

**JOINT REGIONAL PLANNING PANEL**  
**Sydney East Region**

<b>JRPP No:</b>	2011SYE128
<b>DA No:</b>	DA2010/1839
<b>Modification No:</b>	MOD2011/0246
<b>Local Government Area</b>	Warringah Council
<b>Proposed Development</b>	Section 96(2) Modification of DA2010/1839 for demolition works and construction of residential flat buildings and associated basement car park including landscape/site works
<b>Address / Property Description:</b>	Lot 1 in DP 1136022, No. 2 Mooramba Road, Dee Why; and Lot 2 in DP 1136022, No. 10 Painters Parade, Dee Why
<b>Applicant:</b>	Dee Why Property Development Pty Ltd
<b>Number of Submissions</b>	Nil
<b>Recommendation</b>	Section 96(2) Approval
<b>Report by:</b>	Peter Robinson, Acting Deputy General Manager for Warringah Council



### Assessment Report and Recommendation

<b>Assessment Officer:</b>	Tony Collier
<b>Application Lodged:</b>	7 November 2011
<b>Plans Reference:</b>	DA06(B); DA11(C); DA12(C); DA13(C); DA14(C); DA15(C); DA16(C); DA17(C); DA20(C); DA21a(C); DA21b(C); DA21c(C); DA30(B); DA31(B); DA32(B); DA35(B); DA36(B); DA38(B); DA39(B); DA40(B); DA41(B); DA50(B); DA70(B); DA71(A); 10-074 L01-REVC; 10-074 L02-REVC; 10-074 L03-REVC; and 10-074 L04-REVB.
<b>Owner:</b>	Dee Why Property Development Pty Ltd
<b>Zone(s):</b>	R2 Low Density Residential (10 Painters Parade); and R3 Medium Density Residential (2 Mooramba Road)
<b>Permissible or Prohibited Land use:</b>	R2 Low Density Residential: Prohibited (car park); and R3 Medium Density Residential: Permitted with Consent (Residential Flat Building)
<b>Variations to Development Standard (Clause 4.6):</b>	Height of Buildings (Supported)
<b>Referred to ADP:</b>	No
<b>Referred to WDAP:</b>	No
<b>Referred to JRPP</b>	Yes (Section 96(2) modification to DA2011/1839)
<b>Land and Environment Court Action:</b>	None current or pending.

### SUMMARY

<b>Submissions:</b>	Nil
<b>Submission Issues:</b>	Nil
<b>Assessment Issues:</b>	<ul style="list-style-type: none"><li>• Building height;</li><li>• Planting within overland flow path; and</li><li>• Introduction of external fire walls.</li></ul>

# **LOCALITY PLAN** (not to scale)



**Subject Site:** Lot 1 in DP 1136022, No. 2 Mooramba Road, Dee Why; and Lot 2 in DP 1136022, No. 10 Painters Parade, Dee Why

**Public Exhibition:** Notification 1  
The subject application was publicly exhibited in accordance with the EPA Regulation 2000, Warringah Local Environment Plan 2000 and Warringah Development Control Plan No. 1. The application was initially notified to 119 adjoining land owners and occupiers for a minimum period of 30 calendar days commencing on 18 November 2011 and being finalised on 20 December 2011. Furthermore, the application was advertised in the Manly Daily on 19 November 2011 and a notice was placed upon the site.

Notification 2  
The application was re-notified in accordance with the EPA



Regulation 2000, Warringah Local Environment Plan 2011 and Warringah Development Control Plan 2011 to 119 adjoining land owners and occupiers for an extended period over Christmas and the New Year commencing on 16 December 2011 and being finalised on 6 February 2012. The re-notification was to advise that the consent authority is the Joint Regional Planning Panel.

## **SITE DESCRIPTION**

The subject site consists of two allotments individually known as Lot 1, DP 1136022, No. 2 Mooramba Road, Dee Why; and Lot 2, DP 1136022, No. 10 Painters Parade, Dee Why.

Lot 1, DP 1136022, No. 2 Mooramba Road, Dee Why is irregular in shape and has an area of 6,233m<sup>2</sup>. Lot 2, DP 1136022, No. 10 Painters Parade, Dee Why is regular in shape and has an area of 925m<sup>2</sup>. The site has a total area of 7,158m<sup>2</sup>.

The site has a split zoning. Specifically, Lot 1, DP 1136022, No. 2 Mooramba Road, Dee Why is located in the R3 Medium Density Residential zone under WLEP 2011. Lot 2, DP 1136022, No. 10 Painters Parade, Dee Why is located in the R2 Low Density Residential under WLEP 2011.

The site has its primary street frontage to Mooramba Road and its secondary street frontage to May Road. The site also has a frontage onto Painters Parade but, due to topographical constraints, this frontage is inaccessible in its current state.

The site has varying topographical features, particularly relating to slope. The majority of the lot fronting Mooramba Road and May Road is now generally flat due to excavation works associated with DA2010/1839 which was approved on 10 February 2011. The western section of the site nearest to Painters Parade, has a slope of up to 21.2% (6.0 metres over a distance of 28 metres).

Vegetation is now limited to the western part of the site nearest to Painters Parade, with no landscaping being located on the remainder of the site. The existing vegetation is low lying and is not considered to be of any environmental or aesthetic significance.

The site is currently fenced off from access due to demolition and excavation works being carried out in accordance with approved DA2010/1839.

The site is surrounded by a mix of development due to its proximity to the commercial strip of Pittwater Road and the neighbouring residential area. Residential development of varying age, bulk and scale is located immediately to the north, south and west of the site while commercial development, including a service station is located immediately to the east on the corner of Pittwater Road and Mooramba Road.

## **RELEVANT PRIOR APPROVALS**

### DA2010/1839 (parent DA)

Lodged on 8 November 2010 for demolition works and construction of residential flat buildings and associated basement car park including landscape/site works.



The applicant proposed to demolish all existing on-site structures relating to the motor showroom and construct nine (9) residential flat buildings over a common basement car park. The development included landscape works and the retention of the residual allotment facing Painters Parade (Lot 2, No. 10 Painters Parade).

The application was assessed under the provisions of *Warringah Local Environmental Plan 2000* and approved by JRPP on 10 February 2011 subject to conditions.

#### MOD2011/0117 (Mod 1)

Lodged on 30 May 2011 under s.96(2) for various modifications to DA2010/1839 including the raising of the building heights, the reconfiguration of unit types and the minor repositioning of buildings. The basement car park was retained as approved under DA2010/1839.

The application was approved by JRPP on 5 September 2011 subject to conditions.

#### MOD2011/0186 (Mod 2)

Lodged on 16 August 2011 under s.96(1A) for a reduction to the area of the basement car park by 478m<sup>2</sup> and minor relocation of the services and lift cores due to the modification approved under MOD2011/117 (Mod 1).

The application was approved under delegation on 28 October 2011 subject to conditions.

#### MOD2011/0237 (Mod 3)

Lodged on 25 October 2011 under s.96(1A) for the modification of the internal layouts of all apartments to satisfy the legislation for disabled access.

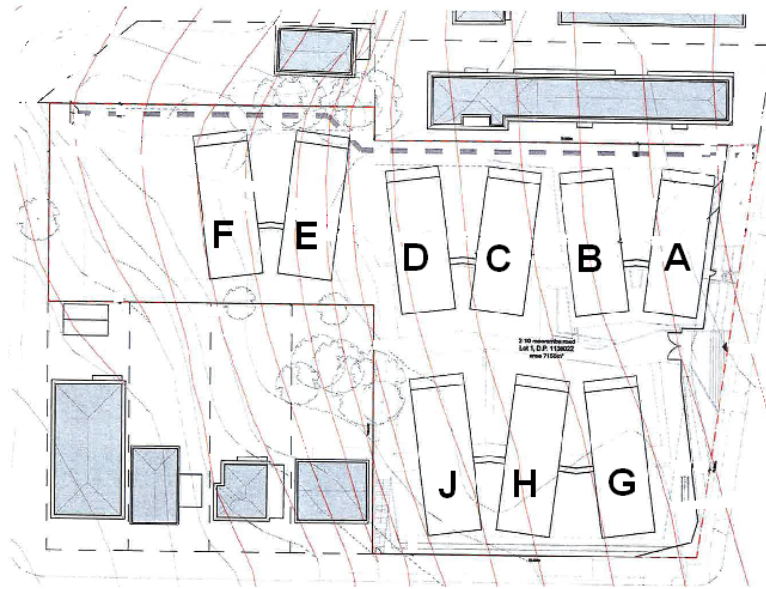
The application was approved under delegation on 30 December 2012 subject to conditions.

### **PROPOSED MODIFICATION IN DETAIL**

The subject proposal is modification No. 4 in the sequence of applications for this development.

The illustration below is provided to assist in identifying the location of buildings within the approved development.





Modified by the author from Plan No. DA05 – Site Analysis 2 by JAA Studio

The applicant seeks to modify DA2010/1839 in the following manner:

#### Basement

- The floor level of the eastern two-thirds of the basement car park is lowered by 150mm (from RL 27.71 to RL 27.56);
- The floor level of the western one-third of the basement car park is raised by 190mm (from RL 27.71 to RL 27.90);
- Plant Room/Interim Garbage Store located to the south of the driveway is redesigned to provide a plant room with direct street access to Mooramba Road;
- An electrical switchroom is incorporated adjacent to the Central Waste Holding Bay;
- Deletion of staircase in south-east corner;
- Washroom facilities are added in the southern side of the car park for maintenance personnel; and
- The internal layout of the car park has been partially redesigned to accommodate the above-mentioned changes. The car park maintains the approved 151 car parking spaces.

#### Ground Level and Landscaping

- A substation is added to the front setback area facing Mooramba Road and immediately south of the approved driveway;
- A hydrant booster is added to the front setback area facing Mooramba Road;
- A 0.5m high mechanical exhaust turret which services the basement car park is incorporated into the landscaped area facing Mooramba Road;
- Three air intake vents which service the basement car park are included along the northern side of the property abutting the approved stormwater easement;
- An access footpath is proposed over Council owned land from the southern side of the property to the street alignment of May Road;
- The raised landscaped areas between the buildings include boulder/wall edging around the base of each mound to improve stability and restrict organic matter from interference with drainage;
- Inclusion of eight (8) external hydrants throughout the property;



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- Construction of 1.5m to 2.0m high fire separation walls between Buildings B, C, D, E and F in lieu of fire sprinkler systems; and
- Incorporation of a 0.6m wide landscaped hedge (*Syzygium australe*) along the northern boundary.

#### Building A

- The roof level of Building A is lowered by 150mm (from RL 40.310 to RL 40.160);
- Addition of an access hatch to roof;
- Replacement of fire sprinklers with spandrel panels and slab projections;
- Replacement of full exterior timber cladding with partial 'timber-like' cladding and off-form concrete; and
- Replacement of bi-fold louvered screens to the inward-facing facade with sliding louvered screens.

#### Building B

- The roof level of Building B is lowered by 200mm (from RL 43.360 to RL 43.160);
- Addition of an access hatch to roof;
- Addition of a 0.7m high lift overrun to roof;
- Replacement of fire sprinklers with spandrel panels and slab projections;
- Replacement of full exterior timber cladding with partial 'timber-like' cladding and off-form concrete; and
- Replacement of bi-fold louvered screens to the inward-facing facade with sliding louvered screens.

#### Building C

- The roof level of Building C is lowered by 200mm (from RL 43.360 to RL 43.160);
- Addition of an access hatch to roof;
- Replacement of fire sprinklers with spandrel panels and slab projections;
- Replacement of full exterior timber cladding with partial 'timber-like' cladding and off-form concrete; and
- Replacement of bi-fold louvered screens to the inward-facing facade with sliding louvered screens.

#### Building D

- The roof level of Building D is lowered by 200mm (from RL 43.360 to RL 43.160);
- Addition of an access hatch to roof;
- Addition of a 0.7m high lift overrun to roof;
- Replacement of fire sprinklers with spandrel panels and slab projections;
- Replacement of full exterior timber cladding with partial 'timber-like' cladding and off-form concrete; and
- Replacement of bi-fold louvered screens to the inward-facing facade with sliding louvered screens.

