

**SUBJECT: 2013SYE001 – DA N0353/12, 79 - 91  
MACPHERSON STREET, WARRIEWOOD (PART LOT 122 SP  
86957) Construction of 9 residential flat buildings of 3-4  
storeys incorporating a total of 221 residential units over  
basement parking and at-grade parking for 472 vehicles,  
associated landscaping, demolition, tree removal excavation,  
flood mitigation works, earthworks, and construction of  
internal driveways and internal roads**

**Determination Level: Joint Regional Planning Panel Date: 17 April 2013**

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## **SUMMARY OF RECOMMENDATION**

### **DEFERRED COMMENCEMENT CONSENT WITH CONDITIONS**

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<b>REPORT PREPARED BY:</b>	Gordon Edgar – Executive Planner Liza Cordoba – Principle Planner Land Release Tija Stagni – Planner Land Release Robbie Platt – Assistant Planner Land Release
<b>APPLICATION SUBMITTED ON:</b>	17 December 2012
<b>APPLICATION SUBMITTED BY:</b>	MERITON PROPERTY MANAGEMENT PTY LTD LEVEL 11, 528 KENT STREET SYDNEY NSW 2000
<b>OWNER(S):</b>	MERITON PROPERTY MANAGEMENT PTY LTD (Own)

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This Development Application has a capital investment value of over \$20 million (\$57,120,083). Consequently, pursuant to Schedule 4A of the Environmental Planning and Assessment Act, the Joint Regional Planning Panel is the consent authority.

## **BACKGROUND**

The development application the subject of this report is for Stage 2 of the Concept Approval by the Planning and Assessment Commission (PAC). It is located within 'Buffer Area 3' of the Warriewood Valley Urban Land Release Area, which is part of the State Government's Metropolitan Development Program. The planning for the area is underlain by an extensive and orderly planning process.

The proponent's (Meriton) Part 3A development proposal varied widely from the density and scale established for the site by this orderly planning process. It was Council's contention that the proposal was contrary to the Objects of the *Environmental Planning and Assessment Act 1979*, in particular: *the promotion and co-ordination of the orderly and economic use and development of land, the provision of land for public purposes, and the provision and co-ordination of community*

*services and facilities and that* the development failed the test imposed by the Objects of the Act in regard to the following:

- It contradicted the certainty of the Sub-Regional Plan and Metropolitan Plan and Warriewood Valley Planning Framework 2010
- It would imbed an urban form that would impact on the desired character of Warriewood Valley with adverse impact on the amenity of the residents and surrounding community
- It would vary widely from the established community expectations in terms of the form of development

Council's detailed evaluation of the development identified five principal areas of concern being, equity and precedent, departure from the orderly planning process, inadequate infrastructure and services provision and funding, impact on amenity, and community expectation

Notwithstanding Council's objections, the PAC on 18 January 2011 approved the Concept Approval for 2 Stages of development with a specific Project Approval for Stage 1. The PAC in issuing the Concept and Project Approvals required amended plans lowering the density to 60 dwellings per hectare and the height of buildings to a maximum of 4 storeys. The reduction in density required a recalculation of Developer Contribution from that shown in the approvals. The approvals established conditions of approval and Statement of Commitments which are unable to be deviated from in assessing and determining this Part 4 application for Stage 2

Council subsequently challenged the PAC's approval in the Land and Environment Court of NSW which subsequently ruled in favour of the Minister for Planning and Meriton.

Since the approval by the PAC the Approvals have been modified numerous times.

Council and the Department of Planning and Infrastructure have undertaken a Strategic Review of the Warriewood valley undeveloped lands to determine the future form of development for the Valley. The Draft findings are that a maximum of 36 DPH is appropriate.

## **1.0 SITE AND LAND AFFECTATIONS**

### **1.1 Description of Site**

The proposed development is Stage 2 of a larger development divided into 2 stages. The subject site is irregular in shape and is located on the south-western corner of Macpherson Street and Boondah Road in Warriewood. The Site is now known as 79-91 Macpherson Street, Warriewood. The legal description of the land upon which Stage 2 of the development is proposed is Part Lot 122 in Strata Plan 86957.

The overall development site was previously known as 14-18 Boondah Road, Warriewood.

The Site is generally low-lying and on the edge of the Fern Creek flood plain. The Site slopes gently away from Macpherson Street towards the wetlands in the southern and western edges of the site.

The Stage 2 portion of the Site is generally cleared of vegetation with the exception of a remnant stand of trees in the area between proposed Buildings N and O at the midpoint of the Boondah Road frontage to the Site.

Stage 2 of the overall development of the Site, the subject of this Development Application, is proposed on the eastern and south-eastern portions of the overall development site with frontages to Macpherson Street and Boondah Road. A detailed description of what is proposed as a part of Stage 2 is included in section 4 of this report.

Stage 1 of the overall development is generally located on the western side of the overall development site and is currently under construction. The works approved as a Part 3A Project Approval for Stage 1 comprises the demolition of all existing structures on the site, excavation, earthworks and flood mitigation, construction of 7 residential buildings (known as Buildings A to G) of 3-4 storeys in height providing a total of 226 apartments with associated swimming pool and gymnasium building, basement parking for 471 vehicles, a child care centre, external road works, internal public access roads and public pedestrian cycle way, bushfire asset protection zone, environmental buffer areas and ecological rehabilitation and landscaping works.

## **1.2 Land Affectations**

The Site is zoned 2(f) (Urban Purposes – Mixed Residential) under Pittwater Local Environmental Plan 1993 (PLEP 1993). The Site is to be zoned R3 (Medium Density Residential) under Draft Local Environmental Plan 2013.

The site is subject to the 2010 Warriewood Valley Planning Framework and other associated documents (Roads Masterplan, Landscape Masterplan, Section 94 Plan, and Water Management Plan). The Warriewood Valley land release is currently under a review of its density by the Department of Planning and Infrastructure and Council. The Draft findings of this study have not yet been endorsed.

The Site is identified as bush fire prone land. It is located within 'Buffer Area 3' adjacent to the sewage treatment plant to the north of the Site. It is within Acid Sulphate Soil Region 3. It has been identified as containing components of the following Endangered Ecological Communities: Swamp Sclerophyll Forest; Swamp Oak Forest and; Sand Bangalay Forest.

The Site is also identified as flood prone land.

## **1.3 Adjoining Properties and Surrounding Locality**

In regard to adjoining properties, the overall development site practically envelopes two adjoining residential properties fronting onto Macpherson Street that are not a part of the Site. These 2 properties are known as 5 and 7 Macpherson Street, Warriewood. They are centrally located in relation to the development site and surrounded by it to the east, west and south. Effectively, these 2 adjoining properties are located in-between Stages 1 and 2 of the overall development. No.5 Macpherson Street contains a 2 storey brick and tile dwelling house and a fibrous cement clad garage. No.7 Macpherson Street contains a 2 storey brick and tile dwelling house.

To the east of the Site, on the opposite side of Boondah Road is a sewage treatment plant.

To the west of the Site are wetlands and Fern Creek. On the other side of Fern Creek is a residential area characterised by 2 storey townhouse style development and detached dwellings on small allotments. This style of residential development is also prevalent to the north-east of the Site further up Macpherson Street.

To the south-west of the Site are the Warriewood Wetlands, which are zoned 7(a) Environmental Protection under PLEP 1993.

To the north of the Site on the opposite side of Macpherson Street is the Anglican Retirement Village (ARV) which consists of a mixture of low rise retirement unit development and higher level aged care facilities.

## **2.0 STRATEGIC BACKGROUND**

### **2.1 Part 3A Concept Approval**

On 18 January 2011, the Planning Assessment Commission (PAC) approved a concept development for the whole of the Site (then known as 14-18 Boondah Road, Warriewood) under Part 3A of the Environmental Planning & Assessment Act (EPAA). This Concept Approval (MP09\_0162) approved the development of the Site in 2 stages with 16 residential buildings of 3 to 4 storeys and associated buildings including a child care centre and common swimming pool / gymnasium building. It also included associated basement parking, earthworks, landscaping, internal road works, ecological rehabilitation and flood mitigation works.

The Concept Approval set the maximum density for the Site, the number of buildings, their footprints, maximum heights, access/egress arrangements and driveway, pathway and cycleway locations. The Concept Approval required all future stages of the development to be subject to a Part 4 (of the EPAA) assessment and set specified Future Environmental Assessment Requirements (FEAR's) for all future detailed development applications. These FEAR's are detailed under **Table 1** of this assessment report. The subject Stage 2 Development Application is Stage 2 of this Concept Approved development.

The PAC approved the detailed development of Stage 1 of the Concept Approval, known as Project Approval MP10\_0177 at the same time as the Concept Approval. Stage 1 included 8 of the residential buildings within the Concept Approval, known as Buildings A – G, as well as the child care centre and the swimming pool / gymnasium building. Stage 1 is currently under construction and occupies the western portion of the Site.

The Concept Approval was subsequently modified on 3 occasions; most recently, MOD 3 was approved on 14 January 2013. This modification to the Concept Approval included the addition of a garbage room, minor amendments to building footprints and the alignment of an internal road.

It is noted that a number of submissions to this Development Application have raised issues regarding the Concept Approval and Project Approval issued by the PAC under Part 3A of the EPAA. Those issues deal with conditions already imposed by

the prevailing Part 3A approvals and cannot be revisited through the assessment of the current DA. In fact, the Applicant is required to comply with the terms of the Concept Approval. It is not within the scope of the assessment of this Development Application to change or override any of the provisions of the Part 3A Concept Approval that apply to the development irrespective of whether the terms of these approvals are considered appropriate or not.

Notwithstanding the above, a detailed response to submissions has been provided in **ATTACHMENT 1** to provide a more detailed explanation and response to the issues raised by the community, such that the complicated existing provisions that apply to this DA and “transitional Part 3A projects” can be better understood.

## **2.2 Warriewood Valley Strategic Review**

The catalyst for undertaking the Warriewood Valley Strategic Review originated from the PAC recommendation that Council (with the Department of Planning and Infrastructure) undertake a strategic review of all undeveloped lands in the Warriewood Valley release area.

The subject property was not identified as an undeveloped land for density consideration in the Warriewood Valley Strategic Review (Strategic Review). It is worth noting that the Site is identified as not having flood-free evacuation access at the Probable Maximum Flood (PMF) event. The flooding consultant commissioned by Council for the Strategic Review, Cardno, in its Hydrology Study recommended that for flood events up to the PMF event, ‘shelter in place’ should not be permitted if the isolation occurs for longer than six hours. The exhibited Draft Strategic Review Report identifies this unresolved issue and confirms (in page 53 of that Draft Report) that “senior officers from the Department and NSWSES will further assess flood evacuation to resolve the issue of an acceptable standard for intensified development and its evacuation routes.”

Notwithstanding the above issue and regardless that the Strategic Review is not yet finalised, this DA is an outcome of a Concept Approval issued by the PAC. Submissions to this DA requested that the determination of the DA be deferred until such time as Council and the Department completes the Strategic Review and reported to Council. The Concept Approval, as the prevailing/parent approval for the development upon which this DA relates, already approved the intensification of the property for up to a density of 60 dwellings per hectare. The Concept Approval also determined ‘shelter in place’ is the approved approach for development on the overall property including this site.

## **2.3 Warriewood Valley Planning Framework 2010**

The Warriewood Valley Planning Framework 2010 (2010 Framework) is the current, adopted planning document relevant to the Warriewood Valley Release Area directing how the release area will be developed. The 2010 Framework has prescribed a maximum permitted density of 25 dwellings per hectare being developed in Warriewood Valley including the subject property. This provides for 186 dwellings on this site.

A Concept Approval issued for the property under Part 3A of the EP&A Act permitted a maximum density of 60 dwellings per hectare to be developed on this site which equates to 447 dwellings in two (2) stages. This DA has been lodged as a requirement of the Concept Approval.

Submissions to this DA requested that this DA be considered against the adopted 2010 Framework. As discussed earlier, there are provisions applying to this DA and “transitional Part 3A projects”. One such provision relates to the density provision applied in the Concept Approval which overrides the density provision in Council’s LEP or DCP, and the 2010 Framework. Likewise the Concept Approval does not allow alteration of height, placement of buildings, access points, developer contributions, dedications and reliance on consultant’s reports embedded within the Approval. In this regard the extracts from the Act at 2.4 below are relevant.

## 2.4 Part 3A Transitional Arrangements

Although Part 3A of the EPAA has been repealed, Schedule 6A of the EPAA enabled the continuance of the Part 3A provisions for projects approved prior to the repeal of Part 3A. This Development Application is the subject of Concept Approval MP09\_0162 and considered to be a “*transitional Part 3A project*” under the EPAA, as follows (*emphasis added*):-

### **“3B Provisions applying with respect to approval of concept plans**

- (1) *This clause applies to development (other than an approved project) for which a concept plan has been approved under Part 3A, before or after the repeal of Part 3A, and so applies whether or not the project or any stage of the project is or was a transitional Part 3A project.*
- (2) *After the repeal of Part 3A, the following provisions apply (despite anything to the contrary in section 75P (2)) if approval to carry out any development to which this clause applies is subject to Part 4 or 5 of the Act:*
  - (a) ***if Part 4 applies to the carrying out of the development, the development is taken to be development that may be carried out with development consent under Part 4 (despite anything to the contrary in an environmental planning instrument),***
  - (b) *if Part 5 applies to the carrying out of the development, the development is taken to be development that may be carried out without development consent under Part 4 (despite anything to the contrary in an environmental planning instrument),*
  - (c) *any development standard that is within the terms of the approval of the concept plan has effect,*
  - (d) ***a consent authority must not grant consent under Part 4 for the development unless it is satisfied that the development is generally consistent with the terms of the approval of the concept plan,***
  - (e) *a consent authority may grant consent under Part 4 for the development without complying with any requirement under any environmental planning instrument relating to a master plan,*
  - (f) ***the provisions of any environmental planning instrument or any development control plan do not have effect to the extent to which they are inconsistent with the terms of the approval of the concept plan,***
  - (g) ***any order or direction made under section 75P (2) when the concept plan was approved continues to have effect.”***

Subsection 3B(2)(a) of Schedule 6A above applies, as Stage 2 of this development is ‘*taken to be development that may be carried out with development consent under Part 4 (despite anything to the contrary in an environmental planning instrument)*’.

In the event of an inconsistency or non-compliance with a planning instrument (EPI) or development control plan (DCP) and the approved Concept Plan, Subsection

3B(2)(f) of Schedule 6A above applies and the inconsistency or non-compliance in the EPI or DCP has no effect.

The consent authority (in this case, the JRPP) must assure itself that the development is consistent with the terms of the approval of the concept plan prior to the granting of consent. In this regard, the terms of the Concept Approval are set out at Part 5 in Tables 1, 1(a), 1(b), 1(c), 1(d) and 1(e) below with an assessment as to whether the proposed development is consistent with these terms of concept approval.

## **2.5 Application of Section 75P(2) of the EPAA as it relates to this application**

Section 75P(2), as referenced in Section 3B(2)(g) of Schedule 6A above, of the EP&A Act reads as follows (*emphasis added*):-

### ***“75P Determinations with respect to project for which concept plan approved***

- (2) *If the Minister determines that approval to carry out the project or any particular stage of the project is to be subject to the other provisions of this Act, the following provisions apply:*
  - (a) ***the determination of a development application for the project or that stage of the project under Part 4 is to be generally consistent with the terms of the approval of the concept plan,***
  - (a1) ***any consent granted for the project or that stage of the project under Part 4 is to be subject to such conditions as the Minister directs for the purpose of fulfilling the obligations in a statement of commitments submitted by the proponent (in which case those conditions cannot be modified without the approval of the Minister and a person cannot appeal to the Court under this Act in respect of the direction or any such conditions imposed by the consent authority),***
  - (b) ***the project or that stage of the project is not integrated development for the purposes of Part 4,***
  - (c) *any further environmental assessment of the project or that stage of the project under Part 4 or Part 5 is to be undertaken in accordance with the requirements determined by the Minister when approving the concept plan (despite anything to the contrary in that Part),*
  - (c1) *a provision of an environmental planning instrument prohibiting or restricting the carrying out of the project or that stage of the project under Part 4 (other than a project of a class prescribed by the regulations) does not have effect if the Minister so directs,*
  - (d) *the Minister may, by order, declare that that stage of the project (or any part of it) is exempt or complying development for the purposes of this Act,*
  - (e) *the Minister may, by order, declare that that stage of the project (or any part of it) is not designated development for the purposes of this Act,*
  - (f) *the Minister may, by order, revoke or amend (as the case requires) the declaration of the project under this Part.*

*An order under paragraph (d), (e) or (f) is to be published in the Gazette and has effect according to its tenor.”*

The Concept Approval involves land that is bushfire prone land and contains a section of Fern Creek for which works are to be carried out within the creek line corridor. This DA seeks approval for works which would be integrated development if it were not for Section 75P(2)(b).

### **3.0 DETAILS OF THE PROPOSAL**

The proposed development, the subject of this assessment report, is Stage 2 of the overall development approved in concept form by the Part 3A Concept Approval MP09\_062 and includes the remaining 9 residential buildings within the overall development, as well as associated internal roads and landscaping. A total of 221 units are proposed. Of these 221 units, a total of 23 (10.4%) are adaptable units.

The following buildings are proposed:

#### **Building H**

A 3 storey residential flat building over basement parking fronting onto Macpherson Street and adjacent to 5 Macpherson Street. It contains a total of 18 units including:

- 1 x 1 bed + study unit;
- 6 x 2 bed units (2 of which are adaptable);
- 5 x 2 bed + study unit;
- 6 x 3 bed units.

#### **Building I**

A 3 storey residential flat building over basement parking fronting onto the corner of Macpherson Street and Boondah Road. It contains a total of 18 units including:

- 1 x 1 bed unit;
- 14 x 2 bed units (2 of which are adaptable);
- 3 x 3 bed units.

#### **Building J**

A 3 storey residential flat building over basement parking and fronting onto Boondah Road. It contains a total of 18 units including:

- 1 x 1 bed unit;
- 14 x 2 bed units (2 of which are adaptable);
- 3 x 2 bed + study units.

#### **Building K**

A 4 storey residential flat building over basement parking that fronts onto an internal driveway. It contains a total of 34 units including:

- 1 x studio unit;
- 32 x 2 bed units (3 of which are adaptable);
- 1 x 2 bed + study unit.

#### **Building L**

A 4 storey residential flat building over basement parking located behind the swimming pool / gymnasium building and facing toward the riparian zone and wetlands area at the rear of the Site. It contains a total of 22 units including:



- 1 x 2 bed unit;
- 21 x 3 bed units (2 of which are adaptable).

#### Building M

A 4 storey residential flat building over basement parking fronting onto an internal driveway. It contains a total of 39 units including:

- 3 x 1 bed units (1 of which is adaptable);
- 1 x 1 bed + study unit (adaptable);
- 13 x 2 bed units (2 of which are adaptable);
- 13 x 2 bed + study units (2 of which are adaptable);
- 9 x 3 bed units.

#### Building N

A 3 storey residential flat building over basement parking fronting onto Boondah Road, adjacent to the entrance to the new main internal driveway to Stage 2. it contains a total of 15 units including:

- 1 x 1 bed unit;
- 14 x 2 bed units (3 of which are adaptable).

#### Building O

A 3 storey residential flat building over basement parking fronting onto Boondah Road. It contains a total of 18 units including:

- 6 x 1 bed units (2 of which are adaptable);
- 6 x 2 bed units;
- 6 x 2 bed + study units

#### Building P

A 3 storey residential flat building over basement parking fronting onto Boondah Road and located adjacent to the new internal driveway proposed adjacent to the south-east boundary of the Site. It contains a total of 39 units including:

- 2 x studio units;
- 3 x 1 bed units;
- 3 x 1 bed + study units (2 of which are adaptable units);
- 23 x 2 bed units;
- 8 x 2 bed + study units (2 of which are adaptable units).

Basement parking is proposed for a total of 464 vehicles with 210 of these car spaces being provided in a 'stacked' arrangement. Consent is also sought as a part of this Stage 2 Development Application for:

- Demolition of the existing structures on the Site and tree removal;
- Excavation, earthworks and flood mitigation works;
- The construction of the buildings described above;

- Associated landscaping works including a children’s playground and exercise station;
- Construction of driveways and internal roads.

#### **4.0 ISSUES**

- Compliance with the Part 3A Concept Approval
- Inadequacy of landscape treatment and level of landscaping information
- Compliance with SEPP 65 and Residential Flat Design Code
- Building Height
- Inconsistencies within the terms of the Concept Approval
- Flooding
- Water Management
- Visual Privacy
- Apartment Layout
- Daylight and Solar Access
- Deep Soil

#### **5.0 NOTIFICATIONS**

604 landowners/community groups were notified on 21 December 2012. Landowners/community groups were given until 31 January 2013 to comment on the proposal. The application was also advertised in the local newspaper on Saturday 21 December 2012.

27 submissions received from members of the community. See summary of submissions and responses in **ATTACHMENT 1**.

