

DEVELOPMENT ASSESSMENT REPORT

JRPP Ref No:	2010SYE041
Development Application No:	DA2010/1026
Application Lodged:	01/07/2010
Plans Reference:	Dwg No. S1e, S2e – S10e – Prepared by HPS Architect, dated 30/06/2010.
Amended Plans:	No amended plans were submitted as part of this application.
Applicant:	Nmmh Pty Limited
Owner:	Nmmh Pty Limited
Reporting Officer	Malcolm Ryan – Director of Strategic and Development Services at Warringah Council
Address	Lot 13 Sec 3 DP 1521 - 16 Roger Street, Lot 12 Sec 3 DP 1521 - 18 Roger Street, and Lot 11 DP 634211 - 20 Roger Street, Brookvale.
Property Description:	Demolition Works and Construction of a mixed use (Commercial/Retail and Residential) building.

Locality:	F1 Brookvale Centre
Category:	Category 1 - Offices, 'shops', 'business premises' and 'housing (not on the ground floor)
Draft WLEP 2009 Permissible or Prohibited Land use:	Permissible: Retail and commercial premises Prohibited: Residential Development
Variations to Controls	YES (Building Appearance)
Referred to WDAP:	No
Referred to JRPP:	YES (Capital Investment Value >\$10m)
Land and Environment Court Action:	No
SUMMARY	
Submissions:	One (1) submission was received.
Submission Issues:	Residential Development is an inappropriate Land use within this locality. Parking and traffic issues.
Assessment Issues:	<ul style="list-style-type: none">• Draft WLEP 2009;• SEPP 65;• SEPP 55;• Desired Future Character Statement for the F1 locality;

- Clause 20 variation in relation to building appearance;
- Traffic and Parking layout Issues;
- General Principles of WLEP 2000 in relation to Clauses 43, 48 49, 50, 65, 66, 72, 75, and 76.
- Resident Issues (public notification)

Recommendation:

Refusal

Attachments:

Site and Elevation Plans



LOCALITY PLAN (not to scale)



Subject Site:

Lot 13 Sec 3 DP 1521 - 16 Roger Street, Lot 12 Sec 3 DP 1521 - 18 Roger Street, and Lot 11 DP 634211 - 20 Roger Street, Brookvale.

Public Exhibition:

The subject application has been publicly exhibited in accordance with the EPA Regulation 2000, Warringah Local Environment Plan 2000 and Warringah Development Control Plan. As a result, the application was notified to 249 adjoining land owners and occupiers for a period of 14 calendar days commencing on 27/7/2010 and being finalised on 10/08/2010, furthermore, the application has been advertised within the Manly Daily on 21/07/2010 and a notice was placed upon the site.

As a result of the notification process Council received a total of one (1) submission objecting to the proposal.

SITE DESCRIPTION

The site is described as Lot 13 Sec 3 DP 1521, Lot 12 Sec 3 DP 1521, Lot 11 DP 634211 know as 16 - 20 Roger Street, Brookvale. The subject site is located on the western side of Roger Street.

The consolidated site is best described as rectangular in shape with a frontage of 60.345m to Roger Street. The total site area is 3,035m².

The sites are currently occupied by a number of single storey buildings of varying ages and materials. The existing land uses are industrial in nature. The area around the buildings is generally paved with exception of a small garden bed at the front of 16 Roger Street.

The property is located within the F1 – Brookvale Centre locality and, as such, is surrounded by mixed industrial and commercial uses. The western side of Roger Street has been developed for a variety of industrial and warehouse uses interspersed with commercial uses.

The eastern side of Roger Street is occupied predominantly with automotive related uses. To the east of the subject site (fronting Pittwater Road) is a commercial area. 200m to the south of the site is Warringah Mall Shopping centre.

SITE HISTORY

There is no relevant background that is applicable to the assessment of this application.

PROPOSED DEVELOPMENT

The proposal involves the demolition of all existing buildings and structures on the site and the construction of mixed use development, which comprises the following:

Level	Proposed uses
Basement	<ul style="list-style-type: none">• Carparking for 110 vehicles;• Storage area for residential area;• Utility room (electrical);
Ground Floor	<ul style="list-style-type: none">• Retail Shops (total of 750m²);• Commercial space (total of 500m²);• Amenities facilities;• Carparking for 32 vehicles (including 1 disabled space);• Loading bay;• Bin Room.
First Floor	<ul style="list-style-type: none">• 24 x 2 bedroom apartments (units 1-24);• Central terrace and landscape area;
Second Floor	<ul style="list-style-type: none">• Living area for 36 apartments (units 25-60).
Third Floor	<ul style="list-style-type: none">• 2 bedrooms, bathroom and en-suits for Units 25-60.

STATUTORY CONTROLS

- a) Environmental Planning and Assessment Act 1979
- b) Environmental Planning and Assessment Regulation 2000
- c) State Environmental Planning Policy No 55 – Remediation of Land
- d) State Environmental Planning Policy No 65 – Design Quality of Residential Flat Development
- e) State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004
- f) State Environmental Planning Policy (Infrastructure) 2007
- g) Warringah Local Environment Plan 2000
- h) Warringah Development Control Plan
- i) Warringah Section 94A Development Contributions Plan
- j) Draft Warringah LEP 2009

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As a result of the public exhibition process, Council received a total of one (1) submission from:

Name	Address
Brookvale Mufflers	24 Roger Street, Brookvale

The issues raised in the submissions are addressed as follows:

- **Residential Development is not a appropriate land use within this locality**

Concerns have been raised that the residential development is not a suitable land use within this locality as it will be surrounded by industrial and automotive related uses.

Comment: This issue has been addressed under the provisions of DWLEP 2009. In summary, the site is unsuitable for residential development under the provision of the DWLEP 2009. The concern raised has determining weight and this issue has been included as a reason for refusal.

- **Insufficient Carparking & Traffic Issues**

Concerns have raised that the proposed development does not provide sufficient carparking spaces for this development, which will lead to parking problems within Roger Street.

Comment: This issue has been addressed under the Clause 74 of this report. In summary, the proposal is satisfactory in relation to the number of car parking spaces provided. Therefore the concern raised in this regard does not warrant the refusal of the application.

LAND AND ENVIRONMENT COURT ACTION

No court action has been commenced in relation to the current application.

REFERRALS

Department	Comments received
Urban Design	<p>Council's Urban Designer has reviewed the proposal has provided the following comments:</p> <p>Positive aspects :</p> <ol style="list-style-type: none"> 1. <i>"Providing retail shops facing street and locating car parking to the rear of the site.</i> 2. <i>Consolidated vehicular access point to allow continuous shopfront providing safe pedestrian routes.</i> <p>Negative aspects:</p> <ol style="list-style-type: none"> 1. <i>Building appearance - WLEP2000 CL 66 Building bulk states that... large areas of continuous wall planes are to be avoided by varying building setbacks and using appropriate techniques to provide visual relief ...Proposal has a continuous street boundary setback of building façade and awnings/ balconies with monotonous repetition. Roger Street has no suitable contextual reference to adopt but proposed modular façade units should introduce some variations to add visual relief and rhythm. Roof form and repetitive dormer roof windows also add bulk to the building form.</i> 2. <i>SEPP 65 Site Design - The Communal Open Space requirement of 25 to 30% of the site area should be provided for a sixty residential unit development with minimal private open space proposed for each unit.</i> 3. <i>SEPP 65 Amenity - Residential Flat Design Code recommends apartment buildings separation distance of 12m for building height of 12m/ 4 Storeys. The proposal has balcony to balcony separation of 3.6 to 7.3m in the central courtyard and 1.1 to 2m to the back (western) boundary which in the future could potentially be 11m high blank walls to industrial units built right on the boundary (General Industrial Zone). These will create amenity problems like lack of visual and acoustic privacy, loss of daylight access to apartments and to private and shared open spaces.</i> 4. <i>The design should optimise solar access to contribute positively to public and residence amenity. It is recommended that the applicant be requested to provide further information on the percentage of units with amenity problems.</i> 5. <i>SEPP 65 Amenity recommends ...ease of access for all age groups and degrees of mobility – Proposal does not provide any lift access to residential units.</i> <p>Conclusion</p> <p><i>Shop top housing is not permitted in the draft WLEP2009. The site is zoned B5 Business Development under draft WLEP 2009. Within this zone "business premises" and "shops" are uses that are permitted with</i></p>

Department	Comments received
	<p><i>development consent. However, "residential accommodation" is a prohibited use. The subject site backs on to a general industrial zone which allows building forms of 11m high to be built right up to the back boundary. The residential units proposed have balconies/ windows that are setback 1.1/ 3.25m respectively from the back (western) boundary which could potentially in the future be 11m high blank walls to industrial units. The draft WLEP2009 has prohibited residential accommodation in the B5 zone as it is considered inappropriate to locate residential premises next door to an industrial zone without a proper buffer.</i></p> <p><i>The initial analysis demonstrates that the proposed development does not comply fully with the current WLEP 2000 controls and with SEPP 65 requirements for residential flat development. There is no justification to allow a departure from the controls. Therefore the development cannot be supported in its current form".</i></p> <p>Comment: The issues raised by Council's Urban Designer are further addressed through-out this report.</p>
Traffic Engineers	<p>Council's Traffic Engineer has reviewed the proposal has provided the following comments:</p> <p><i>"The traffic section has assessed the plans and documents submitted and the following issues are required to be addressed to enable a complete and comprehensive assessment to be undertaken:</i></p> <ul style="list-style-type: none"> <i>• The traffic generation rate applied for the existing use/s has no justification to support the assumption. It has not been based on surveys, trading data or known rates. Further details relating to the generation rate applied shall be submitted justifying the rate applied.</i> <i>• The 1m extension to blind aisles has not been provided for all aisles in accordance with AS2890.1, this includes area/s which will be restricted by security fencing.</i> <i>• Turning bays in accordance with AS2890.1 have not been provided for blind aisles greater in length than six 90 degree parking spaces".</i> <p>Comment: The issue raised by Council's Traffic Engineer is further addressed under Clause 72 and 75 of this report.</p>
Development Engineers	<p>Council's Development Engineer has reviewed the proposed development and has provided the following comments:</p> <p><i>"Reference is made to the proposed stormwater drainage plan by TJ Taylor Consultants, Drawing No. 16610 – 1, dated June 2010.</i></p> <p><i>In regards to the proposed On-site Stormwater Detention (OSD) and associated drainage design, Development Engineers provide the following comments:</i></p> <ol style="list-style-type: none"> <i>1. The grassed flow path length and slope appear to be incorrect. As a result, the calculated time of concentration used for the pre-development ILSAX pipe file is too low and as a result the PSD's are higher for the site than expected. Refer to pages 37 & 38 of Council's OSD Technical Specification (September 2007). In this regard, the onsite stormwater detention tank may need to be re-designed to comply with Council's requirements.</i> <i>2. Inspection grate located directly over the control discharge system is to be minimum 600mm x 900mm to facilitate future inspection and</i>

