

## JOINT REGIONAL PLANNING PANEL Sydney East Region

<b>JRPP No</b>	2011SYE079
<b>DA Number</b>	DA2011/0890
<b>Local Government Area</b>	Warringah Council
<b>Proposed Development</b>	Demolition works and construction of a mixed use Development including the Redevelopment of Brookvale Hotel, Short Term Accommodation (Motel), Bottleshop, Showroom and Residential Units
<b>Street Address</b>	Lot 11 DP 1000708, 511-513 Pittwater Road, Brookvale.
<b>Applicant/Owner</b>	Kelly Trust No. 3 Pty Ltd C/- Don Fox Planning Pty Ltd
<b>Number of Submissions</b>	Four (4) Letters of submissions were received (1 opposing the development and 3 letters in support)
<b>Recommendation</b>	Refusal
<b>Reporting Officer</b>	David Kerr – Acting Deputy General Manager for Strategic and Development Services

### Assessment Report and Recommendation

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**Assessment Officer:** Lashta Haidari

**Application Lodged:** 14/07/2011

**Plans Reference:** Drawing No, 001 -003, 098-105, 200, 201, 300, 400, 402, 500, 550, 551, 552, 553 – all Revision A – dated 8/07/2011 and Drawing no 401 – Revision B –dated 11/07/2011, all prepared by Drew Dickson Architects.

**Amended Plans:** No amended plans were submitted as part of this application.

**Owner:** Prowl Pty Ltd

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**Locality:** F1 Brookvale Centre

**Category:** **Category 1**  
Housing (not on ground floor)  
Shop (Bottle Shop)

**Category 2**  
Short Term Accommodation (Motel)  
Hotel (Brookvale Hotel)  
Other land uses that are not prohibited or in Category 1 or 3 includes:  
Housing on ground floor; and  
Showroom (retail/commercial).

**(Draft WLEP 2009) Permissible  
or Prohibited Land use:**

**B5 Business Development**

**Permissible**

Hotel (Pub);  
Hotel/motel (short term accommodation); and  
Showroom/commercial space.

**Prohibited**

Residential Accommodation;  
Gymnasium & swimming pool (ancillary to residential  
accommodation).

Yes – Building Height & Building Appearance.

**Variations to Controls**

**Referred to WDAP:**

No

**Land and Environment Court  
Action:**

Yes - Class 1 appeal against the deemed refusal has  
been lodged with the Land and Environment Court on  
25 November 2011.

**SUMMARY**

**Submission Issues:**

- Proposal is inconsistent with the Desired Future Character Statement;
- Non-compliance relating to Building height
- Visual and Heritage issue relating to Pittwater frontage
- Reduction in the entertainment hub
- Prohibition of residential development within DWLEP 2009; and
- Front Setback relating to Pittwater Road.

**Assessment Issues:**

- SEPP 65 - Design Quality of Residential Flat Development;
- Warringah Local Environmental Plan 2000:  
Desired Future Character for the F1 locality;  
Built Form Controls relating to Building Height,  
Building Appearance & Front Building Setback; and  
General Principles of Development Control relating  
to Privacy, Building Bulk, Traffic Access and Safety,  
Management of stormwater, and Carparking.
- Draft Warringah Local Environmental Plan 2009:  
Prohibited development; and  
Non-compliance with the Building Height standard.

**LOCALITY PLAN** (not to scale)



**Subject Site:** Lot 11 DP 1000708, 511-513 Pittwater Road, Brookvale.

**Public Exhibition:** The subject application has been publicly exhibited in accordance with the EPA Regulation 2000, Warringah Local Environment Plan 2000 and Warringah Development Control Plan. As a result, the application was notified to 790 adjoining land owners and occupiers for a period of 30 calendar days commencing on 29/7/2011 and being finalised on 30/08/2011. Furthermore, the application has been advertised within the Manly Daily on 30 July 2011 and a notice was placed upon the site.

Four (4) Letters of submissions were received as a result of the notification process (which includes 1 letter opposing the development and 3 letters of support).

## **SITE DESCRIPTION**

The subject site is legally described as Lot 11 within DP 1000708 known as No. 511-513 Pittwater Road, Brookvale. The site has an area of 6,172m<sup>2</sup> and is located on the south-eastern corner of the intersection between Old Pittwater Road and Roger Street with its main frontage to Pittwater Road.

The site is described as an 'irregular' shaped allotment with a frontage of 70.76m to Old Pittwater Road to the north, a 40.26m frontage to Pittwater Road to the east, and 50.35m frontage to Roger Street to the west. The site has a moderate fall from the Old Pittwater Road and Roger Street boundaries towards the east, and Pittwater Road boundary.

The site is currently occupied Brookvale Hotel, which incorporates a drive through bottle shop.

A number of trees are located along the frontage of the site on Old Pittwater Road and Roger Street and a pocket of landscaping is located in front of the existing Brookvale Hotel on the Pittwater Road frontage.

The subject site is located within the F1 – Brookvale Centre locality and, as such, is surrounded by mixed industrial, commercial, and retail uses. The site immediately adjoins a 2 storey commercial building (known as 515 Pittwater Road) to the north, and further north is No. 517 Pittwater Road which is currently under construction for the purposes of shop top housing.

The adjoining building to the south fronting Pittwater Road is a 2 storey commercial building (known as No. 509 Pittwater Road) and further to the south of the site fronting Roger Street is a three storey building that is used as a motor showroom and vehicle service facility (known as Col Crawford Holdings Pty Ltd).

The development along Roger Street to the south-west of the site has been developed for a variety of industrial and warehouse uses interspersed with commercial uses. The development along old Pittwater Road to the north-west of the site is characterised by low density residential development, Brookvale Oval, and Brookvale Public School.

## **LAND AND ENVIRONMENT COURT**

A Class 1 appeal against the deemed refusal has been lodged with the Land and Environment Court on 25 November 2011.

## **PROPOSED DEVELOPMENT**

The proposal involves the demolition of all existing buildings and structures on the site and the construction of mixed-use development, comprising the redevelopment of Brookvale hotel, short-term accommodation (Motel), bottle shop, showroom and residential units with two levels of basement car parking.

The proposed development comprises a 2-storey hotel fronting Pittwater Road with a 4 storey building (referred to as Block A) adjoining the hotel on its western side. The building (referred to as Block B) is located on the southern side of the internal courtyard and is proposed to be a 5 storey detached building, whilst the building (referred to as Block C) is proposed to be 5/6 stories with frontages to Roger Street and Old Pittwater Road.

The following is a detailed description of the various components of the proposed development:

### **Hotel**

The proposed development includes the re-development of Brookvale Hotel, which will occupy the portion of the site fronting Pittwater Road. The new hotel will comprise a ground floor pub with public bar area, indoor/outdoor gaming area and indoor/outdoor brasserie area. The ground floor space will also comprise a kitchen, cool rooms, and storage areas. The basement level includes the toilet/amenities for the hotel with an internal stair access.

### **Bottle Shop**

A new bottle shop (378m<sup>2</sup>) is proposed to be located within the lower ground level of the proposed development. The bottle shop will be accessed via a lift and stairs from the hotel above and basement carparking below.

### **Short Term Accommodation (Motel)**

Adjoining the rear of the proposed new Hotel and within the ground level of Block A is proposed to be a motel (short term accommodation), comprising:

- 1 x studio;
- 6 x 1 bedroom; and
- 1 x 2 bedroom self-contained units.

### **Commercial Showroom**

The proposed showroom will be located on Level 2 in Block B with the frontage to Roger Street and Old Pittwater Road. The proposed showroom will have 851m<sup>2</sup> of floor space of and will be accessed via a central staircase directly from the corner of Roger Street and Old Pittwater Road as well staircases located at both ends of the building.

It should be noted that the traffic report submitted with application refers to the proposed showroom as a 'motor showroom', whilst the applicant within the SEE and the application form has indicated that the use of this area is for retail/commercial purposes.

### **SOHO Units (Residential units containing office space)**

The ground levels of Blocks B and C will comprise 5 x 1 bedroom + office space and 4 x 2 bedroom + office space units (referred to as SOHO units). The applicant within the SEE has indicated that the purpose of these units is to include an office space, which is to provide professional home office space.

The proposed SOHO units would be described as 'Home Business' pursuant to WLEP 2000. In this regard, these units have been defined as housing on ground level in the assessment of this application, as they are not consistent with shop-top housing as the office space is ancillary to the dwellings and are not directly accessible to the public. Further, public parking is not provided to this office space.

## **Residential Units**

A total of 110 residential units are proposed from Level 1 to Level 5 of Blocks A, B, and C. The following table details the residential units (as stipulated within the Statement of Environmental effect –prepared by Don Fox Planning)

<b>Block &amp; Level</b>	<b>1 bed units</b>	<b>2 bed units</b>	<b>3 bed units</b>	<b>Total Units</b>
Block A Level 1	7	1		8
Block A Level 2	10	1		11
Block A Level 3	8	2		10
Block B Level 1	3	1		5
Block B Level 2	3	2		5
Block B Level 3	2		2	4
Block B Level 4	2		2	4
Block C Level 1 & 2	14	1		15
Block C Level 3	15	5		20
Block C Level 4 & 5	18	10		28
<b>Total</b>	<b>82</b>	<b>24</b>	<b>4</b>	<b>110</b>

## **Gymnasium and Swimming Pool**

A swimming pool and gymnasium is located on Level 1 of Block C adjacent to Old Pittwater Road and Roger Street. The applicant has indicated that this area is intended for the exclusive use of the residents of the residential and SOHO units.

## **Storage**

Storage for the residential and SOHO units is provided on Level 1 adjacent to the gymnasium and swimming pool area. These storage areas are in the form of lockers.

## **Parking and Access**

- **Basement 01** - 95 parking spaces plus 14 disabled spaces, 3 motorcycle spaces and 6 bicycle spaces; and
- **Basement 02** - 130 parking spaces plus 9 disabled spaces, 3 motorcycle spaces and 6 bicycle spaces.

The development provides three vehicular access points from the following

- **Pittwater Road:** Provides vehicular access to the basement bottle shop car park via a ramp that is located between the proposed new hotel and the adjoining two storey commercial building north of the site. No egress onto Pittwater Road is proposed.
- **Old Pittwater Road:** This proposed access point is designed for deliveries, loading and unloading and waste collection. This vehicular access point provides access to the hotel and bottle shop loading bay and also the showroom loading bay adjacent to Old Pittwater Road with truck turning areas accommodated.

Furthermore, the applicant has indicated that waste and recycling trucks will also enter via this access point to collect commercial waste on a daily basis and residential waste and recycling on a weekly basis.

- **Roger Street:** This vehicular access point provides access and egress to and from the basement car park for residents, visitors and customers of the proposed mixed-use development.

### **Signage**

Consent is also sought for a new “Brookvale Hotel” sign that is proposed to be located in a central position on the Pittwater Road elevation of the proposed hotel building above the upper window and below the parapet. The sign is proposed to consist of individual lettering stating “BROOKVALE HOTEL” and will have total area of approximately 14.8m<sup>2</sup>.

### **STATUTORY CONTROLS**

- a) Environmental Planning and Assessment Act 1979
- b) Environmental Planning and Assessment Regulation 2000
- c) State Environmental Planning Policy No 55 – Remediation of Land
- d) State Environmental Planning Policy No 64 – Advertising and Signage
- e) State Environmental Planning Policy No 65 – Design Quality of Residential Flat Development
- f) State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004
- g) State Environmental Planning Policy (Infrastructure) 2007
- h) Warringah Local Environment Plan 2000
- i) Warringah Development Control Plan
- j) Warringah Section 94A Development Contributions Plan
- k) Draft Warringah LEP 2009

## **External Referrals**

### **NSW Office of Water**

The application was referred to NSW Office of Water as integrated development pursuant to Environmental Planning and Assessment Act 1979 requiring General Term of Approval under the provision of Management Act 2000 on 21 July 2011.

However, the General terms of approval from NSW office of Water has not been received at the time of writing this report. Accordingly, consent cannot be granted and this issue has been included as reason for refusal.

### **Transport Roads & Maritimes Services (RMS)**

The application was referred to RMS in accordance with State Environmental planning Policy (Infrastructure) 2007 and SEPP 64 (Advertising and Signage).

The comments received from the RMS in relation SEPP Infrastructure has been addressed under the heading 'SEPP (Infrastructure) 2007 of this report. In summary, the RMS has raised concern in relation to the proposed entry from Pittwater Road.

It is noted that the RMS comments received raised no objection to the proposed signage pursuant to SEPP 64.

### **NSW Police Force**

The application was referred to NSW Police in accordance with Section 79C the Environmental Planning and Assessment Act, 1979 for the assessment of Crime Guidelines, a Safer by Design Crime Risk Evaluation.

The NSW Police has reviewed the proposal and has identified a **Medium** crime risk for the proposed development rating on a sliding scale of Low, Medium, High and Extreme crime risk and as a result has recommended a number measures to reduce the crime risk for the development to Low.

Should the application be worthy of approval, the recommendations of the NSW Police should be included as conditions of consent.

### **Ausgrid**

The application was referred to Ausrid to determine the energy supply requirements for the proposed development and also with regards to Clause 45 (2) of SEPP (Infrastructure) 2007.

Ausgrid by letter dated 25 July 2011 has raised no objection to the proposed development subject to conditions. Should the application be approved, the conditions as recommended by Augrid should be included in the consent.

## Internal Referrals

Referral Department	Comments Received
Strategic Planning	<p>Council's Strategic Planning section has reviewed the proposal and has provided the following comments:</p> <p><b><i>“Draft Warringah Local Environmental Plan 2009</i></b></p> <p><i>The subject site is zoned B5 Business Development under the draft Warringah LEP 2009. In addition, under draft WLEP 2009 - Schedule 1 Additional Permitted Uses, Item 5 makes provisions for certain additional permitted uses within parts of the B5 zone that are identified as ‘Area 9’ on the Additional Permitted Uses Map. (‘Area 9’ is the land that currently lies within the F1 Brookvale Centre Locality under Warringah LEP 2000). It is noted that the proposed development is described in the Statement of Environmental Effects as a mixed use development having the following components:</i></p> <ul style="list-style-type: none"> <li><i>• Hotel (pub)</i></li> <li><i>• Hotel/ motel short term accommodation</i></li> <li><i>• Bottle shop</i></li> <li><i>• Residential units that incorporate a separate office component</i></li> <li><i>• Showroom/ commercial space</i></li> <li><i>• Residential units</i></li> <li><i>• Gymnasium and swimming pool (for use of residents of the residential units on site)”</i></li> </ul> <p><i>Status of residential accommodation in the B5 Business Development zone</i>  <i>When commencing the preparation of the draft Warringah LEP, Council decided to translate the Warringah LEP 2000 into the new Standard Instrument LEP format. It also decided that the only exceptions to this would be to accommodate changes to land use planning policy that would be required to give effect to the NSW Government’s Metropolitan Strategy.</i></p> <p><i>In preparing the draft LEP Council was required to give effect to the strategic directions established in the NSW Government’s Metropolitan and draft NE Subregional Strategies. These documents cite Brookvale/ Dee Why as a ‘major centre’ for the subregion. In response to this Council prepared the draft LEP to identify Dee Why as fulfilling commercial, retail, civic and housing functions of the major centre and Brookvale as primarily fulfilling the employment and service functions of the major centre.</i></p> <p><i>Draft WLEP 2009 proposes a number of zones to facilitate the employment and service functions of Brookvale being B3 Commercial Core (allocated only to the Warringah Mall site); B5 Business Development and IN1 General Industrial. None of these zones will permit housing on the basis that:</i></p> <ul style="list-style-type: none"> <li><i>• the area does not represent desirable residential land in terms of residential amenity having regard to its use for industry; major shopping mall and range of service and automobile related functions, and</i></li> <li><i>• there remains significant re development potential within the B4 zoned area (i.e. the Dee Why commercial area) in the northern portion of the ‘Major Centre’ to accommodate an expanded housing role within the Dee Why commercial area, and</i></li> <li><i>• Council is seeking to promote the role of the area as current and future employment lands and it is appropriate that competition with residential markets does not hinder this process, and</i></li> <li><i>• in addition to dwellings targets, the Metropolitan Strategy establishes significant jobs capacity targets for the sub region and Warringah has been allocated the major portion of this target.</i></li> </ul> <p><b><i>Recent decision of Council</i></b></p> <p><i>At its meeting on 23 August 2011 Council considered Item 5.4 being Mayoral Minute 23/2011 Draft Warringah Local Environmental Plan 2009 – B5</i></p>

