

**JOINT REGIONAL PLANNING PANEL  
Sydney East Region**

<b>JRPP No</b>	2011SYE080
<b>Development Application No.</b>	DA2011/0887
<b>Local Government Area</b>	Warringah Council
<b>Proposed Development</b>	Demolition works and construction of a mixed retail, commercial and residential development and use of premises as retail shops, a café and residential units.
<b>Street Address</b>	Nos.697, 699 and 701 Pittwater Road, Dee Why
<b>Applicant/Owner</b>	Jubilee Properties Pty Ltd and Life Property Group
<b>Number of Submissions</b>	A total of Six (6) submissions were received.
<b>Recommendation</b>	Refusal
<b>Reporting Officer</b>	David Kerr, Acting Deputy General Manager, Strategic and Development Services

**Assessment Report and Recommendation**

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<b>Assessment Officer:</b>	Steve Findlay
<b>Application Lodged:</b>	14/07/2011
<b>Plans Reference:</b>	<u>Architectural Plans</u> DAA00 to A11, prepared by Kann Finch Group <u>Landscape Plan</u> 11002R-SK01 (Rev1), prepared by Aspect Studios (Drew Dickson Architects)
<b>Amended Plans:</b>	No amended plans were submitted as part of this application.
<b>Owner:</b>	Jubilee Properties Pty Limited

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<b>Locality:</b>	E9 - Pittwater Road
<b>Category:</b>	Category 1 (shops, restaurants and housing not ground level)
<b>Draft WLEP 2009 Permissible or Prohibited Land use:</b>	B4 Mixed Use – Permissible (shops, restaurants and shop-top housing)
<b>Variations to Controls</b>	YES – Building Height and Build-to-Lines
<b>Referred to WDAP:</b>	No
<b>Land and Environment Court Action:</b>	No

## SUMMARY

### Submission Issues:

Desired Future Character, Building Height, Build to Lines, Bulk and Scale, Overshadowing, Overbearing on Park and Church, Inconsistent with SEPP 65 and Residential Flat Design Code

### Assessment Issues:

Desired Future Character, Building Height, Scale, Communal and Private Open Space, SEPP 65 and Residential Flat Design Code, Design of Rear Laneway, Waste, Impact on Trees, Site Dewatering (Integrated Development) and St David's Park

### Attachments:

Pre-lodgement Minutes (PLM2011/0025)

## LOCALITY PLAN (not to scale)



### Subject Site:

Lot B, DP 381816, Lot 4 DP 417528, and Lot 1 DP 300967 - Nos.697, 699 and 701 Pittswater Road, Dee Why.

### Public Exhibition:

The subject application was 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 804 adjoining landowners and occupiers for a period of 30 calendar days commencing on 29 July 2011 and being finalised on 1 September 2011. Furthermore, the application was advertised within the Manly Daily on 30 July 2011 and a notice was placed upon the site.

## SITE DESCRIPTION

The site comprises three (3) allotments, including; Lot B, DP 381816, Lot 4, DP 417528 and Lot 1, DP 300967 and is known as Nos. 697, 699 and 701 Pittwater Road, Dee Why. The subject site is located on the northern side of Pittwater Road, adjoining St David Avenue Park at the intersection with St David Avenue.

The site has a total area of 1,777sqm, is irregular in shape and has frontages to both Pittwater Road (primary frontage) and St David Avenue (secondary frontage). The frontage to Pittwater Road is 35.965m and the frontage to St David Avenue is 14.575m.

The site currently contains three dilapidated retail/commercial buildings which are currently unoccupied and in a poor condition.

The site has a sloping topography (falling from the rear NW boundary adjoining St David Avenue) from RL 26.41 toward the front eastern boundary adjoining Pittwater Road at RL 19.05, representing a fall of some 7.36m.

The adjoining St David's Park is an urbanised "*pocket park*", it has limited green space, a predominance of structures including the bus stop/toilet block and substation and a sloping topography. A large tree is situated in the park which is in close proximity to the subject site.

The site is adjoined as follows;

**West** – Uniting Church and Dee Why Police Station

**East** – Pittwater Road and older style 2-3 storey commercial buildings opposite

**North** – St David's Park and St David Avenue with Council's Civic and Library precinct opposite

**South** – 3-5 storey commercial buildings

## SITE HISTORY

### 697 and No. 699 Pittwater Road

#### ***Development Consent No. DA2002/1203***

This Development Application was for demolition of the existing buildings and erection of a mixed use/residential flat building comprising two (2) retail tenancies, forty four (44) residential units and associated car parking and was approved on 23 August 2004. This development has been physically commenced, as confirmed by Council.

### 701 Pittwater Road

#### ***Development Consent No. DA2000/5096***

This Development Application was for demolition and construction of a new mixed commercial and residential development and was refused by Council on 19 June 2001. The refusal was challenged in the Land and Environment Court in the case of *Songkal Pty Ltd v Warringah Council [2001] NSW LEC 197*.

The Court granted a Deferred Commencement Consent requiring the Applicant to acquire a right of carriageway or a transfer of title for vehicular and pedestrian access over the NW corner of St David Avenue Park (an area of approximately 27.3sqm).

On 17 February 2003, Council activated the deferred commencement consent for DA2000/5096 following receipt of evidence that a right of carriageway for vehicular and pedestrian access over St David Avenue Park, being part of Lot 1, DP 364010 had been obtained.

On 14 February 2008, a Construction Certificate was issued by Local Certification Services and the development has been physically commenced, as confirmed by Council.

## **Development Application No. DA2011/0887 – Current DA**

On 14 July 2011, the current application was lodged with Council and it is this application which is the subject of this report and the Joint Regional Planning Panel is the consent authority as the proposed development has an estimated cost in excess of \$10 million.

### **Preliminary Briefing to the Joint Regional Planning Panel (JRPP)**

On 14 September 2011, the application was the subject of a briefing before the Joint Regional Planning Panel, wherein the matter was set down for a determination date of 7 December 2011.

### **PROPOSED DEVELOPMENT**

The proposal involves the demolition of existing structures and construction of a mixed use development, comprising 75 residential apartments, retail shops, retail/café space and 116 basement level carparking spaces.

The residential component of the building is split into two separate building sections (north and south) with independent lift access and entry points (Lobby A and Lobby B).

Specifically, the development contains the following:

#### **Basement Level 2**

- Parking for 43 vehicles including 4 disabled spaces
- Plant and Storage areas
- Ramp access up to Basement Level 1
- Stair and lift access to Basement Level 1

#### **Basement Level 1**

- Parking for 41 vehicles including 4 disabled spaces
- Plant and Storage areas
- Ramp access down to Basement Level 2 and up to Lower Ground Floor Level
- Stair and lift access to Basement Level 2 and Lower Ground Floor

#### **Lower Ground Floor Level**

- Parking for 18 vehicles for retail and visitors
- 3 x motorcycle parking spaces
- Storage areas
- Stair and lift access to Basement Level 1 Ground Floor Level

#### **Ground Floor Level**

##### **(i) *Rear, north-west side***

- Parking for 14 vehicles for retail and visitors including 2 x disabled parking spaces
- Plant and Storage areas
- Retail toilet amenities
- Retail Goods Lift
- Ramp access down to Lower Ground Floor Level and up to Level 1

##### **(ii) *Pittwater Road side***

- 3 x specialty retail shops and a café/retail shop fronting Pittwater Road
- 3 x storage areas adjoining the retail space
- Lobby entrance A, lift and mailboxes to the residential apartments at the southern end of the building
- Lobby entrance B, lift and mailboxes to the residential apartments at the northern end of the building

**Level 1 - 8 apartments consisting of:**

- 2 x 2 bedroom with study
- 4 x 1 bedroom loft
- 2 x 1 bedroom adaptable for commercial use
  - o Gymnasium
  - o Vehicular entry/exit driveway to St David Avenue
  - o Loading area with separate exit to St David Avenue
  - o Residential garbage storage area
  - o Bulky goods waste
  - o Goods lift and plant
  - o Tank and plant rooms

**Level 2 - 7 apartments consisting of:**

- 2 x 2 bedroom with study
- 1 x 1 bedroom with study
- 4 x 1 bedroom (1 being adaptable for commercial use)

**Level 3 - 11 apartments consisting of:**

- 3 x 2 bedroom with study
- 4 x 1 bedroom with study
- 3 x 1 bedroom (1 being adaptable for commercial use)
- 1 x studio

**Level 4, 5 and 6 - 11 apartments consisting of:**

- 3 x 2 bedroom with study
- 2 x 1 bedroom with study
- 5 x 1 bedroom (1 being adaptable for commercial use)
- 1 x studio

**Level 7 - 10 apartments consisting of:**

- 3 x 2 bedroom with study
- 1 x 2 bedroom
- 2 x 1 bedroom with study
- 3 x 1 bedroom (1 being adaptable for commercial use)
- 1 x studio

**Level 8 - 6 apartments consisting of:**

- 2 x 3 bedroom with study
- 1 x 2 bedroom with study
- 1 x 2 bedroom
- 2 x 1 bedroom with study

**Level 9 -** Second level to Level 8, 3 x bedroom with study apartment and second level to 2 x Level 8, 1 bedroom with study apartments.

**AMENDMENTS TO THE SUBJECT APPLICATION**

There have been no amendments to the application since lodgement.

**STATUTORY CONTROLS**

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

## PUBLIC EXHIBITION

The subject application was publicly exhibited in accordance with the EPA Regulation 2000, Warringah Local Environment Plan 2000 and Warringah Development Control Plan. As a result, six (6) submissions were received and are detailed as follows:

Submission	Address
Ruth Sutton	No address provided
Ann Sharp	77 Brighton Street, Curl Curl
Brian Scott	PO Box 1509 Lane Cove
Robert Price	PO Box 6278 Kincumber
Lyn Saunderson	11 Francis Street, Dee Why
St David's Uniting Church	3 St David Avenue, Dee Why (see special note below)

The matters raised within the submissions are addressed as follows:

### 1. Inconsistency with Desired Future Character

**Comment:** The proposed development is assessed as being inconsistent with the DFC for the E9 Locality as detailed in the relevant sections of this report, namely for reasons relating to the excessive height and scale of the building and the impact of that non-compliance on the ability of the proposal to ensure the upper levels of the building are reduced in their mass to facilitate the sharing of views and sunlight. Therefore, this objection should be given determining weight.

### 2. Visual Impact (inadequate setbacks for upper storeys and scale of the building dominates the street, park and church)

**Comment:** The visual impact of the development in terms of its height and scale is discussed in detail in the sections of this report dealing with DFC, built form controls, SEPP 65 and the RFDC. Whilst the non-compliance with the storeys component of the height control from 6 storeys to 8 storeys is supported, the non-compliance with the building height for the 9<sup>th</sup> storey and 27 metre height is not supported and the proposal should be reduced in height to comply with the applicable building height control of 24 metres by deleting Levels 8 and 9 or substantially reducing the size of Level 8 and deleting Level 9. Nevertheless, this objection should be given determining weight.

### 3. Excessive Height fronting Pittwater Road, non-compliance with 4 storey podium and lack of setback of upper floors

**Comment:** These issues are similar to the above issue and are addressed in the relevant sections of the report and for the reasons mentioned are concurred with and should be given determining weight.

### 4. Adaptable units only on 2 floors. Building is predominantly residential not commercial

**Comment:** The planning controls for the E9 – Pittwater Road Locality state that the design of buildings is to facilitate the adaptation of upper storey premises for “*residential or office uses*”. In this regard, the design provides for residential uses above the ground floor level and provides some residential units which are readily adaptable for office use (Levels 1 and 2). Therefore, the proposal is satisfactory in this regard and the objection should not be given determining weight.

### 5. Non-compliance with building height control, in storeys and in lineal height

**Comment:** The non-compliances with the building height control, due to the excessive scale and lack of minimisation of shadowing and view impacts on surrounding properties and areas, are not supported and so the objection is concurred with and should be given determining weight.



## **6. Non compliance with Build to Lines**

**Comment:** The non-compliances with the build to lines are generally satisfactory in that they provide for an acceptable urban design outcome and streetscape presentation. Therefore, the proposal is satisfactory in this regard and the objection should not be given determining weight.

## **7. Non-compliance with Minimum Floor to Ceiling Heights**

**Comment:** The proposal complies with the applicable ceiling height controls. Therefore, the proposal is satisfactory in this regard and the objection should not be given determining weight.

## **8. Inconsistency with SEPP 65 and RFDC Guidelines**

**Comment:** The proposal is inconsistent with several design quality principles and does not comply with a number of requirements of the RFDC as detailed within this report. Further, there are matters where Council's Urban Designer requires additional information in order to confirm compliance with natural light and ventilation requirements. Therefore, in light of this, the objection should be given determining weight.

## **9. Upgrading of the Adjacent Bus Stop (Pittwater Road)**

There is no provision under WLEP 2000 which requires the applicant to undertake this work and it is understood that Council's Works Program includes the upgrade of the park and bus stop using Section 94 contributions collected through other development in Dee Why. Alternatively, the applicant could have proposed a Voluntary Planning Agreement (VPA) in relation to this matter or entered into an agreement do certain works such as this. Therefore, the objection should not be given determining weight

## **10. Provision of the Shared Rear Lane Access**

**Comment:** The proposed rear lane access way adjoining properties to the south has been provided for in the proposed development; however, the gradient of the ramped section from St David Avenue is too steep for service vehicles and needs to be redesigned to provide for such. Therefore, the concerns of the objector in relation to making provision for the laneway are partly concurred with in that this matter has not been satisfied. Therefore, this objection should be given determining weight

## **11. Traffic Impacts**

**Comment:** Councils Traffic Management Section have reviewed the proposal and the applicant's traffic report and concluded that the proposal will have a minimal impact on the surrounding road network, subject to the laneway issue being rectified. Therefore, the proposal is satisfactory in this regard and the objection should not be given determining weight.

## **12. Lack of communal Open Space**

**Comment:** The proposed development does not provide adequate communal open space to satisfy the onsite recreational needs of the future residents for 75 dwellings and is unsatisfactory for this reason. Therefore, this objection should be given determining weight.

## **13. Non-compliance with Private Open Space Requirements**

**Comment:** Some of the balconies do not satisfy the minimum width requirements under WLEP 2000. This matter could be addressed by way of conditions of consent.

## **14. Overdevelopment of the site**

**Comment:** The non-compliances with building height and lack of communal open space are symptomatic of the overdevelopment of the site. Therefore, this objection should be given determining weight.

## **15. Excessive bulk and Scale**

**Comment:** The bulk of the proposed building, including the NE corner vertical definition, is generally satisfactory considering the context of the site and its surrounds, however, the non-compliances with the building height controls (relating to Levels 8 and 9) are indicative of the excessive scale of the development, which is not supported. Therefore, this objection should be given determining weight.

## **16. Increased overshadowing of Adjoining Properties**

**Comment:** The proposal will increase shadow effects on adjoining properties to the south and south-west, including the Salvation Army Site and the Uniting Church Site. Overall, the extent of shadows cast is worsened by the non-compliant nature of the building and would be reduced/minimised with a compliant development. This concern is a matter that must be considered in the assessment of the merits of the additional height.

