

<b>JRPP No:</b>	2010SYE062
<b>DA No:</b>	DA2010/1285
<b>PROPOSED DEVELOPMENT:</b>	Demolition works and construction of a mixed use (Commercial/Retail & Residential) Development - 638 Pittwater Road Brookvale
<b>APPLICANT:</b>	Edmond Ian John HASHMAN
<b>REPORT BY:</b>	Lashta Haidari, Senior Development Assessment Officer, Warringah Council

## Assessment Report and Recommendation

### 638 Pittwater Road, Brookvale – Construction of a Mixed Use (Commercial/Retail and Residential) Development

#### DEVELOPMENT ASSESSMENT REPORT

<b>Assessment Officer:</b>	Malcolm Ryan, Director Strategic and Development Services
<b>Address / Property</b>	Lot 1, DP 1001963, No. 638 Pittwater Road, Brookvale
<b>Description:</b>	Demolition works and construction of a mixed use (commercial/retail and residential) development
<b>Development Application No:</b>	DA2010/1285
<b>Application Lodged:</b>	18/08/2010
<b>Plans Reference:</b>	Drawing No. 01 – 11 (Rev: DA – Dated 17/08/2010) – prepared by Claireleigh Holding Pty Ltd
<b>Amended Plans:</b>	NO
<b>Applicant:</b>	Claireleigh Holdings
<b>Owner:</b>	Trustees Society Of St Vincent De Paul

<b>Locality:</b>	F1 - Brookvale Centre F3 - Brookvale Industrial
<b>Category:</b>	<u>F1 – Brookvale Centre</u> <b>Category 1</b> – Offices; Shops; and Housing (not on ground floor) <u>F3 - Brookvale Industrial</u> <b>Category 1</b> – Warehouse <b>Category 3</b> – Housing and Offices (not ancillary to industrial or warehouse)
<b>Draft WLEP 2009 Permissible or Prohibited Land use:</b>	<u>B5 – Business Development</u> <b>Permissible</b> – Retail and Office Premises <b>Prohibited</b> – Residential accommodation <u>IN1 - General Industrial zone</u> <b>Permissible</b> – Warehouse <b>Prohibited</b> – Office and Residential accommodation

**Variations to Controls:**

Yes

**F1 – Brookvale Centre**

Building Height and Building Appearance

**F3 - Brookvale Industrial**

Building Height and Front Setback

**Referred to WDAP :**

Yes (Category 3 component to the development)

**Referred to JRPP:**

Yes - (Capital investment value over \$10 million)

**Land and Environment Court  
Action:**

No

**SUMMARY**

**Submissions:**

Two (2) submissions were received as a result of the notification process

**Submission Issues:**

Insufficient information; acoustic impact; inappropriate land use; traffic impacts

**Assessment Issues:**

- SEPP 65 - Design Quality of Residential Flat Development;
- SEPP 55 - Remediation of Land;
- WLEP 2000:  
Desired Future Character for the F3 locality;  
Built Form Controls relating to Building Height, Building Appearance & Front Building Setback; and General Principles of Development Control relating to Noise, Private Open Space, Privacy, Building Bulk, Site Facilities, Traffic Access and Safety, Management of stormwater.
- Draft WLEP 2009:  
Inappropriate development within the nominated zones; and non-compliance with the Building Height standard

**Recommendation:**

**Refusal**

**Attachments:**

- A. Site and Elevation Plans
- B. B Pre-lodgement Notes
- C. Minutes of WDAP 11 November 2010

**LOCALITY PLAN (not to scale)**





**Subject Site:**  
**Public Exhibition:**

Lot 1, DP 1001963, No. 638 Pittwater Road, Brookvale.

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 132 adjoining land owners and occupiers for a period of 30 calendar days commencing on 28 August 2010 and being finalised on 30 September 2010. Furthermore, the application has been advertised within the Manly Daily on 24 August 2010 and a notice was placed upon the site.

**SITE DESCRIPTION**

The subject site is known as Lot 1 within DP 1001963, No. 638 Pittwater Road, Brookvale. The site has an area of 2,662m<sup>2</sup> and is located on the north-eastern corner of Pittwater Road and Orchard Road.

The site is described as an 'L' shaped allotment with a frontage of 16.21m to Pittwater Road, a 7.365m frontage to the corner of Pittwater Road and Orchard Road, a 90.61m frontage to Orchard Road and 40.23m to Charlton Lane at the rear.

The site is currently occupied by a building containing a St Vincent de Paul Society retail outlet and warehouse on the ground floor. Loading areas and car parking are provided to the east of the existing building. Vehicular access to the site is provided from Orchard Road.

A number of trees are located along the eastern boundary and a small pocket of trees are located

within setback of the existing building to Pittwater Road.

The site straddles two localities, the western portion of the site closest to Pittwater Road is located within the F1 Brookvale Centre locality. The eastern portion of the site is located within the F3 Brookvale locality. The site adjoins the F2 Brookvale Services Centre locality to the south and, as such, is surrounded by a variety of industrial and commercial land uses including the State Transit Authority bus depot which is located to the south across Orchard Road.

The site adjoins No. 640 Pittwater Road to the north which currently accommodates Coates Hire. This site includes a single storey building located in the northern portion of the site, with the remainder of the site closest to the subject property being open area for the purposes of storage and display. The site adjoins No. 642 Pittwater Road to the north west. A two storey building is currently located on this site which is used as a function centre.

The site adjoins No. 7 Orchard Road to the east which is currently accommodates a two storey industrial building.

A range of business uses and motor showrooms is located along the western side of Pittwater Road.

## PROPOSED DEVELOPMENT

The proposal involves the demolition of all existing buildings and structures on the site and the construction of mixed-use development, comprising retail, warehouse and office space, fifty seven (57) residential units and stratum subdivision.

The following is a detailed description of the proposed development:

Level	Proposed uses
<b>Basement 2</b>	Car parking for 81 vehicles and plant and storage areas.
<b>Basement 1</b>	Car parking for 80 vehicles and plant and storage areas. Lift and stair access is available to the basement level below and the levels above.
<b>Ground Floor</b>	<ul style="list-style-type: none"><li>• A St Vincent de Paul shop is proposed on the western side of the ground level. A pedestrian entry to the shop is located at the corner of Pittwater Road and Orchard Road.</li><li>• A St Vincent de Paul warehouse and holding room will occupy the north east side of the ground floor.</li><li>• A St Vincent de Paul regional office is proposed on the southern side of the ground floor. Access to the office is provided from Orchard Road.</li><li>• Two residential lift lobbies One lobby is located on the northern side of the site's frontage to Pittwater Road and the second lobby is located on the eastern side of the proposed ground floor office.</li><li>• A residential garbage storage area.</li><li>• 10 car parking spaces (including two loading spaces) on the eastern side of the site at ground level with exist access only onto Charlton Road.</li><li>• Vehicle access to the basement is available from Charlton Lane on the northern side of the side the site.</li></ul>
<b>First, second, and Third Floor</b>	57 residential units are proposed over three floors, which comprise: <ul style="list-style-type: none"><li>• 1 studio Apartment;</li><li>• 18 x 1 bedroom;</li><li>• 6 x 1 bedroom plus study;</li><li>• 26 x 2 bedroom; and</li><li>• 3 x 2 bedroom plus study; and</li><li>• 3 x 3 bedroom.</li></ul>

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The application seeks consent for 57 dwellings that will be managed in accordance with the National Rental Affordability Scheme (NRAS).

### **National Rental Affordability Scheme**

The NRAS is managed by the Federal Government and regulated under the legislative framework provided through the National Rental Affordability Scheme Act 2008. The Scheme seeks to address the shortage of affordable rental housing by offering financial incentives to the business sector and community organisations to build and rent dwellings to low and moderate income households at 20 per cent below-market rates for 10 years.

The financial incentive, payable either as a grant or refundable tax offset, is paid annually for up to 10 years. To remain eligible to receive the incentive, known as the NRAS Incentive, the investor must rent their property to low and moderate income households at 20 per cent below market rates. At the end of the NRAS 10 year period, properties revert to full control of the investor, who has no ongoing obligations to the Australian Government.

The applicant has indicated that the Claireleigh Joint Venture was allocated NRAS funding for 60 dwellings to be constructed at No. 25 Colden Street, Picton. An application to transfer the Picton allocation to the subject site has been approved by the Department of Families, Housing community services and indigenous Affairs.

### **STATUTORY CONTROLS**

- a) Environmental Planning and Assessment Act 1979
- b) Environmental Planning and Assessment Regulation 2000
- c) SEPP 55 – Remediation of Land
- d) SEPP 65 – Design Quality of Residential Flat Development
- e) SEPP (Building Sustainability Index: BASIX) 2004
- f) SEPP (Infrastructure) 2007
- g) Warringah Local Environment Plan 2000
- h) Warringah Section 94A Development Contributions Plan
- i) Draft Warringah Local Environment Plan 2009 (DWLEP 2009)
- j) Warringah Development Control Plan

### **PUBLIC EXHIBITION**

As a result of the public exhibition and notification processes, Council received a total of two (2) submissions from the following:

Name	Address
State Transit Authority of NSW	Level 1 630-636 Pittwater Road, Brookvale
NSW Health –Northern Sydney Central Coast	PO Box 465, Manly Hospital

The issues raised in the submissions are addressed as follows:

#### **Insufficient Information**

Concerns have been raised that the applicant has not provided sufficient information to allow for a full assessment of the DA, particularly with regards to the following:

- Lighting Impact Assessment
- Impacts of bus movements (day/night) on development
- Impact on development of after hours work.

Specifically, concern is raised that the adjoining and surrounding land uses, including the adjoining bus depot, will generate adverse acoustic impacts on the future occupants of the residential\_



component of the building. Concerns have also been raised that there is insufficient information to undertake a proper assessment in this regard.

Comment: The proposed development is for shop top housing, which normally would not require the submission of the above mention information. Notwithstanding, given the close proximity of the development to the bus depot, the applicant is required to demonstrate that the amenity of the proposed residential development will not be adversely affected.

In this regard, the development does not satisfy the requirements of Clause 43 – Noise. This is discussed in detail under the General Principles of Development Control section of the report, where it was found that relevant information (such as an acoustic report) has not been provided with the application which would enable Council to complete a thorough and proper assessment of noise impacts on the future residential occupants of the development associated with adjoining and nearby land uses.

Based on the above, the concerns relating to the impacts on the future residential occupants of the development do carry a determining weight and warrants the refusal of the application.

### **Residential Development is not an appropriate land use within the locality**

Concerns have been raised that the development will result in an inappropriate mix of land uses between the residential component of the subject building and the adjoining and surrounding industrial and commercial land uses.

Concerns have also been raised that the development (i.e. the residential component of the development) is prohibited development within the draft zoning.

Comment: The development has been assessed as being inconsistent with the aims and objectives of the applicable zones of Draft WLEP 2009 and is not supported on this basis. This is discussed in detail under the Draft WLEP 2009 section of the report.

Based on the above, the concerns relating to the appropriateness of the proposed residential land use component of the development within the locality do carry a determining weight and warrant the refusal of the application.

### **Parking, Traffic and Connectivity**

Concerns have been raised that the subject site is located in a busy location where cars and pedestrians compete with through-traffic for access to the St Vincent de Paul site. The objector notes that any additional traffic congestion will further reduce road safety. Traffic hazards (both real and perceived) can discourage people from walking and cycling.

The submission has also indicated that it is important that the proposed development ensures that there is sufficient off-street parking for the St Vincent de Paul component to minimise its impact on the streetscape and traffic congestion in Orchard Road.

Comment: The concerns raised in this submission have been addressed under Clauses 72 - 75 of this report. In summary, the number of car parking spaces provided for the development complies with the requirement of Schedule 17 under WLEP 2000. With regards to the traffic impact, it is noted both the RTA and the Council's Traffic Engineer have raised concerns in relation to the traffic impact on Orchard Road. The concern raised in relation to traffic impact has been included as a reason for refusal.

### **EXTERNAL REFERRALS**

Department	Comments received
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Department	Comments received
<b>NSW Road Traffic Authority (RTA)</b>	<p>The application was referred to the RTA and concerns were raised with regards to the loading dock (for residential use and garbage removal) and its proximity to the car park entry on Orchard Road. Whilst the RTA provided condition of consent, that could be included in any consent, Council's Traffic Engineer concurs with the RTA concern and recommends refusal of the application.</p> <p>This is discussed in more detail under Clauses 72-75 of the General Principles of Development Control table of this report.</p>
<b>NSW Office of Water</b>	<p>The application was referred to the NSW office of Water with respect to temporary groundwater dewatering for the proposed development. The following comments were received:</p> <p><i>"The NSW Office of Water has determined that a Licence under Part 5 of the Water Act 1912 is required in relation to the subject development application and has been identified that the proposed development may result in prolonged adverse impacts on groundwater resources if the required dewatering occurs on anything other than a temporary basis. Therefore, the proposal must not incorporate provision for the permanent or semi-permanent pumping of groundwater seepage from below-ground areas. To comply with this requirement, the construction of below-ground areas must incorporate a water proofing system (i.e. any basement void is to be designed and constructed as a fully tanked structure) with an adequate provision for future fluctuations of the water table level so that groundwater inflows do not occur.</i></p> <p><i>The NSW Office of Water recommends that Council give a staged consent to enable the issues identified in the GTAs to be fully investigated and assessed by independent, suitably qualified people in the required specialist fields. It is suggested that consent be structured as two stages:</i></p> <p><i>Stage 1, corresponding to the demolition of existing buildings and clearing of the surface of the site. The NSW Office of Water does not have a role in licensing these activities where they do not impact on groundwater. However, clearing of the site may be the only means by which access can be gained to install groundwater monitoring bores to address the GTAs. The technical documentation required by the GTAs must be provided to the NSW Office of Water prior to the commencement of Stage 2, at the time of application for a Water Licence for temporary construction dewatering.</i></p> <p><i>Stage 2, comprising excavation at the site and construction of the proposed development. The NSW Office of Water recommends that any consent has a condition that requires the proponent to present proof of receiving the Water Licence to the Private Certifying Authority, before any Construction Certificate is issued at the commencement of Stage 2. The reason for this is that no works that can impact upon groundwater can commence before a licence is obtained.</i></p> <p><i>However, if a staged consent is not desirable to Council, then it is strongly recommended that the issues described in the GTAs are addressed by the applicant and assessed by Council before any consent is given. These issues have the potential to adversely impact upon any proposal and must be adequately addressed".</i></p> <p>Comment: As a construction certificate is not required for demolition works then the NSW Office of Water requirement detailed in 'staged 2' can be conditioned prior to the issue of any construction certificate for excavation/contamination works. This will ensure that the issues raised by the Office of Water are included if any consent is granted.</p>
<b>Energy Australia</b>	<p>The application was referred to Energy Australia and no concerns are raised with the proposal subject to conditions of consent.</p>