	<p><i>Business Development zone and resolved as follows:</i></p> <p>A. That Council agrees that it would not oppose the addition of shop top housing as a permitted use within limited parts of the B5 Business Development zone; that is, those parts of the proposed B5 zone that currently lie within the F1 Brookvale Centre Locality under Warringah LEP 2000.</p> <p>B. That Council agrees to communicate this position to the Director General of the Department of Planning.</p> <p><i>In doing so it gave consideration to the following information. Since the commencement of the preparation of the draft LEP the status of NSW Government's strategic documents has changed. The Metropolitan Strategy has been reviewed and the Metropolitan Plan 2036 released in December 2010. Housing and jobs targets remain under review by the new Government. The draft subregional strategies, whilst prepared in 2006 – 2007 have not become final documents.</i></p> <p><i>In finalising the draft LEP, the new Government has raised concerns that shop top housing will no longer be permitted on the land that currently forms the F1 Brookvale Centre Locality under Warringah LEP 2000. The new Government does not believe that shop top housing would be incompatible with the intent of the Metropolitan Plan for a 'major centre'.</i></p> <p><b>Conclusion</b></p> <p><i>The final draft LEP was adopted by Council on 8 June 2010 (after consideration of submission to the public exhibition of the Plan) and forwarded to the Director General with a request that the Minister makes the Plan. Council's final draft LEP does not include any form of residential accommodation (or development that is ancillary to residential accommodation) in the B5 Business Development zone.</i></p> <p><i>This position was again endorsed by Council at its meeting on 14 December 2010 (with its consideration of Item 9.8) and this position was communicated to the Department of Planning on 15 December. Council's final draft LEP was again endorsed at its meeting on 23 August 2011 (with its consideration of Items 5.3 and 5.4) and this was communicated to the Department of Planning and Infrastructure on 2 September 2011.</i></p> <p><i>That is, whilst Council has decided that it would not oppose the addition of shop top housing as a permitted use in certain parts of the B5 Business Development zone, this position is not consistent with Council's final adopted draft LEP. If shop top housing was included as a permitted use in the B5 zone in the draft Warringah LEP this would be at the initiative of the NSW Government.</i></p> <p><i>Council's most recent formal communication from the Department of Planning and Infrastructure in relation to the timing of the finalisation of the draft Warringah LEP is letter dated 20 April 2011 (TRIM Doc. No. 2011/080759) which advises that:</i></p> <ul style="list-style-type: none"> <li>• <i>Warringah's draft LEP is a "priority LEP", and</i></li> <li>• <i>It intends to have this Plan notified by mid 2011".</i></li> </ul> <p><b>Comment:</b> The comments received from Council's Strategic Planning Department have been addressed in detail under the DWLEP 2009 section of this report. In summary, the DWLEP 2009 has completed the public exhibition process, has been adopted by Council and was subsequently forwarded to the Department of Planning for gazettal. In this regard, reference is made to the Land and Environment court case, <i>Trustees of the Sisters of the Good Samaritan v Warringah Council</i> [2011] NSWLEC 1181 where the judgement in Clause 61 summarises the weight to be given to a draft LEP, particularly in the circumstances of consideration against its imminency, certainty and consistency with the planning objectives of the zone.</p> <p><i>61. If the weight to be given to the draft LEP is considered against its</i></p>
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	<p><i>imminency, certainty and consistency with the expressed future planning objectives for the area, we are satisfied that the draft LEP should be given determinative weight.</i></p> <p>Having regard to the above judgement, the plan is considered both imminent and certain. On this basis, the DWLEP 2009 is required to be given weight in the consideration under Section 79C of the EP &amp; A Act, 1979.</p>
<b>Urban Design</b>	<p>Council's Senior Urban Designer has reviewed the proposal has provided the following comments:</p> <p><b>“Positive aspects:</b></p> <ol style="list-style-type: none"> <li>1. <i>Articulated building forms. Street facades are composed with an appropriate scale, rhythm and proportion.</i></li> <li>2. <i>Activating street frontages and locating vehicular circulation and truck loading areas to the streets rear of the site.</i></li> <li>3. <i>Rationalised vehicular access point to allow for continuous street frontages and awning to provide safe and sheltered pedestrian routes.</i></li> </ol> <p><b>Negative Aspects:</b></p> <p><i>Building appearance - WLEP2000 CL 66 Building bulk states that... buildings are to have a visual bulk and an architectural scale consistent with structures on adjoining or nearby land and are not to visually dominate the street or surrounding spaces, unless the applicable Locality Statement provides otherwise... The proposal has building form which exceeds the 11m building height control by up to 3m at the corner of Old Pittwater road and Roger street.</i></p> <ol style="list-style-type: none"> <li>1. <i>The site has a prominent location at the corner of Old Pittwater Road and Roger Street and should address both street frontages. Considering the surrounding buildings of predominantly 2 to 3 storeys structures, the taller than 11m (above street level) built form proposal at the corner of old Pittwater Road and Roger Street seems rational. The built form can be more prominent to define the corner which will still be at a sympathetic scale to the adjoining streetscape. However by putting the taller built forms on the northern and western part of the site, they cut out solar access to the sunken courtyard in the middle of the site. Moreover the courtyard facing apartment blocks are 4 to 6 storeys high further limiting solar access to residential units and landscaped communal open space especially in winter.</i></li> <li>2. <i>SEPP 65 Site Design - The Communal Open Space requirement of 25 to 30% of the site area should be provided for a 110 residential unit development with minimal private open space proposed for each unit. The central landscaped courtyard proposed is about 23% of the site area and will also be mostly in shadow especially during winter.</i></li> <li>3. <i>SEPP 65 Amenity - Residential Flat Design Code (RFDC) recommends apartment buildings habitable rooms/ balconies separation distance of 12m for building height up to 12m/ 4 Storeys. The proposal has balconies separation of about 6m within the central court. The inadequate separation distances will create amenity problems like lack of visual and acoustic privacy, loss of daylight access to apartments and to private and shared open spaces.</i></li> </ol> <p><i>The design should optimise solar access and cross-ventilation to contribute positively to residence amenity. It is recommended that the applicant be requested to provide further information on the following:</i></p> <ul style="list-style-type: none"> <li>• <i>Provide solar access study to support statement of 70% of apartments within the proposed development will receive a minimum of 3 hours direct sunlight to outdoor private open spaces and primary living rooms during winter.</i></li> </ul>

	<ul style="list-style-type: none"> <li>• Provide study to support statement of 60% of apartments has natural cross-ventilation.</li> </ul> <p>4. The prohibition of residential accommodation on the subject site zoned B5 is not consistent with translation of the current land use categories in Warringah LEP 2000 because it is the intent of Council to preserve employment land within the Brookvale major centre area for the subregion. The subject site is surrounded by business and industrial zones which allow building forms of 11m high to be built.</p> <p>The residential units proposed have balconies/ windows that are setback 1.5/ 3 m from the southern boundaries which could potentially in the future be 11m high blank walls to business units creating amenity problems like lack of visual/acoustic privacy and loss of daylight access to apartments. Moreover the vehicle service building to the south would also be a noise source for the residences proposed.</p> <p><b>Conclusion</b></p> <p><i>The initial analysis demonstrates that the proposed development does not comply fully with the current WLEP 2000, draft WLEP 2009 controls and with SEPP 65 requirements for residential flat development. There is no justification to allow a departure from the controls. Therefore the development cannot be supported in its current form”.</i></p> <p><b>Comment:</b> The concerns raised by Council's Urban Designer have been taken into consideration in the various sections of this report.</p>
<b>Traffic Engineer</b>	<p>Council's Traffic Engineer has reviewed the proposal and has provided the following comments:</p> <p><b>“Access Arrangements</b></p> <p><i>The proposed motor vehicle showroom has no vehicular access. Please be aware that it is not acceptable to manoeuvre vehicles over the kerb / footpath / nature strip. Should the applicant wish to utilise this area they must clearly demonstrate that vehicle movements into the showroom can occur safely, without disrupting traffic flow on Roger Street.</i></p> <p><i>Additionally there is no provision to load and unload vehicles to the site. The applicant must specify the means by which vehicles will be delivered to the motor showroom.</i></p> <p><i>The applicant has not shown that 12.5m service vehicles can manoeuvre out of the proposed service area in a single forward movement. This must be demonstrated by indicating the swept path of the vehicle from the service area.</i></p> <p><i>The proposed driveway access from Old Pittwater Road does not allow heavy vehicle access from the kerbside lane.</i></p> <p><i>All driveway access arrangements must be in accordance with AS2890.1:2004 and AS2890.2:2002.</i></p> <p><b>Parking Provision.</b></p> <p><i>The area allocated for the disabled parking spaces are sufficient to meet the standards, however all shared areas for disabled parking spaces must have a bollard installed to prevent parking as per AS2890.6:2009</i></p> <p><i>The location of the motor showroom and the additional parking provided as part of this application may allow part of the Roger Street frontage to be converted to retail space at a latter time. This may lead to an overall shortfall of parking on this site.</i></p> <p><i>Currently this car park is closed until 10am to prevent commuter parking.</i></p>

	<p><i>Should a car park of this size be open prior to 10am it is likely that a significant (non residential) proportion of the car park will be occupied by commuters and staff from nearby businesses.</i></p> <p><i>The applicant must be specifically precluded from charging a fee for car parking on this site, or operating this site as a commercial car park.</i></p> <p><i>The residential component of the car park must be separated from the commercial/retail component via a physical barrier.</i></p> <p><b>Traffic Generation.</b></p> <p><i>Traffic generated by the site to access the road network via the signalised intersection at Old Pittwater Road/Roger Street/Beacon Hill Road.</i></p> <p><i>The traffic study identifies the traffic volumes generated by this site but does not specify peak times.</i></p> <p><b>Conclusion.</b></p> <p><i>Due to the deficiencies outlined above this development is not supported in its current form”.</i></p> <p><b>Comment:</b> The concerns raised by Council's Traffic Engineer have been addressed under the specific Clauses (72 -75) of the WLEP 2000.</p>
<b>Development Engineer</b>	<p>Council's Development Engineer has reviewed the proposal and has provided the following comments:</p> <p><i>“Reference is made to the proposed stormwater drainage plan by Demlakian Engineering, Drawing No. 211073 SW1 to SW8, Revision A, dated 6 July 2011.</i></p> <p><i>In regards to the proposed On-site Stormwater Detention (OSD) and associated drainage design, Development Engineers provide the following comments:</i></p> <ol style="list-style-type: none"> <li><i>1. Calculations are to be submitted for assessment. This requires the submission of a computer disc with the relevant hydrologic model.</i></li> <li><i>2. Design ground floor levels of Units A003, A004, A005 for the motel suites are to be provided on the drawings. All office, storage and habitable floor levels are to be set at a minimum of 300mm above the maximum design water surface and surcharge levels.</i></li> <li><i>3. There appears to be a conflict with the storage volume provided for each OSD tank as shown on drawings 211073 SW1 and cross sections of OSD tanks 1 and 2. The volumes of storage provided on the cross sections appear to be less than the proposed storage volume shown on drawing 211073 SW1. It is noted that the OSD tanks are designed not to overflow in the 1 in 100 year ARI storm. The hydraulics consultant is to check and confirm the storage volume required for the development and amend the drawings where necessary.</i></li> <li><i>4. Further design information is required on the stormwater drainage plan. Reference is made to Council's OSD Technical Specification, Appendix 9, Sample Drawing No A4 9070A. The section of the detention tank should include the following:</i> <ul style="list-style-type: none"> <li><i>• Complete dimensions/stout details of both OSD tanks 1 and 2</i></li> <li><i>• Depths of landscaping cover over OSD tank 1</i></li> </ul> </li> <li><i>5. An engineering longitudinal section through the outlet pipe from OSD tanks 1 and 2 to the connection into the Council system in Pittwater Road must be provided. This long section is to show design invert levels; finished surface levels; pipes size; design flows; locations of structures</i></li> </ol>

	<p><i>above and below the pipelines such as truck turning areas, driveway ramps, pathways, fire stairs, top of concrete base of the proposed electrical substation; all utility services that may cross the line; hydraulic grade line; etc.</i></p> <p><i>The stormwater drainage proposal is not satisfactory until the above issues are addressed. Amended stormwater drainage plans are to be submitted to Council for re-assessment, prior to the issue of the Development Consent.</i></p> <p><b>Right Of Way (ROW)</b></p> <p><i>With reference to the submitted survey plan for the site, there appears to be an existing within the subject site adjoining the rear of 515 and 517 Pittwater Road. It is unclear if one or both of these properties have the benefit to the easement as no 88B instrument has been provided with the application. The applicant proposes to construct the new electrical substation within the ROW which cannot be approved without the applicant providing evidence that the ROW is to be either extinguished with the approval of the beneficiary property(s) or relocated. Details must be provided by the applicant.</i></p> <p><i>It also appears that there is an insufficient splay at the corner of Roger St and Old Pittwater Rd as the existing public footpath is located within the site at this point. As part of the application, it will be necessary for the applicant to provide a curved splay providing a 3.7 metre setback from the existing kerb alignment at the corner of the intersection. The land is to be dedicated to Council as road reserve and the building design modified to suit.</i></p> <p><i>In terms of the pedestrian access to the building along the Pittwater Road frontage, all internal levels at doorways are to be set at 3% above the existing top of kerb perpendicular to the access point. A review of the proposed levels show that some minor internal grade changes may be required to suit this requirement. It is considered that proposed footpath levels using the above requirement be shown on the drawings adjacent to all proposed doors to assess the internal levels.</i></p> <p><i>All proposed access driveways to the development are to be in accordance with Council's Normal profile a copy of which can be found on Council's website. A review of the three driveway crossings has found that only the one off Pittwater Road complies with this requirement.</i></p> <p><i>The driveway access off Old Pittwater Rd is to have a level of RL 24.33m AHD at the boundary on the low side and RL 24.57m AHD on the high side. The driveway off Roger St is to have a level of RL 24.33m AHD at the boundary on the low side and RL 24.82m AHD on the high side.</i></p> <p><i>The above boundary levels will require alteration of the proposed internal grades to suit AS2890.1-2004. It will be necessary for the applicant to check the grades and provide details to ensure the internal grades comply with the above standard.</i></p> <p><i>It is noted that the internal ramp length for the access off Roger St is incorrect. It appears that a typographical error has occurred and must be amended. The length and grades may need to be altered to suit the above requirements.</i></p> <p><i>The above issues relating to the ROW and driveway access cannot be conditioned. Information satisfying the issues must be submitted prior to further assessment of the application".</i></p> <p><b>Comment:</b> The concerns raised by Council's Development Engineers are also addressed under Clause 76 of this report.</p>
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<b>Waste Services Officer</b>	<p>Council's waste services officer has reviewed the proposal and has provided the following comments:</p> <p><i>"Only one issue of non-compliance with this proposal.</i></p> <p><i>The three access doors leading from the service area/truck parking bay to the residential and commercial bin rooms are too narrow. All three doors must be increased to a minimum of 1.2 metres wide".</i></p> <p><b>Comment:</b> The issue raised by Council's Waste officer has been addressed under Clause 70 of this report.</p>
<b>Landscape Officer</b>	<p>Council's Landscape has reviewed the proposal and has provided the following comments:</p> <p><i>"Some concern is raised in regard to the streetscape amenity provided by the proposal.</i></p> <p><i>At present, the site presents a significant landscape component to the streetscape on the Old Pittwater, Rd, Roger Street and Pittwater Road frontages. The attractive tree planting and landscape presentation is highlighted by the stark contrast to the general Brookvale streetscape.</i></p> <p><i>The current site, being a hospitality venue provides a more personable pleasant frontage as befits its clientele than does most of the industrial/commercial uses in the area.</i></p> <p><i>It would seem logical that a development similarly containing a hospitality element and residential component would also seek to present a personable, humane presentation to the street.</i></p> <p><i>The plans as provided do not provide any landscape element to the street frontages, relying only on the built form.</i></p> <p><i>The Pittwater Road frontage is admittedly problematic as it requires a co-ordinated master plan approach to provide a meaningful streetscape experience. One development in isolation should not make much of a difference. In view of the surrounding built form to the street edge, the realignment of the hotel building to the boundary is not unreasonable or necessarily undesirable. It should however be tempered by an overall street scheme which is subject to a separate study and implementation regime, which is beyond the control of this application. At this stage, no objection is raised to the realignment of the hotel to the boundary on Pittwater Road.</i></p> <p><i>Old Pittwater Road and Roger Street present a different scenario in relation to this development. As the residential component addresses these streets and the built form is higher, some contribution the streetscape character is warranted. The loss of the perimeter planting of London Plane trees is considered to be a significant change to the desirable elements of the streetscape in this area.</i></p> <p><i>The development on these frontages adjoins residential Localities (F4 and G3) and is opposite the well vegetated Brookvale Public School. The effect of this softer landscape should be reflected in the frontages to the development away from the main road.</i></p> <p><i>Certainly these roads are still quite busy, particularly in relation to Beacon Hill Road as it descends into Brookvale. The presentation of a building façade alone at this key point without any soft landscape element is not contributing to the development of an attractive, human environment as would befit a mixed use residential development.</i></p> <p><i>With regard to the above landscape issues, the exterior of the proposed development is not considered to adequately address WLEP2000 General Principles Cl. 63 Landscape, Cl. 66 Building Bulk, the Desired Future Character of the Locality, the consideration of the adjoining Locality, and the Residential Design Flat Code part 02 Landscape Design, Design Quality Principle 6 Landscape and Design Quality Principle 10 Aesthetics.</i></p>

	<p><i>With regard to the internal landscape areas, the soft and hard landscape provides functional circulation routes and general planting amenity. The species selected are capable of establishing in the environment provided. The space is more of an ornamental space than useable communal space, however in the context of the apartment, SOHO and Motel uses proposed would provide a pleasant outlook for the units, as appears to be the design intent. The maximum soil depth indicated on the Landscape Plan is 900mm.</i></p> <p><i>It is difficult to ascertain from the shadow diagrams how much sunlight will be afforded to the units facing into the courtyard, particularly on the lower floors. Given the internal height of the buildings as indicated on Section B, some clarification of the solar access to the courtyard should perhaps be sought.</i></p> <p><b>Comment:</b> The issues raised by Council's Landscape Officer have been addressed in various sections of this report.</p>
<b>Natural Environment Unit</b>	Council's Natural Environment Unit has reviewed the proposal and has raised no objection to the proposed development.
<b>Heritage</b>	<p>The application was referred to Council's Heritage Officer for comments, as the site is located within the vicinity of a heritage item (being the Brookvale Public School). The Heritage officer has reviewed the proposal and has raised no objection to the proposed development.</p> <p><b>Comment:</b> The assessment made by Council's Heritage consultant is addressed in detail under Clause 82 of this report.</p>
<b>Environmental Health &amp; Protection</b>	Council's Environment Health and Protection has reviewed the proposal and has raised no objection to the proposed development subject to conditions.

