

JRPP No:	2010SYE104
DA No:	DA2010/1979
Address / Property Description:	Part Lot 11 DP 577062, No. 23 Fisher Road, Dee Why Stage 1 concept mixed use development comprising residential and commercial uses and basement car parking
APPLICANT:	The Salvation Army NSW Property Trust – C/- Hassell
REPORT BY:	Malcolm Ryan, Director Strategic and Development Services

Assessment Report and Recommendation

Application Lodged:	3 December 2010
Plans Reference:	SK-100; SK-101; SK-102; SK-103; SK-104; SK-105; SK-106; SK-107; SK-108; SK-120; SK-150; SK-151; SK-200; SK-201; SK-500; SK-501; SK-502; SK-503; SK-504; SK-505; SK-506; SK-600 and SK-601
Amended Plans:	No amended plans have been submitted
Owner:	Salvation Army NSW Property Trust
Locality:	E10 Civic Centre
Category:	Category 1 – Housing; and Category 1 – Business Premises
Draft WLEP 2009 Permissible or Prohibited Land use:	B4 Mixed Use zone: Residential Flat Building - Permitted with consent; and Business Premises - Permitted with consent
Variations to Controls (Cl.20/Cl.18(3)):	<ul style="list-style-type: none"> • Building Height (not supported); • Floor to Ceiling (not supported); and • Side Boundary Envelope (not supported).
Referred to ADP:	No
Referred to WDAP:	No
Land and Environment Court Action:	None pending
SUMMARY	
Submissions:	One (1)
Submission Issues:	<ul style="list-style-type: none"> • Building height; • Privacy; • Inadequate provision for site access; • Inadequate provision of car parking; and • Noise during construction phase.

Assessment Issues:

- Inconsistency with *State Environmental Planning Policy No. 55 – Remediation of Land*
- Inconsistency with *State Environmental Planning Policy No 65 – Design Quality for Residential Flat Development*.
- Insufficient information:
 - Phase 1 Preliminary Environmental Site Investigation; and
 - Flora and Fauna Report.
- Inconsistency with Desired Future Character of the E10 Civic Centre Locality.
- Non-compliance with the following Built Form Controls of the locality statement:
 - Building Height;
 - Floor to Ceiling; and
 - Side Boundary Envelope.
- Inconsistency with General Principles of Development Control:
 - Clause 52 – Development near Parks, Bushland Reserves & other Open Spaces;
 - Clause 56 – Retaining Unique Environmental Features on the Site;
 - Clause 58 – Protection of Existing Flora;
 - Clause 61 – Views;
 - Clause 66 – Building Bulk;
 - Clause 72 – Traffic Safety and Access;
 - Clause 79 – Heritage Control; and
 - Clause 82 – Development in the Vicinity of Heritage Items.

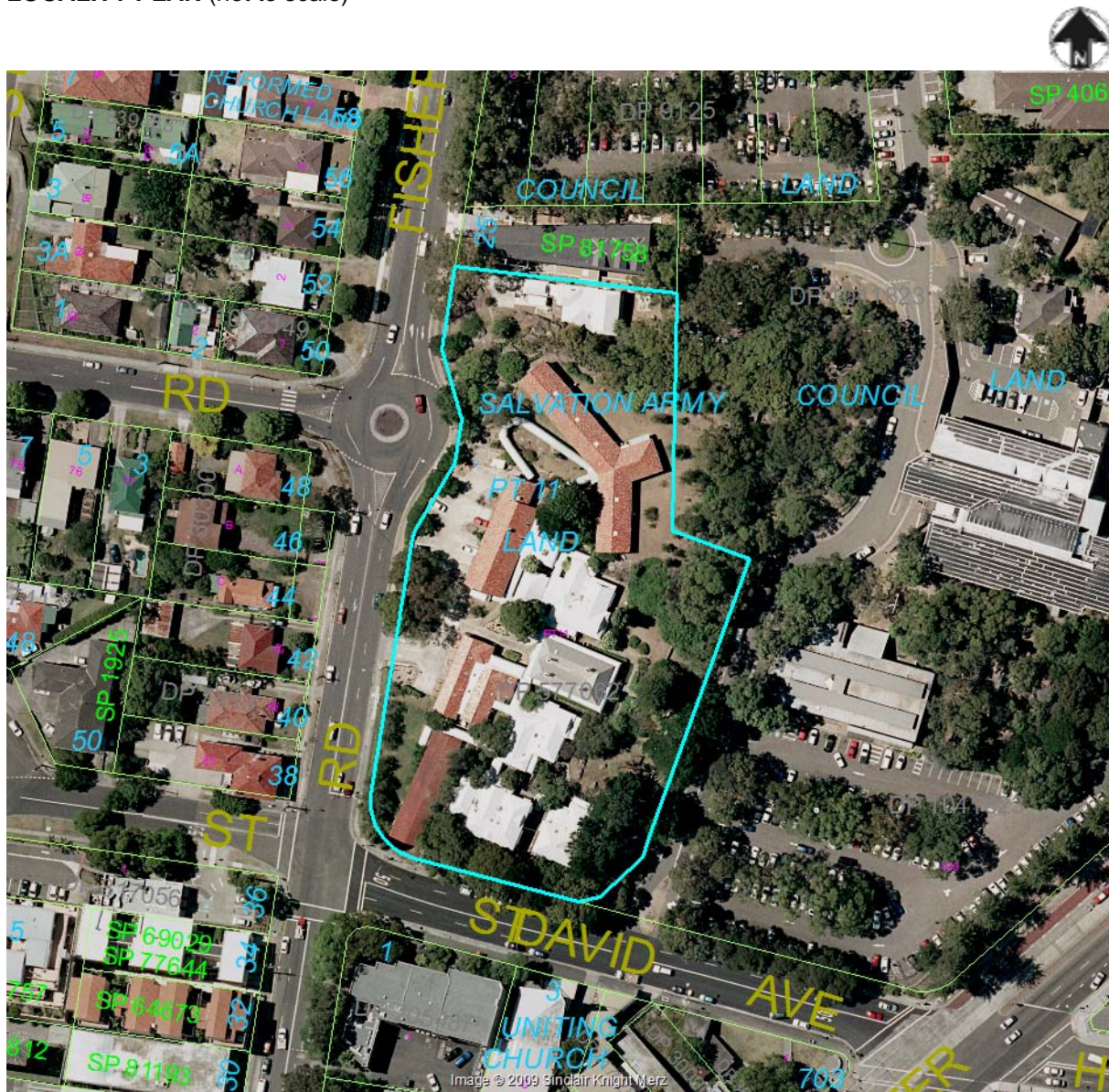
Recommendation:

Refusal

Attachments:

Site plan; elevations

LOCALITY PLAN (not to scale)



Subject Site: Part Lot 11 DP 577062, No. 23 Fisher Road, Dee Why

Public Exhibition: The subject application has been publicly exhibited in accordance with the EPA Regulation 2000, Warringah Local Environment Plan 2000 and Warringah Development Control Plan. As a result, the application was notified to 150 adjoining land owners and occupiers for a minimum period of 30 calendar days commencing on 17 December 2010 and being finalised on 9 February 2011. Furthermore, the application has been advertised within the Manly Daily on 18 December 2010 and a notice was placed upon the site.

SITE DESCRIPTION

The subject site consists of a single allotment known as Part Lot 11 in DP 577062, No. 23 Fisher Road, Dee Why. The site is located on the corners of Fisher Road, St. David Avenue and Civic Drive. The site is irregular in shape and has an area of 1.062ha.

The site accommodates an aged care facility owned and operated by the Salvation Army. The facility accommodates a variety of single and part-double storey buildings situated around the site, all constructed over time (1890s, 1950s and 1980s). A two storey building is located in the extreme northern part of the site. Amongst those buildings, a heritage listed building (the 'Pacific Lodge') is located within the eastern side of the site together with a 'cultural heritage garden'.

The site currently gains vehicular access from Fisher Road via two crossovers each located to the north and south of the Fisher Road/McIntosh Road roundabout respectively. The northern crossover currently services a two storey building associated with the facility whilst the southern crossover directly services the aged care facility. Due to its topographical constraints, further access to the site is via two pedestrian footpaths which are located on Fisher Road and Civic Drive respectively.

Topographically, the site consists of an elevated rock outcrop (or a formation of rock outcrops) which forms a unique and prominent landscape feature in Dee Why. The site is elevated by approximately 9.0m at the northern side (facing No. 25 Fisher Road); 7.0m at the western side (facing Fisher Road); 8.0m at the southern side (facing St. David Avenue); and 13.0m at the eastern side (facing Civic Drive). The level of the site is uneven but generally achieves its highest point in the northern half then gradually slopes down in a north-to-south direction towards St. David Avenue.

The site is located within the E10 Civic Centre locality which is bounded by the E2 Dee Why Lagoon Suburbs locality (low density residential) to the west; the E11 Fisher Road locality (mixed use) to the south; the E9 Pittwater Road locality (mixed use/high density residential) to the east; and the E13 Dee Why Park locality (medium density residential) to the north. The site is therefore surrounded by a mix of development although low density residential is evident immediately adjacent to the west, the 2 storey police station and church building to the south, the Civic Centre, Dee Why Library building and open car parks to the east and a 3 storey residential flat building and open car park to the north. A pocket of remnant bushland is located immediately to the north-east of the site on the elevated rock platform facing Civic Drive (and the Civic Centre). The high density Dee Why Town Centre is located approximately 110m to the east (downhill and across Pittwater Road).

Vegetation is scattered throughout the site although dense pockets are located within the north-eastern corner and along the St. David Avenue frontage. Given the continual open character of the site, vegetation coverage is considered to have environmental and aesthetic significance.

SITE HISTORY

The site has been occupied since the 1890s when the Salvation Army acquired the land from Elizabeth Jenkins to establish a nursing home ('Home for Rest for Salvation Army Officers') which was built on the site between 1890 and 1892.

Since that time, the site has been subject to ongoing development in the 1950s and 1980s with the construction of a variety of low-scale buildings to support the gradual evolution of the current day Salvation Army Aged Care Facility.

CURRENT DEVELOPMENT APPLICATION HISTORY

PLM2010/0004

A Pre-lodgement meeting was held on 11 February 2010 between representatives of the Salvation Army, Hassell and Council staff with regards to the subject development. The proposal, at that time, involved a Stage 1 concept for the demolition of existing buildings, the construction of a residential

development (approximately five (5) buildings of between 2 - 7 storeys in height), new access points, basement car parking, landscaping and the retention of a heritage item.

The figure below shows the proposed layout of the development at the time of the Pre-lodgement meeting and is provided to give some indication of how the plan had changed at lodgement:



Figure 1 Pre-lodgement building layout
(Source: Hassell supporting Pre-lodgement documents)

The Pre-lodgement Minutes concluded:

The proposal is not supported for the following reasons:

- *The maximum 7 stories / 30 metre height proposed is considered excessive and the merits of the proposal are not readily identifiable nor justified. The height proposed would have an adverse visual impact, have little relationship with adjoining built forms and have potential impact in respect to view loss and overshadowing*
- *Whilst the provisions of Clause 20 could be legally used to vary the height, the extent of the variation proposed is such that the variation would undermine the future application of these controls in the E10 Locality. As stated previously, proper consideration of the such a variation could only be achieved through the formulation of a height strategy for the entire locality, essentially to demonstrate that the existing 3 storey / 13m height control is unnecessary or obsolete.*

- *The curtilage around the existing heritage item (Pacific Lodge) appears to be inadequate to accommodate the scale of the buildings proposed adjacent to it. More detail is required to demonstrate how a relationship will be created with the adjacent Civic Place.*
- *The proposed 7 storey building will have an adverse impact on the visual setting of the adjacent heritage item (Dee Why Public Library).*
- *The proposal is not consistent with the requirements of the draft Warringah LEP 2009*

As a more general comment, the staged approach is inadequate in terms of not providing sufficient architectural detail to support the significant variation to the building height control.

A further meeting was held on 27 May 2010 between representatives of the Salvation Army; the Director of Strategic and Development Services; and Council staff with respect to clarifying the information required to be submitted with a Stage 1 Development Application. A letter dated 9 June 2010 was subsequently sent to the Salvation Army to advise of the supporting information that would normally be required for a Stage 1 Development Application.

DA2010/1979

The current application was lodged with Council on 3 December 2010. Following an extended notification period due to the Christmas period, and upon receipt of the various responses to external and internal referrals and on completion of the assessment, a letter was sent to the applicant dated 23 February 2011 detailing the identified matters of non-compliance and inconsistency and advising the applicant that the application, in its current form, could not be supported. The letter provided the applicant with an opportunity to withdraw the application in accordance with Council's *Applications for Development Handling of Unclear, Non-Conforming, Insufficient and Amended Applications Policy* (adopted 11 December 2007).

Following receipt of responding correspondence from the Salvation Army and Hassell, dated 1 and 2 March 2011 respectively, an additional letter was sent to both parties dated 16 March 2011 clarifying and confirming the outcome of Council's assessment and providing the applicant with further opportunity to withdraw the application.

The applicant was advised in both letters that failure to withdraw the application would result in Council reporting the application to the Joint Regional Planning Panel on the information on hand. To date, no request to withdraw the application has been made.

PROPOSED DEVELOPMENT

The applicant seeks approval for a Stage 1 Development Application made pursuant to Section 83B of the *Environmental Planning and Assessment Act, 1979*.

The Stage 1 Development Application includes building envelopes, footprints, landscaping and traffic access/egress arrangements. The approval of the Stage 1 Development Application would permit construction to occur through a subsequent Stage 2 Development Application within the building envelopes and footprints, and for the location of traffic access/egress points, as proposed in this Application.

The following plan is provided to assist in the identification of the proposed buildings on the site:

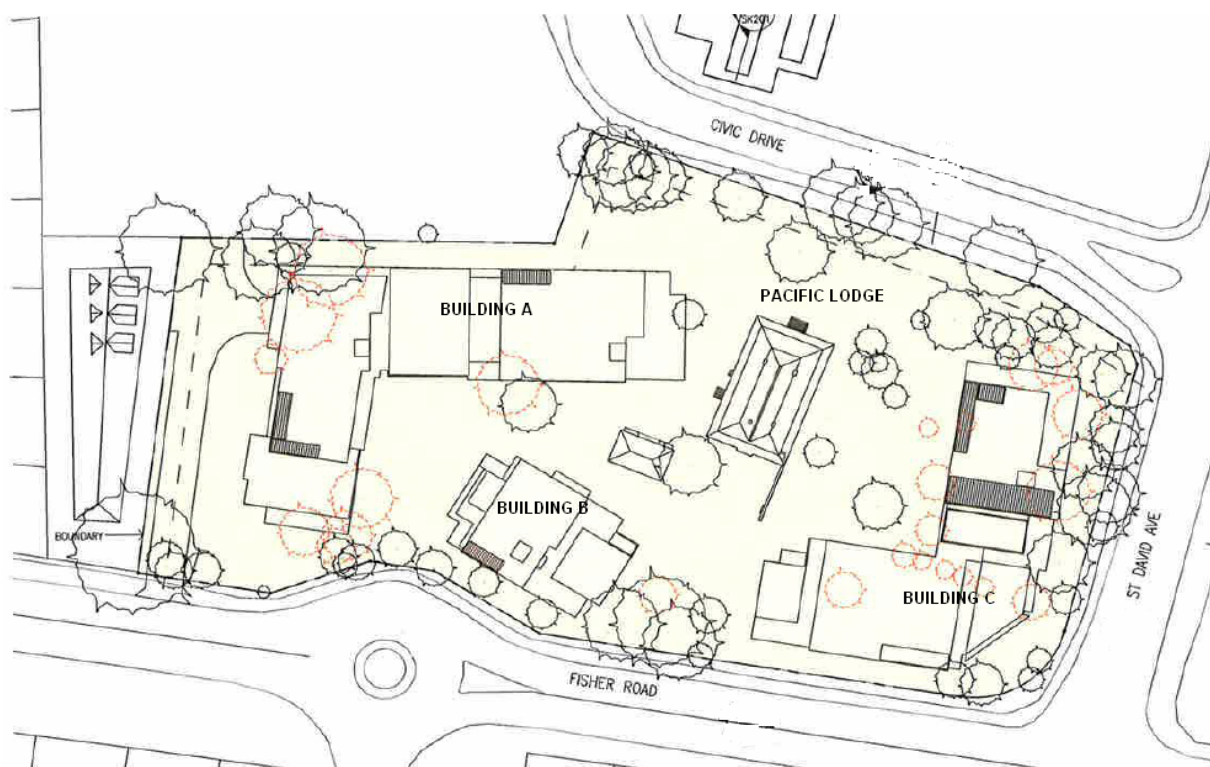


Figure 2 Building identification
(Source: Plan No. SK-120 dated 11/10/2010 prepared by Hassell)

The application proposes three building envelopes & footprints, consisting of 9,487m² residential floor space and 80m² commercial floor space, which includes the following (note: because of its conceptual nature, finer details of actual apartment yields, storage and garbage facilities are not provided):

Basement South (FFL 33.600)

- Extends below Building C.
- Access is gained from Fisher Road and Basement North via a 6.06.0m wide tunnel.
- Car parking is provided for 44 vehicles.

Basement North Lower (FFL 34.830)

- Extends below Buildings A and B.
- Access is gained from Fisher Road via a new driveway which extends along the northern boundary.
- Car parking is provided for 69 vehicles.

Basement North Upper (FFL 37.840)

- Extends below Building A.
- Access is gained from Basement North Lower via an internal ramp.
- Car parking is provided for 41 vehicles.

Building A (FFL 38.830 – FFL 56.830)

- 6 storeys/18.0m.

Building B (FFL 37.200 - FFL 49.200)

- 4 storeys/12.0m

Building C (FFL 32.515 – FFL 51.415)

- 6 storeys/18.9m.