## **17. Loss of Breezes**

**Comment:** The proposal will alter breezes for surrounding development, however, the planning controls allow for a development to a height of 24 metres and covering a significant amount of the 1,770m<sup>2</sup> site. In this regard, such changes are inevitable within Dee Why Town Centre and should not constitute reasons for refusal of such development. Therefore, the objection should not be given determining weight.

## **18. Construction related Impacts**

**Comment:** Suitable conditions of consent can be imposed in relation to management of the construction site and protection of adjoining properties. Therefore, the objection should not be given determining weight.

## **19. Site Dewatering**

**Comment:** The proposed development is Integrated Development as it requires Temporary Construction Dewatering for the basement carpark and a licence is required from the NSW Office of Water. It is noted that General Terms of Approval have not been received in relation to this DA, hence consent cannot be granted in the absence of such GTA's. Therefore, this objection should be given determining weight.

## **20. Proposed building is incompatible and inappropriate in a beachside suburb, is ugly, has the potential to create a slum and belies the natural beauty of the area**

**Comment:** The proposed development is of a modern and contemporary character and design which possesses many good architectural and urban design qualities and if approved would replace an outdated and dilapidated set of unused buildings and revitalise and rejuvenate this section of the town centre. The proposed development is unsatisfactory in relation to matters of scale and intensity, including the relationship to the surrounding streets and the church, rather than aesthetics. Therefore, the objection should not be given determining weight.

### ***Letter from St David's Anglican Church***

Council received a letter dated 16 September 2011 from Jubilee Properties (Owner of Subject Site) and signed by the church stating that certain matters raised by the church have been clarified and agreed to by the applicant and that the church has no further concerns in relation to the application.

## **MEDIATION**

No mediation has been requested by the objectors.



## LAND AND ENVIRONMENT COURT ACTION

At the time of writing this report, Council had not been informed of any appeal to the NSW Land and Environment Court in relation to this application.

## EXTERNAL REFERRALS

<b>NSW Office of Water</b>
<p>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 25 July 2011.</p> <p>However, the General terms of approval from NSW office of Water has not been received at the time of writing this report.</p>
<b>Transport Roads &amp; Maritimes Services (RMS)</b>
<p>The application was referred to RMS in accordance with State Environmental planning Policy (Infrastructure) 2007.</p> <p>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 no objection to the proposed development subject to conditions, which can be incorporated into the consent if the application was recommended for approval.</p>
<b>NSW Police Force</b>
<p>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.</p> <p>The NSW Police has reviewed the proposal and has recommended a number measures to further minimise the crime risk for the development.</p> <p>Should the application be worthy of approval, the recommendations of the NSW Police should be included as conditions of consent.</p>
<b>Ausgrid</b>
<p>The application was referred to Ausgrid to determine the energy supply requirements for the proposed development and also with regards to Clause 45 (2) of SEPP (Infrastructure) 2007.</p> <p>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 Ausgrid should be included in the consent.</p>
<b>State Transit</b>
<p>The application was referred to State Transit given the location of the bus stop adjacent to the proposed development.</p> <p>State Transit by letter dated 30 August 2011 has raised no objections subject to certain issues being dealt with, which can be addressed via conditions of consent if the application was recommended for approval.</p>

## INTERNAL REFERRALS

<b>Development Engineer</b>
<p>Council's Development Engineer has reviewed the proposal and has provided the following comments:</p> <p>"Additional information is required in relation to the following:</p> <p><b>(i) Drainage</b></p> <p><i>Council is still awaiting a response from the NSW Office of Water regarding the tanking of the basement.</i></p> <p><i>The orifice diameter on sheets SW4 and SW5 are to be 96mm and 89mm respectively. Amend plans are to be provided accordingly. A pipeline long section is required from the OSD tank outlet to the point of connection at kerb inlet pit (the long section is to show levels of existing services in footpath).</i></p> <p><i>Provide an anchor point over access hatch to connect confined space winch.</i></p>

## Development Engineer

### **(ii) Vehicular Access**

*The vehicular accesses from St David's Avenue for both the carpark and the loading dock are to be amended to ensure a maximum grade of 1 in 20 for the first 6m along the high (western) side of the respective driveways are provided.*

### **(iii) Pedestrian Access**

*The floor levels of the all pedestrian entrances to shop and lobbies off Pittwater Road are to be designed to ensure no adjustment to the existing paved footpath is required".*

**Comment:** The concerns raised by Council's Development Engineers could be dealt with by way of conditions and/or additional information provided (addressed under Clauses 72 and 76 of this report).

## Urban Designer

Council's Senior Urban Designer has reviewed the proposal has provided the following comments:

### **Draft Warringah LEP 2009 – Floor Space Ratio (FSR)**

*The FSR map and relevant clauses have been added to the latest version of Draft WLEP 2011 which has not been publicly exhibited and is currently reviewed by Department of Planning and Infrastructure (DOPI) and Parliamentary Counsel before being recommended for final approval by the Minister for Planning and Infrastructure. The FSR for the site as stated in Draft WLEP 2011 is 4:1. The proposed FSR to be applied to the site is 4.3:1. This matter is currently being deliberated by DOPI.*

### **Status of the draft Warringah LEP 2009**

*The draft LEP was certified by the Department of Planning on 9 September 2009 and became a matter for consideration under section 79C of the Act on 12 October 2009 with the commencement of the public exhibition of the plan.*

*On 8 June 2010, Council considered the submissions made to the exhibition process and on 25 June 2010 forwarded the final draft LEP to the DOPI with a request that the Minister make the plan. No formal commitment has been given by the Department in regard to the time frame for making of the plan. However, Council understands that the Department would like to finalise the process before the end of 2011.*

### **Urban Design Issues**

#### **Positive aspects**

- 1. Articulated building forms. Facades are composed with an appropriate scale, rhythm and proportion.*
- 2. Pittwater Road has continuous street frontage and awning to provide safe and sheltered 5m wide pedestrian route. Vehicular circulation and truck loading areas are located to the side street at St David's Avenue.*
- 3. Providing service access to neighbouring sites which front on to Pittwater Road where vehicular access is not desirable via a 'right-of-carriageway' dedicated to the benefit of Council as per caveat on land title. (Provided the proposed 1:5 gradient ramp is redesigned to cater for service vehicle.)*
- 4. Amalgamation of sites to enable a workable basement car park and consolidation of vehicular access points.*

#### **Negative Aspects**

- 1. The proposal has building forms which exceeds the 24m WLEP2000 building height control by up to about 3m. The applicant proposed that the 1.3m original unexcavated site level and an extra 10% be added to the height plane. The proposal of 9 storey plus loft exceeds the 6 storey limit count. LEP2000 Building Build-to lines requirement of 9m from the kerb for storey above the 4<sup>th</sup> storey has not been complied with.*

## Urban Designer

2. **SEPP 65 Site Design** - The Communal Open Space requirement of 25 to 30% of the site area should be provided for a 75 residential unit development with minimal private open space proposed for each unit. The revised proposal submitted on 8 Sep 2011 provided for the inclusion of a public toilet within the proposed building which will enable the existing old toilet block to be demolished and improve the amenity of St David's Park for the benefit of the local community and users of the existing bus stop.

The Residential Flat Design Code (RFDC), rule of thumb, states that 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 a contribution to public open space. St David Park bus stop is a popular and main stop for major bus routes. The removal of the old toilet building into the new proposal will benefit the public transport commuters and local park users greatly in terms of new public toilets facilities and increase of valuable north facing park land. Moreover the proposed residential balconies facing the park will also benefit from the removal of the old toilet block and provide active surveillance of a very public area. However the proposal submitted on 8 Sep 2011 exceeded the building height limit control more by up to 7m and extra floor space area as a result of the extra floor. The applicant in the end reverted back to the original proposal submitted.

There is a possibility of providing the communal open space as a 'sky garden' on the western half of the proposal on level 8. This would mean deleting the 3 units on this level. The western half of the building will then fall within the 24m building height envelope as it steps away from the St. David's Avenue and Pittwater Road corner. The higher tower element created on the eastern side can be justified as a corner treatment which, urban form wise, can be more prominent being a major junction in Dee Why Town Centre.

3. **SEPP 65 Amenity** – The RFDC recommends apartment buildings habitable rooms/ balconies separation distance of 18m for building height up to 25m/ 8 Storeys. The proposal has balconies separation of about 9 -12.2m to the North West boundary. The inadequate separation distances will potentially create amenity problems like lack of visual and acoustic privacy, loss of daylight access to apartments and to private open spaces when the neighbouring sites are developed.

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:

- Provide solar access study to support statement of 79% 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.
- Provide study to support statement of 77% of apartments has natural cross-ventilation.
- The revised proposal submitted on 8 Sep 2011 has drawings of solar access and natural ventilation requirements of SEPP 65 and RFDC. The solar study does not provide adequate information on the period of sun access into the dwellings and the natural ventilation diagrams do not provide adequate information of air flow through the dwellings.
- A summary expert opinion for solar access and cross ventilation by Steve King was submitted on 26 Oct 2011 to provide more information. Some revisions were made to the internal room arrangements for several units in the north-eastern side to improve the solar access to living spaces and cross ventilation. The report claims that the proposal complied with the Residential Flat Design Code 'rule-of-thumb' with 75% (RFDC 70% min.) of units receiving over 3 hours of sun to living rooms or bedrooms (RFDC only consider living rooms) and 8% of units receiving over 2 hours. The report also claims that 62.7% of units achieved cross-ventilation and 10.7% are likely to exhibit enhanced single sided ventilation performance equivalent to cross ventilation (RFDC requires 60% min.)

3. The service access to neighbouring sites through the right-of-carriageway dedicated to the benefit of Council is below natural ground level. The original intention would be a service laneway at ground level. The applicant claims the difference in level will be about 300mm maximum. There are also concerns of service vehicles using the 1: 5 gradient ramp proposed. It is crucial that the right-of-carriageway is designed to adequately serve all types of vehicular access including service trucks to the next door site when the proposed development is completed. As such, the landscaped area proposed on the western end of the right-of-carriageway should be part of the vehicular driveway ready for use upon development completion.

## Urban Designer

### Conclusion

*The site has a prominent location at the Dee Why Town Centre major junction of Pittwater Road, Howard Avenue and St. David Avenue and is considered an important focal point. Considering the location of the site near the heart of Dee Why Town Centre, the nine storeys plus loft proposal, although higher in storey count but is still predominantly within the 24m building height plane, may be supported provided the communal open space requirements and right-of-carriageway issues identified earlier are addressed. The built form can be more prominent to define the corner of a major junction and be at a contextually fitting scale to the adjoining buildings, streetscape and future Multiplex Development.*

*The initial analysis demonstrates that the proposed development does not comply fully with the current WLEP 2000 and with SEPP 65 requirements for residential flat development. There may be justification to allow a departure from the controls if the issues mentioned above are addressed but presently, the development cannot be supported in its current form"*

**Comment:** The concerns raised by Council's Urban Designer have been taken into consideration in the various sections of this report.

## Traffic Engineer

Council's Traffic Engineer has reviewed the proposal and has provided the following comments:

*"The roadway/ramp grades between the proposed link to the service lane and St David Avenue do not meet the requirements of AS2890.2:2002.*

*The maximum allowable grade is 1:6.5 (15.4%), the proposed access has a 14 metre section with a grade of 1:5 (20%), and a 2m section with a grade of 1:6(16.6%).*

*The steep grade of the access ramp effectively precludes access to adjoining sites by heavy vehicles via the proposed service lane.*

*Due to the grade of St David Avenue, moving the access east towards Pittwater Road will provide a corresponding drop in the level for the site access. This will make it possible for the ramp grades to accommodate heavy/service vehicles to the entry of the service lane.*

*It may also be beneficial to combine the driveway access of the service area for this development and the entry to the underground car park/service lane".*

**Comment:** The concern raised by Council's Traffic Engineer has been addressed under the specific Clauses 72 of the WLEP 2000 section of this report.

## Waste Services Officer

Council's waste services officer has reviewed the proposal and has provided the following comments:

*"The proposal does not comply with Policy No. PL850 WASTE.*

*Specifically:*

*The building requires access to be provided for a HRV size waste collection truck 10.5 metres long. The plans only provide for a vehicle 9.5 metres long.*

*This despite several telephone conversations and an email from Council to the applicant indicating the requirement to accommodate a 10.5 metre long HR vehicle. Council had already agreed to reduce the requirement from 12.5 metres to 10.5 metres long.*

*The "Statement of Environmental Effects" clause 5.3.4.3 Loading provides a list of reasons as to why the applicant believes the proposal does not need to comply with the policy. All are unacceptable. The building must be designed in accordance with Policy No. PL850 WASTE and must accommodate a waste collection vehicle 10.5 metres long.*

*The access door to the residential bin room requires the following modifications:-*

#### Waste Services Officer

- *Minimum 1200mm wide.*
- *Door must swing outwards.*
- *Door must be able to be latched in the open position.*

#### **Other Concerns:-**

*Two different layouts (plans) have been provided for the residential bin room. One showing 57 bins (the correct amount) and another showing 29 bins. Can it be confirmed which layout is being submitted with this application.*

*There are also two different layouts shown for the commercial bin room. This also needs to be confirmed which one is correct".*

**Comment:** The issue raised by Council's Waste officer has been addressed under Clause 70 of this report.

#### Heritage Officer

The application was referred to Council's Heritage Officer for comments, as the site is located within the vicinity of a heritage items. The Heritage officer has reviewed the proposal and has raised concerns with regards to the proposed.

**Comment:** The assessment made by Council's Heritage Officer is addressed in detail under Clause 82 of this report.

#### Environmental Health and Protection

Council's Environment Health and Protection Section have reviewed the proposal and have raised no objection to the proposed development subject to conditions.