## NOTIFICATION & SUBMISSIONS RECEIVED

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 790 adjoining landowners and occupiers for a period of 30 calendar days commencing on 29/7/2011 and being finalised on 30/08/2011. Furthermore, the application has been advertised within the Manly Daily on 30 July 2011 and a notice was placed upon the site.

Four (4) submissions were received as result of the notification process, which included three (3) letters of support and one (1) letter objecting to the proposed development. Submissions were received from the following property owners/occupiers:

Name	Address
A. Sharp	77 Brighton Street, Curl Curl
Parkview Farm Pty Ltd	PO Box 124, Frenchs Forest
Col Crawford	497 Pittwater Road, Brookvale
Tuyute Pty Ltd	Suite 3/515 Pittwater Road, Brookvale

### Letter of objection

The issues raised in the submission opposing the proposed development are outlined below. A response follows each issue.

### **Proposal is inconsistent with the Desired Future Character Statement (DFC)**

Concern has been raised that the proposed development is inconsistent with the desired future character of the F1 locality under WLEP 2000. Specifically, the following issues were raised:

- *The proposal includes 'housing on the ground floor', which is considered to be a Category 2 land use, as it is not listed under Category 1 or 3 of the F1 Locality.*

*However, this particular Category 2 use is NOT consistent with the desired future character for the Brookvale Centre (Locality F1) which contains specific reference to 'low-rise shop-top housing';*

- *A home business on the ground floor would be a Category 2 development that is not consistent with the desired future character for the F1 Locality;*
- *The proposal for home office use would privatize areas of the ground floor and potentially exclude public access;*
- *The Brookvale Hotel is a large site and permeability for public access within and across the site is an important consideration. The desired future character states: "Future development will help create a pedestrian environment which is safe, active and interesting." It is possible to provide a safe, active and interesting pedestrian environment by utilizing the interior of the site. The provision of a pedestrian corridor between Pittwater Road and Roger Street should also be retained for pedestrian amenity / convenience.*

**Comment:** An assessment of the proposed development against the Desired Future Character Statements for the F1 Brookvale Centre is provided in this report. In summary, the proposed development has been found to be inconsistent with the Desired Future Character Statements for the locality. Accordingly, inconsistency with the DFC has been included as reason for refusal.

### **Non-compliance with Building Height Built Form Control**

Concern has been raised in relation to the non-compliances with the built form control relating to building height. Specifically, the following issue has been raised:

*"The proposal does not comply with the 11m height limit, which would allow only 3 stories above basement level car parks. Instead, the proposal allows up to 5 / 6 storeys of residential development.*

*The proposal is for a 2 to 6 storey mixed use commercial and residential development above 2 levels of basement car parking with frontages to Pittwater Road, Old Pittwater Road and Roger Street."*

*The proposal is not consistent with the requirement for 'low-rise' shop-top housing. Additional parking is required in conjunction with increased residential density. The increased height also has the potential to affect future development to the south and west of the site".*

**Comment:** This issue has been addressed in detail under 'Built Form Control' within the 'F1 Brookvale Centre Locality' section of this report. In summary, the proposed development seeks variation to the building height in relation to Blocks B and C under the provisions of WLEP 2000. The non-compliance with the height requirement in relation to Block B does not result in unacceptable or unreasonable impacts on adjoining and surrounding properties.

However, the non-compliance in relation to proposed Block C is considered excessive and not supported and therefore included as a reason for refusal.

### **Visual/ Heritage**

Concern has been raised that the proposed two storey façade of the hotel on Pittwater Road has a box-like appearance that lacks aesthetic character compared with the existing building.

The objector also noted that the original portion of the hotel was constructed over 50 years ago and is part of the history of Brookvale and therefore its demolition and replacement with a nondescript edifice would do little to enhance the Brookvale Centre.

The objector has also requested that any heritage values of the existing building should be acknowledged and recorded, in the public interest.

**Comment:** The application was referred to Council's Heritage officer for comments as detailed under Clause 82 of this report. In summary, no specific concerns were raised with regards to the heritage value of Brookvale Hotel. The concern raised in this regard would not warrant the refusal of the application.

### **Entertainment Hub**

Concern has been raised that Brookvale Hotel is an entertainment hub in the Brookvale area and the proposal would reduce the land area allocated to hotel use.

**Comment:** The proposed development includes the re-development of Brookvale Hotel and its continued use as a hotel. The hotel use will not be compromised as a result of the proposed development. Accordingly, the concern raised does not warrant the refusal of the application.

### **Draft Warringah LEP 2009**

Concern has been raised that the residential accommodation is prohibited within the proposed B5 Business Development zone. The objector notes that if low rise shop-top housing were to be included as an additional use, residential accommodation (which includes housing on the ground floor) would be prohibited, as in all standard Business zones. A general concern raised in the submission is that the Brookvale Centre has poor amenity for residential accommodation.

**Comment:** This issue has been addressed under the heading 'DWLEP 2009' of this report. In summary, the development has been assessed as being inconsistent with the aims and objectives of the B5 zone of DWLEP 2009 and is not supported on this basis.

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

### **Letters of Support**

The following comments were made in the submissions received in support of the proposed development:

- *The proposal is extremely impressive;*
- *The proposal will be a further catalyst to be rejuvenation of this entire precinct;*
- *Additional shop top housing will bring an influx of new residents which will greatly assist the retail area and breathe new life into the precinct;*
- *The proposal will be positive impact on Brookvale Town Centre and will prove to be a great boost to the various businesses in the area.*

## ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979

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

Section 79C 'Matters for Consideration'	Comments
<b>Section 79C (1) (a)(i) – Provisions of any environmental planning instrument</b>	See discussion on Environmental Planning Instrument including: "State Environmental Planning Policy No. 55 – Remediation of Land", 'State Environmental Planning Policy (BASIX: Building Sustainability Index) 2004', 'State Environmental Planning Policy (Infrastructure) 2007', State Environmental Planning Policy No 64 – Advertising and Signage, 'State Environmental Planning Policy No. 65 – Design Quality of Residential Flat Development' and 'Warringah Local Environmental Plan 2000' in this report.
<b>Section 79C (1) (a)(ii) – Provisions of any draft environmental planning instrument</b>	Refer to discussions on Draft Environmental Planning Instruments in the body of the report.
<b>Section 79C (1) (a)(iii) – Provisions of any development control plan</b>	The application was advertised and notified in accordance with Warringah Development Control Plan.
<b>Section 79C (1) (a)(iiia) - Provisions of any Planning Agreement or Draft Planning Agreement</b>	None applicable.
<b>Section 79C (1) (a)(iv) - Provisions of the regulations</b>	<p>Clause 50(1A) of the EP&amp;A Regulation 2000 requires the submission of a design verification certificate from the building designer at lodgement of the development application. A design verification certificate has been submitted with the application.</p> <p>Clause 98 of the EPA Regulations 2000 requires the consent authority to consider the provisions of the Building Code of Australia. A condition of consent could be included in the consent if the application was worthy of approval that all works to be consistent with the provisions of the Building Code of Australia.</p>
<b>Section 79C (1) (b) – The likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality</b>	<p>(i) The environmental impacts of the proposed development on the natural and built environment are addressed under the 'General Principles of Development Control' in this report. In summary, the proposed development is capable of being constructed so as to not result in any adverse environmental impacts on the natural environment. The proposed development is inconsistent a number of General Principles of Development Control relating to the built environment and therefore the impacts of the proposal are unsatisfactory.</p> <p>(ii) The proposed development will not have a detrimental social impact in the locality considering the proposal involves the reinstatement of the existing hotel and bottle shop on the site. The construction of commercial/retail and residential development is envisaged under the WLEP 2000.</p> <p>(iii) The economic impact of the proposed development is satisfactory.</p>
<b>Section 79C (1) (c) – The suitability of the site for the development</b>	The site does not contain any significant physical constraints that would prevent the provision of this development on site. However, the three street frontages, topography of the site and the configuration of the available land present design challenges. Subject to the resolution of these design issues (i.e. achieving compliance with the relevant planning

Section 79C 'Matters for Consideration'	Comments
	controls as well the requirement of SEPP 65) and subject to the provision of adequate drainage and additional information (i.e. stage 2 contamination report) demonstrating that the site is suitable for the proposed development, the site can be made suitable for the proposed development.
<b>Section 79C (1) (d) – Any submissions made in accordance with the EPA Act or EPA Regs</b>	The public submissions received in response to the proposed development are addressed under 'Notification & Submissions Received' within this report.
<b>Section 79C (1) (e) – The public interest</b>	<p>The proposed development is not considered to be consistent with the desired future character of the F1 Brookvale Centre. The proposed development also does not comply with the built form controls or satisfy a number of general principles of development controls. The non-compliances are symptomatic of a development, which is an overdevelopment of the site.</p> <p>Importantly, the controls within WLEP 2000 provide the community with a level of certainty as to the 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 F1 locality.</p> <p>As the proposed development does not comply with the development standards, which apply to the site, the development is not consistent with the scale and intensity of development that the community can reasonably expect to be provided on this site and in the locality.</p> <p>For these reasons the proposal is not considered to be in the public interest. This issue has been included as a reason for refusal.</p>

## DRAFT ENVIRONMENTAL PLANNING INSTRUMENTS:

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

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

**Land Use Zones:** B5 - Business Development

### Definition and Permissible or Prohibited:

Proposed Land use	Permissible or Prohibited
Hotel (pub)	<b>Permissible</b> - (Any other development not specified in item 2 or 4)
Hotel / motel short term accommodation	<b>Permissible</b>
Bottle shop	<b>Permissible</b> (Schedule 1 - Additional Permitted Uses – Item 5)
Showroom/ retail space	<b>Permissible</b> (Schedule 1 - Additional Permitted Uses – Item 5)
Residential units	<b>Prohibited</b> (Residential Accommodation)
Gymnasium and swimming pool (for use of residents of the residential units on site)	<b>Prohibited</b> (Ancillary to Residential Accommodation)

**Additional Permitted uses for particular land (Refer to Schedule 1):** Yes (Retail Premises within the B5 Zone)

As indicated in the above table, the proposed residential accommodation (which represents a significant component of the proposed development) and the ancillary uses such as the

gymnasium and swimming pool are prohibited land uses within the B5 zone under the provisions of DWLEP 2009.

The applicant acknowledges, within Statement of Environment Effects, that the residential component will be prohibited development. However, in response to this, the applicant has provided the following comments:

*“Section 79C (1)(a)(ii) requires that any Draft Environmental Planning Instrument which has been the subject of public consultation under the EP&A Act and that has been notified to the consent authority must be considered in the assessment of a DA. As the Draft LEP has been formally exhibited under Section 65 of the EP&A Act it is necessary to consider the relevant matters of the publicly exhibited Draft LEP.*

*It is relevant to note that in June 2011 the NSW Land & Environment Court, in Trustees of the Sisters of The Good Samaritan v Warringah Council, Proceedings No. 11053 of 2010 determined that draft WLEP 2009 is certain and imminent for gazettal and accordingly should be given substantial determining weight in the assessment of a DA such as this mixed use proposal.*

*Notwithstanding, subsequent to the Court’s judgement in this matter, it has become apparent that there may be a legal procedural issue with the public exhibition of the Draft WLEP 2009 in late 2009 whereby the publicly exhibited version of the draft LEP did not include the relevant clauses and floor space ratio map for the Dee Why Town Centre. The FSR map and relevant clauses have been added into the latest version of draft WLEP 2011 which is currently being reviewed by the Department of Planning and Infrastructure (DoPI) and Parliamentary Counsel before being recommended for final approval by the Minister for Planning. It is yet to be determined by DoPI whether the draft LEP needs to be re-exhibited.*

*Furthermore, the owners of the Brookvale Hotel (the applicant) engaged DFP to prepare a submission to the Minister for Planning and Infrastructure (Appendix U) recommending: “that “shop-top housing” remain a permissible form of development within the Brookvale town centre by inserting “shop-top housing” in the additional uses permitted in Area 9 in Schedule 1 (Part 5) of draft WLEP 2009.”*

*It has been subsequently advised that the Department of Planning and the Minister will give serious consideration to the DFP submission requesting that “shop-top housing” remain a permissible use in the Brookvale town centre under draft WLEP 2009”.*

Further to the above, the applicant also argues that the savings provision in Clause 1.8 of DWLEP 2009 should also be taken into consideration given that at the time of lodgement of the application, DWLEP 2009 had not commenced and for reasons detailed above, the applicant has indicated that there is uncertainty as to whether DWLEP 2009 is imminent (given the re-exhibition question), and indeed certain as it relates to the site (given the consideration being afforded the applicant’s submission to Minister regarding the permissibility of shop top housing).

As indicated in the referral comments received from Council’s Strategic section, the prohibition of residential accommodation from the B5 zone was to respond to the NSW Government’s Metropolitan Strategy, which has identified Dee Why/ Brookvale as the ‘Major Centre’ for the North East Subregion of Sydney (comprised of Manly, Warringah and Pittwater Local Government Areas). In this decision making about choice and location of appropriate standard instrument zones Council’s Strategic section has advised the Department that:

- Dee Why currently accommodates Warringah's civic functions and multiple associated community facilities. It has significant areas of office and retail floor space and has the largest concentration of medium density residential development in Warringah. The Dee Why Town Centre is currently the focus of a major re development proposal that will significantly increase retail, office and residential floor space. It will also provide upgraded community facilities and public spaces that are integrated and central within the heart of Dee Why. The re development will ensure that the Dee Why Town Centre is wholly consistent with the Department's descriptor of a major centre.
- Brookvale has historically been a major centre of industry and employment in Warringah and the subregion. This role has continued to expand with recent re development, particularly west of Pittwater Road. To ensure the on going availability of industrial and compatible employment land it is vital that Brookvale does not support significant office and residential floor space in competition with Dee Why. Rather, it should continue to support and service the major centre of Dee Why by providing an alternate range of employment and service functions.

For the above reasons, Council has identified the subject land since the commencement of the draft LEP process as being zoned B5 Business Development. Council's Strategic Section has advised that at no point in the process to develop the draft LEP has the Department raised any concerns with Council in relation to the use of these zones for the subject land. Nor has the Department raised any concerns with Council in relation to the strategic justification and choice of standard instrument zones for the wider Dee Why/ Brookvale 'Major Centre'.

However at the Ordinary Meeting of Council on 23 August 2011 Council considered Item 5.4 being Mayoral Minute 23/2011 Draft Warringah Local Environmental Plan 2009 – B5 Business Development zone and resolved as follows:

- A. *That Council agrees that it would not oppose the addition of shop top housing as a permitted use within limited parts of the B5 Business Development zone; that is, those parts of the proposed B5 zone that currently lie within the F1 Brookvale Centre Locality under Warringah LEP 2000.*
- B. *That Council agrees to communicate this position to the Director General of the Department of Planning.*

Whilst Council has decided that it would not oppose the addition of shop top housing as a permitted use in certain parts of the B5 Business Development zone, this position is not consistent with Council's final adopted draft LEP. No formal process has been commenced to amend the draft LEP, this could occur after the LEP is gazetted as an amendment. If shop top housing was included as a permitted use in the B5 zone in the draft Warringah LEP this would be at the initiative of the NSW Government.

Having regard to the above comments, Council is required to consider the exhibited Plan under the Section 79 C (1) (a) (ii) of the Environmental Planning and Assessment Act, 1979. Further, at the time of preparing this report, Council has not received any further advice from the Department as to whether "shop-top housing" will be inserted as a permissible use in the Brookvale town centre under DWLEP 2009.