The applicant has provided the following information pertaining to the Stage 1 Development Application:

"In accordance with the Act, Stage 1 consent is sought for residential development specifically:

- *demolition;*
- *3 medium rise apartment buildings [Buildings A, B & C] comprising;*
 - *9,487sqm of residential floor space, comprising an approximate apartment mix of*
 - *25% @ 1 bedroom*
 - *40% @ 2 bedroom*
 - *31% @ 3 bedroom*
- *80sqm retail/commercial tenancy [on the corner of Fisher Road and St. David Avenue];*
- *2 x buildings up to a maximum of 5 storeys [Buildings A & C. Refer to assessed building heights in this report];*
- *1 x building up to a maximum 4 storeys [Building B. Refer to assessed building heights in this report];*
- *two levels of basement car parking comprising;*
 - *154 parking spaces within a basement configuration;*
- *new vehicular access point from Fisher Road and internal circulation;*
- *site landscaping works; and*
- *retention and refurbishment of existing heritage item.*

The Stage 1 consent will provide a defined framework against which future stages can be assessed. It will also provide Council with certainty to proceed with detailed designs for the development and specialist technical investigations as required. These details will be the subject of separate development application(s)."

Furthermore, the applicant clarifies that:

"It is important to note that this is a Stage 1 development application, and as such, the anticipated number and mix of apartments is estimated only and is flexible. This is to provide flexibility to respond to the variances in the market and demand, whilst still providing surety that the overall built form is acceptable to the assessing authority."

Staged Development Applications

Section 83B of the *Environmental Planning and Assessment Act, 1979* deals with staged development applications as follows:

83B Staged development applications

- (1) For the purposes of this Act, a "staged development application" is a development application that sets out concept proposals for the development of a site, and for which detailed proposals for separate parts of the site are to be the subject of subsequent development applications. The application may set out detailed proposals for the first stage of development.*
- (2) A development application is not to be treated as a staged development application unless the applicant requests it to be treated as a staged development application.*

(3) *If consent is granted on the determination of a staged development application, the consent does not authorise the carrying out of development on any part of the site concerned unless:*

- *consent is subsequently granted to carry out development on that part of the site following a further development application in respect of that part of the site, or*
- *the staged development application also provided the requisite details of the development on that part of the site and consent is granted for that first stage of development without the need for further consent.*

(4) *The terms of a consent granted on the determination of a staged development application are to reflect the operation of subsection (3).*

In order to clarify the limitations of Staged Applications, the Land and Environment Court has provided some guidance in the form of a Planning Principle, handed down as part of the court hearing in relation to *Anglican Church Property Trust v Sydney City Council NSWLEC 353*. The judgement states that:

Multi-stage applications are useful for large or controversial projects as they provide the applicant with certainty about the major parameters of a proposal before it embarks on the expensive exercise of preparing detailed drawings and specifications for a development application. The critical issue is: how much detail should be provided in the Stage 1 application as against the Stage 2 application?

The principle we have adopted is that in multi-stage applications the information provided in Stage 1 should respond to all those matters that are critical to the assessment of the proposal. Where traffic generation is the critical issue, Stage 1 should include information on the precise number of cars accommodated on a site. Where the floor space is critical, Stage 1 should include the precise FSR. Where the major issue is the protection of vegetation, the footprints of the proposed buildings may be sufficient.

In this regard, this application includes the various land uses proposed (residential and commercial), the approximate gross floor areas for each use, building envelopes (which lays out the heights and footprints of buildings), setbacks to Civic Place, St. David Avenue and Fisher Road, basement levels, curtilages to heritage buildings, landscaped area, service truck access and residential vehicular access. The built forms depicted on the plans may not necessarily be the same as the final form of the buildings which would normally be considered in a Stage 2 Development application. Rather, the plans subject to this application generally indicates the shapes within which the future buildings will be contained. The actual shapes of the buildings, including the number of floors, the number and size of apartments, the layouts of the apartments, the number of car parking spaces, the elevations (including the presence or absence of balconies), the external finishes and the colours are to be shown in the Stage 2 application which follows the approval of any Stage 1 consent.

Notwithstanding, the critical matters to be assessed and determined are:

- The visual consistency of the development to surrounding development;
- The impact of the development on the availability of views from surrounding properties and the public domain;
- The streetscape and urban design issues relating to the building heights, footprints and separations, curtilages to heritage buildings, traffic accessibility and safety;
- The shadow impacts of the development on the public domain and private properties;
- The traffic impacts of the development; and
- The impact of the development upon the environment relating to bushland and the retention of unique site features.

Having reviewed and assessed the submitted documentation, it is considered that the level of supporting information does not adequately respond to those matters that are regarded as being critical to the assessment of the proposal in order to provide Council with an adequate level of certainty as to the appropriateness of the concept development and to progress to a Stage 2 detailed design, in its current form, and how the environmental impacts can be appropriately mitigated or managed.

AMENDMENTS TO THE SUBJECT APPLICATION

There are no amendments to the subject application.

STATUTORY CONTROLS

- a) Environmental Planning and Assessment Act 1979;
- b) Environmental Planning and Assessment Regulations 2000;
- c) SEPP No. 55 – Remediation of Land;
- d) SEPP No. 65 – Design quality of Residential Flat Development;
- e) SEPP (Infrastructure) 2007;
- f) Warringah Local Environment Plan 2000;
- g) Warringah Development Control Plan; and
- h) Draft Warringah Local Environmental Plan.

PUBLIC EXHIBITION

The subject application has been publicly exhibited in accordance with the EPA Regulation 2000, Warringah Local Environment Plan 2000 and Warringah Development Control Plan. As a result, the application was notified to 150 adjoining land owners and occupiers for a minimum period of 30 calendar days commencing on 17 December 2010 and being finalised on 9 February 2011. Furthermore, the application has been advertised within the Manly Daily on 18 December 2010 and a notice was placed upon the site.

As a result of the public exhibition process one (1) submission has been received from:

- Andrew Gainey – No. 2 McIntosh Road, Dee Why

The matters raised within the submission are addressed as follows:

Building height

The submission raises concern that the proposal is an overdevelopment and, due to excessive building height and the location of windows, could result in adverse impacts to privacy.

Comment:

The assessment of the application has found that the proposed building heights exceed the building heights permitted under the Building Height Built Form Control under WLEP 2000 and the draft WLEP. Given that the application seeks approval for building envelopes (and therefore, building heights) this component of the application is considered to be a fundamental matter which constitutes a reason for refusal.

Privacy

As indicated above, the submission raises concern that the development will, as a result of the proposed building heights, have an adverse impact upon the privacy of the neighbouring residential zone to the west.

Comment:

The current application does not propose the fine-grain' details of apartment placement and layout and, as such, cannot be accurately assessed with regards to the degree of impact upon privacy. Notwithstanding, given the location and layout of the proposed building footprints and the proximity of Building B to the objectors property (approximately 80m from Building B), it is considered unlikely that any adverse privacy impacts would occur.

Inadequate provision for site access

The submission points out that the provision of vehicular access/egress to/from the site is inadequate.

Comment:

This matter has been addressed by the RTA and Council's Traffic Engineer (see the section addressing External and Internal Referrals in this report). In summary, despite the recommendations put forward by the RTA, Council's Traffic Engineer objects to this aspect of the proposal in it's current format on traffic and safety grounds.

In this regard, traffic access is considered to be a fundamental matter which cannot be easily resolved within the scope of this Development Application and constitutes a reason for refusal.

Inadequate provision of car parking

The submission contends that the development proposes insufficient car parking.

Comment:

The assessment of the application has found that the development satisfies the provisions of Clause 74 and Schedule 3 under WLEP 2000 pertaining to the provision of on-site car parking (see the sections addressing the General Principles of Development Control and Schedule 17 in this report).

Noise during construction phase

The submission raises concern that the development will result in noise pollution to the nearby residential area and notes that the application does not provide adequate planning to protect residents.

Comment:

This application does not propose any construction works. Construction would be the subject of a subsequent Stage 2 Development Application whereby appropriate conditions would be imposed to limit the impact of the construction phase upon the neighbouring residential area.

MEDIATION

Has mediation been requested by the objectors?	No
Has the applicant agreed to mediation?	N/A
Has mediation been conducted?	No

LAND AND ENVIRONMENT COURT ACTION

There is no Land and Environment Court action current or pending on this application.

REFERRALS

External Referrals

State Transit Authority of NSW (STA)

The STA advises that:

- "1) The traffic report prepared by GTA did not accurately address all public transport services in the Transport Impact Report. In addition to the routes listed in Table 2.4 (page 9) the following services also operate via Fisher/McIntosh: 130, 178, E78, 153 as well as school services.*
- 2) Both bus stops on Fisher Road experience heavy use by passengers, with the addition of further dwellings the demand on these stops is expected to rise. State Transit believes that this development provides an opportunity to upgrade the current stops to cater for future growth, meet DDA compliance, and increase passenger amenity. State Transit is happy to discuss this issue, as any changes will need to be approved by STA prior to implementation.*
- 3) State Transport supports the recommendation in the Transport Impact Report (page 22, Point vi) and cannot support any access to the site via the Fisher/McIntosh roundabout. This would have an adverse impact on the operations of bus services.*
- 4) If construction will result in road closures or impact on bus services, State Transit will need to be consulted and given the chance to comment prior to construction."*

Assessing Officer's Comment

The issue of the location of the driveway in the *Transport Impact Assessment* dated 28/1/10 and prepared by GTA Consultants Pty Ltd is potentially confusing in that the discussion relating to access (see page 15 and page 22, Point vi of that report) refers to a 'possible' driveway location immediately adjacent to the Fisher Road/McIntosh Road roundabout. In this regard, the Assessment does not recommend access at that location due to safety and operational concerns and it is this conclusion of that report that the STA refers to under Point 3 above. To further clarify, it should be noted that the Assessment, in the conclusion (see page 22, Point vii), states that *'the proposed access arrangements for the site would operate safely and would not impact on the operation of the local road network or Dee Why fire station'*.

Notwithstanding, with regards to the proposed vehicular access to the property, the RTA and Council's Traffic Engineer each raise safety concerns regarding the location of the driveway in proximity to the Fisher Road/McIntosh Road roundabout. Council's Traffic Engineer has raised an objection to this aspect of the proposal in its current format.

In this regard, traffic access is considered to be a fundamental matter which cannot be easily resolved within the scope of this Development Application and constitutes a reason for refusal.

Roads and Traffic Authority (RTA)

The RTA does not raise any objection to the proposal subject to conditions but provides the following comment regarding access:

"Concern is raised with the location of the proposed vehicular access to the development. The proposed access point is located too close to the intersection of Fisher Road and McIntosh Road. Vehicles turning right into and out of the development will impact on the operation of the roundabout at this intersection with rear end crashes a likely possibility.

It is recommended that entry and exit movements to and from the site shall be restricted to left-in and left-out movements only. This is to be enforced by the construction of a raised concrete median at the centerline of Fisher Road at the front of the driveway and extending appropriate distances either side of the driveway."

Assessing Officer's Comment

Fisher Road is classified as a Sub-arterial road (Regional road) and, as such, is under the management of Council.

Council's Traffic Engineer considers that the installation of a raised concrete median (or any median generally) at the centerline of Fisher Road at the front of the driveway, and extending appropriate distances either side of the driveway, may address localized left-in access and left-out egress to site but does not consider the wider impacts to traffic flow associated with the site and with existing neighbouring properties which have driveways in close proximity to the proposed driveway.

Given that the Fisher Road is under the management of Council, and that Council's Traffic Engineer raises concerns regarding the proposed access/egress and the recommended median strip, it would be inappropriate to impose the conditions recommended by the RTA on this application.

In this regard, traffic access is considered to be a fundamental matter which cannot be easily resolved within the scope of this Development Application and constitutes a reason for refusal.

Aboriginal Heritage Office

The Aboriginal Heritage Office provides the following comments:

There are known Aboriginal sites in the Dee Why area. No sites are recorded in the current development area and much of the proposed development area has been subject to extensive disturbance.

If areas of in situ sandstone outcrop are proposed for impact (such as overhangs over 1m in height or platforms over 2m square), the Aboriginal Heritage Office would recommend a preliminary inspection by a qualified Aboriginal heritage professional.

If sandstone outcrops would not be impacted by the development (and if any outcrops that were present were properly protected during works), then no further assessment is required and the Aboriginal Heritage Office would not foresee any further Aboriginal heritage constraints on the proposal.

Assessing Officer's Comment

Given that the site includes in situ sandstone rock outcrops which may exceed 1m in height or platforms over 2m, and which will be impacted by the development, square it is considered appropriate to impose a condition requiring the provision of a Preliminary Aboriginal Heritage Inspection Report, should this application be approved, with a Stage 2 Development Application.

Energy Australia

Energy Australia have raised no objection to the proposal subject to conditions which would normally be applied to a Stage 2 Development Application.

NSW Police Force

NSW Police have raised no objection to the proposal.

Internal Referrals

Strategic Planning

Council's Strategic Planning Department advises the following:

"Under draft WLEP 2009, the site is zoned B4 Mixed Use, with a height limit of 13m above ground level (existing).

The current proposal does not meet the objectives of clause 4.3 of WLEP 2009 in that:

- the proposed buildings are not compatible in height or scale with surrounding and nearby development, and this non compliance is accentuated by the site being on top of a hill;*
- visual impact and disruption of views especially from McIntosh Road and nearby residential areas is not minimised;*
- the adverse impact on the scenic quality of the remnant bushland on this site and the adjoining Civic Centre site is not minimised; and*
- due to its location on top of the hill, it will be difficult to manage the visual impact of the development when viewed from public places (noting that the photo montage from Pittwater Road appears to be inaccurate. The proposal is shown above tree lines in the elevations submitted and therefore will be visible from the Dee Why centre and other areas).*

The current application does not meet the WLEP 2009 objectives of Zone B4 Mixed Use in that the proposed development does not:

- integrate suitable business, office, residential, retail and other development in accessible locations*
- promote a land use pattern that is characterised by shops, restaurants and business premises at the ground floor and housing and offices at the upper floors.*
- promote building design that creates active building fronts, contributes to the life of streets and public spaces.*

The current proposal also does not comply with clause 6.19 of draft WLEP 2009, which states that development consent must not be granted for a residential flat building in Zone B4 Mixed Use with a dwelling at the ground floor level.

Under the draft WDCP 2009, the site is included in Part G10, as part of the Civic Centre site. Part B does not apply, however all other parts of the draft WDCP 2009 apply, such as Part C Siting Factors, and Part D Design (including matters such as views and building bulk), Part E Natural Environment (including retention of unique environmental features on site). Each of these controls needs to be addressed in the application to enable proper assessment.

Dee Why vision

In April 2010 a report on the vision for Dee Why was considered by Council. In regard to planning for the major centre of Dee Why, Part G of the Warringah draft DCP will be revised to reflect the vision and desired urban form and character of the Dee Why centre, once finalised. Further work on a consultation strategy, the urban form of Dee Why major centre and consequent amendments to the LEP and DCP are being undertaken and will be reported to Council later this calendar year. This application is considered premature until the wider vision and urban form for the centre has been finalised and adopted by Council.

Dee Why major centre

Dee Why is the only major centre for the North East Subregion, comprising Manly, Warringah and Pittwater local government areas. The NSW Government has recently identified Frenchs Forest as a potential specialised centre, focused around the proposed new hospital. The implications on Dee Why of having the potential specialised centre so close are currently under consideration. This application is considered premature until the outcomes of this study are known.

Summary

The current application fails to demonstrate compliance with the relevant objectives and requirements in the draft Warringah Development Control Plan 2009 and the draft Warringah Local Environmental Plan 2009, and fails to supply accurate and sufficient information on which to assess various matters (eg the photomontage, visual impact and disruption of views).

On these bases, it is recommended that the application be withdrawn or the application refused."

Assessing Officer's Comment

The matters raised by Council's Strategic Planner with regards to the draft WLEP have been addressed within the relevant section in this report. In summary, the matters raised are concurred with and result in an inconsistency with the general objectives of draft WLEP and the specific objectives of the B4 Mixed Use zone under draft WLEP.

With regards to the Dee Why vision, Council's Strategic Planning Department are currently preparing an Urban Form Study which considers the desired overall appearance of Dee Why in conjunction with a suite of planning principles. The finalization of the Study is imminent and will be reported to Council in May 2011 for exhibition prior to the preparation of a Masterplan, an amendment to draft WLEP and the preparation of provisions for the draft Warringah Development Control Plan.

The proposed building heights of the development are considered to be inconsistent with the Study (and eventual LEP and DCP provisions) and, if approved in its current form, would undermine the process and ultimate outcome of Council's strategic vision for the urban form of Dee Why which regards the maximum building heights permitted for the site, under the WLEP 2000 Building Height Built Form Controls, to be in keeping with the Study. It is in this context that the application, as proposed, is considered to be premature.

In this regard, the non-compliant building height is considered to be a fundamental matter which constitutes a reason for refusal.

Urban Design

Council's Senior Urban Designer advises the following:

Positive aspects:

- "1. Articulated building forms. Facades are composed with an appropriate scale, rhythm and proportion.*
- 2. The apartment buildings comply generally with the 12m separation distance for building height of 12m/4 Storeys as per recommendations of the Residential Flat Design Code. These will ensure amenity like visual and acoustic privacy, daylight access to apartments and to private and shared open spaces.*

Negative aspects:

- 1. Building height control of 3 Storey is exceeded by 3, 1 and 3 storeys in Building A, B and C respectively. The storey count includes the basement parking levels of building A & C which are exposed above ground level by more than a metre. Buildings exceed the height limit of 13m by about up to 5m at the north-eastern and south-eastern corner. These non-compliances will set precedence for future developments to follow. Moreover the proposal will be substantially higher than the tree canopy along the hillock that the site sits on and therefore will be very prominent. The reasons cited for the change are not substantial enough to be supported.*

2. *The south-eastern corner of the proposal will cast a shadow over St. David Park/Bus stop at 3pm winter, 21st June. The proposed building at this corner is 3 storey with the 4th and 5th storey set back by about 4 metres. The shadowing can be minimised if the 3 storey height limit is observed.*
3. *The elevation of the building from the western hill slope and the photomontage view from McIntosh Road submitted presents a bulky structure especially with the two additional storeys proposed on top of the permitted 3 storey built form control.*
4. *The possibility of achieving street activity near the corner of Fisher Road and St David Avenue should be explored further.*

Traffic requirement

The future footpath widening /traffic management works require a 1.5m wide road dedication for the St David Avenue frontage of the site. This will enable the provision of a minimum 2m wide footpath and additional kerb side lane (2.8m wide).

Conclusion

The initial analysis demonstrates that the proposed development exceeds the current WLEP 2000 controls. As this is a stage 1 DA proposal, no unit layouts has been shown so SEPP 65 requirements for residential flat development cannot be assessed. There is no justification to allow a departure from the controls and the non-compliances would set precedence for future development. The applicant will need to take into account the 1.5m wide dedication along St David Avenue boundary in their proposal."