#### **6.0 ASSESSMENT OF COMPLIANCE WITH CONCEPT APPROVAL**

The tables below have been compiled by the assessing officer and are based on the original Part 3A Concept Approval MP09\_0162 for the development, approved 18 January 2011, as modified by:

- MP09\_162 MOD 1 approved 15 December 2011;
- MP09\_162 MOD 2 approved 6 November 2012, and;
- MP09\_162 MOD 3 approved 15 January 2013.

### TABLE 1: CONCEPT APPROVAL COMPLIANCE TABLES

[illegible]

Refer to <b>Table 1(b)</b> below.	landscape details with the Concept Approval in <b>section 6.1</b> of this report below.	condition required to ensure compliance  <b>(See Deferred Commencement Condition 1).</b>
<p><b>Other Documents</b></p> <p>Refer to Table 1(c) below for other documents making up terms of approval. These include:</p> <p>Letter dated 11/11/2010 from Meriton Apartments detailing the proposed public open space dedication of the Fern Creek creekline corridor (6,681sqm). Additional land totalling 8,920sqm is identified in this letter to be dedicated as passive open space including land adjacent to the eastern boundary of the development site identified as an overland flowpath and drainage swale, also some of the land within the 25m buffer strip, some land within the 10m buffer zone and some land within the 20m core riparian zone, adjoining the southern boundary of the development site. This was accepted by the PAC and is within the Concept Approval.</p> <p>Solar Access Assessment – Concept Plan prepared by SLR Consulting Pty Ltd and dated 2 June 2011</p> <p>Revised Master Plan Layout prepared by</p>	<p>The development site has been subdivided such that the wider development site has been separated from the land identified for dedication within this letter. A detailed comment regarding developer contributions and land dedications is provided in <b>section 7.2</b> of this report.</p> <p>This document is not available on the Department's website and has not been able to be located by Department staff, however, it is noted that it was inserted into the Concept Approval by Mod 1 of that approval. It is also noted that it would have been based on the Concept Plans for Mod 1 and that the Concept Approval was further modified since then but the solar access assessment was not. It is therefore likely that it would not be an accurate solar access assessment of the Stage 2 buildings as they are now proposed. In any event, new solar access reports have been submitted that are updated to the currently proposed plans. The concept plan solar access report would therefore be a superseded document and not relevant to the assessment due to this anomaly.</p>	<p>YES, Conditions recommended</p> <p>Superseded and not relevant.</p>

<p>AT &amp; L Civil Engineers and Project Managers and dated 28 October 2011.</p>	<p>The Revised Master Plan Layout referred to was a part of the approval of Mod 1 to the Concept Approval. It shows the general location of Stage 2 buildings but with the formerly proposed internal loop driveway, which is inconsistent with the current Concept Approval as it was revised as a part of the approval of Mod 3 to the Concept Approval. The failure to update the Revised Master Plan Layout is considered to be an anomaly of the Concept Approval. The Mod 3 internal driveway design is considered to be the current and prevailing Concept Approval internal driveway design and the Stage 2 DA complies with this design. Otherwise, the DA is generally consistent with the Revised Master Plan Layout.</p> <p><b>Note:</b> Comments elsewhere in this report regarding Schedule 4 and the 'Statement of Commitments' within the Concept Approval relating to the dedication of the 'loop road'.</p>	<p>YES</p>
<p><b>PART B</b></p> <p><b>1. Environmental Zones</b></p> <p>The plans described in Part A shall be modified as follows:</p> <p>a) The Asset Protection Zone shall be maintained as an Inner Protection Area with a minimum width of 25 metres, exclusive of the 10 metre wide Vegetated Wetland Buffer Zone</p> <p>b) The Bio-Retention Basin B and Private Internal Road adjoining Building B shall be relocated clear of the 10 metre Vegetated Buffer Zone.</p> <p>c) The building envelopes of Buildings O and P shall be amended to accord with the above environmental zone modifications. The north eastern wall of Building O shall not extend past its existing location.</p> <p>Amended plans demonstrating compliance with this modification shall be submitted to,</p>	<p>The submitted Stage 2 plans are consistent with this requirement.</p> <p>The submitted Stage 2 plans are consistent with this requirement.</p> <p>The submitted Stage 2 plans are consistent with this requirement.</p>	<p>YES</p> <p>YES</p> <p>YES</p>



	Approval, Council is obliged to accept it. Refer to full discussion under <b>section 7.2.</b>	
<b>4. Inconsistencies between Documentation</b>  In the event of any inconsistency between modifications of the Concept Plan approval identified in this approval and the drawings / documents including the revised Statement of Commitments, the modifications of the Concept Plan shall prevail.	Noted	N/A
<b>SCHEDULE 3</b>  <b>FUTURE ENVIRONMENTAL ASSESSMENT REQUIREMENTS</b>  <b>1. Flood Levels</b>  Future Development Applications shall comply with the Brown Consulting Flood Management Report and consider and address any recommendations in the Council's adopted Flood Study and relevant state policies at the time of lodgement of the application to demonstrate the finished floor levels of the buildings will be above the probable maximum flood levels for the site.	Refer to <b>section 7.4</b> of this report for detailed discussion regarding compliance with these flood level requirements.	YES, Subject to deferred commencement conditions.  <b>(See Deferred Commencement Condition 2)</b>
<b>2. Building Design</b>  Future Development Applications shall demonstrate existing locally significant Angophora trees within the Boondah Road reserve can be retained unless specific approval is granted by Pittwater Council for removal of these trees. This requirement excludes the area required for clearing for the proposed road access onto Boondah Road.	Council has already issued approval for the removal of Angophoras along Boondah Road as a part of the required road and infrastructure works. These have been conditioned to be replaced and this condition is also recommended as a part of the Stage 2 consent  <b>(See Condition B4)</b>	YES
<b>3. Children's Play Area</b>  Future Development Applications shall demonstrate the eastern half of the landscaped area identified on Plan No.LA101 Issue B as an exercise station precinct between Buildings H, I, J and K will incorporate child play areas.	Additional detail has been submitted regarding the treatment of the relevant landscaped area. The western portion of this area is proposed as a small children's play area with climbing apparatus over a soft fall area and the eastern half is proposed to be used as an exercise station with an ab-crunder, cross trainer and leg press/chin up apparatus. The area is	YES

	<p>surrounded by 1.2m fencing. This area is surrounded by Buildings H, I J and K so it would be appropriate for this play area and exercise station to be constructed and fully equipped prior to the issue of the Occupation Certificate for Building K. An appropriate condition is recommended</p> <p><b>(See Condition E11)</b></p>	
<p><b>4. SEPP 65</b></p> <p>Future Development Applications shall be consistent with the provisions of the <i>State Environmental Planning Policy 65 – Design Quality of Residential Flat Development (SEPP 65)</i> and the accompanying <i>Residential Flat Design Code 2002</i>.</p>	<p>Refer to <b>section 7.5</b> of this report for a detailed assessment of the performance of the development against SEPP 65 Design Quality Principles and <b>section 7.6</b> of this report for an assessment of its performance against the rules of thumb of the RFDC.</p>	<p><b>NO</b></p> <p>Strict compliance with the SEPP 65 Landscape Design Quality principle is not achieved. This can be addressed by condition. Strict compliance with RFDC is not achieved although not to the extent that would warrant the refusal of the application.</p>
<p><b>5. Landscaping</b></p> <p>Future Development Applications shall include detailed landscape plans demonstrating that sufficient deep soil can be provided for landscaping, particularly along street frontages.</p>	<p>A detailed assessment of the level of compliance with this assessment requirement is provided below in <b>section 7.7</b> of this report. Insufficient information has been provided to adequately demonstrate compliance.</p>	<p><b>NO</b></p> <p>Deferred commence condition required</p> <p><b>(See Deferred Commencement Condition 2)</b></p>
<p><b>6. Travel Access Guide (TAG) / Green Travel Plan</b></p> <p>Future Development Applications shall provide details of any Travel Access Guide (TAG) / Green Travel Plan prior to the occupation of any building on site. This should include an investigation of car sharing schemes.</p>	<p>A Transport Access Guide was submitted. This does not address car sharing schemes and is not considered to contain sufficient detail. It is recommended a condition be included requiring an amended guide to be submitted</p>	<p>YES, subject to condition</p> <p><b>(See Condition E12)</b></p>



	prior to any Occupation Certificate being issued.	
<b>7. Road Improvement Works</b>  Future development applications shall provide details of any road improvement works that may be required to accommodate the traffic generated by the development on the site. All required works for each application shall be implemented prior to the occupation of any buildings in that development application.	<p>The roadworks necessary for the overall development, including Stage 2, were conditioned as part of the Stage 1 Project Approval.</p> <p>Roads Act approvals have recently been issued for the full width reconstruction of Boondah Road (to full length of the property) including the southern-most driveway entrance, Macpherson Street east (half road construction, fronting the property) and the roundabout at Macpherson Street-Boondah Road intersection.</p> <p>As such this DA does not seek consent for works associated with the reconstruction of Boondah Road.</p>	N/A
<b>8. Adaptable Units</b>  At least ten percent of the residential units provided as part of the Stage 2 works shall be developed as adaptable housing as defined by Pittwater Development Control Plan 21. Each adaptable unit shall be provided with at least one accessible car parking space.	<p>23 adaptable units are proposed (equalling 10.4% of total 221 units proposed). 31 car spaces are identified as being accessible on the car parking plans. Each proposed residential flat building is supported by an individual access report making recommendations for modifications to be made at construction certificate stage to ensure compliance with the relevant Australian standard, the BCA and the DDA. Conditions are recommended requiring written confirmation from an access consultant that the CC plans incorporate all of these recommendations prior to release of the CC plans.</p> <p><b>(See Condition C17)</b></p>	<p>YES, subject to conditions.</p> <p><b>(See Condition C17)</b></p>
<b>9. Car Parking</b>  Car parking for Stage 2 works shall be	427 residential car spaces	YES

<p>provided at the following minimum rate:</p> <p>(a) 1 space per studio/ 1 bedroom unit;</p> <p>(b) 2 spaces per 2 bedroom unit;</p> <p>(c) 2 spaces per 3 bedroom unit;</p> <p>(d) 1 visitor space per 5 dwellings; and</p> <p>(e) Other requirements are to be consistent with the Pittwater Council's DCP 21.</p>	<p>are provided and 45 visitor car spaces are provided, consistent with the car parking rates required by this condition. Numerous conditions are recommended to ensure compliance with the relevant standards</p> <p><b>(See Conditions B6 and C5)</b></p>	
<p><b>10. Emergency Access</b></p> <p>The emergency access shall meet the requirements for emergency vehicles and may be constructed as a shared way with the cycle path.</p>	<p>The emergency access connecting the internal driveways off Macpherson Street and Boondah Road is to be provided as part of Stage 1 and not the subject of this DA.</p>	N/A
<p><b>11. Stage 2 Pedestrian / Cycle Paths</b></p> <p>The location of the Stage 2 pedestrian / cycle paths may vary from the alignment shown on the approved concept plan (18 January 2011) if future applications demonstrate that it is unreasonable in physical, environmental and economic terms to provide the pedestrian / cycle paths along the approved alignment.</p>	<p>The location of the Stage 2 pedestrian and cycle paths is consistent with the Concept Approval (as modified).</p>	YES
<p><b>12. Road Improvement Works</b></p> <p>The developer shall be responsible for the reconstruction of half of the width of Boondah Road.</p>	<p>Reconstruction of the full width of Boondah Road is the subject of a recent Roads Act Approval. Half of the width of this road reconstruction is to be paid for by Council and the other half is to be paid for by the developer.</p> <p>As such, this DA does not seek consent for works associated with the reconstruction of the half-width of Boondah Road.</p>	N/A
<p><b>SCHEDULE 4</b></p> <p><b>STATEMENT OF COMMITMENTS</b></p> <p><b>1. Developer Contributions</b></p>		

<p>Section 94 Contribution of \$19,041,428.00 comprising a total cash contribution of \$13,152,676.00 and an agreed schedule of works-in-kind to the value of \$5,888,676.00 (including the dedication of 15,601sqm of land) is to be made for the provision of public infrastructure and services.</p> <p>The above Section 94 Contributions payable are to be stages as follows.</p>	<p>Refer to Stage 1 and 2 contribution details below.</p>	<p>See below.</p>
<p><b>Stage 1</b></p> <p>A cash contribution to the amount of \$6,941,976.64 to be made payable prior to the issue of the first Occupation Certificate. Evidence of the payment shall be provided to the Certifying Authority. This is equivalent to 295 dwelling being built. Should this number change, then equivalent proportional number of dwellings divided into the total cash contribution will be made payable.</p> <p>The following works in kind shall be carried out during Stage 1.</p> <p>Refer to Table 1(d) below.</p>	<p>Cash contribution revised based on number of units approved equivalent amount was paid prior to first Occupation Certificate for Stage 1.</p> <p>Stage 1 still under construction, therefore not all works undertaken. Project Approval MP10_0177 as amended requires these works to be undertaken and land to be dedicated prior to final Occupation Certificate for Stage 1.</p>	<p>N/A</p>
<p><b>Stage 2</b></p> <p>A cash contribution to the amount of \$6,221,675.36 to be made payable prior to the issue of the final Occupation Certificate. Evidence of the payment shall be provided to the Certifying Authority. This is equivalent to 264 dwellingS being built. Should this number change, then equivalent proportional number of dwellings divided into the total cash contribution will be made payable.</p> <p>The following works in kind shall be carried out during Stage 2.</p> <p>Refer to Table 1(e) below.</p>	<p>This DA for Stage 2 seeks approval for 221 dwellings, not the 264 dwellings as stated in this Concept Approval condition. The contributions must be commensurate to 221 dwellings therefore, the revised cash contribution will be different to the cash contribution in the Concept Approval (the condition as worded, infers the amount will be changed). Appropriate conditions are therefore recommended requiring the payment for the lesser, adjusted amount. Refer to detailed comment in <b>section 7.2</b> of this report and</p> <p><b>(See Condition E18)</b></p>	<p>YES, subject to conditions</p> <p><b>(See Condition E18)</b></p>

**TABLE 1(a): APPROVED ARCHITECTURAL DRAWINGS**

Drawing No.	Revision	Name of Plan	Drawn By	Date
A000	I	Open Space and Ecology	Architectus	November 2012
A001	I	Vehicle Access and Street Network	Architectus	November 2012
A002	I	Pedestrian Footpath and Access Cycleway	Architectus	November 2012
A003	I	Land Use Diagram	Architectus	November 2012
A004	I	Building Height Diagram	Architectus	November 2012
A005	K	Building Height Diagram	Architectus	November 2012
DA01	B	Overall Site Staging Plan	Meriton Apartments Pty Ltd	13 August 2010
DA07	F	Deep Planting	Meriton Apartments Pty Ltd	3 October 2012

**TABLE 1(b): APPROVED LANDSCAPE AND EARTHWORKS PLANS**

Drawing No.	Revision	Name of Plan	Drawn By	Date
LA101	J	Landscape Masterplan Vegetation Plan	Site Image Landscape Architects	27 November 2012
LA102	B	Landscape Masterplan  Landscape Management Zones	Site Image Landscape Architects	13 August 2010
C025	P1	Site Earthworks Plan and Section	AT&L Civil Engineers and Project Managers	7 September 2010

**TABLE 1(c): OTHER APPROVED DOCUMENTS**

Drawing No.	Name of Document	Drawn By	Date
None	Letter regarding public open space dedication  <b>(Attachment 1)</b>	Meriton Apartments Pty Ltd	11 November 2010
None	Solar Access Assessment – Concept Plan  14-18 Boondah Road, Warriewood	SLR Consulting Pty Ltd	2 June 2011
SKC22 Issue P4	Revised Master Plan Layout	AT&L Civil Engineers and Project Managers	28 October 2011

**TABLE 1(d): STAGE 1 DEVELOPMENT CONTRIBUTIONS (IN KIND)**

<b>Element</b>	<b>Public Works</b>	<b>Value</b>
Traffic and Transport	Dedication of the 5.5m splay corner at the intersection of Macpherson Street and Boondah Road.  Construction of a roundabout at the intersection of Macpherson Street and Boondah Road.	\$1,370,417
Multi-function creekline corridors (works)	Construction & embellishment of 6,681sqm of proposed on-site creekline corridor land.	\$534,480
Multi-function creekline corridors (land)	Dedication of on-site land of creekline corridor land.	\$681,462
<b>SUB TOTALS</b>		<b>\$2,586,359</b>

**TABLE 1(e): STAGE 2 DEVELOPMENT CONTRIBUTIONS (IN KIND)**

<b>Element</b>	<b>Public Works</b>	<b>Value</b>
Traffic and Transport	Dedication of internal loop road connecting Macpherson Street and Boondah Road *	Nil
Public recreation and open space	Dedication of land for active and passive open space on-site (8,920sqm)	\$2,899,000
Pedestrian network	Direct provision including bridge over the creekline corridor, pedestrian/cycleway network on Meriton land.	\$403,317
<b>SUB TOTALS</b>		<b>\$3,302,317</b>

**\*Note:** Loop road now does not form part of the development.

## **7.0 CONCEPT APPROVAL COMPLIANCE ISSUES**

### **7.1 Landscaping**

Council officers raised a number of concerns during the assessment of this application in relation to the inadequacy of the originally submitted landscape plans and their inconsistency with the Concept Approval. These issues included: inconsistent building footprints on landscape plans, inadequate tree planting detail, inadequate installation sizes; inadequate planting densities; inappropriate species; failure to demonstrate compliance with the approved concept landscape plan, including its notations, and; the failure of the submitted landscape information to adequately demonstrate compliance with landscape related FEAR's stipulated within the Concept Approval.

In response to these concerns, the Applicant has provided an amended set of landscape plans. Council's Natural Environment section, which have provided the following comments:

*"Amended Landscape Plans have been provided. This includes an amended Indicative Plant Schedule on the Cover Sheet. A number of additional native species including extra canopy trees (as opposed to mainly palms) have been included which will result in an enhanced landscape compared to what was previously proposed. All trees and the majority of the species proposed are locally native and appropriate, and are in accordance with those listed in the Warriewood Valley Landscape Masterplan..."*

*A crucial component of the landscaping in relation to natural resources was the requirement to offset the removal of 23 Angophora trees from the road reserve by planting at least 23 replacement Angophora costata or Eucalyptus robusta as advanced specimens back into the road reserve where possible, as per the Concept Approval. With regard to Stage 2 works this required provision of at least eleven (11) tree specimens to this area, as twelve (12) were provided in the Stage 1 works. The original Stage 2 Landscape Plan 01 Issue A indicated twelve (12) individual trees spaced appropriately along both Boondah Road and the eastern part of Macpherson Street.*

*The current Stage 2 Landscape Plan 01 Issue B has been amended to now indicate some trees along the road reserve, however the differences being:*

- The tree symbols are now smaller and are clumped together in select locations rather than being evenly spaced along the two roads.*
- Only one (1) Angophora costata 100L specimen is actually indicated (singular) and pointed to with an arrow, and likewise only one (1) Eucalyptus robusta (singular). This is confusing and has the potential to be interpreted that only these two trees are to be planted as specified and the others could be any species, and not what is required as per the Concept Approval.*
- The width of the planting bed between the kerb and footpath is not specified and it is unknown as to whether the required large trees will grow and thrive to maturity in these confines, particularly as they are bunched together.*
- The Indicative Plant Schedule indicates a large number of specimens however does not provide quantities or specify where each species is to be located. The planting will be impossible to certify and therefore open to interpretation, possibly resulting in an undesirable result."*

## **Comments**

It is of particular concern that the submitted landscape plans possibly only propose plantings of only 1 x 100 litre pot size Angophora on plan LA01 and 1 other on LA 02 when the "Indicative Planting Schedule" and the approved Concept Landscape Plan indicate 400 litre pot size plantings of multiple Angophoras all along the Boondah Road frontage "to create filtered views in and out of the site." It may be that the 100 litre pot sizes for the Angophoras have been proposed in the Stage 2 landscape plans (contrary to the Concept Approval) because there is not enough deep soil or growing space for larger Angophoras to be successfully established. Not enough

information has been provided to clarify whether or not this is the case although it is noted that the street tree beds have a maximum width of 2m and minimum width (where street trees are indicated to be planted) of 0.8m.

Not enough information has been provided with the Development Application to clarify what the proposed tree plantings are going to be even though this information has been requested. The street tree plantings in the amended landscape plans for Stage 2 appear to be smaller than originally proposed and, other than the indicate 2 Angophoras, these trees could be any combination of Angophoras, Cabbage Tree Palms or Eucalyptus robusta, according to the indicative planting schedule. The clumped planting densities indicated in the landscape plans would appear to be more conducive to palms than Angophoras, particularly as the Angophoras are required to be 400 litre specimens. The landscape plans are of a sufficient scale to enable the 2-3 lettered codes of each tree species listed in the Indicative Planting Schedule to actually be inserted onto each indicated tree on the plan, as is the usual practice in detailed landscape plans but, for whatever reason and despite requests for more detail, this has not been done. There is therefore no certainty of the ultimate landscaping outcome that will result from the landscape plans put forward as part of Stage 2.