## INTERNAL REFERRALS

Department	Comments received
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Department	Comments received
<b>Traffic Engineer</b>	Council's Traffic Engineer has reviewed the development application and raised concerns in relation to the traffic and parking study submitted with the application and in relation to the loading dock fronting Orchard Road. This is discussed in more detail under Clauses 72 – 75 in the General Principles of Development Control table of this report.
<b>Strategic Planning</b>	<p>Council's Strategic Planning section has reviewed the proposal and has provided comments on broad planning issues identified with the development. The following comments have been received:</p> <p><u>Draft Warringah LEP 2009</u></p> <p>Consistent with Council's decision to translate the current LEP into the Standard Instrument LEP, under the draft Warringah LEP 2009 the site is proposed to be zoned part B5 Business Development and Part IN1 General Industrial.</p> <p>Within B5 zone <i>business premises</i> are permitted. <i>Office premises, retail premises</i> and <i>residential accommodation</i> are prohibited.</p> <p>However, on that portion of the subject site zoned B5, <i>office premises</i> and <i>retail premises</i> are permitted by Schedule 1 Additional Permitted uses (item 5). (Note that Area 9 on the Additional Permitted Uses Map has been used to carry across the differences in land use categorisation between the F1 and F3 localities).</p> <p>You will also note that the prohibition of <i>residential accommodation</i> on that portion of the subject site zoned B5 is not consistent with the translation of the current land use categories in Warringah LEP 2000. In this regard Council resolved to prohibit <i>residential accommodation</i> within the B5 zone. This decision is based on the role that Brookvale will play as employment land within the major centre for the sub-region.</p> <p>Within that portion of the site zoned IN1 <i>business premises, office premises, retail premises</i> and <i>residential accommodation</i> will be prohibited.</p> <p><u>Status of the draft Warringah LEP 2009</u></p> <p>The draft LEP was certified by the Department of Planning on 9 September 2009 and became a matter for consideration under section 79C of the Act on 12 October 2009 with the commencement of the public exhibition of the plan.</p> <p>On 8 June 2010 Council considered the submissions made to the exhibition process and on 25 June 2010 forwarded the final draft LEP to the Department of Planning with a request that the Minister make the plan.</p> <p>No formal commitment has been given by the Department in regard to the time frame for making of the plan. However, Council understands that the Department would like to finalise the process before the end of 2010.</p> <p>A submission from the St. Vincent de Paul Society was received during the public exhibition of the draft LEP in relation to the two zonings on this land. The anomaly of the 2 zones appears to have occurred due to a previous subdivision pattern/amalgamation of sites. The submission requested that the land be zoned B5 in its entirety. On 24 August 2010 Council resolved for staff to prepare a report on this anomaly. This report has not been prepared to date.</p>



Department	Comments received
Urban Design	<p>Council's Urban Designer has reviewed the proposal and provided the following comments:</p> <p><i>"Positive aspects:</i></p> <ol style="list-style-type: none"> <li><i>1. Providing retail shops facing street and locating vehicular circulation and truck loading areas to the rear of the site.</i></li> <li><i>2. Consolidated vehicular access points to allow continuous shopfront and awning providing safe and sheltered pedestrian routes.</i></li> </ol> <p><b>Negative Aspects:</b></p> <ol style="list-style-type: none"> <li>1. Building appearance - WLEP2000 CL 66 Building bulk states that... <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> The proposal has building forms of about 13 to 15m in height which is above the 11m building height control. The site has a prominent location at the corner of Pittwater Road and Orchard Road and should address both street frontages however it should not be too visually dominating. Considering the surrounding streetscape predominantly 2 storeys built form, the four storey proposal cannot be supported. The built form control of 11m will allow 3 storeys comfortably and a taller and more prominent roof form to define the corner will be a more sympathetic scale to creating cohesive and attractive streetscape.</li> <li>2. Front building setback – WLEP2000 Locality F3 requires 4.5m. Part of the proposal has zero setback and 4.235m at the south boundary.</li> <li>3. SEPP 65 Site Design - The Communal Open Space requirement of 25 to 30% of the site area should be provided for a 57 residential unit development with minimal private open space proposed for each unit.</li> <li>4. SEPP 65 Amenity - Residential Flat Design Code (RFDC) recommends apartment buildings habitable rooms/balconies and non-habitable rooms separation distance of 9m for building height up to 12m/4 Storeys. The proposal has balcony separation of 4.2m &amp; 6.135m to the north boundaries which in the future could potentially be 11m high blank walls to business premises built right on the boundary (Business Development Zone). In the central court, the separation distance between living rooms and bedrooms is 7m (RFDC recommends 12m). The inadequate separation distances will create amenity problems like lack of visual and acoustic privacy, loss of daylight access to apartments and to private and shared open spaces.</li> <li>5. The design should optimise solar access to contribute positively to common area and residence amenity. It is recommended that the applicant be requested to provide further information on the percentage of units with amenity problems.</li> </ol> <p><b>Conclusion</b></p> <p>The subject site is surrounded by business and industrial zones which allow building forms of 11m high to be built. The residential units proposed have balconies/windows that are setback 4.2/ 6.135 m from the northern boundaries which could potentially in the future be 11m high blank walls to business units creating amenity problems like lack of visual/acoustic privacy and loss of daylight access to apartments. Moreover the bus depot to the south would also be a noise source for the residences proposed.</p> <p>The initial analysis demonstrates that the proposed development does not comply fully with the current WLEP 2000, draft WLEP 2009 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.</p>

Department	Comments received
<b>Development Engineering</b>	Council's Development Engineering section have reviewed the proposed development and raise concern with the On-site Stormwater Detention (OSD) system and associated Stormwater Drainage Design. In summary, the stormwater drainage proposal is considered unsatisfactory and cannot be supported. This is discussed in more detail under Clause 76 - Management of Stormwater in the General Principles of Development Control table.
<b>Landscape Officer</b>	Council's Landscape Officer has reviewed the proposal and raise concerns the removal of the number trees on site as result of the proposed development. This discussed in more detail under Cause 58 in the General Principles of Development Control table of this report.
<b>Environmental Health</b>	Council's Environment Health sections have reviewed the proposal and raise no concern with the proposed development subject to a deferred commencement condition.
<b>Waste Officer</b>	Comments from Council's Waste officer had not been received at the time of preparing 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
<b>Section 79C (1) (a)(i) – Provisions of any environmental planning instrument</b>	See discussion on SEPP BASIX, SEPP (Infrastructure) 2007, SEPP 65 Design Quality of Residential Flat Development and WLEP 2000 in this report.
<b>Section 79C (1) (a)(ii) – Provisions of any draft environmental planning instrument</b>	The proposed development is not consistent with the requirements of the Draft Warringah Local Environment Plan 2009 (Draft WLEP 2009). This is discussed under the Draft WLEP 2009 section of the report.
<b>Section 79C (1) (a)(iii) – Provisions of any development control plan</b>	The application was advertised and notified in accordance with Warringah Development Control Plan.
<b>Section 79C (1) (a)(iii)(a) - Provisions of any Planning Agreement or Draft Planning Agreement</b>	Not Applicable
<b>Section 79C (1) (a)(iv) - Provisions of the regulations</b>	A design verification certificate prepared by the Architect accompanied the application which satisfies the requirements of Clause 50(1A) of the EP&A Regulation 2000. Subject to conditions of consent, the proposal satisfies the requirements of Clause 98 of the EPA Regulations 2000 in that the proposed development would be compliant with the requirements of the Building Code of Australia.

Section 79C 'Matters for Consideration'	Comments
<p><b>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</b></p>	<p>(i) The environmental impacts of the proposed development on the natural and built environment are addressed in detail under the General Principles of Development Control section in the report. In summary, the proposed development's impact on the natural and built environment has been found to be unacceptable and unreasonable in terms of its context and settings. Specifically, the proposed development is inconsistent with the character and amenity of the locality and streetscape and the proposed residential component of the building is an incompatible land use to that of adjoining and surrounding industrial land uses.</p> <p>(ii) The proposed development will have an unacceptable social impact in the locality as it involves the construction of residential development within and surrounded by industrial area. The social cost to the occupants of the residential component of the development is that they will be unduly impacted on by noise, odour and activities associated with a predominantly industrial area which would not create a sense of place and community.</p> <p>(iii) The proposed development will increase the commercial floor space within the locality and the development will contribute to the revitalisation and renewal of the Brookvale locality. On this basis, the proposal will have a positive economic impact.</p>
<p><b>Section 79C (1) (c) – The suitability of the site for the development</b></p>	<p>The site does not contain any significant physical constraints which would make the site unsuitable for the proposed development. However, the applicant has not provided sufficient information or justification to demonstrate that the site is suitable for the proposed residential use. In this regard, the external impacts on the residential occupants of the proposed development, such as noise, odour and traffic, associated with industrial uses on adjoining and nearby land have not been adequately addressed.</p> <p>Further to the above, The applicant has also not 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>On this basis, the site cannot be considered suitable for the proposed development.</p>
<p><b>Section 79C (1) (d) – Any submissions made in accordance with the EPA Act or EPA Regs</b></p>	<p>The public submissions received in response to the proposed development are addressed under the 'Notification &amp; Submissions Received' section within this report. In summary, the objections are concurred with and are included in the reasons for refusal.</p>

Section 79C 'Matters for Consideration'	Comments
<b>Section 79C (1) (e) – The public interest</b>	<p>On the one hand, the residential component of the proposed development 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>However, the residential development is not considered to be in the public interest for the following reasons:</p> <ul style="list-style-type: none"> <li>• Allowing residential development on the site undermines the strategic planning work carried out by Council which has identified the locality as being unsuitable for residential development as evidenced by the provisions applying to the site under Draft WLEP 2009.</li> <li>• The strategic planning undertaken as part of the Draft WLEP 2009 ensures the growth in the number of dwellings and the number of residents within Warringah is controlled, manageable and sustainable. Varying the aims and objectives of the Draft WLEP 2009 without a proper consideration of the strategic plan for the growth of the locality will contribute to uncontrolled and uncoordinated development within the locality.</li> </ul> <p>It is therefore considered the implications of varying the controls within the Draft WLEP 2009 to the extent proposed by this application will result in uncontrolled uncoordinated development which is not consistent with the <i>objects</i> of the EP&amp;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 the reasons stated above, the proposal is not considered to be in the public interest.</p>

## DRAFT ENVIRONMENTAL PLANNING INSTRUMENTS:

### Draft Warringah Local Environmental Plan 2009 (Draft WLEP 2009)

The public exhibition of the draft WLEP 2009 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 draft WLEP 2009 is therefore a mandatory matter for consideration under Section 79 C (1) (a) (ii) of the Environmental Planning and Assessment Act, 1979.

#### Definition:

Business Premises, Office Premises, Retail Premises and Residential Accommodation

#### Land Use Zones:

B5 - Business Development; and  
IN1 - General Industrial

#### Permissible or Prohibited:

Zone	Proposed Land Use	Permissible or Prohibited
<b>B5 – Business Development</b>	Retail Premises	Permissible (refer to "Additional Purposes Map")
	Office Premises	Permissible (refer to "Additional Purposes Map")

	Residential accommodation	Prohibited
<b>IN1 - General Industrial</b>	Warehouse	Permissible
	Office Premises	Prohibited
	Residential accommodation	Prohibited

### **Additional Permitted uses for particular land (Refer to Schedule 1):**

Yes (Office and Retail Premises within the B5 Zone)

The site straddles two zones. The western portion of the site (which is currently within the F1 Brookvale Centre locality) is located within the B5 Business Development zone under the draft LEP. The eastern portion of the site (which is currently within the F3 Brookvale Industrial locality) is located within the IN1 General Industrial zone under the draft LEP.

As indicated in the above table, the proposed residential accommodation within the B5 and IN1 zones, and the office premises in the IN1 zone, are prohibited development under the draft LEP.

The dual zoning of the site was acknowledged as a constraint to further development in the report to the Council meeting of 8 June 2010 in relation to the draft WLEP. The report states that a submission requesting that the entire site be zoned B5 Business development are given further consideration, particularly having regard to the site's dual frontage to Pittwater Road and Charlton Lane and the role of the Brookvale Centre supporting that of Dee Why as the major centre for the sub-region. If the entire site was located within the B5 zone, the issue associated with the prohibition of offices within the IN1 zone would no longer be relevant. In this regard, the office component of the development within IN1 zone is supported given it is also consistent with aims and objectives for the B5 zone and IN1 zone under the provision of the draft document.

However, the residential accommodation (which represents a significant component of the proposed development) is prohibited development within both zones. The applicant acknowledges, within Statement of Environment Effects, that the residential component will be prohibited development. However, in response to this, the applicant is relying on the savings provision and has indicated that the draft WLEP 2009 has no determining weight.

The relevance of a draft LEP and the weight to be given to it relies on the facts of the particular case and circumstances which have been highlighted by numerous Land and Environment Court cases including *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).

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; and
3. The existence and applicability of savings provisions in the draft LEP.

### **Council's Assessment**

#### **1. The imminence of the draft LEP and the degree of certainty that it will come into force.**

Comment: The draft WLEP 2009 has completed the public exhibition process, adopted by Council and subsequently forwarded to the Department of Planning for gazettal. In this regard, the plan is considered both imminent and certain. On this basis, the draft WLEP—

2009 is required to be given weight in the consideration under Section 79C of the EP & A Act, 1979.

## **2. The extent of conflict between the proposed development and the planning objectives contained in the draft LEP.**

An assessment of the residential component of the proposed development in relation to the objectives of the B5 – Business Development and IN1 – General Industrial zones are as follows:

### **B5 – Business Development**

- *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, centres.*

Comment: The zone does not envisage residential development as the zone is flanked by industrial lands along a major traffic corridor. Further, the area is promoted as a current and future employment area under the North East Sub-Regional Strategy and this would be compromised through competition with residential markets. Accordingly, the proposed development incorporating a large portion of residential units is inconsistent with this objective.

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

Comment: The development is inconsistent with this objective as it involves the provision of a residential component.

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

Comment: The development incorporates retail and business uses at the ground floor level and has been design to address the Pittwater Road frontage.

Based on the above, it is concluded that the proposed development is inconsistent with two of the three objectives of the B5 - Business Development zone.

### **IN1 – General Industrial**

- *To provide a wide range of industrial and warehouse land use.*
- *To encourage employment opportunities.*
- *To minimise any adverse effect if industrial on other land uses.*
- *To minimise any adverse effect of industrial on other land uses.*
- *To enable other land uses that provides facilities or services to meet the day to day needs of workers in the area.*
- *To enable a range of compatible community and leisure uses.*
- *To maintain the industrial character of the land in landscaped setting.*

Comment: The development involves the provision of a residential component that is not compatible with the industrial and warehouse land uses that is envisaged by this zone. Accordingly, the proposed development (i.e. the residential component of the development) is inconsistent with the objectives of the IN1 General industrial zone.

## **3. The existence and applicability of savings provisions in the draft LEP.**

Comment: In relation to the third principle, the draft WLEP 2009 contains a savings provision under Clause 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".*

Reference is made to the Land and Environment court case, *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 circumstance when the document was a draft when the 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)."*

Comment: The draft WLEP 2009 is currently a draft document (at the time of writing this report) and has not commenced. Therefore, in accordance with the above judgement the proposed development cannot be supported as it is inconsistent with the aims and objectives of the B5 – Mixed Business Development zone.

## Principal Development Standards:

The only development standard under the Draft WLEP 2009 that is relevant to the assessment of this application is the building height control. It should be noted that the building height is calculated differently under DWLEP 2009 in comparison to the building height (built form control) under the F1 and F3 localities as contained under the current (WLEP 2000) instrument. In regard, the following table provides a comparison of the built form controls relating to the building height and front setback in relation to the proposed development under the provision of the draft instrument (DWLEP 2008) and the current instrument (WLEP 2000):

Instrument	Development Standard	Required	Proposed	Complies
Draft WLEP 2009	Building Height	11m (measured from existing ground level to highest point of building)	15.4m	NO (refer to discussion under 4.3 relating to building height)
	Front Setback	Not Applicable	N/A	N/A
WLEP 2000 (F1 Locality)	Building Height	11m (measured vertically between any point on the topmost ceiling of the building and the natural ground level below)	13.0m -13.8m	NO (refer to Clause 20 variation under the F1 locality built form control)

Instrument	Development Standard	Required	Proposed	Complies
	Front setback	Consistent with adjacent buildings	Consistent	Yes
WLEP 2000 (F3 Locality)	Building Height	11m (measured vertically between any point on the topmost ceiling of the building and the natural ground level below)	12.6m – 13.2m	NO (refer to Clause 20 variation under the F3 locality built form control)
	Front setback	4.5m	Nil to Orchard Rd	NO (refer to Clause 20 variation under the F3 locality built form control)

### Clause 4.3 – Hight of Buildings (DWLEP 2009)

#### Height of Buildings

The height of the proposed development is 15.4m which exceeds the 11.0m maximum building height standard under the proposed zoned by 4.4m.