#### Building E

- The roof level of Building E is lowered by 250mm (from RL 46.860 to RL 46.610);
- Addition of an access hatch to roof;
- Replacement of fire sprinklers with spandrel panels and slab projections;
- Replacement of full exterior timber cladding with partial 'timber-like' cladding and off-form concrete; and
- Replacement of bi-fold louvered screens to the inward-facing facade with sliding louvered screens.

#### Building F

- The roof level of Building F is lowered by 300mm (from RL 49.910 to RL 49.610);
- Addition of an access hatch to roof;
- Addition of a 0.7m high lift overrun to roof;
- Replacement of fire sprinklers with spandrel panels and slab projections;
- Replacement of full exterior timber cladding with partial 'timber-like' cladding and off-form concrete; and
- Replacement of louvered screens at ground level to sliding louvers.
- Replacement of bi-fold louvered screens to the inward-facing facade with sliding louvered screens.

#### Building G

- The roof level of Building G is lowered by 150mm (from RL 40.310 to RL 40.160);
- Addition of an access hatch to roof;
- Addition of an external enclosed fire egress stairwell between the top floor of Building G and Building H;
- Replacement of full exterior timber cladding with partial 'timber-like' cladding and off-form concrete;
- Replacement of fire sprinklers with spandrel panels and slab projections;
- The fully enclosed timber louvered south-facing balconies to be made partially open through the inclusion of 2.5m high translucent glass louvers; and
- Replacement of bi-fold louvered screens to the inward-facing facade with sliding louvered screens.

#### Building H

- The roof level of Building H is lowered by 200mm (from RL 43.360 to RL 43.160);
- Addition of an access hatch to roof;
- Addition of a 0.7m high lift overrun to roof;
- Addition of an external enclosed fire egress stairwell between the top floor of Building G and Building H;
- Replacement of fire sprinklers with spandrel panels and slab projections;
- Replacement of full exterior timber cladding with partial 'timber-like' cladding and off-form concrete;
- The fully enclosed timber louvered south-facing balconies to be made partially open through the inclusion of 2.5m high translucent glass louvers; and
- Replacement of bi-fold louvered screens to the inward-facing facade with sliding louvered screens.

#### Building J

- The roof level of Building J is lowered by 200mm (from RL 43.360 to RL 43.160);
- Addition of an access hatch to roof;
- Replacement of fire sprinklers with spandrel panels and slab projections;
- Replacement of full exterior timber cladding with partial 'timber-like' cladding and off-form concrete;
- The fully enclosed timber louvered south-facing balconies to be made partially open through the inclusion of 2.5m high translucent glass louvers; and
- Replacement of bi-fold louvered screens to the inward-facing facade with sliding louvered screens.





The buildings will continue to be arranged around the site in a regular 'zig-zag' formation with each building being offset to each other at an angle of approximately 15° thereby maintaining a building separation of between 2.5m to 10.0m. Each pair of buildings will continue to be connected by glass-enclosed bridge walkways at the upper levels.

## **AMENDMENTS TO THE SUBJECT APPLICATION**

The applicant has provided a written request dated 18 January 2011 to delete Condition No. 28A to form part of this application. Condition No. 28A was imposed on MOD2011/0237 lodged under s.96(1A) of the *Environmental Planning and Assessment Act, 1979* due to the plans which accompanied that application indicating the lowering of the building heights which is actually the subject of this application.

Condition No. 28A states:

### **“28A. Floor Levels**

*This consent does not authorise the alteration of finished floor levels. The finished floor levels to all buildings are to remain as approved under MOD2011/0117.*

*Details demonstrating compliance are to be submitted to the Certifying Authority prior to the issue of the Construction Certificate.*

**Reason:** *To ensure consistency with the approved plans.”*

In this regard, under s.2.4 of Warringah DCP, re-notification/advertising is not required as the request to delete the condition does not cause any greater environmental impact than has already been approved.

## **STATUTORY CONTROLS**

- a) Environmental Planning and Assessment Act 1979;
- b) Environmental Planning and Assessment Regulation 2000;
- c) Contaminated Lands Management Act 1997;
- d) State Environmental Planning Policy No. 55 – Remediation of Land;
- e) State Environmental Planning Policy No. 65 – Design Quality of Residential Flat Development;
- f) State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004;
- g) State Environmental Planning Policy (Infrastructure) 2007; and
- h) Warringah Local Environmental Plan 2011.

## **NON-STATUTORY CONTROLS**

- a) Warringah Development Control Plan 2011 (adopted by Council on 8 June 2010 and effective as of 9 December 2011).

## **PUBLIC EXHIBITION**

### Notification 1

The subject application was publicly exhibited in accordance with the EPA Regulation 2000, Warringah Local Environment Plan 2000 and Warringah Development Control Plan No. 1. The application was initially notified to 119 adjoining land owners and occupiers for a minimum period of 30 calendar days commencing on 18 November 2011 and being finalised



on 20 December 2011. Furthermore, the application was advertised in the Manly Daily on 19 November 2011 and a notice was placed upon the site.

#### Notification 2

The application was re-notified in accordance with the EPA Regulation 2000, Warringah Local Environment Plan 2011 and Warringah Development Control Plan 2011 to 119 adjoining land owners and occupiers for an extended period over Christmas and the New Year commencing on 16 December 2011 and being finalised on 6 February 2012. The re-notification was to advise that the consent authority is the Joint Regional Planning Panel.

As a result of the public exhibition process no submissions were received

#### **MEDIATION**

Has mediation been requested by the objectors? No

Has the applicant agreed to mediation? No

Has mediation been conducted? No

#### **LAND AND ENVIRONMENT COURT ACTION**

There are no Land and Environment Court actions pending on this application.

#### **REFERRALS**

##### **External**

##### Ausgrid

The application was referred to Ausgrid for comment in accordance with clause 45(2) of *State Environmental Planning Policy (Infrastructure) 2007*.

The application includes provision of a substation to be located at the north-eastern corner of the site, facing Mooramba Road.

Ausgrid have assessed the application and raise no objection to the development subject to conditions that are included in the recommendation of this report.

##### **Internal**

##### Development Engineer

Council's Development Engineer has assessed the application and has not raised any objection to the proposal subject to the following:

- a) The deletion from the plans of the proposed landscaped hedge along the northern side of the overland flow path;
- b) The deletion from the plans of the proposed footpath crossover onto May Road; and
- c) An amendment to imposed Condition No. 17A to read:

##### **"17A. On-site Stormwater Detention**



*An On-site Stormwater Detention system must be designed and constructed in accordance with Council's current On-site Stormwater Detention Technical Specification, and generally in accordance with the concept drainage plans prepared by Waterman, drawing number 23959 SDP01 to SDP05, dated P3.*

*Detailed drainage plans are to be prepared by a suitably qualified Civil Engineer, who has membership to the Institution of Engineers Australia, National Professional Engineers Register (NPER) and registered in the General Area of Practice for civil engineering.*

*The drainage plans must address the following:*

- i. OSD high level overflow pipe is to be designed to cater for minimum 340 litres per second.*
- ii. Any surcharge flows from the OSD tank in the event of a blockage to the orifice plate must be conveyed to the kerb and gutter system in Mooramba Road via a pit and pipe system.*
- iii. A catch drain or swale to divert flows to the headwall located due west of the subject. Catch drain or swale is to be designed to cater for the 1 in 100 year ARI flows.*
- iv. OSD tank is to have minimum dimensions of 32.5m long x 5.25m wide and to provide minimum 318 cubic metres.*

*Detailed drainage plans, including engineering certification confirming the above requirements have been satisfied and complying with Council's current On-site Stormwater Detention Technical Specification, are to be submitted to the Certifying Authority for approval prior to the issue of the Construction Certificate.*

**Reason:** *To ensure appropriate provision for the disposal of stormwater and stormwater management arising from the development. (Special condition)"*

#### Assessing Officer's Comment

The deletion of the landscaped hedge along the northern side of the overland flow path does not require an additional condition to be imposed which prohibits its installation. This is already addressed under Condition No. 22 which was imposed under DA2010/1839 restricting the planting of grass or the like within the overland flow path only.

The amended Condition No. 17A and is included in the Recommendation in this report.

The deletion of the footpath is addressed through an additional condition which stipulates that the Council does not approve of the construction of the footpath and is included in the recommendation in this report.

#### Building and Compliance

Council's Building and Compliance Service (Fire Safety Specialist) has assessed the application and notes the following:

*"The proposed Alternative Solution of providing "fire walls" between apartment buildings in order to provide protection to the external wall openings has not been supported by a Fire Engineering Design Brief that identifies the relevant Performance Requirements of Part C3 [Protection of Openings].*

*Also, there appears to be an inconsistency of providing “fire walls” between some apartments and not others where the prescribed minimum distance between openings is less than prescribed.”*

Following the receipt of the email received from BCA Logic via the applicant on 12 January 2012 (see commentary below) Council's Building and Compliance Service (Fire Safety Specialist) has provided the following additional comments:

*“Following the most recent advice from BCA Logic [Stuart Boyce], the proposed discharge of the fire isolated stairs from Buildings B, C, D, E and F pass within 6.0m of openings in the external wall. The proposed alternative solution is to provide protection by a 1 hour “fire wall” at a height of less than 3.0m. This is one solution to provide protection.*

*The Deemed to Satisfy criteria of C3.4 provides other acceptable methods of protection.”*

#### Assessing Officer's Comment

The SEPP 65 Statement accompanying the application refers to the requirement for the proposed fire walls owing to the proposed removal of sprinklers from buildings. Council received an email from BCA Logic via the applicant on 12 January 2012 which provides additional information regarding the fire walls and notes that the fire walls (and other fire engineered alternate solutions) will “*need to be assessed against the performance criteria of the BCA in lieu of the Deemed to Satisfy Criteria. These are being addressed in a separate Fire Engineered Alternate Solution Report to be finalised and lodged with the Construction Certificate application to the Accredited Certifying Authority*”.

Notwithstanding the provisions of the BCA and the eventual consideration of the Certifying Authority with regards to fire engineered alternate solutions, the inclusion of the fire walls is considered to have adverse implications on the planning of the site in terms of aesthetics, safety and amenity and in this regard, the proposed fire walls cannot be supported.

In terms of aesthetics, the proposed fire walls are located adjacent to the main pedestrian thoroughfare in the site, are positioned between Buildings B, C, D, E and F and, according to Plan No. DA12(B), will achieve heights of between 1.5m to 2.0m. In this regard, the visual impact of the walls would be considerable and would alter the internal amenity of the development.

In terms of safety and amenity, the proposed fire walls create narrow ‘laneways’ which funnel pedestrian movement and enable concealment. In this regard, the design of the fire walls (including their respective locations, heights and lengths) is not consistent with the principles of *Crime Prevention Through Environmental Design* (CPTED), in particular the principles of Natural Surveillance and Space Management, of which the original development application was considered and approved.

Given the above planning considerations, and the availability of other fire engineered alternate solutions which would mutually satisfy both BCA and planning requirements, the proposed fire walls are not supported. Accordingly, a condition is included in the recommendation of this report which requires that the proposed fire walls be deleted from the plans.

#### Landscape Officer



Council's Landscape Officer has assessed the application and advises that the landscaped hedge along the northern side of the overland flow path is not appropriate given the requirement for the retention of the full width of the overland flow path.

#### Assessing Officer's Comment

As discussed above (refer to assessing officer's response to Council's Development Engineer referral), the deletion of the landscaped hedge along the northern side of the overland flow path does not require an additional condition to be imposed which prohibits its installation. This is already addressed under Condition No. 22 which was imposed under DA2010/1839 restricting the planting of grass or the like within the overland flow path only

#### Waste Management

Council's Waste Management Officer has not provided a response to the application at the time of writing this report. Notwithstanding, appropriate conditions were imposed on DA2010/1839 and MOD2011/0117 which require the development to comply with *Council's Policy No. PL 850 – Waste*. These conditions will remain imposed.