Department	Comments received
	<p><i>maintenance of the system.</i></p> <p><u>Drainage works in Roger Street</u></p> <p>3. Council's Development Engineers have received comments from the Natural Environment Unit with regards to the proposed drainage works in Roger Street. Council prefers not to inherit any new drainage infrastructure where it is feasible for stormwater to be discharged to the kerb and gutter system in Roger Street. In this regard, Council cannot accept the stormwater drainage proposal.</p> <p>The stormwater drainage proposal is not satisfactory until the above issues are addressed. Amended stormwater drainage plans are to be submitted to Council for re-assessment, prior to the issue of the Development Consent.</p> <p>All of the above points must be addressed and resolved prior to the issue of the Development Consent as they cannot be conditioned".</p> <p>Comment: The issue raised by Council Development Engineer are further addressed under Clause 76 of this report.</p>
Natural Environment Section	Council's Natural Environmental section has reviewed the proposal and has raised no objection or conditions to the proposed development.
Environmental Health	<p>Council's Environment Health section has reviewed the proposal and has raised no objection to the proposed development subject to number of conditions.</p> <p>Whilst no objection is raised by Environmental Health the conditions proposed are Deferred commencement conditions, which are not considered legislatively appropriate having regard to the issues that may arise during remediation of the site and design changes that may result.</p>
Waste Officer	Comments from Council's waste officer were not received at the time of writing this report.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

The relevant matters for consideration under Section 79C of the Environmental Planning and Assessment Act, 1979, are:

Section 79C 'Matters for Consideration'	Comments
Section 79C (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on "State Environmental Planning Policy No. 55 – Remediation of Land", 'State Environmental Planning Policy (BASIX: Building Sustainability Index) 2004', 'State Environmental Planning Policy (Infrastructure) 2007', 'State Environmental Planning Policy No. 65 – Design Quality of Residential Flat Development' and 'Warringah Local Environmental Plan 2000' in this report.
Section 79C (1) (a)(ii) – Provisions of any draft environmental planning instrument	Refer to discussions on Draft Environmental Planning Instruments in the body of the report.
Section 79C (1) (a)(iii) – Provisions of any development control plan	The application was advertised and notified in accordance with Warringah Development Control Plan.
Section 79C (1) (a)(iii)(a) - Provisions of any Planning Agreement or Draft Planning Agreement	None applicable.
Section 79C (1) (a)(iv) - Provisions of the regulations	Clause 50(1A) of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer at lodgement of the development application. A design verification certificate has been submitted with the application.

Section 79C 'Matters for Consideration'	Comments
	<p>Clause 98 of the EPA Regulations 2000 requires the consent authority to consider the provisions of the Building Code of Australia. A condition of consent could be included in the consent if the application was worthy of approval that all works to be consistent with the provisions of the Building Code of Australia.</p>
<p>Section 79C (1) (b) – The likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality</p>	<p>(i) The environmental impacts of the proposed development on the natural and built environment are addressed under the 'General Principles of Development Control' in this report. In summary, the proposed development is capable of being constructed so as to not result in any adverse environmental impacts on the natural environment. The proposed development does not however comply with a number of General Principles of Development Control relating to the built environment and therefore the impacts of the proposal are unsatisfactory.</p> <p>(ii) The proposed development will not have a detrimental social impact in the locality considering the proposal involves the construction of commercial/retail and residential development, which is envisaged under the WLEP 2000.</p> <p>(iii) The proposed development will increase the commercial floor space within the locality and the development will contribute to the revitalisation of Brookvale locality. As such it is considered that the proposal will have a positive economic impact.</p>
<p>Section 79C (1) (c) – The suitability of the site for the development</p>	<p>The site does not contain any significant physical constraints which would prevent the provision of this development on site.</p> <p>The applicant has not however provided sufficient information to demonstrate that the site is suitable for the proposed use, or will be suitable for the proposed use following remediation of the site.</p> <p>Accordingly, the site cannot be considered suitable for the proposed development.</p>
<p>Section 79C (1) (d) – Any submissions made in accordance with the EPA Act or EPA Regs</p>	<p>The public submissions received in response to the proposed development are addressed under 'Notification & Submissions Received' within this report.</p>
<p>Section 79C (1) (e) – The public interest</p>	<p>The increased density proposed in part serves the public interest. The increased density will contribute to the diversity of housing within the locality thus ensuring the housing stock caters for a broad cross section of the community.</p> <p>It is however considered that the proposed development is not in the public interest of the local community for the following reason:</p> <ul style="list-style-type: none"> • Allowing residential development on this site undermines the strategic planning work carried out by Council which has identified this site/zone unsuitable for residential development under the provision of the DWLEP 2009. The strategic planning undertaken ensures the growth in the number of dwellings and number of residents within Warringah is controlled, manageable and sustainable. Varying the aims and objectives of the draft LEP without a proper consideration of the strategic plan for the growth of the locality will contribute to uncontrolled and uncoordinated development within the locality. <p>It is therefore considered the implications of varying the controls</p>

Section 79C 'Matters for Consideration'	Comments
	within the DWLEP 2009 to the extent proposed within the development will result in uncontrolled un co-ordinated development which is not consistent with the objects of the EP&A Act, specifically the object in Clause 5(a) (ii) which is ' <i>the promotion and co-ordination of the orderly and economic use and development of land</i> '. For these reasons the proposal is not considered to be in the public interest

DRAFT ENVIRONMENTAL PLANNING INSTRUMENTS:

Draft Warringah Local Environmental Plan 2009 (Draft WLEP 2009)

The public exhibition of the draft Warringah Local Environmental Plan 2009 (the draft LEP) commenced on 12 October 2009 and ended on 30 December 2009. The draft LEP was adopted by Council at its meeting held on 8 June 2010. The DWLEP 2009 is therefore a mandatory matter for consideration under Section 79 (1) (a) (ii) of the Environmental Planning and Assessment Act, 1979.

Definition: Business and retail premises and residential accommodation

Land Use Zone: B5 Business Development

Permissible or Prohibited: Business premises and shops are permitted Land Uses & residential accommodation is a prohibited land use within this zone.

Additional Permitted used for particular land – Refer to Schedule 1: Yes (office and Retail premises)

Principal Development Standards:

Development Standard	Required	Proposed	Complies	Clause 4.6 Exception to Development Standard
Minimum Subdivision Lot Size:	NA	NA	N/A	NA
Rural Subdivision:	NA	NA	NA	NA
No Strata Plan or Community Title Subdivisions in certain rural and environmental zones:	NA	NA	NA	NA
Height of Buildings:	11m	Maximum of 11m	YES	No

Under the provisions of the draft DWLEP 2009 the subject site is located within the B5 Business Development zone. Within this zone 'business premises' and 'shops' are uses that are permitted with development consent. Furthermore, 'office and retail premises' are additional purposes that are shown on the 'Additional Purposes Map' as being permitted on the site. However, residential development will be a prohibited use within the B5 zone. The prohibition of residential development represents a notable difference from the existing

planning provisions (i.e. WLEP 2000) which permits residential development (not on ground level) as Category 1 development.

The applicant within the SEE has acknowledged the fact that residential development (which represents a significant component of the proposed development) will be prohibited development and has indicated that this application would benefit from the savings provisions of the draft document.

The relevance of a draft LEP and the weight to be given to it relies on the facts of the particular case and circumstances. The Land and Environment Court in a number of cases (see *Mathers v North Sydney Council* [2000] NSWLEC 84, *Haywood and Bakker Pty Ltd v North Sydney Council* [2000] NSWLEC 138 *Blackmore Design Group Pty Ltd v North Sydney Council* [2001] NSWLEC 279) has considered the weight to be given to a draft LEP and the effect of savings provisions. In summary, the primary principles arising from Land and Environment Court cases are that the weight to be placed upon a draft LEP when determining a development application depends on:

1. The imminence of the draft LEP and the degree of certainty that it will come into force;
2. The extent of conflict between proposed development and planning objectives contained in the draft LEP;
3. The existence and applicability of savings provisions in the draft LEP.

In relation to the first principle, the fact that WLEP 2009 has been through the public exhibition and has been adopted by Council the plan is considered both imminent and certain and therefore is at a stage to be given significant weight as a consideration under section 79C.

In relation to the second principle, an assessment of the proposed development (i.e. the residential component of the development) in relation to the objectives of the B5 zone is as follows:

- ***To enable a mix of business and warehouses uses, and specialised retail uses that require a large floor area, in locations that are close to, and that support the viability of, centre.***

Comment: With regards to this objective, it is clear that this zone does not envisage residential development. The corridor is flanked by industrial lands and lies on a major traffic corridor. Further, with a view to promoting the role of the area as current and future employment lands it is appropriate that competition with residential markets does not hinder this process. Accordingly, the proposed development is inconsistent with this objective.