Important notations on the approved Concept Landscape Plan in regard to this issue are as follows:

*“MACPHERSON STREET STREETSCAPE*

*Indigenous tree species will be planted to create filtered views in and out of the site through the development of a tree canopy on the street frontage kerb widenings are to include a managed understorey of low-growing shrubs and grasses.”*

*“BOONDAH ROAD STREETSCAPE*

*Existing Angophoras to be retained where possible.*

*Additional Angophoras (400 litre) will be planted to create filtered views in and out of the site through the development of a tree canopy on the road frontage.”*

The concern that the lack of detail leaves the implementation of the landscaping open to interpretation and may lead to an undesirable result is supported by the existing street frontage landscaping to the buildings of Stage 1 of the same development that have already been constructed. As can be seen from **Figures 1 & 2** below, the “filtered views in and out of the site through the development of a tree canopy on the road frontage” (required by approved Concept Landscape Plan) is not successfully achieved, nor is it considered that it would be achieved to any reasonable level of success if this landscaping were to survive to maturity. The trees planted are too small to have any meaningful impact in softening the development and bunched together such that they will not achieve “filtered views”.



**Figure 1:** View from Macpherson Street of Stage 1 building and its street frontage landscaping in street verge beds. Note the clumping together of the tree plantings and lack of effectiveness to screen and soften the development, due to small size of trees planted and inadequate planting density behind. It is further questioned as to whether these trees will thrive in this location due to their proximity to each other and the limited size of the deep soil area in which they sit.

This lack of certainty in terms of the landscaping outcome is not considered to be acceptable for a development of this magnitude in an area where planning controls encourage the achievement of a desired future character where landscaping generally dominates over built form. **Figure 3** provides the context for this development as it is a view looking north-west up Macpherson Street from in front of the Site. It illustrates how much more effective a higher planting density within the front building setback can be in screening and softening a development when viewed from the street. This photograph shows a 2 storey development. The 3-4 storey Stage 2 development, with greater height and massing, should at least match or increase this level of planting density to be consistent with this streetscape character.

It is questioned as to whether the narrow deep soil beds in which they are planted are large enough to enable them to thrive and survive in the future. The Stage 1 street verge canopy tree beds shown in **Figures 1 & 2** are actually wider than those proposed as a part of Stage 2 so the success and survival of the Stage 2 street tree plantings must also be questioned, given the undesirable precedent that has already occurred in Stage 1. No information has been submitted to demonstrate that the similarly proposed Stage 2 street tree plantings will have sufficient deep soil and growing space to thrive.

The large areas of deep soil areas covered in nothing but turf behind the street verge beds appear to be a lost opportunity for more potentially successful tree planting and a waste of deep soil area in a location where canopy trees are sorely lacking and



much needed. It is noted that the turfed areas are included in the approved Concept Landscape Plan but that this excessive amount of turf serves no purpose, is an underutilisation of important deep soil areas and prevents the opportunity to provide more effective tree planting to achieve the “filtered views” from the street, also required by the Concept Approval.



**Figure 2:** View of Stage 1 buildings from Macpherson Street demonstrating the inadequacy and ineffectiveness of the street verge tree beds and the plantings within them. This landscaped treatment clearly fails to provide a streetscape landscape treatment that is ever likely to match the scale of the development behind and successfully implement the Concept Approval landscape principle to “create filtered views in and out of the site through the development of a tree canopy on the street frontage.” Clearly, the street tree beds are too far apart and too small to achieve this effect. In addition, the planting density of trees is inadequate for a development of this scale. Again, the turfed deep soil areas are considered to be a lost opportunity for additional tree planting to assist the achievement of the desired landscape outcome.

It is important to note that, whilst the development of tree canopies in the road reservation may be of some assistance in filtering distant views of the development from the opposite side of the street and beyond, it would be of less assistance in screening and softening the appearance of the development when viewed from the part of the public domain where the bulk and scale has the greatest impact – from the footpath / bicycle path that runs on the inside of the proposed tree canopy within the road reservation and immediately in front of the development. All that separates this path from the 3 storey buildings is turf, small native trees planted at a minimum of 11m intervals and some 2-5m wide timber edged gardens of palms (with a maximum maturity height of 4m) and shrubs. It is unlikely that the “filtered views” nominated in the approved Concept Landscape Plan will be achieved with this minimalist level of planting, particularly from the immediately adjacent public path. With this level of

planting, the built form of the development will stand proud of its surrounding landscaping and completely dominate its setting.



**Figure 3:** View looking north-west down Macpherson Street from in front of the Site. This photo shows the landscaped character of the streetscape and of existing, smaller scale development in the locality. The density of tree planting within the front building setback is vital in achieving a filtered view of the buildings behind the street tree canopy.

A further concern regarding the likely success of the landscape treatment for Stage 2 is the level change between the carriageway and footpath on Boondah Road and the Site. For all of the proposed Stage 2 buildings fronting onto Boondah Road (Buildings I, J, N, O and P) there is a significant level change between the Boondah Road road reservation and the finished floor levels of the ground floor of these buildings. This is illustrated in the landscape sections included on landscape plan LA 201. These level changes range from a minimum of 1.7m to a maximum of 2.4m. Thus, the limited tree planting at street level is likely to be ineffective in matching the scale of the buildings that are sitting on much higher ground and will have the appearance of 4 storeys when viewed from Boondah Road.

A total of 23 Angophora trees (including 11 Angophoras within the Boondah Road public road reserve) have already been approved by Council for removal in order to facilitate the construction of necessary infrastructure within the road reserve. A total of 13 replacement trees (Angophoras and Eucalyptus Robusta) are required to be planted as a part of Stage 2 works. In this regard, a deferred commencement condition is recommended requiring an enhancement of the planting densities and

detailed planting schedules with pot sizes, species, location and numbers to be planted all detailed within the landscape plan information, as is the usual practice in landscape plans for medium density development. All replacement Angophora tree plantings must be 400 litre pot size and clearly indicated on the landscape plan for each individual planting. In addition, confirmation is required to be submitted that adequate deep soil is provided for each individual tree proposed to be planted to survive and thrive in the long term. **(See Deferred Commencement Condition 2)**

A successful landscape treatment to the street frontages is an essential component in ensuring that Stage 2 of the development is harmonious with the surrounding character of the locality as possible given the scale of the development. In this regard, it is not considered that the landscape treatment of Stage 1 has been successful. It alters the local character that otherwise would have been the case, had the landscaping to Macpherson Street been of a higher standard. This result is contrary to the landscaping principles outlined in the Concept Approval and should not be repeated.

It is essential that the community including the future occupants of this development that the development present well to the surrounding public domain with a generous and appropriately scaled landscape treatment that sets an appropriately high landscaping standard.

In view of the above, the submitted landscape information is considered to be inconsistent with the Concept Approval and inadequate for the purposes of assessment of the detailed Stage 2 Development Application. Revised landscaping detail is required prior to the activation of the consent.

**Section 7.6.1** of this report deals with privacy impacts and provides further justification for the need to require detailed landscape plans to be submitted prior to the activation of the consent.

## **7.2 Developer Contributions and Land Dedications**

This development will generate developer contributions as the property is in the Warriewood Valley Release Area. The Concept Approval, as the 'parent' consent issued for the overall development of this property, included a condition listing the Statement of Commitments under Schedule 4 of the Concept Approval MP09\_0162 as amended and specified a cash contribution amount and works in kind associated with Stages 1 and 2 of the development.

The condition for Stage 2 reads as follows:

### ***"Stage 2***

*A cash contribution to the amount of \$6,221,675.36 to be made payable prior to the issue of the final Occupation Certificate. Evidence of the payment shall be provided to the Certifying Authority. This is equivalent to 264 dwellings being built. Should this number change, then equivalent proportional number of dwellings divided into the total cash contribution will be made payable.*

*The following works in kind are to be carried out in Stage 2.*

<b>Element</b>	<b>Public Works</b>	<b>Value</b>
<i>Traffic and Transport</i>	<i>Dedication of internal loop road connecting Macpherson Street and Boondah Road*</i>	<i>Nil</i>
<i>Public recreation and open space land</i>	<i>Dedication of land for active and passive open space on-site (8,920sqm)</i>	<i>\$2,899,000</i>
<i>Pedestrian network</i>	<i>Direct provision including bridge over the creekline corridor, pedestrian/cycleway network on Meriton land</i>	<i>\$403,317</i>
<b>SUB TOTALS</b>		<b>\$3,302,317</b>

**\*Note: Loop road now does not form part of the proposal.**

### **Calculation of Developer Contribution Applicable to this DA**

This DA for Stage 2 seeks approval for 221 dwellings, not the 264 dwellings as stated in the condition in the Concept Approval. The contributions must be commensurate to 221 dwellings therefore the revised cash contribution will be different to the cash contribution in the Concept Approval (the condition as worded, infers the amount will be changed).

The Concept Approval indicates that the figure of \$6,221,675.36 relates to 264 dwellings and that “[s]hould this number change, then equivalent proportional number of dwellings divided into the total cash contribution will be made payable.” Therefore, in accordance with the Concept Approval the per dwellings contribution amount is:

$$\$6,221,675.36 / 264 \times 221 = \mathbf{\$5,208,296.1}$$

### **Works in Kind Items**

#### *Internal Loop Road*

The internal loop road was deleted by Mod 1 to the Concept Approval and replaced with a pedestrian walkway/cycleway along the same alignment which connects the two private driveways off Macpherson Street and Boondah Road which is also to be used as an emergency access.

Notwithstanding its deletion, is it not possible to deviate from the Concept Approval so a condition has been applied requiring the dedication that may be the subject of a later modification to the Concept Approval and the Part 4 consent if an alternative public access provision is made to allow the public to move from Macpherson Street to Boondah Road.

#### *Land for active and passive open space*

The land to be dedicated to Council, valued at \$2,899,000, is a recently created lot and irregular in shape, known as Lot 504 in DP1175520. This land abuts the Warriewood Wetlands and adjoins that part of the Fern Creek corridor on the overall

site (and the creekline corridor land is a separate lot that will be dedicated to Council under Stage 1).

The utility as active and passive open space, as described in the Works In Kind table, is questionable particularly as the majority of the land is behind detention basins that will be managed and maintained by the Strata Corporation for the residential buildings in Stages 1 and 2. This issue has been raised in a number of submissions.

Council was not party to any negotiations surrounding the Works in Kind items given the application was dealt with under the Part 3A process. Council's submissions to the Department and the PAC stated that the 8,920m<sup>2</sup> land is surplus to the applicant's needs and could be dedicated to Council free of charge for passive open space. The PAC however did not agree with Council's submission and attributed a residential value on the land (being \$325 per square metre at the time).

#### Pedestrian network

The pedestrian walkway/cycleway to be dedicated to Council extends from the north-west corner of the site to the south-east corner of the site and includes a bridge over the Fern Creek into Sector 12 (known as Shearwater Estate). Part of the network is to be used as a shareway for use of emergency vehicles (between the private driveway off Macpherson Street and the private driveway off Boondah Road)

### **Opportunity to modify Statement of Commitments under this DA**

While several submissions have raised concern in regard to the utility and value attributed to the public recreation and open space land to be dedicated to Council, there is no opportunity for Council in assessing this DA or the JRPP in determining the application to alter this requirement of the PAC's Concept Approval.

Section 75W of the EPAA facilitates consideration of a modification of a Concept/Project Approval at the instigation of the Applicant only.

A modification to the Concept Approval is the only avenue by which the Statement of Commitments may be altered. However a modification to the Concept Approval to amend the Statement of Commitments can only be sought by the proponent of the original Concept Approval, in this case Meriton. Council and the JRPP, in these circumstances have no opportunity to amend the cash contribution amount or the Works in Kind items.

Further, Council in the roll out of the land release has required developer contributions to be paid at Construction Certificate stage or Subdivision Certificate stage to facilitate expenditure of the sum prior to occupation of development and at the time needs of the residents are realised. The PAC however in modifying the Concept Approval requires the contribution to be paid at final Occupation Certificate stage.

### **Condition to be imposed**

A condition of consent is recommended to be imposed requiring the dedication of land, direct provision of the pedestrian/cycleway and bridge over Fern Creek and payment of cash contributions prior to the issue of final Occupation Certificate for

Stage 2. In keeping with the PAC Approval for Stage 1 it is also recommended that any unpaid cash contribution be adjusted in line with CPI after 30 June 2013. **(See Condition E18)**

### 7.3 Building Height

The Concept Approval set the height restrictions for the buildings within the development in the following terms:

*“The height of the development shall be limited to 3 storeys, with the exception of Buildings D, E, F, G, K, L and M which may be permitted to be a maximum of 4 storeys to achieve maximum density....., subject to:*

*i) any 4<sup>th</sup> storey having a smaller footprint than the 3<sup>rd</sup> level below to provide articulation to the building form;*

*ii) any change to the siting or form of the envelopes resulting in Modifications 2a and/or 2b shall maintain compliance with the relevant provisions of the Residential Flat Design Code; and*

*iii) the amendments shall maintain a minimum of 50% of the developable area of 7.45ha as deep soil area.*

*Amended plans demonstrating compliance with this modification shall be submitted to, and approved by, the Director General.”*

Amended Concept plans were submitted and duly approved by the Director General. These plans were 2 dimensional concept plans only with no sections or elevations indicating the height of these buildings above natural ground level. The terms of the Concept Approval never specifically defined “storey”, however, the above terms of the Concept Approval do require that the modifications maintain compliance with the relevant provisions of the RFDC. On page 24 of the RFDC under “Building Height”, the following definition is provided:

*“- storeys means habitable floors, excluding underground car parking...”*

The above definition conflicts with the approach taken in SEPP 65 in its definition of *residential flat building* where it treats a basement car park as a “storey” where this basement car park protrudes more than 1.2m above natural ground level. Ordinarily, this is the approach taken when considering whether a basement constitutes a storey or not and SEPP 65 is applicable. However, because the terms of the Concept Approval where the height limits are set specifically requires “compliance with the relevant provisions” of the RFDC but does not mention SEPP 65 (it is mentioned later in the terms of approval, but in a more general sense), it is considered that the definition of storey provided in the RFDC is the relevant definition in interpreting the height limits set by this specific Concept Approval.

On the basis that the definition of storey within the RFDC is being used, as explained above, the development complies with the maximum height limits set by the Concept Approval under the terms for assessing building height set by the relevant provision within this same Concept Approval. Buildings K, L and M are 4 storeys in height and Buildings H, I, J, N, O and P are 3 storeys in height. Only habitable floors are counted as storeys irrespective of how far the basements protrude above natural ground level.

It should be noted that Council in response to one of the modification submissions by the Applicant to the Department of Planning and Infrastructure specifically raised a concern to the protrusion of the 'basement' car park areas above ground level and its appearance as another 'storey' as defined in SEPP 65. This was rejected by the Department. The issue was also raised by Council as a contention in its Land and Environment Court challenge which failed.

However, it should be noted that, if the approach taken in SEPP 65 to include any basement protruding more than 1.2m above natural ground level is taken as the definition of "storey", then the development would not comply with the maximum height limit set by the Concept Approval. The proposed buildings that would not comply with the maximum number of storeys (using the SEPP 65 approach to "storeys") and based on the information currently before Council (which does not provide full details of the relative heights of basement levels in relation to natural ground level) would potentially include Buildings J, K, L, M, O & P. The SEPP 65 inclusion of protruding basements as "storeys" is not considered to be the appropriate approach in this instance because the Concept Approval does not specifically mention SEPP 65 when it sets out its height limits but does mention the RFDC, thus giving the RFDC definition more weight. The SEPP 65 approach to defining a storey is also not specifically a definition as such, it is only a part of the detail of another definition for "residential flat building" that is provided in SEPP 65 to assist the reader in determining whether or not the Policy applies to a development.

Whilst this assessment has concluded that the development technically complies with the height limits set within the terms of the Concept Approval, the height of some of the buildings is considered to be of concern on a merits basis. Unlike Macpherson Street, there is a significant level change between the level of the carriageway and footpath of Boondah Road and the level of the finished floor levels of the ground floors of the proposed Stage 2 buildings fronting onto Boondah Road (this level change varies from between 1.7m and 2.4m for Buildings, as shown in landscaping sections in Landscape Plan LA201). This level change takes into account the fact that the level of Boondah Road is being raised as a part of the associated roadworks for the overall development to meet flood evacuation requirements. It is significant to note at this point that the original Concept Approval reduced the height of all of the buildings proposed by condition such that all of the buildings that directly fronted onto a public street were limited to 3 storeys in height and all of the buildings that were located internally and away from Macpherson Street and Boondah Road were permitted to be a maximum of 4 storeys. The intent of this condition to ensure a maximum 3 storey built character presenting to the public domain is clear.

The terms of the height limit set in the Concept Approval for the 3 storey buildings fronting Boondah Road and Macpherson Street would technically allow a building of 3 habitable floors sitting on top of at-grade parking, based on the definition of "storeys" in the RFDC and the lack of any other specific height control expressed in metres or as a maximum RL for the ridge. This is considered to be a significant and unfortunate limitation in the terms of the Concept Approval. Effectively, such a building would have the appearance of a 4 storey building. It is not considered that this was ever the intent of the Concept Approval height control, nor is it considered that it was ever the intent for the approved 3 storey buildings to have the appearance of 4 storeys when viewed from the street because of the level change between the Site and Boondah Road and the part protrusion above natural ground level of the basement levels.

The submitted model accompanying this Development Application is deceptive in that it depicts the Site as relatively flat when this is not, in fact, the case. The level changes of the topography and the additional height resulting from some of the buildings having a ground floor FFL well above natural ground level will inevitably make the buildings appear to be higher than a 3 storey building built at grade on level ground. Similar height issues apply to Buildings L and M, which are approved as 4 storey buildings but are sitting on top of a basement parking level that protrudes significantly out of the ground and may give the appearance of a 5 storey building when viewed from the public cycleway immediately to the south of these buildings.

There are no 5 storey residential buildings in a residential zone anywhere in the Pittwater LGA. The exclusion of buildings of this height within the residential areas is a part of what defines Pittwater. 4 storey buildings do exist in residential zones in Pittwater but they are not permitted currently, they are the exception rather than the rule and are largely older residential flat buildings from the 1960's and 1970's with 3 residential floors over at-grade parking.

Although it would have been preferable if the finished floor levels of some of the proposed buildings were reduced, an examination into the feasibility of conditioning this has revealed that the interconnected basement design, flooding issues, the fall of the Site and other issues would limit or even prevent a meaningful reduction in the height of these buildings. The height of the proposed buildings is not considered to be a particularly good outcome for the character of residential development in the Pittwater LGA however, as these buildings all technically comply with the terms of the Concept Approval, it is not considered possible in this instance to impose conditions that would only result in limited reductions in height, if any, and would be difficult to justify.