### **ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979**

The relevant matters for consideration under Section 96(2) of the *Environmental Planning and Assessment Act, 1979*, are:

<b>Section 96(2) - Other Modifications</b>	<b>Comments</b>
A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to and in accordance with the regulations, modify the consent if:	
(a) it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which consent was originally granted and before that consent as originally granted was modified (if at all), and	The development, as proposed, has been found to be such that Council is satisfied that the proposed works are substantially the same as those already approved under DA2010/1839.
(b) it has consulted with the relevant Minister, public authority or approval body (within the meaning of Division 5) in respect of a condition imposed as a requirement of a concurrence to the consent or in accordance with the general terms of an approval proposed to be granted by the approval body and that Minister, authority or body has not, within 21 days after being consulted, objected to the modification of that consent, and	Development Application DA2010/1835 did not require concurrence from the relevant Minister, public authority or approval body.

Section 96(2) - Other Modifications	Comments
<p>(c) it has notified the application in accordance with:</p> <p>(i) the regulations, if the regulations so require,</p> <p>or</p> <p>(ii) a development control plan, if the consent authority is a council that has made a development control plan under section 72 that requires the notification or advertising of applications for modification of a development consent, and</p>	<p>The application has been publicly exhibited in accordance with the <i>Environmental Planning and Assessment Act 1979</i>, <i>Environmental Planning and Assessment Regulation 2000</i>, <i>Warringah Local Environment Plan 2011</i> and <i>Warringah Development Control Plan 2011</i>.</p>
<p>(d) it has considered any submissions made concerning the proposed modification within any period prescribed by the regulations or provided by the development control plan, as the case may be.</p>	<p>No submissions were received in relation to this application.</p>

In accordance with Section 96(3) of the *Environmental Planning and Assessment Act 1979*, in determining an modification application made under Section 96 the consent authority must take into consideration such of the matters referred to in section 79C(1) as are of relevance to the development the subject of the application.

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)</b> – Provisions of any environmental planning instrument	See discussion on “Environmental Planning Instruments” in this report.
<b>Section 79C(1)(a)(ii)</b> – Provisions of any draft environmental planning instrument	None applicable
<b>Section 79C(1)(a)(iii)</b> – Provisions of any development control plan	The application was advertised and notified in accordance with Warringah Development Control Plan.
<b>Section 79C(1)(a)(iia)</b> – Provisions of any planning agreement	None applicable.
<b>Section 79C(1)(a)(iv)</b> – Provisions of the regulations	<p>The EPA Regulations 2000 require the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter was addressed via a condition of consent under DA2010/1839.</p> <p><u>Clause 92</u> of the EPA Regulations 2000 requires the consent authority to consider AS 2601 - 1991: <i>The Demolition of Structures</i>. This matter was addressed via a condition of consent under DA2010/1839.</p> <p><u>Clause 50(1A)</u> of the EPA Regulations 2000 requires the submission of a design verification statement from the building designer at lodgement of the development application. A revised statement has been submitted.</p>
<b>Section 79C(1)(b)</b> – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	<p>(i) The environmental impacts of the proposed development, as modified, on the natural and built environment are addressed under the General Principles of Development Control in this report.</p>





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Section 79C 'Matters for Consideration'	Comments
	<p>(ii) The proposed development, as modified, will not have a detrimental social impact in the locality considering the residential character of the proposal.</p> <p>(iii) The proposed development, as modified, will not have a detrimental economic impact on the locality considering the residential nature of the proposed land use.</p>
<b>Section 79C(1)(c)</b> – the suitability of the site for the development	The proposed modifications do not alter the site's suitability for the proposed use.
<b>Section 79C(1)(d)</b> – any submissions made in accordance with the EPA Act or EPA Regs.	See discussion on “Public Exhibition” in this report.
<b>Section 79C(1)(e)</b> – the public interest	<p>The various controls contained within WLEP 2011 and WDCP 2011 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 character envisaged for the R2 Low Density Residential zone and the R3 Medium Density Residential zone.</p> <p>The development also complies with the Height of Buildings Development Standard subject to a minor variation supported under CI 4.6 of WLEP 2000 and is consistent with the relevant controls in WDCP 2011.</p> <p>As the proposed development complies with the various controls which apply to the site, the development is considered to be consistent with the scale and intensity of development that the community can reasonably expect to be provided on this site and within the respective localities.</p> <p>Therefore, the proposal is considered to be in the public interest.</p>

## ENVIRONMENTAL PLANNING INSTRUMENTS

### State Environmental Planning Policies (SEPPs)

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

A revised BASIX certificate has been submitted with the application (see Certificate No. 395671M dated 1 November 2011). The BASIX Certificate is supported by an ABSA Assessor Certificate (see Certificate No. 34177123 dated 31 October 2011).

The BASIX Certificate indicates that the development will achieve the following:

Commitment	Required Target	MOD2011/0117	MOD2011/0246
<b>Water</b>	40	40	40
<b>Thermal Comfort</b>	Pass	Pass	Pass
<b>Energy</b>	20	36	35

It is noted that the energy score has improved upon what was approved under DA2010/1839 and MOD2011/0117.

DA No.Mod2011/0246



All required BASIX commitments have been noted on the application plans. Furthermore, a condition of consent was imposed in DA2010/1839 which requires compliance with the commitments made in the respective BASIX Certificate.

### **State Environmental Planning Policy (Infrastructure) 2007**

#### **Roads and Maritime Services (RMS)**

The original development application (DA2010/1839) was referred to the RMS under the provisions of Schedule 3 of the SEPP. The RMS did not raise any objection to the original development application subject to comments which were included in the original consent.

Given that the proposed modification, the subject of this application, does not propose a significant alteration to the design or the number of apartments already approved, nor to the basement car park and the number of car parking spaces. This modified application was not referred to the RMS for further comment.

#### **Ausgrid**

The application was referred to Ausgrid for comment in accordance with clause 45(2) of *State Environmental Planning Policy (Infrastructure) 2007*.

The application includes provision of a substation to be located at the north-eastern corner of the site, facing Mooramba Road.

Ausgrid have assessed the application and raise no objection to the development subject to conditions that are included in the recommendation of this report.

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

Clause 7 (1) (a) of SEPP 55 requires the Consent Authority to consider whether land is contaminated and whether the land is suitable for development.

This matter was considered under DA2010/1839 where conditions were imposed by Council's Environmental Health Officer requiring the applicant to notify Council of any new contamination evidence which may be revealed during demolition and excavation works and which requires the validation of any contamination identified in the *Stage 2 Detailed Investigation* which certifies that remediation was undertaken in accordance with the Contaminated Land Management Act 1997.

Condition Nos. 38, 39 and 40 and the reference to the *Additional Environmental Site Investigation & Remedial Action Plan* prepared by Environmental Investigation Services in Condition No. 1 under DA2010/1839 are to remain in force.

In this regard, the site is considered to be suitable for the proposed development, as modified, with regards to contamination.

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



*State Environmental Planning Policy No. 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 50(1A) of the EPA Regulations 2000 requires the submission of a design verification statement from the building designer at lodgement of the development application. An updated statement has been submitted by JAA Architecture Studio Pty Ltd dated November 2011.

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

The location and layout of all apartments, windows, balconies and landscaped areas are the same as that approved under DA2010/1839 and subsequent modifications and in this regard, the development, as modified, maintains consistency with the 10 Design Quality Principles found under cl. 9 to 18 of the SEPP. Therefore, with exception to Clause 18 of the SEPP (Principle 8: Safety and Security; and Principle 10: Aesthetics) due to the inclusion of fire walls and the change in external materials and finishes, further assessment of the remaining eight remaining principles is not considered to be necessary and has not been undertaken.

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

Clause 18 (Principle 8: Safety and Security) stipulates 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:

In the SEPP 65 Statement accompanying the application, the applicant claims that the inclusion of the fire walls are an alternative design solution to the replacing of fire sprinklers.

The height and placement of the fire walls creates narrow constrained pathways and concealable areas which may encourage crime. This is not in keeping with the principles of CPTED under which the original development application was approved.

In this regard, the proposed fire walls are not supported as they are not considered, in terms of safety and security, to be a justified alternative solution and will have a detrimental impact upon the safety of pedestrians within the site.

Therefore, a condition is included in the Recommendation of this report which requires the deletion of the fire walls from the plans.

### **Principle 10: Aesthetics**

Clause 18 (Principle 10: Aesthetics) stipulates 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 changes to the materials and finishes of the building façades involve the replacement of full exterior timber cladding with partial ‘timber-like’ cladding and off-form concrete panels. Figure 1 below provides an example (using Building A) of the proposed changes to the facades with the off-form concrete panels greyed out.



**Figure 1** Example of the proposed finishes as applied to the western façade of Building A.  
Source: Plan No. DA70(B) dated 26/10/2011 as prepared by JAA Studio

The overall design integrity of the development is not considered to be compromised through the modification of façade treatments but rather, enhances the visual interest by providing a distinct contrast of natural colours and materials. This contrast effectively breaks up the built form of each building and the development as a whole, especially when considered in context to the proposed landscaping theme throughout the site which serves to compliment the aesthetic value of the development when viewed from within the site and from the surrounding public domain.

In this regard, the amended material changes are considered to satisfy the provisions of Principle 10 in that the development, as modified, will provide the appropriate composition of building elements, textures, materials and colours and reflect the use, internal design and structure of the development. It is also considered that the modified finishes will favourably respond to the environment and context, particularly to desirable elements of the existing streetscape and future character of the area.

**Residential Flat Design Code**

The following table provides an assessment of the development, as modified, against the provisions of the Residential Flat Design Code.

**Note:** Only the controls which have been impacted by the modification are addressed. The remainder were considered under DA2010/1839, MOD2011/0117, MOD2011/0186 and MOD2011/0237 and were found to be consistent.

Primary Development Controls	Guideline	Approved (DA2010/1839)	Proposed (MOD2011/0246)
<b>PART 02 SITE DESIGN</b>			
<b>Deep Soil Zones</b>	<p>A minimum of 25% of the open space area of a site should be a deep soil zone; more is desirable. Exceptions may be made in urban areas where sites are built out and there is no capacity for water infiltration. In these instances, stormwater treatment measures must be integrated with the design of the residential flat building.</p>	<p><b>Consistent</b></p> <p>The development, as approved, provides approximately 2,863m<sup>2</sup> (40%) of deep soil zones of the site.</p>	<p><b>Consistent</b></p> <p>The soil depths are proposed to be amended resulting in a decrease in the numerical provision of the deep soil zones. Notwithstanding, the proposed deep soil planting exceeds the minimum requirement under the SEPP by 11.7% to provide approximately 2,634m<sup>2</sup> (36.7%).</p>
<b>Planting on structures</b>	<p>In terms of soil provision there is no minimum standard that can be applied to all situations as the requirements vary with the size of plants and trees at maturity. The following are recommended as minimum standards for a range of plant sizes:</p> <ul style="list-style-type: none"> <li>• Large trees such as figs (canopy diameter of up to 16m at maturity) - minimum soil volume 150m<sup>3</sup> - minimum soil depth 1.3m - minimum soil area 10m x 10m area or equivalent.</li> <li>• Medium trees (8.0m canopy diameter at maturity) - minimum soil volume 35m<sup>3</sup> - minimum soil depth 1.0m - approximate soil area 6.0m x 6.0m or equivalent.</li> <li>• Small trees (4.0m canopy diameter at maturity) - minimum soil volume 9.0m<sup>3</sup> - minimum soil depth 800mm - approximate soil area 3.5m x 3.5m or equivalent.</li> <li>• Shrubs - minimum soil depths 500-600mm</li> <li>• Ground cover - minimum soil depths 300-450mm</li> <li>• Turf- minimum soil depths 100-300mm</li> <li>• any subsurface drainage requirements are in addition to the minimum</li> </ul>	<p><b>Consistent</b></p> <p>The central landscaped areas will have a minimum soil depth of 1.0m (subject to condition) which will permit the planting of ground cover, shrubs and small trees.</p> <p>The perimeter of the site consists of deep soil beyond 1.3m which will permit the planting of ground cover, shrubs and large trees.</p> <p>The landscape plan submitted with application (see Drawing Nos. 10_074_L01(A1) to 10_074_L04(A1) dated 30/11/10) confirms that planting will occur in accordance with this control.</p>	<p><b>Consistent</b></p> <p>The soil depths are proposed to be amended resulting in a decrease in the numerical provision. The variation to the landscaped open space provision is addressed, and supported, under Warringah Development Control Plan 2011.</p> <p>The variation is considered to be minor (3.3%) and is supported based upon the resulting density and height of the planting being the same as that approved under DA2010/1839.</p>