Accordingly, the DWLEP 2009 is considered both imminent and certain in considering this application and therefore must be taken into consideration. The relevance of DWLEP 2009, and the weight to be given to it, relies on the facts of the particular case and circumstances which have been highlighted by numerous Land and Environmental Court cases including

*Mathers v North Sydney Council* [2000] NSWLEC 84; *Haywood and Bakker Pty Ltd v North Sydney Council* [2000] NSWLEC 138; *Blackmore Design Group Pty Ltd v North Sydney Council* [2001] NSWLEC 279; and *Trustees of the Sisters of the Good Samaritan v Warringah Council* [2011] NSWLEC 1181.

In summary, the primary principles arising from the above cases are that the weight to be placed upon a draft LEP, when determining a development application, depends on:

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

### **Council's Assessment**

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

Comment: The DWLEP 2009 has completed the public exhibition process, has been adopted by Council and was subsequently forwarded to the Department of Planning for gazettal. In this regard, reference is made to the Land and Environment court case, *Trustees of the Sisters of the Good Samaritan v Warringah Council* [2011] NSWLEC 1181 where the judgement in Clause 61 summarises the weight to be given to a draft LEP, particularly in the circumstances of consideration against its imminency, certainty and consistency with the planning objectives of the zone.

*61. If the weight to be given to the draft LEP is considered against its imminency, certainty and consistency with the expressed future planning objectives for the area, we are satisfied that the draft LEP should be given determinative weight.*

Having regard to the above judgement, the plan is considered both imminent and certain. On this basis, the DWLEP 2009 is required to be given weight under Section 79C of the EP & A Act, 1979.

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

Comment: Any application lodged before the making of DWLEP 2009 that will become prohibited after the making of that plan must be evaluated against the objectives of the plan. Assessments of the residential component of the proposed development in relation to the objectives of the B5 – Business Development zone are addressed as follows:

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

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

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

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

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

Comment: The development incorporates retail premises in the form of a showroom at the frontage of Old Pittwater Road and Roger Street and Brookvale Hotel fronting Pittwater Road. Accordingly, it is considered that the proposed development has been designed to create a pedestrian environment that is safe, active and interesting, which is consistent with this objective.

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

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

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

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

Reference is made to the Land and Environment Court case, *Blackmore Design Group Pty Ltd v North Sydney Council* [2001] NSWLEC 279, where the judgement summarises the weight to be given to a draft LEP, particularly in the circumstance when the document was a draft when the application was lodged and has since been gazetted with a transitional provision.

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

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

**Comment:** The DWLEP 2009, at the time of preparation of this document, remains a draft plan and has not commenced. The judgement is relevant in relation to the role of the savings clause and the need to look at the aims and objectives of the DWLEP 2009. As indicated above, the residential component of the development is inconsistent with the aims and objectives of the B5 zone under the DWLEP 2009 and should be given significant weight for the following reasons:

- Allowing residential development on the site undermines the strategic planning work carried out by Council, which has identified the locality as being unsuitable for residential development as evidenced by the provisions applying to the site under DWLEP 2009.
- The strategic planning undertaken as part of the DWLEP 2009 ensures the growth in the number of dwellings and the number of residents within Warringah is controlled, manageable and sustainable. Varying the aims and objectives of the DWLEP 2009 without a proper consideration of the strategic plan for the growth of the locality will contribute to uncontrolled and uncoordinated development within the locality.
- It is therefore considered the implications of varying the controls within the DWLEP 2009 to the extent proposed by this application will result in uncontrolled uncoordinated development which is not consistent with the *objectives* of the EP&A Act, specifically the objective in Clause 5(a) (ii) which is *'the promotion and co-ordination of the orderly and economic use and development of land'*

#### **Amended definition of Shop Top Housing under the Standard Instrument:**

The definition of shop top housing under the Standard Instrument, which will be relevant upon the gazettal of DWLEP 2009 is as follows:

***"Shop top housing means one or more dwellings located above ground floor retail premises or business premises."***

The proposal in its current form is inconsistent with this definition with regards to Block B and C. Even if low rise shop-top housing were to be included as an additional use in Area 9 (F1 Locality), residential accommodation (which includes housing on the ground floor) would be prohibited.

#### **Principal Development Standards:**

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

<b>Instrument</b>	<b>Development Standard</b>	<b>Required</b>	<b>Proposed</b>	<b>Complies</b>
<b>Draft WLEP 2009</b>	<b>Building Height</b>	11m (measured from existing ground level to highest point of building)	<b>Brookvale Hotel</b> 9.2m to top of roof plant	Yes
			<b>Block - A</b> 11.6m at the highest point of the building	<b>NO</b> (Refer to discussion under 4.3 relating to building height)
			<b>Block - B</b> 13.9m at the highest point of the building	<b>NO</b> (Refer to discussion under 4.3 relating to building height)

Instrument	Development Standard	Required	Proposed	Complies
			<b>Block – C</b>  15.2m at the highest point of the building	<b>NO</b>  (Refer to discussion under 4.3 relating to building height)
<b>WLEP 2000 (FI Locality)</b>	<b>Building Height</b>	11m (Measured vertically between any point on the topmost ceiling of the building and the natural ground level below)	<b>Brookvale Hotel</b> 6.2m -7.9	Yes
			<b>Block – A</b> 10m at the highest point	Yes
			<b>Block - B</b>  12m at the highest point	<b>No</b> (Refer to Clause 20 variation under WLEP 2000)
			<b>Block – C</b>  14.1m at the highest point	<b>No</b> (Refer to Clause 20 variation under WLEP 2000)

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

#### Height of Buildings

The proposed development (i.e. Blocks A, B, and C) does not comply with the Building Height Development Standard as detailed in the above compliance table under the provisions of the DWLEP 2009. In this regard, the objectives of the Standard are addressed below:

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

Comment: The height standard for the site falls under the DWLEP 2009 only. In this regard, the proposed height of the development, particularly the height of Block C is considered excessive and will set undesirable precedent for the locality that envisages buildings not to exceed the 11 metres height limit. Accordingly, the height of the proposed development is not compatible and would be excessive in terms of its bulk and scale when compared to the adjoining and surrounding developments.

It is further noted, that the site adjoins a low density residential land diagonally across the road on Old Pittwater Road. The low density residential has an 8.5m height limit and therefore it is considered that the height of the proposed development (particularly Block C) will provide an in appropriate transition in terms of bulk and scale. Further the height of the proposed development will result in an unsatisfactory cumulative impact, when viewed from the residential area.

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

Comment: The non-compliance with the height standard will not result in inconsistencies with this objective under the DWLEP 2009 as the adjoining developments for the residential component of the development are industrial/commercial and proposed development will not

result in adverse impacts with regards to views, loss of privacy and loss of solar access. Further, the residential land along Old Pittwater Road will not be significantly impacted upon by the proposal with regards to views, loss of privacy and loss of solar access.

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

Comment: The non-compliance with the height standard will not result in inconsistencies with this objective under the DWLEP 2009 as the building does not sit within a coastal or bushland environment.

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

Comment: The non-compliance with the height standard will not result in inconsistencies with this objective under the DWLEP 2009 as it will not be viewable from parks and reserves and the adjoining streets are predominantly industrial, commercial, and residential in nature.

In conclusion, a variation to the Building Height Development Standard under Clause 4.6 of DWLEP 2009 cannot be supported for reasons that the height of the development (particularly Block C) is inconsistent with the objective relating to compatibility in relation to the bulk and scale of the development.

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

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

The objective if this Clause are to:

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

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

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

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

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

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

## STATE ENVIRONMENTAL PLANNING POLICIES (SEPPs)

Further consideration is required for the following State policies:

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

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

BASIX Certificates has been submitted with the application for all residential units. The certificates confirm that the proposed development meets the NSW government's requirements for sustainability. The development meets the water and energy performance targets and achieves a pass for thermal comfort.

### SEPP No. 55 – Remediation of Land

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

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

In response to these requirements, the applicant has submitted a Stage 1 – Environmental Site Assessment Report prepared by Environmental Investigations (Report No. E1382.1) – dated 6 July 2011. The report concludes that *“on the basis of the site history and the information collected during the assessment during the site inspection a number of potential areas of Environmental concern and contaminants of concerns were identified and on that based a Stage 2 Environmental Site Assessment has been recommended focussing on soil sampling”*.

Based on the above recommendation, the applicant has failed to submit the information required (i.e. A Stage 2 contamination assessment report) to demonstrate that the land is suitable in its current state, or will be suitable after remediation, for the purpose for which the development is proposed to be carried out, as required by SEPP 55 and Clause 48 and 49 of WLEP 2000. Accordingly consent cannot be granted for the proposed development and this issue has been included as a reason for refusal.

### State Environmental Planning Policy (Infrastructure) 2007

#### Clause 45 of SEPP Infrastructure

Clause 45 of SEPP Infrastructure requires the Consent Authority to consider any development application (or an application for modification of consent) for any development carried out:

- *Within or immediately adjacent to an easement for electricity purposes (whether or not the electricity infrastructure exists);*
- *Immediately adjacent to an electricity substation; or*
- *Within 5m of an exposed overhead electricity power line.*

The application was referred to Ausgrid (previously known as Energy Australia) to determine if the subject site was within or immediately adjacent to any of the above electricity infrastructure. Ausgrid, by letter dated 25 July 2011 stated that the subject site was not affected by any of the above electricity infrastructure. In this regard, the subject application is considered to satisfy the provisions of Clause 45 SEPP Infrastructure.

#### Clause 102 – Impact of road noise or vibration on no-road development

Clause 102 applies to residential development adjacent to a road corridor or freeway with an annual average daily traffic volume of more than 40,000 vehicles and which the consent authority considers would be likely to be adversely affected by road noise or vibration.

The Transport Road & Maritime Services (previously known as RTA) has published traffic volume maps for NSW (*Traffic Volume Maps for Noise Assessment for Building on Land Adjacent to Busy Roads*). The noise assessment for the development is indicated on Map 12 as mandatory under Clause 102 of the SEPP.

Clause 102(2) also requires the consent authority to consider any guidelines that are issued by the Director-General for the purposes of this clause and published in the Gazette. The supporting guidelines (as published by The Department of Planning in 2008) guide development adjacent to railway lines and along motorways, tollways, freeways, transit ways and other 'busy' roads. For new residential developments, internal noise levels of 35 dB (A) have been set for bedrooms during the night-time period and 40 dB (A) for other habitable rooms.

Clause 102(3) prohibits the consent authority from granting consent to residential development adjacent to a road corridor or freeway unless it is satisfied that appropriate measures will be taken to ensure that the above-mentioned LAeq levels are not exceeded.

As the site is located adjacent to Pittwater Road which has volume in order of 47, 000 vehicles per day, this Clause applies to the proposed development. In this regard, the applicant has submitted an acoustic report (prepared by Koikas Acoustic, dated 11 July 2011). The findings of this report are addressed in detail under Clause 43 – Noise of this report. In summary, the acoustic report recommends design measures to minimise the acoustic impact of the traffic on residential development. In this regard, the subject application is considered to satisfy the provisions of Clause 102 subject to condition to be included in the consent if the application is worthy of approval to adopt the recommendations of the acoustic report in the design of the proposed development.

#### Clause 106 of SEPP Infrastructure

Pursuant to Clause 106(1) (a) the clause applies to new premises of the relevant size or capacity. (2) In this clause, "relevant size or capacity" means:

*"in relation to development on a site that has direct vehicular or pedestrian access to any road-the size or capacity specified opposite that development in Column 2 of the Table to Schedule 3"*

Clause 106 'Traffic generating development' of the SEPP requires the application be referred to the RTA within 7 days, and take into consideration any comments made within 21 days, if the development is specified in Schedule 3 of the SEPP. Column 3 of the table within Schedule 3 applies to this application as the proposed development provides more than 200 parking spaces (i.e. total of 248 parking spaces are proposed as part of the development).

As per the above requirement, the application was referred to the Transport Road & Maritime Services (RMS) (previously known as Road and Traffic Authority – RTA). The RMS by its letter dated 10 August 2011 provided the following comments:

*“The RTA has reviewed the development application and it is noted that the proposal includes an entry only access from Pittwater Road, which is not supported by the RTA, as current practice to limit the number of vehicular conflict points along the arterial road network to maintain network efficiency and road safety. This current practice is reflected in Section 6.2.1 of the RTA’s current publication of the Guide to Traffic Generating Developments which states ‘access across the boundary with a major road is to be avoided whenever possible’.*

*The Australian Guidelines ‘Planning for Road Safety’ is based on the widely accepted principle of conflict reduction by separating the traffic movement and land access function as much as possible. Pittwater Road is a state road, which carries a high volume of traffic, where transport efficiency of through traffic is of great importance.*

*Prior to approval of this development, amended plans must be submitted to Council indicating the removal of the driveway on Pittwater Road”.*

**Comment:** Based on the above advice, the application does not comply with the requirement of Clause 106 of the SEPP and this issue has been included as a reason for refusal.

#### **SEPP No 64- Advertising and Signage**

SEPP 64 applies to all signage that, under another environmental planning instrument can be displayed with or without development consent and is visible from any public place or public reserve. Under SEPP 64 the proposed signage is defined as building identification and business identification signage and therefore only Parts 1, 2 and 4 of the SEPP applied to the proposed modification.

Clause 8 of SEPP 64 states the following;

*‘A consent authority must not grant development consent to an application to display signage unless the consent authority is satisfied:*

- (a) That the signage is consistent with the objectives of this Policy as set out in clause 3 (1) (a), and*
- (b) That the signage the subject of the application satisfied the assessment criteria specified in Schedule.’*

The objectives under clause 3(1) (a) are to ensure that signage is compatible with the desired amenity and visual character of an area, provides effective communication in suitable locations, and is of high quality design and finish.

One (1) sign is proposed as part of this application, being a business identification sign (i.e. the name of the Brookvale Hotel) that will be located in a central position on the Pittwater Road elevation of the proposed hotel building above the upper window and below the parapet. The consistency of the proposed signage against the objectives under Clause 3(1) (a) is considered in more detail within the following assessment of the proposal against the criteria in Schedule 1 of SEPP 64:

## 1. Character of the area

Control	Comments	Consistent with control
Is the proposal compatible with the existing or desired future character of the area or locality in which it is proposed to be located?	The site is situated within the F1 Brookvale Centre Locality under Warringah Local Environmental Plan 2000. It is considered that the sign proposed as part of this application is consistent with the desired future character of the F1 locality.	Yes
Is the proposal consistent with a particular theme for outdoor advertising in the area or locality?	The proposed sign is considered to be consistent with signs on other buildings within the locality	Yes

## 2. Special areas

Control	Comments	Consistent with control
Does the proposal detract from the amenity or visual quality of any environmentally sensitive areas, heritage areas, natural or other conservation areas, open space areas, waterways, rural landscapes or residential areas.	<p>The subject site is not identified as a heritage item, but it is within the vicinity of heritage building (being Brookvale Public School), which is located on Old Pittwater Road.</p> <p>The proposed sign will be located on front of the proposed hotel fronting Pittwater Road and will not be visible from old Pittwater Road. Council's Heritage officer reviewed the proposal and has raised no objection to the proposal or the proposed signage on heritage grounds</p>	Yes

## 3. Views and vistas

Control	Comments	Consistent with control
Does the proposal obscure or compromise important views?	The proposed sign will be affixed to the building. Views and vistas will not be obscured or compromised as a result of the proposed sign.	Yes
Does the proposal dominate the skyline and reduce the quality of vistas?	The proposed sign will not therefore result in any changes to the skyline or quality of vistas	Yes
Does the proposal respect the viewing rights of other advertisers?	The proposed sign do not obstruct viewing rights of other advertisers in the vicinity	Yes

## 4. Streetscape, setting or landscape

Control	Comments	Consistent with control
Is the scale, proportion and form of the proposal appropriate for the streetscape, setting or landscape?	The scale, proportion and form of the proposed sign is considered appropriate given the scale of the building and the use proposed.	Yes
Does the proposal contribute to the visual interest of the streetscape, setting or landscape?	The proposed sign will provide business identification for the subject premises. The sign provide an appropriate level of visual interest.	Yes
Does the proposal reduce clutter by rationalising and simplifying existing advertising?	The proposed sign does not result in any 'visual clutter'.	Yes
Does the proposal screen unsightliness?	The proposed sign does not screen any unsightly part of the building	Not Applicable
Does the proposal protrude above buildings, structures or tree canopies in the area or locality?	The proposed sign will not protrude above the existing building or tree canopies in the area.	Yes

## 5. Site and building

Control	Comments	Consistent with control
Is the proposal compatible with the scale, proportion and other characteristics of the site or building, or both on which the proposed signage is to be located?	The scale of the proposed sign is considered to be appropriate for the size of the site and the proposed building and façade to which it is to be affixed.	Yes
Does the proposal show innovation and imagination in its relationship to the site or building?	The proposed sign is of a standard form. The design is considered satisfactory for the intended identification purposes.	Yes

## 6. Associated devices and logos with advertisements and advertising structures

Control	Comments	Consistent with control
Have any safety devices, platforms, lighting devices or logos been designed as an integral part of the signage or structure on which it is to be displayed?	No safety devices, platforms, lighting devices are to be incorporated as part of the signage design.	Not Applicable

## 7. Illumination

Control	Comments	Consistent with control
Would illumination result in unacceptable glare?	The proposed sign is not proposed to be illuminated.	Not Applicable
Would illumination affect safety for pedestrians, vehicles or aircraft?		
Would illumination detract from the amenity of any residence other form of accommodation?		
Can the intensity of the illumination be adjusted?		
Is the illumination subject to a curfew?		