Assessing Officer's Comment

The negative impacts of the development identified by Council's Senior Urban Designer (refer to Points 1 to 3 above) are primarily generated by the proposed non-compliant building heights. Compliance with the Building Height Built Form Control under WLEP 2000 would alleviate these physical and visual impacts significantly and remove any potential for the creation of an undesirable precedence which would effectively undermine Council's controls, policies and current studies (as indicated by Council's Strategic Planning Department above).

With regards to the 1.5m wide road dedication for the St. David Avenue frontage of the site, it is unlikely that this would have any impact upon the location of the building footprint to Building C given the permitted nil setback to St. David Avenue as stipulated in the Front Setback Built Form Control under WLEP 2000 (the Basement and Ground Floor of Building C is proposed to be setback between 5.9m – 9.9m from the St. David Avenue frontage).

Notwithstanding, the proposed building height is considered to be a fundamental matter which constitutes a reason for refusal.

Development Engineering

Council's Development Engineer advises the following:

"The proposal as submitted does not include any details of the proposed method of stormwater drainage.

The submission of an OSD design and supporting calculations is required before an engineering assessment for this application can be completed."

Assessing Officer's Comment

The Stage 1 application does not include any documentation or plans which adequately address Clause 76 of the General Principles of Development under WLEP 2000. Should the application be approved, suitable conditions will be required to be imposed on the Stage 2 consent requiring a detailed Stormwater Management Plan to include OSD design and supporting calculations to be submitted with a Stage 2 Development Application.

Traffic Engineering

Council's Traffic Engineer advises the following:

"Car parking

The proposal provides total of 154 car spaces, which exceed the LEP requirements of 143 car spaces required for the residential and small retail component. However the adequacy of car parking needs to take into account the proposed use of Pacific Lodge which is being retained, which does not appear to have been dealt with in the application. This aspect will require further consideration from Planning and Development Services.

Access

The proposed method of access to the new development from an existing driveway which services about 2 car spaces is not considered suitable. The driveway is too close to the roundabout at McIntosh Road and there is limited visibility to approaching traffic particularly north bound traffic on Fisher Road due to a crest in Fisher Road. The increased use of the driveway to provide the main access to the site could create a rear end accident potential on Fisher Road. Accordingly the proposed access arrangements are not supported in the current format.

Service Vehicle Requirements.

The proposal acknowledges that Waste requires on site loading facility with access in a forward direction. Truck swept paths show this can be achieved on the driveway but a defined loading bay has not been identified.

The Traffic Report also suggests that loading for the retail component occurs from a Loading Zone provided on St David Avenue. The parking in this location is currently restricted to Police Vehicles and under the Traffic Management for Dee Why Town Centre the parking on the north side of St David Avenue will be removed to provide adequate intersection operating function. Traffic Management will not support the suggested on street loading.

The report also notes that service vehicle access to Pacific Lodge will be retained via the existing main driveway to the site. Further details would need to be provided as to the use of Pacific Lodge and onsite turning for the service vehicle.

Traffic Generation and Impact

The proposal assumes the traffic from the retained Pacific Lodge will occur outside of the peak hour period. This statement needs to be substantiated. Traffic generation for Pacific Lodge needs to be addressed.

Conclusion

In view of the issues raised above the application is not supported on traffic and safety grounds."

Assessing Officer's Comment

The majority of matters raised by Council's Traffic Engineer (ie Car Parking; Service Vehicle Requirements; and Traffic Generation & Impact) could be addressed through the provision of a comprehensive Traffic Report, should this application be approved, with a Stage 2 DA.

However, in terms of access, the RTA and the STA raise safety concerns regarding the location of the driveway and Council's Traffic Engineer objects to this aspect of the proposal in it's current format on traffic and safety grounds.

In this regard, traffic access is considered to be a matter which cannot be easily resolved within the scope of this Development Application and constitutes a reason for refusal.

Heritage

Council's Heritage Officer provides the following interim advice:

"Given the scale of this application, the heritage importance of "Pacific Lodge" and the long and extensive history of the use of the site by the Salvation Army, it is considered necessary to obtain external expert heritage advice from Council's Heritage Panel. Due to the Christmas holiday period, it has not been possible to organise these comments due to the relevant Panel members being unavailable. It is anticipated that these external comments will not be available until mid February 2011 [see comments provided by Musescape Pty Ltd below].

In the interim, it is considered that the application fails to adequately address the heritage issues involved with the site, despite the submission of a Preliminary Heritage Assessment by Tropman & Tropman Architects (dated October 2010).

The application fails to provide the detailed Conservation Management Plan which was required by Council as part of the pre-lodgement advice.

On this basis alone it is considered that the application is inadequate in its consideration of the various heritage issues involved and therefore is incomplete and should not be approved."

In addition to the above, Council engaged Musescape Pty Ltd to provide detailed advice on the likely impacts of the development on the heritage significance of the subject site and on other listed heritage items in the vicinity. Musescape Pty Ltd advise in their letter dated 7 February 2011 the following:

"The documentation submitted to date does not provide Council with sufficient information to assess the extent to which the proposed development would affect the heritage significance of the item (i.e. 'Pacific Lodge') or those other items in the vicinity (i.e. Dee Why Public Library and Dee Why Fire Station). For a development of this type (i.e. one involving extensive alterations and additions to a heritage item), the LEP requires the preparation of a conservation plan and the Applicant's consultants, Tropman and Tropman, in their Preliminary Heritage Assessment, dated October 2010, recommend the preparation of a Conservation Management Plan for the site that addresses the following:

- i. Extent of heritage property and curtilage;*
- ii. Heritage significance of administration;*
- iii. Significance of other existing residential aged care facility buildings;*
- iv. Potential future uses of heritage listed building:*
 - Residence.*
 - Community centre.*
 - Tea rooms.*
 - Small commercial offices.*

...

From my inspection of the site and review of the current DA documents, I am of the opinion that the current proposal represents an over-development of the site and does not pay due respect to the heritage significance of 'Pacific Lodge' and its landscape setting or the heritage items and potential heritage item (i.e. Warringah Council offices) in the vicinity. So that Council may adequately assess the DA and its likely heritage impacts, I recommend that the Applicant be required to have a conservation management plan/strategy prepared by an appropriately qualified person. The document should include the following:

- i. Thorough assessment of heritage significance in accordance with Heritage Council criteria including views and vistas to, from and within the site;*
- ii. Comparative analysis of 'Pacific Lodge' with other places of similar date, style and use in Warringah LGA and elsewhere in NSW;*
- iii. Identification of and justification for curtilage(s);*
- iv. Identification of relevant issues, opportunities and constraints affecting the item and its setting;*
- v. Development of conservation policies and strategies for the site to retain and enhance its significance;*
- vi. Preparation of development guidelines that identify appropriate setbacks, development zones, building footprints and guidelines on architectural style, built form, scale and height, external materials, finishes and colours, and landscaping that will retain the significant elements of the current setting and introduce compatible new soft and hard landscape elements;*
- vii. Identification of sympathetic and compatible new uses for those buildings to be retained, taking into account the future residential use of the site and its proximity to Council's civic precinct and the Dee Why CBD."*

Assessing Officer's Comment

The site accommodates three (3) items which are identified as having varying degrees of heritage significance. Pacific Lodge is listed on the Heritage Branch State Inventory. An associated heritage building is located within the centre of the site and a cultural heritage garden (located adjacent to Civic Drive) are not listed.

Additionally, the site is in close proximity to the Dee Why Library building and the Civic Centre. The Library is heritage listed whilst the Civic Centre has potential for heritage listing. The heritage listed Fire Brigade building is located across Fisher Road to the west.

Given that the Stage 1 application is for the approval of building envelopes and footprints, the conditioning of a Stage 1 DA consent to require the submission of a Conservation Management Plan (as recommended by Musecape Pty Ltd) with a Stage 2 DA is not considered to be appropriate as the Plan may require any curtilage from a heritage building to be increased thereby requiring a potentially repositioning of the building footprints to which this application seeks approval.

In this regard, this is considered to be a matter which constitutes a reason for refusal

Landscape

Council's Landscape Officer advises the following:

"The proposal shall have significant impacts on a multitude of trees and vegetation onsite. Although preliminary plans only indicate the removal of several trees on site it is unclear as to how many trees in total shall be affected and impacted by associated works such as underground car parking, cut & fill, retaining wall construction, site access, etc.

Currently it is even unclear as to what trees are affected by the development on the proposed plans as during the site visit, trees indicated for retention on the plans would clearly have to be removed as the footprint of the building was directly where the tree stood. This was prevalent particularly along the St David Ave frontage where significant stands of Angophora costata (Sydney Red Gum) are located. It is also unclear as to the impact the proposed buildings will have on trees indicated for retention and

particularly the roots of the trees earmarked for retention. This was indicated by the Pinus radiata (Radiata Pine) located in the centre of the site where the tree itself is not earmarked for removal, but the building foundations will severely require the removal of a significant portion of the trees roots, therefore destabilising the structural integrity of the tree itself. Considering the significance of the stand, not having a clear indication of which trees require removal, retention and protection, it is considered that the application is deficient in providing information on the impact of the development on the tree and vegetation population of the site.

Additionally it would appear the lot requires a Flora and Fauna Assessment Report compiled as the site may contain Threatened Species. It would appear the application is deficient in providing this information as well.

Furthermore, it would appear there is no supporting landscaping plan indicating additional planting or redesign to compliment and enhance the existing landscaping/gardens. Considering the proposed removal of trees onsite and the expected additional removal of trees onsite, it would be imperative considering the intensity of the proposal to include a landscaping plan.

On the above basis it is considered that the application is inadequate in its consideration of the various tree and vegetation issues involved and therefore is incomplete and should not be approved."

Assessing Officer's Comment

Council's Landscape Officer notes that the Landscape Plan shows trees to be retained and removed but questions the accuracy of the plan given that the placement of the building footprints (in particular, Building A which is sited close to the pocket of bushland to the north-east) will impact upon the root systems and canopies of significant trees and prominent stands of trees (ie *Angophora costata* (Sydney Red Gum) along St. David Avenue. Additionally, Council's GIS system notes that the site may contain stands of *Corymbia gummifera* (Red Bloodwood) and *Eucalyptus macrocarpa* (Eucalytus) which may provide habitat for threatened flora or fauna species and thus have higher conservation significance. Council's Landscape Officer therefore considers it to be important for an application on this property to include a comprehensive *Flora and Fauna Assessment* and an *Arboricultural Impact Assessment*. However, the conditioning of a Stage 1 DA consent to require the submission of a Flora and Fauna Assessment and an Arboricultural Impact Assessment with a Stage 2 DA it is not considered to be appropriate as the Plan may require the repositioning of the building footprints to which this application seeks approval.

It is noted that an Aborist Report was requested in the Pre-lodgement Minutes dated 11 February 2010 but no report was provided with the application to support the submitted landscape plan.

In this regard, this is considered to be a matter which constitutes a reason for refusal

Natural Environment Unit

Council's Natural Environment Unit raises no objection to the proposal subject to conditions which would normally be applied to a Stage 2 Development Application.

Building Assessment and Compliance

Council's Building Assessment and Compliance Officer raises no objection to the proposal subject to conditions which would normally be applied to a Stage 2 Development Application.

Waste Management

Council's Waste Management Officer has not provided any comments at the time of writing. The waste management of the development would be subject to conditions which would normally be applied to a Stage 2 Development Application.

However, should this application be approved, a condition will be required to be imposed for the submission of a **Waste Management Plan** with a Stage 2 Development Application.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

Section 79C 'Matters for Consideration'	Comments
Section 79C (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on “Environmental Planning Instruments” in this report.
Section 79C (1) (a)(ii) – Provisions of any draft environmental planning instrument	See discussion on “Draft Environmental Planning Instruments” in this report.
Section 79C (1) (a)(iii) – Provisions of any development control plan	Warringah Development Control Plan applies to this proposal.
Section 79C (1) (a)(iia) - Provisions of any planning agreement	None applicable.
Section 79C (1) (a)(iv) – Provisions of the regulations	<p>Clause 50(1A) of the EPA Regulations 2000 requires the submission of a design verification certificate from the building designer at lodgement of the development application.</p> <p>Clause 70B of the EPA Regulations 2000 relates specifically to staged applications for residential flat development and states that Clause 50(1A) applies in relation to a staged development application only if the application sets out detailed proposals for the development or part of the development.</p> <p>It is acknowledged that the Development Application is for the Stage 1 concept which seeks approval for building envelopes, footprints and traffic access/egress. In this regard, a Design Verification Statement addressing the 10 Design Quality Principles of the SEPP would have been desirable in that it would provide consistency and continuity to the evolution of the design of the development if it further progressed to a Stage 2 Development Application. In this regard, should this application be approved, a Design Verification Statement will be required for a detailed Stage 2 Development Application.</p>
Section 79C (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	<p>(i) The environmental impacts of the proposed development on the natural and built environment are addressed under the General Principles of Development Control in this report.</p> <p>(ii) The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.</p>
Section 79C (1) (c) – the suitability of the site for the development	The site is considered unsuitable for the proposed development.
Section 79C (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on “Public Exhibition” in this report.
Section 79C (1) (e) – the public interest	The various controls contained within WLEP 2000 provide the community with a level of certainty as to the

Section 79C 'Matters for Consideration'	Comments
	<p>scale and intensity of future development and the form and character of development that is in keeping with the desired future character envisaged for the locality.</p> <p>The development, as proposed, is considered to be inconsistent with the desired future character of the E10 Civic Centre locality. Additionally, the development does not comply with fundamental Built Form Controls (Building Height and Side Boundary Envelope and) and is not consistent with key General Principles of Development Control (Clauses 52; 56; 58; 61; 66; 72; 79; and 82).</p> <p>This assessment has found the development to be inconsistent with the scale and intensity of development that the community can reasonably expect to be provided on this site and within the respective localities and is therefore not considered, in its current form, to be in the public interest.</p>

DRAFT ENVIRONMENTAL PLANNING INSTRUMENTS

Draft Warringah Local Environmental Plan (Draft WLEP)

Definitions:

Residential Flat Building; and
Business Premises/Retail Premises.

Land Use Zone:

B4 Mixed Use

Permissible or Prohibited:

Residential Flat Building - Permitted with consent; and
Business Premises/Retail Premises - Permitted with consent.

Additional Permitted used for particular land – Refer to Schedule 1:

N/A

Principal Development Standards:

Development Standard	Required	Proposed	Complies	Clause 4.6 Exception to Development Standard
Minimum Subdivision Lot Size:	N/A	N/A	N/A	N/A
Rural Subdivision:	N/A	N/A	N/A	N/A
No Strata Plan or Community Title Subdivisions in certain rural and environmental zones:	N/A	N/A	N/A	N/A

Development Standard	Required	Proposed	Complies	Clause 4.6 Exception to Development Standard
Height of Buildings*:	13.0m	Building A – 18.0m; Building B – 12.0m; Building C – 18.9m.	No Yes No	See commentary below

*Note: Building heights under the draft WLEP are taken from existing ground level.

Variations to the Building Height Development Standard

The site is located within the B4 Mixed Use zone and is subject to a Building Height Control of 13.0m (as taken from the existing ground level).

The proposal must satisfy the objectives of *Clause 4.3 – Height of Buildings*, the underlying objectives of the particular zone, and the objectives of *Clause 4.6 - Exceptions to Development Standards* under the Draft WLEP. The following provides an assessment of the variation against relevant objectives.

1. Is the planning control in question a development standard?

The prescribed height limitation pursuant to Clause 4.3 of Draft WLEP 2009 is a development standard.

2. What are the underlying objectives of the development standard?

The underlying objectives of the standard, pursuant to Clause 4.3(1) – ‘Height of Buildings’ of the draft WLEP are as follows:

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

- (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 development has been found to be inconsistent with the Desired Future Character statement of the locality as identified under the *Warringah Local Environmental Plan 2000*.

The proposed building heights and scale have been found to be not compatible with the building heights of surrounding development and in accordance with the provisions of the Building Height Built Form Control.

The development does not satisfy this objective.

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

Comment:

Visual impact

The development has not been appropriately designed to respond to the topography of the site and the area in that Buildings A and C step up to their highest points as the gradient of the land slopes down towards the Civic Centre and Pittwater Road.

Plan No. SK-600 is a visual impact study which consists of a photomontage taken from the corner of Pittwater Road and Dee Why Parade. The view depicts a ghosted image of the development behind the existing buildings (including the Civic Centre) and tree line. This Plan is not considered to satisfy an assessment of the visual impact of the development as the location of the photograph is at a point where the development would not be seen from the public domain of Dee Why. Rather, appropriate

locations for a visual impact study would be at the corner of Pittwater Road and St. David Avenue and at key visual points along Fisher Road, Civic Drive and the Kingsway. Given the scale and prominent elevated location of the development, a visual impact study is considered to be a critical component of the application in providing Council and the community with some accurate depiction of the development.

In this regard, the visual impact study is considered to be inadequate in ascertaining with any certainty the visual impact of the development.

View Sharing

A view analysis has been provided (see Section 6.2.3 and Appendix A in the Statement of Environmental Effects and Plan No. SK-601). The analysis indicates that consideration has been given to the maintaining of views from McIntosh Road through the incorporation of an articulated upper levels to Building A. Plan No. SK-601 consists of a photo montage taken from a highpoint on McIntosh Road.

Plan No. SK-601 indicates that the development will result in a significant obstruction of long views from the public domain (and, by proximity, from adjoining private residences) of the Pacific Ocean and the horizon. Short views of the current landscaped setting of the subject site will also be lost.

A review of the Plan reveals that, if the building height of Building A achieved compliance the degree of view sharing would be significantly increased to an acceptable level. Notwithstanding, in its current form, the articulation included in the upper levels of Building A cannot be considered to provide an acceptable degree of view sharing given the proposed building height non-compliance.

Privacy

Given the relative distances and differences in building height, the development does not present overlooking opportunities into the neighbouring residential properties along Fisher Road and the Kingsway. In both cases it is noted that the development includes privacy screens to address this concern.