#### Property & Commercial Development

Council's Property Section provided the following comments:

- *As per the Deed dated 23 September 2010 between Warringah Council and Jubilee Properties Pty Ltd, the developer of this land is to provide a 6 metre carriageway in favour of each of the lots fronting Pittwater Road to the south of the land between St David Avenue and Fisher Road. Please refer to document no. 2010/258939 for further information.*
- *The subject property also has a Right of Carriageway (ROW) over the rear corner of the adjoining Council reserve on the western side of the existing electricity substation building.*
- *The proposed development appears to include a paved loading area at road level over part of the ROW over the Council reserve. This paved loading area may also need a supporting retaining wall structure over the ROW over the Council reserve. Therefore, it is recommended that an appropriate Positive Covenant be registered over the private land as a condition of development consent to ensure that the paved area and any associated retaining wall structure over the Council reserve is maintained and re-built in the future solely by the private property owner (i.e. the new strata owner for the new development).*

**Comment:** The above matters can be dealt with by way conditions, should the application be worthy of approval.

## ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

Section 79C 'Matters for Consideration'	Comments
<b>Section 79C (1) (a)(i) – Provisions of any environmental planning instrument</b>	See discussion on 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. 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>	Warringah Development Control Plan is applicable to this application and the relevant provisions are considered in this report.
<b>Section 79C (1) (a)(iia) – Provisions of any planning agreement</b>	None applicable.
<b>Section 79C (1) (a)(iv) – Provisions of the regulations</b>	<p>The EPA Regulations 2000 requires the consent authority to consider the provisions of the Building Code of Australia. This matter can be addressed via a condition of consent.</p> <p>Clause 92 of the EPA Regulations 2000 requires the consent authority to consider AS 2601 - 1991: <i>The Demolition of Structures</i>. This matter can be addressed via a condition of consent.</p> <p>Clause 50(1A) of the EPA Regulations 2000 requires the submission of a design verification certificate from the designer at lodgement of the development application. This documentation has been submitted from Kahn Finch Group Architects, which satisfied this requirement.</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) <b>Environmental Impact</b> - The environmental impacts of the proposed development on the natural and built environment are addressed under the General Principles of Development Control section in this report. In summary, the impacts are associated with the additional height in terms of visual impact, overshadowing and streetscape.</p> <p>(ii) <b>Social Impact</b> - The proposed development will not have a detrimental social impact in the locality considering the mixed use (retail/cafe and residential) character of the proposal. In this regard, the proposal will result in positive social outcomes in terms of providing for urban renewal, improved aesthetics and visual amenity, better streetscape, better casual surveillance of public areas, improved carparking and access, pedestrian safety and garbage storage.</p> <p>(iii) <b>Economic Impact</b> - The Applicant has submitted information to address the economic impact of the proposed development which is considered will have a positive economic impact on the locality as the mixed uses of the development will assist to strengthen economic vitality in this area within the Dee Why Town Centre providing an active street front, additional housing opportunities and commercial activity.</p>

Section 79C 'Matters for Consideration'	Comments
<p><b>Section 79C (1) (c) – the suitability of the site for the development</b></p>	<p>The site is considered suitable for the proposed development for the following reasons:</p> <p><b>Location</b> – The site is ideally located with respect to proximity to public transport, shops, civic services and Dee Why Library.</p> <p><b>Amalgamated Site</b> – The site comprises 3 lots which represent a significant opportunity to provide a well integrated and coordinated design outcome which accords with the planning controls.</p> <p><b>Vehicular Access</b> – The site has a secondary frontage to St David's Avenue and can facilitate the provision of a rear laneway to service the subject site and other future developments to the south.</p> <p><b>Open Space</b> – The site is situated adjacent to St David's Park which affords a higher degree of outlook and amenity to the north (sunlight access and views) which can be enjoyed by residential and commercial occupants.</p> <p>However, the existing public toilets and sub-station in the park diminish these outlooks and views. In this regard, the applicant was approached during the assessment of the DA to consider accommodating these facilities within the proposed development to provide enhanced levels of amenity for park users, including use by occupants of the proposed development. Unfortunately, these discussions were not successful in achieving agreement and the DA is being assessed as lodged (i.e. not including the public amenities).</p> <p><b>Topography</b> – The site has a moderate slope, however it has been excavated for the present commercial developments. The slope has presented some design challenges with providing the ROW access laneway at the rear of the site which gains access off St David Avenue and the access to the basement carpark (see traffic officers, development engineers and urban designers referral comments). These matters are yet to be resolved by the applicant.</p> <p><b>Dee Why Town Centre</b> – The site is within the "Major Centre" (along with Brookvale) as identified under the North East Subregional Strategy and will provide for part of the dwelling target and jobs targets for this centre. The development will also benefit from this location in being in close proximity to the future Dee Why Town Centre redevelopment comprising the Multiplex Site (including the delivery of a Town Square) and the Council Carpark Site.</p>
<p><b>Section 79C (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs</b></p>	<p>Six (6) submissions were received in relation to the proposed development which is addressed in the earlier section dealing with resident submissions. The concerns raised in relation to building height, design of the rear service lane, overshadowing, visual dominance, visual bulk and scale and private and communal open space are concurred with for reasons discussed in this report.</p>
<p><b>Section 79C (1) (e) – the public interest</b></p>	<p>The planning controls contained 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 locality.</p>



Section 79C 'Matters for Consideration'	Comments
	<p>The development, as proposed, is considered to be inconsistent with the desired future character for the E9 Pittwater Road locality. Additionally, the development does not comply with several Built Form Controls (Building Height and Build To Lines) and is not consistent with a number of General Principles of Development Control.</p> <p>This assessment has found the development to be inconsistent with the scale and intensity of development that the community can reasonably expect to be provided on this site. On the other hand, it is acknowledged that the character, design and external appearance of the building is of a high standard that could provide a much needed boost to the urban design qualities and streetscapes currently in Dee Why Town Centre. However, the architectural merits of the development do not outweigh the fact that the proposal represents an overdevelopment of the site in terms of non-compliances with building height and lack of provision of communal open space for the future resident population of the site.</p> <p>The proposal, as lodged, involves a significant departure from the development standards of WLEP 2000 and insufficient justification has been provided by the applicant for these variations. Additionally, there are no <i>net community benefits</i> provided by the applicant to offset these non-compliances, hence the proposal is not considered to be in the public interest.</p>

## DRAFT ENVIRONMENTAL PLANNING INSTRUMENTS:

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

The public exhibition of the 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.

**Definitions:** Shop Top Housing, Retail Premises and Restaurant.

**Land Use Zone:** B4 - Mixed Use

**Permissible or Prohibited:** Permitted with consent (Shop Top Housing, Retail Premises, and Restaurants).

**Additional Permitted used for particular land – Refer to Schedule 1:** Not Applicable

#### 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 E9 Locality as contained under the current (WLEP 2000) instrument.

Development Standard	Required	Proposed	Complies	Clause 4.6 Exception to Development Standard
Height of Buildings*:	24m	28.7m (this includes an additional 1.3m associated with the previous excavation of the site which is the "existing ground level")	<b>NO</b>	<b>YES</b> (Refer to discussion under 4.3 relating to building height)

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

## **Clause 4.3 – Height of Buildings (DWLEP 2009)**

### **Height of Buildings**

The proposed development 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 proposed height of the development is considered excessive and will set an undesirable precedent for the locality that envisages buildings not to exceed the 24 metre height limit. Accordingly, the height of the proposed development is not compatible and would be excessive in terms of its scale as compared to other redevelopment for shop top housing in the surrounding locality.

- 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 adjoining and nearby development which overlooks the subject site will not experience adverse impacts with regards to views, loss of privacy and loss of solar access. However, it is noted that the impacts associated with this proposal have not been “minimised” and a compliant building would achieve greater consistency with this objective.

- 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 site is located approximately 1 kilometre from the coast, will not be viewable from Dee Why Beach and the visual impact analysis demonstrates that the building will be barely noticeable in the landscape when viewed from Long Reef Headland.. Furthermore, the site does not sit within a 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 result in inconsistencies with this objective under the DWLEP 2009 as it will involve adverse visual impact when viewed from the adjoining St David’s Park, the Civic and Library Precinct and Pittwater Road and St David’s Avenue.

In conclusion, a variation to the Building Height Development Standard under Clause 4.6 of DWLEP 2009 cannot be supported for reasons that the proposed height of the development is inconsistent with the objectives relating to compatibility in relation to the height, bulk and scale of the development and the visual impact 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 exceeds the 24.0m maximum building height standard for the site under the Draft LEP.

The objectives of 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 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 objectives of the building height development standard.

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

### **State Environmental Planning Policies (SEPPs)**

#### **State Environmental Planning Policy No. 55 – Remediation of Land**

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

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

In response to these requirements, the applicant has submitted a Stage 1 – Environmental Site Assessment Report prepared by Coffey Environments (Report No. GEOTLCOV24307AA-AC) – dated 30 June 2011. The report concludes makes the following conclusions:

*“Based on the scope of works undertaken, Coffey makes the following conclusions:*

- *there is a low to high likelihood of contamination being present on the site where the proposed redevelopment is located from past and present activities:*

*The key AECs that may affect the proposed development are:*

- *ACM being present within the existing buildings on the site;*
- *SMF being present within the existing buildings on the site or discarded around the site;*
- *Domestic and construction waste discarded across the site; and*
- *Herbicide use around historic and existing garden beds.*

*Based on the findings, Coffey considers that site redevelopment is feasible subject to the following recommendations:*

- *A Hazardous Material Survey be conducted across the site and within the building structures to identify ACM and/or SMF;*
- *Removal of all refuse across the site to a licensed disposal facility;*
- *Limited soil sampling in the above AECs and in garden beds and analysis for identified PCOCs; and*

- *Should contamination be detected in these areas, that presents an unacceptable risk to human health or the environment, then management and/or remediation may be required”.*

In addition to the above, the application was also referred to Council's Environmental Health Officer who raised no objection to the proposal subject to conditions.

Accordingly, based on the information submitted, the requirements of SEPP 55 and Clause 48 of WLEP 2000 have been satisfied and the land is considered to be suitable for the development subject to conditions which adopt the recommendations of the above-mentioned Stage 1 – Environmental Site Assessment Report prepared by Coffey Environments.

## **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 Road and Maritime Services (RMS), which was previously known as RTA, have 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 30 August 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.

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

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

The development consists of 75 dwellings and proposes a new crossover onto St David Avenue which is within 90 metres of Pittwater Road, which is a classified road (Arterial Road). As such, the development triggers a requirement to refer the application to the RTA under Column 3 of Schedule 3.

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 26 August 2011 has raised no objection to the development subject to conditions.

In this regard, the subject application is considered to satisfy the provisions of Clause 106 subject to condition to be included in the consent if the application is worthy of approval to adopt the conditions as recommended by RMS.

### **State Environmental Planning Policy - BASIX**

BASIX certificates have been submitted with the application for the residential component of the development. All required BASIX commitments have been noted on the application plans. Furthermore, should the application be consented to, a condition of consent will be imposed requiring compliance with the requirements of the applicable BASIX certificate.

### **State Environmental Planning Policy No 65 – Design Quality for Residential Flat Development (SEPP 65)**

SEPP 65 applies to new residential flat buildings, 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."*

As previously outlined, the proposed development is for the construction of a 9 storey plus "loft" mixed retail, commercial and residential development plus basement car parking for the provisions of 75 residential dwellings (8 of which are adaptable for commercial use), 3 retail shops and 1 café/retail shop.

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.

As previously outlined within this report Clause 50(1A) of the EPA Regulations 2000 requires the submission of a **design verification certificate** from a qualified designer at lodgement of the development application. This documentation was submitted with the DA, being prepared by Trevor De Waal (Principal Architect – Kann Finch Group) and satisfies this requirement.

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

As such, the following consideration has been given to the requirements of the SEPP and the Design Code:

The 10 principles are outlined as follows:

### **Principle 1: Context**

The provisions of SEPP 65 provide that:

***"Good design responds and contributes to its context. Context can be defined as the key natural and built features of an area. Responding to context involves identifying the desirable elements of a location's current character or, in the case of precincts undergoing a transition, the Desired Future Character as stated in planning and design policies. New buildings will thereby contribute to the quality and identity of the area".***

**Comment:** The desired future character (DFC) statement for the E9 Locality identifies the desirable elements of the locality which are to be reflected in new development. The DFC statement can therefore be used to determine whether the proposed development responds positively and appropriately to its context.

The area surrounding the subject site forms what is generally known as the Dee Why Town Centre (DYTC). The area to the east of the site comprising the E21 – Dee Why Town Centre Locality has been rezoned to facilitate the redevelopment of the "core" of the DYTC on what is known as Site A (Council Carpark Site) and Site B (Multiplex Site). The scale of development now permitted on those sites is significantly greater than the remainder of the DYTC of which the subject site forms part of the "remainder". Nevertheless, it is concurred with the applicants position that the subject site is in close physical proximity to the Multiplex Site and that the contextual solution for the site is influenced to some extent by the tower elements on Site B (the closest part of the DYTC redevelopment) as the proposed development and the Multiplex development will be read in close relationship, as will new development on the other corners of Howard Avenue, Pittwater Road and St David Avenue.

Site B of the E21 - DYTC locality comprises the following scale of development:

*Concept mixed use development comprising residential, retail and commercial uses, including 3 storey street front buildings to Oaks Avenue and part of Howard Avenue, an 8 storey commercial office building fronting Pittwater Road, 7 storey mid-rise residential buildings, two residential tower buildings (one of part 15/part 18 storeys and one of part 14/part 17 storeys), a publicly accessible "town square" and north-south pedestrian link, 5 levels of carparking (4 basement levels and 1 above ground level), a bus bay and vehicular access.*

The remainder of DYTC has had some redevelopment in accordance with WLEP 2000, including, the following notable recent mixed use developments:

- "Dee Why Grand" (redeveloped Dee Why Hotel Site – 6 to 8 storeys and 24 to 30 metres),
- "kallista" (637-641 Pittwater Road – 6 to 7 storeys),
- "Nautilus" (647 Pittwater Road – 6 storeys)

- “1-5 Dee Why Parade (The Northern Gateway Site – Up to 8 storeys)
- “910 Pittwater Road (6 storeys)

The most recent of these larger scale redevelopments in the DYTC is the *Dee Why Grand* mixed use development, which is a much larger amalgamated site (10,562m<sup>2</sup>) than the subject site (1,777m<sup>2</sup>) and takes place over two localities, with the residential tower elements in that development (8 storeys and 30 metres) being located at significant distances from Pittwater Road and not within the E9 Locality, but the adjoining E8 – Sturdee Parade locality.

Other matters relevant to context relate to the natural features of the area, including;

- Site is surrounded by natural escarpment/hillsides to the south, west and north
- Site is located at the bottom of the slope forming the hillside extending to the west of DYTC and which rises moderate to steeply for the depth of the site
- Site is close to visually dominant Norfolk Island Pines in front of the Civic Centre site
- Site adjoins public open space in the form of St David's Park to the north
- Site is adjoined by a distinctive church building to the west
- Site is opposite the Civic and Library Precinct to the north
- Site has a main road frontage on the core intersection in DY
- Site is a defacto “Corner Site” (not actually being on the corner due to the park)

For the reasons mentioned above, the subject site is contextually a very important site and is a visually prominent site where new development is going to be highly noticeable.

The design response to the above described context is appropriate to the extent that the overall building height, massing, strong vertical form, strongly defined corner elements in the NE corner and partly stepped design relate positively to its surroundings, although concerns are raised in relation to the building height on this site as it is not identified in any current planning instruments as being suitable for additional height.

## Principle 2: Scale

The provisions of SEPP 65 provide that:

***“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 has been conceived on the basis that the subject site is a “marker site” to DYTC and will provide a transition between the older existing commercial developments along Pittwater Road and the towers of the future Multiplex development approved on “Site B” of the DYTC.

It is accepted that the subject site is a significant site within the DYTC on the basis that it is located on (or the closest site to) the main or primary intersection in the commercial centre of Howard Avenue/St David Avenue and Pittwater Road. This intersection should be celebrated to some extent in a special manner with strong corner definition and built form that emphasizes its marker status, but this should be carried out in a manner which is generally consistent with the applicable planning controls under WLEP 2000. In this regard, the relaxation of the “Build-to-Line” (BTL) and number of storeys controls to Pittwater Road and the park is appropriate to give the building a strengthened and visually impressive expression, which is a characteristic of the DA which is supported.

However, when it comes to the overall building height limit in metres, the proposal exceeds the maximum allowable height for no discernable reason apart from incorporating additional floor space and residential apartments which will obtain good views to the ocean. Therefore, the non-compliance with the building height control, which ultimately determines the scale of the building, cannot be supported. In response, the top floor of the building, namely Level 8 (9<sup>th</sup> Storey) should be deleted or



significantly stepped back from Pittwater Road to comply with the height limit and Level 9 ("Loft" Level) should be deleted from the proposal altogether to ensure compliance with the height limit and a more suitable scale of development.