- ***To provide for the location of vehicle sales or hire premises and bulky good premises.***

Comment: The proposed development is inconsistent with this objective as the proposed development is for residential development.

- **To create a pedestrian environment that is safe, active and interesting by incorporating street level retailing and business uses.**

Comment: The proposed development does incorporate retail and business uses at the ground level. However, it is considered that the proposed development does not provide a pedestrian environment that is safe and active as the proposed ground level is below street level which is not consistent with this objective.

Having regard to the above assessment, the proposed development particularly the residential component of the development within this zone is not consistent with the objectives of this zone and therefore the proposed development cannot be supported.

In relation to the third principle DWLEP 2009 contains a savings provision under Cl 1.8A which states:

"If a development application has been made before the commencement of this Plan in relation to land to which this Plan applies and the application has not been finally determined before that commencement, the application must be determined as if this Plan had not commenced".

In this particular circumstances reference is made to the Land and Environment court case (in *Blackmore Design Group Pty Ltd v North Sydney Council* [2001] NSWLEC 279), where the judgement summarises the weight to be given to a draft LEP, particularly, in the circumstances where it was a draft when an application was lodged and has since been gazetted with a transitional provision.

49 The fact that LEP 2010 has been made ensures that the plan is certain and imminent and accordingly, that plan must be given significant weight in the determination of the application. However, due to the savings provision, the inquiry does not stop there. In Blackmore at [30], Lloyd J states:

*30. Whether one applies the test of "significant weight", or "some weight", or "considerable weight" or "due force" or "determining weight" to the later instrument is not, however, the end of the matter. The savings clause still has some work to do. The proposed development is a permissible development by dint of the savings clause. In giving the 2001 LEP the weight of being imminent and certain, that does not mean that there is no further inquiry. It is necessary to look at the aims and objectives of the later instrument and then see whether the proposed development is consistent therewith. Various expressions have been used to define this concept, but the approach which has been favoured in the Court of Appeal is to ask whether the proposal is "antipathetic" thereto (*Coffs Harbour Environment Centre Inc v Coffs Harbour City Council* [1991] 74 LGRA 185 at 193).*

DWLEP 2009 is still a draft document (at the time of writing this report) and has not commenced and therefore in accordance with the above judgement and given that the proposed development was found to be inconsistent with the aims and objectives of the B5 zone the proposal is not supported in this instance.

ENVIRONMENTAL PLANNING INSTRUMENTS (EPI's)

State Environmental Planning Policies (SEPPs)

Further consideration is required for the following State policies:

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

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

BASIX Certificates has been submitted for the residential component of the development. The certificate confirms that the proposed development meets the NSW government's requirements for sustainability. The development meets the water and energy performance targets and achieves a pass for thermal comfort.

State Environmental Planning Policy No. 55 – Remediation of Land

Clause 7(1)(a) of State Environmental Planning Policy No. 55 – Remediation of Land (SEPP 55) and Clause 48 of WLEP 2000 state that a consent authority must not consent to the carrying out of any development on land unless;

- It has considered whether the land is contaminated, and
- If the land is contaminated, it is satisfied that the land is suitable in its contaminated state for the purpose for which the development is proposed to be carried out, and
- If the land requires remediation to be made suitable for the development proposed to be carried out, it is satisfied that the land will be remediated before the development is carried out.

In response to these requirements the applicant has submitted a Phase 1 – Preliminary Contamination Assessment prepared by Environmental Investigation Services (EIS), a division of Jeffery & Katauskas Pty Ltd dated June 2010 (Ref: E23987KK –rpt2).

The Report notes that based on the scope of work undertaken for this assessment EIS considers that there is a moderate risk of contamination at the site and that a stage 2 site assessment should be carried out to address the potential soil/groundwater contamination and the existences of hazardous building materials associated with the existing structures.

The applicant within the Statement of Environmental Effect (SEE) has indicated that this requirement is to be addressed by way of “deferred commencement” condition.

This requirement cannot be the subject of deferred commencement condition as Council per the requirement of SEPP 55 and Clause 48 before granting consent needs to be satisfied that the land is suitable for the proposed development.

The applicant has failed to submit the information required to demonstrate that the land is suitable in its current state, or will be suitable after remediation, for the purpose for which the development is proposed to be carried out, as required by SEPP 55 and Clause 48 and 49 of WLEP 2000. Accordingly consent cannot be granted for the proposed development and this issue has been included as a reason for refusal.

State Environmental Planning Policy (Infrastructure) 2007

Clause 45 of SEPP Infrastructure 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; or*
- *Within 5m of an exposed overhead electricity power line.*

The application was referred to Energy Australia to determine if the subject site was within or immediately adjacent to any of the above electricity infrastructure. Energy Australia by letter dated 18 June 2010 stated that the subject site was not affected by any of the above electricity infrastructure. In this regard, the subject application is considered to satisfy the provisions of Clause 45 SEPP Infrastructure.

State Environmental Planning Policy No. 65 – Design Quality of Residential Flat Development

State Environmental Planning Policy No. 65 – Design Quality for Residential Flat Development (SEPP 65) applies to new residential flat buildings, the substantial redevelopment/refurbishment of existing residential flat buildings and conversion of an existing building to a residential flat building.

Clause 3 of SEPP 65 defines a residential flat building as follows:

“Residential flat building means a building that comprises or includes:

- (a) 3 or more storeys (not including levels below ground level provided for car parking or storage, or both, that protrude less than 1.2 metres above ground level), and*
- (b) 4 or more self-contained dwellings (whether or not the building includes uses for other purposes, such as shops), but does not include a Class 1a building or a Class 1b building under the Building Code of Australia.”*

‘Storey’ is not defined in SEPP 65 or WLEP 2000. As such, for the purposes of determining whether the buildings within the development comply with Clause 3(a) of SEPP 65, the number of storeys within each building has been determined in accordance with the guidelines contained in State Environmental Planning Policy No. 6 – Number of Storeys (despite the provision in Clause 5(1) of WLEP 2000 which indicates that SEPP 6 does not apply to land to which WLEP 2000 applies whilst WLEP 2000 has effect). In accordance with Clause 6 of SEPP 6 a storey is measured as follows;

‘Where the application of a provision of an environmental planning instrument requires a determination of the number of storeys, floors or levels which a building contains, that number shall, for the purposes of applying the provision, be deemed to be the maximum number of storeys, floors or levels, as the case may be, of the

building which may be intersected by the same vertical line, not being a line which passes through any wall of the building.'

The plan submitted with the application indicates that the proposed development will be 3 or more storeys and contains 60 self contained dwellings. The proposed development can therefore be defined as a 'residential flat building' in accordance with Clause 3 of SEPP 65.

As per the definition of a 'Residential Flat Building' and the provisions of Clause 4 outlining the application of the policy, the provisions of SEPP 65 are applicable to the assessment of this application.

SEPP 65 requires any development application for residential flat development to be assessed against the 10 Design Quality Principles contained in Clauses 9-18 of SEPP 65 and the matters contained in the Residential Flat Design Code (RFDC).

Design Quality Principle 1: Context

"Good design responds and contributes to its context. Context can be defined as the key natural and built features of an area.

Responding to context involves identifying the desirable elements of a location's current character or, in the case of precincts undergoing a transition, the desired future character as stated in planning and design policies. New buildings will thereby contribute to the quality and identity of the area."

Comment: The desired future character statement for the F1 locality identifies the desirable elements of the locality which are to remain and be maintained. The desired future character statement can therefore be used to determine whether the proposed development responds appropriately to its context.

The proposed uses are Category 1 development within F1 locality and are therefore considered to be generally consistent with the desired future character of the locality.

Notwithstanding the above, the proposal is not considered to adequately respond to its context for the following reasons;

- The proposed development is inconsistent with the DFC statement of the F1 locality in that it does not provide a pedestrian environment that is safe and active (refer discussion under the DFC of this report);
- The bulk and scale of the proposed development is not consistent with the criteria for the built form control relating to the building appearance and inconsistent with requirement of Clause 66 (refer to discussion under Clause 20 and Clause 66 of this report);
- The residential component of the development is not compatible with surrounding development in this locality and not consistent with the aims and objectives of the DWLEP 2009. Allowing residential development on this site undermines the strategic planning work carried out by Council which has identified this site unsuitable for residential development under the provision of the DWLEP 2009.

It is considered that the development is not appropriate given the scale and form of the existing and desired development in the locality. Accordingly, the proposal does not satisfactorily address the design objectives of this principle. This issue has been included as a reason for refusal.

Design Quality Principle 2: Scale

“Good design provides an appropriate scale in terms of the bulk and height that suits the scale of the street and the surrounding buildings.

Establishing an appropriate scale requires a considered response to the scale of existing development. In precincts undergoing a transition, proposed bulk and height needs to achieve the scale identified for the desired future character of the area.”

Comment: The proposed development is inconsistent with the built form control, associated with bulk and scale, for development in the F1 locality. Whilst the proposed development complies with the maximum height limit and is generally consistent with the front setback control, which apply to development in the F1 locality. The proposed development does comply with built form control relating to the building appearance.

For the above reasons it is considered that the scale of the proposed development is inconsistent with this design quality principle and this inconsistency has been included as a reason for refusal.

Design Quality Principle 3: Built Form

“Good design achieves an appropriate built form for a site and the building’s purpose, in terms of building alignments, proportions, building type 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 design of the proposal is not appropriate given the residential use proposed within development is not compatible with the surrounding development. The development does not provide adequate landscaped setbacks which provide the opportunity to provide plantings which may assist in softening the visual impact of the development therefore contribute to the streetscape of Roger Street. The proposed development does not therefore provide a positive contribution to the streetscape and as such, is not supported.