Solar Access

The shadow diagrams provided by the applicant (see Plan Nos. SK-500, SK-503, and SK-506) indicate that the development will not result in significant overshadowing over the neighbouring properties (although it is noted that Council's Senior Urban Designer points out that *"the south-eastern corner of the proposal will cast a shadow over St. David Park/Bus stop at 3pm winter, 21st June. The proposed building at this corner is 3 storey with the 4th and 5th storey set back by about 4 metres. The shadowing can be minimised if the 3 storey height limit is observed."*)

Therefore, whilst the shadow diagrams indicate that the shadows cast by the development over nearby residential properties are generally consistent with the provisions of Clause 62 of the General Principles of Development Control (which requires that *sunlight, to at least 50% of the principle private open spaces, is not to be reduced to less than 2 hours between 9am and 3pm on June 21*) overshadowing over the public domain could be further reduced by lowering the proposed building height to achieve compliance with the Building Height Development Standard under the draft WLEP and with the Building Height Built Form Control under WLEP 2000.

The development does not satisfy this objective.

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

Comment:

The development is located on the edge of the densely urbanised area of Dee Why Town Centre and is situated on a visually prominent ridge. As discussed above, the development has not been appropriately designed to respond to the topography of the site and the area in that Buildings A and C step up to their highest points as the gradient of the land slopes down towards the Civic Centre and

Pittwater Road. This will result in the highest parts of Building A and C being visible from surrounding areas such that it may have an adverse impact on the scenic quality of Warringah's coastal and bush environments.

Unfortunately, the scope of the visual impact study provided with the application is narrow and does not include long views to the development nor views from other coastal or bush environments. As pointed out above, given the scale and prominent elevated location of the development, a more expansive visual impact study is considered to be a critical component of the application in providing Council and the community with some accurate depiction of the development and, in this regard, the visual impact study is considered to be inadequate in ascertaining with any certainty the visual impact of the development upon the scenic quality of Warringah's coastal and bush environments.

The development does not satisfy this objective.

3. What are the underlying objectives of the zone?

In assessing the developments non-compliance with the building height, consideration must be given to its consistency with the objectives within the zone.

B4 Mixed Use zone

The objectives of this clause are:

To provide a mixture of compatible land uses

Comment:

The development proposes a mix of residential and commercial land uses. The mix consists of 9,487m² of residential floor space and an 80m² commercial tenancy which is proposed to be located on the corner of Fisher Road and St. David Avenue.

The development satisfies this objective.

To integrate suitable business, office, residential, retail and other development in accessible locations so as to maximise public transport patronage and encourage walking and cycling.

Comment:

The location of the property is on the edge of the Dee Why Town Centre which is identified in the *Sydney Metropolitan Strategy* (Metro Strategy) as a major centre of the north-east sub-region.

Because of this peripheral location, Council's Strategic Planner has pointed out that the application does not meet the objectives of Zone B4 Mixed Use zone in that the proposed development does not integrate suitable business, office, residential, retail and other development in accessible locations.

The development does not satisfy this objective.

To reinforce the role of Dee Why as the major centre in the sub-region by the treatment of public spaces, the scale and intensity of development, the focus of civic activity and the arrangement of land uses.

Comment:

Treatment of public spaces

The development is located adjacent to the Civic Centre, Library and associated public open spaces. Whilst the development will not have any physical impact upon these public spaces it will have an overbearing visual impact due to the proposed building heights and scale of Buildings A and C.

Scale and intensity

The site is located on the edge of the Centre and, as such, currently provides an effective visual transition between the adjacent R2 Low Density Residential zone (as proposed under the draft WLEP) and the Town Centre. The development, as proposed, would introduce a scale and intensity similar to development within the Town Centre and, instead of maintaining a gradual transition between zones, would effectively create an abrupt 'bookend' between a low density residential zone and the heavily urbanised Town Centre.

Focus of civic activity

The development, as proposed, does not include any civic component which could be considered to undermine the continued role of the Centre as a focus of civic activity within Warringah.

Arrangement of land uses

The development proposes the arrangement of three residential flat buildings, the retention of heritage buildings and the incorporation of a commercial land use at the corner of Fisher Road and St. David Avenue.

The arrangement of land uses are generally not considered to be problematic given the conceptual nature of the application but the locations of the proposed building footprints which accommodate those uses have potential adverse impacts upon the curtilage of heritage items within the site and upon the retention of trees within and around the perimeter of the site.

The development does not satisfy this objective.

To promote building design that creates active building fronts, contributes to the life of streets and public spaces and creates environments that are appropriate to human scale as well as comfortable, interesting and safe.

Comment:

Council's Strategic Planner has pointed out that the application does not meet the objectives of the B4 Mixed Use zone in that the proposed development does not promote building design that creates active building fronts, contributes to the life of streets and public spaces.

The development does not satisfy this objective.

To promote a land use pattern that is characterised by shops, restaurants and business premises at the ground floor and housing and offices at the upper floors.

Comment:

Council's Strategic Planner has pointed out that the application does not meet the objectives of the B4 Mixed Use zone in that the development does not promote a land use pattern that is characterised by shops, restaurants and business premises at the ground floor and housing and offices at the upper floors.

Additionally, the application does not comply with clause 6.19 of draft WLEP, which states that development consent must not be granted for a residential flat building in Zone B4 Mixed Use with a dwelling at the ground floor level (as evidenced in Buildings A, B and C).

The development does not satisfy this objective.

To encourage site amalgamations to facilitate new development and to facilitate the provision of car parking below ground.

The development is sited on a property under one ownership and will not require amalgamation to facilitate underground car parking.

The development satisfies this objective.

Given the above considerations, on balance the proposal is not consistent with the objectives of both Clause 4.3 - Height of Buildings and the B4 Mixed Use Zone of the Draft Warringah Local Environmental Plan.

4. Is the variation to the development standard consistent with the objectives of Clause 4.6 of the Draft WLEP 2009?

The objectives of Clause 4.6 – ‘Development Standards’ of the Draft WLEP seek:

to provide an appropriate degree of flexibility in applying certain development standards to particular development; and

to achieve better outcomes for and from development by allowing flexibility in particular circumstances.

In this regard, sub-clause 4.6(4) requires that:

(4) *Consent must not be granted for development that contravenes a development standard unless:*

(a) *the consent authority is satisfied that:*

(i) *the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and*

Comment:

The applicant has provided commentary within the Statement of Environmental Effects which does not adequately address the proposed variation to the Building Height Built Form Control under Clause 20 under WLEP 2000 or to the Building Height Development Standard under the draft WLEP.

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

Comment:

It has been found that the development is not in the public interest as it does not, on balance, achieve consistency with the Objectives of the B4 Mixed Use zone.

(b) *the concurrence of the Director-General has been obtained.*

Comment:

Concurrence is not required from the Director-General due to the Draft Warringah Local Environmental Plan awaiting gazettal.

5. Is the variation well founded?

The variation to the building height development standard is not considered to be well founded in that the proposed non-compliance is not consistent with objectives of Clause 4.3 – Height of Buildings, the underlying objectives of the particular zone, and the objectives of Clause 4.6 - Exceptions to Development Standards under the Draft WLEP, as set out above.

6. Is compliance with the standard unreasonable or unnecessary in the circumstances of the case?

On the basis of the above comments, it is considered that the variation to the building height development standard is not well founded and that compliance is reasonable and necessary in the particular circumstances of the case.

ENVIRONMENTAL PLANNING INSTRUMENTS (EPI's)

State Environmental Planning Policies (SEPPs)

State Environmental Planning Policy No 55 – Remediation of Land

Clause 7(1)(a) of the SEPP requires the Consent Authority to consider whether land is contaminated.

As noted in the *Preliminary Heritage Assessment* which supports the application, the site has been under continual occupation for residential/aged care purposes since 1890-92 with redevelopments occurring in the 1950s and 1980s. In this respect there is a possibility that the site may contain residual building materials which have resulted from any prior demolition/construction works.

Therefore, it is considered that the site may pose a risk of contamination and therefore, further consideration is required under Clause 7(1)(b) and (c) of the SEPP in order for Council to be satisfied that the land is not contaminated and is subsequently suitable for the residential land use.

Given that the Stage 1 Development Application seeks approval for the locating of building footprints (and, by implication, associated excavation works), it is considered critical that confirmation of the presence/absence of any contamination be provided in a Phase 1 Environmental Assessment prior to consent as this may have implications as to any remediation that may be required and to the placement of buildings.

It is noted that a Phase 1 Environmental Assessment was requested to be submitted in the Pre-lodgement Minutes dated 11 February 2010 but was not provided with the Development Application.

In this regard, the lack of information required by Council to confidently address the SEPP is considered to be a matter which constitutes a reason for refusal.

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

As the proposal is a Staged Development Application made under s.83B of the *Environmental Planning & Assessment Act, 1979* (the Act) a BASIX Certificate is not required at this stage.

Should the application be approved, a BASIX Certificate would be required to be lodged, in accordance with the SEPP, with any future Stage 2 Development Application which proposes the construction of the development,

State Environmental Planning Policy (Infrastructure) 2007

Energy Australia

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,
- within 5m of an overhead power line
- includes installation of a swimming pool any part of which is: within 30m of a structure supporting an overhead electricity transmission line and/or within 5m of an overhead electricity power line

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 as a result the application was referred to Energy Australia who raised no objection to the proposal subject to conditions which may be imposed in the Stage 2 Development Application should this application be approved.

Roads and Traffic Authority (RTA)

Schedule 3 of the SEPP requires that the following residential flat developments are referred to the RTA as Traffic Generating Development:

Purpose of Development	Size or Capacity (Site with access to any road)	Size or Capacity Site with access to classified road or to a road that connects to classified road if access is within 90m of connection, measured along alignment of connecting road
Residential flat building	300 or more dwellings	75 or more dwellings

The development consists of 95 dwellings and proposes a new crossover onto Fisher Road which is a classified road (Sub-arterial road (Regional road)). As such, the development triggers a requirement to refer the application to the RTA under Column 3 of Schedule 3.

The RTA does not raise any objection to the proposal subject to conditions which includes a recommendation for the installation of a raised concrete median strip at the centerline of Fisher Road at the front of the driveway, and extending appropriate distances either side of the driveway.

However, as discussed earlier in this report (see 'External Referrals' in this report) Council's Traffic Engineer considers that the installation of a median, will not positively facilitate traffic flow associated with the site and with existing neighbouring properties which have driveways in close proximity to the proposed driveway.

Therefore, given that the Fisher Road is under the management of Council, and that Council's Traffic Engineer raises concerns regarding the proposed access/egress and the recommended median strip, it would be inappropriate to impose the conditions recommended by the RTA on this application.

In this regard, traffic access is considered to be a fundamental matter which cannot be easily resolved within the scope of this Development Application and constitutes a reason for refusal.

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

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

Residential flat building means a building that comprises or includes:

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

The development seeks consent for the building envelopes of the residential flat buildings, a business premises on the corner of and car parking for those residential units within the basement car park levels of the development. The applicant has provided the following comments on the application of the SEPP as it relates to the Stage 1 concept proposal as follows:

“As the Stage 1 DA is predominantly seeking approval for a concept or building envelope, a thorough analysis of the final design against the principles of SEPP 65 cannot be undertaken. However, an analysis of the Stage 1 concept with regard to the proposed conceptual design principles has been undertaken.

In this instance, a SEPP 65 Verification Report has not been provided given that the proposal represents a Stage 1 concept scheme for the site. Clause 50(1A) of the Environmental Planning and Assessment Regulation 2000 (“the EP&A Regs”) sets out the information required to be submitted for residential flat building development applications submitted after 1 December 2003 as follows:

(1A) A development application that relates to a residential flat development, and that is made on or after 1 December 2003, must be accompanied by a design verification from a qualified designer, being a statement in which the qualified designer verifies:

- (a) that he or she designed, or directed the design, of the residential flat development, and*
- (b) that the design quality principles set out in Part 2 of State Environmental Planning Policy No 65 - Design Quality of Residential Flat Development are achieved for the residential flat development.*

Division 3A of Environmental Planning and Assessment Regulation 2000 (“the EP&A Regs”) sets out provisions for staged applications. Clause 70B relates specifically to staged applications for residential flat development and states ‘Clause 50(1A) applies in relation to a staged development application only if the application sets out detailed proposals for the development or part of the development.

In this instance, consent is sought for the first stage of a residential flat building development and does not provide specific detail on internal layout and arrangements of the building. As such, the provision of a design verification statement will be provided with subsequent detailed applications for development.”

The applicant, in the Statement of Environmental Effects (refer to Section 5.2.1 of that Statement), claims to provide an analysis of the Stage 1 concept with regard to the proposed conceptual design principles. However, an inspection of the documentation provided with the application reveals that no analysis has been provided.

It is acknowledged that the Development Application is for the Stage 1 concept which seeks approval for building envelopes, footprints and traffic access/egress. In this regard, a Design Verification Statement addressing the 10 Design Quality Principles of the SEPP would have been desirable in that it would provide consistency and continuity to the evolution of the design of the development if it further progressed to a Stage 2 Development Application. In this regard, should this application be approved, a Design Verification Statement will be required for a detailed Stage 2 Development Application.

Notwithstanding the absence of any analysis of the Design Quality Principles by the applicant, the following provides an assessment of the Principles to gauge how the development, as proposed, responds to the SEPP.

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:

Because of its topographical prominence, its location adjacent to other localities (the E2 Dee Why Lagoon Suburbs Locality and the E11 Fisher Road Locality) and its close proximity to the Dee Why Town Centre, the property is regarded as a gateway site.

Currently, given the relatively low scale of development on the site and the extent of vegetation around the perimeter, the site performs a relatively open and gentle transitional buffer between the adjacent low density E2 Dee Why Lagoon Suburbs Locality and the Town Centre.

The development, as proposed, will have an adverse impact upon the transitional character of the site in that the scale of the proposed buildings, and the required removal of a substantial amount of vegetation, will introduce a built form which is of a character, scale and intensity more appropriately suited to the Town Centre. In this sense, the quality and identity of the transitional buffer will be removed and replaced with an extension of the Dee Why Town Centre.

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 proposes the construction of three (3) residential flat buildings, all of which exceed the Building Height Built Form Control which permits building height up to 13m and 3 storeys. In terms of the degree of non-compliance, the development proposes the following:

- Building A – 6 storeys/18.0m (exceeds the Control by 3 storeys/5.0m);
- Building B – 4 storeys/12.0m (exceeds the Control by 1 storey); and
- Building C – 6 storeys/18.9m (exceeds the Control by 3 storeys/5.9m).

The map below illustrates the existing scale of development by the number of storeys (marked in red) within the E10 Civic Centre Locality and the neighbouring E2 Dee Why Lagoon Suburbs Locality, E11 Fisher Road Locality and E13 Dee Why Park Locality.

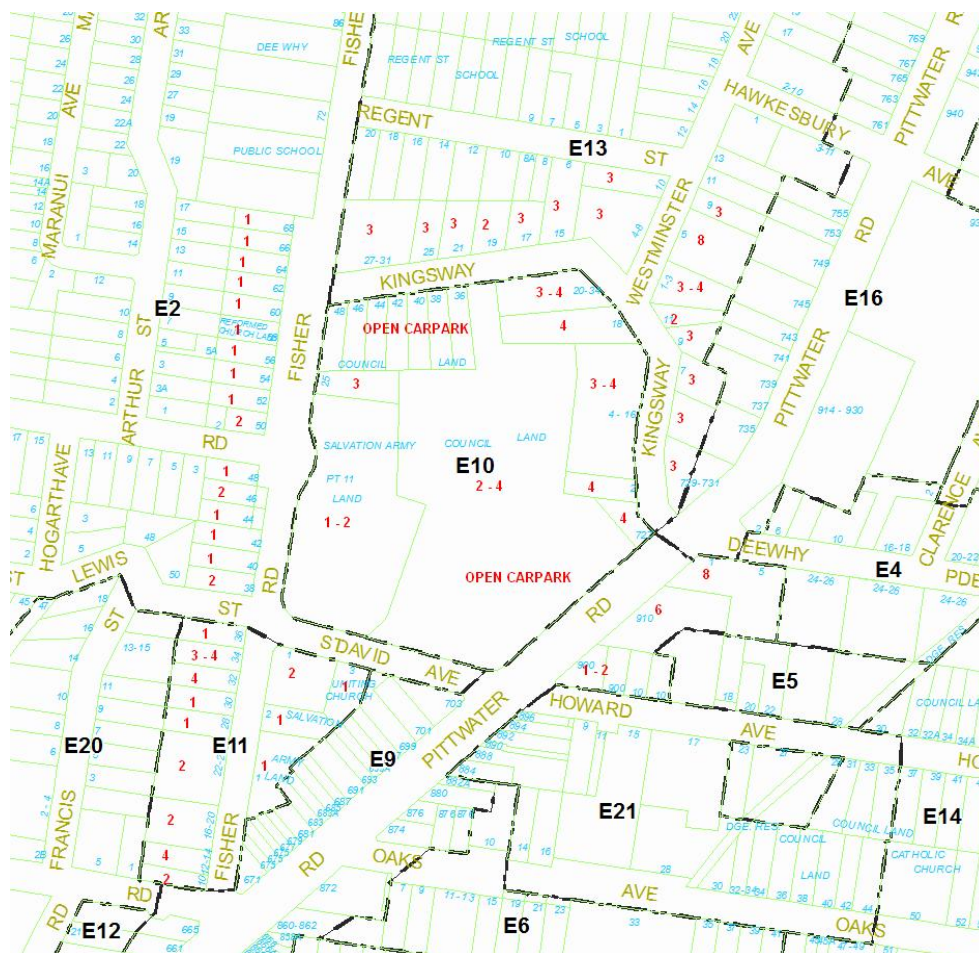


Figure 3 Built form surrounding the site

As can be seen in the illustration above, the scale of existing development along Fisher Road (within the E2 Dee Why Lagoon Suburbs Locality) predominantly consists of single and double storey dwellings with the recently constructed 3 storey residential flat building at No. 25 Fisher Road being the only exception.

As development approaches the Dee Why Town Centre building heights generally increase between 3 to 4 storeys, most notably at the corner of Pittwater Road and Dee Why Parade where a transition into Dee Why Town Centre is considered to be appropriate where building heights of 6 to 8 storeys are prominent.

The application seeks approval for the building envelopes and footprints only. In this respect, the articulation of the built form is not refined and would be subject to further consideration under a Stage 2 Development Application. Notwithstanding, in terms of scale, the proposed envelopes fail to appropriately respond to the scale of surrounding development and to the elevated topography of the site.