### **Principle 3: Built Form**

The provisions of SEPP 65 provide that:

***"Good design achieves an appropriate Built Form for a site and the building's purpose, in terms of building alignments, proportions, building type and the manipulation of building elements."***

***Appropriate Built Form defines the public domain, contributes to the character of streetscapes and parks, including their views and vistas, and provides internal amenity and outlook."***

**Comment:** The proposed development is considered to contain many examples of good design in terms of its built form, including the composition of building setbacks, levels of articulation, stepped design, use of balconies, podiums, skillion roof forms, recessing and strongly defined elements (especially to the NE corner). The proportions, transitions and flow of the building are considered to be favourable aspects of its built form. The building responds well to its particular location, being a "marker site" and bordered by 4 different interfaces (the park, the street, the church and the existing commercial buildings). The facades of the building provide some good transitions to these interfaces, incorporating areas of strength to the NE corner and relief where required to the church, park and Pittwater Road.

The design provides for the required four (4) storey podium height adjoining part (south-western) of Pittwater Road where the building gradually steps back the upper levels from the north-eastern corner as it proceeds to the south-west (down Pittwater Road) and includes generous setbacks to St David's Church, again gradually stepping back from the St David Avenue progressively to the north-west to ensure its visual connection with the public domain and church are sensitive and respectful. In addition, the proposal incorporates a strong vertical design element at the north-eastern corner to emphasise the corner status of the building. The design increasingly steps back from this element with each level to reinforce and emphasize the corner integrating back toward the adjoining buildings.

Overall, the built form achieves a good standard of built form.

### **Principle 4: Density**

The provisions of SEPP 65 provide that:

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

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

**Comment:** The planning controls under WLEP 2000 do not specify a maximum housing density for the E9 Locality; rather the density for any development site is a function of the other built form controls; including building height, build to lines, building mass, carparking and open space.

This locality is not "undergoing transition" in terms of density. The density envisaged under WLEP 2000 is commensurate with the controls and the determined traffic capacity of DYTC, which is calculated by Council's Urban Designer to be an FSR of 4:1. Furthermore, Council does not envisage an 'upzoning' in DYTC over and above the densities currently permitted under WLEP 2000.

In respect to the current proposal, the development's obvious non-compliance with the building height controls, as outlined earlier, results in an FSR of 4.3:1 which is greater than that anticipated under WLEP 2000 and is symptomatic of the overdevelopment of the site. The reason this is a significant issue is that, should Council support higher densities on each individual redevelopment site in DYTC,

the FSR for DYTC overall will be well above that which has been determined to be sustainable in traffic capacity terms.

Importantly, notwithstanding the Draft WLEP 2009 was publicly exhibited without an FSR control for this site, it is understood that the Department of Planning and Infrastructure (DPI) have requested Council incorporate an FSR control in the new LEP, a request which has been satisfied by Council. As to whether, the gazetted version retains the FSR control, this is in the hands of the Minister. On this, the applicant insists that as the Draft WLEP 2009 was publicly exhibited without an FSR control for the site, no such control should be applied to the DA and no determining weight should be given to that FSR control incorporated in the current version of the Draft LEP. The applicant's position is concurred with in as much as the gazetted version of the Draft LEP is unlikely to contain an FSR control.

In terms of the proposed development, the provision of 75 residential apartments is considered to be excessive on the basis that the building incorporates floor space which is associated with excessive building height and the proposed density should be reduced to provide an appropriate density which is consistent with the prevailing planning controls under WLEP 2000. Accordingly, the proposed density of the development is considered inappropriate.

#### **Principle 5 – Resource, energy and water efficiency.**

The provisions of SEPP 65 provide that

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

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

**Comment:** The proposed works include demolition of all structures currently on the site and excavation works to accommodate the new development. The Applicant has submitted a Waste Management Plan with the application. Further, a condition of consent could be imposed requiring the submission of a Construction Management Plan (CMP) detailing disposal and recycling of demolition and excavation materials, should the DA be consented to.

The proposal incorporates passive solar design and insulation within the building and includes the use of operable louvre screens in certain areas.

In addition, BASIX certificates for the residential component of the development have been submitted with the application. The certificates confirm that the proposed development is capable of achieving the water and energy targets and has obtained a pass for thermal comfort.

Accordingly, sufficient provision has been incorporated to satisfy the objectives of this principle.

#### **Principle 6: Landscape**

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

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

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

**Comment:** It is noted that there is no minimum landscaped open space provision required for such development within the E9 Locality under WLEP 2000. This is due to the dense urban environment and envisaged character of development in DYTC, which is abutting mixed development (shop top housing or retail/office) development sites. Accordingly, due to the urban context within which this site is located, minimal landscaping has not been provided nor could be provided at ground level.

Notwithstanding, small pockets of landscaping are incorporated at Level 1 at the Pittwater Road frontage, adjoining the Church site and internally. However, these areas are not expansive and do not provide for functional or useable communal open space, they are purely for aesthetic purposes. The areas fronting the street will afford some limited softening of the built form. In addition, some “green wall” landscape elements have been included within the void areas located behind the podium façade. These landscape details provide a green vertical aesthetic to enhance the amenity for the residential occupants.

Owing to the location of the site adjacent to St David’s Park, the site is afforded with enhanced levels of landscape amenity for the residential apartments and commercial uses which would look directly over the park. The large tree on the park site will soften and screen parts of the proposed development when viewed from the north.

Nevertheless, the proposal does not incorporate adequate communal open space for the residential occupants of the development. Considering the size and scale of the residential component (75 dwellings), it is expected that some reasonable sized communal open space would be provided onsite and in a suitable location to satisfy some of the passive and active recreational needs of the residents. This is considered necessary for this proposal, despite the siting of the development adjacent to St David’s park and being within general walking distance to Dee Why Beach and parklands. The applicant claims that the adjoining park, other nearby reserves and access to Dee Why Beach will be adequate for the future occupants, however, considering the size of the residential population of the building and the moderate distance (approx 1 kilometre) to Dee Why Beach, the site should incorporate immediately available open space. In this regard, the adjoining park is not considered to be an adequate offset for the lack of provision of onsite open space, particularly considering that use of the park is limited due to the amount of space taken up by the public toilet block and sub station.

Further on the issue of the park, as discussed earlier, the applicant was invited to consider the option of accommodating public toilet facilities and a substation within the proposed development so that the existing toilet block and substation could be demolished to free-up space and provided enhanced levels of amenity for park users, including use by occupants of the development. However, after a number of meetings and ongoing discussions, agreement could not be reached (as the applicant was seeking even further concessions on floorspace and height) and so the applicant declined the invitation, hence the DA is being assessed on the basis of how it was originally lodged.

It is expected that communal open space for the proposed development would be provided in the form of podium level or roof terrace open space areas, similar to what has been provided in similar scale developments, including:

- *Dee Why Grand* development,
- *Multiplex* development (Stage 1 concept design approved only)
- Shop-top Housing development at 910 Pittwater Road.

Council’s Urban Designer has provided comments (see internal referral comments section) which support the proposition that the development should incorporate its own communal open space and be a more self-sustaining development in this respect.

### **Principle 7: Amenity**

The provisions of SEPP 65 provide that:

***“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:** Council's Urban Designer has assessed the documentation addressing the amenity requirements of the RFDC (particularly in relation to sunlight access and natural cross ventilation) and is still not satisfied that the levels of compliance claimed by the applicant are adequate to confirm compliance with the relevant Rules of Thumb. Generally, it is agreed that the design overall provides a good level of amenity for future occupants, with the majority of apartments having good levels of sunlight access and cross ventilation. The orientation and layout of the apartments on each level has taken advantage of the northern exposure over the park, the church site and Pittwater Road. The units on the south-western side of the site are the ones which will not be afforded with such high levels of amenity, particularly those units immediately on that south-western boundary with No. 693 Pittwater Road. It is acknowledged that not all units can be provided with superior levels of amenity and that some units will only achieve “satisfactory” amenity considering the constraints imposed by the shape and orientation of the site and the nature of adjoining land uses.

However, subject to further clarifying information being submitted by the applicant to confirm the claimed levels of compliance with the amenity standards of the RFDC, the proposal is considered to be generally satisfactory in terms of this design principle.

#### **Principle 8 Safety and Security**

The provisions of SEPP 65 provide that:

***“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 application was not accompanied by a formal Crime Risk Assessment as required by the RFDC (for all developments over 20 units), however, the DA was referred to the NSW Police who conducted an assessment against the Crime Prevention Through Environmental Design (CPTED) principles and provided a number of recommendations which could be addressed via conditions of consent.

Generally, the proposed building is separated into two residential blocks each providing secure access separated from the vehicular access points. All apartments provide balconies and windows which overlook either Pittwater Road, St David Park or west toward St David's Church which provides casual surveillance over these areas.

The proposal, subject to conditions of consent recommended by NSW Police, which are appropriate and to not require any redesign of the development, will provide appropriate levels of security and safety.

#### **Principle 9 Social Dimensions**

The provisions of SEPP 65 provide that:

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

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

**Comment:** The provision of a mix of apartment sizes in this location is considered desirable due to the sites close proximity to major bus interchanges, commercial facilities and opportunities within the Dee Why Town Centre and being within walking distance to the beach and public amenities and facilities (including the library) and the future Dee Why Town Centre redevelopment (Multiplex and Council Carpark Site).

The proposed development provides a mix of studios, 1 bed, 2 bed and 3 bed apartments and contains seven (7) adaptable residential/commercial premises which will provide for a greater choice in housing types. This is desirable in a town centre and is consistent with the objectives and intent of the Sydney Metropolitan Strategy and North East Sub-regional Strategy.

The development also includes active street front uses in terms of the retail and café components on the ground floor level and is considered to contribute to the social context by encouraging and providing for social interaction and engagement.

## Principle 10 Aesthetics

The provisions of SEPP65 provide that:

***“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 proposed development exhibits a high standard of architecture and overall aesthetics, which would contribute positively to the streetscapes of DYTC. The character, design and external appearance has been assessed by Council’s Urban Designer and no specific matters have been raised in relation to external finishes, levels of articulation and modulation. It is noted that the design incorporates a substantial use of glazing, recessed balconies, architectural framing devices and a variety of materials and textures which are integrated and will provide a visual ‘uplift’ of this site and this portion of DYTC.

The building provides a modern and contemporary form with a well considered use of physical and material articulation and modulation to provide a distinctive and strongly defined corner element to this intersection. The quality of urban design would provide for the rejuvenation of a significant amalgamated site within DYTC which would provide further impetus for redevelopment and enhancement of the town centre streetscapes.

The design incorporates a podium base providing a ‘human scale’ to the building façade to Pittwater Road. The stepped levels above offer a transitional element moving back from the corner element defining the significant intersection between the town centre and the Civic Centre precinct.

Overall, the aesthetics of the proposed development are satisfactory.

## Residential Flat Design Code Compliance Table

The following table provides an assessment against the criteria contained within the ‘Residential Flat Design Code’ as required by SEPP 65.

PART 01 - LOCAL CONTEXT		
General Comments		
Primary Development Controls		
Building Height	Where there is an existing floor space ratio (FSR), test height controls against it to ensure a good fit	<p><b>Not Applicable</b></p> <p>No FSR applies under WLEP 2000, as discussed previously in this report.</p> <p><b>Note:</b> the density of development in the E9 locality is controlled by built form controls including height, build to lines, and building mass.</p>

PART 01 - LOCAL CONTEXT									
	<p>Test heights against the number of storey's and the minimum ceiling heights required for the desired building use. (2.7 for habitable rooms, 2.4 non-habitable rooms and 1.5 for attics)</p> <p>(Habitable Rooms include: any room or area used for normal domestic activities, including living, dining, family, lounge, bedrooms, study, kitchen, sub room and play room)</p>	<p><b>Number of Storeys</b></p> <p><b>NO.</b></p> <p>The building varies in the number of storeys from 8 storeys to 9 storeys. Therefore, the proposal does not comply with the maximum height control of 6 storeys under WLEP 2000.</p> <p>This matter is discussed in detail under the DFC and Built Form Controls section of this report. In summary, the proposal is not satisfactory in its current form, noting that the 9<sup>th</sup> storey should be deleted or significantly stepped away from Pittwater Road and St David's Avenue and "loft" level should be deleted, thus reducing the height to a maximum of 8 storeys.</p> <p><b>Ceiling Heights</b></p> <p><b>YES</b></p> <p>Residential levels – complies</p> <p>Commercial/Retail levels – complies</p>							
<b>Building Depth</b>	Resolve building depth controls in plan, section and elevation.	See below							
	<p>In general, an apartment building depth of 10-18 metres is appropriate. Developments that propose wider than 18 metres must demonstrate how satisfactory day lighting and natural ventilation are to be achieved.</p>	<p><b>NO (AND ADDITIONAL INFORMATION REQUIRED)</b></p> <p>The proposed development has been designed in two modules, being the northern and the southern halves of the building.</p> <p>The northern module has a maximum building depth of 15 metres which satisfies the standard.</p> <p>The southern module has a maximum building depth of 15 metres to 27 metres which partly exceeds the standard.</p> <p><b>Note</b> : Importantly, it is noted that the increased building depth is not compensated for with increased width of individual apartments and increased floor to ceiling heights above the minimums to maintain good levels of amenity of the respective units. This is relevant to the consideration of the additional number of storeys incorporated within the building above the "6 storey" control under WLEP 2000.</p> <p>Nevertheless, the levels of sunlight access and natural ventilation appear to be satisfactory, subject to additional clarifying information to confirm compliance, as requested by Council's Urban Designer.</p>							
<b>Building Separation</b>	<p>Design and test building separation controls in plan and section.</p> <p>5 to 8 storeys/up to 25 metres</p> <table><tr><td>18 metres</td><td>Habitable rooms &amp; balconies</td></tr><tr><td>13 metres</td><td>between habitable rooms/balconies and non habitable rooms</td></tr><tr><td>9 metres</td><td>between non habitable rooms</td></tr></table> <p>*Habitable room any room or</p>	18 metres	Habitable rooms & balconies	13 metres	between habitable rooms/balconies and non habitable rooms	9 metres	between non habitable rooms	<p><b>YES</b></p> <p>The subject site is such that it is within a dense urban area where the controls under WLEP 2000 envisage abutting development as there are no side setback controls.</p> <p>In the case of the proposed development, the south-western façade takes the form of a party wall on the common boundary with the adjoining development at 693 Pittwater Road, hence the apartments on that side of the development are so designed to abut a similar party wall associated with the future development of that site and so there are no balconies or apartments oriented to the south. This is satisfactory.</p> <p>to the north-east apartments are on a nil side setback, however they adjoin the park, so a separation distance is not relevant.</p> <p>to the north-west apartments are setback between 9m and 12m to the Church site, so the subject site provides for 50% of the building separation distance of 18m required under the RFDC, should the church site (which is within the E11 – Fisher</p>	
18 metres	Habitable rooms & balconies								
13 metres	between habitable rooms/balconies and non habitable rooms								
9 metres	between non habitable rooms								