#### Clause 4.3 Assessment

The proposed development does not comply with the Building Height Development Standard as detailed in the above compliance table under the provision of the DWLEP 2008. In this regard, the objectives of the Standard are addressed below:

- a) *To ensure that buildings are compatible with the height, bulk and scale of the desired future character of the locality that may be identified in any development control plan made by the Council.***

Comment: The height standard for the site falls under the Draft LEP only. In this regard, the proposed height of 15.4m is considered excessive and will set undesirable persistent for the locality that envisages buildings not to exceed the 11 metres height limit. Accordingly, the height of the proposed building is not compatible and would be excessive in terms of its bulk and scale when compared to the adjoining and surrounding developments.

- b) *To minimise visual impact, disruption or views, loss of privacy and loss of solar access.***

Comment: The non-compliance with the height standard will not result in inconsistencies with this objective under the Draft LEP as the adjoining developments are industrial/commercial and the nearest residential development is located north of the site in Old Pittwater Road.

- c) *To minimise adverse impact of development on the scenic quality of Warringah's coastal and bush environments.***

Comment: The non-compliance with the height standard will not result in inconsistencies with this objective under the Draft LEP as the building does not sit within a coastal or bushland environment.

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

Comment: The non-compliance with the height standard will not result in inconsistencies with this objective under the Draft LEP as it will not be viewable from parks and reserves and the street is predominantly industrial and commercial in nature.

In conclusion, a variation to the Building Height Development Standard under Clause 4.6 of Draft WLEP 2009 cannot be supported for reasons that it is inconsistent with objectives of the standard as discussed above.

#### **Clause 4.6 - Exception to Development Standard**

This Clause applies when a Development standard is varied under the provision of the DWLEP 2009. As indicated above, the height of the proposed development is 15.4m which exceeds the 11.0m maximum building height standard under the proposed zoned by 4.4m.

The objective if this Clause are:

- *To provide an appropriate degree of flexibility in applying certain development standard to particular development, and*
- *To achieve better outcomes for and from development allowing flexibility in particular circumstances.*

Clause 4.6 (subclause 4) states that consent must not be granted for development that contravenes a standard unless the consent authority is satisfied that:

- (i) *The applicant's written request that adequately addressed the matter required to be demonstrated by subclause (3).***

**Comment:** The applicant has not provided a written request that addresses the non-compliance in relation to varying the building height development standard under the provision of the DWLEP 2009.

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

**Comment:** The non-compliance with the building height standard is not considered to be in public interest as the proposed development is found to be inconsistent with zone objectives of the B5 and IN1 as discussed in the previous section of this report.

#### **ENVIRONMENTAL PLANNING INSTRUMENTS (EPI's)**

#### **STATE ENVIRONMENTAL PLANNING POLICIES (SEPPs)**

##### **SEPP (Building Sustainability Index: BASIX) 2004**

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

A BASIX Certificate was been submitted with the application. 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.

##### **SEPP 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 Stage 1 – Environmental Site Assessment Report prepared by Environmental Strategies – dated May 2010.

The report concludes that the site has been used for a range of commercial/light industrial purposes since 1902 and no significant contaminating activities were observed in the area surrounding the site. The report recommends that a Phase 2 Environmental Assessment be undertaken to assess the quality of the fill on the site and to determine whether previous site has impacted the soil ground and groundwater beneath the site.

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.

### **SEPP (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 1 September 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.

### **SEPP 65 – Design Quality of 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.

The development is consistent with the definition of a ‘Residential Flat Building’ and therefore, the provisions of SEPP 65 are applicable to the assessment of the 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 (DFC) statement for the F1 and F3 localities 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 and Category 3 land uses development within the F1 and F3 localities. 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 F3 locality in that residential development is inconsistent with the DFC statement (refer to discussion under the DFC of this report);
- The bulk and scale of the proposed development is not consistent with the “Building Appearance” built form control and Clause 66 – Building Bulk;
- The residential component of the development is not compatible with surrounding development in the locality and inconsistent with the aims and objectives of the draft WLEP 2009 (as discussed in the Draft WLEP section of the report).

Given the above, the proposed development is not appropriate in response to “Context” in relation to the scale and form of the existing and desired development in the locality. Accordingly, the proposal does not satisfactorily address the design objectives of the principle and this inconsistency 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 development does not comply with the maximum height limit control under WLEP 2000 and is inconsistent with the front setback control. The proposed development is also not consistent with the building appearance built form control. Furthermore, it is noted that the proposal does not comply with the Building Height standard under the Draft WLEP 2009.

For the above reasons, the proposed development is inconsistent with the design quality principle in terms of the scale of the building.

## 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 built form of the proposed development is not considered to be a site or locality responsive design. In this regard, the internal separating of the residential component of the building results in poor internal amenity, outlooks and vistas. Also the built form is bulky and lacks adequate articulation and will not positively contribute to the streetscape.

For the reasons given the proposal is not considered to be consistent with this design quality principle.

#### ***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 of the proposed development is determined by the proposal’s compliance with relevant planning controls.

The proposal has been assessed against the provisions of SEPP 65, the Residential Flat Design Code and WLEP 2000 and DWLEP 2009. In summary, the proposal has been assessed as containing several non-compliances with the “Rules of Thumb” contained within the Residential Flat Design Code, including; building separation, internal solar access, lack of landscaping and open space and acoustic and visual privacy.

Based on the non-compliances, the density of the development is considered to be excessive and the proposal represents an overdevelopment of the site. Accordingly, the proposed development is not consistent with this design quality principle.

#### ***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:** A BASIX certificate for the residential component 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 the compliance with the BASIX requirements, it is considered that the proposal does not make efficient use of energy as inadequate spatial separation is provided between units which will result in poor solar access, particularly to the first floor units.



The proposed apartment layout and building separation does not minimise energy consumption and make efficient use of energy resources. Therefore, the proposal is not consistent with the design quality principle.

### **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 and F3 localities for landscaped open space. The only landscaping that is proposed is within landscape planter boxes located on the ground floor adjacent to the Orchard Road frontage.

The proposed landscape elements will not allow for the establishment of landscaping that will effectively screen the views the bulk and scale of the development particularly given the absence of any deep soil zones in the planter boxes. In addition, no provision has been made for the practical establishment and long term management of the landscaping (except within the front setback) that has been proposed.

Based on the above, the proposed landscaping design will not provide for a satisfactory level of amenity for the future occupants of development.

### **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 the future occupants of the building in terms of visual privacy, natural acoustic privacy and solar access.

Based on the above, the building layout, design and separation will not facilitate an adequate level of solar access to the residential units. Further, shadow diagrams were not submitted with the application. On this basis, the application fails to demonstrate that the amount of sunlight each residential unit would receive on 21 June.

In summary, the proposed development fails to provide a satisfactory level of amenity for future residential occupants. Accordingly, the proposal is inconsistent with this Design Quality Principle.

## 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:** The building has been designed to optimise the safety and security for future occupants of the development. The proposal is considered to adequately achieve safety and security for future occupants of the development providing good casual visual surveillance of the street and the private domain.

The proposed development consistent with the Design Quality Principle.

## 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 accommodations 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.

## Conclusion on the 10 Design Quality Principles

The proposed development is assessed as being inconsistent and incompatible with the Design Quality Principles contained in Clauses 9-18 of SEPP 65 and has been included as a reason for refusal.

## Residential Flat Design Code (RFDC)

The following table provides an assessment of the development against the various provisions of the RFDC:

SEPP 65 - Residential Design Code Checklist		
Part	Guideline	Comments/explanation of compliance
PART 01 - LOCAL CONTEXT		

SEPP 65 - Residential Design Code Checklist		
Part	Guideline	Comments/explanation of compliance
<b>Building Height</b>	Where there is an existing floor space ratio (FSR), test height controls against it to ensure a good fit.	<p><b>Not Applicable</b></p> <p>No FSR applies under WLEP 2000.</p> <p><b>Note:</b> The density of development in the F1 and F3 Localities under WLEP 2000 is controlled by building height, front setbacks and car parking standards.</p>
	Test heights against the number of storeys and the minimum ceiling heights required for the desired building use.	<p><b>YES</b></p> <p>3.0m floor-to-ceiling (Retail) 2.7m floor-to-ceiling (Residential)</p>
<b>Building Depth</b>	In general, an apartment building depth of 10-18m is appropriate. Developments that propose wider than 18m must demonstrate how satisfactory day lighting and natural ventilation are to be achieved.	<p><b>YES</b></p> <p>All apartments achieve a depth of less than 18m.</p>
<b>Building Separation</b>	Design and test building separation controls in plan and section.	<p><b>NO</b></p> <p>As the development does not abut another residential land use the internal building separation is considered satisfactory. However, the development does not provide sufficient separation between habitable rooms, balconies and communal walkways which result in potential loss of amenity through noise and privacy.</p>
	<p>For buildings up to four storeys/12m:</p> <p>(a) 12m between habitable rooms/balconies; (b) 9.0m between habitable/balconies and non-habitable rooms; (c) 6.0m between non-habitable rooms.</p> <p><b>Note:</b> The RFDC defines a habitable room as any room or area used for normal domestic activities, including living, dining, family, lounge, bedrooms, study, kitchen, sun room and play room</p> <p>Test building separation controls for daylight access to buildings and open spaces.</p>	<p><b>NO</b></p> <p>51% (29) apartments receive a minimum of three hour's direct sunlight between 9am and 3pm in mid-winter, which does not comply with the requirement of this Clause.</p>
<b>Street Setbacks</b>	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.	<p><b>NO</b></p> <p>The development exceeds the Building Height Built Form Control by up to 4.5m and subsequently adds to the visual bulk and scale along Orchard Road.</p>
	Test street setbacks with building envelopes and street sections.	<p><b>Not Applicable</b></p> <p>The respective locality statements do not include Side boundary envelope built form controls.</p>
	Test controls for their impact on the scale, proportion and shape of building facades	<p><b>NO</b></p> <p>The development exceeds the Building Height Built Form Control by 3.0m to 4.5m (equivalent of one floor) resulting in visually excessive building bulk and scale along the Pittwater Road, Orchard Road and Charlton Lane elevations.</p>
<b>Side &amp; Rear setbacks</b>	Relate side setbacks to existing streetscape patterns.	<p><b>Not Applicable</b></p> <p>The respective locality statement does not include side and rear setback built form controls. Notwithstanding, the proposed side and rear setbacks are consistent with the prevailing side and rear setbacks within the F1 &amp; F3 localities.</p>

SEPP 65 - Residential Design Code Checklist		
Part	Guideline	Comments/explanation of compliance
<b>Floor space ratio</b>	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.	<b>Not Applicable</b> No FSR applies to the subject site under WLEP 2000.
<b>PART 02 - SITE DESIGN</b>		
<b>Site Configuration</b>		
<b>Deep Soil Zones</b>	A minimum of 25% 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, Stormwater treatment measures must be integrated with the design of the residential flat building.	<b>NO</b> There are no minimum landscaped open space standards for development within the F1 and F3 Localities 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 development does not provide any deep soil open space zones and therefore does not comply with the requirement of the RFDC.
<b>Open Space</b>	The area of communal open space required should generally be at least between 25% and 30% of the site area. Larger sites and brownfield sites may have potential for more than 30%.	<b>NO</b> No communal landscaped area controls apply to the F1 and F3 localities under WLEP 2000 Notwithstanding SEPP 65 requires communal open space within mixed use developments (i.e. on roof tops and podiums). The proposed development does not provide any communal open space and therefore does not comply with the requirement of the RFDC.
	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.	<b>NO</b> The development does not provide increased private open space.
	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 25m <sup>2</sup> ; the minimum preferred dimension in one direction is 4.0m. (See Balconies for other private open space requirements).	<b>NO</b> The open space areas (courtyards) associated with the apartments located on the first floor (the level immediately above the commercial component) does not achieve the minimum recommended area or dimension.

SEPP 65 - Residential Design Code Checklist		
Part	Guideline	Comments/explanation of compliance
<b>Planting on structures</b>	<p>In terms of soil provision there is no minimum standard that can be applied to all situations as the requirements vary with the size of plants and trees at maturity. The following are recommended as minimum standards for a range of plant sizes:</p> <ul style="list-style-type: none"> <li>• Large trees such as figs (canopy diameter of up to 16m at maturity) - minimum soil volume 150m<sup>3</sup> - minimum soil depth 1.3m - minimum soil area 10m x 10m area or equivalent.</li> <li>• Medium trees (8.0m canopy diameter at maturity) - minimum soil volume 35m<sup>3</sup> - minimum soil depth 1.0m - approximate soil area 6.0m x 6.0m or equivalent.</li> <li>• Small trees (4.0m canopy diameter at maturity) - minimum soil volume 9.0m<sup>3</sup> - minimum soil depth 800mm - approximate soil area 3.5m x 3.5m or equivalent.</li> <li>• Shrubs - minimum soil depths 500 - 600mm</li> <li>• Ground cover - minimum soil depths 300 - 450mm</li> <li>• Turf- minimum soil depths 100 - 300mm</li> <li>• Any subsurface drainage requirements are in addition to the minimum soil depths quoted above.</li> </ul>	<p><b>YES</b></p> <p>The development provides a 1.4m wide landscape strip along the rear property boundary abutting Charlton Lane. While the soil depth is sufficient the width limits planting to small trees, shrubs &amp; ground cover.</p>
<b>Safety</b>	<p>Carry out a formal crime risk assessment for all residential developments of more than 20 new dwellings.</p>	<p><b>YES</b></p> <p><u>Surveillance</u> The development provides adequate external surveillance along Pittwater Road, Orchard Road and Charlton Lane. However, it is noted that the internal walkways on the first floor level include fenced balcony areas and associated alcoves which provide opportunities for concealment.</p> <p><u>Access Control</u> The development provides two pedestrian access points on Pittwater Road and Orchard Road in addition to access via the basement car parking areas. These access points and areas are well defined and secured through secured doorways and gateways.</p> <p><u>Territorial Reinforcement</u> The internal walkways located on the first floor provide defined courtyard areas but conflict with their close proximity to adjacent habitable rooms. This could present a possible crime risk due to the potential for concealment.</p> <p><u>Space Management</u> This matter is addressed via on-site management.</p>

SEPP 65 - Residential Design Code Checklist		
Part	Guideline	Comments/explanation of compliance
Visual amenity	Refer to Building Separation minimum standards	<p><b>NO</b></p> <p>Externally, the development does not provide articulation along the Orchard Road elevation which would otherwise provide a visual relief to the dominant four storeys mass and scale of the building which extends in a continuous vertical surface for a length of 64.5m (71% of the Orchard Road frontage).</p> <p>Internally, the development does not provide any visual relief to occupants by way of landscaped open space or communal open space. The narrow corridors, whilst open to the sky, result in a sense of enclosure which provides little direct sunlight access.</p>
	Identify the access requirements from the street or car parking area to the apartment entrance.	<p><b>YES</b></p> <p>The development includes two pedestrian access points to the residential component. Both access points are clearly defined and separate from the commercial use located on the ground floor.</p>
Pedestrian access	Follow the accessibility standard set out in AS 1428 (parts 1 and 2), as a minimum.	<p><b>YES</b></p> <p>Subject to appropriate conditions, if the application was worthy of approval.</p>
	Provide barrier free access to at least 20% of dwellings in the development.	<p><b>YES</b></p> <p>100% of apartments have barrier free access via direct lifts to all floors.</p>
Vehicle access	Generally limit the width of driveways to a maximum of 6.0m.	<p><b>YES</b></p> <p>The development includes the following four crossovers:</p> <p>Orchard Road – 2 x 4.5m Charlton Land – 1 x 6.0m 1 x 4.5m</p> <p>It is acknowledged that the development proposes a mixed commercial/residential use and therefore, a separation of commercial and residential driveways would be appropriate to minimise conflict.</p>
	Locate vehicle entries away from main pedestrian entries and on secondary frontages.	<p><b>YES</b></p> <p>With exception to a 3.5m wide driveway which services the residential waste disposal area off Orchard Road, all other driveways are located away from main pedestrian entries and are situated on secondary frontages.</p> <p>With regard to the above-mentioned driveway, this is not considered to result in a safety issue given the infrequent use of the driveway.</p>
<b>PART 03 BUILDING DESIGN</b>		
Apartment layout	Single-aspect apartments should be limited in depth to 8.0m from a window.	<p><b>YES</b></p> <p>All single aspect apartments (with exception to units 113, 114, 117 &amp; 118 – each 8.6m in depth) achieve a depth no greater than 8.0m from a window to the rear wall.</p>