The built form of the residential component of the development does not allow for the internal amenity of the units to be optimised. The units do not receive a satisfactory level of amenity in terms of solar access, natural ventilation, and visual and acoustic privacy.

For the reasons given the proposal is not considered to be consistent with this design quality principle and this inconsistency has been included as a reason for refusal.

Design Quality Principle 4: Density

“Good design has a density appropriate for a site and its context, in terms of floor space yields (or number of units or residents).

Appropriate densities are sustainable and consistent with the existing density in an area or, in precincts undergoing a transition, are consistent with the stated desired future density. Sustainable densities respond to the regional context, availability of infrastructure, public transport, community facilities and environmental quality."

Comment: No specific housing or commercial density controls apply to the development therefore the appropriateness of the density proposed is determined by the proposal's compliance with relevant planning controls.

The proposal has been assessed against the provisions of SEPP 65 and the Residential Flat Design Code and WLEP 2000. The assessment has identified non-compliances with the 'general rules of thumb' for building separation, natural ventilation, internal solar access, lack of landscaping and open space, and acoustic and visual privacy. The poor internal amenity that results from these non-compliances indicates that the density of the development is excessive. The proposed development is not therefore consistent with this design quality principle and this inconsistency has been included as a reason for refusal.

Design Quality Principle 5: Resource, energy and water efficiency

"Good design makes efficient use of natural resources, energy and water throughout its full life cycle, including construction.

Sustainability is integral to the design process. Aspects include demolition of existing structures, recycling of materials, selection of appropriate and sustainable materials, adaptability and reuse of buildings, layouts and built form, passive solar design principles, efficient appliances and mechanical services, soil zones for vegetation and reuse of water."

Comment: BASIX certificates for residential of the development has been submitted with the application. The certificate confirms that the proposed development is capable of achieving the water and energy targets and has obtained a pass for thermal comfort.

Despite that compliance with the BASIX requirement has been achieved, it is considered that the proposal does not make efficient use of energy for the following reasons:

- The minimal building separation proposed results in acoustic and privacy impacts between apartments.
- Mechanical ventilation is used to compensate for the lack of natural ventilation and increased energy consumption results.
- The minimal building separation results in poor access to light for those rooms which adjoin the internal courtyard and theses that faces western boundary and associated increase energy consumption for the provision of lighting.

The proposed apartment layout and building separation does not minimise energy consumption and make efficient use of energy resources and is not therefore consistent with this design quality principle this inconsistency has been included as a reason for refusal.

Design Quality Principle 6: Landscape

“Good design recognises that together landscape and buildings operate as an integrated and sustainable system, resulting in greater aesthetic quality and amenity for both occupants and the adjoining public domain.

Landscape design builds on the existing site’s natural and cultural features in responsible and creative ways. It enhances the development’s natural environmental performance by co-ordinating water and soil management, solar access, micro-climate, tree canopy and habitat values. It contributes to the positive image and contextual fit of development through respect for streetscape and neighbourhood character, or desired future character.

Landscape design should optimise useability, privacy and social opportunity, equitable access and respect for neighbours’ amenity, and provide for practical establishment and long term management.”

Comment: There is no requirement in the F1 locality for landscaped open space. The proposal only incorporates landscape planter boxes within the centre courtyard and adjacent to the western boundary within the first floor area. No access has been proposed to allow for the maintenance of the landscaping area proposed within this development.

Given no provision has been made for the practical establishment and long term management of the gardens that has been proposed, it is considered that the landscape design does not provide a satisfactory level of amenity for the future occupants of development. As such, this issue has been included as reasons for refusal.

Design Quality Principle 7: Amenity

“Good design provides amenity through the physical, spatial and environmental quality of a development.

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

Comment: The building and apartment layout proposed does not provide a satisfactory level of amenity for future occupants in terms of visual privacy, natural ventilation and acoustic privacy.

The building separation proposed varies between 3.6m – 7.3m and the internal courtyard is enclosed to the north and south by the building on the adjoining properties. The building layout and separation proposed limits the airflow to the internal courtyard and therefore limits the natural ventilation of the units.

The shadow diagrams submitted do not clearly demonstrate that the private open space and living areas of a minimum of 70% of the units within the development will receive a minimum of 3 hours of sunlight in mid winter.

The development is not accessible for all age groups and degrees of mobility as there is no lift proposed within the development and residents will be required to access their units via an internal stairway only.

In summary, the proposed development fails to provide a satisfactory level of amenity for future occupants. Accordingly, the proposal's inconsistency with Design Quality Principle 7 has been included as a reason for refusal.

Design Quality Principle 8: Safety and security

"Good design optimises safety and security, both internal to the development and for the public domain.

This is achieved by maximising overlooking of public and communal spaces while maintaining internal privacy, avoiding dark and non-visible areas, maximising activity on streets, providing clear, safe access points, providing quality public spaces that cater for desired recreational uses, providing lighting appropriate to the location and desired activities, and clear definition between public and private spaces."

Comment: A pedestrian access point into the building, separated from vehicular traffic is considered to provide a clear and safe access point from Roger Street. The provision of internal access from the basement to the dwellings/foyer assists in security.

An assessment of the safety and security of the proposal against the Crime Prevention through Environmental Design Principles (CPTED) can be found under RFDC table of this report.

The proposal is generally consistent with this design quality principle however there is some concern in relation to internal access (via stairs) to the residential development through the retail/commercial area. This issue has been included as a reason for refusal.

Design Quality Principle 9: Social dimensions

"Good design responds to the social context and needs of the local community in terms of lifestyles, affordability, and access to social facilities.

New developments should optimise the provision of housing to suit the social mix and needs in the neighbourhood or, in the case of precincts undergoing transition, provide for the desired future community."

Comment: The development will provide apartment style accommodation and commercial premises that are located within close proximity to public transport and shopping facilities. It is anticipated that, due to their size, apartments within the development will be more affordable than single dwelling houses that are available within the local area. It is considered that the proposed building satisfies the objectives of this principle.

Design Quality Principle 10 Aesthetics

"Quality aesthetics require the appropriate composition of building elements, textures, materials and colours and reflect the use, internal design and structure of the development. Aesthetics should respond to the environment and context, particularly to desirable elements of the existing streetscape or, in precincts undergoing transition, contribute to the desired future character of the area."

Comment: The development is satisfactory in terms of providing appropriate colours and finishes.

Overall, the proposed development is found to be inconsistent and not compatible with the desirable elements of this locality as discussed through out this report. Accordingly, the proposal is considered to be inconsistent with the intent of this principle and this inconsistency has been included as reason for refusal.

SEPP 65 - Residential Design Code Checklist		
Part	Guideline	Comments/explanation of compliance
PART 01 - LOCAL CONTEXT		
Primary Development Controls		
Building Height	Where there is an existing floor space ratio (FSR), test height controls against it to ensure a good fit.	<p>Not Applicable No FSR applies under WLEP 2000.</p> <p>Note: The density of development in the F1 Locality under WLEP 2000 is controlled by building height, front setbacks and carparking standards.</p>
	<p>Test heights against the number of storeys and the minimum ceiling heights required for the desired building use.</p> <p>Note: The height controls under SEPP 65 are based on controlling the number of storeys using height planes. Under WLEP 2000, the F1 locality contains no height plane controls.</p>	<p>YES</p> <p>The proposal complies with the 11 metre height control under the F1 locality statement.</p>
Building Depth	In general, an apartment building depth of 10-18 metres is appropriate. Developments that propose wider than 18 metres must demonstrate how satisfactory day lighting and natural ventilation are to be achieved.	<p>YES</p> <p>The building depth does not exceed 18 metres and is therefore considered satisfactory.</p>
Building Separation	<p>For buildings up to four storeys/ 12 metres, the following distances of separation are suggested;</p> <ul style="list-style-type: none"> -12 metres between habitable rooms/balconies - 9 metres between habitable/balconies and non-habitable rooms - 6 metres are provided between non-habitable rooms. <p>A habitable room is any room or area used for normal domestic activities, including living, dining, family, lounge, bedrooms, study, kitchen, sun room and play room.</p> <p>A non-habitable room is a space of a specialised nature not occupied frequently or for extended periods, including bathrooms, toilets, pantries, walk in wardrobes, corridors, lobbies, photographic darkrooms and clothes drying</p>	<p>NO</p> <p>The proposal has balcony to balcony separation of 3.6 to 7.3m in the central courtyard and 1.1 to 2m to the back (western) boundary which in the future could potentially be 11m high blank walls to industrial units built right on the boundary.</p> <p>The Building separation proposed between the building and to the adjoining properties is inconsistent with the requirement of the RFDC and as result the proposed development will have poor amenity (i.e. visual and acoustic privacy, loss of daylight access to apartments and to private and shared open spaces) for the future occupants of the development.</p> <p>This issue has been included as reason for refusal.</p>