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 site consists of an elevated ridge located at the interface of low to medium density residential area and the civic centre. It is setback approximately 100m from the high density Dee Why Town Centre, which is located to the east. Currently, the site accommodates a scale of development which is commensurate with its surrounds and provides a gentle transition from the low density E2 Dee Why Lagoon Suburbs Locality into the Dee Why Town Centre. The proposed built form (expressed through the proposed building envelopes) is considered to be inappropriate in that

The envelopes proposed in the application are considered to be inappropriate in that the built form will eradicate the transitional character of the site in that the resulting buildings will introduce a built form which will be of a character, scale and intensity more appropriately suited to the Town Centre

The alignment of the building footprints has been identified as encroaching upon the curtilage of the heritage building within the site (refer to ‘Internal Referrals’ in this report). The consulting Heritage Advisor notes that *“the current proposal represents an over-development of the site and does not pay due respect to the heritage significance of ‘Pacific Lodge’ and its landscape setting or the heritage items and potential heritage item (i.e. Warringah Council offices) in the vicinity”*. Further information would be required in the form of a comprehensive Conservation Management Plan which addresses, amongst other things, the extent of heritage property on the site and the curtilage from those heritage items. In this respect, the conditioning of a Stage 1 DA consent to require the submission of a Conservation Management Plan with a Stage 2 DA it is not considered to be appropriate as the Plan may require any curtilage from a heritage building to be increased thereby requiring a potentially repositioning of the building footprints to which this application seeks approval.

The development, as proposed, will have a significant visual impact upon the streetscape and public domain in that it will alter the open perspective currently afforded through the low-to-medium density pattern of development in the area. The proposed building heights (and therefore, the potential built forms within the proposed building envelopes) will introduce a dominant built form which will have an overbearing visual impact upon the site and neighbouring localities.

A view analysis has been provided (see Section 6.2.3 and Appendix A in the Statement of Environmental Effects and Plan No. SK-601). The analysis indicates that consideration has been given to the maintaining of views from McIntosh Road through the incorporation of articulated upper levels to Building A. Plan No. SK-601 consists of a photo montage taken from a highpoint on McIntosh Road.

Plan No. SK-601 indicates that the proposed built form will result in a significant obstruction of long views from the public domain (and, by proximity, from adjoining private residences) of the Pacific Ocean and the horizon. Short views of the current landscaped setting of the subject site will also be lost.

A review of the Plan reveals that, if the building height of Building A achieved compliance with the Building Height Built Form Control, the degree of view sharing would be significantly increased to an acceptable level. Notwithstanding, in its current form, the articulation included in the upper levels of Building A cannot be considered to provide an acceptable degree of view sharing given the proposed building height non-compliance.

As discussed earlier in this report, Council's Strategic Planning Department are currently in the process of preparing an Urban Form Study which considers the desired overall appearance of Dee Why in conjunction with a suite of planning principles. The finalization of the Study is imminent and will be reported to Council for in May 2011 for exhibition prior to the preparation of a Masterplan, an amendment to draft WLEP and the preparation of provisions for the draft Warringah Development Control Plan.

The proposed building heights of the development are considered to be inconsistent with the Study (and eventual LEP and DCP provisions) and, if approved in its current form, would undermine the process and ultimate outcome of Council's strategic vision for the urban form of Dee Why which regards the maximum building heights permitted for the site, under the WLEP 2000 Building Height Built Form Controls, to be in keeping with the Study.

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:

The Built Form Controls under WLEP 2000 do not include limitations on housing density for the E10 Civic Centre Locality. However, consideration must be given to the density provisions of neighbouring localities. Given the estimated number of apartments the development proposes a density of one dwelling per 112m² (ie 10,615m² site area/95 apartments).

The E2 Dee Why Lagoon Suburbs Locality immediately to the west permits a housing density of one dwelling per 600m², the E13 Dee Why Park Locality to the north and the E20 Mooramba West Locality to the south-west to the north each permit a housing density determined by how the design responds to the General Principles of Development Control, the Desired Future Character and the other Built Form Controls required under WLEP 2000.

Comparatively, the proposed density significantly exceeds the density of the neighbouring E2 Dee Why Lagoon Suburbs Locality by 488m² per dwelling. Additionally, as identified in this report, the development, as proposed, is not consistent with the Desired Future Character, does not comply with the Building Height, Floor-to-Ceiling Height and Side Boundary Envelope Built Form Controls and Clauses 52 (Development near Parks, Bushland Reserves & other Open Spaces); 56 (Retaining Unique Environmental Features); 58 (Protection of Existing Flora); 61 (Views); 66 (Building Bulk); 72 (Traffic Access and Safety); 79 (Heritage Control); and 82 (Development in the Vicinity of Heritage Items) of the General Principles of Development Control.

Therefore, the proposed density is not considered to be commensurate to surrounding densities and does not satisfy key provisions of WLEP 2000 which would normally be used to determine an appropriate density.

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 and mechanical services, soil zones for vegetation and re-use of water”.

Comment:

This application is for the Stage 1 concept and, as such, does not address this Principle. In this regard, consistency with this Principle (including the provisions of *State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004*) would normally be the subject of comprehensive assessment at Stage 2 of the development.

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, microclimate, and 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:

The landscape plan submitted with the application (see Plan No. SK-120 dated 11/10/2010) does not provide sufficient detail to enable an accurate assessment of the impact of the development upon existing vegetation or provide any indication of possible future planting throughout the site to ascertain how the landscaping and buildings operate as an integrated and sustainable system.

Council’s Landscape Officer notes (refer to ‘Internal Referrals’ in this report) that the Landscape Plan shows trees to be retained and removed but questions the accuracy of the plan given that the placement of the building footprints (in particular, Building A which is sited close to the pocket of bushland to the north-east) will impact upon the root systems and canopies of significant trees and prominent stands of trees (ie *Angophora costata* (Sydney Red Gum) along St. David Avenue). Additionally, Council’s GIS system notes that the site may also contain stands of *Corymbia gummifera* (Red Bloodwood) and *Eucalyptus macrocarpa* (Eucalytus) which may provide habitat for threatened flora or fauna species and thus have higher conservation significance. Council’s Landscape Officer therefore considers it to be important for an application on this property to include a comprehensive Flora and Fauna Assessment and an Arboricultural Impact Assessment. However, the conditioning of a Stage 1 DA consent to require the submission of a Flora and Fauna Assessment and an Arboricultural Impact Assessment with a Stage 2 DA it is not considered to be appropriate as the Plan may require the repositioning of the building footprints to which this application seeks approval.

It is noted that an Aborist Report was requested in the Pre-lodgement Minutes dated 11 February 2010 but no report was provided with the application to support the submitted landscape plan.

Therefore, given the inaccuracies of the Plan and lack of sufficient supporting information, full consideration cannot be given to this Principle.

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:

This application is for the Stage 1 concept which seeks approval for the building envelopes and footprints only. All internal floor layouts are indicative only and subject to change in a Stage 2 Development Application. In this regard, consistency with this Principle would normally be the subject of comprehensive assessment at Stage 2 of the development.

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:

Consistency with this Principle would normally be the subject of comprehensive assessment at Stage 2 of the development.

Notwithstanding, the application was referred to NSW Police who raised no objection subject to recommendations pertaining to the provisions of *Crime Prevention Through Environmental Design* (CPTED).

However, should the application be approved, a condition of consent will be required to be imposed for a Comprehensive CPTED Report to be submitted with the Stage 2 Development Application.

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 provisions 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:

Dee Why is undergoing significant transition evidenced by the recent construction of the Dee Why Grand and the gazettal of the E21 Dee Why Town Centre Locality with WLEP 2000.

In this regard, the development of the site to accommodate residential flat development would be considered to respond to the changing social dimension of Dee Why in terms of its social context and needs of the local community in terms of lifestyles, affordability, and access to social facilities. However, given the unique character of the site and its proximity to low-to-medium density localities, any residential flat development should be of an appropriate scale and exhibit consistency with the Desired Future Character and compliance with the Built Form Controls of the locality.

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:

This application is for the Stage 1 concept and, as such, does not address this Principle. In this regard, consistency with this Principle would normally be the subject of comprehensive assessment at Stage 2 of the development.

Residential Flat Design Code

The SEPP requires the assessment of any development application for residential flat development against 10 principles contained in Clauses 9 -18 and Council is required to consider the matters contained in the publication *“Residential Flat Design Code”*.

The Code supports and provides additional guidance for applying the SEPP and the design principles. The SEPP requires that the Code is to be considered when determining a development application for residential flat development. However, on the basis that the current application is for a concept proposal and are thus subject to change, no detailed plans are relevant to the assessment of the proposal. Therefore, details in relation to dwelling designs (including dwelling configurations, floor layouts, private and communal open spaces, storage, entries and accesses, etc), architectural design (external finishes, sun shading, fenestration, articulation, modulation, etc) and landscape design (communal landscaped areas, private courtyards, etc), are to be the subject of assessment under the RFDC at the next stage of the development, i.e. Stage 2 if this application should be approved.

Notwithstanding, given the defined layout of building footprints, the location of the vehicle access point and indicative apartment layouts, the following table provides a general consideration of the concept against the criteria of the ‘Residential Flat Design Code’ to gain a comprehensive understanding of the current level of compliance and the potential for full compliance in a Stage 2 Development Application should this Stage 1 Development Application be approved.

PART 01 - LOCAL CONTEXT		
Criteria	Requirement	Comment
Primary Development Controls		
Building Height	Where there is an existing floor space ratio (FSR), test height controls against it to ensure a good fit	N/A
	Test heights against the number of storey's and the minimum ceiling heights required for the desired building use. (2.7 for habitable rooms, 2.4 non-habitable rooms and 1.5 for attics) (Habitable Rooms include: any room or area used for normal domestic activities, including living, dining, family, lounge, bedrooms, study, kitchen, sub room and play room)	Consistent Building A: Required: 6 x 2.7m floor-to-ceiling 5 x 0.3m concrete floor plates 1 x 0.4m concrete roof

PART 01 - LOCAL CONTEXT

Criteria	Requirement	Comment						
		<p>=18.1m <u>Proposed:</u> 18.0m</p> <p>Building B: <u>Required:</u> 4 x 2.7m floor-to-ceiling 3 x 0.3m concrete floor plates 1 x 0.4m concrete roof = 12.1m <u>Proposed:</u> 12.0m</p> <p>Building C: <u>Required:</u> 6 x 2.7m floor-to-ceiling 5 x 0.3m concrete floor plates 1 x 0.4m concrete roof = 18.1m <u>Proposed:</u> 18.9m</p>						
Building Depth	<p>Resolve building depth controls in plan, section and elevation.</p> <p>In general, an apartment building depth of 10-18 metres is appropriate. Developments that propose wider than 18 metres must demonstrate how satisfactory day lighting and natural ventilation are to be achieved.</p>	<p>Given that the application seeks approval for the building footprint, the full depth of the buildings are taken into consideration.</p> <p>In this regard, each building achieves a depth of approximately 18m which indicates that each apartment could comply.</p>						
Building Separation	<p>Design and test building separation controls in plan and section.</p> <p>five to eight storeys/up to 25 metres</p> <table border="1"><tr><td>18 metres</td><td>Habitable rooms & balconies</td></tr><tr><td>13 metres</td><td>between habitable rooms/balconies and non habitable rooms</td></tr><tr><td>9 metres</td><td>between non habitable rooms</td></tr></table> <p>*Habitable room any room or area used for normal domestic activities, including living, dining, family, lounge, bedrooms, study, kitchen, sun room and play room</p> <p>**Non-habitable room spaces of a specialised nature not occupied frequently or for extended periods, including bathrooms, toilets, pantries, walk-in wardrobes, corridors, lobbies, photographic darkrooms and clothes drying rooms.</p>	18 metres	Habitable rooms & balconies	13 metres	between habitable rooms/balconies and non habitable rooms	9 metres	between non habitable rooms	<p>The development proposes three buildings of variable height:</p> <p>Building A: 6 storeys/18.0m;</p> <p>Building B: 4 storeys/12.0m;</p> <p>Building C: 6 storeys/18.9m.</p> <p>Given the proposed building heights, building separations are as follows:</p> <p>Building A to Building B: 12.5m to 15.5m</p> <p>Building B to Building C: 21.5m</p> <p>Building A to Building C: 45m</p>
18 metres	Habitable rooms & balconies							
13 metres	between habitable rooms/balconies and non habitable rooms							
9 metres	between non habitable rooms							

PART 01 - LOCAL CONTEXT		
Criteria	Requirement	Comment
		<p>Therefore, it is possible for the development to achieve compliance provided that the building heights are reduced to achieve compliance with the Building Height Built Form Control.</p> <p>Notwithstanding, compliance with the separation of specific room/balcony features would normally be the subject of comprehensive assessment at Stage 2 of the development.</p>
	Test building separation controls for daylight access to buildings and open spaces.	<p>The layout of the development, in conjunction with the proposed building heights, will result in a reasonable level of overshadowing within the site (as shown on the Shadow Diagrams SK-500, SK-503 and SK-506).</p> <p>Given the conceptual layout and location of apartments and balconies relative to the building footprints it is difficult to ascertain the impact upon individual apartments. However, generally the majority of internal shadow will be cast at 9.00am whilst the remainder of the day (specifically at Noon and 3.00pm) would provide sunlight access to internal open spaces.</p> <p>However, sunlight access to buildings and open spaces within the site would be significantly improved if the building heights were reduced to comply with the Building Height Built Form Control.</p>

PART 01 - LOCAL CONTEXT		
Criteria	Requirement	Comment
Street Setbacks	Identify the Desired Streetscape Character, the common setback of buildings in the street, the accommodation of street tree planting and the height of buildings and daylight access controls.	<p>Not Consistent</p> <p>The Fisher Road frontage immediately adjacent to the western side of the site is predominantly characterized by single storey dwelling houses.</p> <p>The St. David Avenue frontage immediately adjacent to proposed Building C is characterized by 2 storey buildings (the police station and the church).</p> <p>The Civic Drive frontage is characterized by 2 storey public buildings (facing the street).</p> <p>See Figure 1 in this report for an examination of the scale of buildings surrounding the site).</p>
	Test street setbacks with building envelopes and street sections.	<p>Not Consistent</p> <p>The development breaches the Side Boundary Envelope Built Form Control under WLEP 2000 along the eastern side of Building A (facing Civic Drive).</p>
Side + rear setbacks	Relate side and rear setbacks to existing streetscape patterns.	<p>Consistent</p> <p>Note: As the site is identified as a corner allotment, the site includes two side boundaries and no rear boundary.</p> <p><u>Civic Drive</u> Proposed setback: 4.5m Predominant setback: N/A (Civic Centre)</p> <p><u>Northern boundary:</u> Proposed setback: 16.3m Predominant setback: 0.9m</p>
Floor space ratio	Test the desired Built Form outcome against proposed floor space ratio to ensure consistency with building height- building footprint the three dimensional building envelope open space requirements.	N/A

PART 02 - SITE DESIGN		
Criteria	Requirement	Comment
Site Configuration		
Deep Soil Zones	A minimum of 25 percent of the open space area of a site should be a deep soil zone; more is desirable. Exceptions may be made in urban areas where sites are built out and there is no capacity for water infiltration. In these instances, Stormwater treatment measures must be integrated with the design of the residential flat building.	Compliance with the provision of deep soil would normally be the subject of comprehensive assessment at Stage 2 of the development.
	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.	Compliance with the provision of communal open space would normally be the subject of comprehensive assessment at Stage 2 of the development.
	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 25sqm; the minimum preferred dimension in one direction is 4 metres. (see Balconies for other private open space requirements)	Compliance with the provision of private open space would normally be the subject of comprehensive assessment at Stage 2 of the development.
Safety	Carry out a formal crime risk assessment for all residential developments of more than 20 new dwellings.	Compliance with the provision of CPTED would normally be the subject of comprehensive assessment at Stage 2 of the development. Notwithstanding, the application was referred to NSW Police who raised no objection subject to recommendations pertaining to the provisions of CPTED.
Visual Privacy	Refer to Building Separation minimum standards	Compliance with visual privacy would normally be the subject of comprehensive assessment at Stage 2 of the development.
Pedestrian access	Identify the access requirements from the street or car parking area to the apartment entrance. Follow the accessibility standard set out in AS 1428 (parts 1 and 2), as a minimum.	Compliance with the provisions of the pedestrian accessibility standards of AS 1428 would normally be the subject of comprehensive assessment at Stage 2 of the development.

PART 02 - SITE DESIGN		
Criteria	Requirement	Comment
	Provide barrier free access to at least 20 percent of dwellings in the development.	Compliance with the provision of barrier free pedestrian access would normally be the subject of comprehensive assessment at Stage 2 of the development.
Vehicle access	Generally limit the width of driveways to a maximum of six metres.	Compliance with the provision of width of driveways would normally be the subject of comprehensive assessment at Stage 2 of the development.
	Locate vehicle entries away from main pedestrian entries and on secondary frontages.	<p>The development locates the main driveway on Fisher Road which is regarded under WLEP 2000 as the secondary street frontage (St. David Avenue is nominated in the Front Setback Built Form Control as the primary street frontage).</p> <p>The driveway is currently proposed to be located away from main pedestrian entries (according to the Stage 1 concept).</p> <p>Notwithstanding, the RTA, STA, Council's Traffic Engineer and the consulting traffic engineer acting on behalf of the applicant (see page 15 of the <i>Transport Impact Assessment</i> dated 28/10/10 and prepared by GTA Consultants Pty Ltd) each raise concerns regarding the location of the driveway in proximity to the roundabout and recommend works which would address traffic safety. In this regard, this is a fundamental matter which constitutes a reason for refusal.</p>

PART 03 - BUILDING DESIGN		
Criteria	Requirement	Comment
Building Configuration		
Apartment layout	Single-aspect apartments should be limited in depth to 8 metres from a window.	Compliance with the dimension of single aspect apartments would normally be the subject of comprehensive assessment at Stage 2 of the development.
	The back of a kitchen should be no more than 8 metres from a window.	Compliance with the internal dimensions of apartments would normally be the subject of comprehensive assessment at Stage 2 of the development.
	Buildings not meeting the minimum standards listed above, must demonstrate how satisfactory day lighting and natural ventilation can be achieved, particularly in relation to habitable rooms (see Daylight Access and Natural Ventilation).	This matter would be the subject of a Stage 2 Development Application.
	<p>If council chooses to standardise apartment sizes, a range of sizes that do not exclude affordable housing should be used. As a guide, the Affordable Housing Service suggest the following minimum apartment sizes, which can contribute to housing affordability: (apartment size is only one factor influencing affordability)</p> <ul style="list-style-type: none"> - 1 bedroom apartment 50sqm - 2 bedroom apartment 70sqm - 3 bedroom apartment 95sqm 	<p>Council does not have any mechanism or provision for the standardisation of apartment sizes to address affordable housing.</p> <p>The applicant indicates in the Statement of Environmental Effects that the Stage 1 concept generally bases apartment sizes on 100m² each although this would be refined in a Stage 2 Development Application.</p>
Apartment Mix		
Balconies	Provide primary balconies for all apartments with a minimum depth of 2 metres. 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.	Compliance with the provision and dimension of balconies would normally be the subject of comprehensive assessment at Stage 2 of the development.
Ceiling Heights minimum wall height at edge	<p>The following recommended dimensions are measured from finished floor level (FFL) to finished ceiling level (FCL). These are minimums only and do not preclude higher ceilings, if desired.</p> <p><i>2.7 metre minimum for all habitable rooms on all floors;</i> <i>2.4 metres is the preferred minimum for all non-habitable rooms,</i></p>	The development, as proposed, provides FFL/FCL distances of 2.7m for all above-ground residential areas.