## 7. Safety

Control	Comments	Consistent with control
Would the proposed reduce the safety for any public road?	The size of the proposed sign and the location of the signage will ensure that the sign will not reduce the safety of a public road	Yes
Would the proposal reduce the safety for pedestrians or bicyclists?	The proposed sign will not project over public space and therefore will not reduce the safety of pedestrians or bicyclists	Yes
Would the proposal reduce the safety for pedestrians particularly children, by obscuring sightlines from public areas?	The proposed sign will not obscure sightlines along the footpath and the road. The development is not considered to reduce the safety of pedestrians or bicyclists.	Yes

Based on the above assessment, the sign proposed under this application is considered to be consistent with the assessment criteria specified in Schedule 1 as required by Clause 8(b) of SEPP 64. The findings of the above assessment also demonstrate the proposed signage is consistent with the objectives under Clause 8(a) of SEPP 64.

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

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

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

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

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

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

*‘Where the application of a provision of an environmental planning instrument requires a determination of the number of storeys, floors or levels which a building contains, that number shall, for the purposes of applying the provision, be deemed to be the maximum number of storeys, floors or levels, as the case may be, of the building which may be intersected by the same vertical line, not being a line which passes through any wall of the building.’*

The plans submitted with the application indicate that Blocks A, B, and C will be 3 or more storeys and all the buildings contain 4 or more self-contained dwellings. The proposed residential units within Blocks A, B, and C can therefore be defined as a ‘residential flat building’ in accordance with Clause 3 of SEPP 65.

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

SEPP 65 requires any development application for residential flat development to be assessed against the 10 Design Quality Principles contained in Clauses 9-18 of SEPP 65 and the matters contained in the Residential Flat Design Code (RFDC). Accordingly, an assessment of the proposed development against the 10 Design Quality Principles are as follows:

The 10 principles are outlined as follows:

### **Design Quality Principle 1: Context**

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

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

The desired future character statement for the F1 – Brookvale Centre locality identifies the desirable elements of the locality. The desired future character statement can therefore be used to determine whether the proposed development responds appropriately to its context.

The key focus under the F1 Locality Statement is that the *“Locality will be developed as a mixed retail and business area incorporating low-rise shop-top housing”*. The proposal is not considered to adequately respond to its context for the following reasons:

- The proposed development is inconsistent with the DFC statement of the F1 locality, given the significant non-compliance in relation to the building height control, and therefore the proposal cannot be described as “Low Rise” shop top housing;
- The bulk and scale of the proposed development is inconsistent with the “Building Appearance” built form control and Clause 66 – Building Bulk particularly given that the proposed Block C a is five to six storey building with a length of 50m to Roger Street and over 55m to Old Pittwater Road, therefore the building will have an appearance of a four storey residential flat building above the basement car parking. The scale of the building far exceeds that of a likely built form and character of low rise shop-top housing.
- Block B is inconsistent with the definition of shop top housing under the DWLEP 2009 as it is not attached to ground floor retail premises or business premises.
- Residential developments are not permissible under the DWLEP 2009. The DWLEP 2009 will dictate outcomes for the area in the future. Council’s intent is clear through the zoning and the uses allowable the have chosen to prohibit residential development as an appropriate use.

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

### **Design Quality Principle 2: Scale**

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

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

**Comment:** The proposed development is an inappropriate built form for the subject site given that the proposal does not achieve compliance with the built form controls under the WLEP 2000, particularly the DFC statement for the F1 locality. Further, supporting the F1 locality statement are a number of controls relating to built form. These controls apply the following limits to development in this locality:

- Maximum of 11m height limit;
- Building Appearance which requires buildings to be designed to:
  - *Articulate long facades by breaking the elevation into distinct segments;*
  - *Detail new development by incorporating similar patterns and proportions where established by existing buildings;*
  - *Ensure larger infill sites reflect the general height, form, alignment and façade character of the street;*
  - *Create active street fronts;*
  - *Continue footpath awnings where appropriate; and*
  - *Address both street frontages on corner sites.*

The WLEP 2000 also goes on to require under Clause 66 that buildings are to have an appropriate visual bulk and architectural scale. This scale is to be consistent with the structures on nearby land and must not visually dominate the street or surrounding spaces. Clause 66 gives particular emphasis to side setbacks increasing the wall height, avoiding large areas of continuous wall planes and ensuring appropriate planting to reduce the visual bulk of the building.

Whilst the WLEP 2000 do not specify an FSR or maximum wall height for the F1 Locality, the WLEP 2000 sets controls for maximum building height and bulk of new development. These controls limit the allowable height of 11m in total and impose setbacks and requirements regarding large areas of continuous wall planes.

The site is situated on the corner of Old Pittwater Road and Roger Street with a frontage to Pittwater Road. The site is prominent from all three street frontages. In this regard, the appropriate and compliant redevelopment of the site is therefore critical in setting a standard for future development within Brookvale. Accordingly, it is considered that the scale of the proposed development is not appropriate for the following reasons:

- The non-compliance with the building height effectively results in an additional floor level along the full length of the building of Block C fronting Old Pittwater Road and Roger Street. Despite the increased setback of the top storey, this does not visually relieve the vertical scale of the development which, when regarded in context to the scale of surrounding development, is considered to be both visually dominant and excessive;
- The development does not incorporate similar patterns or proportions to established buildings. The proposed development is considered excessive in that they collectively introduce a bulk and scale which has no architectural reference to the predominant industrial/commercial character of the locality;
- The elevation along the Old Pittwater Road and Roger Street frontage has minimal planting in public areas that would normally assist in screening the development when viewed from public domain, particularly where residential units front Old Pittwater Road (this issue is further supported by Council's Landscape Officer's comments as detailed in the referral section of this report).

For these reasons, the development does not meet the objectives of Design Quality Principle 2. This issue has been included as a reason for refusal.

### **Design Quality Principle 3: Built Form**

*“Good design achieves an appropriate built form for a site and the building’s purpose, in terms of building alignments, proportions, building type and the manipulation of building elements.*

*Appropriate built form defines the public domain, contributes to the character of streetscapes and parks, including their views and vistas, and provides internal amenity and outlook.”*

**Comment:** As discussed above, the built form of the proposed development is not considered to be a site or locality responsive design. In this regard, it is also critical to note that the internal separation of the residential blocks results in poor internal amenity, outlooks and vistas. Also the built form (particularly Block C) exceeds the height limit and will not positively contribute to the streetscape.

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

### **Design Quality Principle 4: Density**

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

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

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

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

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

### **Design Quality Principle 5: Resource, energy and water efficiency**

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

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

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

Despite the compliance with the BASIX requirements, it is considered that the proposal does not make efficient use of energy as inadequate spatial separation is provided between residential blocks, which will result in poor solar access to the units.

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

### **Design Quality Principle 6: Landscape**

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

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

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

**Comment:** There is no requirement in the F1 locality for landscaped open space. The only landscaping that is proposed is within the central courtyard.

The proposed landscape elements will not allow for the establishment of landscaping that will effectively screen the bulk and scale of the development when viewed from the streetscape (as detailed in Landscape Officer’s comments).

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

### **Design Quality Principle 7: Amenity**

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

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

**Comment:** The building and apartment layout proposed does not provide a satisfactory level of amenity for the future occupants of the building in terms of visual and acoustic privacy and solar access due to the separation afforded between the residential blocks.

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

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

#### **Design Quality Principle 8: Safety and security**

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

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

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

Further to the above, the application was also referred to NSW Police for an assessment for the application under the Crime Guidelines, a Safer by Design Crime Risk Evaluation. The NSW Police raised no objection with regards to the residential component of the development subject to conditions, which require measures to be incorporated into the design to further minimise risk.

Accordingly, the proposed development is consistent with the Design Quality Principle.

#### **Design Quality Principle 9: Social dimensions**

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

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

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

#### **Design Quality Principle 10: Aesthetics**

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

**Comment:** The development is satisfactory in terms of providing appropriate colours and finishes and there the proposal is found to be consistent with the intent of this principle.

### Conclusion on the 10 Design Quality Principles

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

### Residential Flat Design Code (RFDC)

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

SEPP 65 - Residential Design Code Checklist		
Part	Guideline	Comments/explanation of compliance
<b>PART 01 - LOCAL CONTEXT</b>		
<b>Building Height</b>	Where there is an existing floor space ratio (FSR), test height controls against it to ensure a good fit.	<p><b>Not Applicable</b></p> <p>No FSR applies under WLEP 2000.</p> <p><b>Note:</b> The density of development in the F1 locality under WLEP 2000 is controlled by building height, building appearance and car parking standards.</p>
	Test heights against the number of storeys and the minimum ceiling heights required for the desired building use.	<p><b>YES</b></p> <p>3.9m floor-to-ceiling (showroom) Minimum of 2.7m floor-to-ceiling (Residential)</p>
<b>Building Depth</b>	In general, an apartment building depth of 10-18m is appropriate. Developments that propose wider than 18m must demonstrate how satisfactory day lighting and natural ventilation are to be achieved.	<p><b>YES</b></p> <p>All apartments achieve a depth of less than 18m.</p>
<b>Building Separation</b>	Design and test building separation controls in plan and section.	<p><b>NO</b></p> <p>The proposed development does not provide sufficient separation between the residential blocks as per the building separation guidelines. It is considered that the proposed development will result in potential loss of amenity through noise and privacy.</p>
	<p>For buildings up to four storeys/12m:</p> <p>(a) 12m between habitable rooms/balconies; (b) 9.0m between habitable/balconies and non-habitable rooms; (c) 6.0m between non-habitable rooms.</p> <p><b>Note:</b> The RFDC defines a habitable room as any room or area used for normal domestic activities, including living, dining, family, lounge, bedrooms, study, kitchen, sun room and play room</p> <p>Test building separation controls for daylight access to buildings and open spaces.</p>	
		<p><b>NO</b></p> <p>Insufficient information (i.e. internal solar access) has been submitted with the application to demonstrate that the proposed residential units will receive adequate daylight access to the living area and private open space of the individual units.</p>

SEPP 65 - Residential Design Code Checklist		
Part	Guideline	Comments/explanation of compliance
<b>Street Setbacks</b>	Identify the desired streetscape character, the common setback of buildings in the street, the accommodation of street tree planting and the height of buildings and daylight access controls.	<b>NO</b> The development exceeds the Building Height Built Form Control as detailed in the built form control table and subsequently adds to the visual bulk and scale along Old Pittwater Road and Roger Street.
	Test street setbacks with building envelopes and street sections.	<b>Not Applicable</b> The respective locality statement does not include Side boundary envelope built form controls.
	Test controls for their impact on the scale, proportion and shape of building facades	<b>NO</b> The development exceeds the Building Height Built Form Control as detailed under the WLEP 2000 and DWLEP 2009, resulting in a visually excessive building bulk and scale along the Old Pittwater Road and Roger Street elevations.
<b>Side &amp; Rear setbacks</b>	Relate side setbacks to existing streetscape patterns.	<b>Not Applicable</b> The F1 locality statement does not include side and rear setback built form controls.
<b>Floor space ratio</b>	Test the desired built form outcome against proposed floor space ratio to ensure consistency with building height- building footprint the three dimensional building envelope open space requirements.	<b>Not Applicable</b> No FSR applies to the subject site under WLEP 2000.
<b>PART 02 - SITE DESIGN</b>		
<b>Site Configuration</b>		
<b>Deep Soil Zones</b>	A minimum of 25% of the open space area of a site should be a deep soil zone; more is desirable. Exceptions may be made in urban areas where sites are built out and there is no capacity for water infiltration. In these instances, Stormwater treatment measures must be integrated with the design of the residential flat building.	<b>NO</b> There are no minimum landscaped open space standards for development within the F1 Locality Statement of WLEP 2000. However, SEPP 65 requires that proposed development provides for a minimum of 25% of the open space area of a site should be a deep soil zone. The development proposes a Landscape open space within the central courtyard and within landscape terraces located in front of the SOHO units, which will equate to about 23% of the site area.  As detailed in Council's Landscape Officer referral comments, the landscaping provided for the proposed development is not sufficient to adequately screen the bulk and scale of the proposed development. This is considered critical given the scale of the proposed mixed-use development.
<b>Open Space</b>	The area of communal open space required should generally be at least between 25% and 30% of the site area. Larger sites and brownfield sites may have potential for more than 30%.	<b>NO</b> No communal landscaped area controls apply to the F1 locality under WLEP 2000  A minimum of 25% - 30% of the total site area is to be provided as communal open space (for mixed use development). The proposed development does provide approximately 6% (378m <sup>2</sup> ) of communal

SEPP 65 - Residential Design Code Checklist		
Part	Guideline	Comments/explanation of compliance
		<p>open space in the form of the central courtyard.</p> <p>The proposed development therefore does not comply with the requirement of communal open space as per the RFDC guideline. It is considered, that providing communal open space that achieves compliance with the requirements of the RFDC for the proposed development is critical given that the surrounding locality is characterised by industrial landuses and therefore the amenity of the residents will be further compromised.</p> <p>Further, the open space areas located between the residential apartments blocks will not receive adequate solar access and therefore fails to allow for effective landscaping to be provided that will assist in improving the residential amenity.</p>
	Where developments are unable to achieve the recommended communal open space, such as those in dense urban areas, they must demonstrate that residential amenity is provided in the form of increased private open space and/or in a contribution to public open space.	<p><b>NO</b></p> <p>The development does not provide increased private open space other than private balconies for each individual unit.</p>
	The minimum recommended area of private open space for each apartment at ground level or similar space on a structure, such as on a podium or car park, is 25m <sup>2</sup> ; the minimum preferred dimension in one direction is 4.0m. (See Balconies for other private open space requirements).	<p><b>YES</b></p> <p>All units are provided with private open space in the form of balconies that complies with the minimum requirement of the RFDC.</p>
<b>Planting on structures</b>	<p>In terms of soil provision there is no minimum standard that can be applied to all situations as the requirements vary with the size of plants and trees at maturity. The following are recommended as minimum standards for a range of plant sizes:</p> <ul style="list-style-type: none"> <li>• Large trees such as figs (canopy diameter of up to 16m at maturity) - minimum soil volume 150m<sup>3</sup> - minimum soil depth 1.3m - minimum soil area 10m x 10m area or equivalent.</li> <li>• Medium trees (8.0m canopy diameter at maturity) - minimum soil volume 35m<sup>3</sup> - minimum soil depth 1.0m - approximate soil area 6.0m x 6.0m or equivalent.</li> <li>• Small trees (4.0m canopy diameter at maturity) - minimum soil volume 9.0m<sup>3</sup> - minimum soil depth 800mm - approximate soil area 3.5m x 3.5m or equivalent.</li> <li>• Shrubs - minimum soil depths 500 - 600mm</li> <li>• Ground cover - minimum soil depths 300 - 450mm</li> <li>• Turf- minimum soil depths 100 - 300mm</li> <li>• Any subsurface drainage requirements are in addition to the minimum soil depths quoted above.</li> </ul>	<p><b>No</b></p> <p>The centrally located courtyard will have a minimum soil depth of 1.0m (subject to condition), which will permit the planting of ground cover, shrubs and small trees.</p> <p>However, as indicated in the referral comments received from Council's Landscape Officer, whilst there may be a technical compliance with these standards in relation to soil depths, there is inadequate space provided within the development site to provide useable communal landscape open space commensurate with the number of dwellings and height of buildings proposed.</p>

SEPP 65 - Residential Design Code Checklist		
Part	Guideline	Comments/explanation of compliance
<b>Safety</b>	Carry out a formal crime risk assessment for all residential developments of more than 20 new dwellings.	<b>YES</b> <u>Surveillance</u> The development provides adequate external surveillance along old Pittwater Road, Roger Street and Pittwater Road frontages.  <u>Access Control</u> The development provides pedestrian access points on Old Pittwater Road, Roger Street and Pittwater Road adjacent to the proposed hotel. In addition access via the basement car parking areas. These access points and areas are well defined and secured through secured doorways and gateways.  <u>Territorial Reinforcement</u> The internal walkways located on the residential floors provide defined courtyard areas but conflict with their close proximity to adjacent habitable rooms. This could present a possible crime risk due to the potential for concealment.  <u>Space Management</u> This matter is addressed via on-site management.
<b>Visual amenity</b>	Refer to Building Separation minimum standards	<b>NO</b> Externally, the development does not provide adequate articulation along the Old Pittwater Road and Roger Street, which would otherwise provide a visual relief to the dominant four storeys mass and scale of the building, which extends in a continuous vertical surface for the entire frontage.  Internally, the development does not provide visual relief to occupants by way of landscaped open space or communal open space. The narrow corridors (particularly for Block C) result in a sense of enclosure, which provides little direct sunlight access.
<b>Pedestrian access</b>	Identify the access requirements from the street or car parking area to the apartment entrance.	<b>YES</b> The development includes three (3) pedestrian access points to the residential component. All access points are clearly defined and separate from the commercial use located on the ground floor.
	Follow the accessibility standard set out in AS 1428 (parts 1 and 2), as a minimum.	<b>YES</b> Subject to appropriate conditions, if the application was worthy of approval.
	Provide barrier free access to at least 20% of dwellings in the development.	<b>YES</b> 100% of apartments have barrier free access via direct lifts to all floors.
<b>Vehicle access</b>	Generally limit the width of driveways to a maximum of 6.0m.	<b>YES</b> The driveways provided for the proposed complies with this requirement.