Primary Development Controls	Guideline	Approved (DA2010/1839)	Proposed (MOD2011/0246)
	soil depths quoted above.		
<b>PART 03 BUILDING DESIGN</b>			
<b>Storage</b>	<p>In addition to kitchen cupboards and bedroom wardrobes, provide accessible storage facilities at the following rates:</p> <ul style="list-style-type: none"> <li>studio apartments 6.0m<sup>3</sup></li> <li>one-bedroom apartments 6.0m<sup>3</sup></li> <li>two-bedroom apartments 8.0m<sup>3</sup></li> <li>three plus bedroom apartments 10m<sup>3</sup></li> </ul>	<p><b>Consistent</b></p> <p>1 bedroom - 68 x 6.0m<sup>3</sup> = 408m<sup>3</sup>  2 bedroom - 48 x 8.0m<sup>3</sup> = 384m<sup>3</sup>  3 bedroom – 1 x 10m<sup>3</sup> = 10m<sup>3</sup>  <b>Total storage required = 802m<sup>3</sup></b>  <b>Total storage provided = 936m<sup>3</sup>.</b></p>	<p><b>Consistent</b></p> <p>The development, as modified, proposes to amend the provision of storage as follows:  <b>Total storage required = 830m<sup>3</sup></b>  <b>Total storage provided = 834m<sup>3</sup></b>  All storage continues to be located in the basement car parking areas.</p>

### Regional Environment Plans (REPs)

There are no REPs relevant to this application.

### Local Environment Plans (LEPs)

#### Warringah Local Environment Plan 2011 (WLEP 2011)

Warringah Local Environmental Plan 2011 was gazetted on 9 December 2011. Clause 1.8A of WLEP 2011 provides savings provisions relating to development applications but does not provide savings provisions relating to a Section 96 modification to a development application. In this regard, the following provides an assessment against the relevant provisions of WLEP 2011.

#### Consideration of proposal against WLEP 2011:

R2 Low Density Residential

<b>Definition of proposed development:</b> (ref. WLEP 2011 Dictionary)	Car parking (associated with a Residential Flat Building)
<b>Zone:</b>	R2 Low Density Residential
<b>Permitted with Consent or Prohibited:</b>	Prohibited
<b>Additional Permitted used for particular land – Refer to Schedule 1:</b>	Not Applicable

The application maintains the external basement wall layout as approved under MOD2011/0186. Therefore, this element of the application which is located within the R2 Low Density Residential zone has already been addressed under that application where it was found that basement level satisfied the relevant objectives of the zone.

As such, no further assessment against the objectives the R2 Low Density Residential zone under WLEP 2011 have been conducted.



## R3 Medium Density Residential

**Definition of proposed development:**  
(ref. WLEP 2011 Dictionary)

Residential Flat Building means a “*building containing 3 or more dwellings, but does not include an attached dwelling or multi dwelling housing*”.

**Zone:**

R3 Medium Density Residential

**Permitted with Consent or Prohibited:**

Permitted with consent

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

Not Applicable

### Objectives of the Zone

Clause 2.3(2) of WLEP 2011 requires that the consent authority must have regard to the objectives for development in a zone when determining a development application in respect of land within the zone.

The objectives of the R3 Medium Density Residential zone are:

- *To provide for the housing needs of the community within a medium density residential environment.*
- *To provide a variety of housing types within a medium density residential environment.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*
- *To ensure that medium density residential environments are characterised by landscaped settings that are in harmony with the natural environment of Warringah.*

The development is considered to be consistent with the objectives of the zone for the following reasons:

- *To provide for the housing needs of the community within a medium density residential environment.*

Comment:

The proposal will not reduce the provision of housing within the medium density residential environment of the zone

- *To provide a variety of housing types within a medium density residential environment.*

Comment:

The proposal will not alter the mix of housing sizes which were approved under DA2010/1839 and MOD2011/0117.

*To enable other land uses that provide facilities or services to meet the day to day needs of residents.*

Comment:

As approved under DA2010/1839, the proposal will maintain residential uses only. The development will not limit the development of other land uses or services in the area and may encourage such uses through the increase in patronage.

- *To ensure that medium density residential environments are characterised by landscaped settings that are in harmony with the natural environment of Warringah.*

Comment:

The development, as proposed, maintains consistency with the design of landscaping throughout the site which

### Objectives of the Zone

promotes a landscaped setting which is in harmony with the natural environment.

- *To ensure that medium density residential environments are of a high visual quality in their presentation to public streets and spaces.*

#### Comment:

The proposal maintains the architectural articulation of the development as approved under DA2010/1839 which provides visual interest and architectural variety to the streetscape. A professionally prepared Landscape Plan and a Schedule of Colours and Finishes is included with the application which ensures that the visual quality of the development has been carefully considered and maintained in the presentation of the development to the public domain.

### Part 4 Principal Development Standards:

Standard	Permitted	Approved (MOD2011/0117)	Proposed (MOD2011/0246)	Comment
<b>4.1 Minimum subdivision lot size:</b>	N/A	N/A	N/A	N/A
<b>4.2 Rural Subdivision:</b>	N/A	N/A	N/A	N/A
<b>4.2A No Strata Plan or Community Title Subdivisions in certain rural and environmental zones:</b>	N/A	N/A	N/A	N/A
<b>4.3 Height of Buildings:</b>	11.0m	Building A – 10m Building B – 11.8m Building C – 10.5m Building D – 9.0m Building E – 10.5m Building F – 10.5m Building G – 8.0m Building H – 9.5m Building J -8.0m	Building A – 9.85m Building B – 11.6m Building C – 10.3m Building D – 8.8m Building E – 10.25m Building F – 10.2m Building G – 7.85m Building H – 9.3m Building J -7.8m	Yes <b>No</b> (+0.6m)* Yes Yes Yes Yes Yes Yes Yes Yes

**\*Note:** The development, as proposed, results in a reduction to the building heights as approved under DA2010/1839. In particular, the proposed building height of Building B will be reduced by 200mm from it's approved height.

### Building Height Built Development Standard

#### Identified area of inconsistency with the Height of Buildings Development Standard:

The proposal breaches the permitted building height along the western edge of the roof of Building B. Figure 2 below illustrates the extent of non-compliance as approved under DA2010/1839 (the grey roofed area indicates the non-compliance).



**Figure 2** Extent of building height non-compliance under DA2010/1839  
Source: Statement of Environmental Effects dated 4 November 2011 as prepared by Urbis.

Figure 3 below illustrates the extent of non-compliance as proposed. As can be seen, because of the lowering of Building B by 200mm (ie: from RL 43.360 to RL 43.160), the non-compliance is generally indistinguishable from that approved under DA2010/1839 but must be considered as a variation under *Clause 4.3 – Height of Buildings* and *Clause 4.6 - Exceptions to Development Standards*.



**Figure 3** Extent of proposed building height non-compliance.  
Source: Statement of Environmental Effects dated 4 November 2011 as prepared by Urbis.

#### **Clause 4.6 Exceptions to the Height of Buildings Development Standard**

The applicant has provided a written request dated 18 January 2011 for consideration of a variation to Clause 4.3 – Height of Buildings under the provisions of Clause 4.6 - Exceptions to Development Standards. The applicant's responses to the underlying objectives are addressed within the following section.

The site is located within the R3 (Medium Density Residential) zone and is subject to a Building Height Development Standard of 11.0m (as taken from the existing ground level).

The proposal must satisfy the objectives of *Clause 4.3 – Height of Buildings*, the underlying objectives of the particular zone, and the objectives of *Clause 4.6 - Exceptions to Development Standards* under the WLEP 2011. The following provides an assessment of the variation against relevant objectives.

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

The prescribed height limit pursuant to Clause 4.3 of WLEP 2011 is a development standard.

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

The underlying objectives of the standard, pursuant to Clause 4.3(1) – ‘Height of Buildings’ of WLEP 2011 are as follows:

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

- (a) *to ensure that buildings are compatible with the height and scale of surrounding and nearby development.*

Applicant's response

*“The proposed modification to Building B will result in a reduction in building height to that previously approved. The proposed modification is a minor reduction in height and is comparable to the approved height, bulk and scale.”*

Assessing officer comment:

The applicant's response is concurred with. The development, as approved and as proposed, is found to be consistent with the height and scale of surrounding and nearby development within the R3 Medium Density Residential zone typified along Mooramba Road, in particular the residential flat buildings to the north and the mixed use buildings to the east along Pittwater Road.

The development satisfies this objective.

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

Applicant's response

*“The proposed modification will not result in any additional impacts in terms of view, loss of privacy or loss of solar access to that previously approved.”*

Assessing officer comment:

The applicant's response is concurred with. The development has been designed to respond to the topography of the site and the area. In this regard, the buildings gradually step up the site from Mooramba Road.

The development does present an overlooking opportunity into the neighbouring properties at No. 12 Mooramba Road and at No. 4 May Road. However, in both cases it is noted that the approved development includes privacy screens to the north-facing balconies of Buildings C and D to address direct overlooking into the south-facing balconies of No. 12 Mooramba Road. It is noted that no submissions have been received from neighbouring properties which raise concern in this regard.



The subject application includes a revised shadow diagram (see Plan No. DA60(B) dated 26 October 2010) which shows that the proposed lowering of building heights will not exacerbate the approved degree of overshadowing such that the principal private open spaces of the neighbouring properties to the south (Nos. 4, 6 & 8 May Road) will not be subject to overshadowing in excess of 50% and that this application would reduce sunlight access to less than 2 hours between 9am and 3pm on June 21.

A view analysis was provided with DA2010/1839 (see Plan No. A-006) which indicated that the development would not obstruct views from neighbouring properties. In this regard, and given the proposed lowering of the building heights, it is considered that the development remains consistent with the provisions of D7 Views under WDCP 2011 which requires that *development is to allow for the reasonable sharing of views.*

The development satisfies this objective.

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

Applicant's response

*"The proposed modification will not result in any additional impacts to the scenic quality of Warringah's coastal and bush environments."*

Assessing officer comment:

The applicant's response is concurred with. The development is located within the densely urbanised area of Dee Why and does not have any impact upon the scenic quality of Warringah's coastal and bush environments.

The development satisfies this objective.

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

Applicant's response

*"The proposed modification will not result in any additional visual impacts when viewed from public places. The proposed modification reduces the overall height of the proposed development and will continue to positively respond to the public domain with a high quality architectural design and landscaping."*

Assessing officer comment:

The applicant's response is concurred with. The development, as approved and as proposed to be modified by this application, achieves a positive visual impact from the public domains of Mooramba Road, May Road and Pittwater Road through the effective incorporation of landscaping with well considered and articulated building forms which are designed, laid out and finished to promote architectural interest.

The proposed non-compliant building height does not detract from this visual impact but, due to the proposed lowering of the building heights, assists in reducing the visual impact further.

The development satisfies this objective.

### **3. What are the underlying objectives of the zone?**

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

#### R3 (Medium Density Residential) zone

The objectives of this clause are:

- *To provide for the housing needs of the community within a medium density residential environment.*

#### Applicant's response

*"The proposed variation to the height of Building B will not result in a change to the provision of medium density residential housing."*

#### Assessing officer comment:

The applicant's response is concurred with. The development will continue to provide a mix of apartment sizes which will cater for the housing needs of the community within the medium density zone.