Whilst the developer is entitled, under the terms of the Concept Approval, to build 3 and 4 storey buildings within the Site, it is considered to be reasonable in this instance to require a more detailed landscaping treatment that will match the scale of the development in density and height in order to mitigate the impacts of the height, bulk and scale of the proposed buildings when viewed from the public domain. An appropriate deferred commencement condition is recommended. **(See Deferred commencement condition 2)**

## 7.4 Flooding and Water Management

Council's Urban Infrastructure and Catchment Management and Climate Change sections have considered the proposal, including:

- *PAC Concept Approval MOP09\_0162 for 14-18 Boondah Road, Warriewood (Lot 20 in DP 1080979 dated 18 January 2011 as modified (Reference 1) comprising:*
  - *Stormwater and Environmental Management Plan – Buffer Area 3 – Warriewood Valley 14-18 Boondah Road, Warriewood (Brown Consulting, August 2010) (Reference 2) Note: This document was presumed to be the updated report that was amended by the Preferred Project Report dated September 2010 and received by the Department on 29 September 2010.*



- PAC Project Approval MP10\_0177 for 14-18 Boondah Road, Warriewood (Lot 20 in DP 1080979) dated 18 January 2011 as modified (ie Stage 1 only) (Reference 3)
- DA0353/12 submission documents:
  - Proposed Multi-unit Residential Development Stage 2, 14-18 Boondah Road, Warriewood - Statement of Environmental Effects (Architectus, December 2012) (Reference 4)
  - Stormwater and Environmental Management Plan – Buffer Area 3 – Warriewood Valley Stage 2 – 14-18 Boondah Road, Warriewood (Brown Consulting, March 2013 Report No. X08066.01\_01E) (Reference 5)
  - Letter from Brown Consulting to Meriton Apartments dated 1 March 2013 regarding “14-18 Boondah Road, Warriewood Flood Evacuation” (Reference 6)
  - Letter from Brown Consulting to Meriton Apartments dated 7 March 2013 regarding “14-18 Boondah Road, Warriewood Flood Storage PMF” (Reference 7)
  - Letter from Meriton to Pittwater Council dated 14 March 2013 regarding “Response to Council Assessment – DA at 122/79-91 Macpherson Street, Warriewood (SP 86957)” (Reference 8)
  - Water Management and Maintenance Plan; Stage 2: 14-18 Boondah Road, Warriewood NSW (Martens Consulting Engineers, March 2013) (Reference 9)
  - Mosquito Risk Assessment: Boondah Road, Warriewood NSW (Department of Medical Entomology ICPMR and University of Sydney, Westmead Hospital, April 2011) (Reference 10)
  - Flora and Fauna Assessment 14-18 Boondah Rd Stage 2 Development Application (Total Earth Care, March 2013) (Reference 11)
  - Meriton Apartments Drawing No. DA13 Rev. D – Proposed Residential Development – New Residential Development 14-18 Boondah Road, Warriewood NSW 2102 “Site Sections” (Reference 12)
  - Meriton Apartments Drawing No. DA27 Rev. D – Proposed Residential Development – New Residential Development 14-18 Boondah Road, Warriewood NSW 2102 “Building O Plans and Elevations” (Reference 13)
  - Meriton Apartments Drawing No. DA28 Rev. D – Proposed Residential Development – New Residential Development 14-18 Boondah Road, Warriewood NSW 2102 “Building P Plans and Elevations” (Reference 14)
  - AT&L Drawing No. C213 Issue 8 - Proposed Residential Development 14-18 Boondah Road, Warriewood “Roadworks and Stormwater Drainage Plan Sheet 4” (Reference 15)
  - AT&L Drawing No. C214 Issue 7 - Proposed Residential Development 14-18 Boondah Road, Warriewood “Roadworks and Stormwater Drainage Plan Sheet 5” (Reference 16)
  - AT&L Drawing No. C215 Issue 7 - Proposed Residential Development 14-18 Boondah Road, Warriewood “Roadworks and Stormwater Drainage Plan Sheet 6” (Reference 17)
  - AT&L Drawing No. C245 Issue A - Proposed Residential Development 14-18 Boondah Road, Warriewood “Bio Retention Basin B Detail Plan” (Reference 18)

- *Geotechnical Assessment for Proposed Residential Development at Cnr Macpherson Street Boondah Road, Warriewood NSW (Jeffery and Katauskas, February 2010) (Reference 19)*
- *Meriton Apartments Drawing No. DA04 Rev. E - Proposed Residential Development – New Residential Development 14-18 Boondah Road, Warriewood NSW 2102 “Carparking Blocks H-N Level 1” (Reference 20)*
- *Meriton Apartments Drawing No. DA06 Rev. D - Proposed Residential Development – New Residential Development 14-18 Boondah Road, Warriewood NSW 2102 “Carparking Blocks O-P Level 1” (Reference 21)*
- *Ilias Design Group Drawing No. STW-03 Rev. P02 – 14-18 Boondah Road Warriewood Stage 2 “Stormwater Concept Plan Buildings H-N Ground Floor” (Reference 22)*
- *Director-General's Requirements for a Concept Plan and Stage 1 Project Application for a residential development, 14-18 Boondah Road, Warriewood (MP 09-0162) (Reference 23)*
- *Draft Narrabeen Lagoon Flood Study Update - Revision 2 (BMT-WBM, February 2013) (Reference 24)*
- *Warriewood Valley Flood Study Addendum 1 (Cardno, July 2005) (Reference 25)*
- *Warriewood Valley Water Management Specification (Reference 26)*
- *Pittwater 21 DCP (Reference 27):*
  - *C6.4 Flood – Warriewood Valley Land Release Area Residential Sectors*
  - *B3.17 Flood Hazard – Flood Category 1 – High Hazard – Residential Development: Multi Unit Housing Development*
  - *B3.23 Climate Change and Increased Rainfall Volume*

Based on the proposal and the documents listed above, Council's Urban Infrastructure and Catchment Management and Climate Change sections have provided the following comments:

### ***“Floodplain Issues***

#### ***1. Flood Levels***

*The PAC Concept Approval (Reference 1) states “Future Development Applications shall comply with the Brown Consulting Flood Management Report and consider and address any recommendations in the Council's adopted Flood Study and relevant state policies at the time of lodgement of the application to demonstrate the finished floor levels of the buildings will be above the probable maximum flood levels for the site.”*

*Whilst the PAC Concept Approval refers to flood levels based on an adopted Flood Study “at the time of lodgement of the application”, the Draft Narrabeen Lagoon Flood Study Update (Reference 24) or as otherwise revised, contains the latest flood information for Warriewood Valley and should be used in setting the PMF floor levels.*

*Council must take into account the latest flood data available as part of its assessment process, regardless of whether it has been adopted.*

*Council's DCP B3.23 Climate Change (sea level rise and increased rainfall volume) requires any intensification of land in the Warriewood Valley Land Release area to include the assessment of climate change impacts. The climate change assessment is used to set additional requirements to floor levels. Therefore using this development control in conjunction with the PAC decision, the floor levels should be set at the PMF plus climate change as estimated by the latest Draft Narrabeen Lagoon Flood Study, ie. a finished floor level requirement of 5.0m AHD.*

*There are inconsistencies between the Brown Consulting reports (References 5 & 6) and the Statement of Environmental Effects (Reference 4) and the updated drawings in relation to finished floor levels. Meriton Apartment Drawings DA13, DA27 and DA28 (References 12 to 14) and the letter to Council (Reference 8) now demonstrates that the minimum finished floor level requirement of 5.0m AHD is being met in all buildings (including Buildings O and P).*

*A number of conditions of consent are recommended. (See Condition B8)*

## **2. Flood Emergency Response**

*The PAC Concept Approval (Reference 1) and its supporting Brown Consulting report (Reference 2) limits further assessment of the flood emergency response in relation to this development application. The Brown Consulting report (Reference 2) states "The primary flood evacuation for the site would be vertical evacuation therefore occupants remain inside the dwellings and move to the upper levels." The SES has yet to release their position on vertical refuge (sheltering-in-place) however they have previously advised that horizontal flood evacuation is the only option they support.*

*A further update to the flood emergency response from the site was provided by Brown Consulting (References 5 and 6) however the updates do not rely on the most recently available flood information from the draft Narrabeen Lagoon Flood Study which now indicates that potential flood isolation of areas impacted by the dominant effects of the Narrabeen Lagoon flooding would result in longer durations than previously estimated.*

*Brown Consulting suggests that some horizontal flood evacuation may be achieved before road evacuation routes become inaccessible and unsafe, and after that time sheltering-in-place would be relied upon. However, there is no indication on how flood warning would be achieved to inform any evacuation from the site. Buildings O and P can become isolated from the rest of the site by a flowpath occurring to the north of the buildings (and south of Buildings M and N), but the impacts of the flowpath and the limitation that it may cause on horizontal evacuation is ignored. It appears that the Brown Consulting appraisal on flood risk emergency response does not provide a full assessment of the range of issues at the site.*

*Having acknowledged that horizontal evacuation from the site is not achievable for the full range of flood events up to the PMF (References 5 and 6), the strategy of sheltering-in-place is generally consistent with the PAC's approval that the primary flood evacuation for the site to be vertical evacuation, regardless of whether or not this would be consistent with current or future SES position on vertical evacuation.*

A number of conditions of consent are recommended. **(See Conditions B9 and E6)**

### 3. Flood Risk to Basement Carpark

The proposed driveway entry to the basement carpark servicing Buildings O and P appears to be at least 4.1mAHD based on Drawing DA06 (Reference 21). The minimum level of the crest of the carpark entry is established by development controls B3.17 Flood Hazard – Flood Category 1 – High Hazard – Residential Development: Multi Unit Housing Development and B3.23 Climate Change and Increased Rainfall Volume. The minimum level of the Flood Planning Level comprising of the 1%AEP flood level and 0.5m freeboard and climate change impacts (ie. 4.3mAHD based on Reference 24) is met by the proposed basement carpark servicing Buildings O and P.

The driveway entry point into the basement carpark servicing the remaining buildings appear to be greater than 5.0mAHD (the PMF level with climate change) based on Drawing STW-03 (Reference 22), so is not considered at risk of floodwaters entering the carpark.

A number of conditions of consent are recommended. **(See Condition B10)**

### 4. Impacts on Flood Storage and Surrounding Properties

The proposal was required to demonstrate that there is no net decrease in the floodplain volume of a floodway or flood storage area within the property for any event up to the Probable Maximum Flood, and that there is no additional adverse flood impact on surrounding properties or flooding processes for any event up to the Probable Maximum Flood event.

The use of the Probable Maximum Flood level to demonstrate impacts to flood storage was used in the specific consideration of this site because of the higher finished floor levels requirements of the PAC Concept Approval. The Brown Consulting report and letter (References 5 & 7) state that the cut and fill strategy used in the developed floodplain scenario results in no net loss to flood storage in the 1%AEP flood event. Additionally, it is claimed that “greater flood storage for more frequent floods than currently exists, and potentially reduced flood levels for those flood events.” The Brown Consulting letter (Reference 7) states that the calculation of flood storage for the PMF event results in a decrease from 208,000 cubic metres in the existing scenario to 186,000 cubic metres in the developed scenario to achieve the required fill levels (ie. a 10.5% decrease in flood storage). However, it is also recognised in the Brown Consulting letter that the lost flood storage is “non-active storage” and has “little effect on the PMF flood regime as shown in the flood maps”.

#### Outstanding Issue 1:

The applicant needs to clarify whether the statement refers to the surrounding floodplain and properties (including the Sewage Treatment Plant and Warriewood Square) and not just the limited area shown on the Figures supplied in Brown Consulting’s Stormwater and Environmental Management Plan (Reference 5).

The Brown Consulting report (Reference 5) in Figure A14 “PMF High Tide Flood Level Difference Map” appears to indicate that there may be an impact on properties upstream of the property (ie. Sector 11). The mapping shows a portion of Sector 11

to be impacted between 0.05-0.47 metres (noting that the acceptable tolerance for the afflux to be 0.05 metres in the PMF).

Outstanding Issue 2:

The applicant therefore needs to clarify whether the impact of the proposed development on flood levels is indeed acceptable on surrounding properties.

Should both outstanding issues be resolved with the outcome being that impacts to flood storage are negligible and that the impacts on surrounding property matters is within acceptable tolerances, then the proposed Conditions of Consent are as follows:

Deferred commencement conditions are recommended to deal with Outstanding Issue 1 and 2 above. **(See Deferred Commencement Condition 1, and an additional condition of consent is also recommended – See Condition B11)**

## **Water Management Issues**

### **1. Water Balance and Onsite Detention**

There are inconsistencies between the Brown Consulting reports (References 2 & 5) in terms of the onsite detention storages sizes, catchment sizes, and the combination of storage types used and modelled water balance outcomes from the site. (Note: some details have changed in both Stage 1 and Stage 2 water management components without explanation).

Details on how the Permissible Site Storage requirements are being met for all 1%AEP durations in the Warriewood Valley Water Management Specification have not been presented.

According to the Brown Consulting report (Reference 5), the Stage 2 proposal includes deep planting (taken to be the pervious area) within the development equating to 53.5% of the developable site area, which is greater than the 50% requirement needed to meet the Warriewood Valley Water Management Specification.

Outstanding Issue 3:

Clarification is required from the applicant that the water balances for the site can be met in accordance with the Warriewood Valley Water Management Specification.

A condition of consent is recommended to deal with Outstanding Issue 3 above. **(See Conditions C9 and C10(a))**

### **2. Stormwater Infrastructure**

Ownership, management and maintenance of all water management facilities relating to the development is to remain with the owners or its corporation relating to this approval.

*There has not been any consideration of standard development control B3.23 Climate Change and Increased Rainfall Volume in the sizing of water management facilities, and some details.*

*All water management systems/facilities (quality and quantity) are to be resized to account for climate change impacts.*

*There is currently no proposed drainage easement to manage the gravity flow of stormwater from 5 and 7 Macpherson Street Warriewood through 79-91 Macpherson St, Warriewood and either into Council's stormwater drainage system or into the Warriewood Wetland.*

*A number of conditions of consent are recommended. (See Conditions B14, B12, C9, C10, C11, E5, E7, E19, E20 and G2)*

### **3. Groundwater**

*The need to address groundwater management is set out in the Director General's requirements (Reference 23). Comments are required from the Office of Water on groundwater management.*

*In the interim, it is recognised that the site has a shallow groundwater table (Reference 19), and that "a groundwater collection and diversion system that will act to intercept flows on the high side of the development, diverting the groundwater through a series of subsoil drains under the construction, and then disperse it below ground towards the wetlands" is proposed to be installed (Reference 11). Groundwater management is outlined in the Martens Consulting report (Reference 9) however the information is limited to groundwater quality sampling and monitoring during construction phase and over the life of the development. Pre-construction water monitoring is not addressed.*

*A number of conditions of consent are recommended. (See Conditions C7 and C8)*

### **4. Maintenance of existing overland flow path**

*A number of conditions of consent are recommended. (See Conditions B13)*

## **7.5 Consistency with SEPP 65 Design Quality Principles**

Clause 30(2)(b) of SEPP 65 requires a consent authority to take into consideration the design quality of the development when evaluated against the design quality principles listed below.

### **Principle 1: Context**

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

Given the Concept Approval for this development, the Site and its locality is considered to be a precinct undergoing transition. In terms of built form, its height and massing, the development is consistent with the future character expressed within the Concept Approval.

However, the context that the development is not considered to be consistent with at present is the desired future character of the streetscape of Macpherson Street and Boondah Road, as expressed within the approved Concept Landscape Plan. The “filtered views” of buildings through a tree canopy within the street and front building setbacks to the building is not achieved, as discussed in detail under **Section 6.1** of this report. **Figure 3** shows the context of the landscaped streetscape of Macpherson Street with 2 storey buildings behind a generous tree canopy matching the scale of the buildings. Given that the proposal and its associated roadworks and infrastructure works has ultimately resulted in the removal of a significant number of canopy trees from the road reservations of Macpherson Street and Boondah Road and is introducing 3 storey buildings with significant massing (compared to existing development in the locality) presenting to the street, a far more detailed landscape design (than what has been submitted) is required as a part of this Development Application and its consent. This landscaping detail must clearly meet the landscape principles set by the approved concept landscape plan and provide adequate demonstration that a generous number of advanced canopy trees are to be planted along the road reservation and within the front building setback and that these plantings have sufficient deep soil and growing space to reach maturity height and survive over the long term.

Based on the landscaping information currently submitted, the Development Application does not demonstrate an adequate response to the key natural feature of the locality of canopy trees, nor does it adequately demonstrate compliance with the landscape related Future Environmental Assessment Requirements set out in the Concept Approval. Consequently, the Application is not considered to be consistent with the Design Quality Principle of Context.

Therefore, a deferred commencement condition is recommended requiring that the appropriate landscape information be submitted to Council for approval prior to the activation of the Consent. **(See Deferred Commencement Condition 2)**

#### Principle 2: Scale

*"Good design achieves an appropriate scale in terms of the bulk and height that suits the scale of the street and the surrounding buildings. Establishing an appropriate scale requires a considered response to the scale of existing development. In precincts undergoing transition, proposed bulk and height needs to achieve the scale identified for the desired future character of the area."*

In view of the existence of the Concept Approval setting the height, location and footprint of the proposed buildings and the fact that this approval prevails over any other planning instrument or development control plan, this Concept Approval is considered to be an expression of the future character for this locality, as desired by the state government planning power that has approved it. In this regard, the proposal is considered to be a precinct undergoing transition and the scale of the development is consistent with the desired future character expressed in the Concept Approval.

#### Principal 3: Built Form

*"Good design achieves an appropriate built form for a site and the building's purpose, in terms of building alignments, proportions, building type and the manipulation of building elements. Appropriate built form defines the public domain, contributes to the character of streetscapes and parks, including their views and vistas, and provides internal amenity and outlook."*

Again, the built form of this development has already been largely determined by the prevailing Concept Approval. This applies to the alignments of the proposed buildings and their proportions. In regard to the presentation of the proposed buildings to the public domain, it is considered that the development displays an acceptable level of articulation that is consistent with the footprints approved within the Concept Approval.

#### Principle 4: Density

*"Good design has a density appropriate for a site and its context, in terms of floor space yields (or number of units or residents). Appropriate densities are sustainable and consistent with the existing density in an area or, in precincts undergoing a transition, are consistent with the stated desired future density. Sustainable densities respond to the regional context, availability of infrastructure, public transport, community facilities and environmental quality."*

The proposal is consistent with the stated desired future density expressed within the terms of the Concept Approval.

#### Principle 5: Resource, Energy and Water Efficiency

*"Good design makes efficient use of natural resources, energy and water throughout its full life cycle, including construction. Sustainability is integral to the design process. Aspects include demolition of existing structures, recycling of materials, selection of appropriate and sustainable materials, adaptability and reuse of buildings, layouts and built form, passive solar design principles, efficient appliances and mechanical services, soil zones for vegetation and reuse of water."*

The development is adequate and is supported by the required BASIX Certificate that sets out relevant commitments that must be implemented.

#### Principle 6: Landscape

*"Good design recognises that together landscape and buildings operate as an integrated and sustainable system, resulting in greater aesthetic quality and amenity for both occupants and the adjoining public domain. Landscape design builds on the existing site's natural and cultural features in responsible and creative ways. It enhances the development's natural environmental performance by co-ordinating water and soil management, solar access, micro-climate, tree canopy and habitat values. It contributes to the positive images and contextual fit of development through respect for streetscape and neighbourhood character, or desired future character. Landscape design should optimise useability, privacy and social opportunity, equitable access and respect for neighbours' amenity, and provide for practical establishment and long term management."*

As detailed under **section 7.1** and **section 7.7** of this report, it is not considered that the Development Application has sufficiently addressed this Design Quality Principle with the landscaping information submitted to date. There are clearly expressed



landscaping outcomes within the approved Concept Landscape Plan that have not been met. There are landscape related FEAR's that have not been adequately addressed in regard to deep soil provision and the replacement of lost Angophora trees along Boondah Road. The submitted landscape plans are vague, confusing and open to interpretation. This does not give any certainty in terms of the landscaping outcome for Stage 2 of this development. These are considered to be the desired future landscaping outcomes for the Site and the onus is on the Applicant to demonstrate that these outcomes can be achieved.

In order to address this identified deficiency, a deferred commencement condition is recommended requiring that the necessary landscaping information be submitted to Council for approval prior to the activation of the Consent. **(See Deferred Commencement Condition 2)**

#### Principle 7: Amenity

*"Good design provides amenity through the physical, spatial and environmental quality of a development. Optimising amenity requires appropriate room dimensions and shapes, access to sunlight, natural ventilation, visual and acoustic privacy, storage, indoor and outdoor space, efficient layouts and service areas, outlook and ease of access for all age groups and degrees of mobility."*

The proposal is considered acceptable in regard to this design quality principle.

#### Principle 8: Safety and Security

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

Refer to comments within **Table 2** below under the "safety" section.

#### Principle 9: Social Dimensions and Housing Affordability

*"Good design responds to the social context and needs of the local community in terms of lifestyles, affordability, and access to social facilities. New developments should optimise the provision of housing to suit the social mix and needs in the neighbourhood or, in the case of precincts undergoing transition, provide for the desired future community. New developments should address housing affordability by optimising the provision of economic housing choices and providing a mix of housing types to cater for different budgets and housing needs."*

The proposed mix of unit sizes and their layouts within the development is considered to satisfy this design quality principle.

#### Principle 10: Aesthetics

*"Quality aesthetics require the appropriate composition of building elements, textures, materials and colours and reflect the use, internal design and structure of*

*the development. Aesthetics should respond to the environment and context, particularly to desirable elements of the existing streetscape or, in precincts undergoing transition, contribute to the desired future character of the area."*

The development's scale is out of character with the pre-planning and form of development elsewhere in the Valley. This is not able to be addressed due to the Concept Approval by the PAC.

## **7.6 Consistency with the Residential Flat Design Code (RFDC)**

The consistency of the proposal with the Rules of Thumb of the RFDC are assessed in **Table 2** below. Some of the provisions within the RFDC that are already determined by the Concept Approval are not listed.

Problems are created by the Concept Approval in regard to the treatment of the provisions of SEPP 65 and the RFDC as development controls, or the conversion of design criteria that were originally formulated to provide more general design guidance and guidance on the formulation of development control plans into the equivalent of development controls. The terms of the Concept Approval require that the development *"shall be consistent with the provisions of"* SEPP 65 and the RFDC. The terms of the Concept Approval where the height of the buildings and density of the development was determined states that the height of the buildings be limited to 3 and 4 storeys (as relevant) and the density be limited to 60 dwellings per hectare, subject to these modifications *"shall maintain compliance with the relevant provisions of the Residential Flat Design Code"*. This sentence suggests that an assessment of compliance had already been carried out at that time and it was determined that the originally proposed denser and higher development already complied with all of the relevant design criteria of the RFDC. The truth of the matter is that there would have been insufficient detailed plans and supporting information in a Concept Application before the determining authority to enable it to properly assess and draw any conclusions about whether or not this overall development, as it was originally proposed, complied 100% with all of the numerous provisions of the RFDC. This would have been unlikely. If that level of detail had been submitted at this time then there would not have been any need for a detailed Development Application for Stage 2.

In this context, it was not appropriate to be setting future environmental assessment requirements that were, in all likelihood, impossible to completely comply with for a development of 9 residential flat buildings with 221 units where the heights and footprints of the buildings were already set under the terms of the Concept Approval.