PART 01 - LOCAL CONTEXT		
	<p>area used for normal domestic activities, including living, dining, family, lounge, bedrooms, study, kitchen, sun room and play room</p> <p><b>**Non-habitable room spaces of a specialised nature not occupied frequently or for extended periods, including bathrooms, toilets, pantries, walk-in wardrobes, corridors, lobbies, photographic darkrooms and clothes drying rooms.</b></p>	<p>Road Locality, where a 3 storey+13m control applies) be redeveloped.</p> <p>This is considered satisfactory.</p>
	Test building separation controls for daylight access to buildings and open spaces.	<p><b>YES</b></p> <p>The proposed building separation distances are satisfactory in respect to daylight access for the reasons mentioned above in relation to how the building will interface with adjoining sites and existing development.</p>
<i>Street Setbacks</i>	Identify the Desired Streetscape Character, the common setback of buildings in the street, the accommodation of street tree planting and the height of buildings and daylight access controls.	<p><b>NO</b></p> <p>The DFC for the E9 locality requires development to define and maintain a human scale to any street, including a 4 storey podium and a coherent parapet line along Pittwater Road. Storeys above the parapet line are to be setback to maintain solar access and not dominate the public domain. In addition, building facades are to be articulated to reduce mass and add visual interest.</p> <p>The proposed building includes a four (4) storey podium to part of (south-western 2/3rds) the Pittwater Road frontage and seeks a variation to the remaining part (1/3<sup>rd</sup>) in order to provide strong corner definition and overall visual significance on this “<i>marker site</i>”. The proposed Clause 20 variations for the build to lines are supportable under a merit assessment on the basis that the intended corner definition is a good urban design outcome having regard to the context of the site within the DYTC.</p> <p>The 8 to 9 storey height of the building is not considered to be satisfactory as the excessive height at the upper levels of the building accentuates the lack of complying street setbacks to Pittwater Road and St David Avenue and diminishes the human scale of the building, when viewed from Pittwater Road to the north-east and St David Avenue to the north-west.</p> <p>In this regard, the building height should be reduced as previously outlined to better relate to the street setbacks and the DFC for the E9 Locality.</p>
	Test street setbacks with building envelopes and street sections.	<p><b>Not Applicable</b></p> <p>No building envelopes apply to the proposed development within the E9 Locality under WLEP 2000.</p>
<i>Side + rear setbacks</i>	Relate side setbacks to existing streetscape patterns.	<p><b>Not Applicable</b></p> <p>There are no side and rear setback controls applying under the E9 Locality under WLEP 2000.</p>
<i>Floor space ratio</i>	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.	<p><b>NO</b></p> <p>As discussed under the “Density” design principle earlier in this report, no FSR currently applies to the site under WLEP 2000, however an FSR control of 4:1 has been included in the Draft WLEP 2009 for the subject site, which is was not part of the “publicly exhibited” draft, therefore, determining weight should not be given to the proposed control.</p>



PART 01 - LOCAL CONTEXT		
		<p>Notwithstanding the above, the density of the development is considered to be excessive on the basis that the building incorporates additional height in the form of non-complying levels, namely Level 8 and 9, which should be deleted from the proposal or substantially reduced in size.</p> <p>It is noted that the proposed development complies with the building mass requirements in WLEP 2000.</p>
PART 02 - SITE DESIGN		
Site Configuration		
<i>Deep Soil Zones</i>	<p>A minimum of 25 percent of the open space area of a site should be a deep soil zone; more is desirable. Exceptions may be made in urban areas where sites are built out and there is no capacity for water infiltration. In these instances, Stormwater treatment measures must be integrated with the design of the residential flat building.</p>	<p><b>NO</b></p> <p>There is no minimum landscaped open space requirement for this site under WLEP 2000 as it envisages a relatively dense urban environment which is typical of a commercial area and town centre. However, the proposal does provide some soft landscaping at Level 1 and in planters at upper level terraces.</p>
	<p>Where developments are unable to achieve the recommended communal open space, such as those in dense urban areas, they must demonstrate that residential amenity is provided in the form of increased private open space and/or in a contribution to public open space.</p>	<p><b>NO</b></p> <p>The proposed development does not provide any specific areas for use as communal open space, however the building does contain a small gymnasium on Level 1 which is internal to the building and overlooking the access driveway.</p> <p>As mentioned earlier, the site is adjoined by St David's Park which is approximately 685m<sup>2</sup> which will afford some limited open space opportunities for future residents of the development. However, approximately 50% of the area of the park is taken up by the existing toilet block, substation and bus stop, which significantly diminishes any real recreational opportunities that open space might otherwise provide.</p> <p>It is understood that Council will be upgrading the park as part of its Parks and Reserves Works Program, however, the timing of the upgrade is uncertain at this point in time and the upgrade will provide for a new toilet block and bus stop.</p> <p>Discussions were had with the applicant with a view to incorporating the amenities block within the proposed development, such that it would 'open up' space for other uses within the park and enhance the amenity of the park for the general public and the occupants of the proposal, however, those discussions were unable to reach agreement and the concept has been abandoned.</p> <p>Furthermore, the site is approximately 1 kilometre from Dee Why Beach, which is within a "moderate" walking distance of the site, but is certainly not within the immediate vicinity of the site. Therefore, it is considered that the development, which has a capacity of 75 dwellings, should provide for some reasonable quantum of communal open space in addition to private balconies (most of which are only the minimum size required – 10m<sup>2</sup>) and the modest size gymnasium. This is considered to be a fundamental deficiency of the application and should be rectified prior to any consent being contemplated.</p> <p>It is noted that a limited number of private balconies (Level 7 and 8) are oversized, but this does not compensate for the lack of communal open space (only 7 apartments out of 75 or 10% of apartments have enlarged balconies).</p> <p>Accordingly, the proposal is not considered to be satisfactory in terms of the provision of open space.</p>

PART 01 - LOCAL CONTEXT		
	The minimum recommended area of private open space for each apartment at ground level or similar space on a structure, such as on a podium or car park, is 25sqm; the minimum preferred dimension in one direction is 4 metres. (see Balconies for other private open space requirements)	<b>YES</b> The proposal complies with the minimum size of private open space for all units.
<i>Safety</i>	Carry out a formal crime risk assessment for all residential developments of more than 20 new dwellings.	<b>YES</b> A Crime Risk Assessment was not submitted with the application, however it is noted that the design provides for secure entries, passive surveillance of the public domain from both the residential apartments and from the retail spaces at ground level. In addition, the application was referred to NSW Police who have undertaken an assessment in accordance with the Crime Prevention Through Environmental Design (CPTED) factors. As a result, a number of recommendations have been made. These recommendations may be incorporated into any consent through the imposition of conditions of consent.
<i>Visual Privacy</i>	Refer to Building Separation minimum standards	<b>YES</b> On the facades where the proposal includes balconies, the site is adjoined by a public reserve to the north, Pittwater Road to the east, and a single storey Church to the west. The design provides for adequate visual privacy between apartments and from the public domain.
<i>Pedestrian access</i>	Identify the access requirements from the street or car parking area to the apartment entrance.	<b>YES</b> There is a clearly defined access point for pedestrians and vehicles within the development. Separate vehicular access is provided for private and service vehicles from St David Avenue. Accordingly, two driveways are incorporated. The driveway located on the north-west boundary serves private vehicles accessing the basement carpark. This driveway also forms part of the communal rear lane access required to be developed in accordance with WLEP 2000. A second driveway is provided to the east of the main driveway for service vehicles accessing the loading dock within the building. Pedestrian access to the residential and adaptable residential/commercial apartments is provided in two separate locations, each servicing one side of the building. At ground level, pedestrian access is available at the north-eastern and south-western corners of the building facing Pittwater Road. These entrance lobbies lead to internal lift access and mailboxes.
	Follow the accessibility standard set out in AS 1428 (parts 1 and 2), as a minimum.	<b>YES</b> Subject to appropriate conditions of consent.
	Provide barrier free access to at least 20 percent of dwellings in the development.	<b>YES</b> The proposed development provides 8 apartments which provide the spatial requirements to comply with AS4299 for Adaptable Housing (Nos. 1:04, 1:05, 2:04, 3:06, 4:06, 5:06 and 7:06).

PART 01 - LOCAL CONTEXT		
<i>Vehicle access</i>	Generally limit the width of driveways to a maximum of six metres.	<b>YES</b> The proposed driveways have a maximum width of 6m.
	Locate vehicle entries away from main pedestrian entries and on secondary frontages.	<b>YES</b> Both driveway accesses are located on the secondary street frontage to St David Avenue. Pedestrian access is located from the Pittwater Road frontage.
PART 03 - BUILDING DESIGN		
Building Configuration		
<i>Apartment layout</i>	Single-aspect apartments should be limited in depth to 8 metres from a window.	<b>YES</b> On average, the majority of the apartments within this building have internal spaces within 10-12 metres of a window, which exceeds the limitation. The single aspect apartments which exceed an 8 metre depth are located facing Pittwater Road. The relevant apartments include: 1:04, 1:05, 2:03, 2:04, 3:07, 3:08, 4:07, 4:08, 5:07, 5:08, 6:07 and 6:08. These apartments contain moveable walls between the living area and the bedroom to better enable light and ventilation into all habitable rooms.
	The back of a kitchen should be no more than 8 metres from a window.	<b>YES</b> All apartments have a window within 8 metres of the kitchen.
	Buildings not meeting the minimum standards listed above, must demonstrate how satisfactory day lighting and natural ventilation can be achieved, particularly in relation to habitable rooms (see Daylight Access and Natural Ventilation).	<b>ADDITIONAL INFORMATION REQUIRED</b> The proposal is considered to be generally satisfactory with regard to the minimum standards for apartment layout. In addition, the Applicant has submitted a Solar Access and Ventilation Compliance Report prepared by Steve King (architect) which concludes that the proposal adequately complies with the RFDC Rules of Thumb. However, it is noted that Council's Urban Designer has reviewed that report and requires further confirmation of the compliance claims made in relation to light and ventilation.
	If council chooses to standardise apartment sizes, a range of sizes that do not exclude affordable housing should be used. As a guide, the Affordable Housing Service suggest the following minimum apartment sizes, which can contribute to housing affordability: (apartment size is only one factor influencing affordability) - 1 bedroom apartment 50sqm - 2 bedroom apartment 70sqm - 3 bedroom apartment 95sqm	<b>YES</b> WLEP 2000 does not contain standards for apartment sizes. Notwithstanding, the following represents the minimum apartment sizes within the proposed development: 1 Bedroom = 54m <sup>2</sup> 2 Bedroom = 76m <sup>2</sup> 3 Bedroom = 116m <sup>2</sup>
<i>Apartment Mix</i>		
<i>Balconies</i>	Provide primary balconies for all apartments with a minimum depth of 2 metres. Developments which seek to vary from the minimum standards must demonstrate that negative impacts from the	<b>NO</b> The Applicant has identified that 5 out of the 75 apartments (representing 7%) do not comply with the minimum balcony depth. Apartments No. 3.03, 4.03, 5.03, 6.03 and 7.03 provide a balcony depth measuring 1.5m. It is recommended that these

PART 01 - LOCAL CONTEXT		
	context-noise, wind – can be satisfactorily mitigated with design solutions.	balconies be increased to 2.5m in depth in order to comply with the requirements of WLEP 2000.
<i>Ceiling Heights minimum wall height at edge</i>	<p>The following recommended dimensions are measured from finished floor level (FFL) to finished ceiling level (FCL). These are minimums only and do not preclude higher ceilings, if desired.</p> <p><i>2.7 metre minimum for all habitable rooms on all floors, 2.4 metres is the preferred minimum for all non-habitable rooms, however 2.25m is permitted.</i></p> <p><i>attic spaces, 1.5 metre minimum wall height at edge of room with a 30 degree minimum - ceiling slope.</i></p>	<p><b>YES</b></p> <p>The proposed design provides floor to ceiling heights of 2.7m to habitable rooms and 2.3m - 2.4m for non habitable rooms.</p>
<i>Ground Floor Apartments</i>	Optimise the number of ground floor apartments with separate entries and consider requiring an appropriate percentage of accessible units. This relates to the desired streetscape and topography of the site.	<p><b>Not Applicable</b></p> <p>This proposal is for a mixed use development within the Dee Why Town Centre where the planning controls require retail and commercial floorspace on the ground floor and residential units on the levels above the ground floor level.</p>
	Provide ground floor apartments with access to private open space, preferably as a terrace or garden.	<p><b>Not Applicable</b></p> <p>There are no ground floor apartments.</p>
<i>Internal Circulation</i>	<p>In general, where units are arranged off a double-loaded corridor, the number of units accessible from a single core/corridor should be limited to eight. Exceptions may be allowed:</p> <ul style="list-style-type: none"> <li>• for adaptive reuse buildings</li> <li>• where developments can demonstrate the achievement of the desired streetscape character and entry response</li> </ul> <p>where developments can demonstrate a high level of amenity for common lobbies, corridors and units, (cross over, dual aspect apartments).</p>	<p><b>YES</b></p> <p>The proposed development incorporates a design around two cores (Lobby A and Lobby B). This design has facilitated dual aspect apartments and consequently reduces the number of units accessing each circulation core improving the implied and actual security within the building.</p>
<i>Storage</i>	<p>In addition to kitchen cupboards and bedroom wardrobes, provide accessible storage facilities at the following rates:</p> <ul style="list-style-type: none"> <li>• studio apartments 6m3</li> <li>• one-bedroom apartments 6m3</li> <li>• two-bedroom apartments 8m3</li> <li>• three plus bedroom apartments 10m3</li> </ul>	<p><b>YES</b></p> <p>The Applicant has identified provision of storage for the development in the form of 50% internal to each apartment and 50% within the basement.</p>

PART 01 - LOCAL CONTEXT		
Building Amenity		
<b>Daylight Access</b>	Living rooms and private open spaces for at least 70 percent of apartments in a development should receive a minimum of three hours direct sunlight between 9 am and 3 pm in mid winter. In dense urban areas a minimum of two hours may be acceptable.	<p><b>ADDITIONAL INFORMATION REQUIRED</b></p> <p>The Solar Access and Cross Ventilation Compliance Assessment produced by Steve King (Architect) on behalf of the Applicant provided the following conclusions:</p> <p><i>"The proportion of dwellings deemed complying with the '3-hour' solar access standard between 9am and 3pm June 21 is 54 units from a total of 75, being 72%. Six additional apartments achieve more than two hours of effective direct sun at those times. All of the remaining apartments face Pittwater Road, an adverse, but unavoidable orientation for midwinter sun access."</i></p> <p>However, it is noted that Council's Urban Designer has reviewed that report and requires further confirmation of the compliance claims made in relation to light and ventilation.</p>
	Limit the number of single-aspect apartments with a southerly aspect (SWSE) to a maximum of 10% of the total units proposed. Developments which seek to vary from the minimum standards must demonstrate how site constraints and orientation prohibit the achievement of these standards and how energy efficiency is addressed (see Orientation and Energy Efficiency).	<p><b>YES</b></p> <p>The proposed development site contains a significant frontage to Pittwater Road which is a south-eastern aspect. As a result, 18 of the 75 apartments (24%) are single aspect apartments facing south-east.</p> <p>No apartments have a direct south aspect. Refer to comments above.</p>
<b>Natural Ventilation</b>	Building depths, which support natural ventilation typically range from 10 to 18 metres.	<p><b>NO</b></p> <p>Building depths range from 15m to 27m, which exceeds the maximum of 18 metres and have been discussed previously.</p>
	Sixty percent (60%) of residential units should be naturally cross ventilated.	<p><b>ADDITIONAL INFORMATION REQUIRED</b></p> <p>The natural ventilation assessment produced by Steve King (Architect) on behalf of the Applicant provided the following conclusions:</p> <p><i>"The overall number of apartments which may be characterised as cross-ventilated is 47 out of the total of 75, being 62.7%. A further 8 (10.7%) apartments are likely to exhibit enhanced single sided ventilation performance equivalent to cross ventilation."</i></p> <p><i>The total proportion of apartments which may be deemed to comply for a natural ventilation amenity is therefore 55 apartments, or 73.9%."</i></p> <p>However, it is noted that Council's Urban Designer has reviewed that report and requires further confirmation of the compliance claims made in relation to cross ventilation.</p>
Building Performance		
<b>Waste Management</b>	Supply waste management plans as part of the development application submission as per the NSW Waste Board.	<p><b>YES</b></p> <p>Complies with Council's Waste Management Policy</p>
<b>Water Conservatio</b>	Rainwater is not to be collected from roofs coated with lead- or bitumen-based	<p><b>YES</b></p> <p>Subject to conditions if the application is worthy of approval.</p>

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n	paints, or from asbestos-cement roofs. Normal guttering is sufficient for water collections provided that it is kept clear of leaves and debris.	