The development satisfies this objective.

- *To provide a variety of housing types within a medium density residential environment.*

#### Applicant's response

*"The proposal will not result in a change to the approved housing type."*

#### Assessing officer comment:

The applicant's response is concurred with. The development, as modified, maintains a variety of housing types consisting of 26 one bedroom apartments, 85 two bedroom apartments (111 apartments in total).

The development satisfies this objective.

- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*

#### Applicant's response

*"The proposal does not modify the approved land use."*

#### Assessing officer comment:

The applicant's response is concurred with. The development is located within close proximity to facilities and services which meet the day to day needs of residents such as Dee





Why Beach, shopping and services, and high frequency public transport route of Pittwater Road.

The development satisfies this objective.

- *To ensure that medium density residential environments are characterised by landscaped settings that are in harmony with the natural environment of Warringah.*

Applicant's response

*"The proposal continues to be suitably landscaped so as to provide a harmonious natural environment."*

Assessing officer comment:

The applicant's response is concurred with. The development, as modified, continues to incorporate landscaping within and around the perimeter of the site. The landscape design which incorporates densely landscaped street frontages and side setbacks, includes native species together with the retention of the large trees along Mooramba Road and May Road. The residual allotment facing Painters Parade will remain open and landscaped.

The development satisfies this objective.

- *To ensure that medium density residential environments are of a high visual quality in their presentation to public streets and spaces.*

Applicant's response

*"The proposal does not seek to alter the visual appearance of the approved residential flat development and will not result in any significant change to its presentation to public streets or spaces."*

Assessing officer comment:

The applicant's response is concurred with. The development, as modified, will continue to present highly articulated, contemporary built forms surrounded by dense landscaping.

The visual effect is generally positive in that it provides an upgrade to the standard of ageing residential development within the locality and a benchmark for future development in the area.

The proposal is consistent with the objectives of both Clause 4.3 - Height of Buildings and the R3 Zone of the Warringah Local Environmental Plan 2011.

**4. Is the variation to the development standard consistent with the objectives of Clause 4.6 of WLEP 2011?**

The objectives of Clause 4.6 – 'Development Standards' of the WLEP 2011 seek:

- (a) *to provide an appropriate degree of flexibility in applying certain development standards to particular development; and*



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*(b) to achieve better outcomes for and from development by allowing flexibility in particular circumstances.*

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

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

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

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

Assessing officer comment:

The applicant has provided a statement which adequately addresses the variation to the Height of Buildings Development Standard.

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

Assessing officer comment:

It has been found that the development, as modified, continues to be in the public interest as it achieves consistency with the Objectives of the R3 (Medium Density Residential) zone.

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

Assessing officer comment:

Planning Circular PS 08-003 dated 9 May 2008, as issued by the NSW Department of Planning, advises that the concurrence of the Director-General may be assumed for exceptions to development standards under environmental planning instruments that adopt Clause 4.6 of the Standard Instrument. In this regard, given the consistency of the variation to the Objectives of the zone, the concurrence of the Director-General for the variation to the Height of Buildings Development Standard is assumed.

**5. Is the variation well founded?**

Applicant's response

*"The proposed variation is considered to be well founded given the approved building height currently exceeds to development standard and the proposed modification will result in a minor reduction in building height.*

*The proposed development not a matter of significance for State or regional environmental planning but is limited to local environmental matter.*


*The proposed reduction in building height is minimal and will not result in any impact on the public."*

Assessing officer comment:

The applicant's response is concurred with. The variation to the building height development standard is considered to be well founded in that the proposed non-compliance is consistent with objectives of *Clause 4.3 – Height of Buildings*, the underlying objectives of the particular zone, and the objectives of *Clause 4.6 - Exceptions to Development Standards* under the WLEP 2011, as set out above.

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

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

Part 6 Additional Local Provisions	
Provision	Comment
<b>6.1 Acid Sulfate Soils</b>	Not applicable to this application.
<b>6.2 Earthworks</b>	No change to approvals granted under DA2010/1839
<b>6.3 Flood Planning</b>	Not applicable to this application.
<b>6.4 Development on Sloping Land</b>	<p><b>Compliant.</b></p> <p>The site is located with Area A and Area B as identified on Council's Landslip Risk Map.</p> <p>Area A (ie: the eastern half of the site) generally constitutes land with a slope of less than 5. Area B (ie: the western half of the site) generally constitutes land with flanking slopes of between 5 to 25.</p> <p>Figure 4 below is an extract from Council's Landslip Risk Map which shows the extent of Area A (yellow) and Area B (orange).</p>  <p><b>Figure 4 Identified Landslip Risk Areas</b></p>

Part 6 Additional Local Provisions	
	<p>Clause 6.4 requires that development consent must not be granted to development on land to which this clause applies unless the consent authority is satisfied that:</p> <p>(a) <i>the application for development has been assessed for the risk associated with landslides in relation to both property and life, and</i></p> <p><u>Comment:</u></p> <p>The approved development application (DA2010.1839) included a Geotechnical Investigation prepared by Jeffery and Katauskas Pty Ltd which concluded that the site may be developed upon subject to conditions which were imposed in the consent.</p> <p>In the assessment of DA2010/1839 it was acknowledged that the area of the site located within the R3 Medium Density zone (and the area subject to this application) was previously excavated to accommodate the now demolished Holden car showroom and workshops and forms a gentle downward slope of about 3°.</p> <p>It is noted that the site is now under excavation to accommodate the basement car park as approved under DA2010/1839 and MOD2011/0186.</p> <p>Given the above, it is considered that the site does not present any risks associated with landslides in relation to both property and life.</p> <p>(b) <i>the development will not cause significant detrimental impacts because of stormwater discharge from the development site, and</i></p> <p><u>Comment:</u></p> <p>The application, both as approved and as proposed, has undergone assessment by Council's Development Engineer who raises no objection to the development subject to conditions pertaining to the stormwater drainage of the site.</p> <p>(c) <i>the development will not impact on or affect the existing subsurface flow conditions.</i></p> <p><u>Comment:</u></p> <p>The subsurface flow condition of the site has been modified over time and does not reflect natural or pre-development flow conditions. Whilst the approved development introduces a new subsurface structure (the basement) which will alter the subsurface flow further, this has been considered by Council's Development Engineer and appropriate stormwater flow paths and on-site stormwater detention were introduced throughout the site to compensate. This application does not alter this approved arrangement such that the subsurface flow conditions will be further altered.</p> <p>The application is considered to be consistent with Clause 6.4.</p>
<b>6.5 Coastline Hazards</b>	Not applicable to this application.
<b>6.6 Erection of dwelling houses in Zone E3 Environmental Management</b>	Not applicable to this application.
<b>6.7 Residential Flat Buildings in Zone</b>	Not applicable to this application.



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Part 6 Additional Local Provisions	
<b>B4 Mixed Use</b>	
<b>6.8 Subdivision of Certain Land</b>	Not applicable to this application.
<b>6.9 Location of Sex Services Premises</b>	Not applicable to this application.

Schedules	
Schedule	Comment
<b>Schedule 1 Additional permitted uses</b>	Not applicable to this application.
<b>Schedule 2 Exempt development</b>	Not applicable to this application.
<b>Schedule 3 Complying development</b>	Not applicable to this application.
<b>Schedule 4 Classification and reclassification of public land</b>	Not applicable to this application.
<b>Schedule 5 Environmental heritage</b>	Not applicable to this application.

Other Relevant WLEP 2011 Clauses
None applicable.

## Development Control Plans (DCPs)

### Warringah Development Control Plan 2011

#### Consideration of proposal against Warringah Development Control Plan 2011:

Warringah Development Control Plan			
Part B: Built Form Controls			
Control	Requirement	Proposed	Comment/Compliant
<b>B1. Wall height</b>	Not applicable to this application.	Not applicable to this application.	Not applicable to this application.
<b>B2. Number of storeys</b>	3 storeys	3 storeys	No change to approvals granted under DA2010/1839.
<b>B3. Side Boundary Envelope</b>	5.0m x 45°	<5.0m x 45°	Compliant
<b>B4. Site Coverage</b>	Not applicable to this application.	Not applicable to this application.	Not applicable to this application.
<b>B5. Side Boundary Setbacks</b>			No change to approvals granted under DA2010/1839
<u>North</u>			
Basement	4.5m	2.5m	
Above Ground	4.5m	4.5m – 5.6m	
<u>South</u>			
Basement	4.5m	2.5m	
Above Ground	4.5m	4.5m – 5.6m	
<u>West</u>			
Basement	4.5m	Nil - 2.5m	
Above Ground	4.5m	6.8m – 10.2m	
<b>B7. Front Boundary Setbacks</b>			No change to approvals granted under
Primary – Mooramba Road			



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Secondary – May Road	6.5m 3.5m	6.5m – 15.4m 3.5m – 4.6m	DA2010/1839
<b>B9. Rear Boundary Setbacks</b>	Not applicable to this application	Not applicable to this application	Not applicable to this application
<b>B11. Foreshore Building Setback</b>	Not applicable to this application	Not applicable to this application	Not applicable to this application
<b>B12. National Parks Setback</b>	Not applicable to this application	Not applicable to this application	Not applicable to this application
<b>B13. Coastal Cliffs Setback</b>	Not applicable to this application	Not applicable to this application	Not applicable to this application
<b>B14. Main Roads Setback</b>	Not applicable to this application	Not applicable to this application	Not applicable to this application
<b>B15. Minimum Floor to Ceiling Height</b>	Not applicable to this application	Not applicable to this application	Not applicable to this application
Part C: Siting Factors			
Control	Comment		
<b>C1. Subdivision</b>	Not applicable to this application.		
<b>C2. Traffic, Access and Safety</b>	<p><b>Compliant.</b></p> <p>The Objectives of Clause C2 aim to minimise:</p> <p><i>a) traffic hazards;</i>  <i>b) vehicles queuing on public roads</i>  <i>c) the number of vehicle crossings in a street;</i>  <i>d) traffic, pedestrian and cyclist conflict;</i>  <i>e) interference with public transport facilities; and</i>  <i>f) the loss of "on street" kerbside parking.</i></p> <p><u>Comment:</u></p> <p>The proposal is a modification of an approved development and already satisfies the above Objectives. However, the proposal seeks to improve the safety of pedestrians within the basement car park by adding a dedicated pedestrian safety zone/pathway from the entrance at Mooramba Road to the rear of the car park. In this regard, the proposal improves upon the requirements of Objective D.</p> <p>Given the above, the application is considered to be consistent with the Objectives of Clause C 2.</p>		
<b>C3. Parking Facilities</b>	No change to approvals granted under DA2010/1839		
<b>C4. Stormwater</b>	<p><b>Compliant subject to condition.</b></p> <p>The Objectives of Clause C4 aim to:</p> <ul style="list-style-type: none"> <li><i>To ensure the appropriate management of stormwater.</i></li> <li><i>To minimise the quantity of stormwater run-off.</i></li> <li><i>To ensure the peak discharge rate of stormwater flow from new development is no greater than the Permitted Site Discharge (PSD).</i></li> </ul> <p><u>Comment:</u></p> <p>The application has been assessed by Council's Development</p>		