PART 03 - BUILDING DESIGN		
Criteria	Requirement	Comment
	<i>however 2.25m is permitted. attic spaces; 1.5 metre minimum wall height at edge of room with a 30 degree minimum - ceiling slope.</i>	Notwithstanding, compliance with the FFL/FCL distances would normally be the subject of comprehensive assessment at Stage 2 of the development.
Ground Floor Apartments	Optimise the number of ground floor apartments with separate entries and consider requiring an appropriate percentage of accessible units. This relates to the desired streetscape and topography of the site.	Compliance with the separate entries of ground floor accessible apartments would normally be the subject of comprehensive assessment at Stage 2 of the development.
	Provide ground floor apartments with access to private open space, preferably as a terrace or garden.	Compliance with the provision of ground floor accessibility to private open space would normally be the subject of comprehensive assessment at Stage 2 of the development.
Internal Circulation	<p>In general, where units are arranged off a double-loaded corridor, the number of units accessible from a single core/corridor should be limited to eight.</p> <p>Exceptions may be allowed:</p> <ul style="list-style-type: none"> • for adaptive reuse buildings • where developments can demonstrate the achievement of the desired streetscape character and entry response <p>Where developments can demonstrate a high level of amenity for common lobbies, corridors and units, (cross over, dual aspect apartments).</p>	Compliance with the arrangement of internal circulation would normally be the subject of comprehensive assessment at Stage 2 of the development.
Storage	<p>In addition to kitchen cupboards and bedroom wardrobes, provide accessible storage facilities at the following rates:</p> <ul style="list-style-type: none"> • studio apartments 6m³ • one-bedroom apartments 6m³ • two-bedroom apartments 8m³ • three plus bedroom apartments 10m³ 	Compliance with the provision of storage areas would normally be the subject of comprehensive assessment at Stage 2 of the development.
Building Amenity		
Daylight Access	Living rooms and private open spaces for at least 70 percent of apartments in a development should receive a minimum of three hours direct sunlight between 9 am and 3 pm in mid winter. In dense urban areas a minimum of two hours may be acceptable.	Given the orientation of the building footprints to Buildings A, B and C it is likely that the development would achieve a minimum of 70% living areas within apartments with access to direct sunlight.

PART 03 - BUILDING DESIGN		
Criteria	Requirement	Comment
		However, compliance with sunlight access would normally be the subject of comprehensive assessment at Stage 2 of the development.
	Limit the number of single-aspect apartments with a southerly aspect (SWSE) to a maximum of 10% of the total units proposed. Developments which seek to vary from the minimum standards must demonstrate how site constraints and orientation prohibit the achievement of these standards and how energy efficiency is addressed (see Orientation and Energy Efficiency).	<p>An assessment of the application, as proposed, reveals that 73% of apartments have a dual aspect. However, it is acknowledged that the floor layouts in the application is conceptual and subject to change.</p> <p>Therefore, full compliance with apartment orientation would normally be the subject of comprehensive assessment at Stage 2 of the development.</p>
Natural Ventilation	Building depths, which support natural ventilation typically range from 10 to 18 metres.	<p>An assessment of the application, as proposed, reveals that all apartments achieve depths of less than 18m (typically between 8m and 15m) of apartments have a dual aspect. However, it is acknowledged that the floor layouts in the application is conceptual and subject to change.</p> <p>Therefore, full compliance with apartment depth would normally be the subject of comprehensive assessment at Stage 2 of the development.</p>
	Sixty percent (60%) of residential units should be naturally cross ventilated.	Compliance with natural ventilation would normally be the subject of comprehensive assessment at Stage 2 of the development.

PART 03 - BUILDING DESIGN		
Criteria	Requirement	Comment
Building Form	No rules of thumb	N/A
Building Performance		
Waste Management	Supply waste management plans as part of the development application submission as per the NSW Waste Board.	Compliance with the waste management would normally be the subject of comprehensive assessment at Stage 2 of the development.
Water Conservation	Rainwater is not to be collected from roofs coated with lead- or bitumen-based paints, or from asbestos- cement roofs. Normal guttering is sufficient for water collections provided that it is kept clear of leaves and debris.	Compliance with the provision of water conservation would normally be the subject of comprehensive assessment at Stage 2 of the development.

Regional Environment Plans (REPs)

There are no Regional Environmental Plans applicable to this development.

Local Environment Plans (LEPs)

Warringah Local Environment Plan 2000 (WLEP 2000)

Desired Future Character

The subject site is located in the E10 Civic Centre locality under *Warringah Local Environmental Plan 2000*.

The Desired Future Character Statement for the E10 Civic Centre locality states:

The Civic Centre will remain the focus of Civic activity within Warringah with this role enhanced by the development of a new Civic Building on Pittwater Road. The presence of this building will be enhanced by the use of colonnades to distinguish it from other buildings in the locality and the planting of a double row of Norfolk Island Pines at the front of the building along Pittwater Road. The corner of Pittwater Road and St. David Avenue will be strongly defined as a major pedestrian access to the site.

The northern side of this locality adjacent to the Kingsway will be redeveloped for apartment style housing in landscaped settings and be of similar scale to apartment style housing in the adjacent locality.

The sandstone outcrops and vegetation between the existing Council Chambers and the existing library, and west of the main entrance to the existing Council Chambers, will be retained.

The proposed residential component of the development is defined as 'Housing' under WLEP 2000. Housing is identified as Category 1 development in this locality.

The proposed commercial component of the development is defined as 'Business Premises' under WLEP 2000. Business Premises are identified as Category 1 development in this locality.

Clause 12(3)(a) of WLEP 2000 requires the consent authority to consider Category 1 development against the locality's DFC statement. Notwithstanding Clause 12(3)(a) only requires the consideration of the DFC statement, the proposed development results in non-compliances with the Building Height; Floor-to-Ceiling and Side Boundary Envelope Built Form Controls. Additionally, insufficient information has been provided to accurately assess the Landscaped Open Space Built Form Control. As such pursuant to Clause 20(1) a higher test, i.e. a test of consistency against the Locality's DFC is required.

Accordingly, an assessment of consistency of the proposed development against the locality's DFC is provided as follows:

- 1) *The Civic Centre will remain the focus of Civic activity within Warringah with this role enhanced by the development of a new Civic Building on Pittwater Road. The presence of this building will be enhanced by the use of colonnades to distinguish it from other buildings in the locality and the planting of a double row of Norfolk Island Pines at the front of the building along Pittwater Road. The corner of Pittwater Road and St. David Avenue will be strongly defined as a major pedestrian access to the site.*

Comment:

This component of the Statement emphasises the role of the Civic Centre as the focus of civic activity in the locality, including architectural and landscape treatments to the Centre to distinguish it from other buildings in the locality.

The development, as proposed, does not include any civic component which could be considered to undermine the continued role of the Centre as a focus of civic activity within Warringah. Whilst the building height of the development is considered excessive, it cannot be considered to have any bearing on the architectural or landscape treatments prescribed for the Civic Centre.

- 2) *The northern side of this locality adjacent to the Kingsway will be redeveloped for apartment style housing in landscaped settings and be of similar scale to apartment style housing in the adjacent locality.*

Comment:

Residential Flat Building A, which is located within the northern half of the site, is proposed to achieve a building height of 6 storeys and 18.0m. The predominant scale of apartment style housing in the adjacent localities is 3 storeys and 13.0m.

Therefore, the proposed scale of the development is not consistent with the intended scale of development in the locality.

In this regard, the predominant building height within the adjacent

- 3) *The sandstone outcrops and vegetation between the existing Council Chambers and the existing library, and west of the main entrance to the existing Council Chambers, will be retained.*

Comment:

The development will not impact upon the sandstone outcrops and vegetation between the existing Council Chambers and the existing library. Similarly, the sandstone outcrop to the west of the main entrance of the Council Chambers will not be impacted upon due to its distance from the development and that the outcrop is located on land under separate ownership.

Notwithstanding consistency with two of the components of the Desired Future Character Statement, the development is considered to be inconsistent with one component relating to building scale relative to surrounding localities.

In this regard, the development is considered to be inconsistent with the Desired Future Character Statement of the E10 Civic Centre locality.

Built Form Controls (Development Standards)

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

Built Form Standard	Required	Proposed	Compliant
Building Height: Storeys; and Metres	3 storeys; and 13m	Building A – 6 storeys/18.0m; Building B – 4 storeys/12.0m; Building C – 6 storeys/18.9m.	No No No
Floor to Ceiling (Maximum): Ground (other than for housing)	3.6m	Building A – N/A Building B – N/A Building C – 3.6m	N/A N/A Yes
Ground (housing)	2.7m	Building A – 2.7m Building B – 2.7m Building C – 3.6m	Yes Yes No
Upper	2.7m	Building A – 2.7m Building B – 2.7m Building C – 2.7m	Yes Yes Yes
Front Setbacks (Minimum): St David Avenue (Building C) Basement (FFL 32.515) Level 1 (FFL 35.515) Level 2 (FFL 39.415) Level 3 (FFL 42.415) Level 4 (FFL 45.415) Level 5 (FFL 48.415)	Nil	5.9m – 9.9m 5.9m – 9.9m 6.0m – 8.3m 6.0m – 8.3m 5.0m – 8.3m 6.2m – 12.7m	Yes Yes Yes Yes Yes Yes
Rear Building Setback	N/A (corner allotment)	N/A	N/A
Side Boundary Setbacks: <u>North (Building A)</u> Basement (FFL 34.830) Basement (FFL 37.830) Level 1 (FFL 41.830) Level 2 (FFL 44.830) Level 3 (FFL 47.830) Level 4 (FFL 50.830) Level 5 (FFL 53.830)	4.5m	16.2m – 20.7m 16.3m – 20.7m 16.5m – 21.2m 15.0m – 16.5m 15.0m – 16.5m 15.0m – 16.5m 18.0m – 19.0m	Yes Yes Yes Yes Yes Yes Yes
<u>East (Building A)</u> Basement (FFL 34.830) Basement (FFL 37.830) Level 1 (FFL 41.830) Level 2 (FFL 44.830) Level 3 (FFL 47.830) Level 4 (FFL 50.830) Level 5 (FFL 53.830)	4.5m	4.5m 4.5m 4.5m 4.5m 4.5m 4.5m 4.5m – 6.0m	Yes Yes Yes Yes Yes Yes Yes
Side Boundary Envelope: <u>Building A only</u> North East	5.0m x 45° 5.0m x 45°	<5.0m x 45° <5.0m x 45°	No No
Landscaped Open Space:	40% site area (4,246m ²)	Insufficient detail provided.	No* See note below
Car Parking Facilities	Must be provided below ground or behind buildings in shared parking areas	Car parking is contained within basement areas which are predominantly below ground.	Yes

Note: the Landscaped Open Space Plan (see Plan No. SK-120) indicates that the development will achieve 63% (6,671.67m²) of landscaped open space. However, other than building footprints, the Plan does not include impermeable areas such as driveways, footpaths, courtyard areas and podiums (most notably connected to Building A). In this regard, the Plan does not provide sufficient information to accurately assess compliance.

The proposed development fails to satisfy the Locality's Building Height; Floor-to-Ceiling and Side Boundary Envelope Built Form Controls. Additionally, insufficient information has been provided to accurately assess the Landscaped Open Space Built Form Control. Accordingly, further assessment is considered against the applicability of Clause 20(1).

Clause 20(1) stipulates:

“Notwithstanding clause 12 (2) (b), consent may be granted to proposed development even if the development does not comply with one or more development standards, provided 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 determining whether the proposal qualifies for a variation under Clause 20(1) of WLEP 2000, consideration must be given to the following:

(i) General Principles of Development Control

The proposal fails consistency with Clauses 52, 56, 58, 61, 66, 72, 79 and 82 of the General Principles of Development Control and accordingly, fails to qualify to be considered for a variation to the development standards, under the provisions of Clause 20(1) (See discussion on “General Principles of Development Control” in this report for a detailed assessment of consistency).

(ii) Desired Future Character of the Locality

The proposal is inconsistent with the E10 Civic Centre locality's Desired Future Character Statement and accordingly, fails to qualify to be considered for a variation to the development standards, under the provisions of Clause 20(1) (See discussion on “Desired Future Character” in this report for a detailed assessment of consistency).

(iii) Relevant State Environmental Planning Policies

The proposal has been considered to be inconsistent with applicable State Environmental Planning Policies. (Refer to earlier discussion under ‘State Environmental Planning Policies’ in particular – *State Environmental Planning Policy No. 55 - Remediation of Land* and *State Environmental Planning Policy No. 65 - Design Quality for Residential Flat Development*). Accordingly the proposal fails to qualify to be considered for a variation to the development standards, under the provisions of Clause 20(1).

Notwithstanding, in order to fully consider the application the following provides an assessment of the non-compliances to the Building Height, Floor to Ceiling and Side Boundary Envelope Built Form Controls (note: in accordance with Clause 20(1) of WLEP 2000, the following assessment does not constitute any consideration for variations to the respective Built Form Controls).

In assessing these elements of the proposal, it is necessary to consider the objectives of the respective Controls. Accordingly, consistency with the merit considerations drawn from the relevant objectives incorporated into the Warringah Design Guidelines and are addressed below:

Building Height Built Form Control

Built Form Standard	Required	Proposed	Compliant
Building Height: Storeys; and Metres	3 storeys; and 13m	Building A – 6 storeys/18.0m; Building B – 4 storeys/12.0m; Building C – 6 storeys/18.9m.	No No No

Areas of Non-compliance

The development is non-compliant in the following areas:

- Building A –exceeds the Control by 3 storeys/5.0m;
- Building B –exceeds the Control by 1 storey; and
- Building C –exceeds the Control by 3 storeys/5.9m.

The figures below illustrate the assessed non-compliant building heights based upon the plans submitted by Hassell.

Notes on Figures 4 to 7:

- Shaded yellow areas indicate the extent of non-compliance with the 13.0m building height.
- Solid red lines indicate the permitted 3 storey building height limit relative to natural ground level.

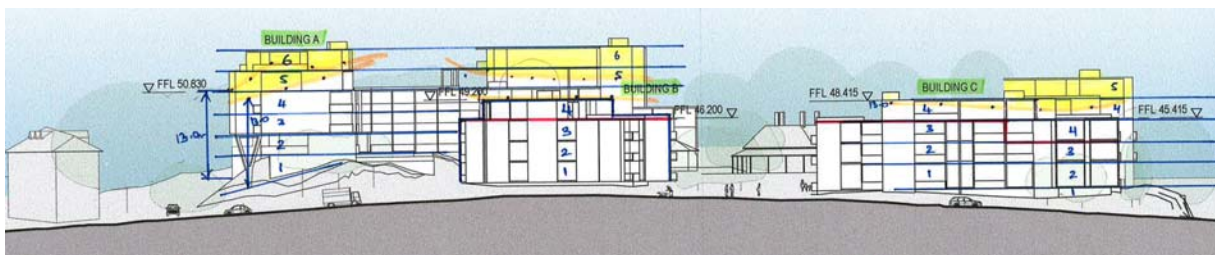


Figure 4 View from Fisher Road
(adapted by the author from Plan No. SK-150 dated 11/10/2010 and prepared by Hassell)

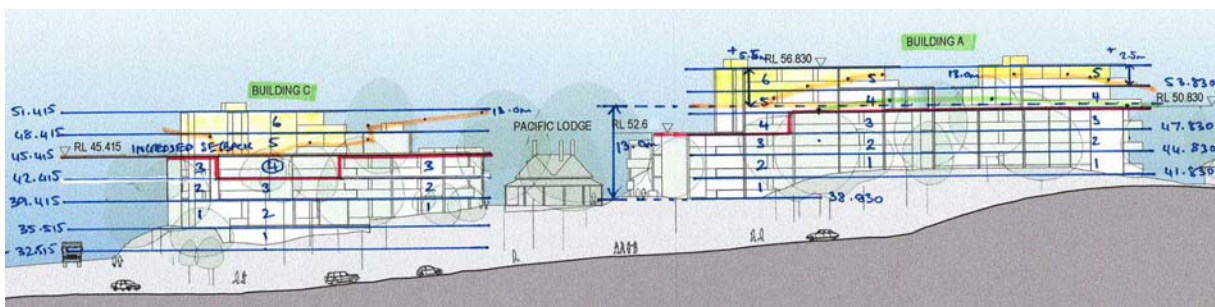


Figure 5 View from Civic Drive
(adapted by the author from Plan No. SK-151 dated 11/10/2010 and prepared by Hassell)

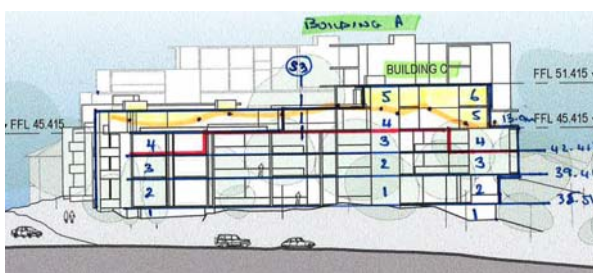


Figure 6 View from St. David Avenue
(adapted by the author from Plan No. SK-150 dated 11/10/2010 and prepared by Hassell)

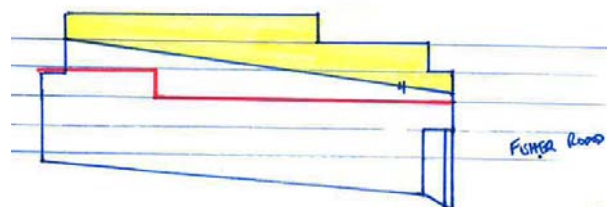


Figure 7 View from 25 Fisher Road (to the north)
(prepared by the author based upon levels in plans provided by Hassell)

Merit consideration of non-compliance

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

The site is within an area of the E10 Civic Centre locality which is characterised by a low level development surrounded by a dense landscaped setting. This character forms an effective transitional buffer between the low density E2 Dee Why Lagoon Suburbs locality to the west and the high density Dee Why Town Centre to the east. The incorporation of a development of the scale and intensity as proposed in this application will introduce a built form which will visually dominate the skyline (particularly given the elevated topography of the site), streetscape and surrounding development which, as illustrated in Figure 1 in this report, consists of low to medium scale built forms. In this respect, the development is similar in scale to recent development in the Town Centre.