Given the above, in the assessment of this application, if the literal interpretation of the stipulation for consistency and compliance with the RFDC were taken, then the only conclusion that can be reached is that the development does not achieve this, nor could it ever with any amount of modifications. It cannot be expected that 100% of 221 units all comply with the level of detail in the design criteria of the RFDC. This is why in the compliance table for the RFDC (**Table 2**), the non-compliances have been identified, some have been addressed as being able to be improved by conditions and others have simply been identified as technically non-compliant but that this is acceptable in terms of the level of compliance that has been achieved overall.

This is considered to be a reasonable approach in the assessment of the application. It is not considered to be reasonable to apply the Rules of Thumb of the RFDC as development controls when they were never formulated for that purpose.

Consequently, notwithstanding the RFDC non-compliances identified in this report, the development is considered to be acceptable on balance and subject to the recommended conditions.

**TABLE 2: RFDC COMPLIANCE TABLE**

RFDC REF	‘RULE OF THUMB’ & ‘BETTER DESIGN PRACTICE’ GUIDELINE	CONSISTENCY WITH GUIDELINE																
PART 02 SITE DESIGN																		
Site Configuration																		
Deep Soil Zones	A minimum of 25 percent of the open space area of a site should be a deep soil zone; more is desirable. Exceptions may be made in urban areas where sites are built out and there is no capacity for water infiltration. In these instances, stormwater treatment measures must be integrated with the design of the residential flat building.	Concept Approval stipulates that a minimum of 50% deep planting must be achieved across the whole site. The proposal achieves 53.86%deep soil zone for Stage 2.  Yes																
Communal Open Space	The area of communal open space required should generally be at least between 25 and 30 percent of the site area. Larger sites may have potential for more than 30 percent.	The overall development site includes communal areas such as the swimming pool and gym building (part of Stage 1), playgrounds in both Stage 1 and Stage 2, an exercise station in Stage 2 and the connection of the cycleway and public footpaths through the site into the wider cycleway/footpath system within the Warriewood Valley. In addition, access is provided for passive recreation within the riparian zones. This provision is considered to be adequate communal open space to service Stage 2 of the development.  Yes																
Private Open Space for Ground Level Apartments	The minimum recommended area of private open space for each apartment at ground level or similar space on a structure, such as on a podium or car park, is 25m².	All ground floor units have access to private open space. Approx largest and smallest sizes listed below: <table><tr><td>Largest</td><td>Smallest</td></tr><tr><td>Building H – 68.5²</td><td>7m²</td></tr><tr><td>Building I – 63.5m²</td><td>9m²</td></tr><tr><td>Building J – 54.5m²</td><td>12m²</td></tr><tr><td>Building K – 98m²</td><td>14m²</td></tr><tr><td>Building L – 52.5m²</td><td>16m²</td></tr><tr><td>Building M – 51m²</td><td>22m²</td></tr><tr><td>Building N – 25m²</td><td>8.8m²</td></tr></table>	Largest	Smallest	Building H – 68.5²	7m²	Building I – 63.5m²	9m²	Building J – 54.5m²	12m²	Building K – 98m²	14m²	Building L – 52.5m²	16m²	Building M – 51m²	22m²	Building N – 25m²	8.8m²
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Building N – 25m²	8.8m²																	

RFDC REF	'RULE OF THUMB' & 'BETTER DESIGN PRACTICE' GUIDELINE	CONSISTENCY WITH GUIDELINE
		<p>Building O – 40m<sup>2</sup>                      18m<sup>2</sup>  Building P – 51.5m<sup>2</sup>                      12m<sup>2</sup></p> <p>Each building has ground level courtyards to units that are less than recommended minimum of 25sqm. This figure is only a recommendation and does not take into account the size of the unit or whether or not additional space beyond the minimum size required for a balcony is available to the ground level unit. In each instance of non-compliance with the minimum courtyard area of 25sqm, the relevant courtyard otherwise complies with the balcony design criteria of a minimum depth of 2m and useable area as outdoor open space.</p> <p><b>No</b> - The 25sqm minimum area is a recommendation only. The provided courtyard areas are usable and an extension in size by condition to numerically comply with this recommendation, whilst possible, is not considered necessary.</p>
Safety	Carry out a formal crime risk assessment for all residential developments of more than 20 new dwellings.	<p>The application was referred to the NSW Police and they have not made a comment. Opportunities for passive surveillance of the Site are good as a result of balcony and circulation area locations. In regard to the bicycle pathways pedestrian thoroughfares through the Site, whilst adding to passive surveillance opportunities by passers by, these also create excuse making opportunities for potential intruders into the private spaces of the development. Reasonably clear delineation of public and private space has occurred. Lighting within the basement parking areas, along all public footpaths and cycleways, as well as at building entries will be required by condition to meet the relevant Australian Standard. Directional signage is to be provided throughout the development with maps of the location of all buildings at major entry points to Stage 2 of the development in order to avoid people accidentally wandering into private areas and excuse making opportunities for would-be intruders.</p>

RFDC REF	'RULE OF THUMB' & 'BETTER DESIGN PRACTICE' GUIDELINE	CONSISTENCY WITH GUIDELINE
		<b>Yes, subject to conditions (See Conditions C19 and E40)</b>
Visual Privacy	<p>Objectives are to provide reasonable levels of visual privacy externally and internally, during the day and at night and to maximise outlook and views from principal rooms and private open space without compromising visual privacy.</p> <p>Rules of Thumb for privacy refer to Building Separation minimum standards provided below.</p> <p>For buildings over three storeys, it is recommended that building separation increase in proportion to building height to ensure appropriate urban form, adequate amenity and privacy of building occupants. Suggested dimensions within a development, for internal courtyards and between adjoining sites are:</p> <p>Up to four storeys/12 metres</p> <ul style="list-style-type: none"> <li>- 12m between habitable rooms/balconies</li> <li>- 9m between habitable rooms and non habitable rooms</li> <li>- 6m between non habitable rooms.</li> </ul>	<p>Refer to <b>section 7.6.1</b> of this report for a detailed assessment of the internal and external privacy impacts of the development.</p> <p>Building footprints comply with the Concept Approval issued by the PAC. Building separation within the development complies with the minimum separation distances.</p> <p><b>Yes</b></p>
Pedestrian Access	<p>Identify the access requirements from the street or the car parking area to the apartment entrance. Follow the accessibility standard set out in AS 1428 (parts 1 and 2), as a minimum. Provide barrier free access to at least 20 percent of dwellings in the development.</p>	<p>Access reports have been submitted for each individual building proposed with different recommendations designed to ensure compliance with AS 1428, the Disability Discrimination Act (DDA) and Building Code of Australia (BCA). Conditions are recommended for each individual building referring to the relevant access reports and their recommendations and requiring that the plans accompanying the CC for each building incorporate all recommended modifications in these reports. Furthermore, written confirmation that the CC plans comply with the access recommendations is also required by condition to be submitted with the CC prior to release of each individual CC.</p> <p><b>Yes, subject to conditions (See Conditions C17, C18 and C19)</b></p>
Vehicle Access	Generally limit the width of driveways to a maximum of 6	<b>Yes</b>

RFDC REF	'RULE OF THUMB' & 'BETTER DESIGN PRACTICE' GUIDELINE	CONSISTENCY WITH GUIDELINE
	metres.	
Building Separation	<p>For buildings over three storeys, it is recommended that building separation increase in proportion to building height to ensure appropriate urban form, adequate amenity and privacy of building occupants. Suggested dimensions within a development, for internal courtyards and between adjoining sites are:</p> <p>Up to four storeys/12 metres</p> <ul style="list-style-type: none"> <li>- 12m between habitable rooms/balconies</li> <li>- 9m between habitable rooms and non habitable rooms</li> <li>- 6m between non habitable rooms.</li> </ul>	<p>All separation distances comply with the RFDC Rules of Thumb.</p> <p><b>Yes</b></p>
Landscape Design	<p>Improve the amenity of open space with landscape design which:</p> <ul style="list-style-type: none"> <li>- provides appropriate shade from trees or structures;</li> <li>- provides accessible routes between buildings;</li> <li>- screens care, drying areas, pools and ground floor courtyards.</li> </ul>	<p>Whilst the listed design outcomes may be able to be met by the proposal, inadequacies have been identified regarding the submitted landscape information. Refer to <b>section 7.1</b>.</p> <p><b>Yes</b></p>
	<p>Contribute to streetscape character and the amenity of the public domain by:</p> <ul style="list-style-type: none"> <li>- relating landscape design to the desired proportions and character of the streetscape;</li> <li>- using planting and landscape elements appropriate to the scale of the development;</li> <li>- mediating between and visually softening the bulk of large development for the person on the street.</li> </ul>	<p>Inadequacies have been identified regarding the submitted landscape information. Refer to <b>section 7.1</b>. In particular, it is not considered that the development provides a landscape treatment that sufficiently contributes to the streetscape character and amenity of the public domain considering the scale of development proposed.</p> <p><b>No</b></p>
	<p>Design landscape that improve the energy efficiency and solar efficiency of dwellings and the microclimate of private open spaces. Planting solutions include:</p> <ul style="list-style-type: none"> <li>- trees for shading low-angle sun on the eastern and western sides of a dwelling;</li> <li>- deciduous trees for shading of windows and open areas in summer;</li> <li>- locating evergreen trees well away from the building to permit the winter sun access;</li> <li>- varying the heights of different species of trees and shrubs to shade walls and windows;</li> <li>- locating pergolas on balconies</li> </ul>	<p>With regard to the listed landscape design criteria, it is questionable as to whether the bunching together of the proposed Angophoras is appropriate for the long term survival of these trees. More generally, inadequacies have been identified regarding the submitted landscape information. Refer to <b>section 7.1</b>.</p> <p><b>No</b></p>

RFDC REF	'RULE OF THUMB' & 'BETTER DESIGN PRACTICE' GUIDELINE	CONSISTENCY WITH GUIDELINE
	and courtyards to create shaded areas in summer and private areas for outdoor living; - locating plants appropriately in relation to their size at maturity.	
	Design landscape which contributes to the site's particular positive characteristics, for example by: - enhancing habitat and ecology; - retaining and incorporating trees, shrubs and ground covers endemic to the area, where appropriate; - retaining and incorporating changes of level.	With regard to the listed landscape design criteria, it is not considered that the planting densities proposed will sufficiently contribute to the positive character of the Site and its locality. Refer to <b>section 7.1</b> for detailed discussion on the inadequacies of the landscaping information.  <b>No</b>
	Provide a sufficient depth of soil above paving slabs to enable growth of mature trees.	No detail of soil depth has been submitted to demonstrate that proposed landscaping will thrive. Refer to <b>section 7.7</b> for detailed discussion.  <b>No</b>
	Minimise maintenance by using robust landscape elements	This has not been demonstrated. Refer to <b>section 7.1</b> for detailed discussion on the inadequacies of the landscaping information.  <b>No</b>
<b>PART 03 BUILDING DESIGN</b>		
<b>Building Configuration</b>		
Apartment Layout	Single-aspect apartments should be limited in depth to 8 metres from a window.	90 of 108 (83.3%) single aspect units comply with this requirement.  <b>No</b> , refer to detailed discussion under <b>section 7.6.2</b> of this report.
	The back of a kitchen should be no more than 8 metres from a window.	175 of 221 units or 79.2% comply with this design requirement.  <b>No</b> , refer to detailed discussion under <b>section 7.6.2</b> of this report.
	If Council chooses to standardise apartment sizes, a range of sizes that do not exclude affordable housing should be used.  As a guide, the Affordable Housing Service suggest the following minimum apartment sizes, which can contribute to housing affordability: (apartment size is only one factor influencing affordability) - 1 bedroom apartment 50m <sup>2</sup>	- 1 bedroom ranges from 56.1-72.4m <sup>2</sup> - 2 bedroom ranges from 81.2-102.4m <sup>2</sup> - 3 bedroom ranges from 103.1-116.9m <sup>2</sup>  <b>Yes</b>

RFDC REF	'RULE OF THUMB' & 'BETTER DESIGN PRACTICE' GUIDELINE	CONSISTENCY WITH GUIDELINE
	- 2 bedroom apartment 70m <sup>2</sup> - 3 bedroom apartment 95m <sup>2</sup>	
Apartment Mix	Include a mixture of unit types for increased housing choice.	<p>The proposal includes:</p> <ul style="list-style-type: none"> <li>○ 4 x studio (1.8%)</li> <li>○ 15 x 1 bed (6.8%)</li> <li>○ 5 x 1 bed + study (2.3%)</li> <li>○ 122 x 2 bed (55.2%)</li> <li>○ 36 x 2 bed + study (16.3%)</li> <li>○ 39 x 3 bed (17.6%).</li> </ul> <p>Note: 23 of these units are adaptable.</p> <p><b>Yes</b></p>
	Provide ground floor apartments with access to private open space, preferably as a terrace or garden.	<p>All ground floor units have access to private open space.</p> <p><b>Yes</b></p>
Internal Circulation	In general, where units are arranged off a double-loaded corridor, the number of units on each floor accessible from a single core/corridor should be limited to eight.	<p>Building K has 9 units accessed by one double loaded corridor on three different levels. All other buildings comply.</p> <p>This is considered to be a relatively minor non-compliance that would not affect amenity in such a detrimental way as to warrant a re-design.</p> <p><b>No</b></p>
Balconies	<p>Provide primary balconies for all apartments with a minimum depth of 2 metres.</p> <p>Developments which seek to vary the minimum standards must demonstrate that negative impacts from the context-noise, wind – can be satisfactorily mitigated with design solutions.</p>	<p>18 units across three floors in Building M are non-compliant with the 2m minimum balcony depth. This non-compliance is by approximately 0.2m. All other buildings comply. It is considered a relatively easy matter to achieve compliance by a condition requiring that the Construction Certificate plans for Building M be modified to ensure that all balconies of living rooms achieve a minimum depth of 2m.</p> <p><b>Yes, subject to condition (See Condition C14)</b></p>
Ceiling Heights	<p>The following recommended minimum dimensions are measured from finished floor level (FFL) to finished ceiling level (FCL).</p> <p>In residential flat buildings or other residential floors in mixed use buildings:</p> <p>In general, 2.7 metres minimum for all habitable rooms on all floors, 2.4 metres is the preferred minimum for all non-habitable rooms, however</p>	<p>FCL's have not been provided, however, the floor to floor heights range between 3m and 3.2m. Allowing for a 300mm slab thickness, all of the buildings are likely to comply with this requirement.</p> <p><b>Yes</b></p>



RFDC REF	'RULE OF THUMB' & 'BETTER DESIGN PRACTICE' GUIDELINE	CONSISTENCY WITH GUIDELINE
	2.25m is permitted.	
Ground Floor Apartments	Optimise the number of ground floor apartments with separate entries and consider requiring an appropriate percentage of accessible units. This relates to the desired streetscape and topography of the site.	This is achieved where it is reasonably possible to the Macpherson Street and Boondah Road street frontages. This is considered to be acceptable.  <b>Yes</b>
Storage	In addition to kitchen cupboards and bedroom wardrobes, provide accessible storage facilities at the following rates: <ul style="list-style-type: none"> <li>- studio apartments 6m<sup>3</sup></li> <li>- one-bedroom apartments 6m<sup>3</sup></li> <li>- two-bedroom apartments 8m<sup>3</sup></li> <li>- three bedroom apartments 10m<sup>3</sup>.</li> </ul>	The Applicant has provided a schedule demonstrating compliance with this requirement for every unit proposed. It is noted that the storage space the Applicant has counted includes studies and media areas. Whilst it could be argued that these areas are habitable areas and not designated storage areas the Applicant could also argue that these areas could be designated as storage space to achieve numerical compliance and this would actually reduce the amenity of the apartment by reducing the flexibility of the use of these areas. For this reason, it is considered that the development has adequately demonstrated compliance with this requirement.  <b>Yes</b>
Daylight Access	Living rooms and private open spaces for at least 70 percent of apartments in a development should receive a minimum of three hours direct sunlight between 9 am and 3pm in midwinter.	Refer to <b>section 7.6.3</b> for assessment. Total units receiving less than 3hrs direct sunlight between 9am and 3pm during midwinter = 41 units of 221. Percentage of compliant units = 81.4%  <b>Yes</b>
	Limit the number of single-aspect apartments with a southerly aspect (SW, S & SE) to a maximum of 10% of the total units proposed.	Refer to <b>section 7.6.3</b> for assessment. Total single aspect southerly facing units = 27 units of 221 Percentage of non-compliant units = 12.2%  <b>No</b>
Natural Ventilation	Sixty percent (60%) of residential units should be naturally cross ventilated.  <i>Developments, which seek to vary from the minimum standards, must demonstrate how natural ventilation can be satisfactorily achieved,</i>	60.2% of units are cross ventilated.  <b>Yes</b>

RFDC REF	'RULE OF THUMB' & 'BETTER DESIGN PRACTICE' GUIDELINE	CONSISTENCY WITH GUIDELINE
	<i>particularly in relation to habitable rooms.</i>	
	Twenty five percent (25%) of kitchens within a development should have access to natural ventilation.	63 units (28.5%) have kitchens with access to natural ventilation. <b>Yes</b>
Acoustic Privacy	<ul style="list-style-type: none"> <li>- Utilise the site and building layout to maximise the potential for acoustic privacy by providing adequate building separation within the development and from neighbouring buildings.</li> <li>- Arrange apartments within a development to minimise noise transition between flats.</li> <li>- Design the internal apartment layout to separate noisier spaces from quieter spaces.</li> <li>- Resolve conflicts between noise, outlook and views by using design measures including double glazing, operable screened balconies and continuous walls to ground level courtyards.</li> </ul>	<p>An issue was raised in regard to bedroom windows to units opposing each other and opening out into a 2m wide and roofed ventilation slot in Building K is apparent. The rooftop services have been moved away from the top of this ventilation slot such that it is no longer roofed and double glazing is proposed to bedroom windows opening out into this ventilation slot. The double glazing of bedroom windows opening out into the ventilation slot in Building K will be conditioned to be required to be incorporated within the CC plans for Building P.</p> <p><b>Yes, subject to conditions (See Condition C15).</b></p>
Energy Efficiency		Energy efficient measures have been employed where possible. The development will be required to comply with the relevant BASIX Certificate.

### 7.6.1 Visual Privacy

The objectives for the visual privacy section within the RFDC are to provide reasonable levels of visual privacy externally and internally, during the day and at night and to maximise outlook and views from principal rooms and private open space without compromising visual privacy.

In regard to internal privacy between the proposed buildings, the minimum separation distances recommended within the RFDC are met by the development, thus this facilitates an acceptable level of internal visual privacy between the buildings. This is enhanced by careful design including offsetting opposing windows and minimising balconies on side elevations where other proposed buildings adjoin and tree planting in-between buildings where possible.

With regard to external privacy, due to the location of No's 5 and 7 Macpherson Street being almost completely surrounded by the development, it is considered that it would be extremely difficult to completely mitigate the potential for overlooking issues to occur for these properties as a result of the development. Currently, 5 and 7 Macpherson Street are developed with single dwelling-houses. It is noted that both the Concept Approval and the Stage 2 DA plans show what appears to be a connecting at-grade driveway from the internal cul-de-sac of the Stage 2

development to the rear boundary of 5 Macpherson Street. It would appear that this at-grade connecting driveway is intended to be constructed as a part of the Stage 2 landscaping and driveway works. This driveway leaves the potential for vehicular access to the redevelopment of 5-7 Macpherson Street to be facilitated via the rear and the internal driveway system of the Stage 2 development. It cannot be presumed however, that this re-development will occur, merely that there is potential for it to occur. Although it is possible that these properties will ultimately be re-developed in the future, an assessment of the privacy impact on the existing development is still required.

Existing buildings from Stage 1 lie in reasonably close proximity to these adjoining properties to the west and the south and already cause some erosion of visual privacy to the backyards of these dwellings due to overlooking. The swimming pool building and gymnasium is only 5m directly south of the rear boundary of 7 Macpherson Street. Within this 5m setback is a footpath that connects Stage 1 with Stage 2 and is likely to be heavily used once both stages are fully occupied as it provides connection from Stage 2 to the communal swimming pool and gymnasium facility. The footpath and associated landscaping on either side of it in-between the swimming pool building and southern rear boundary of 7 Macpherson Street are identified as a part of the landscaping works associated with the Stage 2 development. Given this, it is considered entirely appropriate to require, as a part of the Stage 2 Consent, that revised landscape plans be submitted that include specific details of the species, pot size, location and numbers of screen planting between the footpath and the rear boundary of 7 Macpherson Street as well as the installation of 2m high lapped and capped timber fencing along the full extent of this rear boundary to 7 Macpherson Street. This condition is considered necessary in order to reasonably mitigate, as far as is possible, the privacy impacts that will inevitably occur to 7 Macpherson Street as a result of the development. Screen planting and fencing will assist in minimising the potential for overlooking to occur into the backyard of this adjoining property.