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	<p>Engineer who does not raise any objection to the proposal subject to a condition addressing on-site stormwater detention and the removal of the proposed hedging along the northern side of the overland flow path and the proposed footpath which crosses the southern verge.</p> <p>The condition addressing on-site stormwater detention has been included within the recommendation of this report.</p> <p>The removal of the proposed hedging along the northern side of the overland flow path is already addressed through the retention of Condition No. 22 which requires that the overland flow path be kept clear of any trees and replaced with grass or the like. In this regard, it is not considered necessary to impose an additional condition requiring the removal of the proposed hedging.</p> <ul style="list-style-type: none"> <li><i>To incorporate Water Sensitive Urban Design techniques and On-Site Stormwater Detention (OSD) Technical Specification into all new developments.</i></li> </ul> <p><u>Comment:</u></p> <p>The proposal is a modification of an approved development. This objective does not apply.</p> <p>Given the above and subject to condition, the application is considered to be consistent with the Objectives of Clause C4.</p>
<b>C5. Erosion and Sedimentation</b>	No change to approvals granted under DA2010/1839
<b>C6. Building over or adjacent to Constructed Council Drainage Easements</b>	No change to approvals granted under DA2010/1839
<b>C7. Excavation and Landfill</b>	No change to approvals granted under DA2010/1839
<b>C8. Demolition and Construction</b>	No change to approvals granted under DA2010/1839
<b>C9. Waste Management</b>	No change to approvals granted under DA2010/1839
Part D: Design	
Control	Comment
<b>D1. Landscaped Open Space and Bushland Setting</b>	<p><b>Compliant subject to condition.</b></p> <p>The Objectives of Clause D1 aim:</p> <ul style="list-style-type: none"> <li><i>To enable planting to maintain and enhance the streetscape.</i></li> <li><i>To conserve and enhance indigenous vegetation, topographical features and habitat for wildlife.</i></li> <li><i>To provide for landscaped open space with dimensions that are sufficient to enable the establishment of low lying shrubs, medium high shrubs and canopy trees of a size and density to mitigate the height, bulk and scale of the building.</i></li> <li><i>To enhance privacy between buildings.</i></li> <li><i>To accommodate appropriate outdoor recreational opportunities that meet the needs of the occupants.</i></li> <li><i>To provide space for service functions, including clothes drying.</i></li> <li><i>To facilitate water management, including on-site detention and infiltration of stormwater.</i></li> </ul> <p><u>Comment:</u></p>

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The proposal is a modification of an approved development and already satisfies the above Objectives. However, the proposal seeks to now include the following features:

- Fire walls between Buildings B, C, D, E and F.

Comment:

In the Statement of Environmental Effects, the applicant claims that the inclusion of the fire walls are an alternative design solution to fire sprinklers. Although the walls are a safety matter, they do have an impact upon the integrity of the landscape design and the overall perception of open space and are accordingly addressed here.

This element of the proposal was referred to Council's Building and Compliance Service who raised concern that the fire walls could not be substantiated as a reasonable alternative solution as the placement of the walls was selective and only covered certain parts of the development thereby neglecting the remainder (ie: where the buildings were positioned in close proximity to each other and to the property boundary). Additionally, it is noted that this element of the proposal is not justified in an accompanying fire report or BCA report.

With respect to landscaped open space, the fire walls achieve heights of between 1.5m to 2.0m and, in conjunction with their placement and lengths, will introduce a disruptive structural element within the design of the landscaped area of the development.

In this regard, the proposed fire walls are not supported as they are not considered to be a justified alternative solution and will have a detrimental impact upon the landscaped area of the development.

- A mechanical exhaust turret for the basement car park within the front setback of Mooramba Road.

Comment:

The proposed exhaust turret is located within the south-eastern corner of the site within a triangular area of landscaped open space. The turret achieves a height of 1.0m above finished ground level and is partially concealed from view by landscaping.

- A substation at street level within the front setback area of Mooramba Road.

Comment:

The proposed substation is located at the north-eastern corner of the site facing Mooramba Road. The substation is required to be accessible at all times and cannot be concealed by landscaping. However, it is noted that the substation is embedded into the terraced landscaped wall feature which provides an appropriate landscaped 'frame' to the substation.

- Three air intake vents to service the basement car park.

Comment:

The air intake vents are located along the northern side of the site

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	<p>between landscaped mounds and the overland flow path. In this regard, the vents are appropriately concealed from view and are located such that they do not have any adverse impact upon the communal use of the landscaped open space areas of the site.</p> <ul style="list-style-type: none"> <li>Hedging along the northern boundary within the dedicated overland flow path.</li> </ul> <p><u>Comment:</u></p> <p>The application proposes the installation of a 0.6m wide landscaped hedge along the entire length of the northern boundary within the dedicated overland flow path. Council's Development Engineer has examined this element of the application and does not support the installation of any features, man-made or natural, within the overland flow path in accordance with Condition No. 22 which was imposed in DA2010/1839. The condition is to be retained thereby rendering the proposed landscaped hedge not permissible. No additional prohibitive condition is required in this regard.</p> <ul style="list-style-type: none"> <li>The addition of boulder/wall edging around the raised landscaped areas between each building.</li> </ul> <p><u>Comment:</u></p> <p>The proposed wall edging formalises the landscaped mounds between each building and enables distinct service access and drainage between the mounds and the respective buildings. The wall edging does not detract from the overall appearance or integrity of the original landscape design but rather, serves to further define the landscaped theme and facilitate functionality.</p> <p><u>Numerical Requirement</u></p> <p>Clause D1 also stipulates a requirement of 40% (2,863m<sup>2</sup>) of the site area as landscaped open space. The formalisation of the mounds through the installation of the wall edging reduces the provision of landscaped open space from 40% to approximately 36.7% (2,634m<sup>2</sup>) which is a shortfall of 3.3% (228m<sup>2</sup>) across the site. Notwithstanding, it is noted that the landscaped mounds, due to their shape and location between buildings, accommodates the same density and type of planting which was originally approved under DA2010/1839 and, in this regard, the integrity and theme of the landscaped design remains unaltered and the amenity of the occupants within the development and from neighbouring properties and the streetscapes of Mooramba Road and May Road will not be adversely affected.</p> <p>The numerical variation to the landscaped open space is considered to be minor and is supported in this instance.</p> <p>Subject to condition, the application is considered to be consistent with the Objectives of Clause D1.</p>
<b>D2. Private Open Space</b>	No change to approvals granted under DA2010/1839
<b>D3. Noise</b>	<p><b>Compliant subject to condition.</b></p> <p>The Objectives of Clause D3 aim:</p> <ul style="list-style-type: none"> <li><i>To encourage innovative design solutions to improve the urban environment.</i></li> </ul>

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	<ul style="list-style-type: none"> <li><i>To ensure that noise emission does not unreasonably diminish the amenity of the area or result in noise intrusion which would be unreasonable for occupants, users or visitors.</i></li> </ul> <p><u>Comment:</u></p> <p>The application was referred to Ausgrid who raise no objection to the proposal, subject to conditions including a condition which requires the applicant to provide a Noise Assessment Report which addresses the requirements of the amenity or intrusive criteria in Section 2.4 of the EPA's <i>NSW Industrial Noise Policy, 2004</i> in relation to the proposed substation.</p> <p>The conditions imposed by Ausgrid are included in the recommendation of this report.</p> <p>Subject to condition, the application is considered to be consistent with the Objectives of Clause D3.</p>
<b>D4. Electromagnetic Radiation</b>	<p><b>Compliant subject to conditions.</b></p> <p>The Objectives of Clause D4 aim:</p> <ul style="list-style-type: none"> <li><i>To ensure the safety of the community from electromagnetic radiation.</i></li> <li><i>To ensure that mobile phone base station and associated infrastructure and equipment does not result in an adverse visual impact on the natural or built environment.</i></li> </ul> <p><u>Comment:</u></p> <p>The application was referred to Ausgrid who raise no objection to the proposal, subject to conditions including a condition which requires that the development must comply with both the Reference Levels and the precautionary requirements of the draft ARPANSA's <i>Radiation Protection Standard for Exposure Limits to Electric and Magnetic Fields 0 Hz - 3 kHz, 7 December 2006</i>.</p> <p>The conditions imposed by Ausgrid are included in the recommendation of this report.</p> <p>Subject to condition, the application is considered to be consistent with the Objectives of Clause D4.</p>
<b>D5. Orientation and Energy Efficiency</b>	<p><b>Compliant.</b></p> <p>The Objectives of Clause D5 aim:</p> <ul style="list-style-type: none"> <li><i>To consider the placement of buildings within sites to maximise solar access and natural ventilation.</i></li> <li><i>To encourage innovative design solutions to improve the urban environment.</i></li> <li><i>To design buildings in settings that minimise the need for artificial temperature control and, as a result, provide a high level of amenity for occupants.</i></li> </ul> <p><u>Comment:</u></p> <p>A revised BASIX certificate has been submitted with the application (see Certificate No. 395671M dated 1 November 2011). The BASIX Certificate is supported by an ABSA Assessor Certificate (see Certificate No. 34177123 dated 31 October 2011).</p>

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	<p>It is noted that the energy score has improved upon what was approved under DA2010/1839.</p> <p>All required BASIX commitments have been noted on the application plans. Furthermore, a condition of consent was imposed on DA2010/1839 which requires compliance with the commitments of the applicable BASIX Certificate.</p> <p>The application is considered to be consistent with the Objectives of Clause D5.</p>
<b>D6. Access to Sunlight</b>	<p><b>Compliant.</b></p> <p>The Objectives of Clause D6 aim:</p> <ul style="list-style-type: none"> <li><i>To ensure that reasonable access to sunlight is maintained.</i></li> <li><i>To encourage innovative design solutions to improve the urban environment.</i></li> <li><i>To maximise the penetration of mid winter sunlight to windows, living rooms, and high use indoor and outdoor areas.</i></li> <li><i>To promote passive solar design and the use of solar energy.</i></li> <li><i>To minimise the need for artificial lighting.</i></li> </ul> <p><u>Comment:</u></p> <p>Given the proposed lowering of the building heights, the subject application includes a revised shadow diagram (see Plan No. DA60(B) dated 26 October 2010) which shows that the proposed lowering of building heights will not exacerbate the approved degree of overshadowing such that the principal private open spaces of the neighbouring properties to the south (Nos. 4, 6 &amp; 8 May Road) will not be subject to overshadowing in excess of 50% and that this application would reduce sunlight access to less than 2 hours between 9am and 3pm on June 21.</p> <p>The application is considered to be consistent with the Objectives of Clause D6.</p>
<b>D7. Views</b>	<p><b>Compliant.</b></p> <p>The Objectives of Clause D7 aim:</p> <ul style="list-style-type: none"> <li><i>To allow for the reasonable sharing of views.</i></li> <li><i>To encourage innovative design solutions to improve the urban environment.</i></li> <li><i>To ensure existing canopy trees have priority over views.</i></li> </ul> <p><u>Comment:</u></p> <p>A view analysis was provided with DA2010/1839 (see Plan No. A-006) which indicated that the development would not obstruct views from neighbouring properties. In this regard, and given the proposed lowering of the building heights, it is considered that the development remains consistent with the provisions of D7 Views under WDCP 2011 which requires that <i>development is to allow for the reasonable sharing of views.</i></p>
<b>D8. Privacy</b>	<p>No change to approvals granted under DA2010/1839 and MOD2011/0117</p>
<b>D9. Building Bulk</b>	<p><b>Compliant.</b></p> <p>The Objectives of Clause D9 aim:</p>