SEPP 65 - Residential Design Code Checklist		
Part	Guideline	Comments/explanation of compliance
	rooms. A zero building separation may be appropriate in contexts such as in urban areas between street wall building types (party walls).	
Street Setbacks	Identify the desired streetscape character, the common setback of buildings in the street, the accommodation of street tree planting and the height of buildings and daylight access controls.	YES The front building setbacks comply with the required front setbacks for the F1 Locality.
	Identify the quality, type and use of gardens and landscaped areas facing the street.	YES No landscaped area controls apply to the F1 locality under WLEP 2000. The proposed landscaping is located in the courtyard area on the first floor and is not visible from the street.
	Test street setbacks with building envelopes and street sections.	Not Applicable No building envelope control applies to the proposed development under WLEP 2000.
Side and Rear Setbacks	Relate side setbacks to existing streetscape patterns.	Not Applicable There are no side and rear setback controls under the F1 Locality. The proposal is generally consistent with the setbacks of the adjoining development.
Floor Space Ratio	Test the desired built form outcome against proposed floor space ratio to ensure consistency with building height- building footprint the three dimensional building envelope open space requirements.	Not Applicable No FSR applies to the subject site under WLEP 2000.
PART 02- SITE DESIGN		
Site Configuration		
Deep Soil Zones	A minimum of 25 percent of the open space area of a site should be a deep soil zone; more is desirable. Exceptions may be made in urban areas where sites are built out and there is no capacity for water infiltration. In these instances, storm water treatment measures must be integrated with the design of the residential flat building.	NO There are no minimum landscaped open space standards for development within the F1 Locality Statement of WLEP 2000. However, SEPP 65 requires that proposed development provides for a minimum of 25% of the open space area of a site should be a deep soil zone. The proposed development provides a maximum of 13% landscape area in the form of deep soil zone in the central courtyard and therefore does not comply with the requirement of the RFDC.
Open Space	The area of communal open space required should generally be at least between 25 and 30 percent of the	No No communal landscaped area controls

SEPP 65 - Residential Design Code Checklist		
Part	Guideline	Comments/explanation of compliance
	<p>site area. Larger sites and brownfield sites may have potential for more than 30 percent.</p> <p>Where developments are unable to achieve the recommended communal open space, such as those in dense urban areas, they must demonstrate that residential amenity is provided in the form of increased private open space and/or in a contribution to public open space.</p>	<p>apply to the F1 locality under WLEP 2000</p> <p>Notwithstanding SEPP 65 requires communal open space within mixed use developments (i.e. on roof tops and podiums). The proposed development does not provide communal open space and therefore does not comply with the requirement of the RFDC.</p>
	<p>The minimum recommended area of private open space for each apartment at ground level or similar space on a structure, such as on a podium or car park, is 25m²; the minimum preferred dimension in one direction is 4 metres. (See "Balconies" for other private open space requirements)</p>	<p>Not Applicable</p> <p>There are no ground floor level residential units.</p>
Safety	<p>Carry out a formal crime risk assessment for all residential developments of more than 20 new dwellings.</p>	<p>NO</p> <p>The proposed development has been assessed against the four Crime Prevention Through Environmental Design Principles outlined in 'Crime prevention and the assessment of development applications – Guidelines under Section 79C of the Environmental Planning and Assessment Act 1979' prepared by the Department of Urban Affairs and Planning (now Department of Planning).</p> <p>Surveillance</p> <p>The design allows for the surveillance of Roger Street from the living areas and bedrooms within Units fronting Roger Street.</p> <p>Surveillance of the internal Courtyard is available from the remaining of the units that are fronting the street.</p> <p>Effective lighting improves the surveillance of an area. No lighting details have been submitted with the application. If the application is approved a condition should be included on the consent to require the details of lighting for security to be submitted with the Construction Certificate to ensure that adequate security lighting is provided.</p> <p>Access Control</p> <p>The landscaping of the front setback</p>

SEPP 65 - Residential Design Code Checklist		
Part	Guideline	Comments/explanation of compliance
		<p>clearly defines the boundary of the public and private domain and thus discourages people from entering the site unless they have a specific reason for doing so.</p> <p>The design of the internal access from the basement car park to the residential units (via internal stairs) is inadequate in that the safety of residents is compromised by lack of surveillance within the stairs and indirect sightlines.</p> <p>Territorial Reinforcement</p> <p>The design does provide common areas such as the basement parking which will be well used by the majority of the residents within the development therefore the opportunity for crime is reduced as the common areas will be well supervised.</p> <p>Space Management</p> <p>Space management strategies include activity coordination, site cleanliness, rapid repair of vandalism and graffiti, and the replacement of security lighting. Will be the responsibility of the strata body to ensure that the common space is well maintained and well used.</p> <p>With the exception of the stair access from the car park to the residential units, it is considered that the proposal is consistent with the requirements of this Clause.</p>
Visual Privacy	Refer to Building Separation minimum standards.	<p>NO</p> <p>As discussed under 'Building Separation' of this report the proposed distances of separation result in privacy and acoustic impacts. These impacts have not been addressed adequately by the application.</p>
Building Entry	<p>Identify the access requirements from the street or car parking area to the apartment entrance.</p> <p>Follow the accessibility standard set out in AS 1428 (parts 1 and 2), as a minimum.</p> <p>Provide barrier free access to at least 20 percent of dwellings in the development.</p>	<p>NO</p> <p>All residential units are accessed via an entry foyer on Roger Street and an associated pedestrian passageway to the stairs. Access is also provided from the basement carparking levels via the internal stairs to each residential floor above.</p> <p>The pedestrian entry is not separated from the retail shop entry doors, therefore the development does not reduce potential conflict.</p>

SEPP 65 - Residential Design Code Checklist		
Part	Guideline	Comments/explanation of compliance
Vehicle Access	Generally limit the width of driveways to a maximum of six metres.	<p>YES</p> <p>Vehicular access to the site is via the main driveway entry from Roger Street. The driveway from Roger Street has a width of approximately 6m.</p> <p>The access driveway widths comply with AS 2890.1-2004 and is consistent with the type and scale of development proposed.</p>
Pedestrian Access	Locate vehicle entries away from main pedestrian entries and on secondary frontages.	<p>YES</p> <p>Pedestrian access is provided from Roger Street, away from the vehicular access to the site.</p>
PART 03 - BUILDING DESIGN		
Building Configuration		
Apartment Layout	Single-aspect apartments should be limited in depth to 8 metres from a window.	<p>YES</p> <p>All 60 units proposed in the development are technically single aspect,</p> <p>However, all units comply with the 8m depth from a window.</p>
	The back of a kitchen should be no more than 8 metres from a window.	<p>YES</p> <p>All kitchens comply with this requirement.</p>
	The width of cross-over or cross-through apartments over 15 metres deep should be 4 metres or greater to avoid deep narrow apartment layouts.	<p>YES</p> <p>No units are greater than 15 metres in depth and therefore the proposal is considered satisfactory in this regard.</p>
	<p>If Council chooses to standardise apartment sizes, a range of sizes that do not exclude affordable housing should be used. As a guide, the Affordable Housing Service suggest the following minimum apartment sizes, which can contribute to housing affordability: (apartment size is only one factor influencing affordability)</p> <ul style="list-style-type: none"> - 1 bedroom apartment 50m² - 2 bedroom apartment 70m² - 3 bedroom apartment 95m² 	<p>YES</p> <p>The apartments proposed vary in size from 70.3 square metres to 81.9 square metres. The apartment sizes are considered to be satisfactory.</p>
Balconies	<p>Provide primary balconies for all apartments with a minimum depth of 2 metres.</p> <p>Developments which seek to vary from the minimum standards must demonstrate that negative impacts from the context-noise, wind – can be satisfactorily mitigated with design solutions.</p>	<p>YES</p> <p>The development provides complying primary balcony widths for each dwelling.</p> <p>The primary areas of all balconies are a minimum size of 10m² which complies with the controls under WLEP 2000.</p>

SEPP 65 - Residential Design Code Checklist		
Part	Guideline	Comments/explanation of compliance
Ceiling Heights	<p>The following recommended dimensions are measured from finished floor level (FFL) to finished ceiling level (FCL). These are minimums only and do not preclude higher ceilings, if desired.</p> <p>In general, 2.7 metres minimum for all habitable rooms on all floors, 2.4 metres is the preferred minimum for all non-habitable rooms, however 2.25m is permitted.</p>	<p>YES</p> <p>The floor to floor heights for each level are as follows;</p> <p>Ground floor - 3.17m First floor - 2.85m Second floor – 2.85 m Third floor – 2.4 m</p> <p>The proposed development is therefore satisfactory in this regard.</p>
Ground Floor Apartments	Optimise the number of ground floor apartments with separate entries and consider requiring an appropriate percentage of accessible units. This relates to the desired streetscape and topography of the site.	<p>Not Applicable</p> <p>This is a mixed-use development that has no residential units on the ground floor level.</p>
	Provide ground floor apartments with access to private open space, preferably as a terrace or garden.	<p>Not Applicable</p> <p>This is a mixed-use development that has no residential units on the ground floor level.</p>
Internal Circulation	<p>In general, where units are arranged off a double-loaded corridor, the number of units accessible from a single core/corridor should be limited to eight. Exceptions may be allowed:</p> <p>for adaptive reuse buildings where developments can demonstrate the achievement of the desired streetscape character and entry response</p> <p>Where developments can demonstrate a high level of amenity for common lobbies, corridors and units, (cross over, dual aspect apartments).</p>	<p>YES</p> <p>The maximum number of units off each corridor is 2.</p>