The submitted indicative landscape plans provide some suggestion that some planting will occur in this area but there is not sufficient actual detail to give the consent authority certainty that the inevitable privacy issues will be effectively and reasonably mitigated. Thus, revised and detailed landscape plans are required. **(See Deferred Commencement Condition 2)**

Proposed Buildings 'H' and 'K' in Stage 2 are located to the east and south respectively of No. 5 Macpherson Street. Whilst Building 'K' has reasonable separation from this adjoining property, being over 20m to the south of the rear boundary of 5 Macpherson Street, Building H is located only 3m away from the eastern side boundary of 5 Macpherson Street. This building is a 3 storey high residential flat building. It includes 3 units on each floor that occupy the entire western elevation with the side of the courtyard/balconies, as well as the dining room, kitchen and bedroom windows facing towards 5 Macpherson Street.

In normal circumstances, Building H would be required to have a greater setback than this in order to minimise privacy impacts on this adjoining property by actual separation and the provision of sufficient setback space for effective screen planting to occur between the developments. If 5 Macpherson Street were to be redeveloped with higher density residential development than a single dwelling, then this future development should not have to provide any greater side setback to Building H than the 3m this building is set back from the common boundary between these properties. This would only provide a separation of 6m so it is considered reasonable

that conditions be imposed on the Stage 2 Consent that require additional privacy mitigation measures. These include requiring that all bedroom, dining room and kitchen windows on the western elevation be either highlight windows with sill heights no lower than 1.6m above finished floor level, or, have fixed external louvers that prevent direct views towards 5 Macpherson Street. Relevant detail is conditioned to be provided at the Construction Certificate stage. **(See Condition C16)**

### **7.6.2 Apartment Layout**

The apartment layout 'Rules of Thumb' within the RFDC require that single-aspect apartments be limited in depth to 8 metres from a window. 90 of 108 (83.3%) of the proposed single aspect units comply with this design requirement. As this design requirement is aimed at improving access to natural light and air for single aspect units, those units with skylights could also potentially be included as otherwise meeting the aim of this requirement. This would increase the level of compliance for the Stage 2 development to 96 of 108 single aspect units or 88.8%.

Another apartment layout design requirement is that the back of a kitchen be no more than 8 metres from a window. 175 of 221 units or 79.2% comply with this design requirement.

Thus, the overall development does not strictly numerically comply with either of these numerical design requirements.

It would not be reasonable to expect 100% compliance with this design requirement, particularly in circumstances where the building footprints have already been approved as a part of the Concept Approval prior to finalisation of the internal floor plans and detailed design that now form a part of this Development Application. However, the Concept Approval specifically requires that the DA be consistent with the provisions of SEPP 65 and the RFDC.

In regard to the apartment layout requirements, the 'Rules of Thumb' acknowledge that total compliance throughout an entire development may not be possible and state that buildings not meeting the above minimum standards must demonstrate how satisfactory daylight and natural ventilation can be achieved, particularly in relation to habitable rooms.

In this regard, the assessment of daylight and solar access provided in **section 7.6.3** below has identified that adequate solar access is achieved.

### **7.6.3 Daylight and Solar Access**

In a letter requesting additional information sent to the Applicant on 26 February 2013, Council officers identified concern that the supporting information submitted with the Stage 2 Development Application did not sufficiently demonstrate consistency with the SEPP 65 Rule of Thumb provisions regarding daylight access. There are 2 relevant Rules of Thumb. These are:

*“- Living rooms and private open spaces for at least 70 percent of apartments in a development should receive a minimum of three hours direct sunlight between 9am and 3pm in mid winter. In dense urban areas a minimum of two hours may be acceptable*

*- Limit the number of single-aspect apartments with a southerly aspect (SW-SE) to a maximum of 10% of the total units proposed. Developments which seek to vary from the minimum standards must demonstrate how site constraints and orientation prohibit the achievement of these standards and how energy efficiency is addressed.”*

### **Solar Access**

In response to Council's concerns, the Applicant has submitted additional relevant information to demonstrate consistency with the RFDC daylight and solar access requirements. This includes an additional Solar Access Assessment Report prepared by SLR Consulting Australia and dated 11 March 2013 with 15 minute interval three dimensional sun's eye view diagrams. An assessment of this information has revealed the following:

#### Building K

##### South Elevation

Units G20, G21, G22, G23, 120, 121, 122, 123, 220, 221, 222 and 223 receive less than 3hrs direct sunlight between 9am and 3pm during midwinter (ie 12 non-compliant units)

#### Building L

##### South Elevation

Units G28, G33, 128, 133, 228 and 233 receive less than 3hrs direct sunlight between 9am and 3pm during midwinter (ie 6 non-compliant units)

#### Building M

##### South Elevation

Units G38, G43, 138, 143, 144, 238, 243, 244, 335 receive less than 3hrs direct sunlight between 9am and 3pm during midwinter (ie 9 non-compliant units)

#### Building N

All units appear to be compliant.

#### Building O

##### South-West Elevation

Units G50 and 150 receive less than 3hrs direct sunlight between 9am and 3pm during midwinter (ie 2 non-compliant units)

South-East Elevation

Units G55 and 155 receive less than 3hrs direct sunlight between 9am and 3pm during midwinter (ie 2 non-compliant units)

#### Building P

South-East Elevation

Units G58, G59 and 158 receive less than 3hrs direct sunlight between 9am and 3pm during midwinter (ie 3 non-compliant units)

South-West Elevation

Units G61, G62, G63, 159, 161, 162 and 163 receive less than 3hrs direct sunlight between 9am and 3pm during midwinter (ie 7 non-compliant units)

Total non-compliant units = 41 units of 221 with Buildings K, M and P being the poorest performing buildings.

Percentage of compliant units = 81.4%

This complies with RFDC Rule of Thumb.

#### ***South-facing single aspect units (daylight)***

##### Building K

Units G20, G21 G22, G23, 123 and 223 are single aspect south facing units. (ie 6 non-compliant units)

##### Building L

Unit G33 is a single aspect south facing unit. (ie 1 non-compliant unit)

##### Building M

Units G38, G43, 138, 143, 144, 238, 243, 244 and 335 are single aspect south facing units. (ie 9 non-compliant units)

##### Building N

No single aspect south facing units.

##### Building O

Units G50, G55, 150 and 155 are single aspect south facing units. (ie 4 non-compliant units).

#### Building P

Unit G58, G59, G62, G63, 158, 162 and 163 are single aspect south facing units. (ie 7 non-compliant units)

Total non-compliant units = 27 units of 221 with Buildings K, M and P being the poorest performers.

Percentage of non-compliant units = 12.2%

This does not comply with RFDC Rule of Thumb, which sets a maximum percentage of single aspect south facing units of 10%. Given the limitations set by the Concept Approval and the minor nature of the non-compliance, this is considered to be acceptable in the circumstances

### **7.7 Deep Soil**

The level of information that would demonstrate compliance with this requirement was not submitted with the lodgement of the Stage 2 Development Application. It was requested by letter on 26 February 2013 however, no information has been submitted that demonstrates the deep soil provision along the street frontages. This should have included some analysis of what deep soil requirements would be necessary to ensure the continued growth and survival of the streetscape landscaping (which includes canopy trees) and sections showing soil depth as well as plans showing the extent of the street frontage deep soil areas. As the development relies upon proposed Angophora planting in the road reservation, the detail of this street planting and its soil depth should have been included in the landscape information.

Landscaping sections have been submitted that do not provide any detail regarding deep soil areas but merely focus on the entry paths to buildings. These were assessed and the Applicant advised they were not useful for the purposes of assessment and the Applicant has reproduced them at a higher magnification and resubmitted the same sections in response.

The relevant FEAR states the following:

#### ***“5. Landscaping***

*Future Development Applications **shall include detailed landscape plans demonstrating that sufficient deep soil can be provided** for landscaping, particularly along street frontages.” (emphasis added)*

The Applicant has submitted a “Deep Planting” plan (DA07 Revision F) with the Stage 2 Development Application however this plan is merely a magnified reproduction of the Deep Planting plan approved as a part of the Concept Approval. Noting the above assessment requirement that requires detailed plans that demonstrate that the deep soil provided is sufficient for the planting proposed, it cannot be concluded with certainty from the information provided that this FEAR has

been satisfied. No real attempt has been made by the Applicant to demonstrate compliance. It stands to reason that a plan that forms part of a concept approval would not include the level of detail that is anticipated by the wording of this assessment requirement. There would be no need for future development applications at all if the level of detail provided within the concept approval plans satisfied the future environmental assessment requirements of the same concept approval.

400 litre pot sized Angophoras are required (by notations in the approved Concept Landscape Plan) to be planted along the Boondah Road frontage, although the submitted landscape plans only shows 100 litre pot size plantings and closely clumped together in a 2m wide planter bed. In addition to this discrepancy is the fact that the landscape plan does not clearly show proposed footpaths and kerb and gutters that run immediately adjacent to the planter beds for the Angophoras and are likely to reduce the deep planting area for these trees down to less than 1m at the most prominent corner of the Site at the junction of Macpherson Street and Boondah Road. Footpaths are part of the landscape treatment of the Site and must be included in the landscape plan to enable proper assessment of the overall landscape treatment of the Site. Given the previous request for more landscaping detail and the wording of the relevant FEAR, the cursory and indistinct level of detail on the amended landscape plans is surprising. The Applicant has again failed to address and respect the intent of the landscape-related future environmental assessment requirement of the Concept Approval.

Whilst the failure to demonstrate compliance with the above FEAR is not considered to be a reason for refusal, such demonstration of compliance and satisfactory resolution of the landscape treatment of the Site is recommended to be required prior to an active consent being issued. A deferred commencement condition is therefore recommended that requires this information to be submitted prior to and approved by Council prior to the activation of the consent. As previously stated within this report, it is considered to be extremely important that the landscape treatment of this development to the surrounding public roads is satisfactory, matches the scale of the development, and that this landscaping will continue to thrive and survive over the long term.

An appropriate condition is therefore recommended. **(See Deferred Commencement Condition 2)**

## **8.0 ASSESSMENT AGAINST LOCAL ENVIRONMENTAL PLANS**

### **8.1 Pittwater Local Environmental Plan 1993**

The following is provided notwithstanding the transitional provision of the Act as they apply to Part 3A Approvals overriding the local provisions of the PLEP 1993.

#### **8.1.1 Permissibility**

Under PLEP 1993 the subject site is zoned 2(f) (Urban Purposes - Mixed Residential). Under this zone, the land uses permitted with consent are “*Residential buildings; associated community and urban infrastructure.*” Both these terms however, are not defined under PLEP 1993.



Under Part 2 of Schedule 11 of PLEP 1993, the objectives of the 2(f) zone as it relates to the Warriewood Valley urban Land release are:

- “(a) to identify land within the Warriewood Valley urban Land Release which is suitable for residential development and which will be provided with adequate physical and social infrastructure in accordance with the planning strategy for the area, and*
- (b) to provide opportunities for more varied forms of housing and wider housing choice, and*
- (c) to provide opportunities for a mixture of residential buildings which can be in the form of detached dwellings, integrated development, cluster housing, group buildings and the like.”*

The application involves construction of 9 residential flat buildings with basement car parking, as well as associated internal roads and landscaping. In this regard, the application would be consistent with the above objectives of the zone 2(f) under PLEP 1993.

### **8.1.2 Relevant Provisions of Division 7A of PLEP 1993**

Clause 30A outlines the objectives of this Division, as follows:

- “(a) permit development for urban purposes on land within the Warriewood Valley Urban Land Release in accordance with a planning strategy for the release area, and*
- (b) permit staged development for urban purposes in the various sectors of the Warriewood Valley Urban Land Release that has regard to a development control plan applying to the release area, and*
- (c) permit greater housing diversity and wider housing choice in areas provided with adequate physical and social infrastructure in accordance with a planning strategy for the release area.”*

This application will provide for urban development within the Warriewood Valley Urban Land Release Area (release area). This application, by providing for residential flat buildings, will provide for a greater diversity of housing in release area.

The Concept Plan for the entire site, approved under the now repealed Part 3A provisions, has determined buildings heights, footprints, setbacks and dwelling densities for this development. Despite being repealed, transitional Part 3A provisions apply such that the approved Concept Plan and conditions override the maximum dwelling yields stipulated in Council’s *Warriewood Valley Planning Framework 2010* and a number of otherwise relevant DCP provisions.

Clause 30B(1) identifies Buffer Area 3 as land within the release area to which, under Clause 30B(2), Council may grant consent for development after considering the objectives of the 2(f) zone.

Clause 30B(3) requires Council, before granting any consent for development within the release area, to be satisfied that arrangements have been made addressing the following, where relevant to the development proposal:

- “(a) *identification and management of any limitations to urban development and associated works created by slope, soil structure, geotechnical instability, flooding or the like,*
- (b) *conservation and the protection of any significant vegetation and associated plant communities,*
- (c) *conservation and the protection of any significant fauna populations and their habitat,*
- (d) *identification and remediation of any contaminated lands,*
- (e) *enhancement and protection of any significant visual elements within the landscape and its setting,*
- (f) *identification and protection of any significant Aboriginal heritage items or sites,*
- (g) *identification and protection of any significant European heritage items or sites,*
- (h) *management of urban stormwater from a total catchment management viewpoint,*
- (i) *management and provision of traffic networks and facilities,*
- (j) *identification and protection of any development from bushfire hazards.*

These issues have all been considered during the assessment of this application. The Concept Approval and Stage 1 Project Approval imposed a number of conditions addressing flooding, significant vegetation, the traffic networks and bushfire hazards. A number of additional conditions are proposed to be imposed, addressing the issues relevant to this application, including bushfire protection, stormwater management, protection of significant vegetation and flood risk.

Clause 30C stipulates the minimum and maximum dwelling yields for each residential sector in the release area. The minimum and maximum yields stipulated for Buffer Area 3 is as follows:

*“Buffer Area 3 – not more than 142 dwellings or less than 135 dwellings”*

The Concept Approval for the development on this site permits a maximum density of 60 dwellings per hectare, equating to a maximum of 447 dwellings across the site. 226 dwellings were approved under Stage 1 of the development and this application proposes an additional 221 dwellings. Transitional Part 3A legislative provisions apply such that the approved density overrides the dwelling yields stipulated in Clause 30C for this sector.

Clause 30D(2) applies to land within the identified Sewerage Treatment Plan Buffer Areas requires Council *“not to consent to development for the purpose of residential buildings... unless the Director General has certified in writing to the council that the impact of odours from the Warriewood Sewerage Treatment Plant on users or occupiers of the buildings is mitigated.”*

A referral response from the Director General dated 21 February 2013 in regard to this DA advises that satisfactory arrangements pursuant to Clause 30D(2) have been made to ensure that the impact of odours from the Warriewood Sewerage Treatment Plant on residents within the proposed development is mitigated.

## **8.2 Draft Pittwater Local Environmental Plan 2013**

### **8.2.1 Permissibility**

Under Draft PLEP 2013 the subject site is to be zoned R3 (Medium Density Residential). Under this zone, the land uses permitted with consent are

*“Attached dwellings; Bed and breakfast accommodation; Boarding houses; Building identification signs; Business identification signs; Child care centres; Community facilities; Dual occupancies; Dwelling houses; Educational establishments; Environmental protection works; Exhibition homes; Group homes; Health consulting rooms; Home-based child care; Home industries; Multi dwelling housing; Neighbourhood shops; Places of public worship; Residential flat buildings; Respite day care centres; Roads; Secondary dwellings; Semi-detached dwellings; Seniors housing; Serviced apartments; Veterinary hospitals”*

A residential flat building is defined as “a building contained 3 or more dwellings, but does not include an attached dwelling or multi dwelling house”. Road is defined as “a public road or a private road within the meaning of the *Roads Act 1993*, and includes a classified road.”

Under Part 2 of Draft PLEP 1993, the objectives of the R3 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 development minimises unnecessary impacts on the natural characteristics of the site and surrounding area.*
- *To maintain the desired character of the locality.*
- *To provide for a limited range of other land uses of a low intensity and scale, compatible with surrounding land uses.”*

The application would be consistent with the above definitions and the above objectives of the R3 zone under the Draft PLEP 2013.

### **8.2.1 Relevant provisions of Part 6 of Draft PLEP 2013**

The Draft PLEP 2013 is intended as a like-for-like translation from the current LEP. Part 6 of the Draft PLEP imposes no additional considerations or requirements than the current LEP in force therefore an assessment against the Part 6 has not been provided.

## **9.0 ASSESSMENT AGAINST PITTWATER 21 DEVELOPMENT CONTROL PLAN**

### **9.1 Assessment against relevant Pittwater 21 DCP controls**

**TABLE 3: PDCP 21 COMPLIANCE TABLE**

- T - Can the proposal satisfy the technical requirements of the control?
- O - Can the proposal achieve the control outcomes?
- N - Is the control free from objection?

Control	Standard	Proposal	T	O	N
<b>Development Engineer</b>					
B3.22 Flood Hazard - Flood Category 3 - All Development			-	-	-
B5.4 Stormwater Harvesting			Y	Y	Y
B5.11 Stormwater Discharge into Waterways and Coastal Areas			Y	Y	Y
B5.13 Development on Waterfront Land			Y	Y	Y
B6.2 Access Driveways and Works on the Public Road Reserve- All Development other than Dwelling Houses, Secondary Dwelling and Dual Occupancy			Y	Y	Y
B6.4 Internal Driveways - All Development other than Dwelling Houses, Secondary Dwelling and Dual Occupancy			Y	Y	Y
B6.6 Off-Street Vehicle Parking Requirements - All Development other than Dwelling Houses, Secondary Dwelling and Dual Occupancy		The Concept Approval sets the off street parking requirements inline with the DCP with the exception of visitor parking, where the required rate is 1 space per 5 dwellings. The application is compliant with the rates set by the Concept Approval.	N*	Y	N
B6.9 On-Street Parking Facilities - All Development other than Dwelling Houses, Secondary Dwellings and Dual Occupancy			-	-	-
B6.10 Transport and Traffic Management - All Development other than Dwelling Houses, Secondary Dwelling and Dual Occupancy			Y	Y	Y
B8.1 Construction and Demolition - Excavation and Landfill			Y	Y	Y
B8.2 Construction and Demolition - Erosion and Sediment Management			Y	Y	Y
B8.3 Construction and Demolition - Waste Minimisation			Y	Y	Y
B8.4 Construction and Demolition - Site Fencing and Security			Y	Y	Y
B8.5 Construction and Demolition - Works in the Public Domain			Y	Y	Y
B8.6 Construction and Demolition -			Y	Y	N