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	<ul style="list-style-type: none"> <li><i>To encourage good design and innovative architecture to improve the urban environment.</i></li> <li><i>To minimise the visual impact of development when viewed from adjoining properties, streets, waterways and land zoned for public recreation purposes.</i></li> </ul> <p><u>Comment:</u></p> <p>The application maintains the approved size, shaped and layout of all buildings but proposes to lower the overall building heights by 150mm to 300mm. While this reduces the overall bulk of the development it will not have any noticeable effect due to the minor nature of this element of the proposal.</p> <p>The application is considered to be consistent with the Objectives Clause D9.</p>
<b>D10. Building Colours and Materials</b>	<p><b>Compliant.</b></p> <p>The Objective of Clause D10 is to ensure the colours and materials of new or altered buildings and structures are sympathetic to the surrounding natural and built environment.</p> <p><u>Comment:</u></p> <p>The application proposes to maintain the overall external appearance of the buildings but seeks to alter the materials approved to be used by replacing the timber slats with flat panels which have the same appearance as timber but minimise wear and maintenance. Additionally, the facades of the buildings will include selected areas which will be finished in off-form concrete.</p> <p>Both finishes will not have any significant impact upon the visual appearance of the development such that they detract from the approved quality of the architectural design.</p> <p>The application is considered to be consistent with the Objectives Clause D10.</p>
<b>D11. Roofs</b>	<p><b>Compliant.</b></p> <p>The Objectives of Clause D11 aim:</p> <ul style="list-style-type: none"> <li><i>To encourage innovative design solutions to improve the urban environment.</i></li> <li><i>Roofs are to be designed to complement the local skyline.</i></li> <li><i>Roofs are to be designed to conceal plant and equipment.</i></li> </ul> <p><u>Comment:</u></p> <p>The flat roof forms are the same as approved under DA2010/1839 with exception to the proposed inclusion of lift overruns to Buildings B, C, F and H. The lift overruns extend above the roof line by approximately 0.7m and do not have any adverse visual impact on the architectural integrity of the design or deviate from the mixed roof forms in the area.</p> <p>The application is considered to be consistent with the Objectives of Clause D11.</p>
<b>D12. Glare and Reflection</b>	<p><b>Compliant.</b></p>



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	<p>The Objectives of Clause D12 aim:</p> <ul style="list-style-type: none"> <li><i>To ensure that development will not result in overspill or glare from artificial illumination or sun reflection.</i></li> <li><i>To maintain and improve the amenity of public and private land.</i></li> <li><i>To encourage innovative design solutions to improve the urban environment.</i></li> </ul> <p><u>Comment:</u></p> <p>The application proposes to replace the timber side louvers of the south-facing units in Buildings G, H and J with glass louvers. The modification will not have any adverse glare impacts due to their southern location on the site and the minor extent of additional glazing.</p> <p>The application is considered to be consistent with the Objectives of Clause D12.</p>
<b>D13. Front Fences and Front Walls</b>	No change to approval granted under DA2010/1839
<b>D14. Site Facilities</b>	No change to approval granted under DA2010/1839
<b>D15. Side and Rear Fences</b>	No change to approval granted under DA2010/1839
<b>D16. Swimming Pools and Spa Pools</b>	Not applicable to this application.
<b>D17. Tennis Courts</b>	Not applicable to this application.
<b>D18. Accessibility</b>	No change to approval granted under DA2010/1839
<b>D19. Site Consolidation in the R3 and IN1 Zone</b>	No change to approval granted under DA2010/1839
<b>D20. Safety and Security</b>	<p><b>Compliant subject to conditions.</b></p> <p>The Objective of Clause D20 is to ensure that development maintains and enhances the security and safety of the community.</p> <p>The application includes two features which have potential to impact upon the security and safety of the community.</p> <p><u>Substation</u></p> <p>With regards to the proposed substation, the application was referred to Ausgrid who require that the development must be carried out in accordance with the <i>Energy Network Association's Substation Earthing Guide, ENA EGI-20067</i> so that hazardous step, touch and transfer voltages do not exist during fault conditions (50Hz or transient).</p> <p>The conditions imposed by Ausgrid are included in the recommendation of this report.</p> <p><u>Fire walls</u></p> <p>In the SEPP 65 Statement accompanying the application, the applicant claims that the inclusion of the fire walls are an alternative design solution to the replacing of fire sprinklers.</p> <p>This element of the proposal was referred to Council's Building and Compliance Service who raised concern that the fire walls could not be substantiated as a reasonable alternative solution as the placement of the walls was selective and only covered certain parts</p>

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	<p>of the development thereby neglecting the remainder (ie: where the buildings were positioned in close proximity to each other and to the property boundary). Additionally, it is noted that this element of the proposal is not justified in an accompanying fire report or BCA report.</p> <p>Additionally, it is noted that the placement of the fire walls creates narrow constrained pathways and concealable areas which may encourage crime. This is not in keeping with the principles of CPTED under which the original development application was approved.</p> <p>In this regard, the proposed fire walls are not supported as they are not considered to be a justified alternative solution and will have a detrimental impact upon the safety of pedestrians within the site.</p> <p>Subject to conditions addressing the substation and a condition requiring the deletion of the fire walls, the application is considered to be consistent with Clause D20.</p>
<b>D21. Provision and Location of Utility Services</b>	<p><b>Compliant subject to condition.</b></p> <p>The Objectives of Clause D21 aim:</p> <ul style="list-style-type: none"> <li><i>To encourage innovative design solutions to improve the urban environment.</i></li> <li><i>To ensure that adequate utility services are provided to land being developed.</i></li> </ul> <p><u>Comment:</u></p> <p>The application was referred to Ausgrid for comment in accordance with clause 45(2) of <i>State Environmental Planning Policy (Infrastructure) 2007</i>.</p> <p>The application includes provision of a substation to be located at the north-eastern corner of the site, facing Mooramba Road.</p> <p>Ausgrid have assessed the application and raise no objection to the development subject to conditions that are included in the recommendation of this report.</p> <p>Subject to conditions addressing the substation the application is considered to be consistent with Clause D21.</p>
<b>D22. Conservation of Energy and Water</b>	No change to approval granted under DA2010/1839
<b>D23. Signs</b>	Not applicable to this application.
Part E: The Natural Environment	
Control	Comment
<b>E1. Private Property Tree Management</b>	Not applicable to this application.
<b>E2. Prescribed Vegetation</b>	Not applicable to this application.
<b>E3. Threatened species, populations, ecological communities listed under State or Commonwealth legislation, or High Conversation Habitat</b>	Not applicable to this application.
<b>E4. Wildlife Corridors</b>	Not applicable to this application.
<b>E5. Native Vegetation</b>	Not applicable to this application.



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<b>E6. Retaining unique environmental features</b>	Not applicable to this application.
<b>E7. Development on land adjoining public open space</b>	Not applicable to this application.
<b>E8. Waterways and Riparian Lands</b>	Not applicable to this application.
<b>E9. Coastline Hazard</b>	Not applicable to this application.
<b>E10. Landslip Risk</b>	Refer to previous discussion under Clause 6.4 of WLEP 2011 in this report.
<b>E11. Flood Prone Land</b>	Not applicable to this application.
<b>Part F: Zones and Sensitive Areas</b>	
<b>Control</b>	<b>Control</b>
<b>F1. Local and Neighbourhood Retail Centres</b>	Not applicable to this application.
<b>F2. Brookvale Brickworks</b>	Not applicable to this application.
<b>F3. SP1 Special Activities</b>	Not applicable to this application.
<b>Part G: Special Area Controls</b>	
<b>Control</b>	<b>Control</b>
<b>G1. Dee Why Mixed Use Area</b>	Not applicable to this application.
<b>G2. R3 Medium Density Residential bound by Sturdee Parade, Pacific Parade and land zoned B4 Mixed Use</b>	Not applicable to this application.
<b>G3. Belrose Corridor</b>	Not applicable to this application.
<b>G4. Warringah Mall</b>	Not applicable to this application.
<b>G5. Forest Way Shops</b>	Not applicable to this application.

## POLICY CONTROLS

### Warringah Section 94A Development Contribution Plan

Development contributions were imposed under Section 94A were included in the consent for DA2010/1839 and do not apply to this application.

## OTHER MATTERS FOR CONSIDERATION

Nil

## CONCLUSION

The proposal has been considered against the relevant matters for consideration under Section 79C and Section 96(2) of the EP&A Act 1979. This assessment has taken into consideration the submitted plans, Statement of Environmental Effects, all other documentation supporting the application and public submissions, and does not result in any unreasonable impacts on surrounding, adjoining, adjacent and nearby properties subject to any conditions contained within the Recommendation.



The site has been inspected and the application assessed having regard to the provisions of Section 79C of the *Environmental Planning and Assessment Act, 1979*, the provisions relevant Environmental Planning Instruments including *Warringah Local Environment Plan 2011*, and the relevant codes and policies of Council including *Warringah Development Control Plan 2011*.

The development, as modified, has been found to remain consistent with the Matters for Consideration under s.79C of the *Environmental Planning & Assessment Act, 1979*.

The development, as modified, has been found to maintain consistency with the various provisions of the following Environmental Planning Instruments:

- *State Environmental Planning Policy No. 55 – Remediation of Land*;
- *State Environmental Planning Policy No. 65 – Design Quality of Residential Flat Development*;
- *State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004*; and
- *State Environmental Planning Policy (Infrastructure) 2007*.

Additionally, the assessment also found that the development, as modified, remained compliant with the Development Standards of WLEP 2011.

#### Warringah Local Environmental Plan 2011

The application was considered under the provisions of *Warringah Local Environmental Plan 2011* due to the absence of savings provisions for applications to modify a consent under Clause 1.8A of the Plan.

#### Objectives of the R3 Medium Density zone

The development, as modified, has been found to be consistent with the Objectives of the R3 Medium Density zone.

#### Development Standards

The development, as modified, reduces the approved building heights but continues to breach the Height of Buildings Development Standard at the eastern edge of Building B. The non-compliance was considered to be minor, a reduction to the already approved non-compliance and did not have any adverse impact upon internal or external amenity or appearance of the development.

The non-compliance is supported under Clause 4.6 of WLEP 2011.

#### **Warringah Development Control Plan 2011 (Part D Design)**

The development, as modified, will result in a minor decrease of 3.3% in the provision of deep soil landscaped open space. The variation is supported through a merit assessment under Clause D1 Landscaped Open Space and Bushland Setting of Part D Design.

The development, as modified, has been assessed under the relevant clauses of WDCP 2011 and was found to be generally compliant subject to conditions being imposed in relation to the following:

- C4 Stormwater (refer to Condition No. 17A);
- D1 Landscaped Open Space and Bushland Setting (refer to Condition No. 28C);
- D3 Noise (refer to Condition No. 2);
- D4 Electromagnetic Radiation (refer to Condition No. 2);



- D20 Safety and Security (refer to Condition No. 28C); and
- D21 Provision and Location of Utility Services (refer to Condition No. 2).

As a direct result of the application and the consideration of the matters detailed within this report it considered that the Joint Regional Planning Panel (JRPP) for the Sydney East Region, as the consent authority, grant approval.

## RECOMMENDATION

That the Joint Regional Planning Panel (JRPP) for the Sydney East Region grant approval to modify Development Application No. DA2010/1839 for demolition works and the construction of residential flat buildings and associated basement car park including landscape/site works at Lot 1, DP 1136022, No. 2 Mooramba Road, Dee Why; Lot 2, DP 1136022, No. 10 Painters Parade, Dee Why subject to the following conditions:

### A. Condition No. 1 to be modified as follows:

#### 1. Approved Plans and Supporting Documentation

The development must be carried out in compliance (except as amended by any other condition of consent) with the following:

Architectural Plans – Endorsed with Council's stamp		
Drawing No.	Dated	Prepared By
DA06 Site/Roof	5/11/2010	JAA Studio
DA11 Carpark	5/11/2010	JAA Studio
DA12 Ground Level	5/11/2010	JAA Studio
DA13 Level 1	5/11/2010	JAA Studio
DA14 Level 2	5/11/2010	JAA Studio
DA15 Level 3	5/11/2010	JAA Studio
DA16 Level 4	5/11/2010	JAA Studio
DA17 Level 5	5/11/2010	JAA Studio
DA20 Typical Building Plan Types	5/11/2010	JAA Studio
DA21 Apartment Types	5/11/2010	JAA Studio
DA30 Elevations – East and South	5/11/2010	JAA Studio
DA31 Elevation – North and Section G-G	5/11/2010	JAA Studio
DA35 Elevations – Typical 1 Bedroom Apartment Building	5/11/2010	JAA Studio
DA36 Elevations – Typical 1 & 2 Bedroom Apartment Building	5/11/2010	JAA Studio
DA40 Sections A-A & B-B	5/11/2010	JAA Studio
DA41 Sections D-D & E-E	5/11/2010	JAA Studio
DA50 Sections – Typical 1 & 2 Bedroom Apartment Building	5/11/2010	JAA Studio
DA55 Design Study	5/11/2010	JAA Studio
DA70 Colours and Finishes Sample Board	5/11/2010	JAA Studio

Engineering Plans – Endorsed with Council's stamp		
Drawing No.	Dated	Prepared By
1018/A (1 of 3) Stormwater Pipeline Augmentation Layout	24/09/2010	Stefani Group
1018/A (2 of 3) Pipeline Long Sections and Details	24/09/2010	Stefani Group
1018/A (3 of 3) Stormwater Pipeline and Easement Sections	24/09/2010	Stefani Group
HDA01/P3 Hydraulic Services Street Location Plan	30/11/2010	Whipps-Wood



<b>Engineering Plans – Endorsed with Council’s stamp</b>		
HDA02/P3 Hydraulic Services Catchment Plan	30/11/2010	Whipps-Wood
HDA03/P4 Hydraulic Services Carpark Plan	02/12/2010	Whipps-Wood
HDA04/P3 Hydraulic Services Ground Level plan	30/11/2010	Whipps-Wood
HDA05/P3 Hydraulic Services Stormwater Details	30/11/2010	Whipps-Wood
HDA06/P1 Hydraulic Services Tank & Easement Sections	30/11/2010	Whipps-Wood

<b>Reports/Documentation</b>		
<b>Report/Document</b>	<b>Dated</b>	<b>Prepared By</b>
All recommendations made in <i>Additional Environmental Site Investigation &amp; Remedial Action Plan</i> (Ref: E21637F-RPT)	December 2007	Environmental Investigation Services
All recommendations made in <i>Geotechnical Investigation</i> (Ref: 21637SB-RPT)	28/11/2007	Jeffery and Katauskas Pty Ltd

No construction works (including excavation) shall be undertaken prior to the release of the Construction Certificate.