SEPP 65 - Residential Design Code Checklist		
Part	Guideline	Comments/explanation of compliance
Storage	In addition to kitchen cupboards and bedroom wardrobes, provide accessible storage facilities at the following rates: <ul style="list-style-type: none"> two-bedroom apartments 8m3 	<p>YES</p> <p>Satisfactory storage has been provided in the proposed development.</p>
Acoustic Privacy		<p>No</p> <p>There is insufficient information submitted with the application (i.e. acoustic report) to demonstrate that the acoustic impact on the future occupants of the development will be acceptable.</p>
Building Amenity		
Daylight Access	Living rooms and private open spaces for at least 70 percent of apartments in a development should receive a minimum of three hours direct sunlight between 9 am and 3 pm in mid winter. In dense urban areas a minimum of two hours may be acceptable.	<p>NO</p> <p>The shadow diagrams submitted do not satisfactorily demonstrate that the dwellings within the development will receive adequate daylight access.</p> <p>As there is insufficient information submitted to demonstrate that the proposal complies with the solar access requirements, this issue has been included as a reason for refusal.</p>
	Limit the number of single-aspect apartments with a southerly aspect (SW/SE) to a maximum of 10% of the total units proposed.	<p>YES.</p> <p>No units have a southern aspect.</p>
Natural Ventilation	Building depths, which support natural ventilation typically range from 10 to 18 metres.	<p>YES.</p> <p>The proposed development achieves compliance with the building depth requirement.</p>
	Sixty percent (60%) of residential units should be naturally cross-ventilated.	<p>NO</p> <p>All of the first floor units (i.e. Units No. 1-24) as single aspect and has no cross ventilation. The remaining of the units (i.e. units No: 24 -60) are two stories and has openable windows both upstairs and downstairs, however it is considered that adequate cross ventilation has not been provided to all units within the development due to the minimal separation proposed between each building limits air flow into the courtyard area and therefore restricts the air flow through the units on the first and second floors.</p> <p>The inadequate natural ventilation provided has been included as a reason for refusal.</p>

SEPP 65 - Residential Design Code Checklist		
Part	Guideline	Comments/explanation of compliance
Building Form	No rules of thumb	Not Applicable
Building Performance		
Waste Management	Supply waste management plans as part of the development application submission as per the NSW Waste Board.	YES This could form a condition of consent if the application was approved in relation to the recycling of excavation and demolition materials.
Water Conservation	Rainwater is not to be collected from roofs coated with lead- or bitumen-based paints, or from asbestos- cement roofs. Normal guttering is sufficient for water collections provided that it is kept clear of leaves and debris.	YES The BASIX certificate submitted with the application indicates that the re use of water is proposed through the provision of a 10 000 litre rainwater tank which will allow for irrigation of the common landscaped area on the site and for car washing on the 2 car wash bays on the site.

Regional Environmental Plans

There are no Regional Environmental Plans which are relevant to this application.

Warringah Local Environmental Plan 2000

DESIRED FUTURE CHARACTER

The site is located within the F1 Brookvale centre locality as identified under WLEP 2000. The Desired Future Character Statement for this locality states:

The Brookvale Centre locality will be developed as a mixed retail and business area incorporating low-rise shop-top housing.

Future development will help create a pedestrian environment which is safe, active and interesting. Future development will incorporate street level retailing and business uses and contributes to creating cohesive and attractive streetscapes

Offices, 'shops', 'business premises' and 'housing (not on the ground floor)' are all identified as Category One uses within the F1 locality.

Clause 12(3) (a) provides that the consent authority must consider Category 1 development against the localities Desired Future Character. An assessment of the related components of the DFC has been undertaken as follows:

The Brookvale Centre locality will be developed as a mixed retail and business area incorporating low-rise shop-top housing.

Comment: The proposal involves a shop top housing development, which is consistent with the intent of the Desired Future Character.

Future development will help create a pedestrian environment which is safe, active and interesting. Future development will incorporate street level retailing and business uses and contributes to creating cohesive and attractive streetscapes.

Comment: This component of the desired future character anticipates that future development will help create a pedestrian environment which is safe, active and interesting. The proposed development, whilst providing retailing and business uses at the ground level is not consistent with this component of the DFC as the proposed development at the ground floor has varying finished floor levels, which incorporates narrow walkways between tenancies with steps facing Roger Street and within the narrow walkways.

The proposed development is therefore not pedestrian friendly and does not provide an active street frontage. Accordingly, the proposed development is inconsistent with this component of the DFC and this issue has been included as reason for refusal.

Built Form Controls for Locality F1 Brookvale Centre

The following table outlines compliance with the Built form Control of the above locality statement:

Standard	Required	Proposed	Compliance
Building Height	11m	11m	Yes
Front Building setback	The minium front setback is to be consistent with the setback of adjacent building	Building setback - 4.5m (with awnings /balconies extending to a setback of 2m)	Yes
Building Appearance	Building design to achieve criteria	Criteria is not achieved	No*

(*) These non-compliances are addressed below.

Clause 20 Variation

A Clause 20 variation is required for the building appearance built form control under the F1 locality.

Clause 20 of WLEP 2000 states the following:

“Consent may be granted to proposed development even if the development does not comply with one or more development standards, providing the resulting development is consistent with the general principles of development control, the desired future character of the locality and any relevant State Environmental Planning Policy.”

(i)	General Principles of Development Control The proposal is not consistent with several General Principles of Development Control as detailed in the 'General Principles of Development Control' table as detailed in this report.
(ii)	Desired Future Character of the Locality The proposal is not consistent with the Desired Future Character Statement as detailed earlier in this report.

(iii)	<p>Relevant State Environmental Planning Policies</p> <p>The proposed development has not been found to be consistent with the provisions of State Environmental Planning Policy No. 65 - Design Quality of Residential Flat Buildings and State Environmental Planning Policy No. 55 - Remediation of Land. The proposal does however comply with State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 and State Environmental Planning Policy (Infrastructure) 2007</p>
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Based on the above assessment, the proposed development cannot be considered for a variation to the building appearance built form control.

Whilst no variations can be granted in accordance with Clause 20 of WLEP 2000, the following assessment of non-compliance has been included to determine whether the non-compliance could otherwise be supported.

Building Appearance

In accordance with the building appearance built form control, building design is required to comply with the following criteria:

- **Articulate long façade by breaking the elevation into the distinct segments.**

Comment: The proposed development is broken up horizontally into nine distinct segments (each with its own gable roof).

Notwithstanding the above, Council's Urban Designer has raised specific concerns in relation bulk and scale of the development as it presents to Roger Street, which have been addressed under Clause 66 of this report. In summary, the proposed development is found to be unsatisfactory in this regard.

- **Detail new development by incorporating similar pattern and proportional where established by existing buildings.**

Comment: Roger Street is characterised by a mix of buildings that are different in scale and uses. There are no patterns or proportions that are suitable for adoption for this development.

- **Ensure larger infill sites reflect the general height, form, alignment and façade character of the street.**

Comment: Due to the extremely varied mix of development on Roger Street there is no distinct character to reflect.

- **Create active Street Fronts.**

Comment: This issue has been addressed under the DFC component of the report, in summary; the proposed development does not provide an active street front as the development at ground floor is at has varying levels below street level, which is not considered to create an active and safe environment.

- **Continue footpath awnings where appropriate, and**

Comment: The existing street being predominately used for industrial purposes does not have existing footpath awnings. The proposed development incorporates an awning in the

form of first floor balconies, which will provide weather protection for the retail and commercial premises. Accordingly, the proposed development is satisfactory in this regard.

- **Address both street frontages on corner sites.**

Comment: This criteria is not relevant as the subject site is not on a corner site.

The proposed development is found to be inconsistent with the requirement of the built form control relating to the building appearance and therefore this issue has been included as a reason for refusal.

GENERAL PRINCIPLES OF DEVELOPMENT CONTROL

The following General Principles of Development Control as contained in Part 4 of Warringah Local Environmental Plan, 2000 are considered relevant to the consideration of the proposed development;

Principal	Applies	Comments	Compliant
CL38 Glare & reflection	YES	The proposal requires the use of various building elements including glass, which has reflective qualities. If the application is approved, conditions of consent could be included to require the reflectivity of the windows to comply with Council's requirements.	YES (subject to conditions)
CL39 Local retail centres	NO	No Comment	Not Applicable
CL40 Housing for Older People and People with Disabilities	NO	No Comment	Not Applicable
CL41 Brothels	No	Not Applicable	Not Applicable
CL42 Construction Sites	YES	The potential exists for the construction of the proposed development to have an adverse impact upon nearby properties in terms of traffic, noise, dust, parking, accessibility, sediment and the safety of pedestrians given the nature of the works and length of time for construction. These matters are generally covered in the Construction Management Plan . However, if the application was approved a condition of consent could be included to require compliance with this requirement. Issues to be addressed in the Construction Management Plan include pedestrian movements and safety, stormwater and wastewater disposal, waste management, tree protection, hours of demolition and excavation, air quality, noise management and truck parking.	YES (subject to conditions)
CL43 Noise	YES	Clause 43 states that development is not to result in noise emission which would unreasonably diminish the amenity of the area and is not to result in noise intrusion which would be unreasonable to the occupants. The retail/commercial uses are consistent with surrounding land uses and as such will not result in noise emissions which are unreasonable in the locality in which they are located. In relation to the acoustic issues relating to the residential component of the proposed development,	NO

Principal	Applies	Comments	Compliant
		<p>the applicant has not provided sufficient information (i.e. an acoustic report) to demonstrate that the acoustic impact on the future occupants of the development will be acceptable.</p> <p>Accordingly, the proposed development is inconsistent with the requirement of Clause 43 and this issue has been included as a reason for refusal.</p>	
CL44 Pollutants	NO	The normal operation of the development will not result in the emission of atmospheric or other pollutants which would unreasonably diminish the amenity of adjacent properties.	Not Applicable
CL45 Hazardous Uses	NO	No Comment	Not Applicable
CL46 Radiation Emission Levels	NO	No Comment	Not Applicable
CL47 Flood Affected Land	NO	The site is not identified as flood affected.	Not Applicable
CL48 Potentially Contaminated Land	YES	<p>Clause 48 states that the consent authority must not consent to the carrying out of development on land unless;</p> <ul style="list-style-type: none"> • It has considered whether the land is contaminated, and • If the land is contaminated, it is satisfied that the land is suitable in its contaminated state for the purpose for which the development is proposed to be carried out, and • If the land requires remediation to be made suitable for the development proposed to be carried out, it is satisfied that the land will be remediated before the development is carried out. <p>These issues have been addressed in detail under 'State Environmental Planning Policy No.55 - Remediation of Land' in this report. In summary, there is insufficient information submitted with the application to demonstrate that this site is suitable for the proposed development.</p>	NO
CL49 Remediation of Contaminated Land	YES	Refer to comments under Clause 48	NO
CL49a Acid Sulfate Soils	NO	The site is not within an acid sulfate soils area on Council's Acid Sulfate Soils Hazard Map accompanying WLEP 2000. The requirements of Clause 49a are not therefore applicable to the proposed development.	Not Applicable
CL50 Safety & Security	YES	An assessment of the proposal using the Crime Prevention through Environmental Design (CPTED) principles (surveillance, access control, territorial reinforcement and space management) under 'Safety' in the Residential Flat Design Code table of this report has found that the opportunities for crime have not been minimised.	NO
CL51 Front Fences and Walls	NO	No Front Fence is proposed as part of this application.	Not Applicable