Traffic Management Plan					
C6.4 Flood - Warriewood Valley Land Release Area Residential Sectors			Y	Y	Y
C6.18 Utilities and services - Warriewood Valley Land Release Area			Y	Y	Y
<b>Health</b>					
B5.2 Wastewater Disposal			Y	Y	Y
B5.3 Greywater Reuse					
C2.21 Food Premises Design Standards					
C5.17 Pollution control			Y	Y	Y
C5.19 Food Premises Design Standards					
REF - Natural Resources					
B1.4 Aboriginal Heritage Significance					
B3.5 Acid Sulphate Soils					
B4.15 Saltmarsh Endangered Ecological Community					
D16.12 Landscaping					
<b>Planner</b>					
EPA Act Section 147 Disclosure of political donations and gifts			-	-	-
3.1 Submission of a Development Application and payment of appropriate fee			Y	Y	Y
3.2 Submission of a Statement of Environmental Effects			Y	Y	Y
3.3 Submission of supporting documentation - Site Plan / Survey Plan / Development Drawings			Y	Y	Y
3.4 Notification			Y	Y	N
3.5 Building Code of Australia			Y	Y	Y
3.6 State Environment Planning Policies (SEPPs) and Sydney Regional Environmental Policies (SREPs)	Proposed development must be designed, constructed and maintained so that it complies with any relevant state planning controls that may exist including SEPPs and SREPs.  BASIX SEPP	SEPP 65 applies to the development. Refer to <b>sections 7.5 and 7.6</b> of this report for detailed assessment. On the whole, the development is able to meet the requirements of SEPP 65 and the RFDC, subject to the imposition of recommended conditions. There are some minor inconsistencies with the RFDC that are not considered to be fatal to the Application as these are recommendations rather than actual controls.	N	Y	Y

	and SEPP 65 apply to this development.	BASIX Certificates have been submitted for each building. A condition will be included regarding the maintenance of the commitments identified in the BASIX certificate.			
3.7 Designated Development			-	-	-
4.1 Integrated Development: Water Supply, Water Use and Water Activity	Proposal involves groundwater pumping.	Section 75P(2)(b) of EPAA applies. The DA is not Integrated Development see <b>section 2.5</b> of this report.	-	-	-
4.2 Integrated Development: Fisheries Management			-	-	-
4.4 Integrated Development: Bushfire			-	-	-
4.5 Integrated Development: Aboriginal Objects and Places			-	-	-
4.6 Integrated Development - Protection of the Environment			-	-	-
4.7 Integrated Development - Roads			-	-	-
4.8 Integrated Development - Rivers, Streams and Foreshores	The building and associated infrastructure involved work within the vicinity of Fern Creek.	Section 75P(2)(b) of EPAA applies. The DA is not Integrated Development see <b>section 2.5</b> of this report.	-	-	-
5.1 Referral to the Roads and Traffic Authority under SEPP (Infrastructure) 2007			-	-	-
5.2 Referral to the NSW Police Service	Proposal involves construction of more than 20 dwellings.	No response was received.	Y	Y	Y
5.3 Referral to NSW Department of Environment and Climate Change (DECC)	The building and associated infrastructure involved work within the vicinity of Fern Creek.	Section 75P(2)(b) of EPAA applies. The DA is not Integrated Development <b>section 2.5</b> of this report.	-	-	-
A1.7 Considerations before consent is granted		The construction of this building was approved as part of an approval issued under Part 3a of the EPAA (MP09_0162 and the Project Approval MP10_0177) which overrides any EPI or DCP.	-	-	-
B1.3 Heritage Conservation - General			-	-	-
B3.2 Bushfire Hazard	Development must comply		Y	Y	Y

	with Planning for Bushfire Protection and AS 3959.				
B3.6 Contaminated Land and Potentially Contaminated Land		The site is not suspected to be contaminated.	Y	Y	Y
B5.1 Water Management Plan		Conditions of consent will be imposed to satisfy this control.	Y	Y	Y
B5.2 Wastewater Disposal			Y	Y	Y
B5.3 Greywater Reuse		Not proposed.	-	-	-
B5.11 Stormwater Discharge into Waterways and Coastal Areas		Conditions of consent will be imposed to satisfy this control.	Y	Y	Y
B5.13 Development on Waterfront Land			-	-	-
C1.14 Separately Accessible Structures			-	-	-
C2.14 Commercial Swimming Pools			-	-	-
C5.2 Safety and Security			Y	Y	Y
C5.4 View Sharing					
C5.5 Accessibility		All common areas will be conditioned to comply with AS1428 Design for Access and Mobility. Accessible units are required to be incorporated as per the Concept Approval.	-	-	-
C5.7 Energy and Water Conservation			Y	Y	Y
C5.8 Waste and Recycling Facilities		The proposal involves a number of garbage rooms within the underground car parking area and a larger external room dedicated for storing bins for collection.	Y	Y	Y
C5.9 Business Identification Signs			-	-	-
C5.10 Protection of Residential Amenity			-	-	-
C5.11 Advertisements			-	-	-
C5.14 Car/Vehicle/Boat Wash Bays			Y	Y	Y
C5.15 Undergrounding of Utility Services		Conditions of consent will be imposed to satisfy this control.	Y	Y	Y
C5.16 Building Facades			Y	Y	Y
C5.19 Food Premises Design Standards			-	-	-
C5.20 Liquor Licensing Applications			-	-	-
C5.21 Plant, Equipment Boxes and Lift Over-Run		Conditions of consent will be imposed to satisfy this control.	Y	Y	Y
D14.2 Scenic protection - General		Landscaping conditions will be imposed to minimise any visual impact on the natural environment.	Y	Y	N

D16.1 Character as viewed from a public place			Y	Y	Y
D16.2 Building colours and materials		Conditions of consent will be imposed to satisfy this control.	Y	Y	N
D16.3 Front building lines		Building footprints have been established under the Concept Approval and cannot be changed.	Y	Y	N
D16.4 Side and rear building lines - Warriewood Valley Residential Sectors		Building footprints have been established under the Concept Approval and cannot be changed.	Y	Y	N
D16.6 Site Coverage - Warriewood Valley Residential Sectors		A minimum of 50% deep soil planting across the whole site is required under the Concept Approval.	Y	Y	Y
D16.7 Fences - Warriewood Valley Residential Sectors		No fences are proposed.	-	-	-
D16.8 Construction, Retaining walls, terracing and undercroft areas		None proposed.	-	-	-
D16.10 Pets and companion animals		Conditions of consent will be imposed to satisfy this control.	Y	Y	Y
D16.11 Location and design of carparking facilities - Warriewood Valley Residential Sectors		Landscaping will be required via a condition of consent to screen podium car parking levels.	Y	Y	Y
D16.13 Solar access - Warriewood Valley Residential Sectors		See <b>section 9.2</b> of this report.	N*	Y	N
D16.14 Height	8.5m above natural ground level.	The Concept Approval stipulates the maximum number of storeys for each building within the development. The application complies with the Concept Approval.	N*	N	N
D16.15 Scenic protection - General		Landscaping conditions will be imposed to minimise any visual impact on the natural environment.	Y	Y	N

**\*Issues marked with an x are discussed later in the report.**

**Issues marked with - are not applicable to this Application.**

A detailed response to objections is contained in **ATTACHMENT 1**.

## **9.2 Non-compliances with Pittwater 21 DCP controls**

*Control B6.6 Off-Street Vehicle Parking Requirements - All Development other than Dwelling Houses, Secondary Dwelling and Dual Occupancy*

The proposal does not comply with the DCP control however it achieves compliance with the Concept Approval which stipulates visitor parking rates at 1 space per 5 dwellings.



*Control 3.6 State Environment Planning Policies (SEPPs) and Sydney Regional Environmental Policies (SREPs)*

SEPP 65 applies to the development. Refer to **sections 7.5 and 7.6** of this report for detailed assessment. On the whole, the development is able to meet the requirements of SEPP 65 and the RFDC, subject to the imposition of recommended conditions. There are some minor inconsistencies with the RFDC that are not considered to be fatal to the Application as these are recommendations rather than actual controls.

*Control D16.13 Solar access - Warriewood Valley Residential Sectors*

The proposal does not comply with the DCP control however it does comply with the requirements of SEPP 65. The assessment of compliance with SEPP 65 is discussed in **section 7.6.3** of this report.

*Control D16.14 Height*

The proposal does not comply with the DCP control of 8.5 metres however it complies with the Concept Approval which stipulates the maximum number of storeys for each building within the development.

## **10.0 CONCLUSION**

The Development Application has been assessed in accordance with the provisions of Section 79C of the Environmental Planning and Assessment Act 1979, the relevant Concept Approval, Pittwater Local Environmental Plan 1993 and Pittwater 21 DCP and other relevant Council policies.

The Concept Approval stipulates the requirements and commitments that override local standards and controls, against which the authority is legally obligated to assess the Development Application under the terms of the EPAA.

There are inconsistencies within the terms of the Concept Approval identified throughout this report and a pragmatic approach has been taken to identify these anomalies for what they are and apply a commonsense approach in determining their actual intent and whether the development is consistent with that intent.

Overall the development is adequate given the pre-eminence of the Concept Approval by the Planning Assessment Commission, subject to the submission of the required additional information that resolves the identified outstanding issues and other recommended conditions of consent.

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## **RECOMMENDATION OF DEVELOPMENT OFFICER / PLANNER**

That the Joint Regional Planning Panel approve Development Application N0353/12 for the construction of 9 residential flat buildings of 3-4 storeys incorporating a total of 221 residential units over basement parking and at-grade parking for 472 vehicles, associated landscaping, demolition, tree removal, excavation, flood mitigation works, earthworks, and construction of internal driveways and internal roads at 79-91 Macpherson Street, Warriewood (Part Lot 122 SP 86957) as a deferred commencement consent and subject to the conditions included in the attached draft determination.

### **Primary author**

Gordon Edgar  
**EXECUTIVE PLANNER**

Steve Evans  
**DIRECTOR ENVIRONMENTAL PLANNING & COMMUNITY**

## ATTACHMENT 1

Submission No.	Issue Raised	Response to Issue
1	<i>"Massive over development that will put a huge strain on area"</i>	Noted – However the development at this site was approved by the Planning Assessment Commission under the now repealed Part 3A provisions. A number of transitional Part 3A provisions were introduced to deal with existing approved Part 3A projects, and require that this DA be consistent with the prevailing Concept Approval. There is no opportunity for Council to reduce the density of the Stage 2 development.
2	<p><i>"Proposal is in direct conflict with Council's as yet unreleased density and zoning under review by the Warriewood Valley Strategic Planning Team [Warriewood Valley Strategic Review]"</i></p> <p><i>"The proposed density of Stage 2 is not in keeping with the zoning and density of the area and surrounding properties"</i></p> <p><i>"Our density (5 Macpherson Street) should be the same as the</i></p>	<p>The exhibited draft Warriewood Valley Strategic Review Report did not consider this property to be 'undeveloped' given that construction was occurring in accordance with the approvals issued by the PAC under Part 3A.</p> <p>The Concept Approval, as the prevailing/parent approval for this development, has already approved the intensification of this property for up to a density of 60 dwellings per hectare. The Concept Approval also determined 'shelter in place' as the approved approach for development on the overall property including this site.</p> <p>The Concept Approval, as the prevailing/parent approval for this development, has already approved the intensification of this property for up to a density of 60 dwellings per hectare.</p> <p>Subsection 3B(2)(f) of Schedule 6A of the EP&amp;A Act applies insofar as where there is an inconsistency or non-compliance with a planning instrument (EPI) or development control plan (DCP), and the approval of the Concept Plan then the inconsistency or non-compliance in the EPI or DCP has no effect.</p> <p>This issue is irrelevant to the merit assessment of this DA given it</p>

Submission No.	Issue Raised	Response to Issue
	<p><i>surrounding development's [Buffer 3a, 79-91 Macpherson Street, Warriewood]"</i></p> <p><i>Block H is too close and too high, it blocks out morning sun (to 5 Macpherson Street) and causes loss of privacy"</i></p>	<p>introduces another property seeking the same development opportunity that this DA is permitted to do through the prevailing Concept Approval that was issued for the overall development on this site.</p> <p>In regard to the submitter's issue, the exhibited draft Warriewood Valley Strategic Review Report denied development capacity greater than 32 dwellings per hectare for Buffer 3b (5 and 7 Macpherson Street). The suggestion that the density allocated to 5 Macpherson Street should be the same as the density of the subject site is a consideration for the current Warriewood Valley Strategic Review, not this DA.</p> <p>The location and height of Block H was determined by the Concept Approval and overshadowing was considered at this time. Submitted shadow diagrams accompanying the Stage 2 application demonstrate that Block H will result in additional overshadowing of the Eastern side boundary and south-east corner of the dwelling and rear yard of 5 Macpherson Street at 9am during midwinter. By midday and all afternoon, this adjoining property is not affected by shadows cast from the development.</p> <p>It therefore receives 3 hours direct sunlight over the whole of the property during midwinter. This complies with the relevant control in section C1.4 of Pittwater 21 DCP relating to acceptable levels of solar access. Consequently, this impact is considered to be within reasonable limits. Refer to section 6.6.1 of the assessment report for a discussion of privacy impacts.</p> <p>Should this development be approved, a condition of consent will be imposed requiring screen planting and fencing be provided to ensure visual privacy.</p>

Submission No.	Issue Raised	Response to Issue
	<p><i>"Council should consider forcing Meriton as a condition of any approval into negotiating with those owners [of 5 and 7 Macpherson Street]"</i></p> <p><i>"The house numbering needs to be readdressed"</i>. Number 5 Macpherson Street is currently between 79-91 Macpherson Street.</p>	<p>The Applicant was previously required by the Director General to seek site amalgamation with 5 and 7 Macpherson Street, Warriewood. The Applicant's Environmental Assessment for the Concept Plan and Stage 1 Project Application addressed the development potential of the two sites, indicating that access may be able to be achieved at the rear of the sites onto the Applicant's internal road.</p> <p>Council is unable to impose a condition forcing the Applicant to negotiate with the owners of 5 and 7 Macpherson Street.</p> <p>The owners of these two properties are encouraged to explore development options for their properties and if necessary, appropriate access arrangements through the Applicant's site.</p> <p>Noted. On confirmation from the owners of 5 &amp; 7 Macpherson Street wishing to be assigned a new street number, Council will consider their request for renumbering. Any costs incurred with changing the street address is to be borne by the property owner.</p>
3	<p>Number of dwellings for total development (Stage 1 and 2) far exceeds the maximum number of dwellings set by Council's LEP and Warriewood Valley Planning Framework 2010. Gross overdevelopment of the area.</p> <p>Flood modelling has not been redone for the Valley since 2005. A development of this size was never planned for and not considered in the original flood modelling. The development needs to be independently assessed in terms of its potential to create flood risks in other parts of the Valley.</p> <p>Other development in the Valley is held up due to SES concerns</p>	<p>The Concept Approval, as the 'parent' approval for the development on this site, permitted a maximum density of 60 dwellings per hectare, and legislative provisions apply such that the approved density overrides Council's LEP and DCP and the 2010 Framework</p> <p>The Concept Approval and Stage 1 Project Approval approved a development at a specific density, building heights, setbacks to environmental zones and that 50% of the developable site is to have deep soil landscaping. It also approved the flood management regime and emergency response for this development.</p> <p>The PAC in approving the Concept Approval has already approved the emergency response for this development and this DA. The</p>

Submission No.	Issue Raised	Response to Issue
	<p>over flood evacuation. Surely this development should be held up in the same way.</p>	<p>Brown Consulting report states that the primary flood response for the site is vertical evacuation (sheltering-in-place) with occupants remaining inside the dwellings and moving to the upper levels. This flood emergency response is embedded in the Concept Approval MP 09_0162. Any development needs to address flood emergency response including the SES portion on flood evacuation. In regard to this DA, the PAC has already approved the emergency response for this development through the Concept Approval.</p> <p>Further it is noted that:</p> <ol style="list-style-type: none"> <li>1. A new flood model of the Narrabeen Lagoon catchment (incorporating the Warriewood Valley area) has been prepared and is currently being refined by BMT-WBM. The new model will form the basis of a revised Narrabeen Lagoon Flood Study, a joint project between Warringah and Pittwater Councils. The draft Flood Study will be reported to the Narrabeen Lagoon Floodplain Risk Management Community Working Group on 2 May 2013 for consideration, prior to reporting to both councils. The flood level information from the new flood model should be used in the proponent's flood risk assessment.</li> <li>2. Water quantity management for the Warriewood Valley area requires maintaining existing peak flows so that following development, flooding will not be worse than the pre-existing condition. This requirement is not dependent on development density, but rather the ability of the proposal to satisfy the Site Storage Requirement (SSR) set for the sector relative to a percentage site imperviousness of 50%. The site for the proposed development is considered in the Warriewood Valley Urban Land Release Water Management Specification (2001) and the hydrology model and is allocated SSRs values.</li> <li>3. The requirement to assess the impacts of the proposal is borne by the developer. The proposal is required to demonstrate that</li> </ol>

Submission No.	Issue Raised	Response to Issue
		<p>there is no additional adverse flooding impact on surrounding properties or flooding processes for any event up to the Probable Maximum Flood event. The Brown Consulting report does not provide evidence that this requirement has been met.</p> <p>4. The SES has yet to release their position on vertical refuge (sheltering-in-place). SES has advised in the past that flood evacuation is the only option. The Brown Consulting report states that the primary flood response for the site is vertical evacuation (sheltering-in-place) with occupants remaining inside the dwellings and moving to the upper levels. This flood emergency response is embedded in the Concept Approval MP 09_0162.</p>
	<p>Conditions in the approval for Stage 1 are inadequate in terms of landscaping and should be recertified for Stage 2.</p>	<p>Conditions of consent relating to the Stage 1 approval were determined by the PAC. This report reflects concern for the adequacy of landscaping for Stage 2 and seeks enhanced landscaping for Stage 2. Not all the landscaping for Stage 1 has been completed.</p> <p>If this DA is approved, a condition will be imposed requiring landscaping to be in accordance with Council's requirements (Pittwater 21 DCP).</p>
	<p>Concern regarding what road improvement works to be undertaken as part of Stage 2.</p>	<p>The roadworks necessary for the overall development, including Stage 2, were conditioned as part of the Stage 1 Project Approval and required an application under the Roads Act.</p> <p>Condition C6 of the Project Approval, was modified to allow for the timing of the Boondah Road works "to be completed as part of the future Stage 2 development application, if they are not completed as part of Stage 1".</p> <p>Roads Act Approvals have recently been issued for the full width</p>

Submission No.	Issue Raised	Response to Issue
		<p>reconstruction of Boondah Road (to full length of the property) including the southern-most driveway entrance, Macpherson Street east (half road construction, fronting the property) and the roundabout at Macpherson Street-Boondah Road intersection. As such this DA does not seek consent for works associated with the reconstruction of Boondah Road.</p> <p>The timing of the reconstruction works to Boondah Road is the subject of negotiations between Meriton and Council.</p>
	DA does not comply with DCP requirement for visitor car spaces (falling short by 28 spaces)	Visitor parking provided as part of Stage 2 complies with Condition 9 of Schedule 3 of the Concept Approval which, consistent with the RTA's <i>Guide to Traffic Generating Developments</i> , which requires 1 visitor space per 5 dwellings. This condition overrides Council's DCP control in regard to visitor parking rates.
4	Comments are never appreciated or considered	Noted only. No other dialogue raising concerns with this DA.
5	<p><i>"Area does not have adequate roads or infrastructure to accommodate the amount of people and cars that this development would bring"</i></p> <p><i>"No to this extra development on the grounds it is far too big... and needs to be brought into line with original plans for the area"</i></p> <p><i>"Constant rubbish and debris left around the roadside and grassed areas (of Stage 1 development)...Rangers obviously do not do their job of overseeing the site on a regular basis"</i></p>	<p>The Concept Approval determinate that current road capacity was adequate but requires the Pittwater Road right turn lane into Warriewood Road to be increased in length. This road improvement has now been undertaken.</p> <p>The Concept Approval, as the 'parent' approval for the development on this site, stipulates the maximum density and height for the site. The Part 3A legislative provisions override Council's LEP and DCP and the 2010 Framework.</p> <p>Condition E9 imposed on the Stage 1 approval reads:-</p> <p><i>No building materials, skip bins, concrete pumps, cranes, machinery, signs or vehicles used in or resulting from the</i></p>



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		<p><i>construction, excavation or demolition relating to the development shall be stored or placed on Council's footpath, nature strip or roadway.</i></p> <p>Condition F9 imposed on the Stage 1 approval reads:-</p> <p><i>Prior to the occupation certificate being issued and/or commencement of the use, whichever is earlier, of the building the owner must ensure that there is a contract with a licensed contractor for the removal of all trade waste pertaining to the relevant stage of construction. No garbage is to be placed on the public way e.g. footpaths, roadways, plazas, and reserves at any time.</i></p> <p>This is enforced within the limits of resources available to Council's Rangers.</p> <p>If Stage 2 is approved a similar condition will be imposed.</p>
	<p><i>"Large trucks... make the roads an absolute mess and they illegally run along Macpherson Street"</i></p>	<p>Three tonne load limits do not apply to vehicles that have no other way of reaching their destination. It must be acknowledged that heavy traffic such as delivery and construction vehicles will use these roads where property owners have sought delivery or where approvals for construction have been issued.</p> <p>Enforcement is within the limits of resources available to Council's Rangers, Police and the Roads &amp; Maritime Services.</p> <p>A condition was issued for Stage 1 Project Approval that requires the developer to bear the costs of any damage incurred as a result of construction works. The condition reads as follows:-</p> <p><i>The cost of repairing any damage caused to Council or other public</i></p>

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		<p><i>Authority's assets in the vicinity of the subject site as a result of construction works associated with the approved development, is to be met in full by the Proponent/developer prior to the issue of the Final Occupation Certificate.</i></p> <p>If this DA is approved, a similar condition will also be imposed as above.</p>
6	<i>"I object to the increase in traffic this development will cause. The roads around these sites are in poor condition and parking in local shopping centres is also congested."</i>	<p>The PAC approved the intensification of development on this site through the Concept and Project Approvals and Stage 1 Project Approval, having considered the traffic implications as a result of the development.</p> <p>The Concept Approval determinate that current road capacity was adequate but requires the Pittwater Road right turn lane into Warriewood Road to be increased in length. This road improvement has now been undertaken.</p>
	<i>"This area should be kept to 2 storey development to match the original intention of the area"</i>	<p>The Concept Approval, as the 'parent' approval for the development on this site, stipulates the maximum density and height for the site. The Part 3A legislative provisions override Council's DCP height control.</p>
7	Imperative that the height of trees are specified on the plans not the pot size (in particular <i>Livistonia australis</i> shown on montage to be 3-4 metres height), as the height of the <i>Livistonia</i> 's used in Stage 1 are only 1 metre high. The same applies to the other 9 large screening plants on the montage.	<p>Noted. If approved, a condition will be imposed requiring landscaping to be in accordance with Council's requirements (Pittwater 21 DCP).</p>
8	<i>"Our roads in Warriewood, around &amp; near to this development are a disgrace, with already, heavy car &amp; truck usage... a substantial increase in population (the Meriton DA or like) are going to create</i>	<p>The PAC approved the intensification of development on this site through the Concept Approval and Stage 1 Project Approval, having considered the traffic implications as a result of the development.</p>