The development is to be undertaken generally in accordance with the following:

<b>Landscape Plans – Endorsed with Council’s Stamp</b>		
<b>Drawing Number</b>	<b>Dated</b>	<b>Prepared By</b>
10-074 L01(G) Landscape Plan	30/11/2010	Habitation
10-074 L02(E) Landscape Sections	30/11/2010	Habitation
10-074 L03(E) Landscape Sections	30/11/2010	Habitation
10-074 L04(E) Landscape Details	30/11/2010	Habitation

<b>Waste Management Plan – Endorsed with Council’s Stamp</b>		
<b>Plan Number</b>	<b>Dated</b>	<b>Prepared By</b>
Site and Waste Management Report	04/11/2010	JAA Studio

- As modified by the Section 96 application **Mod2011/0117** received by Council on 30 May 2011, and endorsed with Council’s approval stamp;

<b>Architectural Plans – Endorsed with Council’s Stamp</b>		
<b>Drawing No.</b>	<b>Dated</b>	<b>Prepared By</b>
DA06(A) Site/Roof	26/05/2011	JAA Studio
DA12(A) Ground Level	26/05/2011	JAA Studio
DA13(A) Level 1	26/05/2011	JAA Studio
DA14(A) Level 2	26/05/2011	JAA Studio
DA15(A) Level 3	26/05/2011	JAA Studio
DA16(A) Level 4	26/05/2011	JAA Studio
DA17(A) Level 5	26/05/2011	JAA Studio
DA20(A) Typical Building Plan Types	26/05/2011	JAA Studio
DA21(A) Apartment Types	26/05/2011	JAA Studio
DA30(A) Elevations – East and South	26/05/2011	JAA Studio
DA31(A) Elevation – North and Section G-G	26/05/2011	JAA Studio



Architectural Plans – Endorsed with Council's Stamp		
Drawing No.	Dated	Prepared By
DA32(A) Elevation - West	26/05/2011	JAA Studio
DA35(A) Elevations – Typical Building A-F	26/05/2011	JAA Studio
DA36(A) Elevations – Typical Building G-J	26/05/2011	JAA Studio
DA40(A) Sections A-A & B-B	26/05/2011	JAA Studio
DA41(A) Sections D-D & E-E	26/05/2011	JAA Studio
DA50(A) Sections – Typical Buildings	26/05/2011	JAA Studio

Landscape Plans – Endorsed with Council's stamp		
Drawing Number	Dated	Prepared By
10-074 L01-REVB Landscape Plan	25/05/2011	Habitation
10-074 L02-REVB Landscape Sections	25/05/2011	Habitation
10-074 L03-REVB Landscape Sections	25/05/2011	Habitation

- As modified by the Section 96 application **Mod2011/0186** received by Council on 16 August 2011, and endorsed with Council's approval stamp;

Architectural Plans – Endorsed with Council's stamp		
Drawing No.	Dated	Prepared By
DA11(B) Carpark	04/08/2011	JAA Studio

Engineering Plans – Endorsed with Council's stamp		
Drawing No.	Dated	Prepared By
SDP01(P3) Catchment Plan	13/10/2011	Waterman
SDP02(P3) Basement Level Plan	13/10/2011	Waterman
SDP03(P3) Ground Level Plan	13/10/2011	Waterman
SDP04(P3) Detail Sheet No. 1	13/10/2011	Waterman
SDP05(P1) Detail Sheet No. 2	13/10/2011	Waterman

Landscape Plans – Endorsed with Council's stamp		
Drawing Number	Dated	Prepared By
10-074 L04-REVB Landscape Details	25/05/2010	Habitation

- As modified by the Section 96 application **Mod2011/0237** received by Council on 25 October 2011, and endorsed with Council's approval stamp;

Architectural Plans – Endorsed with Council's stamp		
Drawing No.	Dated	Prepared By
DA12(B) Plan – Ground Level	21/10/11	JAA Studio
DA13(B) Plan – Level 1	21/10/11	JAA Studio
DA14(B) Plan – Level 2	21/10/11	JAA Studio
DA15(B) Plan – Level 3	21/10/11	JAA Studio
DA16(B) Plan – Level 4	21/10/11	JAA Studio

Architectural Plans – Endorsed with Council's stamp		
DA17(B) Plan – Level 5	21/10/11	JAA Studio
DA20(B) Plan – Typical Floor Plate Plans	21/10/11	JAA Studio
DA21a(B) Plan – 1 Bed Apartment Types	21/10/11	JAA Studio
DA21b(B) Plan – 2 Bed Apartment C Types	21/10/11	JAA Studio
DA21c(B) Plan – 2 Bed Apartment Types to G, H, J	21/10/11	JAA Studio

**Reason:** To ensure the work is carried out in accordance with the determination of Council and approved plans. (DACPLB01)

- As modified by the Section 96 application **Mod2011/0246** received by Council on 7 November 2011, and endorsed with Council's approval stamp;

Architectural Plans – Endorsed with Council's stamp		
Drawing No.	Dated	Prepared By
DA06(B) Plan - Site/Roof	26/10/2011	JAA Studio
DA11(C) Plan – Car Park	26/10/2011	JAA Studio
DA12(C) Plan – Ground Level	26/10/2011	JAA Studio
DA13(C) Plan – Level 1	26/10/2011	JAA Studio
DA14(C) Plan – Level 2	26/10/2011	JAA Studio
DA15(C) Plan – Level 3	26/10/2011	JAA Studio
DA16(C) Plan – Level 4	26/10/2011	JAA Studio
DA17(C) Plan – Level 5	26/10/2011	JAA Studio
DA20(C) Plan – Typical Floor Plate Plans	26/10/2011	JAA Studio
DA21a(C) Plan – 1 Bed Apartment Types	26/10/2011	JAA Studio
DA21b(C) Plan – 2 Bed Apartment C Types	26/10/2011	JAA Studio
DA21c(C) Plan – 2 Bed Apartment Types to G, H, J	26/10/2011	JAA Studio
DA30(B) Elevations – East and South	26/10/2011	JAA Studio
DA31(B) Elevation – North and Section G-G	26/10/2011	JAA Studio
DA32(B) Elevations - West	26/10/2011	JAA Studio
DA35(B) Building A Operable Facade	26/10/2011	JAA Studio
DA36(B) Typical Building B Operable Facade	26/10/2011	JAA Studio
DA38(B) Building G – Operable Facade	26/10/2011	JAA Studio
DA39(B) Typical Building J Operable Facade	26/10/2011	JAA Studio
DA40(B) Site Sections A-A & B-B	26/10/2011	JAA Studio
DA41(B) Site Sections D-D & E-E	26/10/2011	JAA Studio
DA50(B) Sections – Typical Buildings	26/10/2011	JAA Studio
DA70(B) Building A – Elevation Study	26/10/2011	JAA Studio
DA71(A) Building B – Elevation Study	26/10/2010	JAA Studio

Landscape Plans – Endorsed with Council's stamp		
Drawing Number	Dated	Prepared By
10-074 L01-REVC Landscape Plan and Deep Soil Calculations	31/10/2011	Habitation
10-074 L02-REVC Landscape Sections and Elevations	31/10/2011	Habitation
10-074 L03-REVC Landscape Sections and Elevations	31/10/2011	Habitation
10-074 L04-REVB Proposed Planting & Maintenance Plan	31/10/2011	Habitation

**Reason:** To ensure the work is carried out in accordance with the determination of Council and approved plans. (DACPLB01)

**B. Condition No. 2 to be modified as follows:**

**2. Compliance with External Department, Authority or Service Requirements**

The development must be carried out in compliance with the following:

External Department, Authority or Service	E-Services Reference	Dated
Ausgrid	Response Ausgrid Referral	23/11/2011
NSW RTA	RTA Referral Response	22/12/2010

**(Note:** For a copy of the above referenced document/s, please see Council's 'E-Services' system at [www.warringah.nsw.gov.au](http://www.warringah.nsw.gov.au))

**Reason:** To ensure the work is carried out in accordance with the determination and the statutory requirements of External Department, Authority or Bodies. (DACPLB02)

**C. Amendment to Condition No. 17A as follows:**

**17A. On-site Stormwater Detention**

An On-site Stormwater Detention system must be designed and constructed in accordance with Council's current On-site Stormwater Detention Technical Specification, and generally in accordance with the concept drainage plans prepared by Waterman, drawing number 23959 SDP01 to SDP05, dated P3.

Detailed drainage plans are to be prepared by a suitably qualified Civil Engineer, who has membership to the Institution of Engineers Australia, National Professional Engineers Register (NPER) and registered in the General Area of Practice for civil engineering.

The drainage plans must address the following:

- i. OSD high level overflow pipe is to be designed to cater for minimum 340 litres per second.
- ii. Any surcharge flows from the OSD tank in the event of a blockage to the orifice plate must be conveyed to the kerb and gutter system in Mooramba Road via a pit and pipe system.
- iii. A catch drain or swale to divert flows to the headwall located due west of the subject. Catch drain or swale is to be designed to cater for the 1 in 100 year ARI flows.
- iv. OSD tank is to have minimum dimensions of 32.5m long x 5.25m wide and to provide minimum 318 cubic metres.

Detailed drainage plans, including engineering certification confirming the above requirements have been satisfied and complying with Council's current On-site Stormwater Detention Technical Specification, are to be submitted to the Certifying Authority for approval prior to the issue of the Construction Certificate.

**Reason:** To ensure appropriate provision for the disposal of stormwater and stormwater management arising from the development. (Special condition)



**D. Deletion of Condition No. 28A.**

**E. Addition of Condition No. 28B as follows:**

**28B Footpath crossover on May Road**

This consent does not authorise the construction of the footpath crossover between the southern property boundary and the May Road street alignment.

Details demonstrating compliance are to be submitted to the Certifying Authority prior to the issue of the Construction Certificate.

**Reason:** To ensure consistency with the approved plans.

**F. Addition of Condition No. 28C as follows:**

**28C Fire Walls**

This consent does not authorise the construction of the fire walls between Buildings B, C, D, E and F.

Details demonstrating compliance are to be submitted to the Certifying Authority prior to the issue of the Construction Certificate.

**Note:** This condition does not prevent the requirement to comply with the Building Code of Australia.

**Reason:** To ensure consistency with the approved plans and to maintain the amenity and safety of the development.