SEPP 65 - Residential Design Code Checklist		
Part	Guideline	Comments/explanation of compliance
	Locate vehicle entries away from main pedestrian entries and on secondary frontages.	<b>YES</b> All the proposed driveways are located away from main pedestrian entries.
<b>PART 03 BUILDING DESIGN</b>		
<b>Apartment layout</b>	Single-aspect apartments should be limited in depth to 8.0m from a window.	<b>YES</b> All single aspect apartments achieve a depth no greater than 8.0m from a window to the rear wall.
	The back of a kitchen should be no more than 8.0m from a window.	<b>YES</b> All apartments achieve a depth no greater than 8.0m from a window to the back of the kitchen.
<b>Balconies</b>	Provide primary balconies for all apartments with a minimum depth of 2.0m. Developments which seek to vary from the minimum standards must demonstrate that negative impacts from the context-noise, wind – can be satisfactorily mitigated with design solutions.	<b>YES</b> All balconies achieve a depth of 2.0m or greater.
<b>Ceiling Heights</b>	<p>The following recommended dimensions are measured from finished floor level (FFL) to finished ceiling level (FCL). These are minimums only and do not preclude higher ceilings, if desired.</p> <ul style="list-style-type: none"> <li>• <i>in mixed use buildings: 3.3m minimum for ground floor retail or commercial and for first floor residential, retail or commercial to promote future flexibility of use</i></li> <li>• <i>in residential flat buildings in mixed use areas: 3.3m minimum for ground floor to promote future flexibility of use in residential flat buildings or other residential floors in mixed use buildings</i></li> <li>• <i>In general, 2.7m minimum for all habitable rooms on all floors, 2.4m is the preferred minimum for all non-habitable rooms, however 2.25m is permitted.</i></li> <li>• <i>for two storey units, 2.4m minimum for second storey if 50 percent or more of the minimum wall height at edge</i></li> <li>• <i>for two-storey units with a two storey void space, 2.4m minimum ceiling heights</i></li> <li>• <i>Attic spaces, 1.5 metre minimum wall height at edge of room with a 30 degree minimum - ceiling slope.</i></li> </ul>	<b>YES</b> All apartments achieve a floor-to-ceiling height of 2.7m.
<b>Ground Floor Apartments</b>	Optimise the number of ground floor apartments with separate entries and consider requiring an appropriate percentage of accessible units. This relates to the desired streetscape and topography of the site.	<b>YES</b> Nine residential units (SOHO) are provided on the ground floor of the proposed development. The units do not have separate entry, however this arrangement does not have any adverse visual impact upon the streetscape, as these units are not visible from the street.

SEPP 65 - Residential Design Code Checklist		
Part	Guideline	Comments/explanation of compliance
	Provide ground floor apartments with access to private open space, preferably as a terrace or garden.	<b>YES</b> The ground floor units are provided with private open space in the form balconies and in addition, landscape terraces are also provided in front the balconies to minimise privacy of the ground level units.
<b>Internal Circulation</b>	In general, where units are arranged off a double-loaded corridor, the number of units accessible from a single core/corridor should be limited to eight.	<b>NO</b> Blocks A and B are satisfactory with regards to this requirement. However, Block C fails to comply with the requirement as one (1) corridor serves: 15 units on Level 1 and 2; 20 units on Level 3; and 28 units on Level 4.
<b>Storage</b>	In addition to kitchen cupboards and bedroom wardrobes, provide accessible storage facilities at the following rates: <ul style="list-style-type: none"> <li>studio apartments 6.0m<sup>3</sup></li> <li>one-bedroom apartments 6.0m<sup>3</sup></li> <li>two-bedroom apartments 8.0m<sup>3</sup></li> <li>three plus bedroom apartments 10m<sup>3</sup></li> </ul>	<b>NO</b> Storage for the residential units is provided on Level 1 adjacent to the gymnasium and swimming pool area. These storage areas are in the form of lockers and all the lockers have an area of approximately 2.3m <sup>2</sup>  The storage space does not comply with the minimum storage requirement.
<b>Building Amenity</b>		
<b>Daylight Access</b>	Living rooms and private open spaces for at least 70% of apartments in a development should receive a minimum of three hours direct sunlight between 9am and 3pm in mid-winter. In dense urban areas a minimum of two hours may be acceptable.	<b>NO</b> Insufficient information has been submitted with the application to demonstrate that 70% of proposed development will received the requirement of amount of sunlight.
	Limit the number of single-aspect apartments with a southerly aspect (SWSE) to a maximum of 10% of the total units proposed.  <b>Note:</b> The RFDC does not define single-aspect apartments but does define dual aspect apartments as having at least two major external walls facing in different directions, including corner, cross over and cross through apartments.	<b>Yes</b> There are only 2 units (1.6%) that are single aspect with a southerly aspect.
<b>Natural Ventilation</b>	Building depths, which support natural ventilation typically range from 10m to 18m.	<b>YES</b> Apartments achieve minimum building depth.
	Sixty percent (60%) of residential units should be naturally cross ventilated.	<b>No</b> Insufficient information has been submitted with the application to demonstrate 60% of the apartments will be naturally cross-ventilated. It is noted that 104 units (87%) are single aspect apartments.
<b>Building Performance</b>		
<b>Waste Management</b>	Supply waste management plans as part of the development application submission as per the NSW Waste Board.	<b>YES</b> Subject to conditions if the application is worthy of approval.
<b>Water Conservation</b>	Rainwater is not to be collected from roofs coated with lead- or bitumen-based paints, or from asbestos- cement roofs. Normal guttering is sufficient for water collections provided that it is kept clear of leaves and debris.	<b>YES</b> Subject to conditions if the application is worthy of approval.

## Regional Environmental Plans (REPs)

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

## WARRINGAH LOCAL ENVIRONMENTAL PLAN 2000

### DESIRED FUTURE CHARACTER

#### F1 - BROOKVALE CENTRE LOCALITY

The subject site is located within the F1 Brookvale Centre locality as identified under WLEP 2000 pursuant to the provisions of WLEP 2000. The Desired Future Character Statement for this locality is as follows:

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

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

### Categories of Development

The proposed development incorporates the following categories of development in the F1 Locality:

#### Category 1

- Housing (not ground floor); and
- Shop (bottle shop).

#### Category 2

- Hotel (Brookvale Hotel)
- Short term accommodation (Motel)
- Other land uses that are not prohibited or in Category 1 or 3 includes:
  - Housing on ground floor; and
  - Showroom (retail/commercial space)

### Test of Consistency with the DFC

Clause 12(3) (a) of WLEP 2000 requires the consent authority to consider the desired future character described in the relevant Locality Statement. Clause 12(3) (b) states that the consent authority must be satisfied that the development is consistent with the desired future character of the locality for Category 2 development. An assessment of the related components of the DFC has been undertaken as follows:

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

**Comment:** The proposed development represents a mixed-used development comprising a hotel with bottle shop, short-term accommodation, one commercial showroom and residential development. The re-development of the Brookvale Hotel, the bottle-shop, the showroom and the short-term accommodation uses are consistent with the of the DFC for the F1 locality.

However, the proposed development is found to be inconsistent with this component of the DFC statement as it does not provide low-rise shop-top housing. In particular, the size and scale of the proposed development, is found to be inconsistent with the DFC.

Firstly, the proposed Block B comprises a residential flat building, including housing on ground level (i.e. not over or attached to a retail or business premises), which is not shop-top housing. In this regard reference is made to the Land and Environment Court judgement (Freshwater Village Developments Pty Ltd v Warringah Council – (2011) NSWLEC 1127), where the judgement in paragraph 71 makes specific references to this issue, which is summarised below:

*“Even though “housing” on ground is permissible as a Category 2 use the intent of the DFC is clear in that it seeks a retail character by the use of the words “the ground floor of buildings will be predominantly used for business purposes”. The DFC makes no reference to ground floor business purposes being restricted to street frontages”.*

Having regard to the above judgement, Block B is inconsistent with the requirement of the DFC in that the building does not incorporate retail or business uses.

Further to the above, the proposed development (i.e. Blocks B and C) exceeds the height standards in the F1 locality and is therefore not considered to be low-rise development as required by the DFC statement. While the apparent height of the proposed Block B is reduced from vantage points surrounding the site due to its location, the overall height of the proposed Block C is apparent from the public domain. Once again reference is made to the Land and Environment Court judgement (Freshwater Village Developments Pty Ltd v Warringah Council – (2011) NSWLEC 1127), where the judgement in paragraph 73 makes specific references to low-rise shop top housing, which is summarised below:

*“We do not accept that the proposed development can reasonably be described as “low-rise shop housing” even when commercial or retail premises are located on ground floor. While this term is not defined in LEP 2000, any reference to “low-rise” must be seen in the context of the DFC where reference is made to “buildings greater than two storeys in height are to be designed so that massing is substantially reduced on the top floor”*

Although, the DFC statement with the F1 locality does not make reference to the reduction of the top floors, it is, never the less, considered an important factor particularly in relation to the proposed Block C, given its building height variation and visual bulk of being 4 storeys from the public domain. It is considered that in the case of Block C, the massing of the proposed top floors is virtually the same as the lower levels. This impact is exacerbated by the fact that adjoining development is primarily industrial/warehouse type uses with residential development along old Pittwater and therefore the proposed development will not effectively integrate with the existing Brookvale character and will not provide an appropriate transition to adjacent industrial/warehouse and residential development.

For the above reasons, the proposed development is found to be inconsistent with this component of the DFC.

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

**Comment:** This component of the Desired Future Character anticipates that future development will help create a pedestrian environment, which is safe, active and interesting and contributes to creating cohesive and attractive streetscapes

The proposed development includes the re-development of Brookvale Hotel fronting Pittwater Road and showroom fronting Old Pittwater Road and Roger Street. It is agreed that the proposed development will create a pedestrian environment which is safe. However, the proposal does not include appropriate landscaping to reduce the visual bulk of the proposed development, particularly along the Old Pittwater Road and Roger Street frontages and therefore the proposal will not result in an attractive streetscape as required by the DFC.

Accordingly, the proposed development is inconsistent with the DFC.

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

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

<b>Standard</b>	<b>Permitted</b>	<b>Proposed</b>	<b>Compliant</b>
<b>Building Height</b>	11.0m (natural ground to topmost ceiling)	<b>Brookvale Hotel</b> 6.2m -7.9	Yes
		<b>Block – A</b> 10m at the highest point	Yes
		<b>Block - B</b> 12m at the highest point	No*
		<b>Block – C</b> 14.1m at the highest point	No*
<b>Front Building Setback</b>	Consistent with adjacent buildings	The setback proposed for the all three (3) frontages is consistent with adjacent buildings.	Yes
<b>Building Appearance</b>	Building design is to: <ul style="list-style-type: none"> <li>• Articulate long facades by breaking the elevation into distinct segments;</li> <li>• Detail new development by incorporating similar patterns and proportions where established by existing buildings;</li> <li>• Ensure larger infill sites reflect the general height, form, alignment and façade character of the street;</li> <li>• Create active street fronts;</li> <li>• Continue footpath awnings where appropriate;</li> <li>• Address both street frontages on corner sites</li> </ul>	The design of the proposed Hotel fronting Pittwater Road is satisfactory in relation to building appearance built form control.  Further, the design of the proposed Blocks A and B is also considered satisfactory, as these blocks are not visible from the streets.  However, the design of the proposed Block C is not considered to be consistent with the objectives of building appearance built form control for the reasons discussed under Clause 20 of this report.	No (Refer to Clause 20 variation under WLEP 2000)

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

## Clause 20 Variation

A Clause 20 variation is required for the proposed variation to the Building Height and Building Appearance Built Form Control under the F1 locality.

Clause 20 of WLEP 2000 states the following:

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

(i)	<b>General Principles of Development Control</b>  The proposal is inconsistent with several General Principles of Development Control as detailed in the ‘General Principles of Development Control’ table as detailed in this report.
(ii)	<b>Desired Future Character of the Locality</b>  The proposal is inconsistent with the Desired Future Character Statement as detailed earlier in this report.
(iii)	<b>Relevant State Environmental Planning Policies</b>  The proposed development has not been found to be consistent with the provisions of State Environmental Planning Policy No. 65 - Design Quality of Residential Flat Buildings, State Environmental Planning Policy No. 55 - Remediation of Land and Clause 106 of State Environmental Planning Policy (Infrastructure) 2007. The proposal does however comply with State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004.

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

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

## Building Height Built Form Control

### Building Height

The development does not comply with the Building Height Built Form Control for F1 locality with regards to Block B and C. An assessment of the variation for each individual building against the merit considerations of the Building Height Built Form Control, are as follows:

#### **Block B**

Standard	Permitted	Proposed	Compliant
<b>Building Height</b>	11.0m (natural ground to topmost ceiling)	<b>Block - B</b> 12m at the highest point	<b>No*</b>

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

Block B is not readily visible from the public domain due to its location on the site. It is considered that the 4 storey building does not visually dominate the surrounding spaces by virtue of its height or bulk.

**Preserve the amenity of surrounding land.**

Block B is sufficiently setback from the residential properties along Old Pittwater Road to maintain visual and acoustic privacy. In addition, because of Block B's location on the site, no unreasonable overshadowing will occur over the adjoining development.

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

As indicated above, the proposed development includes excavation into the site to provide two (2) levels of basement carparking, however it is considered that the built form of the proposal has been designed to minimise the bulk and scale to surrounding properties by virtue of the location of Block B on the site.

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

The development incorporates flat roof forms throughout. However, given the variable building heights and the use of plant rooms and the like it is considered that sufficient variation to the overall built form is provided.

**Block C**

Standard	Permitted	Proposed	Compliant
<b>Building Height</b>	11.0m (natural ground to topmost ceiling)	<b>Block – C</b> 14.1m at the highest point	<b>No*</b>

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

The overall building height of Building C being 14.1m to the top part of the underside of the ceiling does not comply with the Control, it is noted that the location of Block C is such that presents to two street frontages (being Old Pittwater Road and Roger Street). The variation to the proposed Block C results in an additional floor level along the full length of the building. The bulk and scale of the development with regards to the design of Block C is considered to be both visually dominant and excessive.

**Preserve the amenity of surrounding land.**

The proposed development will not unreasonable impact with the regards to the amenity of the residential development along Old Pittwater Road given its spital separation. The immediately adjoining development comprises industrial/commercial uses, the amenity of industrial/commercial properties are not considered to be as critical which is reflected in the lack of appropriate controls which are normally designed to protect the amenity of neighbouring properties.

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

The horizontal form of the development visually responds to the flat topography of the site. Whilst the development does propose excavation of the landform to accommodate the basement car parking it is considered satisfactory having regard to the topography of the land and size and scale of the proposed development.

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

The development incorporates flat roof forms throughout. However, given the variable building heights and the use of plant rooms and lift overruns and the like it is considered that sufficient variation to the overall built form is provided.

#### **Building Appearance Built Form Control**

The proposed Block C does not comply with the Building Appearance Built Form Control for the following reasons:

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

**Comment:** The proposed Block C is one continuous elevation along the entire length of Old Pittwater Road and Roger Street. It is considered that the design of Block C does little to offer in terms of providing articulation, as there is no apparent setback to the upper levels in comparison to the lower levels having to the long length of the elevation. Accordingly, the design of Block C is inconsistent with this objective.

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

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

The proposed Block C is excessive in that it introduces a bulk and scale by exceeding the height limit of the locality and has no architectural reference to the predominant industrial/commercial character of the locality. The sheer length of the building (Block C) also creates a different scale relationship to the public domain than that exhibited in the remainder of the Brookvale Centre. Accordingly, the design of Block C is inconsistent with this objective

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

**Comment:** The design of the proposed Block C introduces a height, which significantly exceeds the height limit built form control in the F1 locality, therefore it is considered that design of Block C does not reflect the general height and form in the locality. It is considered that the proposal will result in an unsatisfactory cumulative impact on the character of the locality and will not effectively integrate with the existing Brookvale character. Accordingly, the design of Block C is inconsistent with this objective.