SEPP 65 - Residential Design Code Checklist		
Part	Guideline	Comments/explanation of compliance
	The back of a kitchen should be no more than 8.0m from a window.	<p><b>YES</b></p> <p>All apartments (with exception to units 113, 114, 117 &amp; 118 – each 8.6m in depth) achieve a depth no greater than 8.0m from a window to the back of the kitchen.</p>
<b>Balconies</b>	Provide primary balconies for all apartments with a minimum depth of 2.0m. 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><b>YES</b></p> <p>All balconies achieve a depth of 2.0m or greater.</p>
<b>Ceiling Heights</b> <ul style="list-style-type: none"> <li>•</li> </ul>	<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> <ul style="list-style-type: none"> <li>• in mixed use buildings: 3.3m minimum for ground floor retail or commercial and for first floor residential, retail or commercial to promote future flexibility of use</li> <li>• in residential flat buildings in mixed use areas: 3.3m minimum for ground floor to promote future flexibility of use in residential flat buildings or other residential floors in mixed use buildings</li> <li>• In general, 2.7m minimum for all habitable rooms on all floors, 2.4m is the preferred minimum for all non-habitable rooms, however 2.25m is permitted.</li> <li>• for two storey units, 2.4m minimum for second storey if 50 percent or more of the minimum wall height at edge</li> <li>• for two-storey units with a two storey void space, 2.4m minimum ceiling heights</li> <li>• Attic spaces, 1.5 metre minimum wall height at edge of room with a 30 degree minimum - ceiling slope.</li> </ul>	<p><b>YES</b></p> <p>The development is for a mixed use Building. As such the following applies:</p> <p>Ground Floor (Retail) - 3.3m Upper Floors (Residential) – 2.7m</p>
<b>Ground Floor Apartments</b>	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><b>Not Applicable</b></p> <p>No ground floor apartments are proposed.</p>
	Provide ground floor apartments with access to private open space, preferably as a terrace or garden.	<p><b>Not Applicable</b></p> <p>No ground floor apartments are proposed.</p>

SEPP 65 - Residential Design Code Checklist		
Part	Guideline	Comments/explanation of compliance
<b>Internal Circulation</b>	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.	<p><b>NO</b></p> <p>The development is provided with three lift cores (two of which are located within the western part of the building).</p> <p><u>First Floor</u></p> <p>The eastern lift core provides access to 15 apartments.</p> <p>The two western lift cores provide access to seven (7) apartments.</p> <p><u>Second Floor</u></p> <p>The eastern lift core provides access to 21 apartments.</p> <p>The two western lift cores provide access to eleven apartments.</p> <p><u>Third Floor</u></p> <p>The two western lift cores provide access to three (3) apartments.</p>
<b>Storage</b>	<p>In addition to kitchen cupboards and bedroom wardrobes, provide accessible storage facilities at the following rates:</p> <ul style="list-style-type: none"> <li>studio apartments 6.0m<sup>3</sup></li> <li>one-bedroom apartments 6.0m<sup>3</sup></li> <li>two-bedroom apartments 8.0m<sup>3</sup></li> <li>three plus bedroom apartments 10m<sup>3</sup></li> </ul>	<p><b>NO</b></p> <p>1 bedroom - 25 x 6.0m<sup>2</sup> = 150m<sup>2</sup></p> <p>2 bedroom – 29 x 8.0m<sup>2</sup> = 232m<sup>2</sup></p> <p>3 bedroom – 3 x 10m<sup>2</sup> = 30m<sup>2</sup></p> <p>Total storage required = 412m<sup>2</sup></p> <p>Total storage provided = 249m<sup>2</sup></p> <p><b>Deficiency = 163m<sup>2</sup></b></p>
<b>Building Amenity</b>		
<b>Daylight Access</b>	Living rooms and private open spaces for at least 70% of apartments in a development should receive a minimum of three hours direct sunlight between 9am and 3pm in mid-winter. In dense urban areas a minimum of two hours may be acceptable.	<b>NO</b> 51% (29) apartments receive a minimum of three hours direct sunlight between 9am and 3pm in mid-winter and therefore do not comply with the 70% requirement.
	<p>Limit the number of single-aspect apartments with a southerly aspect (SWSE) to a maximum of 10% of the total units proposed.</p> <p><b>Note:</b> The RFDC does not define single-aspect apartments but does define dual aspect apartments as having at least two major external walls facing in different directions, including corner, cross over and cross through apartments.</p>	<p><b>YES</b></p> <p>There are no single aspect apartments that are south facing.</p>
<b>Natural Ventilation</b>	Building depths, which support natural ventilation typically range from 10m to 18m.	<b>YES</b> Apartments achieve minimum building depth.
	Sixty percent (60%) of residential units should be naturally cross ventilated.	<b>YES</b> The development provides cross-ventilation to over 60% of apartments.
<b>Building Performance</b>		
<b>Waste Management</b>	Supply waste management plans as part of the development application submission as per the NSW Waste Board.	<b>YES</b> Subject to conditions if the application is worthy of approval.
<b>Water Conservation</b>	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.	<b>YES</b> Subject to conditions if the application is worthy of approval.

In determining a development application under Part 4 of the EP&A Act, Council is required under section 79C(1)(b) of the Act to consider the likely economic impacts of a proposed development within a locality.

The Draft SEPP has been developed to promote economic growth and competition and to remove anti-competitive barriers in environmental planning and assessment. It will attempt to achieve this aim by:

- a) Prohibiting Council from considering the commercial viability of proposed development, and
- b) Overcoming restrictions in planning instruments on the number of a particular type of retail premises and their proximity to other retail premises of that type.

The Draft SEPP defines commercial development as development for purposes of (or including or any combination of) the following:

- (a) Retail premises;
- (b) Business premises; and
- (c) Office premises.

The Draft SEPP identifies the following areas of economic impact which Council cannot consider in its determination of a development application:

- The commercial viability of the proposed commercial development;
- The loss of trade to other existing or proposed commercial development;
- Restrictions imposed by an LEP or DCP on the number of particular types of retail premises within a development; and
- Restrictions imposed by an LEP or DCP on the proximity of particular types of retail premises to other retail premises.

The Draft SEPP was released for public comment from 27 July 2010 to 26 August 2010.

**Comment:** The development involves the ground floor retail and office use. Both uses are defined under the Draft SEPP as commercial development. As such, the development is considered to be consistent with the provisions of the Draft SEPP.

## **Regional Environmental Plans (REPs)**

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

## **WARRINGAH LOCAL ENVIRONMENTAL PLAN 2000**

### **DESIRED FUTURE CHARACTER**

#### **F1 - BROOKVALE CENTRE LOCALITY**

The subject site straddles two localities. The western portion of the site is located within the F1 Brookvale Centre locality as identified under WLEP 2000 pursuant to the provisions of WLEP 2000 and has a different locality statement to the remainder of the site.

The Desired Future Character Statement for this locality is as follows:

*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.*

The development proposes a Shop, an Office and Housing (not on ground floor) within this locality. Offices, 'shops', and 'Housing (not on ground floor)' are all identified as Category One uses within the F1 locality.

Clause 12(3) (a) of WLEP 2000 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 outcomes envisaged in the Desired Future Character statement. However, the proposed development substantially exceeds the 11m height limit and is therefore considered to be inconsistent with the component of the DFC which refers to 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.***

**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 provides retails and business premises uses at the ground level and incorporates an awning along the frontage of the building to Pittwater frontage, which contributes to creating cohesive and attractive streetscape.

Accordingly, the proposed development is considered to be consistent with this component of the DFC.

### **Built Form Controls for Locality F1 Brookvale Centre**

The following table outlines compliance with the Built Form Control's of the above locality statement:

Standard	Permitted	Proposed	Compliant
<b>Building Height</b>	11.0m (natural ground to topmost ceiling)	13.0m – 13.8m	<b>No*</b>
<b>Front Building Setback</b>	Consistent with adjacent buildings	Consistent with adjacent buildings	Yes
<b>Building Appearance</b>	Building design is to:		
	Articulate long facades by breaking the elevation into distinct segments	The part of the development occurring in the F1 locality is one segment of a three-part segment along the full length of Orchard Road (which becomes the F3 locality). The articulation is considered to be satisfactory in breaking up the elevation.	Yes
	Detail new development by incorporating similar patterns and proportions where established by existing buildings	Because of the excessive building height, the development does not incorporate similar proportions to established buildings in the locality.	<b>No*</b>
	Ensure larger infill sites reflect the general height, form, alignment and façade character of the street	Because of the excessive building height, the development does not reflect the general height character of the street.	<b>No*</b>

Standard	Permitted	Proposed	Compliant
	Create active street fronts	The development includes a shop front at the corner of Pittwater Road and Orchard Street which is consistent with the existing use and provides continued activation to the street front.	Yes
	Continue footpath awnings where appropriate	The development includes an awning across the Pittwater Road frontage which is consistent with other existing awnings along Pittwater Road.	Yes
	Address both street frontages on corner sites	The development situates the retail use at ground level on the corner of Pittwater Road and Orchard Road which addresses both street frontages.	Yes

(\*) These non-compliances are addressed below.

## Clause 20 Variation

A Clause 20 variation is required for the proposed variation to the Building Height and 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.”

In non-comements of the proposal, consideration must be g

(i)	<b>General Principles of Development Control</b>  The proposal is inconsistent with several General Principles of Development Control as detailed in the 'General Principles of Development Control' table as detailed in this report.
(ii)	<b>Desired Future Character of the Locality</b>  The proposal is inconsistent with the Desired Future Character Statement as detailed earlier in this report.
(iii)	<b>Relevant State Environmental Planning Policies</b>  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

Based on the above assessment, the proposed development cannot be considered for a variation to the Building height and Building Appearance Built Form Control.

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

## Building Height Built Form Control

Area of inconsistency with control:

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The development does not comply with the Building Height Built Form Control by 2.0m to 2.8m.

Merit Consideration of Non-compliance:

The following considerations have been applied in the assessment of the Building Height variation:

- ***Ensure that development does not become visually dominant by virtue of its height and bulk.***

**Comment:** The site is situated on the corner of Pittwater Road and Orchard Road. The site is prominent and, as noted above by the applicant within SEE, may be regarded as a gateway site to Brookvale as it is visible from the southern approach along Pittwater Road due to the openness of the neighbouring State Transit's bus depot. In this regard, and as stated by the applicant (*The scale and architectural treatment of the building strongly defines the edge of Brookvale centre*) the appropriate and compliant redevelopment of the site is therefore critical in setting a standard for further development within Brookvale and along Pittwater Road.

The justification for the increased setback to the third floor is not supported. While the increased setback may reduce building bulk from the street alignment (where the view to the building is almost vertical) it will not reduce the bulk and scale of the building when viewed from the southern approach along Pittwater Road.

The variation effectively results in an additional floor level along the full length of the building. Despite the segmentation of the façade into three blocks, this does not visually relieve the vertical scale of the development which, when regarded in context to the scale of surrounding development, is considered to be both visually dominant and excessive.

- ***Preserve the amenity of surrounding land.***

**Comment:** Due to the industrial/commercial character of the locality there is no other residential properties where residential amenity may be affected. The amenity of industrial/commercial properties are not considered to be as critical which is reflected in the lack of appropriate controls which are normally designed to protect the amenity of neighbouring properties.

What is considered to be critical, and what has not been addressed by the applicant, is the impact upon the amenity of the proposed residential units within the development from the neighbouring industrial/commercial uses. It is noted that the development includes a significant number of units which face the northern boundary. The possibility of a boundary wall being erected to a permissible height of 11.0m by the neighbouring industrial/commercial uses which would have an unacceptable impact upon the internal residential amenity of the development (such as overshadowing and a sense of enclosure).

- ***Ensure that development responds to site topography and minimises excavation of the natural landform.***

**Comment:** The horizontal form of the development visually responds to the flat topography of the site. The development does whilst proposing excavation of the landform to accommodate the basement car park is considered satisfactory.

- ***Provide sufficient area for roof pitch and variation in roof design rather than a flat roof.***

**Comment:** With exception to the overhang on the corner of Pittwater Road and Orchard Road, the development proposes a flat roof form, which is consistent with this objective.

For the above reasons, the Clause 20 variation to the Building Height Built Form Control cannot be supported.

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## Building Appearance Built Form Control

The development does not comply with the Building Appearance Built Form Control in the following two areas:

- ***Detail new development by incorporating similar patterns and proportions where established by existing buildings.***

**Comment:** The development is unique in the area and, as such does not incorporate similar patterns or proportions to established buildings.

The proposed block pattern and horizontal and vertical proportions are excessive in that they collectively introduce a bulk and scale which has no architectural reference to the predominant industrial/commercial character of the locality.

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

**Comment:** While the nil street alignment may be considered to be appropriate to the locality and is representative of the existing street alignment, the development does not comply with building height control and a form and a façade character representative of a residential flat building.

As already identified by both the applicant and Council, the site is a highly visible gateway to the Brookvale industrial/commercial locality. In this regard, the proposed building height, scale, building form and façade character is not reflective of the industrial/commercial character of the locality.

As such, the Clause 20 variation to the Building appearance Form Control is not supported.

## F3 Brookvale Industrial

The remaining portion of the site (i.e. the eastern portion of the site is located within the F3 Brookvale industrial locality. The Desired Future Character Statement for this locality is as follows:

*The Brookvale Industrial locality will remain an industrial and employment centre incorporating industries, warehouses and ancillary service uses.*

*New development or significant redevelopment will be designed to incorporate landscaping to soften the visual impact of industrial buildings and their associated parking and other paved areas as viewed from the street.*

*At the interface of the locality with adjoining and adjacent residential areas, buildings will be sited and designed and the use of land managed to minimise interference with the amenity of such residential areas.*

*Allotments are to be consolidated where necessary to ensure the development of one allotment will not render an adjoining allotment unsuitable for development.*

Office, warehouse and residential uses are proposed within this locality. Warehouses are identified as Category 1 development in this locality. Housing and offices (that is not ancillary to industrial or warehouse) are identified as category 3 development within this locality.

Clause 12(3) (a) of WLEP 2000 requires the consent authority to consider the desired future character described in the relevant Locality Statement. Clause 12(3) (b) states that the consent authority must be satisfied that the development is consistent with the desired future character of the locality for Category 3 development. An assessment of the related components of the DFC has been undertaken as follows:

- ***The Brookville Industrial locality will remain an industrial and employment centre incorporating industries, warehouses and ancillary service uses.***

**Comment:** The proposed development whilst providing an office and a warehouse use which will generate some employment for the locality is inconsistent with this component of the DFC as large component of the proposed development is for residential development. Residential development of the type proposed inconsistent with this component of the DFC.

- ***New development or significant redevelopment will be designed to incorporate landscaping to soften the visual impact of industrial buildings and their associated parking and other paved areas as viewed from the street.***

**Comment:** The site is prominent as it is visible from the southern approach along Pittwater Road due to the openness of the neighbouring State Transit's bus depot. In this regard, and as stated by the applicant (*The scale and architectural treatment of the building strongly defines the edge of Brookvale centre*) the appropriate redevelopment of the site is therefore critical in setting a standard for further development within Brookvale and along Pittwater Road.