Principal	Applies	Comments	Compliant
CL52 Development Near Parks, Bushland Reserves & other public Open Spaces	NO	The subject site does not directly adjoin or is near a park, Bushland reserve or any other public open space. Accordingly, the requirement of this Clause is not applicable to the proposed development.	Not Applicable
CL53 Signs	NO	No signs are proposed as part of this application. If the application was recommended for approval a condition will be included in the consent to state that any new signs will be subject of a new DA.	Not Applicable
CL54 Provision and Location of Utility Services	YES	The site is satisfactorily serviced with utility services including the provision for the supply of water, gas, telecommunications and electricity and the satisfactory management of sewage and drainage. Conditions could be imposed if the application was approved requiring connection to all utility services including an approved telecommunications provider, energy, water and sewerage.	YES (Subject to conditions)
CL55 Site Consolidation in 'Medium Density Areas'	NO	The site is not situated within a 'medium density area' in accordance with WLEP 2000.	Not Applicable
CL56 Retaining Unique Environmental Features on Site	NO	The site does not contain any unique environmental features.	Not Applicable
CL57 Development on Sloping Land	YES	Clause 57 states that on sloping land, the height and bulk of development, particularly on the downhill side, is to be minimised and the need for cut and fill reduced by designs which minimise the building footprint and allow the building mass to step down the slope. The clause also states that excavation of the landform is to be minimised. The height and bulk of the development and extent of cut and fill has been incorporated within the design to ensure the proposal is not visually dominant.	YES
CL58 Protection of Existing Flora	NO	There is no vegetation on site currently that is worthy of retention. The proposed landscaping will ensure sympathetic planting is provided on site and is supported by Councils Landscape Officer.	Not Applicable
CL59 Koala Habitat Protection	NO	No Comment	Not Applicable
CL60 Watercourses & Aquatic Habitats	No	No Comment	Not Applicable
CL61 Views	YES	Clause 61 states that development is to allow for the reasonable sharing of views. Due to the topography and location of the site, the proposed development will not affect any significant views.	YES
CL62 Access to sunlight	YES	Clause 62 states that development is not to unreasonably reduce sunlight to surrounding properties. Sunlight to at least 50% of the principal private open space is not to be reduced to less than 2 hours between 9am and 3pm on June 21 and where overshadowing by existing structures and fences is greater than this, sunlight is not to be	YES

Principal	Applies	Comments	Compliant
		<p>further reduced by the development by more than 20%.</p> <p>The shadow diagrams submitted with the application demonstrate that the proposed development will achieve compliance with the requirement of this Clause.</p> <p>As such, the proposed development complies with the requirements of Clause 62.</p>	
CL63 Landscaped Open Space	NO	There is no requirement for landscaped open space in the F1 locality. Accordingly, the requirements of Clause 63 are not applicable to this proposal.	Not Applicable
CL64 Private open space	NO	<p>In accordance with Clause 64 of WLEP 2000 apartment style housing is to be provided with a minimum of 10 square metres of private open space with minimum dimensions of 2.5 metres.</p> <p>Each unit has access to an area of private space from the living room that complies with the minimum area requirement of 10 square metres. The private open space of each unit also complies with the minimum dimension requirement of 2.5 square metres.</p>	YES
CL65 Privacy	YES	<p>Clause 65 states that development is not to cause unreasonable direct overlooking of habitable rooms and principal private open spaces of other dwellings. In particular the windows of one dwelling are to be located so they do not provide direct and close views (i.e. from less than 9 metres away) into the windows of other dwellings.</p> <p>The proposed development has been design to minimise the privacy impacts of the proposed development on the adjoining properties.</p> <p>However, in relation to the internal privacy, as discussed under 'RFDC' of this report the proposed separation of less than 9 metres results in privacy impacts between the proposes units.</p> <p>Accordingly, the proposed is inconsistent with the requirement of this Clause.</p>	NO
CL66 Building Bulk	YES	<p>Clause 66 states the following:</p> <p><i>'Buildings are to have a visual bulk and an architectural scale consistent with structures on adjoining or nearby land and are not to visually dominate the street or surrounding spaces, unless the applicable Locality Statement provides otherwise.</i></p> <p><i>In particular:</i></p> <ul style="list-style-type: none"> <i>Side and rear setbacks are to be progressively increased as wall height increases,</i> <i>Large areas of continuous wall planes are to be avoided by varying building setbacks and using appropriate techniques to provide visual</i> 	NO

Principal	Applies	Comments	Compliant
		<p>relief, and</p> <ul style="list-style-type: none"> • <i>Appropriate landscape plantings are to be provided to reduce the visual bulk of new buildings and works.'</i> <p>The modulation and articulation of the facade described is considered appropriate given the industrial nature of the locality. However, the scale of the development combined with the minimal setbacks proposed results in a building which visually dominates the street.</p> <p>Council's urban Designer has provided the following comments in relation to the bulk and scale of the development as it presents to the street:</p> <p><i>"Proposal has a continuous street boundary setback of building façade and awnings/ balconies with monotonous repetition. Roger Street has no suitable contextual reference to adopt but proposed modular façade units should introduce some variations to add visual relief and rhythm. Roof form and repetitive dormer roof windows also add bulk to the building form".</i></p> <p>For the reasons given, the proposal is considered to be inconsistent with the provisions of Clause 66. Accordingly, this issue has been included as a reason for refusal.</p>	
CL67 Roofs	YES	<p>The general principle requires roofs to complement the local skyline.</p> <p>The roof forms proposed are appropriate for the types of development proposed and are compatible with other development in the locality. Accordingly, the proposal is consistent with the requirement of Clause 67.</p>	YES
CL68 Conservation of Energy and Water	YES	<p>BASIX Certificates has been submitted for the residential component of the development with the application. The development achieves the target for water, thermal comfort and energy use. If the application is approved conditions of consent will be required to ensure compliance with the BASIX commitments specified on the certificate. If the application was recommended for approval, conditions should be included in the consent to ensure the commitments identified on the BASIX certificate are implemented.</p>	YES
CL69 Accessibility – Public and Semi-Public Buildings	YES	<p>Clause 69 requires that the sitting, design and construction of the premises available to the public are to ensure an accessible continuous path of travel, so that all people can enter and use the premises. Such access is to comply with the requirement of the Disability Discrimination Act 1992 (DDA Act 1992) and with Australian Standard AS 1428.2 - 1992.</p> <p>The development provides a continuous path of travel from the street to the retail and commercial</p>	YES (subject to condition)

Principal	Applies	Comments	Compliant
		component of the development however within the site there are stairs which require persons to leave the site in order to move between retail/commercial premises. This is not considered equitable as per the DDA 1992 and has been included as a reason for refusal.	
CL70 Site facilities	YES	<p>Clause 70 states that site facilities including garbage and recycling enclosures, mailboxes and clothes drying facilities are to be adequate and convenient for the needs of users and are to have minimal visual impact from public places.</p> <p>Garbage storage room are provided on the ground level, which is not visible from the street.</p> <p>Council's waste officer comments were not received at the time of writing this report, accordingly it is assumed that the garbage facility provided within the development is satisfactory and consistent with the requirement of this Clause.</p>	YES
CL71 Parking facilities (visual impact)	YES	<p>Clause 71 requires that car-parking facilities are to be sited and designed so as not to dominate the street frontage or other public spaces.</p> <p>The development incorporates a basement parking and therefore, the visual impact of the parking facility is minimised when viewed from the street.</p>	YES
CL72 Traffic access & safety	YES	<p>Council 's Traffic Engineer has provided the following comments in relation to the requirement of this Clause:</p> <p><i>"The traffic section has assessed the plans and documents submitted and the following issues are required to be addressed to enable a complete and comprehensive assessment to be undertaken:</i></p> <ul style="list-style-type: none"> <i>The traffic generation rate applied for the existing use/s has no justification to support the assumption. It has not been based on surveys, trading data or known rates. Further details relating to the generation rate applied shall be submitted justifying the rate applied.</i> <p>Based on the above comments, the proposed development is inconsistent with the requirement of this Clause and this issue has been included as reason for refusal.</p>	NO
CL73 On-site Loading and Unloading	Yes	Adequate provisions are made for loading and unloading within the basement carparking.	YES
CL74 Provision of Carparking	YES	<p>Clause 74 requires that adequate off-street car parking is to be provided to serve a development and that the application must be assessed against the provisions of Schedule 17.</p> <p>Assessment under the provisions of Schedule 17</p> <p>Schedule 17 provides that car parking for the proposed development shall be calculated at a rate of:</p>	YES

