 2011 in which the development is proposed to be carried out. The zone objectives are repeated and responded to below.

These are stated as follows:

*To provide for the housing needs of the community within a medium density residential environment*

*To provide a variety of housing types within a medium density residential environment.*

*To enable other land uses that provide facilities or services to meet the day to day needs of residents.*

*To ensure that medium density residential environments are characterised by landscaped settings that are in harmony with the natural environment of Warringah.*

*To ensure that medium density residential environments are of a high visual quality in their presentation to public streets and spaces.*

The proposed development is consistent with the first zone objective as the additional building height will enable the provision of 2 additional dwellings and thereby provide for the housing needs of the community in a highly suitable location.

The proposed development is consistent with the second zone objective as it will provide a mix of different sized apartments (1 studio, 4 x 1 bed, 10 x 2 bed, 8 x 3 bed).

The third zone objective is not relevant to the proposal.

The proposed development is consistent with the fourth zone objective as:

- it presents to both adjoining streets and nearby public spaces with a characteristic building height and form that is within a landscaped setting.
- it provides 586m<sup>2</sup> square metres of landscaped area around the perimeter of the site which is more generous than its immediate neighbours to the south and west.
- the perimeter landscaped areas are proposed to be densely planted.
- will remove 4 existing vehicle crossings and driveways (4 within Avon Rd) and consolidate into 1 vehicle crossing/driveway enabling more street tree planting.

Along with the proposal's generous street setbacks, these measures will provide an improved landscape setting to the site; and an improved presentation to the streetscape, the public reserve to the northeast of the site and adjoining private land.

The proposed development is consistent with the fifth zone objective as it will positively contribute to the visual quality (both built form, landscape area and quality) of the corner of Avon Rd and Richmond Ave as well as the longer distance views (50m or more) of the site from the Dee Why Lagoon reserve because:

- presents to both adjoining streets and nearby public spaces with a characteristic building height and form that is within a landscaped setting

- provides 586m<sup>2</sup> square metres of landscaped area around the perimeter of the site which is more generous than its immediate neighbours to the south and west, that will be densely planted.
- it will remove 4 existing vehicle crossings and driveways (4 within Avon Rd) and consolidate into 1 vehicle crossing/driveway enabling more street tree planting.
- It incorporates a heavily recessed upper level and incorporates a perimeter planter (figure 23). The increased setbacks to the upper level make it a visually recessive element, reduces the number of locations from which the upper level can be seen, which in turn allow for the lower 3 levels of the design and the surrounding landscaped elements to be visually dominant.
- provides generous street setbacks that will align with the adjacent residential flat buildings at 17 Richmond Ave and 18 Avon Rd.
- provides compliant boundary setbacks, a highly articulated building and appropriate materials and finishes.

### 3.5 Secretary's considerations

With regards to the Secretary's considerations the proposed variation of the development standard:

- Does not raise any matter of significance for State or regional environmental planning consistent with 4.6 (5)(a).
- The public benefit is not served by maintaining the development standard consistent with 4.6 (5)(b).

### 3.6 Conclusion

The variation proposed to the *Height of buildings* development standard has been appropriately acknowledged and the circumstances assessed, having regard to the objectives of the control.

In conclusion, Council can be satisfied that:

- the proposed building height exception will result in a contextually responsive development is consistent with the zone objectives;
- the proposal is consistent with the objectives of the height of buildings standard and will result in an appropriate amenity outcome to neighbouring land;
- there are sufficient environmental planning grounds to justify contravening the development standard;
- compliance with the building height development standard is unreasonable or unnecessary in the circumstances of the case;
- given the proposal's ability to comply with the zone objectives that approval would not be antipathetic to the public interest; and
- contravention of the development standard does not raise any matter of significance for State or regional environmental planning.

Furthermore:

- this written request has addressed the matters required to be demonstrated by 4.6 (3) & 4.6(a)(i);
- this written request is well founded and adequately addressed the matters required in accordance with & 4.6(a)(i);
- the exception is appropriate considering the range of relevant environmental planning considerations and the circumstances of the case.

The proposal succeeds when assessed against the Heads of Consideration pursuant to clause 4.6 and should be granted development consent.