The proposed development whilst providing some landscaping in the planter boxes along the eastern boundary. However, the proposed landscape elements will not allow for the establishment of landscaping that will effectively screen the bulk and scale of the development particularly given the absence of any deep soil zones in the planter boxes. In this regard, the proposed development is found to be inconsistent with this component of the DFC.

- ***At the interface of the locality with adjoining and adjacent residential areas, buildings will be sited and designed and the use of land managed to minimise interference with the amenity of such residential areas.***

**Comment:** The subject site does not adjoin residential development and therefore this component of the DFC is not applicable to the proposed development.

- ***Allotments are to be consolidated where necessary to ensure the development of one allotment will not render an adjoining allotment unsuitable for development.***

**Comment:** The proposed development will not render the adjoining allotment unsuitable for development and therefore the consolidations of the lots are not required. The proposed development is therefore consistent with this component of the DFC.

### **Built Form Controls for Locality F3 Brookvale Industrial**

The following table outlines compliance with the Built Form Control's of the above locality statement:

Standard	Permitted	Proposed	Compliant
<b>Building Height</b>	11.0m (natural ground to topmost ceiling)	12.6m – 13.2m	<b>No*</b>
<b>Front Building Setback</b>	4.5m	Nil to Orchard Road	<b>No*</b>
<b>Subdivision</b>	Minimum allotment size for subdivision is 4000m <sup>2</sup>	No subdivision is proposed	N/A

(\*) These non-compliances are addressed below.

### **Clause 20 Variation**

A Clause 20 variation is required for the proposed variations to the Building Height Built Form Control under the F3 locality.

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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.”

In assessing these non-complying elements of the proposal, consideration must be

(i)	<b>General Principles of Development Control</b>  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)	<b>Desired Future Character of the Locality</b>  The proposal is not consistent with the Desired Future Character Statement as detailed earlier in this report.
(iii)	<b>Relevant State Environmental Planning Policies</b>  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.

Based on the above assessment, the proposed development can be considered for a variation to the Building Height and Front Setback Built Form Controls.

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

### **Building Height Built Form Control**

Because the non-compliance occurs across two abutting localities the arguments presented earlier under the F1 Brookvale Centre Locality are identical to the arguments present below.

#### Area of inconsistency with control:

The development does not comply with the Building Height Built Form Control by 1.6m to 2.2m.

#### Merit Consideration of Non-compliance:

The following considerations have been applied in the assessment of the Building Height variation:

- ***Ensure that development does not become visually dominant by virtue of its height and bulk.***

**Comment:** The site is situated on the corner of Pittwater Road and Orchard Road. The site is prominent and, as noted by the applicant within the SEE, may be regarded as a gateway site to Brookvale as it is visible from the southern approach along Pittwater Road due to the openness of the neighbouring State Transit's bus depot. In this regard, and as stated by the applicant (*The scale and architectural treatment of the building strongly defines the edge of Brookvale centre*) the appropriate and compliant redevelopment of the site is therefore critical in setting a standard for further development within Brookvale and along Pittwater Road.

The justification for the increased setback to the third floor is not supported. While the increased setback may reduce building bulk from the street alignment (where the view to the building is

almost vertical) it will not reduce the bulk and scale of the building when viewed from the southern approach along Pittwater Road.

The variation effectively results in an additional floor level along the full length of the building. Despite the segmentation of the façade into three blocks, this does not visually relieve the vertical scale of the development which, when regarded in context to the scale of surrounding development, is considered to be both visually dominant and excessive.

- ***Preserve the amenity of surrounding land.***

**Comment:** Due to the industrial/commercial character of the locality there is no other residential properties where residential amenity may be affected. The amenity of industrial/commercial properties are not considered to be as critical which is reflected in the lack of appropriate controls which are normally designed to protect the amenity of neighbouring properties.

What is considered to be critical, and what has not been addressed by the applicant, is the impact upon the amenity of the proposed residential units within the development from the neighbouring industrial/commercial uses. It is noted that the development includes a significant number of units which face the northern boundary. The possibility of a boundary wall being erected to a permissible height of 11.0m by the neighbouring industrial/commercial uses which would have an unacceptable impact upon the internal residential amenity of the development (such as overshadowing and a sense of enclosure).

- ***Ensure that development responds to site topography and minimises excavation of the natural landform.***
- ***Comment: Ensure that development responds to site topography and minimises excavation of the natural landform.***

**Comment:** The horizontal form of the development visually responds to the flat topography of the site. The development does whilst proposing excavation of the landform to accommodate the basement car park is considered satisfactory.

- ***Provide sufficient area for roof pitch and variation in roof design rather than a flat roof.***

**Comment:** With exception to the overhang on the corner of Pittwater Road and Orchard Road, the development proposes a flat roof form, which is consistent with this objective.

### **Front Building Setback**

#### Area of inconsistency with control:

The development does not comply with the Front Building Setback Built Form Control of 4.5m along the Orchard Road frontage.

#### Merit Consideration of Non-compliance:

The following considerations have been applied in the assessment of the Front Building Setback variation:

- ***Create a sense of openness.***

**Comment:** The development continues the existing street setback and, as such, maintains the sense of openness at street level.

- ***Provide opportunities for landscaping.***

**Comment:** The development provides little opportunity for landscaping along the Orchard Road frontage. A small area of landscaping is provided towards the rear of the site which is inconsistent with the requirement of this objective.

- ***Minimise the impact of development on the streetscape.***

**Comment:** The development increases the vertical structural bulk and scale on the site which will have a visual impact on the streetscape. However, the impact could be minimised through the reduction of the building height and articulated building form along the Orchard Road frontage.

- ***Maintain the visual continuity and pattern of buildings, front gardens and landscape elements.***

**Comment:** The development extends along the full length of the property boundary abutting the Orchard Road street alignment. The Front Setback Built Form Control within the F1 locality permits a setback consistent with prevailing setbacks in the area. Therefore, the proposed front setback within the F1 locality is nil. The F3 locality commences 36m along the Orchard Road frontage (from the corner of Pittwater Road/Orchard Road) and continues the nil front setback established within the abutting F1 locality.

The front setback increases 4.2m towards the rear of the building to accommodate the Orchard Road residential entry and bin enclosure crossover.

It is agreed that this increase in setback provides a transition from the established nil front setback within the F1 locality to the 4.5m front setback required within the F3 locality.

- ***The provision of corner allotments relates to street corners.***

**Comment:** The Built Form Controls for the F3 Locality do not contain any provisions relating to corner allotments.

As indicated above, the proposed development is found to be inconsistent with two out of the five objectives for the front setback. It should be noted that if the development was designed to have reduced the height of the building, was articulated along the orchard Road frontage and was provided with more landscaping, then the non-compliance with the front setback control could be supported.

## **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;

<b>Principal</b>	<b>Applies</b>	<b>Comments</b>	<b>Compliant</b>
CL38 Glare & reflection	YES	The proposal involves the use of various building materials including a metal roof, glazing, which have reflective qualities. A condition could be included if the application was worthy of approval to minimise the reflection of the proposed development.	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

Principal	Applies	Comments	Compliant
CL42 Construction Sites	YES	A condition has been included for a Construction Management Plan to be obtained prior to the commencement of works should the application be approved.	YES (subject to conditions)
CL43 Noise	YES	<p>The Clause 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.</p> <p>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.</p> <p>Notwithstanding, the proposal has not provided sufficient information (i.e. an acoustic report) to demonstrate that the noise generated from adjoining and surrounding properties (including the bus depot) will have an acceptable impact on the future occupants of the development.</p> <p>Accordingly, the proposed development is inconsistent with the requirements of the Clause.</p>	NO
CL44 Pollutants	NO	No Comment	Not Applicable
CL45 Hazardous Uses	NO	No Comment	Not Applicable
CL46 Radiation Emission Levels	NO	No Comment	Not Applicable
CL47 Flood Affected Land	NO	No Comment	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"> <li>It has considered whether the land is contaminated, and</li> <li>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</li> <li>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.</li> </ul> <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	No Comment	Not Applicable
CL50 Safety & Security	YES	An assessment of the proposal using the Crime Prevention Through Environmental Design (CPTED) principles was completed under 'Safety' in the Residential Flat Design Code table of this report. In summary, the proposal was found to be satisfactory in terms of minimising the opportunities for crime subject to a condition of consent.	YES (subject to condition)
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	No Comment	Not Applicable
CL53 Signs	NO	No signs are proposed as part of this application.	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.	YES (Subject to conditions)
CL55 Site Consolidation in 'Medium Density Areas'	NO	No Comment	Not Applicable
CL56 Retaining Unique Environmental Features on Site	NO	No Comment	Not Applicable
CL57 Development on Sloping Land	NO	No Comment	Not Applicable

Principal	Applies	Comments	Compliant
CL58 Protection of Existing Flora	YES	<p>Council's Landscape officer has reviewed the proposal and has provided the following comments:</p> <p><i>"The proposal to remove all but one of the trees onsite is not supported due to the size and significance of the large mature Australian native trees that occupy the site. The amenity and softening affect that the current trees provide is significant, particularly given the site location in the Brookvale industrial area where concrete and steel is prevalent and large mature trees are rare.</i></p> <p><i>Given the above statement, several trees are supported for removal, whilst the remaining are recommended for retention. The Arborist report supplied to Council supports the removal of all but one tree onsite, but some of the information supplied is inconclusive or lacks support for further assessment and investigation, particularly with Tree 5, given the shear size, significance and impact it has on the site, the report fails to make recommendations for an internal examination to clarify the presence of an internal fault. The following provides information regarding the retention/removal recommendations and supporting evidence for such.</i></p> <p><i>Trees recommended for removal and supported by Council are; Trees 1, 2, 3, 4, 6, 7, 8, 9, 14, 16, 17, 18, 19 &amp; 20.</i></p> <p><i>Trees recommended for retention are; Trees 5, 10, 11, 12, 13, &amp; 15.</i></p> <p><i>Notes on above recommendations are;</i></p> <p><i>Tree 5 is recommended by the proposed development for removal due to a stem inclusion. Although there is evidence of some form of inclusion, there are usually further visual external signs to indicate if the fault is prevalent and cause for concern. There is usually associated swelling adjacent to the inclusion crack and this is not so. There is no sign of any swelling or 'elephant ears' as it is also known as. Additionally an internal examination is usually recommended to ascertain the extent of the crack via a 'Picus' tomograph which is an ultra sound type of test equipment which can 'see' inside the tree and give a reading of what is happening inside the tree at the point of attachment of the testing devices.</i></p> <p><i>The Arborist report also makes comment about the 'typical reaction wood development to base indicating adaptive wood potentially for strength support due to a weakening of the co dominant'. What is interesting is that this wood is also produced in trees without an inclusion in them to support the weight of the canopy and is not necessarily produced to support an inclusion. My conclusion is that it is to support the weight of the canopy, not the inclusion as I would also expect the 'elephant ears' wood to develop in conjunction with this reactive growth.</i></p> <p><i>It would be my recommendation that such an assessment and test take place on the tree at the location of the inclusion prior to a decision being made on the trees future given the size and incredible impact the tree has on the site. I believe Council owes it to the public to ensure such a large significant tree is further tested to ensure that should it be approved for removal, that is it totally justifiable and Council has done everything in its power to ensure its retention. If, at the conclusion of the testing, that the tree is recommended for removal due to the presence of an internal fault, then it is supported for removal. If the test shows no sign of faulting then the tree is recommended for retention. If it</i></p>	NO
JRPP (Sydney East Region)	Business Paper	<p>conclusion of the testing that the tree is recommended for removal due to the presence of an internal fault, then it is supported for removal. If the test shows no sign of faulting then the tree is recommended for retention. If it</p>	Page 40



Principal	Applies	Comments	Compliant
CL59 Koala Habitat Protection	NO	No Comment	Not Applicable
CL60 Watercourses & Aquatic Habitats	NO	No Comment	Not Applicable
CL61 Views	YES	The proposal satisfies the requirements of the General Principle in that it will allow for a reasonable sharing of views between adjoining and surrounding properties.	YES
CL62 Access to sunlight	YES	Shadow diagrams were not submitted with the application. Notwithstanding, the proposal is not adjoined by residential development, and in this regard, the proposal will achieve compliance with the requirements of the Clause.	YES
CL63 Landscaped Open Space	NO	No Comment	Not Applicable
CL64 Private open space	YES	<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>All units have been provided with balconies that are greater than 10sqm in area, however, the minimum dimensions of the first floor balconies do not comply with the 2.5m.</p> <p>In this regard, the requirements of the General Principle are not satisfied.</p>	YES
CL65 Privacy	YES	<p>The Clause 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>In relation to the internal privacy between units, the proposed separation of less than 9 metres results in privacy impacts between the proposed units. This is also discussed under the 'RFDC' section of the report.</p> <p>Based on the above, the proposal is inconsistent with the requirements of this Clause.</p>	NO

Principal	Applies	Comments	Compliant
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"> <li><i>• Side and rear setbacks are to be progressively increased as wall height increases,</i></li> <li><i>• Large areas of continuous wall planes are to be avoided by varying building setbacks and using appropriate techniques to provide visual relief, and</i></li> <li><i>• Appropriate landscape plantings are to be provided to reduce the visual bulk of new buildings and works.'</i></li> </ul> <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>"The proposal has building forms of about 15.4m in height which is above the 11m building height control. The site has a prominent location at the corner of Pittwater Road and Orchard Road and should address both street frontages however it should not be too visually dominating. Considering the surrounding streetscape of predominantly 2 storeys built form, the four storeys proposal cannot be supported. The built form control of 11m will allow 3 storeys comfortably and a taller and more prominent roof form to define the corner will be a more sympathetic scale to creating cohesive and attractive streetscape"</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>	NO
CL67 Roofs	YES	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 the Clause.	YES
CL68 Conservation of Energy and Water	YES	A BASIX Certificate 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.	YES

Principal	Applies	Comments	Compliant
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>An access report (prepared by accessibility solutions) has been submitted with the application. The report concludes that the development satisfies the accessibility provisions of the BCA and relevant Council WLEP Clause 69 and SEPP 65 requirements pertaining to accessible pathways, visitable and adaptable housing for people with disabilities.</p> <p>Accordingly, the proposed development is consistent with the requirement of Clause 69.</p>	YES
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 in the basement 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 level and therefore, the visual impact of the parking facility is minimised when viewed from the street.</p>	YES

Principal	Applies	Comments	Compliant
CL72 Traffic access & safety	YES	<p>Council's Traffic Management section has reviewed the application and has provided the following comments:</p> <p><i>"Given the scale of the proposal it is considered appropriate that intersection modelling be undertaken and the findings submitted to Council for assessment. The parking and traffic impact study details the traffic generation but does not assign the trips onto the network and analyse the impact of the proposal.</i></p> <p><i>The following issue does not comply with WLEP and variation has not been justified:</i></p> <ul style="list-style-type: none"> <li><i>The loading dock fronting Orchard Rd does not comply with Cl 73 of WLEP, in that the loading dock requires a reverse movement to either enter or exit the dock from the street".</i></li> </ul> <p>Further to the above, the application was also referred to the RTA, who has raised concerns with regards to the loading dock (for residential use and garbage removal) and its proximity to the car park entry on Orchard Road. The RTA has noted those service vehicles are required to reverse into the dock which may cause a conflict point.</p> <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	<p>The application was also referred to the RTA, who has raised concerns with regards to the loading dock (for residential use and garbage removal) and its proximity to the car park entry on Orchard Road. The RTA has noted those service vehicles are required to reverse into the dock which may cause a conflict point.</p>	NO