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

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

### **Local Environment Plans (LEPs)**

#### ***Warringah Local Environment Plan 2000 (WLEP 2000)***

#### Desired Future Character (DFC)

The subject site is located in the E9 Pittwater Road Locality under Warringah Local Environmental Plan 2000. The Desired Future Character Statement for this locality is as follows:

*The future development of the Pittwater Road locality will reinforce the town centre as the focus of regional activity on the Warringah corridor. This will be reflected in the treatment of public spaces, the arrangement of land uses and the scale and intensity of development.*

*Entry into the town centre will be marked by a building at the southern corner of the intersection of Dee Why Parade and Pittwater Road. The scale and architectural treatment of this building will distinguish it from other buildings and define the edge of the town centre.*

*The locality will be the focus of office activity and will incorporate a mix of land uses including business uses such as shops, offices, restaurants and cafes at ground floor level with offices and housing on upper floors. The design of buildings is to facilitate the adaptation of upper storey premises for residential or offices uses.*

*Buildings are to define the streets and public spaces and create environments that are appropriate to the human scale as well as comfortable, interesting and safe. In particular, future development is to ensure that a 4 storey podium adjoins the sidewalk and establishes a coherent parapet line along Pittwater Road. Above the parapet line additional storeys will be set back to maintain solar access to the sidewalks and ensure that the scale of buildings does not dominate public spaces. Building facades are to be articulated in such a way that they are broken into smaller elements with strong vertical proportions and spaces created between buildings at the upper levels to add interest to the skyline, reduce the mass of the building and facilitate the sharing of views and sunlight.*

*The overall height of buildings is to be such that long distance views of Long Reef Headland, the top of the escarpment to the west of Pittwater Road and the Norfolk Island Pines next to Dee Why Beach are preserved.*

*Site amalgamation will be encouraged to facilitate new development and enable all carparking to be provided below ground or behind buildings using shared driveways where possible.*

*Building layout and access are to be in accordance with Map E available at the office of the Council such that shared laneways are established to ensure there is no vehicle access directly from Pittwater Road and the spaces behind buildings combine to form central courts with vehicle access limited to a restricted number of places generally in the location shown on Map E.*

The proposed development comprises "housing", "shops" and "restaurants" under WLEP 2000, all of which are identified as Category One uses in this locality.

Clause 12(3)(a) of WLEP 2000 requires the consent authority to consider Category 1 development against the locality's DFC statement. Notwithstanding Clause 12(3)(a) only requires the consideration of the DFC statement, the proposed development results in non-compliances with the Building Height and Build-to lines Built Form Controls, and as such pursuant to Clause 20(1) a higher test, i.e. a test of consistency against the Locality's DFC is required.

Accordingly, assessments of consistency of the proposed development against the relevant elements of the locality's DFC are addressed as follows:

***The future development of the Pittwater Road locality will reinforce the town centre as the focus of regional activity on the Warringah corridor. This will be reflected in the treatment of public spaces, the arrangement of land uses and the scale and intensity of development.***

**Comment:** The proposed mixed use development provides a combination of retail, residential and café/restaurant uses, which are all envisaged and considered to add to a vibrant and active town centre on a main road. The proposal also makes provision for adaptable floorspace on Levels 1 and 2 (such as offices). The scale and intensity of this development generally reflects what is envisaged in terms of urban renewal and enhancement of the urban design qualities within Dee why Town Centre.

The proposal is consistent with this requirement of the DFC

***Entry into the town centre will be marked by a building at the southern corner of the intersection of Dee Why Parade and Pittwater Road. The scale and architectural treatment of this building will distinguish it from other buildings and define the edge of the town centre.***

**Comment:** The proposed development is not in the specific locations referred to in this component of the DFC, however the applicant considers the subject site on the corner of St David Avenue and Pittwater Road is a "marker site" within the town centre, owing to its corner location and the absence of development on the Civic Centre site. The applicant's position is noted, however, the planning controls do not call for any special treatment to this site within the E9 locality. Any strengthening and particular visual expression to provide a strongly defined corner element in the Pittwater Road streetscape is simply to be assessed on its merits relative to good town planning and urban design principles and outcomes for such a site and having regard to the applicable development standards. This matter is discussed in more detail later in this report.

It is noted that this paragraph of the DFC should not be used as means of seeking support for additional height on the subject site.

***The locality will be the focus of office activity and will incorporate a mix of land uses including business uses such as shops, offices, restaurants and cafes at ground floor level with offices and housing on upper floors. The design of buildings is to facilitate the adaptation of upper storey premises for residential or offices uses.***

**Comment:** The proposed development includes 284m<sup>2</sup> of retail floor space consisting of specialty shops and a possible café located at ground floor level fronting Pittwater Road and St David Park. In addition, the development incorporates 8 apartments over 7 levels which are adaptable for office uses. A number of residential units also incorporate home office/study areas.

The proposal is consistent with this requirement of the DFC.

***Buildings are to define the streets and public spaces and create environments that are appropriate to the human scale as well as comfortable, interesting and safe. In particular, future development is to ensure that a 4 storey podium adjoins the sidewalk and establishes a coherent parapet line along Pittwater Road. Above the parapet line additional storeys will be set back to maintain solar access to the sidewalks and ensure that the scale of buildings does not dominate public spaces. Building facades are to be articulated in such a way that they are broken into smaller elements with strong vertical proportions and spaces created between buildings at the upper levels to add interest to the skyline, reduce the mass of the building and facilitate the sharing of views and sunlight.***

**Comment:** The proposed development provides a modern and contemporary architectural design incorporating distinct horizontal and vertical building elements over the various facades of the building. Included in these strong architectural design elements is a 4 storey podium facing part of the Pittwater Road frontage, which provides a human scale to that part of the development and will contribute to maintain a consistent streetscape for future developments extending to the south-west along Pittwater Road. The podium level also provides a sympathetic transition toward the 3 storey heritage listed Commonwealth Bank Building located at 691 Pittwater Road.

The proposal also includes adequate physical separation to the St David's Church site to the west which is a function of the requirements of the RFDC in ensuring adequate space between the proposed residential components of the building and existing and future development on the church site. The substantial setbacks (9m to 12m) to the church site also provide "breathing space" and some respect/sympathy to that sensitive land use.

As mentioned previously, the applicant considers this site to be a "marker site" at the main intersection within the DYTC and that its significance should be celebrated. In this regard, the applicant has chosen to provide strong corner definition in the NE corner of the site by using strong vertical elements which involve Clause 20 variations to the built to lines applying under the E9 Locality. It is noted that the subject site is not actually on the corner, rather the park is on the corner. Nevertheless, the corner treatment is generally considered an appropriate design response to the location and context of the site and the visual prominence of the site when viewed from Pittwater Road and across the park. However, the top levels of the building are considered to generate excessive visual prominence and scale, when strong corner definition is already being achieved through Levels 1 to 8. Therefore, it is considered that the non-complying Level 8 should be deleted or substantially reduced in size and 9 be deleted from the proposal.

In relation to the adjoining park, the DFC in the E9 Locality Statement is not specific as to how this interface should be dealt with, except to say that the DFC states that "*above the parapet line additional storeys will be set back to maintain solar access to the sidewalks and ensure that the scale of buildings does not dominate public spaces*". This objective is primarily intended to ensure an appropriate scale relationship is provided to streets (in this case Pittwater Road and St David Avenue), but should extend to the adjoining park and church. This is despite the fact that the park is located on the north-eastern side of the site (church being on the north-west) and for these reasons sunlight access and is not critical for these spaces.

The relevant test is whether the proposed scale of the building on its northern side dominates the park. Council's Urban Designer has assessed this aspect of the design and is satisfied that the manner in which the building relates to the park is generally acceptable and sustainable. It is noted that the north-eastern façade of the building does not incorporate 4<sup>th</sup> storey podium and is not stepped back the upper levels to provide some human scale to this interface. Whilst it may be argued that a less overbearing and more sympathetic response to users of the park would be provided proposal incorporated a 4<sup>th</sup> storey podium and stepped back upper levels, the overall urban design response is considered sound, with the exception of the additional height above the 8<sup>th</sup> storey. In this regard, it is considered that the overall height and scale of the building is excessive and the height should be reduced at least to comply with the building height controls of the LEP, which means that Level 8 should be deleted or substantially reduced and Level 9 (the loft) should be deleted.

In terms of the various building façades, the design incorporates adequate articulation and modulation and uses high quality materials and finishes which will contribute a high level of urban design quality and streetscape enhancement.

The proposed form incorporates an articulated building mass at upper levels to facilitate in the sharing of views and sunlight, however this would be improved with a building that complied with the building height control (metres)

Therefore, overall the proposal is not consistent with this requirement of the DFC.

***The overall height of buildings is to be such that long distance views of Long Reef Headland, the top of the escarpment to the west of Pittwater Road and the Norfolk Island Pines next to Dee Why Beach are preserved.***



**Comment:** The proposed development will not have a significant impact on views of Long Reef Headland, the escarpment to the west of Pittwater Road or the Norfolk Island Pines on Dee Why Beach from surrounding, nearby and distant properties. In this regard, the applicant submitted a View Impact Analysis to demonstrate the impact on views, which has been reviewed.

Therefore, the proposal is consistent with this requirement of the DFC.

***Site amalgamation will be encouraged to facilitate new development and enable all carparking to be provided below ground or behind buildings using shared driveways where possible.***

**Comment:** The proposed development involves the amalgamation of 3 sites in total including: Nos. 697, 699 and 701 Pittwater Road. In addition, parking for the development will be entirely located at the rear of the development and within a basement carpark accessed from the secondary street frontage on St David Avenue.

Therefore, the proposal is consistent with this requirement of the DFC.

***Building layout and access are to be in accordance with Map E available at the office of the Council such that shared laneways are established to ensure there is no vehicle access directly from Pittwater Road and the spaces behind buildings combine to form central courts with vehicle access limited to a restricted number of places generally in the location shown on Map E.***

**Comment:** This development includes provision of a shared laneway access at the rear of the site in accordance with Map E to facilitate vehicular access primarily off secondary roads and clear of Pittwater Road. There are no "central courts" requirements affecting the subject site.

Therefore, the proposal is consistent with this requirement of the DFC.

### **Conclusions on DFC**

Overall, the proposed development is considered not to be consistent with the Locality's DFC statement.

### **Built Form Controls (Development Standards)**

The following table outlines compliance with the Built Form Control's of the E9 – Pittwater Road locality statement:

<b>Built Form Standard</b>	<b>Required</b>	<b>Proposal</b>	<b>Compliance</b>
<b>Building Height</b>	<u>Overall</u> 6 storeys and 24 metres <u>Buildings Adjoining St David Ave</u> 3 storey and 13 metres	8 to 9 storeys 27.4 metres  See discussion below	<b>No (*)</b> <b>No</b>  <b>(See Below)</b>
<b>Building Mass</b>	30% above topmost storey (516.6m <sup>2</sup> ) – "Loft Level" 50% topmost storey (861m <sup>2</sup> ) 70% second topmost storey (1205.4m <sup>2</sup> )	Level 9 ("Loft") = 93m <sup>2</sup> (5.4%) Level 8 = 673m <sup>2</sup> (50%) Level 7 - 865m <sup>2</sup> (50.23%)	<b>Yes (**)</b> <b>Yes</b> <b>Yes</b>
<b>Minimum Floor to ceiling height</b>	3.6m to ground floor 2.7m to upper storeys	3.7m to ground floor 2.7m	<b>Yes</b> <b>Yes</b>
<b>Build to Lines</b>	5 metres for storeys 1-4 9 metres for storeys above 4th storey	The non compliances with the build to lines are detailed in the following discussion	<b>No</b>

Built Form Standard	Required	Proposal	Compliance
Footpath awnings	Continuous over all sidewalks	Continuous footpath awning proposed along Pittwater Road sidewalk	Yes

### **Building Height Controls**

The building height controls applying to the Dee Why Town Centre localities, including the E9 locality, under WLEP 2000 are intended to encourage innovative design responses that will result in roof and building facades that are integrated, reduce the visual bulk of the building, hide roof top infrastructure and create an interesting skyline.

- (\*) **Why 2 measures of Building Height?** – Under WLEP 2000, building height is measured in both metres and storeys. Proposals are expected to comply with both measures. The intention of the differing measures of height is to provide sufficient area for roof pitch and roof design. Such roof forms are capable of hiding service infrastructure and lift overruns which would otherwise be visible on a flat roof. The height also takes into account topographical changes across a site.
- (\*\*) **Why the “Loft” Provision?** – A further incentive is provided for the provision of interesting and varied roof forms by permitting the inclusion of lofts. In this regard, WLEP 2000 does not define a loft. The proposed “loft” level is not contained within a roof form and is clearly distinguishable as a “storey” when viewed from the street and other areas, hence it does not constitute a “loft” as intended under WLEP 2000, despite purporting to be a loft level.

As shown in the above table, the proposed development does not comply with the Building Height and Build to Line controls. Accordingly, an assessment is provided against the provisions of Clause 20(1) hereunder.

### **Clause 20(1) stipulates:**

*“Notwithstanding clause 12 (2) (b), consent may be granted to proposed development even if the development does not comply with one or more development standards, provided the resulting development is consistent with the general principles of development control, the desired future character of the locality and any relevant State environmental planning policy.”*

In determining whether the proposal qualifies for a variation under Clause 20(1) of WLEP 2000, consideration must be given to the following:

#### **(i) General Principles of Development Control**

The proposal is inconsistent with a number of General Principles of Development Control and accordingly does not qualify to be considered for a variation to the development standards, under the provisions of Clause 20(1) (See discussion on “General Principles of Development Control” in this report for a detailed assessment of consistency).

#### **(ii) Desired Future Character of the Locality**

The proposal is inconsistent with the Desired Future Character Statement for the E9 Locality and accordingly does not qualify to be considered for a variation to the development standards, under the provisions of Clause 20(1) (See discussion on “Desired Future Character” in this report for a detailed assessment of consistency).

#### **(iii) Relevant State Environmental Planning Policies**

The proposal has been assessed against the relevant State Environmental Planning Policies. (Refer to earlier discussion under ‘State Environmental Planning Policies’) and has been found to be inconsistent with the provisions of SEPP 65. Accordingly the proposal does not qualify to be considered for a variation to the development standards, under the provisions of Clause 20(1).