- ***Create active Street fronts.***

**Comment:** The design of Block C will not result in the creation of active street fronts, as the proposed development does not include appropriate landscaping to reduce the visual bulk of the proposed development when viewed from Old Pittwater Road and Roger Street.

For the above reasons, the Clause 20 variation to the Building appearance Form Control is not supported.

## GENERAL PRINCIPLES OF DEVELOPMENT CONTROL

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

General Principal	Applies	Comments	Complies
CL38 Glare & reflection	YES	<p>The schedule of external finishes submitted with the application indicates that the proposed external colours and finishes including the roof colours will be dark and earthy tone, consistent with the requirement of this Clause.</p> <p>If the application is approved, a condition could be included in the consent to ensure that the reflectivity index of external glazing for windows, walls or roof finishes of the proposed development is to be no greater than 20%.</p>	Yes (subject to condition)
CL39 Local retail centres	NO	No Comment	Not Applicable
CL40 Housing for Older People and People with Disabilities	NO	No Comment	Not Applicable
CL41 Brothels	NO	No Comment	Not Applicable
CL42 Construction Sites	YES	<p>The potential exists for the construction of the proposed development to have an adverse impact upon the amenity of nearby residential properties located along Old Pittwater Road in terms of traffic, noise, dust, parking, accessibility, sediment and the safety of pedestrians given the nature of the works and length of time for construction. These matters are generally covered in the <b>Construction Management Plan (prepared by Demlakian Engineering)</b>. However, if the application was approved a condition of consent could be included to require compliance with this requirement. Issues to be addressed in the Construction Management Plan include pedestrian movements and safety, stormwater and wastewater disposal, waste management, tree protection, hours of demolition and excavation, air quality, noise management and truck parking.</p>	YES (Subject to conditions)
CL43 Noise	YES	<p>Clause 43 states that development is not to result in noise emission, which would unreasonably diminish the amenity of the area and is not to result in noise intrusion, which would be unreasonable to the occupants.</p> <p>The Hotel, short-term accommodation, and the showroom uses are consistent with surrounding land uses and as such will not result in noise emissions which are unreasonable in the locality in which they are located.</p> <p>In relation to the acoustic requirement on the residential component of the proposed development, an acoustic report prepared by Koikas Acoustic (ref No. R110711mf2070Brookvale.docx) dated 11 July 2011 was submitted with the</p>	YES (Subject to conditions)

General Principal	Applies	Comments	Complies
		<p>application. The report examines the effect of external noise intrusion on the proposed development from the following:</p> <ul style="list-style-type: none"> <li>• Traffic noise associated Pittwater Road;</li> <li>• Noise emission from the mechanical plant/ ventilation from the operation hotel;</li> <li>• The outdoor noise associated with outdoor area of Brookvale Hotel; and</li> <li>• The noise criteria from indoor residential.</li> </ul> <p>The report concludes that the proposed development is capable of complying with all relevant acoustic criteria through means of standard acoustic treatment and management.</p> <p>Accordingly, It is considered that the proposed development is capable of complying with the requirements of Clause 43 subject to conditions to be imposed if the application was worthy of approval requiring that the recommendation of the acoustic report be adopted in the design of the proposed development and that all noise emissions to be carried out in accordance with Environment Protections Authority guidelines for noise emissions from construction/demolition works.</p>	
CL44 Pollutants	NO	The normal operation of the development will not result in the emission of atmospheric or other pollutants which would unreasonably diminish the amenity of adjacent properties.	Not Applicable
CL45 Hazardous Uses	NO	No Comment	Not Applicable
CL46 Radiation Emission Levels	NO	No Comment	Not Applicable
CL47 Flood Affected Land	NO	The site is not identified as flood affected.	Not Applicable
CL48 Potentially Contaminated Land	YES	<p>Clause 48 states that the consent authority must not consent to the carrying out of development on land unless;</p> <ul style="list-style-type: none"> <li>• It has considered whether the land is contaminated, and</li> <li>• If the land is contaminated, it is satisfied that the land is suitable in its contaminated state for the purpose for which the development is proposed to be carried out, and</li> <li>• If the land requires remediation to be made suitable for the development proposed to be carried out, it is satisfied that the land will be remediated before the development is carried out.</li> </ul> <p>These issues have been addressed in detail under 'State Environmental Planning Policy No.55 - Remediation of Land' in this report. In summary, there is insufficient information submitted with the application to demonstrate that this site is suitable for the</p>	No

General Principal	Applies	Comments	Complies
		proposed development.	
CL49 Remediation of Contaminated Land	NO	No Comment	Not Applicable
CL49a Acid Sulfate Soils	NO	The site is not within an acid sulfate soils area on Council's Acid Sulfate Soils Hazard Map accompanying WLEP 2000. The requirements of Clause 49a are not therefore applicable to the proposed development.	Not Applicable
CL50 Safety & Security	YES	An assessment of the proposal using the Crime Prevention through Environmental Design (CPTED) principles (surveillance, access control, territorial reinforcement and space management) under 'Safety' in the Residential Flat Design Code table of this report has found that the opportunities for crime have been minimised.	YES
CL51 Front Fences and Walls	No	No front fence is proposed.	Not Applicable
CL52 Development Near Parks, Bushland Reserves & other public Open Spaces	NO	The subject site does not directly adjoin or is near a park, Bushland reserve or any other public open space. Accordingly, the requirement of this Clause is not applicable to the proposed development.	Not Applicable
CL53 Signs	YES	<p>In accordance with Clause 53 the number, shape, extent, placement and content of signs are to be limited to the extent necessary to:</p> <ul style="list-style-type: none"> <li>• <i>Allow reasonable identification of the land use, business activity or building to which the sign relates, and</i></li> <li>• <i>Ensures that the sign is compatible with the design, scale and architectural character of the building or site upon which it is to be placed, and</i></li> <li>• <i>Ensure that the sign does not dominate or obscure other signs or result in visual clutter, and</i></li> <li>• <i>Ensure that the sign does not endanger the public or diminish the amenity of nearby properties.</i></li> </ul> <p>One sign is proposed as part of this application, which is to be erected on the proposed hotel Pittwater Road elevation. The sign is proposed to consist of individual lettering of "BROOKVALE HOTEL" and will have total area of approximately 14.8m<sup>2</sup>.</p> <p>The proposed signage provides business identification for the subject premises. The sign provides an appropriate level of visual interest.</p> <p>It is considered that the proposed sign will not detract from the amenity or visual quality of the locality.</p> <p>Notwithstanding the above, Clause 53 also prescribes that maximum area for business signage on sites with more than one street</p>	YES

General Principal	Applies	Comments	Complies
		<p>frontage is 4m<sup>2</sup> above the awning level and a maximum area of 5m<sup>2</sup> below the awning level. The proposed signage does not technically comply with this requirement, however, it is considered acceptable given the size and scale of the hotel and having regard to the other signages in the immediate locality.</p> <p>Accordingly, the signage proposed under this application is acceptable with regards to the requirement of Clause 53.</p>	
CL54 Provision and Location of Utility Services	YES	<p>The site is satisfactorily serviced with utility services including the provision for the supply of water, gas, telecommunications and electricity and the satisfactory management of sewage and drainage.</p> <p>Conditions could be imposed if the application was approved requiring connection to all utility services including an approved telecommunications provider, energy, water and sewerage.</p>	YES (subject to conditions)
CL55 Site Consolidation in 'Medium Density Areas'	NO	The site is not situated within a 'medium density area' in accordance with WLEP 2000.	Not Applicable
CL56 Retaining Unique Environmental Features on Site	NO	The site does not contain any unique environmental features.	Not Applicable
CL57 Development on Sloping Land	YES	<p>Clause 57 states that on sloping land, the height and bulk of development, particularly on the downhill side, are to be minimised and the need for cut and fill reduced by designs which minimise the building footprint and allow the building mass to step down the slope. The clause also states that excavation of the landform is to be minimised.</p> <p>The proposed development has been designed that response to the topography of the land. Accordingly, the proposed development has been design to achieve compliance with the requirement of this Clause.</p>	YES
CL58 Protection of Existing Flora	YES	<p>The proposed development does not result in the removal of any significant vegetation from the site.</p> <p>Council's Landscape officer has reviewed the proposal has raised no specific objection to the proposed development in relation to the requirement of this Clause. Accordingly, the proposed development is satisfactory in relation to this Clause.</p>	YES
CL59 Koala Habitat Protection	NO	No Comment	Not Applicable
CL60 Watercourses & Aquatic Habitats	NO	No Comment	Not Applicable
CL61 Views	YES	Due to the topography and location of the site, it is unlikely that the proposed development will affect any significant views, which will warrant the refusal of the application.	YES

General Principal	Applies	Comments	Complies
		In determining the extent of potential view loss to adjoining and nearby properties, the four (4) planning principles outlined within the Land and Environment Court Case of Tenacity Consulting Pty Ltd Vs Warringah Council (2004) NSWLEC 140, were applied to the proposal. While no objections regarding view loss were received, the view assessment has been undertaken having regard to all surrounding properties and the proposal is satisfactory in providing reasonable view sharing.	
CL62 Access to sunlight	YES	<p>Clause 62 states that development is not to unreasonably reduce sunlight to surrounding properties. Sunlight to at least 50% of the principal private open space is not to be reduced to less than 2 hours between 9am and 3pm on June 21 and where overshadowing by existing structures and fences is greater than this, sunlight is not to be further reduced by the development by more than 20%.</p> <p>The shadow diagrams submitted with the application demonstrate that the proposed development will achieve compliance with the requirement of this Clause.</p> <p>As such, the proposed development complies with the requirements of Clause 62.</p>	YES
CL63 Landscaped Open Space	No	Clause 63 is not applicable to the proposed development, as the F1 locality does not have Landscape open space built form control.	Not Applicable
CL64 Private open space	YES	<p>In accordance with Clause 64 of WLEP 2000, apartment style housing is to be provided with a minimum of 10 square metres of private open space with minimum dimensions of 2.5 metres.</p> <p>All units have been provided with balconies that are greater than 10sqm in area, and have minimum dimensions of 2.5m.</p> <p>In this regard, the requirements of the General Principle is satisfied.</p>	YES
CL65 Privacy	YES	<p>Clause 65 states that development is not to cause unreasonable direct overlooking of habitable rooms and principal private open spaces of other dwellings. In particular the windows of one dwelling are to be located so they do not provide direct and close views (i.e. from less than 9 metres away) into the windows of other dwellings.</p> <p>As discussed under the SEPP 65 assessment, the spatial separation provided between the residential blocks within the proposed development is unsatisfactory and will results in visual privacy impacts between the residential units.</p> <p>Based on the above, the proposal is inconsistent with the requirements of this Clause.</p>	NO

General Principal	Applies	Comments	Complies
CL66 Building Bulk	YES	<p>Clause 66 states the following:</p> <p><i>'Buildings are to have a visual bulk and an architectural scale consistent with structures on adjoining or nearby land and are not to visually dominate the street or surrounding spaces, unless the applicable Locality Statement provides otherwise.'</i></p> <p>As indicated in the various section of this report, the development does not comply with the requirement of Clause 66 in that the proposed development do not have a visual bulk and scale that is consistent with structures on adjoining or nearby land as summarised below.</p> <p>Council's Urban Designer (as detailed referral section of this report) has raised concerns with the bulk and scale of the proposed development, stating <i>"the site has a prominent location at the corner of Old Pittwater Road and Roger Street and should address both street frontages. Considering the surrounding buildings of predominantly 2 to 3 storeys structures, the taller than 11m (above street level) built form proposal at the corner of old Pittwater Road and Roger Street seems rational. The built form can be more prominent to define the corner, which will still be at a sympathetic scale to the adjoining streetscape. However by putting the taller built forms on the northern and western part of the site, they cut out solar access to the sunken courtyard in the middle of the site. Moreover the courtyard facing apartment blocks are 4 to 6 storeys high further limiting solar access to residential units and landscaped communal open space especially in winter"</i>.</p> <p>Further to the above, it is considered that the size and scale of the proposed development is inconsistent with the surrounding development (particularly with regards to Block C) which exceeds the 11 height limit by a whole storey, and the upper levels do not display any substantial reduction in bulk compared with the lower levels with the result that the building have an excessive visual bulk in the locality.</p> <p>Finally, as discussed in the Landscape officer referral comments, the proposal does not include appropriate landscaping to reduce the visual bulk of the proposed buildings, particularly along the Old Pittwater Road and Roger Street.</p> <p>For the above reasons, proposal is found to be inconsistent with the provisions of Clause 66. Accordingly, this issue has been included as a reason for refusal.</p>	No
CL67 Roofs	YES	The general principle requires roofs to complement the local skyline.	YES

General Principal	Applies	Comments	Complies
		<p>A variety of roof forms have been provided within the Brookvale locality. Flat and Pitched roofs are the predominant roof form of the surrounding development.</p> <p>The proposed development consistent of flat roof forms used in the various buildings.</p> <p>The roof forms proposed are appropriate for the types of development proposed and are compatible with other development in the locality. Accordingly, the proposal is consistent with the requirement of Clause 67.</p>	
CL68 Conservation of Energy and Water	YES	BASIX Certificates has been submitted for the residential component of the development with the application. The development achieves the target for water, thermal comfort and energy use. If the application is approved conditions of consent will be required to ensure compliance with the BASIX commitments specified on the certificate.	YES (Subject to conditions)
CL69 Accessibility – Public and Semi-Public Buildings	YES	<p>Clause 69 requires that the sitting, design and construction of the premises available to the public are to ensure an accessible continuous path of travel, so that all people can enter and use the premises. Such access is to comply with the requirement of the Disability Discrimination Act 1992 (DDA Act 1992) and with Australian Standard AS 1428.2 - 1992.</p> <p>An Accessibility report (prepared Accessible Building Solutions–dated 6 July 2011) has been submitted with the application. The report has done compliance assessment in relation to various components of the development being, residential apartments, the short-term accommodation, the showroom, and the Hotel and bottle shop.</p> <p>The report has done an assessment of the proposal with the requirement of BCA and DDA requirement and concludes that the proposal can achieve compliance with the access provisions of the BCA and AS 4299 Adaptable housing.</p> <p>Based on the advice of the Access Consultant, the proposal is considered to comply with the requirements of Clause 69 subject to conditions.</p>	YES (subject to conditions)
CL70 Site facilities	YES	<p>Clause 70 states that site facilities including garbage and recycling enclosures, mailboxes and clothes drying facilities are to be adequate and convenient for the needs of users and are to have minimal visual impact from public places.</p> <p>The applicant has indicated the services area for the proposed development is provided in the following manner:</p>	YES (subject to conditions)

General Principal	Applies	Comments	Complies
		<p><b>“Residential/Commercial</b></p> <p><i>A waste services area is proposed on Level 1 at the north-western corner of Building C. This would have one service vehicle-loading bay for both residential and commercial waste collection.</i></p> <p><b>Hotel</b></p> <p><i>The service area for the Hotel is located at the end of the service access between Block A and new hotel building”.</i></p> <p>Council's Waste officer has reviewed the proposal and raised no objection to the proposed development subject to condition which requires that <i>the</i> three access doors leading from the service area/truck parking bay to the residential and commercial bin rooms must be increased to a minimum of 1.2 metres wide.</p> <p>Subject to the above condition, the application is satisfactory with regards to the requirement of Clause 70.</p>	
CL71 Parking facilities (visual impact)	YES	<p>Clause 71 requires that car-parking facilities are to be sited and designed so as not to dominate the street frontage or other public spaces.</p> <p>The development incorporates a basement parking level and therefore, the visual impact of the parking facility is minimised when viewed from the street.</p>	YES
CL72 Traffic access & safety	YES	<p>The application was accompanied by Traffic and Parking Report prepared by Halcrow – dated 11 July 2011.</p> <p>The report concludes that the proposed vehicular access points in Old Pittwater Road, Roger Street and Pittwater Road will function efficiently without impacting adversely on general traffic using these streets.</p> <p>The report has also indicated that all parking bays and access points are design to achieve compliance with AS standard.</p> <p>Notwithstanding the above, Council 's Traffic Engineer has reviewed the application and has provided the following comments in relation to Traffic access and safety of the development:</p> <p><i>“The proposed motor vehicle showroom has no vehicular access. Please be aware that it is not acceptable to manoeuvre vehicles over the kerb / footpath / nature strip. Should the applicant wish to utilise this area they must clearly demonstrate that vehicle movements into the showroom can occur safely, without disrupting traffic flow on roger Street”.</i></p> <p>In relation to comments provided by Council's Traffic Engineer, the applicant has indicated that they are not seeking consent</p>	NO