Principal	Applies	Comments	Compliant																											
CL74 Provision of Carparking	YES	<p><b><i>Under Schedule 17 of WLEP 2000, car parking for the proposed development has been calculated as follows:</i></b></p> <p>Office - 1 space per 40sqm GFA Shops - 1 space per 16.4sqm GLFA Warehouse – 1.3 spaces per 100sqm GFA Apartment style housing – 1 space per 1 bedroom unit, 1.2 spaces per 2 bedroom unit, 1.5 spaces per 3 bedroom unit and 1 visitor space per 5 units or part of units.</p> <p>Based on the requirements above car parking is required for the development as follows:</p> <table><tr><th>Use</th><th>Rate</th><th>Required</th></tr><tr><td>Office</td><td>501m<sup>2</sup></td><td>13</td></tr><tr><td>Retail</td><td>560m<sup>2</sup></td><td>34</td></tr><tr><td>Warehouse</td><td>540m<sup>2</sup></td><td>7</td></tr><tr><td>Residential</td><td>25 x 1 bedroom</td><td>25</td></tr><tr><td></td><td>29 x 2 bedroom</td><td>35</td></tr><tr><td></td><td>3 x 3 bedroom</td><td>5</td></tr><tr><td>Visitor</td><td>57 units</td><td>12</td></tr><tr><td></td><td>Total</td><td>131</td></tr></table> <p>A total of 131 car parking spaces are required for the proposed development. 161 basement and 10 ground floor car parking spaces are proposed which complies with the requirements of Schedule 17.</p>	Use	Rate	Required	Office	501m <sup>2</sup>	13	Retail	560m <sup>2</sup>	34	Warehouse	540m <sup>2</sup>	7	Residential	25 x 1 bedroom	25		29 x 2 bedroom	35		3 x 3 bedroom	5	Visitor	57 units	12		Total	131	YES
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CL75 Design of Carparking Areas	YES	Subject to appropriate condition of consent, the proposed development is consistent with the requirements of the Clause.	YES (subject to condition)																											
CL76 Management of Stormwater	YES	Council's Development Engineering section have reviewed the proposed development and raise concerns with the On-site Stormwater Detention (OSD) system and associated Stormwater Drainage Design. In summary, the stormwater drainage proposal is considered unsatisfactory and the proposal is recommended for refusal on this basis.	<b>NO</b>																											
CL77 Landfill	NO	No fill is proposed.	Not Applicable																											
CL78 Erosion & Sedimentation	YES	Appropriate conditions associated with the management of erosion and sedimentation are included as conditions of consent should the application be approved.	YES (subject to conditions)																											
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 15 - Statement of Environmental Effects

Under Clause 15 of WLEP 2000, there are specific provisions relating to Category 3 development. The components that trigger the Category 3 process includes the office and the residential component proposed in the F3 locality.

Pursuant to Clause 15 of WLEP 2000, consent may be granted to development classified as Category Three only if the consent authority has considered a Statement of Environmental Effects that includes the items in Schedule 15.

The applicant has submitted a Statement of Environmental Effects which addresses the items listed in Schedule 15 of WLEP 2000. An assessment of Category 3 elements of the proposal only against the provisions of Schedule 15 is provided below:

(1) Summary of the statement of environmental effects	<p>A Statement of Environmental Effects (SEE) has been submitted with the application.</p> <p><b>Comment:</b> It is considered that the statement submitted adequately addresses the proposal's consistency with all relevant planning controls.</p>
(2) Consistency of the proposal with the Desired Future Character Statement and General Principles of Development Control established by the plan	<p>The applicant has addressed the consistency of the proposal with the desired future character statements for the F1 and F3 Localities and the General Principles of Development Control. In summary, the applicant has concluded that the proposal is consistent with DFC statements for both localities and the development is also consistent with the General Principles as contained in Part of the WLEP 2000.</p> <p><b>Comment:</b> An assessment of the proposal with all relevant controls in WLEP 2000 is detailed in this report. The assessment has found that the proposal (as a whole) is inconsistent with the DFC for the F1 and F3 locality and the General Principles as contained within WLEP 2000.</p>
(3) Objectives of the proposed development	<p>The applicant has advised that the primary objectives of the proposed development are to:</p> <ul style="list-style-type: none"> <li>• <i>To provide new and improved shop, office and warehouse premises for the St Vincent de Paul Society. The improvements to the premises will allow for the continued, effective operation of the charitable organisation.</i></li> <li>• <i>To increase the number of affordable dwellings in Warringah by providing 57 dwellings that will be rented at 80% of the market rent and managed in accordance with the NRAS criteria.</i></li> <li>• <i>To improve the housing choice available in Warringah by providing an alternative to detached dwellings.</i></li> </ul> <p><b>Comment:</b> The objectives of the development are considered to have been sufficiently discussed and documented although it is not necessarily agreed (through the lack of supporting evidence) that the development will have any positive influence on the continued, effective operation of the St Vincent de Paul organisation as the use may continue in its present form.</p>

<p>(4) An analysis of feasible alternatives including the consequences of not carrying out the development and the reasons justifying the carrying out of the development.</p>	<p>The applicant has provided the following comments in regard to the possibility of feasible alternatives;</p> <p><i>"The cost of land within Warringah limits the number of sites on which the development of affordable housing is economically viable. There are therefore few alternative locations available for carrying out development for the purpose of affordable housing.</i></p> <p><i>The proposed development will provide affordable housing which is in close proximity to public transport and a range of shops and services.</i></p> <p><i>The development will enable the redevelopment and improvement of the St Vincent de Paul premises and thereby allow for the continued operation of a charitable organisation which provides an important community service".</i></p> <p><i>If the development is not permitted to proceed the shortage of affordable housing in Warringah will continue to grow and the pressure on the current supply of affordable rental accommodation will increase. The lack of affordable housing in Warringah reduces the availability of key workers such as childcare workers, nurses, police officers, fire-fighters and paramedics and thereby impacts on the businesses that operate in the local area.</i></p> <p><b>Comment:</b> The applicant's comments in regard to the possibility of feasible alternatives, and the consequences of not carrying out the development, are not concurred with as the SEPP (Affordable Housing) 2009 provides for affordable housing in Warringah LGA, and it does not apply to the subject site.</p>
<p>(5) Development and context analysis</p>	<p>The applicant has provided a context analysis of the development.</p> <p><b>Comment:</b> The SEE has provided an appropriate description of the development and an analysis of the context of the site.</p>
<p>(6) The reasons justifying the carrying out of the development in the manner proposed having regard to the biophysical, economic and social considerations and the principles of ecologically sustainable development</p>	<p>The applicant states:</p> <p><i>The development will not result in any adverse impacts on the biophysical environment. The provision of affordable housing on the site will however assist in addressing the shortfall of low-cost housing in Warringah. A significant social benefit will therefore result from the proposed development.</i></p> <p><b>Comment:</b> Given the long-standing industrial/commercial character of the site and locality the development is unlikely to have any significant impact on the biophysical, economic and social environment.</p>
<p>(7) Measures to mitigate any adverse effects of the development on the environment</p>	<p>The applicant states:</p> <p><i>The proposed will not result in any significant impacts on the environment. Whilst some trees will be removed, replacement planting will be provided along the eastern boundary and in two planters on the Orchard Street frontage. The residential component of the development complies with the State Government's BASIX requirements relating to energy, water and thermal efficiency.</i></p> <p><b>Comment:</b> The measures proposed to mitigate any adverse impacts on the environment are considered satisfactory. If the application was recommended for approval, Conditions should be included in the consent if the application is approved to minimise the adverse effects of the development on the environment.</p>
<p>(8) Other approvals required</p>	<p>The applicant states:</p> <p><i>The subject development does not constitute integrated development pursuant to the provisions of the Environmental Planning and Assessment Act 1979. No other approvals are therefore required to enable the development to proceed.</i></p> <p>The development is identified as Integrated Development under Section 91 of the EP&amp;A Act, 1979. Consequently, the application was referred to the NSW Office of Water for concurrence.</p> <p>The comments received from NSW Office of Water and other external bodies have been addressed elsewhere in this report.</p>

## 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, the requisite 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;

Warringah Section 94A Development Contributions Plan		
Contribution based on total development cost of		\$15,955,699.00
Contribution - all parts Warringah	Levy Rate	Contribution Payable
Total S94A Levy	0.95%	151,579.14
S94A Planning and Administration	0.05%	7,977.85
<b>Total</b>	<b>1.0%</b>	<b>\$159,557</b>

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.

## 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, SEPP 65 – Design Quality of Residential Flat Development, SEPP (Building Sustainability Index: BASIX) 2004, SEPP (Infrastructure) 2007, SEPP 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 a number of significant non-compliances, inconsistencies and deficiencies which can be summarised as follows:

- Insufficient information has been submitted with the application to demonstrate compliance with all relevant planning controls, particularly SEPP 65, to enable a thorough and accurate assessment of the application;
- The development is inconsistent with the desired future character statement for the F1 - Brookvale Centre locality;
- The development is inconsistent with the desired future character statement for the F3 – Brookvale Industrial locality and
- The development fails to comply with SEPP 65 - Design Quality of Residential Flat Development.

As detailed in the report, the Draft WLEP 2009 is a mandatory matter for consideration under Section 79C (1) (a) (ii) of the Environmental Planning and Assessment Act, 1979 and given the fact that the Plan has been through public exhibition and has been adopted by Council the plan is considered both imminent and certain. Therefore, the draft planning instrument must be given—



significant weight in the determination of the application. In particular, the subject site is located within the B5 Business Development and IN1 General Industrial zone in which residential development is a prohibited land use and the proposed development does not comply with the minimum building height standard.

Further, the proposed development (i.e. residential component) was found to be inconsistent with the aims and objective zones and cannot be supported on this basis as the subject site is unsuitable for residential development.

The development was found to be inconsistent with the Design Quality Principles contained in SEPP 65 and the Residential Flat Design Code with respect to the following:

- Building separation;
- Open Space
- Visual and acoustic privacy between proposed apartments;
- Landscape and communal open space; and
- Daylight access to living rooms and private open spaces.

These are significant matters in relation to the amenity of the future occupants of the development. On this basis, substantial amendments to the proposal and further information are required for it to satisfy the provisions of SEPP 65 and the RFDC.

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;
- Clause 72 – Traffic Access and Safety
- Clause 76 – Management of stormwater

Two (2) submissions were received in relation to the advertising and notification of the proposal. The issues raised in relation to the appropriateness of the residential component of the proposal were found to carry a determining weight as to warrant the refusal of the application.

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.

## **RECOMMENDATION (REFUSAL)**

That the Warringah Development Assessment Panel recommend to the Joint Regional Planning Panel as the consent authority to refuse Development Application No. DA2010/1285 for demolition works and the construction of a mixed use development at Lot 1 DP 1001963 - 638 Pittwater Road, Brookvale for the following reasons:

1. Pursuant to Section 79C (1) (a) (ii) of the Environmental Planning and Assessment Act, 1979, the proposed development is inconsistent with the objectives of B5 Business Development and IN1 - General Industrial zones 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) (ii) of the Environmental Planning and Assessment Act, 1979, the proposed development does not comply with the Height of Buildings standard and is inconsistent with the objectives of the Height of Buildings standard under the provisions of the Draft Warringah Local Environmental Plan 2009.
3. Pursuant to Section 79C (1) (a) of the Environmental Planning and Assessment Act 1979 the

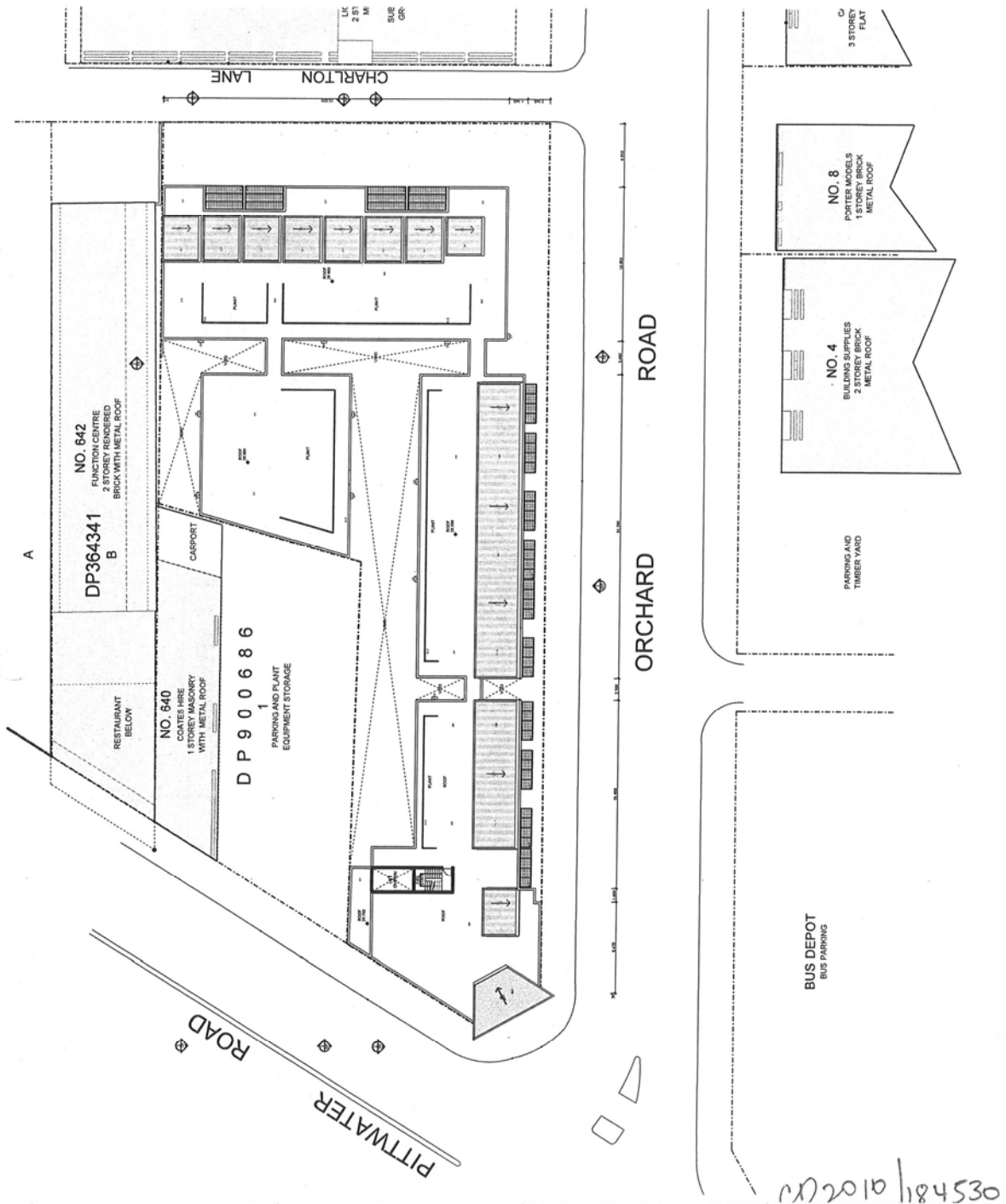
proposed development is inconsistent with the following Design Quality Principles in Clause 15 of State Environmental Planning Policy No.65;

- a) Principle No. 1 Context
- b) Principle No. 2 Scale
- c) Principle No. 3 Built Form
- d) Principle No. 4 Density
- e) Principle No. 5 Resources, energy & water efficiency
- f) Principle No. 6 Landscape
- g) Principle No.7 Amenity
- h) Principle No.10 Aesthetics

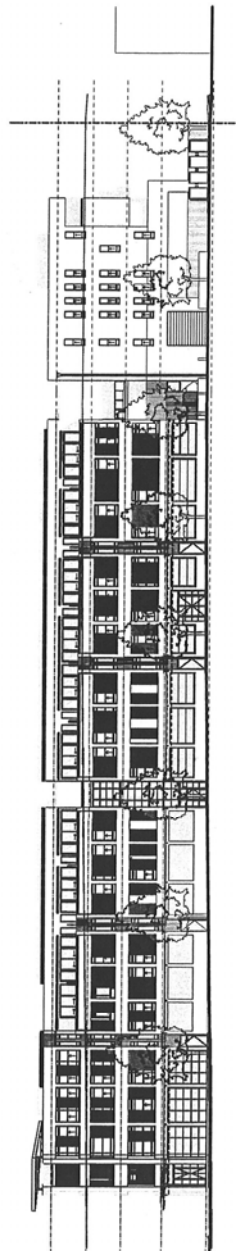
4. Pursuant to Section 79C(1)(a) of the Environmental Planning and Assessment Act 1979, the proposed development is inconsistent with the State Environmental Planning Policy No. 65 Design Quality of Residential Flat Development and the Residential Flat Design Code with respect to the following:
  - a) Building separation;
  - b) Visual and acoustic privacy between proposed apartments;
  - c) communal open space;
  - d) Daylight access to living rooms and private open spaces.
5. 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 inconsistent with the Desired Future Character of the F1 Brookvale Centre Locality as the proposed development does not provide low rise shop top housing.
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 inconsistent with the Desired Future Character of the F3 Brookvale Industrial Locality as the proposed residential use is inconsistent within an industrial locality.
7. Pursuant to Section 79C(1)(a) Environmental Planning and Assessment Act 1979, the proposed development is inconsistent with the building Height and Building Appearance built form control for the F1 Brookvale Centre locality in Warringah Local Environmental Plan 2000.
8. Pursuant to Section 79C(1)(a) Environmental Planning and Assessment Act 1979, the proposed development is inconsistent with the Building Height built form control for the F3 Brookvale industrial locality in Warringah Local Environmental Plan 2000.
9. 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.
  - a) Clause 43 – Noise;
  - b) Clauses 48 and 49 – Contaminated Land;
  - c) Clause 65 – Privacy;
  - d) Clause 66 – Building Bulk;
  - e) Clause 72 – Traffic Access and Safety
  - f) Clause 76 – Management of stormwater
10. 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.
11. 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.