Plan No. SK-600 represents a visual impact study which consists of a photomontage taken from the corner of Pittwater Road and Dee Why Parade. The view depicts a ghosted image of the development behind the existing buildings (including the Civic Centre) and tree line. This Plan is not considered to satisfy an assessment of the visual impact of the development as the location of the photograph is at a point where the development would not be seen from the public domain of Dee Why. Rather, appropriate locations for a visual impact study would be at the corner of Pittwater Road and St. David Avenue and at key visual points along Fisher Road, Civic Drive and the Kingsway. Given the scale and prominent elevated location of the development, a comprehensive visual impact study is considered to be a critical component of the application in providing Council and the community with some accurate depiction of the development.

The development does not satisfy this objective.

- *Preserve the amenity of surrounding land.*

The amenity of surrounding land takes into account consideration of view sharing, privacy and solar access. Visual impact has been discussed elsewhere in this report.

View Sharing

A view analysis has been provided (see Section 6.2.3 and Appendix A in the Statement of Environmental Effects and Plan No. SK-601). The analysis indicates that consideration has been given to the maintaining of views from McIntosh Road through the incorporation of an articulated upper levels to Building A. Plan No. SK-601 consists of a photo montage taken from a highpoint on McIntosh Road.

Plan No. SK-601 indicates that the development will result in a significant obstruction of long views from the public domain (and, by proximity, from adjoining private residences) of the Pacific Ocean and the horizon. Short views of the current landscaped setting of the subject site will also be lost.

A review of the Plan reveals that, if the building height of Building A achieved compliance the degree of view sharing would be significantly increased to an acceptable level. Notwithstanding, in its current form, the articulation included in the upper levels of Building A cannot be considered to provide an acceptable degree of view sharing given the proposed building height non-compliance.

Privacy

Given the relative distances and differences in building height, the development does not present overlooking opportunities into the neighbouring residential properties along Fisher Road and the Kingsway. In both cases it is noted that the development includes privacy screens to address this concern.

Solar Access

The shadow diagrams provided by the applicant (see Plan Nos. SK-500, SK-503, and SK-506) indicate that the development will not result in significant overshadowing over the neighbouring properties (although it is noted that Council's Senior Urban Designer points out that "*the south-eastern*

corner of the proposal will cast a shadow over St. David Park/Bus stop at 3pm winter, 21st June. The proposed building at this corner is 3 storey with the 4th and 5th storey set back by about 4 metres. The shadowing can be minimised if the 3 storey height limit is observed.”)

Therefore, whilst the shadow diagrams indicate that the shadows cast by the development over nearby residential properties are generally consistent with the provisions of Clause 62 of the General Principles of Development Control (which requires that *sunlight, to at least 50% of the principle private open spaces, is not to be reduced to less than 2 hours between 9am and 3pm on June 21*) overshadowing over the public domain could be further reduced by lowering the proposed building height to achieve compliance with the Building Height Development Standard under the draft WLEP and with the Building Height Built Form Control under WLEP 2000.

The development does not satisfy this objective.

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

The development has not been appropriately designed to respond to the topography of the site and the area in that Buildings A and C step up to their highest points as the gradient of the land slopes down towards the Civic Centre and Pittwater Road (see Figures 5 and 6 above). Additionally, extensive excavation into the rock outcrop is proposed to accommodate the basement car parking areas.

The development does not satisfy this objective.

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

The development, in its current form, is sufficiently articulated at the roof level to provide architectural variation, structural separation and visual interest to what are flat roof forms.

The development satisfies this objective.

Floor to Ceiling Built Form Control

Built Form Standard	Required	Proposed	Compliant
Floor to Ceiling (Maximum): Ground (housing)	2.7m	Building C – 3.6m	No

Areas of Non-compliance

The non-compliance occurs on the Ground Floor of Building C (see Figure 4 above).

Merit consideration of non-compliance

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

The floor-to-ceiling height exceeds the Control by 0.9m which is related to the overall building height. The overall visual impact of the building height has been discussed elsewhere in this report.

However, the area of non-compliance will add to the visual dominance of the development at street level (ie when viewed from the corner of St. David Avenue and Civic Drive) by adding an extensive floor-to-ceiling height along the full length of the ground floor level which will contribute towards the visual massing of the building and the overall bulk of the building.

The development does not satisfy this objective.

- *Preserve the amenity of surrounding land.*

Given the contribution towards the visual massing and building bulk, the area of non-compliance will have a contributory adverse impact upon the amenity of surrounding land due to the visual dominance of the development (and, in this particular instance, of Building C when viewed from the corner of St. David Avenue and Civic Drive and from St. David Avenue and Pittwater Road).

The development does not satisfy this objective.

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

This objective is not relevant given that the non-compliance is situated within the structure of the building and has no bearing on the topography of the site (see 'Building Height Built Form Control' above).

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

This objective is not relevant to the non-compliance.

Side Boundary Envelope Built Form Control

Built Form Standard	Required	Proposed	Compliant
Side Boundary Envelope: <u>Building A only</u> East	5.0m x 45°	<5.0m x 45°	No

Area of Non-compliance

The non-compliance to the Side Boundary Envelope Built Form Control occurs along the eastern side of Building A. The encroachment into the building envelope includes the proposed topmost storey.

Merit consideration of non-compliance

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

The building envelope intersects with the building at RL 53.830 which has been found to be commensurate to the permitted building height in terms of metres and storeys. Therefore, the non-compliance supports the argument that the proposed building height is excessive.

As discussed elsewhere in this report, the development by nature of the proposed building height and elevated position, will be a visually dominant feature by introducing a building bulk to an area which is visually open.

The development does not satisfy this objective.

- *Preserve the amenity of the surrounding land.*

The non-compliance is setback from neighbouring properties (ie the Civic Centre) to preserve the amenity of the surrounding land to the east. Plan No. SK-506 indicates that overshadowing will occur across the Dee Why Library building and adjacent public domain at 3.00pm on 21 June. While the extent of overshadowing is considered to be acceptable under Clause 62 – 'Access to Sunlight' under the General Principles of Development Control in WLEP 2000, overshadowing over the public domain could be further reduced by lowering the proposed building height to achieve compliance with the Building Height Development Standard under the draft WLEP and with the Building Height Built Form Control under WLEP 2000.

The development satisfies this objective.

- *Ensure that development responds to topography.*

Figures 5 and 6 above show that the eastern side of the development is stepped up from the western side of the development to maximise the availability of views towards to ocean. The result, as indicated by the non-compliant building envelope along the eastern side of Building A, is a visual exacerbation of the built form at the highest part of the site.

In this regard, the development does not respond appropriately to the topography.

The development does not satisfy this objective.

- *Provide separation between buildings.*

The development is situated on an elevated rock outcrop and is setback sufficiently from buildings on adjacent properties (ie the Civic Centre) to provide sufficient vertical and horizontal visual separation.

The development satisfies this objective.

- *Provide opportunities for landscaping.*

The non-compliance occurs at a sufficiently high level to enable the site to include landscaping at ground level.

However, given that the development proposes a consistent side setback of 4.5m up to Level 4 then steps in to achieve a side setback of 7.2m for the top 2 storeys) there is concern that the development may not provide sufficient space to permit the retention of any significant trees located in the north-eastern corner of the site through a conflict between the tree canopies and the proposed built form. This matter has not been addressed sufficiently in the application to provide Council with any certainty of impact and is raised elsewhere in this report (see the comments made by Council's Landscape Officer in 'Internal Referrals').

The development does not satisfy this objective.

- *Create a sense of openness.*

The non-compliance is setback sufficiently, both horizontally and vertically, from neighbouring properties to provide an appropriate sense of openness.

The development satisfies this objective.

Therefore, in conclusion the above merit assessment has found that the development does not satisfy the relevant objectives which underpin the Built Form Controls.

General Principles Of Development Control

The following General Principles of Development Control as contained in Part 4 of Warringah Local Environmental Plan 2000 are applicable to the proposed development:

General Principles	Applies	Comments	Compliant
CL38 Glare & reflections	Yes	Issues of glare and reflection, including building colours and materials, internal and external lighting of the buildings, pedestrian links and any interfacing with the public domain will be the subject of comprehensive assessment at Stage 2 of the development. If approved, conditions may be imposed on the Stage 1 Consent requiring full details of external finishes and lighting, including a Lighting Design Statement .	Capable of complying subject to condition should this application be approved.
CL39 Local retail centres	No	No comment.	N/A

General Principles	Applies	Comments	Compliant
CL40 Housing for Older People and People with Disabilities	No	No comment.	N/A
CL41 Brothels	No	No comment.	N/A
CL42 Construction Sites	Yes	<p>The potential exists for the future demolition, excavation and construction to have an adverse impact upon surrounding locality in terms of traffic, noise, dust, parking, accessibility, sediment and the safety of pedestrians given the major nature of the works and the scale of the demolition, large extent of excavation and lengthy time period for construction.</p> <p>Therefore, if approved, conditions of consent will be required to be imposed for Construction Management Plan and a Construction Traffic Management Plan to be submitted with the Stage 2 DA. Issues to be addressed include pedestrian movements and safety, stormwater and wastewater disposal, waste management, air quality, noise management and truck parking.</p>	Capable of complying subject to conditions should this application be approved.
CL43 Noise	Yes	If approved, an Environmental Noise Impact Assessment will be required with the Stage 2 DA that addresses noise requirements, noise sources (mechanical plant, loading dock and garbage removal operations, basement car parking, residential apartments, retail spaces) and noise control measures in relation to glazing, mechanical equipment, sound transmission between premises, construction noise and compliance with the BCA.	Capable of complying subject to condition should this application be approved
CL44 Pollutants	No	No comment	N/A
CL45 Hazardous Uses	No	No comment.	N/A
CL46 Radiation Emission Levels	No	No comment.	N/A
CL47 Flood Affected Land	No	No comment.	N/A
CL48 Potentially Contaminated Land	Yes	<p>According to the <i>Preliminary Heritage Assessment</i> provided with the application, the site has been under continuous use as a Home for Rest for Salvation Army Officers since 1892. Since that date, the site has been progressively developed to be used by the Salvation Army as an aged care facility. In this regard, it is unlikely that the site is contaminated.</p> <p>However, in accordance with SEPP 55, consideration must be given to the potential for contamination (asbestos, lead based paint contamination etc which may be associated with early demolition/construction works).</p> <p>The application does not include a Phase 1 Investigation due to the conceptual nature of the proposal as a Stage 1 Development Application. However, should the application be approved, a condition of consent will be required to be imposed for a Phase 1 Environmental Site Assessment in accordance with the <i>Contaminated Land Management Act, 1997</i> to be submitted with the Stage 2 DA.</p>	Capable of complying subject to condition should this application be approved
CL49 Remediation of Contaminated Land	No	No comment.	N/A
CL49a Acid Sulfate Soils	Yes	The site is not within an acid sulphate soils area on Council's Acid Sulphate Soils Hazard Map accompanying WLEP 2000.	Yes
CL50 Safety & Security	Yes	Compliance with the provision of CPTED would normally be the subject of comprehensive assessment at Stage 2 of the development.	Capable of complying subject to condition

General Principles	Applies	Comments	Compliant
		<p>Notwithstanding, the application was referred to NSW Police who raised no objection subject to recommendations pertaining to the provisions of <i>Crime Prevention Through Environmental Design</i> (CPTED).</p> <p>Should the application be approved, a condition of consent will be required to be imposed for a Comprehensive CPTED Report to be submitted with the Stage 2 DA.</p>	should this application be approved
CL51 Front Fences and Walls	No	No comment.	N/A
CL52 Development Near Parks, Bushland Reserves & other public Open Spaces	Yes	<p>The development is located adjacent to a pocket of bushland (although not a classified reserve) and the public domain of the Civic Centre and Dee Why Library grounds.</p> <p>In this respect, the development will have an impact with respect to overshadowing.</p> <p>Plan No. SK-506 indicates that overshadowing will occur across the Dee Why Library building at 3.00pm on 21 June. However, Council's Senior Urban Designer notes that "<i>the south-eastern corner of the proposal will cast a shadow over St. David Park/Bus stop at 3pm winter, 21st June. The proposed building at this corner is 3 storey with the 4th and 5th storey set back by about 4 metres. The shadowing can be minimised if the 3 storey height limit is observed.</i>"</p> <p>In both respects, overshadowing over the public domain could be further reduced by lowering the proposed building height to achieve compliance with the Building Height Development Standard under the draft WLEP and with the Building Height Built Form Control under WLEP 2000.</p> <p>Additionally, the placement of the building footprints (in particular, Building A which is sited close to the pocket of bushland to the north-east) will impact upon the root systems and canopies of significant trees and prominent stands of trees. Council's GIS system notes that the site may contain stands of vegetation which may provide habitat for threatened flora or fauna species which are possibly related to the stand of bushland abutting the site immediately to the north-east and thus have higher conservation significance. In this regard, it is considered important for an application on this property to include a comprehensive <i>Flora and Fauna Assessment</i> and an <i>Arboricultural Impact Assessment</i>. The conditioning of a Stage 1 DA consent to require the submission of a Flora and Fauna Assessment and an Arboricultural Impact Assessment with a Stage 2 DA it is not considered to be appropriate as the Plan may require the repositioning of the building footprints to which this application seeks approval.</p>	No Constitutes a reason for refusal due to impact and due to lack of sufficient information
CL53 Signs	No	No signage is proposed as part of this application. A separate development application is to be lodged for any signage at a later stage of development should this application be approved.	N/A
CL54 Provision and Location of Utility Services	Yes	<p>The application does not include any documentation which appropriately addresses Clause 54. Energy Australia has provided a referral response and raise no objection to the proposal subject to conditions.</p> <p>However, should the application be approved, a condition will be required to be imposed for the applicant of the Stage 2 DA to provide written evidence of consultations with Sydney Water, Energy Australia, Telstra and other relevant service suppliers.</p>	Capable of complying subject to condition should this application be approved

General Principles	Applies	Comments	Compliant
CL55 Site Consolidation in 'Medium Density Areas'	No	No comment.	N/A
CL56 Retaining Unique Environmental Features on Site	Yes	<p>The site is unique in Dee Why as it consists of an expansive and elevated area of rock outcrops. The extent and stability of the outcrop(s) is unknown as excavation works have never occurred on the property to the extent that is proposed in this development. Given that this application seeks approval for the location building footprints and building envelopes (and, by implication, the depths of the basement structures) further information would be required to ascertain the stability of the outcrop(s) to sustain and support the development. A Geo-technical report was requested in the Pre-lodgement Minutes dated 11 February 2010 to address this matter but no report was submitted with the application. In this regard, Council cannot be satisfied that the development would not have any adverse impact upon the retention of the rock outcrop.</p> <p>With respect to bushland refer to 'Clause 58 – 'Protection of Existing Flora' in this table.</p>	No Constitutes a reason for refusal due to lack of sufficient information
CL57 Development on Sloping Land	No	No comment.	N/A
CL58 Protection of Existing Flora		<p>Council's Landscape Officer notes (refer to 'Internal Referrals' in this report) that the Landscape Plan shows trees to be retained and removed but questions the accuracy of the plan given that the placement of the building footprints (in particular, Building A which is sited close to the pocket of bushland to the north-east) will impact upon the root systems and canopies of significant trees and prominent stands of trees (ie <i>Angophora costata</i> (Sydney Red Gum) along St. David Avenue). Additionally, Council's GIS system notes that the site may contain stands of <i>Corymbia gummifera</i> (Red Bloodwood) and <i>Eucalyptus macrocarpa</i> (Eucalytus) which may provide habitat for threatened flora or fauna species and thus have higher conservation significance. Council's Landscape Officer therefore considers it to be important for an application on this property to include a comprehensive <i>Flora and Fauna Assessment</i> and an <i>Arboricultural Impact Assessment</i>. However, the conditioning of a Stage 1 DA consent to require the submission of a Flora and Fauna Assessment and an Arboricultural Impact Assessment with a Stage 2 DA it is not considered to be appropriate as the Plan may require the repositioning of the building footprints to which this application seeks approval.</p> <p>It is noted that an Aborist Report was requested in the Pre-lodgement Minutes dated 11 February 2010 but no report was provided with the application to support the submitted landscape plan.</p>	No Constitutes a reason for refusal due to lack of sufficient information.
CL59 Koala Habitat Protection	No	No comment.	N/A
CL60 Watercourses & Aquatic Habitats	No	No comment.	N/A
CL61 Views	Yes	A view analysis has been provided (see Section 6.2.3 and Appendix A in the Statement of Environmental Effects and Plan No. SK-601). The analysis indicates that consideration has been given to the maintaining of views from McIntosh Road through the incorporation of an articulated upper levels to Building A. Plan No. SK-601	No Constitutes a reason for refusal