Notwithstanding, in order to fully consider the merits of the application, the following provides an assessment of the non-compliances with the Building Height and Build-to-Line controls (**Note:** in accordance with Clause 20(1) of WLEP 2000, the following assessment does not constitute any consideration for variations to the respective Built Form Controls).

**Description of variations sought and reasons provided:**

**Building Height**

***Required***

*"Buildings are neither to exceed 6 storeys nor 24 metres north of the intersections of Fisher Road and Pacific Parade with Pittwater Road..."*

*"Any building that directly adjoins St David Avenue is to present as a 3 storey, 13 metre high building for that part of the building in keeping with the scale of development along St David Avenue"*

***Proposed***

The proposal has an overall height of 27.4 metres and contains 8-9 storeys (it being noted that there is no "loft" level which satisfies the underlying intent of the built form control as stated in the E9 Locality Statement.

The building does not "*directly adjoin*" St David Avenue, being setback between 3m and 10m from the street boundary and between 12m and 19m from the adjoining property on St David Avenue (church).

***Response***

In assessing the non-compliant elements of the proposal, it is necessary to consider the underlying objectives, termed "*merit considerations*", of the Building Height control.

Accordingly, compliance with the merit considerations are addressed below:

***Minimise overshadowing and improve access to sunlight***

**Comment:** The shadow diagrams submitted with the application demonstrate that properties to the south-east along Pittwater Road and to the south-west, including the Salvation Army Site, the Uniting Church Site and properties at 693 Pittwater Road will experience increased amounts of overshadowing as a result of the proposed development. These property owners can expect to experience overshadowing from a building to a height of 24 metres and with a suitable roof form that satisfies the requirements of WLEP 2000. However, the shadows cast are associated with a 27.4 metre high building. Therefore, overshadowing has not been minimised in this case and hence the proposal is inconsistent with this objective.

***Maintain a human scale and setting in which people feel comfortable***

**Comment:** For reasons mentioned earlier, the proposed development is considered to be generally a satisfactory urban design response to the sites context, location and surrounding land uses. As to whether the design provides a "human scale" to the adjacent park, church, Pittwater Road and St David Avenue, this has been discussed in detail and it is concluded that the proposal is a satisfactory urban design response, except for the additional height and scale associated with the non-complying Level 8 (9<sup>th</sup> storey) and Level 9 ("loft").

Therefore, the scale of the building is excessive as it relates to the upper storeys and is inconsistent with this objective.

***Establish a coherent parapet line in conjunction with the 3 and 4 storey podium controls***

**Comment:** As discussed earlier, the proposal provides a 4 storey podium for only part of the frontage to Pittwater Road, the remainder being a strongly defined NE corner of the building and having an 8 storey parapet height, which is generally supported. To the St David Avenue frontage, the proposal provides a 9 storey parapet height, but which is setback from the street boundary a minimum of 5 metres. This parapet height is considered excessive in scale and should be reduced to 1 -2 storeys or a “stepped-in” Level 8 provided as it presents to St David Avenue such that Level 7 becomes the new parapet (RL 44.3). A reduction in the podium height to St David Avenue would assist in maintaining a more sympathetic scale relationship to the Uniting Church Site and any future 3 storey/13 metre high development on that site.

Therefore, the parapet line to St David Avenue is unsatisfactory and the proposal is inconsistent with this objective.

### **Build to Lines (BTL's)**

#### ***Required***

For the first 4 storeys of buildings, build-to-lines are as follows:

- 5 metres for storeys 1-4
- 9 metres for storeys above fourth storey

Therefore, on this site, BTL's apply to both Pittwater Road and St David Avenue.

#### ***Proposed***

The proposal has the following build-to-lines:

##### **(i) Pittwater Road**

- Ground Floor Level (Storey 1) – 5m from the kerb (complies)
- Levels 1, 2 and 3 (Storeys 2-4) – 3.5m to 14.5m from kerb (does not comply)
- Levels 4 to 8 (above 4<sup>th</sup> storey) – Part 3.5m/part 9m/part 13.4m/part 14.9m (does not comply)

##### **(ii) St David Avenue**

- Level 1 (Storey 1) – part 7.5m+(approx) from the kerb (does not comply)
- Levels 2, 3 and 4 (Storeys 2-4) – 8.5m to 10m from kerb (does not comply)
- Levels 5 to 9 (above 4<sup>th</sup> storey) – 8.5m to 10m from kerb (does not comply)

#### ***Response***

In assessing these non-compliant elements of the proposal, it is necessary to consider the underlying objectives, termed “merit considerations”, of the Build-to-Lines control. Accordingly, compliance with the merit considerations are addressed below:

##### ***(a) Ensure that future development defines streets and public spaces***

Notwithstanding the variations to the required build-to-lines under the E9 Locality, the proposed front setbacks to Pittwater Road are considered to adequately define the street.

The proposed Build-to-Lines to St David Avenue are considered satisfactory.

##### ***(b) Maintain a consistent building setback at street and upper levels***

The build to lines adopted in this proposal have been assessed as being satisfactory as the variations to the controls provide additional articulation and modulation which results in a better design outcome, provides additional softening of the built form and enhances the streetscape presentation of the development. Furthermore, the design response satisfies the provisions of SEPP 65 and the RFDC to be greater extent.

**(c) *Encourage a degree of differentiation that contributes to articulation or building facades and a reduction in visual bulk***

The proposed development is satisfactory in terms of articulation and visual bulk.

**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 future demolition, excavation and construction to have an adverse impact upon surrounding locality in terms of traffic, noise, dust, parking, accessibility, sediment and the safety of pedestrians given the major nature of the works and the scale of the demolition, large extent of excavation and lengthy time period for construction.</p> <p>Therefore, if approved, conditions of consent will be required to be imposed for Construction Management Plan and a Construction Traffic Management Plan is to be prepared. Issues to be addressed include pedestrian movements and safety, stormwater and wastewater disposal, waste management, 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 retail/commercial use and the residential 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>	YES (subject to conditions)

General Principal	Applies	Comments	Complies
		<p>In relation to the acoustic requirement on the residential component from traffic impact of Pittwater Road, an acoustic report prepared by Koikas Acoustic (dated 30 August 2011) was submitted with the application. The report examines the effect of external noise intrusion on the proposed development from the Traffic noise associated with Pittwater Road.</p> <p>The report concludes that the proposed site 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 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	YES	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.	YES
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. The site has been found to be suitable for the proposed use in its current state.</p>	YES
CL49 Remediation of Contaminated Land	NO	No Comment	Not Applicable

General Principal	Applies	Comments	Complies
CL49a Acid Sulfate Soils	NO	The site is not within an Acid Sulfate soils area on Council's Acid Sulfate Soils Hazard Map. The requirements of Clause 49a are not therefore applicable to the proposed development.	Not Applicable
CL50 Safety & Security	YES	<p>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.</p> <p>NSW Police have provided comments and recommendations in support of the application, as assessed under CPTED. The NSW Police recommendation could be included as conditions of consent if the application was recommended for approval.</p>	YES (subject to conditions)
CL51 Front Fences and Walls	NO	No Comment	Not Applicable
CL52 Development Near Parks, Bushland Reserves & other public Open Spaces	YES	<p>Clause 52 requires that development adjacent to parks, bushland reserves and other public open space, including another any other public open space is to be complementing the landscape character and public use and enjoyment of the land.</p> <p>The subject site adjoins the St David's Park, the proposed development incorporates a retail/café at ground level and therefore it maintains an open outlook to the public open space. Further, the public access to the park will not be affected by the proposal and will further be improved by the use of a retail/café at the ground level, which is considered to provide a degree of connection between the proposed development and the adjoining open space.</p> <p>The views to and from the public open space will not change from that which is existing.</p> <p>As such the proposal complies with the provisions of Clause 52 of WLEP 2000.</p>	YES
CL53 Signs	NO	No signage is proposed as part of this application. A separate development application is to be lodged for any signage at a later stage of development should this application be approved.	Not Applicable
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

General Principal	Applies	Comments	Complies
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 topography of the site is of slight to moderate slope falling in a south – easterly direction of approximately 7.6m from the rear north-western boundary towards the Pittwater Road frontage.</p> <p>The proposed development has been designed that response to the topography of the land by stepping the development with 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. However, there are a number of trees located on the adjoining park and St David's church site.</p> <p>Council's Landscape Officer notes (refer to 'Internal Referrals' in this report) that the "Arborist report provided addresses one London Plane Tree (<i>Platanus</i> sp.) located on the adjoining public land. Unfortunately none of the documentation provided addresses the impacts on a large <i>Eucalyptus botryoides</i> (Swamp Mahogany) located near the western boundary of the site, on the adjoining Uniting Church land.</p> <p>Council's Landscape Officer has indicated that <i>given the size of the tree and the amount of excavation proposed on the boundary. It is considered likely that the tree will be structurally compromised by excavation so close to the trunk. It is recommended that impacts on this tree be addressed by the applicant, which may require further discussion with the relevant property owner</i>"</p> <p>Based on the advice received from Council's Landscape Officer, there is insufficient information submitted with the application to determine the impact of the proposed development on the trees located on the adjoining sites and therefore this issue has been included as reason for refusal.</p>	NO
CL59 Koala Habitat Protection	NO	No Comment	Not Applicable



General Principal	Applies	Comments	Complies
CL60 Watercourses & Aquatic Habitats	NO	No Comment	Not Applicable
CL61 Views	YES	<p>Clause 61 states that development is to allow for the reasonable sharing of views.</p> <p>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.</p> <p>The applicant within the Statement of Environmental Effect (SEE) has undertaken a view analysis has been provided (see Section 5.3.2.3 and Appendix T) in the Statement of Environmental Effects. The visual/view impact analysis comprises images from six viewing locations being representative of the vistas which are considered to be important vantage points in the locality. Each of the view analysis depicts the existing view from each location, the view with the approved development on the Multiplex site added and the view with the both the Multiplex DA and the proposed development added.</p> <p>A review of the Plan reveals that, even if the building height achieved full compliance with the built form control, the degree of view sharing would be similar to that proposed under this application. Accordingly, It is considered that on balance, the development is considered reasonable with respect to view loss.</p> <p>Notwithstanding the above, if the building height achieved compliance, the degree of view sharing would be would be further minimised.</p>	YES
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 not achieve compliance with the requirement of this Clause.</p> <p>The site context, in conjunction with the proposed building heights, will result in a level of overshadowing to some of the</p>	YES

General Principal	Applies	Comments	Complies
		adjoining properties and the Pittwater Road carriageway. In this regard, although it is agreed that any development (even a complying development) of the site is likely to result in additional overshadowing of the adjoining sites.	
CL63 Landscaped Open Space	No	Clause 63 is not applicable to the proposed development, as the E9 Pittwater Road 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 residential apartments are provided with private open space (POS) in the form of upper level terraces and balconies. The POS for 70 out of 75 apartments achieve compliance with the with the minimum area requirement of 10 square metres. The private open space of these apartments also complies with the minimum dimension requirement of 2.5 square metres.</p> <p>However, the POS for 5 apartments (being the studio apartments Nos: 3.03, 4.03, 5.03, 6.03 and 7.03) does not achieve compliance with the minimum requirement, having demission of 1.5m<sup>2</sup> and a minimum area of 4m<sup>2</sup>.</p> <p>It is considered, that providing private open space that achieves compliance with the requirements of the Clause 64 is critical given the location of the site and the fact that the proposed development does not provide any communal open space for the residence.</p> <p>Accordingly, its is considered that if the application was worthy of approval, a condition could be included in the consent which requires that POS for the five (5) studio apartments be increased to achieve compliance with the requirement of Clause 64.</p>	YES (subject to condition)
CL65 Privacy	YES	<p>Clause 65 requires 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>Externally, the proposed development will not have unreasonable privacy impact given the location of the subject site is well separated from residential buildings.</p>	YES

General Principal	Applies	Comments	Complies
		<p>Internally, the design proposed development includes fin/wall and shutters/screens to balconies and terraces within the proposed development to minimise privacy impacts between the proposed apartments.</p> <p>The proposed development is considered to satisfactorily address the requirements of Clause 65 Privacy.</p>	
CL66 Building Bulk	YES	<p>Clause 66 requires buildings to have a visual bulk and an architectural scale consistent with structures on adjoining or nearby land. Buildings are not to visually dominate the street or surrounding spaces, unless the applicable Locality Statement provides otherwise.</p> <p>The bulk of the development is addressed in detail by Council's urban Designer (see referral section of this report) where no specific objections were raised in relation to the bulk of the building.</p> <p>Further to the above, the applicant has submitted an Urban Design Study, which was conducted by GMU Design. The observations undertaken as part of this study concludes that:</p> <ul style="list-style-type: none"> <li>• <i>"Tie the east and west sides of Dee Why Town Centre together to create a thriving town core.</i></li> <li>• <i>Balance scale and enclosure across Pittwater Road so both sides have built emphasis and strong sense of place announcing the centre of both civic and retail "town".</i></li> <li>• <i>Reinforce built edge to Pittwater Road for length of "town".</i></li> <li>• <i>Celebrate key vistas through stronger corners.</i></li> <li>• <i>Create sense of town entry to Pittwater Road to punctate movement along Pittwater Road and create stronger sense of extent of town centre to the main route into Dee Why Town Centre".</i></li> </ul> <p>Having regard to the above comments, it is considered that the bulk of the proposal is not dissimilar in form to other contemporary residential and mixed used developments situated within Dee Why Town Centre. The general principle for building bulk as stated in the Warringah Local Environment Plan 2000 requires structures not to dominate the street or surrounding spaces and to have progressive setbacks for side and rear boundaries.</p>	YES

General Principal	Applies	Comments	Complies
		<p>The proposed development is of contemporary design, using a range of natural building materials complimented by balconies and terraces throughout the site, to provide a highly articulated development. The architectural design has adequately and successfully minimised the bulk of the buildings.</p> <p>Accordingly, the development is not considered to result in any adverse visual impacts on the surrounding development and is considered to be satisfactory with regard to the provisions of Clause 66.</p>	
CL67 Roofs	YES	<p>Clause 67 requires roofing to complement the local skyline.</p> <p>A variety of roof forms have been provided within the Dee Why Town Centre. Flat roofs are the predominant roof form of the surrounding residential development.</p> <p>The proposed development provides flat metal roofs which will not be readily visible from the street. No features will be located on the roof beyond a lift over run and solar panels which are not considered be detrimental to the design of the building or to any views.</p> <p>The roof form proposed is considered appropriate for the type of development proposed and are compatible with other development in the locality. Accordingly, the proposal is consistent with the requirement of Clause 67.</p>	YES
CL68 Conservation of Energy and Water	YES	<p>BASIX Certificates has been submitted for the residential component of the development. 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. Additionally, conditions should be included in the consent to ensure the commitments identified on the BASIX certificate are implemented.</p>	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 Access Statement of Compliance (prepared Accessible Building Solutions – dated 27 April 2010) has been submitted</p>	YES (subject to conditions)