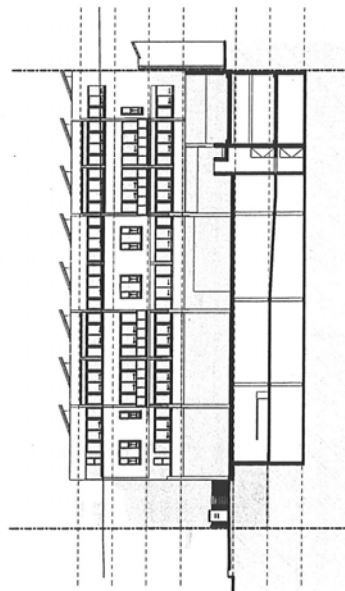
## Site and Elevation Plans



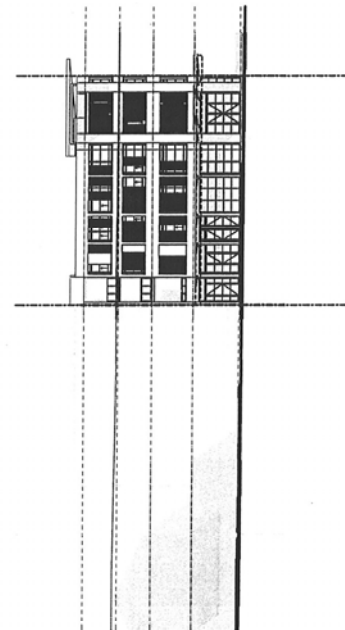
## Site and Elevation Plans

ORCHARD RD ELEVATION  
1:500

1

CHARLTON LANE ELEVATION  
1:500

2

PITTWATER RD ELEVATION  
1:500

3

PROJECT TITLE  
St Vincent De Paul Regional Office,  
Store & Residential Development

PROJECT ADDRESS  
638 Pittwater Rd, Brookvale  
DP 1001983, LOT 1

CLIENT  
CLAIRELEIGH HOLDINGS  
PTY LTD

ARCHITECT

WOLSKI - COPPIN  
ARCHITECTURE  
LEVEL 3, 115 ALESGARY ROAD  
NEUTRAL BAY 2089  
T: 9953 8477 F: 9953 8857

DRAWING TITLE

Notification Plan

DRAWING NO. REVISION NORTH POINT

NP/DA

SCALE: D/A PLOT DATE: 16/08/2010  
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Site and Elevation Plans

## Notes of Pre-DA meeting

Planning and Development Services

Application No: PLM2009/0109

Meeting Date: 9 December 2009

Property Address: 638 Pittwater Road, Brookvale

**Proposal:** A shop top housing (mixed use) development comprising a St Vincent de Paul shop on the ground floor, commercial offices on the corner of Pittwater Road and Orchard Street and affordable housing on levels 1, 2 and 3 above. Basement car parking for 82 vehicles and an at-grade car park for 12 vehicles is also proposed.

**Attendees Council:** for Steven Findlay, Team Leader Development Assessment  
Amy Sutherland, Senior Development Assessment Officer  
Ray Creer, Waste Services Officer  
Robert Barbuto, Team Leader Development Engineering  
Simon Taylor, Development Assessment Officer

**Attendees applicant:** for Ian Hashman, Greg Coppin, Carmen Jones, Ross Fleming

### General Comments:

All applications are assessed on individual merit, however a failure to comply with Council or a State Planning controls will generally indicate an over development of the site and may result in adverse impacts upon adjoining and nearby land and the streetscape.

You are advised to carefully read these notes. If there is an area of concern or non-compliance, you are strongly advised to review and reconsider the appropriateness of the design of your development for your site and the adverse impacts that may arise as a result of your development prior to the lodgement of any development application.

Council will seek to ensure that the development of land meets all provisions of all legislation and the relevant Environmental Planning Instrument/s, in addition to providing appropriate levels of amenity to surrounding and nearby lands.

Failure to achieve this may ultimately lead to the refusal of any application lodged without notice.

### Consideration of proposal against Warringah Local Environment Plan 2000

‘The Fundamentals’	
<b>Definition of proposed development:</b> (ref. WLEP 2000 Dictionary)	‘Housing’, ‘Shops’ and ‘Offices’
<b>Locality:</b>	F1 Brookvale Centre & F3 Brookvale Industrial
<b>Category of Development:</b>	<b>F1 Brookvale Centre Locality</b> Category 1 – Housing (not on ground floor), Offices, Shops In accordance with Clause 12(3)(a) of WLEP 2000 before granting consent to Category 1 development, the consent authority must consider the desired future character described in the relevant locality statement.

## Site and Elevation Plans

**'The Fundamentals'****F3 Brookvale Industrial Locality**

Category 3 – Housing, Shops

In accordance with Clause 12(3)(b) of WLEP 2000 before granting consent to Category 3 development the consent authority must be satisfied that the development is consistent with the desired future character statement.

**Desired Future Character**

The Desired Future Character (DFC) Statement for the F1 Brookvale Centre locality is as follows:

*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 contribute to creating cohesive and attractive streetscapes.*

Housing (on levels 1, 2 and 3), shops and offices are proposed in the F1 Brookvale Centre locality. The uses are all Category 1 uses in the locality. The ground level will incorporate street level retail. Business uses and shop top housing will be provided above ground level.

The DFC Statement for the F3 Brookvale Industrial locality is as follows:

*The Brookvale Industrial locality will remain an industrial and employment centre incorporating industries, warehouses and ancillary service uses.*

*New development or significant redevelopment will be designed to incorporate landscaping to soften the visual impact of industrial buildings and their associated parking and other paved areas as viewed from the street.*

*At the interface of the locality with adjoining and adjacent residential areas, buildings will be sited and designed and the use of land managed to minimise interference with the amenity of such residential areas.*

*Allotments are to be consolidated where necessary to ensure the development of one allotment will not render an adjoining allotment unsuitable for development.*

The residential component of the development is a Category 3 development in the F3 locality. The proposed residential use in the F3 locality is not considered to be consistent with the first paragraph of the DFC for the F3 locality which states that the Brookvale Industrial locality will remain an industrial and employment centre.

It is unclear from the plans the breakdown of the floor space for the St Vincent de Paul shop (i.e shop, warehouse, office, storage floor space). Shops are identified as Category 3 development in the locality. Plans submitted with the application must clearly show the extent of the shop so that the use can be properly assessed.

The proposal incorporates a nil setback to the majority of Orchard Road and a minimal setback to Charlton Lane. The proposal does not incorporate sufficient landscaping to soften the visual impact of the building along these frontages. Compliance with the front building setback control particularly along Orchard Road would provide an opportunity for the provision of landscaping and result in greater compliance with this component of the DFC statement.

The proposed housing is not located within a retail centre that provides for "shop top housing". Rather, the eastern portion of the site is within an industrial area. The residential development is not compatible with surrounding land uses as the sensitive residential use will be impacted by the noise, heavy vehicle traffic and potential pollution from the nearby industrial uses. Future occupants of the development will not be afforded a high or reasonable level of amenity. As such, the provision of housing within the F3 locality on the eastern portion of the site is not supported. An alternative use of the eastern portion of the site, which is consistent with the DFC for the F3 locality, is encouraged so that a more appropriate transition can be provided to the industrial area.

At the pre-lodgement meeting the applicants indicated that the housing component of the development could be significantly reduced in size and that a child care centre could be provided on the eastern portion of the site. Child care centres are identified as a Category 2 development in the F3 Brookvale Industrial locality and provide an ancillary service use for workers of the surrounding industries and businesses. A child care centre would be a more appropriate use of the eastern portion of the site as opposed to housing. Similarly, community facilities, offices or recreation facilities may also be an appropriate use of this portion of the site.

**Built Form Control Compliance Table – F1 Brookvale Centre**

## Site and Elevation Plans

Built Form Control	Requirement	Proposal	Compliance
<b>Building Height: Natural ground to upper ceiling (metres)</b>	11 metres	The entire building exceeds the 11 metre height limit.  The A3 plans submitted cannot be scaled from therefore the height of the proposed building cannot be accurately determined.	The proposal should be amended to comply. Minor variations may be appropriate provided they do not significantly add to the visual bulk and scale of the building.
<b>Front Setback</b>	Development is to maintain a minimum front building setback	A nil setback is proposed.	The proposed setback is generally consistent with the adjoining development.
<b>Building Appearance</b>	Building design is to: <ul style="list-style-type: none"> <li>articulate facades by breaking the elevation into distinct segments,</li> <li>detail new development by incorporating similar patterns and proportions where established by existing buildings</li> <li>ensure larger infill sites reflect the general height, form, alignment and facade character of the street,</li> <li>create active street fronts</li> <li>continue footpath awnings where appropriate, and</li> <li>address both street frontages on corner sites.</li> </ul>	The building design is generally considered acceptable.	Several photomontages should be submitted to demonstrate that the building appearance will be consistent with the 'Building Appearance' guidelines for this locality.

## Built Form Control Compliance Table – F3 Brookvale Industrial

Built Form Control	Requirement	Proposal	Comment
<b>Building Height: Natural ground to upper ceiling (metres)</b>	11 metres	The entire building exceeds the 11 metre height limit.  The A3 plans submitted cannot be scaled from therefore the height of the proposed building cannot be accurately determined.	The proposal should be amended to comply. Minor variations may be appropriate provided they do not significantly add to the visual bulk and scale of the building.
<b>Front Setback</b>	4.5 metres	Nil	The proposal should be amended to comply.
<b>Subdivision</b>	4,000sqm minimum	N/A	N/A



**Site and Elevation Plans****Built Form Control Compliance Table – F3 Brookvale Industrial**

<b>Built Form Control</b>	<b>Requirement</b>	<b>Proposal</b>	<b>Comment</b>
	allotment area		

## Site and Elevation Plans

General Principles of Development Control	
<p><b>Division 1 General</b>  <a href="http://www.legislation.nsw.gov.au/fragview/inforce/epi+690+2000+pt.4-div.1-cl.38+0+N?EPITITLE=%22Warringah%20Local%20Environmental%20Plan%202000%22&amp;nohits=y&amp;tocnav=y">http://www.legislation.nsw.gov.au/fragview/inforce/epi+690+2000+pt.4-div.1-cl.38+0+N?EPITITLE=%22Warringah%20Local%20Environmental%20Plan%202000%22&amp;nohits=y&amp;tocnav=y</a>  38 Glare and reflection  39 Local retail centres  40 Housing for older people or people with disabilities  41 Brothels  42 Construction sites</p>	<p><b>Glare and reflection</b></p> <p>The colours and materials of the building must not result in glare from sun reflection that would unreasonably diminish the amenity of the locality, as required by Clause 38 - Glare and reflection of WLEP 2000. The schedule of colours and materials submitted with the development application should be consistent with this requirement.</p> <p><b>Construction sites</b></p> <p>A Construction Management Plan (CMP) is to be submitted with the application. The CMP is to address the requirements of Clause 42 'Construction Sites' of WLEP 2000 and detail access points, loading zones, site facilities, the location of mobile cranes and the construction zone.</p>
<p><b>Division 2 Health and safety</b>  <a href="http://www.legislation.nsw.gov.au/fragview/inforce/epi+690+2000+pt.4-div.2-cl.43+0+N?EPITITLE=%22Warringah%20Local%20Environmental%20Plan%202000%22&amp;nohits=y&amp;tocnav=y">http://www.legislation.nsw.gov.au/fragview/inforce/epi+690+2000+pt.4-div.2-cl.43+0+N?EPITITLE=%22Warringah%20Local%20Environmental%20Plan%202000%22&amp;nohits=y&amp;tocnav=y</a>  43 Noise  44 Pollutants  45 Hazardous uses  46 Radiation emission levels  47 Flood affected land  48 Potentially contaminated land  49 Remediation of contaminated land  49A Acid sulfate soils</p>	<p><b>Noise</b></p> <p>The Statement of Environmental Effects should address the proposal's consistency with the requirements of Clause 43 - Noise of WLEP 2000. The impact of the noise from the surrounding industrial and bus depot uses and proposed St Vincent de Paul use of site on the amenity of the occupants of the dwellings within the development should be addressed.</p> <p><b>Contaminated land</b></p> <p>The requirements of Clause 48 and 49 of WLEP 2000 and SEPP 55 – Remediation of Land are to be addressed using the reporting requirements outlined in 'Managing Land Contamination – Planning Guidelines SEPP 55 Remediation of Land' prepared by the Environmental Protection Authority which are summarised as follows;</p> <p><b>Stage 1</b> – A Preliminary Investigation is to be undertaken to identify any past or present potentially contaminating activities, provide a preliminary assessment of any site contamination and, if required provide a basis for a more detailed investigation.</p> <p><b>Stage 2</b> – A Detailed Investigation is necessary when the preliminary investigation indicates that the land is contaminated. A Detailed Investigation is to provide information about the extent and degree of contamination and include an assessment of the risk posed by the contaminants to health and the environment. A sampling program is to be undertaken.</p> <p><b>Stage 3</b> – A Site Remedial Action Plan (RAP) is to be submitted if the land is contaminated and requires remediation to be suitable for the proposed use. The RAP is to set objectives and document the process which will be undertaken to remediate the site.</p>
<p><b>Division 3 Public domain</b>  <a href="http://www.legislation.nsw.gov.au/fragview/inforce/epi+690+2000+pt.4-div.3-cl.50+0+N?EPITITLE=%22Warringah%20Local%20Environmental%20Plan%202000%22&amp;nohits=y&amp;tocnav=y">http://www.legislation.nsw.gov.au/fragview/inforce/epi+690+2000+pt.4-div.3-cl.50+0+N?EPITITLE=%22Warringah%20Local%20Environmental%20Plan%202000%22&amp;nohits=y&amp;tocnav=y</a>  50 Safety and security  51 Front fences and walls  52 Development near parks, bushland reserves and other public open spaces</p>	<p><b>Safety and security</b></p> <p>The building has been designed to provide adequate surveillance of the street and communal spaces on the site. The Statement of Environmental Effects should detail the proposal's compliance with Clause 50 'Safety and security' of WLEP 2000 and the Crime Prevention Through Environmental Design (CPTED) principles established by the Department of Planning. The car parking for the commercial and residential components of the development should be separated.</p> <p><b>Front fences</b></p> <p>The plans submitted for the pre-lodgement meeting did not indicate a front fence is proposed. If a fence is proposed it should comply with the requirements in Clause 51 - Front fences and walls in WLEP 2000 and full</p>