General Principles	Applies	Comments	Compliant
		<p>consists of a photo montage taken from a highpoint on McIntosh Road.</p> <p>Plan No. SK-601 indicates that the development will result in a significant obstruction of long views from the public domain (and, by proximity, from adjoining private residences) of the Pacific Ocean and the horizon. Short views of the current landscaped setting of the subject site will also be lost.</p> <p>A review of the Plan reveals that, if the building height of Building A achieved compliance the degree of view sharing would be significantly increased to an acceptable level. Notwithstanding, in it's current form, the articulation included in the upper levels of Building A cannot be considered to provide an acceptable degree of view sharing given the proposed building height non-compliance.</p>	
CL62 Access to sunlight	Yes	<p>The layout of the development, in conjunction with the proposed building heights, will result in a reasonable level of overshadowing within the site (as shown on the Shadow Diagrams SK-500, SK-503 and SK-506).</p> <p>Given the conceptual layout and location of apartments and balconies relative to the building footprints it is difficult to ascertain the impact upon individual apartments. However, generally the majority of internal shadow will be cast at 9.00am whilst the remainder of the day (specifically at Noon and 3.00pm) would provide sunlight access to internal open spaces.</p> <p>However, sunlight access to buildings and open spaces within the site would be significantly improved if the building heights were reduced to comply with the Building Height Built Form Control.</p>	Capable of complying
CL63 Landscaped Open Space	Yes	Compliance with the landscaped open space requirements of WLEP 2000 and SEPP 65 would normally be the subject of comprehensive assessment at Stage 2 of the development.	Capable of complying
CL63A Rear Building Setback	No	As the site is a corner property a rear setback does not apply.	N/A
CL64 Private open space	Yes	Compliance with the private open space requirements of WLEP 2000 and SEPP 65 would normally be the subject of comprehensive assessment at Stage 2 of the development.	Capable of complying
CL65 Privacy	Yes	Compliance with the privacy requirements of WLEP 2000 and SEPP 65 would normally be the subject of comprehensive assessment at Stage 2 of the development	Capable of complying
CL66 Building bulk	Yes	<p>This matter has been discussed in detail under previous discussions on the Desired Future Character statement and the Building Height and Side Boundary Envelope Built Form Controls. The building envelopes comprising the concept development are considered to have an excessive visual bulk and an architectural scale which is inconsistent with the permissible built form controls under the E10 locality and in terms of compatibility with development on adjoining and nearby properties and within neighbouring localities.</p> <p>The proposal will be visually prominent in the streetscape of Fisher Road, St. David Avenue, Civic Drive and when viewed from the more distant areas along Pittwater Road (particularly at the intersection of Pittwater Road and St. David Avenue) owing to the height of Buildings A and C.</p>	No

General Principles	Applies	Comments	Compliant
		In this regard, the development, as proposed, cannot be considered to be consistent with Clause 66.	
CL67 Roofs	Yes	Compliance with the objectives for roofs under WLEP 2000 and SEPP 65 will be the subject of a comprehensive assessment at Stage 2 of the development.	Capable of complying
CL68 Conservation of Energy and Water	Yes	Compliance with the objectives for Conservation of Energy and Water under WLEP 2000 and <i>State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004</i> would normally be the subject of a comprehensive assessment at Stage 2 of the development.	Capable of complying
CL69 Accessibility – Public and Semi-Public Buildings	Yes	Compliance with the objectives for Clause 69 under WLEP 2000 and SEPP 65 would normally be the subject of a comprehensive assessment at Stage 2 of the development. Should the application be approved, a condition would be required to be imposed for a detailed Access Report to be submitted with the Stage 2 Development Application.	Capable of complying subject to condition should this application be approved
CL70 Site facilities	Yes	Compliance, including the storage, collection and handling of waste for the residential and retail/commercial components of the development, the provision of individual dwelling storage and clothes drying facilities for the residential component would normally be the subject of a comprehensive assessment of a Stage 2 Development Application. Should this application be approved appropriate conditions should be imposed for the submission of a comprehensive Waste Management Plan to be submitted with a Stage 2 Development Application.	Capable of complying subject to condition should this application be approved
CL71 Parking facilities (visual impact)	Yes	The car parking areas are accommodated within two basement areas which are predominantly under ground. Due to the undulating topography of the site, portions of the basement car park protrude above ground level. However, the visual impact of the car parking areas are not significant and do not detract from the streetscape.	Yes
CL72 Traffic access & safety	Yes	The development locates the main driveway on Fisher Road which is regarded under WLEP 2000 as the secondary street frontage (St. David Avenue is nominated in the Front Setback Built Form Control as the primary street frontage). The driveway is currently proposed to be located away from main pedestrian entries (according to the Stage 1 concept). Notwithstanding, the RTA, STA, Council's Traffic Engineer and the consulting traffic engineer acting on behalf of the applicant (see page 15 of the <i>Transport Impact Assessment</i> dated 28/10/10 and prepared by GTA Consultants Pty Ltd) each raise concerns regarding the location of the driveway in proximity to the roundabout and recommend works which would address traffic safety. In this regard, this is a fundamental matter which constitutes a reason for refusal	No Constitutes a reason for refusal
CL73 On-site Loading and Unloading	Yes	This application is for the Stage 1 concept and, as such, does not address this General Principle. In this regard, consistency with this Principle would normally be the subject of comprehensive assessment at Stage 2 of the development.	Capable of complying
CL74 Provision of Car parking	Yes	Clause 74 calls up Schedule 17 of WLEP 2000 which determines car parking ratios. The development achieves compliance as illustrated below:	Yes

General Principles	Applies	Comments	Compliant																					
		<table><tr><th>Use</th><th>Required</th><th>Provided</th></tr><tr><td>Residential:</td><td></td><td></td></tr><tr><td>1 Bedroom</td><td>24 x 1 = 24</td><td rowspan="4">139</td></tr><tr><td>2 Bedroom</td><td>40 x 1.2 = 48</td></tr><tr><td>3 Bedroom</td><td>32 x 1.5 = 48</td></tr><tr><td>Visitor</td><td>1/5 units = 19</td></tr><tr><td>Commercial</td><td>80m² = 14 (app)</td><td>15 spaces</td></tr><tr><td>Total</td><td>143 spaces</td><td>154 spaces</td></tr></table> <p>The above table indicates that the development, as proposed, could comply with the currently proposed mix of uses based upon 95 apartments broken down as follows:</p> <p>25% x 1 bedroom = 24 apartments; 42% x 2 bedroom = 40 apartments; 33% x 3 bedroom = 32 apartments; and 80m² commercial area (Business or Retail Premises).</p>	Use	Required	Provided	Residential:			1 Bedroom	24 x 1 = 24	139	2 Bedroom	40 x 1.2 = 48	3 Bedroom	32 x 1.5 = 48	Visitor	1/5 units = 19	Commercial	80m ² = 14 (app)	15 spaces	Total	143 spaces	154 spaces	
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CL75 Design of Car parking Areas	Yes	This application is for the Stage 1 concept and, as such, does not address this General Principle. In this regard, consistency with this Principle would normally be the subject of comprehensive assessment at Stage 2 of the development.	Capable of complying																					
CL76 Management of Stormwater	Yes	The Stage 1 application does not include any documentation or plans which adequately address Clause 76. Should the application be approved, suitable conditions will be required to be imposed on the Stage 2 consent requiring a detailed Stormwater Management Plan to include OSD design and supporting calculations to be submitted with the Stage 2 DA.	Capable of complying subject to condition should this application be approved																					
CL77 Landfill	No	No comment	N/A																					
CL78 Erosion & Sedimentation	Yes	The Stage 1 application does not include any documentation or plans which adequately address Clause 78. Should the application be approved, suitable conditions will be required to be imposed on the Stage 2 consent requiring a detailed Erosion and Sedimentation Management Plan in relation to the transmission of sediment and debris onto the roadway and street gutter system during the demolition, excavation and construction periods.	Capable of complying subject to condition should this application be approved																					
CL79 Heritage Control	Yes	<p>The site accommodates three (3) items which are identified as having varying degrees of heritage significance. Pacific Lodge is listed on the Heritage Branch State Inventory. An associated heritage building is located within the centre of the site and a cultural heritage garden (located adjacent to Civic Drive) are not listed.</p> <p>Additionally, the site is in close proximity to the Dee Why Library building and the Civic Centre. The Library is heritage listed whilst the Civic Centre has potential for heritage listing. The heritage listed Fire Brigade building is located across Fisher Road to the west.</p> <p>The heritage consultant, Musecape Pty Ltd points out in their letter dated 7 February 2011 that <i>the documentation submitted to date does not provide Council with sufficient information to assess the extent to which the proposed development would affect the heritage significance of the item (i.e. 'Pacific Lodge') or those other items in the vicinity (i.e. Dee Why Public Library and Dee Why Fire Station).</i></p>	No Constitutes a reason for refusal																					

General Principles	Applies	Comments	Compliant
		<p>In this regard, Musecape Pty Ltd recommend that a Conservation Management Plan is prepared for the site that addresses the following:</p> <ul style="list-style-type: none"> • The extent of heritage property and curtilage; • The heritage significance of administration; • The significance of other existing residential aged care facility buildings; and • The potential future uses of heritage listed building: <p>Given that the Stage 1 application is for the approval of building envelopes and footprints, the conditioning of a Stage 1 DA consent to require the submission of a Conservation Management Plan with a Stage 2 DA is considered to be unwise as the Plan may require any curtilage from a heritage building to be increased thereby requiring a potentially significant redesign of the development post-lodgement.</p> <p>In this regard, this is considered to be a fundamental matter which constitutes a reason for refusal</p>	
CL80 Notice to Metropolitan Aboriginal Land Council and the National Parks and Wildlife Service	Yes	<p>Due to the prevalence of significant rock outcrops throughout the site, the application was referred to the Aboriginal Heritage Office for assessment and comment.</p> <p>The Aboriginal Heritage Office advises that:</p> <p><i>"If areas of in situ sandstone outcrop are proposed for impact (such as overhangs over 1m in height or platforms over 2m square), the Aboriginal Heritage Office would recommend a preliminary inspection by a qualified Aboriginal heritage professional.</i></p> <p><i>If sandstone outcrops would not be impacted by the development (and if any outcrops that were present were properly protected during works), then no further assessment is required and the Aboriginal Heritage Office would not foresee any further Aboriginal heritage constraints on the proposal."</i></p> <p>Given that the site includes in situ sandstone rock outcrops which may exceed 1m in height or platforms over 2m, and which will be impacted by the development, square it is considered appropriate to provide a Preliminary Aboriginal Heritage Inspection Report, should this application be approved, with a Stage 2 DA.</p>	Capable of complying subject to condition should this application be approved
CL81 Notice to Heritage Council	No	No comment.	N/A
CL82 Development in the Vicinity of Heritage Items	Yes	Refer to 'Clause 79 – Heritage Control' in this table.	No Constitutes a reason for refusal
CL83 Development of Known or Potential Archaeological Sites	No	No comment.	N/A

Other relevant WLEP 2000 Clauses

There are no other relevant clauses under WLEP 2000.

SCHEDULES

Schedule 8 - Site analysis

Clause 22(2)(a) of WLEP 2000 requires that the consent authority must consider a Site Analysis prepared in accordance with the criteria listed in Schedule 8.

It is considered that the submitted Site Analysis, in conjunction with the Statement of Environmental Effects (as prepared by Hassell dated October 2010 and in response to the provisions of Schedule 15) adequately addresses how the development responds to its surrounds and the locality.

Schedule 10 - Traffic Generating Development

The development consists of 95 dwellings and proposes a new crossover onto Fisher Road which is a classified road (Sub-arterial road (Regional road)). As such, the development triggers a requirement to refer the application to the RTA under Column 3 of Schedule 3.

The RTA does not raise any objection to the proposal subject to conditions which includes a recommendation for the installation of a raised concrete median strip at the centerline of Fisher Road at the front of the driveway, and extending appropriate distances either side of the driveway.

However, as discussed earlier in this report (see 'External and Internal Referrals' in this report) Council's Traffic Engineer considers that the installation of a median, will not positively facilitate traffic flow associated with the site and with existing neighbouring properties which have driveways in close proximity to the proposed driveway.

Therefore, given that the Fisher Road is under the management of Council, and that Council's Traffic Engineer raises concerns regarding the proposed access/egress and the recommended median strip, it would be inappropriate to impose the conditions recommended by the RTA on this application.

In this regard, traffic access is considered to be a fundamental matter which cannot be easily resolved within the scope of this Development Application and constitutes a reason for refusal.

Schedule 17 – Car parking Provision

The development achieves compliance as illustrated below:

Use	Required	Provided
Residential:		
1 Bedroom	24 x 1 = 24 spaces	139 spaces
2 Bedroom	40 x 1.2 = 48 spaces	
3 Bedroom	32 x 1.5 = 48 spaces	
Visitor	1/5 units = 19 spaces	
Commercial	80m ² = 14 spaces (app)	15 spaces
Total	143 spaces	154 spaces

Therefore, the above table indicates that the development, as proposed, could comply with the currently proposed mix of uses based upon 95 apartments broken down as follows:

- 25% x 1 bedroom = 24 apartments;
- 42% x 2 bedroom = 40 apartments;
- 33% x 3 bedroom = 32 apartments; and
- 80m² commercial area (Business or Retail Premises).

POLICY CONTROLS

Warringah Section 94A Development Contribution Plan 2006

Section 94A contributions would normally be levied at Stage 2 of the development.

Applications for Development Handling of Unclear, Non-Conforming, Insufficient and Amended Applications Policy (adopted 11 December 2007)

Opportunities were presented to the applicant in two (2) letters dated 23 February 2011 and 16 March 2011 respectively to withdraw the application with a view to addressing areas of non-compliance preparing the required information then resubmitting at a later date. The applicant was advised that failure to withdraw the application would result in Council reporting the application to the Joint Regional Planning Panel for determination based upon the information provided at lodgement. The applicant has, to date, not withdrawn the application and, by implication, has chosen to proceed with the assessment and determination of the application.

CONCLUSION

The proposal has been considered against the relevant matters for consideration under Section 79C of the EP&A Act 1979. This assessment has taken into consideration the submitted plans, Statement of Environmental Effects, all other documentation supporting the application and public submissions, and results in unreasonable impacts on surrounding, adjoining, adjacent and nearby properties.

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, the provisions relevant Environmental Planning Instruments including Warringah Local Environment Plan 2000, Draft Warringah Local Environmental Plan and the relevant codes and policies of Council.

In summary, the application is not supported for the following reasons:

- a) The assessment has found that the application is deficient in the provision of the following information:
 - Phase 1 Environmental Site Assessment;
 - Geo-technical Report; and
 - Flora and Fauna Report.
- b) The assessment has found that the application and supporting information do not satisfy the provisions of the following State Environmental Planning Policies:
 - State Environmental Planning Policy No. 55 – Remediation of Land; and
 - State Environmental Planning Policy No 65 – Design Quality for Residential Flat Development.
- c) The assessment has found that the application is inconsistent with the Desired Future Character of the E10 Civic Centre Locality.
- d) The assessment has found that the application does not comply with the following Built Form Controls such that a variation under Clause 20 of WLEP 2000 cannot be considered:
 - Building Height;
 - Floor to Ceiling; and
 - Side Boundary Envelope.

e) The assessment has found that the application is inconsistent with the following General Principles of Development Control:

- Clause 52 – Development near Parks, Bushland Reserves & other Open Spaces;
- Clause 56 – Retaining Unique Environmental Features on the Site;
- Clause 58 – Protection of Existing Flora;
- Clause 61 – Views;
- Clause 66 – Building Bulk;
- Clause 72 – Traffic Safety and Access;
- Clause 79 – Heritage Control; and
- Clause 82 – Development in the Vicinity of Heritage Items.

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

As a direct result of the application and the consideration of the matters detailed within this report it is considered that the Joint Regional Planning Panel (JRPP) for the Sydney East Region, as the consent authority, refuse the application for the reasons detailed within the “Recommendation” section of this report.

RECOMMENDATION - REFUSAL

THAT the Joint Regional Planning Panel (JRPP) for the Sydney East Region, as the consent authority **refuse** Development Consent to Development Application No DA2010/1979 for a Stage 1 concept mixed use development comprising residential and commercial uses and basement car parking on land at Part Lot 11 DP 577062, No. 23 Fisher Road, Dee Why subject to the reasons outlined as follows:

1. Pursuant to Section 79C(1)(a) of the *Environmental Planning and Assessment Act, 1979* and Clause 12(1)(b) of *Warringah Local Environment Plan 2000* (as amended) the proposed development is considered to be inconsistent with the provisions of *State Environmental Planning Policy No 55 – Remediation of Land*.
2. Pursuant to Section 79C(1)(a) of the *Environmental Planning and Assessment Act, 1979* and Clause 12(1)(b) of *Warringah Local Environment Plan 2000* (as amended) the proposed development is considered to be inconsistent with the provisions of *State Environmental Planning Policy No 65 – Design Quality for Residential Flat Development*.
3. Pursuant to Section 79C(1)(a) of the *Environmental Planning and Assessment Act, 1979* and Clause 12(3)(a) of *Warringah Local Environment Plan 2000* (as amended) the proposed development is inconsistent with the Desired Future Character of the E10 Civic Centre Locality.
4. Pursuant to Section 79C(1)(a) of the *Environmental Planning and Assessment Act, 1979* and Clause 12(2)(b) of *Warringah Local Environment Plan 2000* (as amended) the proposed development does not comply with the Built Form Controls under the E10 Civic Centre Locality statement as follows:
 - Building Height;
 - Floor to Ceiling; and
 - Side Boundary Envelope.
5. Pursuant to Section 79C(1)(a) of the *Environmental Planning and Assessment Act, 1979* and Clause 12(1)(a) of *Warringah Local Environment Plan 2000* (as amended) the development is considered to be inconsistent with the following General Principles of Development Control as follows:
 - Clause 52 – Development near Parks, Bushland Reserves & other Open Spaces;
 - Clause 56 – Retaining Unique Environmental Features on the Site;
 - Clause 58 – Protection of Existing Flora;
 - Clause 61 – Views;

- Clause 66 – Building Bulk;
 - Clause 72 – Traffic Safety and Access;
 - Clause 79 – Heritage Control; and
 - Clause 82 – Development in the Vicinity of Heritage Items.
6. Pursuant to Section 79C(1)(b) of the *Environmental Planning and Assessment Act, 1979* the proposed development is likely to have an adverse environmental impact upon the natural and/or built environment.
 7. Pursuant to Section 79C(1)(c) of the *Environmental Planning and Assessment Act, 1979* the subject site is considered to be unsuitable for the proposed development.
 8. Pursuant to Section 79C(1)(e) of the *Environmental Planning and Assessment Act, 1979* the proposed development is not in the public interest.