General Principal	Applies	Comments	Complies
		<p>for a motor showroom.</p> <p>The use of the subject premises is considered for use as a showroom with pedestrian access only and a condition will be imposed which restricts the use accordingly. However, should the applicant seek to use the premises as a motor vehicle showroom in the future, a separate development application will be required and assessed appropriately. Accordingly, the concern raised by Council's Traffic Engineer can be addressed by way of condition, if the application was worthy of approval.</p> <p>The application was also referred to the RTA, who has raised concerns with regards to the ingress from Pittwater Road.</p> <p>Based on the above comments of the RTA, the proposed development cannot be supported in the present form and therefore, this issue has been included as a reason for refusal.</p>	
CL73 On-site Loading and Unloading	YES	<p>Clause 73 states that facilities for the loading and unloading of service, delivery and emergency vehicles are to be approximate to the size and nature of the development.</p> <p>The applicant's Traffic report has provided the following comments in relation to loading and unloading:</p> <p><i>"It is proposed to provide an access road off Old Pittwater Road (at the same approximate driveway location that currently exists) to access the service areas. The proposed development would have two separate service areas.</i></p> <p><i>A waste service area is proposed on Level 1 at the north western corner of Building C. This would have one service vehicle loading bay for both residential and commercial waste collection. This loading bay has been designed to accommodate a 12.5m long waste collection truck. Appendix B-3 shows a 12.5m long truck manoeuvring into the loading dock.</i></p> <p><i>At the end of the service access road between Building A and the new hotel building is the service area for the hotel development. This service area would have two bays to accommodate van type delivery vehicles plus an additional large truck bay to accommodate a 10.7m long delivery trucks.</i></p> <p><i>The service areas including the access road have been designed generally to comply with the Australian Standard for commercial vehicles, namely AS2890.2:2002".</i></p> <p>Having regards to the above comments</p>	YES

General Principal	Applies	Comments	Complies
		and given that Council's Traffic Engineer has raised no specific objection to loading and unloading, the proposed development is found to be satisfactory with regards to the requirement of this Clause.	
CL74 Provision of Carparking	YES	<p>Clause 74 stipulates that adequate off-street car parking is to be provided to serve a development and that the application must be assessed against the provisions of Schedule 17</p> <p>Please refer to 'Schedule 17 – Car parking provision' in this report for an assessment of compliance with the requirements of Clause 74. In summary, based on the information submitted with application an accurate assessment cannot be made.</p>	No
CL75 Design of Carparking Areas	YES	<p>Applicant's Traffic report states that both the basement car parks comply with the internal manoeuvring and parking space and aisle dimension requirements of AS2890.1:2004.</p> <p>Council's Traffic Engineer has reviewed the findings and recommendations of the traffic consultant in relation to carparking design and concur with the report as no specific objections were raised. The RTA has raised no objections in relation to carparking design.</p>	YES (Subject to conditions)
CL76 Management of Stormwater	YES	Council's Development Engineer has reviewed the proposal and raised a number of issues regarding the stormwater drainage design, which has been addressed in the referral section of this report. As inadequate stormwater details have been submitted, compliance with the requirements of Clause 76 – Management of stormwater has not been achieved. This issue have been included as reasons for refusal.	NO
CL77 Landfill	YES	Clause 77 states that landfill is not to have any adverse impacts on the built or natural environment. From the plans submitted with the application, It is evident that the proposed development will not require an excessive level of fill.	YES
CL78 Erosion & Sedimentation	YES	Appropriate conditions associated with management of erosion and sedimentation can be included on the consent if the application is approved.	YES (Subject to conditions)
CL79 Heritage Control	NO	The site is not identified as a heritage item nor is it located within a conservation area.	Not Applicable
CL80 Notice to Metropolitan Aboriginal Land Council and the National Parks and Wildlife Service	NO	No Comment	Not Applicable
CL81 Notice to Heritage Council	NO	No Comment	Not Applicable

General Principal	Applies	Comments	Complies
CL82 Development in the Vicinity of Heritage Items	YES	<p>The subject site is located in the vicinity of a Heritage item (being the Brookvale Public School) specified under the Warringah LEP 2000.</p> <p>Council's Heritage officer has reviewed the proposal and has provided the following comments in relation to the proposal:</p> <p>"The subject site is not a listed item of heritage significance however is located opposite the Brookvale Public School site which is a listed item of heritage significance under WLEP 2000.</p> <p>The Warringah Heritage Inventory provides the following information:</p> <p><b>Description</b></p> <p><i>'Sandstock brick with sandstone foundations and hipped &amp; gabled roof. The original building has been modified by the addition of classroom wings, which appear to date from the 1920's. Located at the south eastern corner of the school site.'</i></p> <p><b>Statement of Significance</b></p> <p><i>'A good representative example of an early 20 Century school building, with a high degree of integrity and much original fabric. Historically the building provides evidence of the early growth of educational infrastructure.'</i></p> <p><b>Consideration of the proposed development</b></p> <p><i>The application proposes the demolition of the existing building (Brookvale Hotel) and construction of a new mixed-use development including the use of the premises as a hotel, motel / short term accommodation, bottle shop, show room and residential units.</i></p> <p><i>The heritage significance of the Brookvale Public School site is embodied within the building constructed with sandstock brick and sandstone foundation. This building is located towards the centre of the site, with visible frontage to Old Pittwater Road and subsequently, the subject site.</i></p> <p><i>The development proposes a built form that is generally consistent with the established pattern of development and in this regard, there will be no unreasonable visual impacts on the setting or character of the identified building within the Brookvale Public School site.</i></p> <p><i>Similarly, there will be no physical impacts on the Brookvale Public School site.</i></p>	YES (subject to condition)

General Principal	Applies	Comments	Complies
		<i>In this regard, no objection is raised to the proposed development on heritage grounds".</i>	
CL83 Development of Known or Potential Archaeological Sites	NO	The subject site is not located within the vicinity of any known or potential archaeological sites.	Not Applicable

## SCHEDULES

### Schedule 8 - Site analysis

The application was accompanied by a detailed site analysis that satisfies the requirements of Schedule 8.

### Schedule 17 – Carparking Provision

Schedule 17 of WLEP 2000 sets out parking requirements for various land uses. For the proposed development Schedule 17 sets out the following requirements:

#### Retail/Motor Showroom

As indicated in the previous section of this report, there is an inconsistency with the documentation submitted with the application in relation to the proposed showroom. The traffic report submitted with the application indicates that it is a motor showroom for the purpose of calculating the car parking, whilst the SEE and the application form identify this area as commercial/retail.

Given the above and for the purpose of calculating the car parking rate for the proposed showroom, a calculation for both uses (i.e. motor showroom and commercial space) has been provided in the table below to determine whether the car parking provided within the development will adequately cater for the showroom at a worse case scenario.

Showroom GFA	Rate for Motor showroom	Required
850m <sup>2</sup>	0.75 spaces per 100m <sup>2</sup> site area	6 spaces
Rate for Commercial/retail space		Required
1 space per 16.4m <sup>2</sup> of GLFA		51 spaces

Based on the above calculations 51 spaces are required for the showroom as a worst case scenario.

#### Residential

Schedule 17 of WLEP 2000 requires car parking to be provided for residential at the following rate:

Block	Unit Size	Rate	Required
A	25 x 1 bedroom	1 space	25
	4 x 2 bedroom	1.2 spaces	5
B	10 x 1 bedroom	1 space	10
	4 x 2 bedroom	1.2 spaces	5
	4 x 3 bedroom	1.5 spaces	6
C	47 x 1 bedroom	1 space	47
	16 x 2 bedroom	1.2 spaces	20

Block	Unit Size	Rate	Required
SOHO Units	7 x 2 bedroom	1 .2 space	9
	2 x 3 bedroom	1. 5 spaces	3
	Note: The home office space within SOHO units No. C001 –C007 has been included as a bedroom for the purpose of calculating car parking given these home office spaces are designed so as to be readily be converted as bedrooms.		
Visitor Parking	Control applies to apartment style housing only	1 space per 5 units	24

Based on the above calculations 154 spaces are required for the residential component of the development.

### Short-term Accommodation (Motel)

Number of Units	Rate	Required
8	1.0 space per unit + 1.0 space per two employees	8 +1 space for two employees (as stipulated in the traffic report) = 9

Based on the above calculations 9 spaces are required for the short-term accommodation (motel) component of the development.

### Bottle Shop

Bottle shop GFA	Rate for shop	Required
378m <sup>2</sup>	1 space per 16.4m <sup>2</sup> GLFA	23 spaces

Based on the above calculations 23 spaces are required for the bottle shop.

### Hotel

Schedule 17 stipulates that comparison must be drawn of similar development for a hotel development. In this regard, the Traffic report submitted with the application has provided the following comments with regards to the car parking for hotel and bottle shop:

*"In relation to the hotel/bottle shop use, the parking survey of the existing hotel/bottle shop use has peak demand of 91 spaces. Based on the existing hotel/bottle shop area (2,150m<sup>2</sup>), this equates to a peak parking demand of 4.2 spaces per 100m<sup>2</sup> of floor area.*

*Applying the above surveyed parking demand rete to the proposed floor area of the hotel/bottle shop (1,250m<sup>2</sup>), the proposed hotel/bottle shop component of the proposal would require 53 car parking spaces".*

Having regard to the above comments, there is insufficient information submitted within the applicant's traffic report for Council to accurately calculate the car-parking rate for the hotel component of the development. In this regard, the traffic report has based the calculation on the existing hotel plus and bottle shop and has not separated the two uses (i.e. the bottle shop and the hotel) as per the requirements of Schedule 17. This is considered critical given the existing bottle shop has a drive through facility in comparison to the proposed bottle shop. Further, it is noted that the traffic report has not provided an accurate assessment with

regards to drawing a comparison of other hotel/s for Council to be satisfied that there is adequate parking provided on the site to cater for the proposed hotel and bottle shop.

### **Assessment of Schedule 17**

Based on the minimum car parking requirements of Schedule 17 and the calculations provided in the tables above, the proposed development (excluding the hotel) will require:

<b>Car parking requirement</b>	<b>Proposed number of car parking</b>
237 for the development (excluding the hotel)	248 spaces provided

In respect to provision of car parking for the hotel/bottle shop component, as indicated above there is insufficient information submitted with the application for an accurate assessment to be made in this regard. Accordingly, in the absence of such information, the parking rate used in the traffic report is not acceptable with regards to the hotel/bottle shop and therefore an accurate assessment pursuant to Schedule 17 cannot be completed and therefore this issue has been included as a reason for refusal.

## **POLICY CONTROLS**

### **Warringah Section 94A Development Contributions Plan**

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

<b><i>Warringah Section 94A Development Contributions Plan</i></b>		
Contribution based on total development cost of		<b>\$37,800,000.00</b>
<b>Contribution - all parts Warringah</b>	<b>Levy Rate</b>	<b>Contribution Payable</b>
Total S94A Levy	0.95%	359,100
S94A Planning and Administration	0.05%	18,900
Total	1.0%	\$378,000

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

## **MEDIATION**

Mediation was not requested throughout the notification and assessment process.

## **CONCLUSION**

The site has been inspected and the application assessed having regard to the provisions of Section 79C of the Environmental Planning and Assessment Act 1979, State Environmental Planning Policy (Affordable Rental Housing) 2009, State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004, State Environmental Planning Policy (Infrastructure) 2007, State Environmental Planning Policy No.55 – Remediation of Land, Warringah Local Environmental Plan 2000, Warringah Development Control Plan and the relevant codes and policies of Council. This assessment has taken into consideration the submitted plans, Statement of Environmental Effects, all other documentation supporting the application and public submissions.

The development is submitted pursuant to the provisions of WLEP 2000 and must be assessed in accordance with the current planning controls applying to the site. In this

regard, the assessment of the application has revealed that the application is deficient and unsupportable for a number of reasons including that the information submitted with application does not contain all the required information to properly assess the application with regards to Schedule 17 –carparking under the provision of WLEP 2000, and solar access requirement pursuant to SEPP 65 that apply to the proposed development.

The proposed development is found to be inconsistent with the desired future character statement for the F1 locality. The proposal breaches the maximum building height and is inconsistent with the building appearance controls for the F1 locality. Subsequently, the proposal's failure to adequately address the desired future character statement and comply with the built form controls results in a development of excessive height, bulk and scale which will adversely affect the character of the surrounding area. These impacts will be exacerbated by the lack of appropriate landscaping, particularly along the Old Pittwater Road and Roger Street frontages.

Further, it considered that the residential use within the proposed development will undermine the industrial/commercial character of the area and the amenity of the residents within the proposed development will be compromised as a result of the surrounding land uses.

The DWLEP 2009 is a mandatory matter for consideration under Section 79C (1) (a) (ii) of the Environmental Planning and Assessment Act, 1979 and given the fact that the Plan has been through public exhibition and has been adopted by Council, the plan is considered both imminent and certain. Therefore, the draft planning instrument must be given significant weight in the determination of the application. Specifically, the subject site is located within the B5 Business Development zone in which residential development is a prohibited land use.

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

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

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

The proposed development was also found to be inconsistent with the number of the General Principles of Development contained in *Warringah Local Environmental Plan 2000*, particularly with regards, Clauses 48 and 49 – Contaminated Land, Clause 65 – Privacy, Clause 66 – Building Bulk, Clause 72 – Traffic Access and Safety, Clause 76 – Management of stormwater.

There was also insufficient information submitted with the application to properly consider the development application against the requirement of Clause 74 and Schedule 17 – Car parking.

One (1) submission was received opposing to the proposed development. The fundamental concern raised in the submission related to the inconsistency of the development with the desired future character statement for the F1 locality and fact that this development is inappropriate development for this locality having regard to the industrial/warehouse nature

of the subject site and surrounding development. The issues raised in the submissions have been addressed in the "Public Notification Section" of this report.

It is considered that the proposed development does not satisfy the relevant planning controls and that all processes and assessments have been satisfactorily addressed. Accordingly, the application is recommended for refusal.

### **RECOMMENDATION (REFUSAL)**

That the Joint Regional Planning Panel (Sydney East Region) as the consent authority to refuse Development Application No. DA2011/0890 for Demolition works and construction of a mixed use Development including the Redevelopment of Brookvale Hotel, Short Term Accommodation (Motel), Bottleshop, Showroom and Residential Units at Lot 11 DP 1000708, 511-513 Pittwater Road, Brookvale for the following reasons:

1. Pursuant to Section 79C (1) (a) (ii) of the Environmental Planning and Assessment Act, 1979, the proposed development is inconsistent with the objectives of B5 Business Development zone under the provisions of the Draft Warringah Local Environmental Plan 2009 in that the subject site is unsuitable for residential development.
2. Pursuant to Section 79C (1) (a) (ii) of the Environmental Planning and Assessment Act, 1979, the proposed development does not comply with the Height of Buildings standard and is inconsistent with the objectives of the Height of Buildings standard under the provisions of the Draft Warringah Local Environmental Plan 2009.
3. Pursuant to Section 79C (1) (a) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the following Design Quality Principles in Clause 15 of State Environmental Planning Policy No.65;
  - a) Principle No. 1 Context
  - b) Principle No. 2 Scale
  - c) Principle No. 3 Built Form
  - d) Principle No. 4 Density
  - e) Principle No. 5 Resources, energy & water efficiency
  - f) Principle No. 6 Landscape
  - g) Principle No.7 Amenity
4. Pursuant to Section 79C(1)(a) of the Environmental Planning and Assessment Act 1979, the proposed development is inconsistent with the State Environmental Planning Policy No. 65 Design Quality of Residential Flat Development and the Residential Flat Design Code with respect to the following:
  - a) Building separation;
  - b) Visual and acoustic privacy between proposed apartments;
  - c) Landscape open space;
  - d) communal open space; and
  - e) Daylight access to living rooms and private open spaces.
5. Pursuant to Section 79C (1) (a) of the Environmental Planning and Assessment Act 1979, the proposed development is inconsistent with the provisions of Warringah Local Environmental Plan 2000 in that the development is inconsistent with the Desired Future Character of the F1 Brookvale Centre Locality as the proposed development does not provide for low rise shop top housing and does not provide an attractive streetscape.

6. Pursuant to Section 79C(1)(a) Environmental Planning and Assessment Act 1979, the proposed development is inconsistent with the building Height and Building Appearance built form controls for the F1 Brookvale Centre locality in Warringah Local Environmental Plan 2000.
7. Pursuant to Section 79C(1)(a) of the Environmental Planning and Assessment Act 1979, the proposed development is inconsistent with the following General Principles of Development Control of Warringah Local Environmental Plan 2000.
  - a) Clauses 48 and 49 – Contaminated Land;
  - b) Clause 65 – Privacy;
  - c) Clause 66 – Building Bulk;
  - d) Clause 72 – Traffic Access and Safety;
  - e) Clause 74 and Schedule 17 – carparking; and
  - f) Clause 76 – Management of stormwater
8. Pursuant to Section 79C (1) (c) of the Environmental Planning and Assessment Act 1979 the site is not considered suitable for the proposed development as insufficient information has been submitted to demonstrate that the land will be suitable in its current state (or will be suitable after remediation) for the purpose for which the development is proposed to be carried out.
9. Pursuant to Section 91A(4) of the *Environmental Planning and Assessment Act, 1979*, the NSW Office of Water has not provided its General Term of Approval that is required in order for the development to be granted consent.
10. Pursuant to Section 79C (1) (e) of the Environmental Planning and Assessment Act 1979, the proposal is not considered to be in the public interest.