Principal	Applies	Comments	Compliant
		<p><u>Apartment Units</u> 1 space Per 1 bedroom unit 1.2 spaces per 2 bedroom unit 1.5 spaces per 3 bedroom unit 1 visitor space per 5 units or part of the units</p> <p><u>Office and Business/retail space</u> 1 space per 40sqm of Gross Floor Area (GFA).</p> <p><u>Retail</u> 1 space per 16.4sqm.</p> <p>The calculation undertaken during the assessment has indicated that a total 84 spaces are required for the residential component (including 12 visitors' spaces for 60 units). A total of 46 spaces for the retail component and a total of 12 spaces for the commercial component of the development. A total of 142 spaces are required for the proposed development.</p> <p>The development provides a total of 142 parking spaces in the basement carparking, which complies with the requirements of Schedule 17.</p>	
CL75 Design of Carparking Areas	YES	<p>Council Traffic Engineer has provided the following comments:</p> <ul style="list-style-type: none"> <i>The 1m extension to blind aisles has not been provided for all aisles in accordance with AS2890.1, this includes area/s which will be restricted by security fencing.</i> <i>Turning bays in accordance with AS2890.1 have not been provided for blind aisles greater in length than six 90 degree parking spaces".</i> <p>Based on the above comments, the proposed development is inconsistent with the requirements of this Clause and this issue has been included as a reason for refusal.</p>	No
CL76 Management of Stormwater	YES	<p>Council's Development Engineer has reviewed the proposal and raised a number of issues regarding the stormwater drainage design which has been addressed in the referral section of this report. As inadequate stormwater details have been submitted, compliance with the requirements of Clause 76 – Management of stormwater has not been achieved. These issues have been included as reasons for refusal.</p>	NO
CL77 Landfill	YES	<p>Clause 77 states that landfill is not to have any adverse impacts on the built or natural environment. From the plans submitted with the application, It is evident that the proposed development will not require an excessive level of fill.</p>	YES
CL78 Erosion & Sedimentation	YES	<p>Appropriate conditions associated with management of erosion and sedimentation can be included on the consent if the application is approved.</p>	YES (subject to conditions)

Principal	Applies	Comments	Compliant
CL79 Heritage Control	NO	The site is not identified as a heritage item nor is it located within a conservation area.	Not Applicable
CL80 Notice to Metropolitan Aboriginal Land Council and the National Parks and Wildlife Service	NO	No Comment	Not Applicable
CL81 Notice to Heritage Council	NO	No Comment	Not Applicable
CL82 Development in the Vicinity of Heritage Items	NO	The site is not within the vicinity of heritage item nor is it located within a conservation area.	Not Applicable

SCHEDULES

Schedule 8 - Site Analysis

Adequate site analysis documentation has been provided with this application.

Schedule 17 – Carparking Provision

For further details please refer to 'Clause 74 Provision of car parking' in the General Principles of Development Control table in this report. In summary, a satisfactory number of carparking spaces have been provided.

POLICY CONTROLS

Warringah Section 94A Development Contributions Plan

The proposal is subject to the application of Council's Section 94A Development Contributions Plan. The following monetary contributions are required to provide for additional infrastructure generated from this development;

<i>Warringah Section 94A Development Contributions Plan</i>		
Contribution based on total development cost of	\$	14,500,000.00
Contribution - all parts Warringah	Levy Rate	Contribution Payable
Total S94A Levy	0.95%	137,750.00
S94A Planning and Administration	0.05%	7,250.00
Total	1.0%	\$145,000

If the application is approved a condition of consent can be included to ensure the required contributions are paid prior to the issue of any Construction Certificate.

MEDIATION

Mediation was not requested for this development application.

CONCLUSION

The site has been inspected and the application assessed having regard to the provisions of Section 79C of the Environmental Planning and Assessment Act 1979, State Environmental Planning Policy No 65 – Design Quality of Residential Flat Development, State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004, State Environmental Planning Policy (Infrastructure) 2007, State Environmental Planning Policy No.55 – Remediation of Land, Warringah Local Environmental Plan 2000, Warringah Development Control Plan and the relevant codes and policies of Council.

The assessment of the application has revealed that the application is deficient and unsupportable for a number of reasons including; insufficient information submitted to demonstrate compliance with all relevant planning controls and to enable a thorough and accurate assessment of the application, the development is inconsistent with the desired future character statement for the F1 locality and the development fails to comply with a number of relevant planning controls in both State Environmental Planning Policy No. 65 - Design Quality of Residential Flat Development, State Environmental Planning Policy No.55 – Remediation of Land, and the Warringah Local Environmental Plan 2000 (WLEP 2000).

The public exhibition of the draft Warringah Local Environmental Plan 2009 (the draft LEP) commenced on 12 October 2009 and has ended on 30 December 2009. The draft LEP was adopted by Council at its meeting held on 8 June 2010. The DWLEP 2009 is therefore a mandatory matter for consideration under Section 79 (1) (a) (ii) of the Environmental Planning and Assessment Act, 1979 and given the fact that Plan has been through public exhibition and has been adopted by Council the plan is considered both imminent and certain and therefore is at a stage to be given significant weight as a consideration under section 79C. Under the provisions of the draft DWLEP 2009 the subject site is located within the B5 Business Development zone. Within this zone residential development will be a prohibited use.

The proposed development (i.e. residential development) was found to be inconsistent with the aims and objective of the B5 zone and therefore the proposed development cannot be supported as the subject site is considered to be unsuitable for residential development.

The development was found to be inconsistent with 9 out of the 10 Design Quality Principles contained in Clauses 9-18 of SEPP 65 and Residential flat code with respect to the following:

- Building separations;
- Visual and acoustic privacy between proposed apartments;
- Landscape and communal open space;
- Daylight access to living rooms and private open spaces.
- Cross ventilations; and
- Building Entry.

As such these matters are considered to be significant with regards to the amenity of the occupants and adjoining lands and the proposal is considered to require re-design to satisfy these requirements along with adequate documentation demonstrating compliance with SEPP 65 and the RFDC.

The development was also found to be inconsistent with the provisions of SEPP 55 in that there was insufficient information submitted with the application to demonstrate that the site is suitable for the proposed development.

There was also insufficient information submitted with the application to properly consider the development application against the following General Principles of Development contained in *Warringah Local Environmental Plan 2000*;

- Clause 43 Noise;
- Clauses 48 and 49 – Contaminated Land;
- Clause 65 – Privacy;
- Clause 66 – Building Bulk;
- Clauses 72 and 75 – Traffic access and Carparking area; and
- Clause 76 Management of stormwater

One (1) letter of submission was received objecting to the proposed development. The concerns raised within the submission were in relation to the suitability of residential accommodation within the locality and parking issues. The issues raised in the submissions have been addressed in the “Public Notification Section” of this report.

It is considered that the proposed development does not satisfy the relevant planning controls and that all processes and assessments have been satisfactorily addressed. Accordingly, it is recommended that the application be refused in its current state.

RECOMMENDATION (REFUSAL)

That the Joint Regional Planning Panel for the Sydney East Region (JRPP) as the consent authority refuse to grant consent to Development Application No. DA2010/1026 for Demolition Works and Construction of a mixed use (Commercial/Retail and Residential) building at Lot 13 Sec 3 DP 1521 - 16 Roger Street, Lot 12 Sec 3 DP 1521 - 18 Roger Street, and Lot 11 DP 634211 - 20 Roger Street, Brookvale for the following reasons:

1. Pursuant to Section 79C (1) (a) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the aims and objectives of B5 zone under the provisions of the Draft Warringah Local Environmental Plan 2009 in that the subject site is unsuitable for residential development.
2. Pursuant to Section 79C (1) (a) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the following Principles in Clause 15 of State Environmental Planning Policy No.65;
 - Principle No. 1 Context
 - Principle No. 2 Scale
 - Principle No. 3 Built Form
 - Principle No. 4 Density
 - Principle No. 5 Resources, energy & water efficiency
 - Principle No. 6 Landscape
 - Principle No.7 Amenity
 - Principle No.8 Safety and security
 - Principle No.10 Aesthetics

3. Pursuant to Section 79C(1)(a) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the State Environmental Planning Policy No. 65 Design Quality of Residential Flat Development – Residential Flat Design Code with respect to the following:
 - Building separations;
 - Visual and acoustic privacy between proposed apartments;
 - Landscape and communal open space;
 - Daylight access to living rooms and private open spaces.
 - Cross ventilations; and
 - Building Entry.
4. Pursuant to Section 79C (1) (a) of the Environmental Planning and Assessment Act 1979 insufficient information has been submitted to demonstrate that the land will be suitable in its current state (or will be suitable after remediation) for the purpose for which the development is proposed to be carried out as required by State Environmental Planning Policy No.55 – Remediation of Land and Clauses 48 and 49 of Warringah Local Environmental Plan 2000.
5. Pursuant to Section 79C (1) (c) of the Environmental Planning and Assessment Act 1979 the site is not considered suitable for the proposed development as insufficient information has been submitted to demonstrate that the land will be suitable in its current state (or will be suitable after remediation) for the purpose for which the development is proposed to be carried out.
6. Pursuant to Section 79C (1) (a) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Warringah Local Environmental Plan 2000 in that the development is not consistent with the Desired Future Character of Locality F1 Brookvale Centre Locality as the proposed development does not create a cohesive active and attractive streetscape.
7. Pursuant to Section 79C(1)(a) Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the Building appearance built form control for the F1 Brookvale Centre locality contained in Warringah Local Environmental Plan 2000.
8. Pursuant to Section 79C(1)(a) of the Environmental Planning and Assessment Act 1979, the proposed development is inconsistent with the following General Principles of development control of Warringah Local Environmental Plan 2000.
 - Clause 43 Noise;
 - Clauses 48 and 49 – Contaminated Land;
 - Clause 65 – Privacy;
 - Clause 66 – Building Bulk;
 - Clause 69 - Accessibility—premises available to the public
 - Clauses 72 and 75 – Traffic access and Carparking area; and
 - Clause 76 Management of stormwater
9. Pursuant to Section 79C (1) (e) of the Environmental Planning and Assessment Act 1979 the proposal is not considered to be in the public interest.