General Principal	Applies	Comments	Complies
		<p>with the application. The report notes that the proposed development (as a whole) has demonstrated a reasonable degree of accessibility.</p> <p>Further to the above, it is recommended that if the application is worthy of approval that condition be included in the consent to ensure wheelchair access to retail and commercial component is in compliance with AS1428:1 and DDA premises standard.</p> <p>Subject to the above condition, the proposal is considered to comply with the requirements of Clause 69 subject to conditions.</p>	
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 site facilities proposed as part of the proposed development has been reviewed by Council's Waste Officer, who has provided the following comments:</p> <p><i>"The proposal does not comply with Policy No. PL850 WASTE. Specifically:-</i></p> <ol style="list-style-type: none"> <li><i>1) The building requires access to be provided for a HRV size waste collection truck 10.5 metres long. The plans only provide for a vehicle 9.5 metres long.</i></li> </ol> <p><i>The "Statement of Environmental Effects" clause 5.3.4.3 Loading provides a list of reasons as to why the applicant believes the proposal does not need to comply with the policy. All are unacceptable. The building must be designed in accordance with Policy No. PL850 WASTE and must accommodate a waste collection vehicle 10.5 metres long.</i></p> <ol style="list-style-type: none"> <li><i>2) The access door to the residential bin room requires the following modifications:</i> <ul style="list-style-type: none"> <li><i>• Minimum 1200mm wide.</i></li> <li><i>• Door must swing outwards.</i></li> <li><i>• Door must be able to be latched in the open position.</i></li> </ul> </li> </ol> <p><b>Other Concerns:</b></p> <p><i>Two different layouts (plans) have been provided for the residential bin room. One showing 57 bins (the correct amount) and another showing 29 bins.</i></p> <p><i>Can it be confirmed which layout is being</i></p>	NO

General Principal	Applies	Comments	Complies
		<p><i>submitted with this application.</i></p> <p><i>There are also two different layouts shown for the commercial bin room. This also needs to be confirmed which one is correct".</i></p> <p>Based on the above advice, the application is unsatisfactory with regards to Clause 70 and this issue has been included as a reason for refusal.</p>	
CL71 Parking facilities (visual impact)	YES	<p>All on-site car parking is located within the basement level, with the exception of the 14 space for the use of retail is located ground level, however these spaces are located towards the rear of the site and as such, the proposed car park will have no visual impact when viewed from the street.</p> <p>Accordingly, the car parking will not dominate the street frontage or other public places.</p>	YES
CL72 Traffic access & safety	YES	<p>Vehicular access to the site will be provided from St David Avenue. It is proposed to provide separate vehicular accesses for private and service vehicles from St. David Avenue to serve the proposed development. As such two driveways are proposed along St. David Avenue. The northern driveway would provide access to the basement car parking areas, while the southern driveway would provide access to the loading area.</p> <p>Council's Traffic Engineer and Council's Development Engineers (refer to the referrals section of this report) have reviewed the proposed development and have raised a number of issues regarding the Vehicular and Pedestrian access to the site as well as fact that the access ramp not confirming to Australia standard.</p> <p>Based on the above comments, the proposed development cannot be supported in the present form and therefore, this issue has been included as a reason for refusal.</p>	NO
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>Adequate area has been provided within development for loading and unloading operations for the retail and commercial component of the development to ensure servicing of the retail use and the manoeuvring of service vehicles.</p> <p>The service area provides for one (1) service bay with design to accommodate an 8.8m metre long medium rigid truck; two</p>	YES

General Principal	Applies	Comments	Complies
		<p>bays for small rigid truck and two for vans.</p> <p>Council's Traffic Engineer and the RTA have raised no objection to the loading and unloading facilities for the development.</p> <p>Further to the above, the basement area may be used for the loading and unloading associated with residential removals.</p>	
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>Refer to 'Schedule 17 – Car parking provision' in this report for an assessment of compliance with the requirements of Clause 74. In summary, the development provides surplus car parking spaces for the proposed development.</p>	YES
CL75 Design of Carparking Areas	YES	<p>The car park has been generally laid out in a satisfactory manner in that the proposal has allowed for appropriate manoeuvring for vehicles.</p> <p>In this regard it is considered that the proposed car parking area is designed to adequately accommodate the development.</p> <p>The design of the car parking and access areas is addressed in the applicant's traffic report (prepared by Halcrow). Council's Traffic Engineer has raised no objection to the proposal subject to a condition which requires that The proposed driveway, parking aisle and car spaces are to conform with Standards Australia AS/NZS 2890.1-2004.</p>	YES (subject to conditions)
CL76 Management of Stormwater	YES	<p>Council's Development Engineer has reviewed the proposal and requested additional information 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.</p> <p>Some of these matters could be dealt with by way of conditions, and where additional information is required, this issue has been included as a reasons for refusal.</p>	NO
CL77 Landfill	YES	<p>Clause 77 states that landfill is not to have any adverse impacts on the built or natural environment. From the plans submitted with the application, It is evident that the proposed development will not require an excessive level of fill.</p>	YES

General Principal	Applies	Comments	Complies
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
CL82 Development in the Vicinity of Heritage Items	YES	<p>The subject site is located in the vicinity of a Heritage item specified under the Warringah LEP 2000. The following Heritage items of local significance are within this locality:</p> <ul style="list-style-type: none"> <li>• <i>Dee Why Public Library;</i></li> <li>• <i>Dee Why Fire Station</i></li> <li>• <i>Pacific Lodge – Salvation Army site</i></li> </ul> <p>The application was accompanied by a Heritage Impact Report prepared by City Plan Heritage.</p> <p>The application was reviewed internally by staff within the Strategic and Development Services Division, specialising in heritage, which raised concerns with the impact of the height and scale of the proposed development on the setting of the Dee Why Library item.</p> <p>This officer's assessment is not concurred with on the basis of the substantial separation distances between the subject site and the Dee Why Library and does not warrant refusal of the application on these grounds. However, it is noted that a reduction in the height of the proposed development would go to addressing the concerns raised in the internal referral.</p> <p>The assessment contained in the applicant's heritage impact report is considered to be generally sound and satisfies the requirements of this principle.</p> <p>However, it is considered that a peer review by an external heritage consultant should be obtained in relation to any amended scheme, should the JRPP be minded to defer the application.</p>	YES
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

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

It is considered that the submitted Site Analysis, in conjunction with the Statement of Environmental Effects adequately addresses how the development responds to its surrounds and the locality.

### Schedule 10 - Traffic Generating Development

Schedule 10 requires Council to regard development as traffic generating development if the proposal meets the following criteria:

(2) *If the site of the development has direct vehicular or pedestrian access to an arterial road (or a road connecting with an arterial road, where the access is within 90 metres, measured along the road alignment of the connecting road, of the arterial road):*

(a) *the erection of, or the conversion of a building into, a residential flat building comprising 75 or more dwellings or the enlargement or extension of a residential flat building by the addition of 75 or more dwellings.*

The development proposes the construction of mixed use development which accommodates 75 apartments. The development site is located within 90m from Pittwater Road. Therefore, the application has been considered under Schedule 3 of State Environmental Planning Policy (Infrastructure) 2007 and has been referred to the RTA as Traffic Generating Development

The RTA has not raised any objection to the application subject to conditions.

### Schedule 17 - Carparking Provision

Schedule 17 requires a development to provide on-site car parking at the following rates (note: required car parking spaces are rounded up):

Residential Component	Required
1 bedroom	51 x 1 car space = 51 spaces
2 Bedroom	22 x 1.2 car spaces = 25 spaces
3 Bedroom	2x 1.5 car spaces = 3 spaces
Visitors	1 car space/5 dwellings = 15 spaces
<b>Total</b>	<b>94 car spaces</b>

Retail/commercial Component	Required
6.1 spaces per 100m <sup>2</sup>	284m <sup>2</sup> of GLFA = 18 spaces
<b>Total</b>	<b>18 car spaces</b>

The table above indicates will require total of 112 spaces. The proposed development provides for a total of 116 car parking spaces complies with the provisions of Schedule 17.

## POLICY CONTROLS

### Warringah Section 94A Development Contribution Plan

The proposal is subject to the application of Council's Section 94A Development Contributions Plan.

The following monetary contributions are applicable:

Warringah Section 94A Development Contributions Plan		
Contribution based on total development cost of		\$20,344,000.00
Contribution - all parts Warringah	Levy Rate	Contribution Payable
Total S94A Levy	0.95%	193,268
S94A Planning and Administration	0.05%	10,172
Total	1.0%	\$203,440

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.

## 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.

On balance, the proposed development, in its current form, cannot be supported. The primary reasons relate to the failure of the proposal to satisfy the relevant development standards applying to the site under WLEP 2000 and SEPP 65 and the Residential Flat Design Code.

In particular, the proposal does not comply with the building height control of 6 storeys and 24 metres applying to the E9 – Pittwater Road Locality, exceeding the maximum height by 3 storeys and 3.4 metres. In this regard, the applicant has provided insufficient justification for the departures from the planning controls. It is acknowledged that the site is located in close vicinity to a prominent corner within the Dee Why Town Centre (DYTC), is a “*marker site*” and warrants a stronger physical expression of the built form and architectural character for that reason. To achieve this, the applicant has adopted three (3) measures, including additional height in the form of an 8-9 storey and 27.4m building height, reduced Build-to-Lines (BTL's) to the north-eastern corner and a nil setback to the adjoining park. From an urban design perspective the reduced BTL's and additional storeys (only to the 8th storey) within the building represent a good urban design outcome, however, the exceedence of the building height control for the 9<sup>th</sup> storey and the overall height (in metres) has not been sufficiently justified and cannot be supported.

The non-compliance with the overall building height does not “minimise” the visual impact of the building and its associated overshadowing and impacts on the availability of solar access to adjoining properties and the public domain. It is considered that the strength of the built form as it presents to the corner and the park can be adequately achieved through the manner in which the building facades present to the north-eastern (park) and south-eastern (Pittwater Road) aspects and not by additional overall height.

The applicant's premise that the additional building height is warranted to better relate the proposed development to the future Multiplex towers on Site B of DYTC is not sufficiently well founded and is not reflected in the current planning controls applying to the site. Furthermore, it must be stressed that the height controls applying to the E9 Locality were established when the WLEP 2000 was gazetted in 2000 and the Multiplex towers were a later "spot rezoning" under a site specific LEP to create the E21 – DYTC Locality (2008-2009) to facilitate a town centre with associated upzoning of building height up to 15-17 storeys (taking the form of slender towers with human scale and landscaped podiums to streets and public spaces). Therefore, any increases in height for sites outside the E21 Locality, cannot be ad-hoc and "site by site", rather such increases should be assessed holistically as part of a review of the "remainder" of the DYTC localities or through a Planning Proposal.

The additional height being sought under this proposal results in a higher density of development on the site which is not offset by a reduction in the amount of development elsewhere on the site (i.e. more slender building forms with podiums topped with communal open space areas) and there are no tangible community benefits, such as improvements to the park and bus stop which might otherwise provide an offset and be positively contributing to public amenities and hence the public interest.

Ultimately, the onsite deficiencies and additional building height over and above the current planning controls is symptomatic of the overdevelopment of the site.

In order to address the building height concerns, it is recommended that the proposed development be amended by deleting Level 8 (9<sup>th</sup> storey) and Level 9 (loft) or substantially reducing the floor area of Level 8 by increasing the setbacks to Pittwater Road, the adjoining park, the church and St David's Avenue, such that the uppermost levels are designed as a proper "loft" level, and hence integrated within a more interesting and innovative roof form, and so as not to be viewable as a storey from the street or other surrounding spaces.

Additionally, the absence of any meaningful and reasonably sized communal open space or significantly greater private open space for each residential apartment is a fundamental deficiency of the proposal as it would result in inadequate amenity for the future residents of the development.

Furthermore, the inadequate design of the rear laneway needs to be rectified, which will involve making the ramp gradient more suitable for service vehicles.

A number of other matters are also required to be satisfactorily addressed prior to any consent being granted to this development, including:

- Waste storage and access
- Stormwater Design
- Approval for this Integrated Development from the NSW Office of Water in relation to temporary construction dewatering
- Additional clarifying information in relation to Light and Ventilation requirements under the RFDC
- Additional information in relation to the impact of the development on trees (park and church sites)
- Revisiting the potential to incorporate the public toilet facilities within the development to enhance the amenity for the proposed development and the public domain

Therefore, whilst the proposal exhibits a high quality of architecture, finishes and general design attributes and represents a good opportunity to provide for further urban renewal and revitalisation of the DYTC on disused prominent corner site, the proposal does not sufficiently satisfy the planning controls applying to the site under WLEP 2000 and SEPP 65 and the Residential Flat Design Code and contains insufficient compensatory design features and community benefit to outweigh these non-compliances and onsite deficiencies to be in the public interest.

Accordingly, it is considered that the Joint Regional Planning Panel (JRPP), as the consent authority, should refuse the application for the reasons detailed within the "Recommendation" section of this report.

## RECOMMENDATION - REFUSAL

THAT the Joint Regional Planning Panel (JRPP), as the consent authority, **refuse** Development Consent to Development Application No DA2011/0887 for demolition works and construction of a mixed retail, commercial and residential development and use of premises as retail shops, a café and residential units on land at Lot B, DP 381816, Lot 4 DP 417528, and Lot 1 DP 300967, known as Nos.697, 699 and 701 Pittwater Road, Dee Why for the reasons outlined as follows:

1. Pursuant to Section 79C(1)(a) of the *Environmental Planning and Assessment Act, 1979* and Clause 12(1)(b) of *Warringah Local Environment Plan 2000* (as amended) the proposed development is considered to be inconsistent with the provisions of *State Environmental Planning Policy No 65 – Design Quality for Residential Flat Development*.
2. Pursuant to Section 79C(1)(a) of the *Environmental Planning and Assessment Act, 1979* and Clause 12(3)(a) of *Warringah Local Environment Plan 2000* (as amended) the proposed development is inconsistent with the Desired Future Character of the E9 – Pittwater Road Locality.
3. Pursuant to Section 79C (1) (a) (ii) of the *Environmental Planning and Assessment Act, 1979*, the proposed development does not comply with the development standard for “Height of Buildings” and is inconsistent with the objectives of the Height of Buildings standard under the provisions of the Draft Warringah Local Environmental Plan 2009.
4. Pursuant to Section 79C(1)(a) of the *Environmental Planning and Assessment Act, 1979* and Clause 12(2)(b) of *Warringah Local Environment Plan 2000* (as amended) the proposed development does not comply with the Built Form Controls under the E9 – Pittwater Road Locality statement as follows:
  - Building Height and
  - Build to Lines.
5. Pursuant to Section 79C(1)(a) of the *Environmental Planning and Assessment Act, 1979* and Clause 12(1)(a) of *Warringah Local Environment Plan 2000* (as amended) the development is considered to be inconsistent with the following General Principles of Development Control as follows:
  - Clause 58 – Protection of Existing Flora (Impact on Significant Trees),
  - Clause 70 - Site facilities (Waste Facilities), and
  - Clause 72 – Traffic Safety and Access (Design of the Rear Laneway).
  - Clause 76 – Management of Stormwater
6. 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.
7. Pursuant to Section 79C(1)(e) of the *Environmental Planning and Assessment Act, 1979* the proposed development is not in the public interest.
8. Insufficient information has been submitted in relation to the following to allow a complete and proper assessment of the application:
  - Compliance with the daylight and natural ventilation requirements of the Residential Flat Design Code,
  - Stormwater design, and
  - Impact on significant trees.