## Site and Elevation Plans

## General Principles of Development Control

53 Signs	<p>details of the design and materials are to be included in the development application documentation.</p> <p><b>Signs</b></p> <p>The pre-lodgement plans did not indicate any signs are proposed. If signs are proposed the SEE is to detail compliance with Clause 53 'Signs' of WLEP 2000 and <i>State Environmental Planning Policy No.64 – Advertising and Signage</i>.</p>
<p><b>Division 4 Site planning and building design</b></p> <p><a href="http://www.legislation.nsw.gov.au/fragview/inforce/epi+690+2000+pt.4-div.4-cl.54+0+N?EPITITLE=%22Warringah%20Local%20Environmental%20Plan%202000%22&amp;nohits=y&amp;tocnav=y">http://www.legislation.nsw.gov.au/fragview/inforce/epi+690+2000+pt.4-div.4-cl.54+0+N?EPITITLE=%22Warringah%20Local%20Environmental%20Plan%202000%22&amp;nohits=y&amp;tocnav=y</a></p> <p>54 Provision and location of utility services</p> <p>55 Site consolidation in “medium density areas”</p> <p>56 Retaining distinctive environmental features on sites</p> <p>57 Development on sloping land</p> <p>58 Protection of existing flora</p> <p>59 Koala habitat protection</p> <p>60 Watercourses and aquatic habitat</p> <p>61 Views</p> <p>62 Access to sunlight</p> <p>63 Landscaped open space</p> <p>63A Rear building setback</p> <p>64 Private open space</p> <p>65 Privacy</p> <p>66 Building bulk</p> <p>67 Roofs</p> <p>68 Conservation of energy and water</p> <p>69 Accessibility—premises available to the public</p> <p>70 Site facilities</p>	<p><b>Provision and location of utility services</b></p> <p>Utility services are to be provided to the site of the development. The Statement of Environmental Effects should address Clause 54 'Provision and location of utility services' of WLEP 2000 to demonstrate that adequate utility services are or will be available.</p> <p>The application will be referred to EnergyAustralia for comment on the electrical supply requirements for the development.</p> <p><b>Views</b></p> <p>The proposed development is unlikely to impact on any views from the surrounding properties. The SEE must address the proposed development's consistency with the requirements of Clause 61 'Views' of WLEP 2000.</p> <p><b>Access to sunlight</b></p> <p>Shadow diagrams are to be submitted to demonstrate the development will not unreasonably reduce sunlight to surrounding properties as required by Clause 62 'Access to sunlight' of WLEP 2000.</p> <p><b>Private open space</b></p> <p>In accordance with Clause 64 'Private open space' of WLEP 2000, each dwelling is to be provided with 10 square metres of private open space with minimum dimensions of 2.5m.</p> <p><b>Building bulk</b></p> <p>The proposed development should comply with the requirements of Clause 66 - Building bulk of WLEP 2000.</p> <p><b>Conservation of energy and water</b></p> <p>A BASIX certificate must be submitted with the application to demonstrate that the residential component of the development meets the NSW government's requirements for sustainability.</p> <p><b>Accessibility</b></p> <p>In accordance with Clause 69 of WLEP 2000, the development is to comply with the requirements of AS1428.2. The development is also to meet the requirements of the Disability Discrimination Act 1992. An Access Report or written certification from a suitably qualified professional is to be submitted to demonstrate compliance with the requirements of Clause 69.</p> <p><b>Site facilities</b></p> <p>Separate waste storage areas are to be provided for the residential and commercial components of the development.</p> <p>Where more than 30 dwellings are proposed provision is to be made to allow for a garbage truck (heavy rigid vehicle) to reverse onto the site and access the garbage storage area.</p> <p>If less than 30 dwellings are proposed and provision is not made for a garbage truck to enter the site, the garbage storage area cannot be located more than 6 metres from the property boundary.</p> <p>The garbage facilities are to comply with Council's Waste Management Guidelines, Clause 70 of WLEP 2000, Council's Waste Management Guidelines (copy enclosed) and the Residential Flat Design Code.</p> <p>A draft Operational Management Plan is to be provided with the application which will outline how illegal dumping of goods on the street will be managed/prevented.</p> <p>Please liaise directly with Mr Ray Creer, Council's Waste Services Officer</p>

## Site and Elevation Plans

General Principles of Development Control	
	on 9942 2533 for further information regarding the design of the waste storage areas.
<b>Division 5 Traffic, access and carparking</b> <a href="http://www.legislation.nsw.gov.au/fragview/inforce/epi+690+2000+pt.4-div.5-cl.71+0+N?EPITITLE=%22Warringah%20Local%20Environmental%20Plan%202000%22&amp;nohits=y&amp;tocnav=y">http://www.legislation.nsw.gov.au/fragview/inforce/epi+690+2000+pt.4-div.5-cl.71+0+N?EPITITLE=%22Warringah%20Local%20Environmental%20Plan%202000%22&amp;nohits=y&amp;tocnav=y</a> 71 Parking facilities (visual impact) 72 Traffic access and safety 73 On-site loading and unloading 74 Provision of carparking 75 Design of carparking areas	<b>Traffic and Parking</b> <p>A Traffic Report is to be submitted which addresses access to the site from Orchard Street and Charlton Lane, loading and unloading and internal manoeuvring. The Traffic Report is to demonstrate compliance with all relevant Australian Standards including AS2890. The two adjoining driveways on Charlton Lane should be separated to reduce potential conflicts between vehicles and improve pedestrian safety.</p> <p>Car parking is to be provided in accordance with the requirements of Clause 74 'Provision of car parking' and Schedule 17 of WLEP 2000.</p>
<b>Division 6 Soil and water management</b> <a href="http://www.legislation.nsw.gov.au/fragview/inforce/epi+690+2000+pt.4-div.6-cl.76+0+N?EPITITLE=%22Warringah%20Local%20Environmental%20Plan%202000%22&amp;nohits=y&amp;tocnav=y">http://www.legislation.nsw.gov.au/fragview/inforce/epi+690+2000+pt.4-div.6-cl.76+0+N?EPITITLE=%22Warringah%20Local%20Environmental%20Plan%202000%22&amp;nohits=y&amp;tocnav=y</a> 76 Management of stormwater 77 Landfill 78 Erosion and sedimentation	<b>Stormwater Management</b> <p>A stormwater management plan is required to be submitted which provides details of the required on-site stormwater detention system (OSD). The stormwater plans should be fully developed and not just concept plans.</p> <p>Dewatering may be required on the site. In this regard, a Geotechnical Report is to be submitted to determine whether or not dewatering is required. Please note that the Department of Environment, Climate Change and Water (DECCW) does not support permanent dewatering of a site. If temporary dewatering is required, the development constitutes 'integrated development' and a cheque for \$250 made payable to the Department of Environment, Climate Change and Water is to be submitted with the development application. The application will also be advertised for 30 days.</p> <p>Please liaise with Council's Team Leader Development Engineers, Mr Robert Barbuto on 9942 2339, should you require more information.</p>
<b>Division 7 Heritage</b> <a href="http://www.legislation.nsw.gov.au/fragview/inforce/epi+690+2000+pt.4-div.7-cl.79+0+N?EPITITLE=%22Warringah%20Local%20Environmental%20Plan%202000%22&amp;nohits=y&amp;tocnav=y">http://www.legislation.nsw.gov.au/fragview/inforce/epi+690+2000+pt.4-div.7-cl.79+0+N?EPITITLE=%22Warringah%20Local%20Environmental%20Plan%202000%22&amp;nohits=y&amp;tocnav=y</a> 79 Heritage control 80 Notice to Metropolitan Aboriginal Land Council and Department of Environment and Conservation 81 Notice to Heritage Council 82 Development in the vicinity of heritage items 83 Development of known or potential archaeological sites	<b>Heritage</b> <p>The subject site is not identified as, or located within the vicinity of, a heritage item or heritage conservation area.</p>
<b>Clause 15 and Schedule 15</b>	<p>Clause 15 of WLEP 2000 sets out the procedure for Category 3 development. Please note that Category 3 developments must be advertised for a minimum period of 21 days and a public hearing must be held.</p> <p>As the development involves Category 3 development (housing and shops in the F3 locality), in accordance with Clause 15 of WLEP 2000, the Statement of Environmental Effects submitted with the application must</p>

Site and Elevation Plans

**General Principles of Development Control**

<b>STATE ENVIRONMENTAL PLANNING POLICY NO.65 – DESIGN QUALITY OF RESIDENTIAL FLAT DEVELOPMENT</b>	<p>address the provisions of Schedule 15 of WLEP 2000.</p> <p>State Environmental Planning Policy No. 65 (SEPP 65) applies to the development. As such, the provisions of SEPP 65 and the Residential Flat Design Code (RFDC) are required to be taken into consideration and must be addressed in the Statement of Environmental Effects submitted with the application. In this regard, a detailed assessment of the proposal's consistency with the provisions of the RFDC is required, particularly in relation to natural ventilation, visual privacy and solar access. The solar access diagrams submitted with the application should show the shadow cast by a building built to the maximum height limit on the adjoining property to the north.</p>
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**Other Relevant Environmental Planning Instruments / Council Policies**

You are advised of the following (but not limited to all) Council's policies available at [www.warringah.nsw.gov.au](http://www.warringah.nsw.gov.au):

- [Applications for Development - Policy for the handling of unclear, non conforming, insufficient and Amended applications: PDS-POL 140](#)
- [Stormwater drainage for low level properties PDS-POL 135](#)
- [Building over or adjacent to constructed Council drainage systems and easements: PAS-PL 130](#)
- [Common vehicular access to multiple properties: LAP-PL 310](#)
- [Development Applications relating to trading hours under the Liquor Act 1982: LAP-PL 610](#)
- [Onsite stormwater detention rainwater reuse policy for single residential dwellings: PAS-PL 100](#)
- [Vehicle access to all roadside development: LAP-PL 315](#)

**Draft Warringah Local Environmental Plan 2009**

Draft Warringah Local Environmental Plan 2009 was on public exhibition until 30 December 2009. The draft LEP will therefore be a relevant matter for consideration in the assessment of the development application in accordance with Section 79C of the EP&A Act and must be addressed in the Statement of Environmental Effects.

The western portion of the site, which is currently within the F1 Brookvale Centre locality, is within the B5 Business Development zone under the draft LEP. The eastern portion of the site, which is currently within the F3 Brookvale Industrial locality, is located within the IN1 General Industrial zone under the draft LEP.

Retail premises, office premises and residential accommodation are listed as prohibited development in the Land Use Table for both the B5 Business Development zone and the IN1 General Industrial zone.

Importantly, clause 2.5 of the draft LEP allows for additional permitted uses. The clause has effect despite anything to the contrary in the Land Use Table or other provision of the plan. The western portion of the site, within the B5 Business Development zone, is within Area 9 on the 'Additional Permitted Uses Map' of the draft LEP. Clause 5 of Schedule 1 – Additional Permitted Uses states that development for the purposes of office premises and retail premises is permitted with consent in 'Area 9'.

An 11 metre height limit applies to the site under the draft LEP. Height is measured to the highest point of the building under the draft LEP. The proposed development does not comply with the height limit under the draft LEP and must be addressed in the SEE having regard to the objectives of the zone and clause 4.3 and 4.6 of the draft LEP.

**Required Documentation**

- All information required to be submitted under Schedule 1 of the Environmental Planning and Assessment Regulation 2000.
- All information as required on the Development Application form checklist
- Site Analysis (prepared in accordance with Schedule 8 of WLEP 2000)
- Site Survey (prepared by a registered Surveyor)
- Statement of Environmental Effects addressing:
  - Section 79C of EPA Act,
  - All relevant sections of WLEP 2000, including demonstrating consistency with the locality's Desired Future Character Statement, Built Form Controls, General Principles of Development Control and Schedule 15;
  - Other relevant Environmental Planning Instruments (SEPP 55, SEPP 64, SEPP Infrastructure, SEPP BASIX and SEPP 65)

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**Required Documentation**

- Draft Environmental Planning Instruments (Draft Warringah Local Environmental Plan 2009)
- BASIX Certificate
- Geo-technical report
- Contamination Report
- Access Report
- Building Code of Australia Report
- Traffic and Parking Report
- Crime Prevention Through Environmental Design (CPTED) assessment against the Guidelines prepared by the former DUAP
- Erosion and Sediment Control Plan
- SEPP 65 Design verification statement from a qualified designer
- Construction/Site Management Plan
- Sample Board of External Finishes
- Photomontages of the development taken from several vantage points
- Shadow diagrams
- Landscape Plan
- Waste Management Plan
- Stormwater Management Plans

**Concluding Comments**

The proposed residential component of the development in the F3 Brookvale Industrial locality is not compatible with the surrounding industrial land uses. The residential component of the development is identified as Category 3 development in the locality is not considered to be consistent with the DFC for the F3 locality. Residential development is prohibited on this portion of the site under the draft LEP. As such, it is recommended that the residential component of the development in the F3 locality be replaced with a more appropriate transitional use.

Shops are also identified as a Category 3 land use in the F3 locality. If the St Vincent De Paul shop extends into the F3 locality, a suitable justification must be provided and the Statement of Environmental Effects is to demonstrate that the proposal is consistent with the DFC statement.

The proposed non-compliances with the building height and front building setback controls are not justified and cannot be supported. The proposal should be amended to comply with the relevant built form controls. Any variations to the controls under WLEP 2000 are to be supported by a planning justification addressing Clause 20 of WLEP 2000 and any variations to the controls under Draft WLEP 2009 are to address Clause 4.6 of WLEP 2009.

The proposed access and egress arrangements should be amended to allow for the collection of waste and to remove any potential conflicts between vehicles entering and leaving the site on Orchard Avenue.

Given substantial amendments are required to the proposed development, it is recommended that a second pre-lodgement meeting is held prior to the lodgement of the development application.

You are advised that if the capital investment value (CIV) of the development exceeds \$10 million, the Sydney Region East Joint Regional Planning Panel will be the consent authority for the development. For further information on the Joint Regional Planning Panels please refer to the Panel's website at [www.jrpp.nsw.gov.au](http://www.jrpp.nsw.gov.au).

**Other Matters**

- **Requirement to Submit Correct, Clear and Accurate Information at Lodgement**

You are advised, that if an application Unclear, NonConforming, provides Insufficient information or if Council requests additional information in accordance with Clause 54 of the EPA Regulations 2000 and it is not provided within the specified time frame – your application may be rejected or refused without notice.

The time to discuss and amend your design is prior to lodgement of your Development Application, as there will be no opportunity to do so during the assessment process

- **Privacy and Personal Information**

You are advised that Council is legally obliged to make Development Applications and supporting documents available for public inspection – see section 12 of the Local Government Act 1993. We do this at the Customer Service Centre and by

**Site and Elevation Plans****Other Matters**

placing copies of the applications and supporting documents on the Council website.

Should this proposal result in a development application being lodged these notes will form part of the development application documentation that will appear on Council's website – DA's online. [www.warringah.nsw.gov.au](http://www.warringah.nsw.gov.au)

- **Monitoring DA progress after lodgement**

Once lodged you can monitor the progress of your application through Council's website – DA's online. [www.warringah.nsw.gov.au](http://www.warringah.nsw.gov.au)

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