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	<i>havoc on our roads."</i>	The Concept Approval determinate that current road capacity was adequate but requires the Pittwater Road right turn lane into Warriewood Road to be increased in length. This road improvement has now been undertaken.
	Parking around the work site and on the adjoining street is becoming increasing difficult and dangerous.	<p>Note the concerns regarding the current construction activity on site and note this is the subject of a Construction Management Plan including the management of vehicles associated with the construction. Enforcement is carried out within the limits of resources available to Council's Rangers and the Roads &amp; Maritime Services.</p> <p>If this DA is approved, a condition will be imposed regarding the preparation and implementation of a Construction Management Plan and the management and parking of vehicles.</p>
	<i>"Increase in population also sees a heavier demand on local GP practices"</i>	Noted – However the development at this site was approved by the Planning Assessment Commission under the now repealed Part 3A provisions. A number of transitional Part 3A provisions were introduced to deal with existing approved Part 3A projects, and require that this DA be consistent with the prevailing Concept Approval. There is no opportunity for Council to reduce the density of the Stage 2 development.
	<i>"Power, Gas &amp; Sewerage...needs to be addressed by all bodies, so that those who already live in the valley &amp; surrounding areas are not disadvantaged in any way."</i>	<p>A referral response was received from Sydney Water in regard to this DA which advises that the current wastewater system has sufficient capacity to serve the proposed development.</p> <p>Comments from other utility providers, including Energy Australia and Jamena Gas Networks, were provided on the original Major Project Application in 2010. Both providers have advised that they have the infrastructure to service the development.</p>

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	<p>Basement parking encroaches into the water table and will create greater flooding over nearby land &amp; properties.</p>	<p>The impacts of the proposal on the water table have not been addressed in the application. It is agreed that groundwater flows and their impacts need to be appropriately addressed by the development. Comments are being sought on the proposal from the NSW Office of Water, the licensing agency for groundwater issues.</p> <p>If this DA is approved, conditions will be imposed requiring a licence be obtained from NSW Office of Water and ensuring groundwater impacts are minimised.</p>
	<p><i>"All major developments should be on hold until the strategic review is complete &amp; that should also include &amp; address the current/underway Narrabeen Lake floodplain study."</i></p>	<p>This site forms part of the Warriewood Valley Release Area. The site however was not identified as undeveloped land for the purpose of density consideration under the Warriewood Valley Strategic Review as the Concept Approval for the site was issued prior to the Strategic Review officially commencing.</p> <p>The assessment of this DA is associated with the prevailing Concept Approval for the overall development of the site and does not rely on the outcomes of the Strategic Review. Preliminary data from the Draft Narrabeen Lagoon Flood study has been considered in the assessment of this application.</p>
9	<p><i>"We ask Council to stand by its original objections made to the PAC. If this is not done we would question why Council would change its position."</i></p>	<p>Despite Council's submissions to the Department during the assessment of the Part 3A application, a Concept Approval has now been issued for this site and is the 'parent' or overriding approval for the development on this site. This DA (currently before Council) is subservient to the Concept Approval.</p> <p>Transitional Part 3A provisions still apply to this development/site particularly the application of Section 75P(2) of the EP&amp;A Act whereupon <i>"(a) the determination of a development application for</i></p>

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		<p><i>the project or that stage of the project under Part 4 is to be generally consistent with the terms of the approval of the concept plan,.."</i></p> <p>A merit assessment of the current DA is being carried out with the exception of specific matters already established by the Concept Approval such as density, building height and parking rates etc.</p>
	<p>Concern regarding total dwellings numbers far exceeding the maximum number of dwellings set by Warriewood Valley Planning Framework 2010.</p>	<p>The Warriewood Valley Planning Framework 2010 (2010 Framework) is Council's current and adopted planning document relevant to the Warriewood Valley Release Area.</p> <p>The Concept Approval, as the 'parent' approval for the development on this site, permitted a maximum density of 60 dwellings per hectare. Part 3A legislative provisions apply such that the approved density overrides the dwelling yield allocated for the sector in 2010 Framework.</p>
	<p><i>"If Stage 2 is application is approved Council will have to reduce yields in other sectors or risk compromising a wide range of factors including traffic, flooding, public facilities, open space and sports grounds..."</i></p>	<p>The Concept Approval, as the 'parent' approval for the development on this site, permitted a maximum density of 60 dwellings per hectare, and legislative provisions apply such that the approved density overrides Council's LEP and DCP and the 2010 Framework.</p> <p>The issue regarding changes to dwelling density in other sectors relates to the Warriewood Valley Strategic Review Report and cannot be considered in the assessment of this application. Although not yet finalised, Council recognises that all undeveloped land in the Warriewood Valley release area has the potential to develop. The issue raised will be considered in the reporting of the Strategic Review including review of infrastructure delivery that would be commensurate to the revised total number of dwellings planned for Warriewood Valley.</p>

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	ARV development already far exceeds number of dwellings originally anticipated	<p>The retirement village development was considered and approved under the Seniors Living SEPP. The SEPP overrides the density standard under Council's LEP and DCP and at the time, the STP Buffer Sector Draft Planning Framework 2001.</p> <p>The development has already paid developer contribution commensurate with the approved development on this site.</p>
	Developer should be held responsible for the damage to the local roads as a result of their necessity to exceed current road limits in the area.	<p>Three tonne load limits do not apply to vehicles that have no other way of reaching their destination. It must be acknowledged that heavy traffic such as delivery and construction vehicles will use these roads where property owners have sought delivery or where approvals for construction have been issued.</p> <p>Enforcement is within the limits of resources available to Council's Rangers and the Roads &amp; Maritime Services.</p> <p>A condition was issued for Stage 1 Project Approval that requires the developer to bear the costs of any damage incurred as a result of construction works. The condition reads as follows:-</p> <p><i>The cost of repairing any damage caused to Council or other public Authority's assets in the vicinity of the subject site as a result of construction works associated with the approved development, is to be met in full by the Proponent/developer prior to the issue of the Final Occupation Certificate.</i></p> <p>If the Stage 2 DA is approved, a condition will also be imposed as above.</p>
	Council should impose boat storage and caravan storage facilities	This cannot be done as the Concept Approval already establishes the on-site parking requirements for this DA.

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	in addition to the car parking space requirements.	Pittwater 21 DCP already sets on-site parking requirements which must be satisfied by any new development. The parking requirements in the DCP however do not provide for separate boat trailer or caravan storage facilities. Consideration of any additional parking requirements must be examined across the Pittwater Local Government Area, rather than specific development application.
	DA does not appear to provide for the number of visitor car spaces required under the DCP	Visitor parking provided as part of Stage 2 complies with Condition 9 of Schedule 3 of the Concept Approval which, consistent with the RTA's <i>Guide to Traffic Generating Developments</i> , which requires 1 visitor space per 5 dwellings. This condition overrides Council's DCP control in regard to visitor parking rates.
	PCA should be required every month to lodge with Council evidence of compliance with construction times. Ranger patrols are not good enough.	<p>Compliance with hours of construction is enforced within the resource limits of Council. It is not possible at law to require the PCG to lodge with Council evidence of compliance with hours of construction.</p> <p>Any consent issued for this development, will require the Applicant to record details of all complaints in a Complaints Register, recording any action taken by the Applicant in response to the complaints and where no response was taken, the reason for doing so. In circumstances where Council becomes aware of complaints being received, Council may at any time view the Complaints Register and if necessary take appropriate steps to readdress the issue.</p>
	A bond should be lodged with Council for maintenance of landscaping for a period of 10 years. Stage 1 is not in keeping with Council standards. Stage 2 should not proceed until the	Council's standard practice for new multi-unit housing developments is imposition of a condition requiring a 24 month maintenance program. The standard condition reads as follows:

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	landscaping in Stage 1 is rectified and complete.	<p><i>Evidence of a 24 month maintenance program is to be submitted to the Private Certifying Authority with the Occupation Certificate application for the maintenance of all landscaped areas as required under this consent. During this period the nominated contractor shall maintain all approved landscape areas inclusive of weeding, watering, mowing and replacement of failed plant material.</i></p> <p>Conditions for Stage 1, as imposed by the PAC, require landscaping to be completed prior to the issue of the Final Occupation Certificate for Stage 1 buildings. A number of residential buildings are still under construction resulting in the landscaping not being completed. It is the responsibility of the Private Certifying Authority to ensure that landscaping is completed prior to the issue of the Final Occupation Certificate.</p> <p>The suggestion to delay this DA due to landscaping issues regarding Stage 1 is not able to be achieved within the terms of the Concept and Project Approvals from the PAC.</p>
	Flood levels have not been remodelled since 2005. A development of this size was never part of the planning of creek lines and detention basins and was therefore never considered in the original flood modelling that was done for the Valley. Council should not approve Stage 2 without having a full flood impact study undertaken to determine the consequences for properties both upstream and downstream and the STP.	<p>The Concept Approval and Stage 1 Project Approval approved a development at a specific density, building heights, setbacks to environmental zones and that 50% of the developable site is to have deep soil landscaping. It also approved the flood management regime and emergency response for this development.</p> <p>Further is noted that:</p> <ol style="list-style-type: none"> <li>1. A new flood model of the Narrabeen Lagoon catchment (incorporating the Warriewood Valley area) has been prepared and is currently being refined by BMT-WBM. The new model will form the basis of a revised Narrabeen Lagoon Flood Study, a</li> </ol>



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		<p>joint project between Warringah and Pittwater Councils. The draft Flood Study will be reported to the Narrabeen Lagoon Floodplain Risk Management Community Working Group on 2 May 2013 for consideration, prior to reporting to both councils. The flood level information from the new flood model should be used in the proponent's flood risk assessment.</p> <ol style="list-style-type: none"> <li>2. Water quantity management for the Warriewood Valley area requires maintaining existing peak flows so that following development, flooding will not be worse than the pre-existing condition. This requirement is not dependent on development density, but rather the ability of the proposal to satisfy the Site Storage Requirement (SSR) set for the sector relative to a percentage site imperviousness of 50%. The site for the proposed development is considered in the Warriewood Valley Urban Land Release Water Management Specification (2001) and the hydrology model and is allocated SSRs values.</li> <li>3. The proposal is required to demonstrate that there is no additional adverse flood impact on surrounding properties or flooding processes for any event up to the Probable Maximum Flood event. In particular, it should be demonstrated that there is no adverse effects on the Sewage Treatment Plant, Warriewood Square, and the lower reaches of the Narrabeen /Mullet Creek. The Brown Consulting report does not provide evidence that this requirement has been considered and satisfied.</li> </ol>
	Risk to life as the 3 driveway entrances can all be cut by floodwaters. Council has duty of care to overcome the emergency evacuation issue before allowing further development.	The PAC in approving the Concept Approval has already approved the emergency response for this development and this DA. The Brown Consulting report states that the primary flood response for the site is vertical evacuation (sheltering-in-place) with occupants remaining inside the dwellings and moving to the upper levels. This flood emergency response is embedded in the Concept Approval MP 09_0162.

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	Essential that Macpherson Street and Boondah Road are raised above flood level prior to issue of Occupation Certificates for Stage 2 to allow evacuation in PMF event.	Council has issued Road Act approvals for the reconstruction of Macpherson Street and Boondah Road (both for the full length of the roads fronting this property) as well as raising the low section of Macpherson Street to the 1% AEP level. This level is in accordance with the planning for the Warriewood Valley release area where the planned evacuation route for the Valley was established at the 1% AEP level.
	Council should determine the appropriate setbacks from Macpherson Road and Boondah frontages. Overpowering scale of Stage 1 development should not be perpetuated in Stage 2.	<p>The Planning Assessment Commission, under the now repealed Part 3A provisions, approved the Concept Approval which has determined buildings heights, footprints, setbacks and dwelling densities. A number of transitional Part 3A provisions were introduced to deal with existing approved Part 3A projects, and require that this DA be consistent with the prevailing Concept Approval.</p> <p>Should Stage 2 be approved, landscaping conditions will be imposed to screen the built form.</p>
	Sydney Water has advised Council that at times there will be necessary routine maintenance undertaken at the STP which will result in a significant odour problem. This information must be placed in 149 certificates.	<p>The <i>Environmental Planning and Assessment Regulation 2000</i> prescribe the matters that must be specified in a section 149(2) Planning Certificate. Matters relating to odour emission are not matters required to be specified in a Planning Certificate.</p> <p>A referral response from the Department of Planning &amp; Infrastructure in regard to this DA advises that satisfactory arrangements have been made to ensure that the impact of odours from the Warriewood Sewerage Treatment Plant on residents within the proposed development is mitigated.</p>
	Council must make it a condition on 149 certificates that the volume of gas used on the site will not starve the rest of Warriewood Valley	The <i>Environmental Planning and Assessment Regulation 2000</i> prescribe the matters that must be specified in a section 149(2) Planning Certificate. Matters relating to natural gas usage are not

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		matters required to be specified in a Planning Certificate.
	<p>The childcare centre must be completed prior to Occupation Certificate is issued for Stage 2.</p> <p>Council must ensure that on-site provision of staff parking for the childcare centre is made.</p>	<p>The childcare centre building was approved under the Stage 1 Project Approval.</p> <p>The DA for the fit out and use of the building as a childcare centre was approved in 2012 and operates independently from any future consent issued for Stage 2. Conditions of consent limit the number of children to be cared for and requires 8 parking spaces to be used solely for the child care centre.</p>
	<p>Given that the development of other land in Warriewood Valley is stalled due to flooding issues, question why the Stage 2 DA should be assessed before the Strategic Review is reported back to Council.</p>	<p>This site was not identified as undeveloped land in the Warriewood Valley Release Area for the purpose of density consideration under the Warriewood Valley Strategic Review as the Concept Approval for the site was issued prior to the Strategic Review officially commencing.</p> <p>The assessment of this DA is associated with the prevailing Concept Approval for the overall development of the site and does not rely on the outcomes of the Strategic Review.</p>
	<p>Council should condition mid to dark wall colours of grey, brown and green tones for the Stage 2 buildings</p>	<p>Should Stage 2 be approved, a condition will be imposed requiring compliance with the building colours and materials outlined in Pittwater 21 DCP.</p>
	<p>Inequity as it appears Meriton paid \$34,000 per dwelling in Section 94 Contributions while rest of developments in the Valley paid \$64,000.</p>	<p>Despite Council's submissions, including contentions that the development was inequitable, not orderly planning, detrimental to infrastructure provision and was beyond community expectation, the PAC approved the development through the Concept Approval and imposed a condition regarding the Statement of Commitments (developer contributions).</p>

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		<p>The methodology recently received from the Department of Planning and Infrastructure (as the Assessing Authority) confirmed that the Department's rate was \$55,314 per Equivalent Dwelling (a 3 bedroom dwelling).</p> <p>An Equivalent Dwelling is a 3 bedroom dwelling, as referenced in the Warriewood Valley Section 94 Contributions Plan therefore, the number of dwellings approved under the Concept Approval (being the total approved for Stage 1 under Part 3A and Stage 2 based on this DA) was recalculated to ascertain the quantum of Equivalent Dwellings applicable and multiplied by the contribution rate to determine the total contribution.</p>
	<p>Dedication of land at corner of Macpherson and Boondah Road (valued at \$1,370,000) must be incorrect or warrant formal investigation. Council must challenge and renegotiate this agreement.</p> <p>Section 94 contributions are further reduced because of land being dedicated to Council which acts as a credit against otherwise payable Section 94 Contributions. It seems only reasonable that the land dedicated be of some use. The land proposed to be dedicated by the development does not meet the criteria of land for active recreation and therefore council should not uphold this condition as the land must be fit for purpose.</p>	<p>Developer contributions including Works In Kind are part of the Statement of Commitments imposed by condition under the Concept Approval and Stage 1 Project Approval issued by the PAC, and therefore cannot be modified or appealed in the Court. The \$1,370,000 included construction of a roundabout.</p> <p>Council was not party to any negotiations or agreement that led to the PAC listing the Works In Kind items or the values attributed to each item except for those already listed in the Warriewood Valley Section 94 Contributions Plan.</p> <p>The Works In Kind valued at \$1,370,000 relates to two identified traffic and transport works, land dedication for splay corner and construction of a roundabout at the Macpherson Street-Boondah Road intersection (are listed works items in Warriewood Valley Section 94 Plan).</p> <p>In regard to the land dedicated for the purpose of 'active recreation', Council's submissions to the Department and PAC advised that</p>

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		<p>Council did not require this land for creekline corridor land and as this was surplus to the applicant's needs then this land could be dedicated free of charge if necessary. As this surplus to the applicant's needs, Council recommended that this land should be dedicated free of charge. The PAC however did not support Council's submissions and attributed a value to that land as a 'credit' against cash contributions.</p> <p>There is no statutory opportunity to appeal the condition in the Concept Approval.</p>
10	<p>Outcome of Strategic Review needs to be released prior to approval of Stage 2.</p>	<p><i>"We must insist that the Warriewood Valley 2010 Planning Framework be maintained and that the Section 94 Contribution Plan be revisited to ensure that the Valley can be properly completed with the necessary infrastructure being properly covered by Section 94 funds, as was the "contract" when current owners through the release areas purchased their properties... Clearly if this developer is allowed to get away with reduced S94 contributions the residents of Warriewood can reasonably be entitled to a refund of portion of the S94 they contributed to the fund without knowing that the level of their contributions would later be arbitrarily by passed without their agreement"</i></p> <p>The Warriewood Valley Planning Framework 2010 (2010 Framework) is Council's current and adopted planning document relevant to the Warriewood Valley Release Area.</p> <p>The Concept Approval, as the 'parent' approval for the development on this site, permitted a maximum density of 60 dwellings per hectare. Part 3A legislative provisions apply such that the approved density overrides the dwelling yield allocated for the sector in 2010 Framework.</p> <p>Council intends to review the infrastructure requirements and delivery that would be commensurate to the revised total number of dwellings planned for Warriewood Valley. The timing of this review of infrastructure is to be commenced following the outcomes of the Warriewood Valley Strategic Review have been considered by Council.</p>

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		<p>commencing.</p> <p>The assessment of this DA is associated with the prevailing Concept Approval for the overall development of the site and does not rely on the outcomes of the Strategic Review.</p>
	<i>"Has there been any Council or independent assessment conducted of flooding implications?"</i>	The Warriewood Valley Strategic Review Hydrology Study (Cardno, 2011) considered the flooding implications of larger scaled developments. The development of this site was a known quantity at this time.
	<i>"Will the STP be able to cope with the huge increase from those residing within Stage 1 and the proposed Stage 2?"</i>	A referral response from Sydney Water in regard to this DA advises that the current wastewater system has sufficient capacity to serve the proposed development.
	<i>What will happen if Meriton stormwater detention tanks overflow?</i>	The Brown Consulting report states that an emergency spillway has been provided discharging to Fern Creek.
	<i>"Consideration should be given to the long term future environmental impact on the wetlands".</i>	<p>Stage 2 has wetland buffers as agreed with the Department of Land and Water Conservation (now Office of Environment and Heritage).</p> <p>Conditions will need to be imposed on any consent issued for this DA to ensure environmental impact on the Wetlands is minimised (such as management of groundwater with licence required from OEH; water management and sediment and erosion control management for the length of construction, including prior to and up to post construction phase).</p>
	Deterioration of roads due to trucks exceeding road limits has already occurred for Stage 1 and will worsen with Stage 2.	Three tonne load limits do not apply to vehicles that have no other way of reaching their destination. It must be acknowledged that heavy traffic such as delivery and construction vehicles will use these roads where property owners have sought delivery or where

Submission No.	Issue Raised	Response to Issue
		<p>approvals for construction have been issued.</p> <p>Enforcement is within the limits of resources available to Council's Rangers, Police and the Roads &amp; Maritime Services.</p> <p>A condition was issued for Stage 1 Project Approval that requires the developer to bear the costs of any damage incurred as a result of construction works. The condition reads as follows:-</p> <p><i>The cost of repairing any damage caused to Council or other public Authority's assets in the vicinity of the subject site as a result of construction works associated with the approved development, is to be met in full by the Proponent/developer prior to the issue of the Final Occupation Certificate.</i></p> <p>If the DA is approved, a condition will also be imposed as above.</p>
	<p><i>"Has any Council or independent assessment been undertaken to ensure that Macpherson St, Boondah Rd and surrounding streets can accommodate the increase in traffic and parking?"</i></p>	<p>As part of the Warriewood Valley Strategic Review, AECOM undertook a transport study in 2011 to assess the capacity of the local road network in Warriewood Valley. AECOM modelled a residential development scenario accounting for the additional dwellings approved under the Concept Plan and the additional dwellings proposed by the urban design consultant commissioned for the Strategic Review.</p> <p>AECOM identified that the Garden Street-Powderworks Road intersection was by the potential overall increase in density impacted and recommended it be upgraded.</p> <p>No independent study has been undertaken in terms of on-street parking capacity. This DA proposes off street parking provision and must be in accordance with the parking rates imposed in the</p>

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		Concept Approval.
	<p><i>"We are concerned that roads, schools, transport, hospital and amenities may not be adequate to meet any large scale increase."</i></p>	<p>Note the concerns raised in regard to state infrastructure however the PAC has already approved the intensification of development on this site via the Concept Approval and Stage 1 Project Approval. Conditions relating to road improvements as result of the overall development of this site were imposed by the PAC through their approvals.</p> <p>Any implications on infrastructure and services to any increase in dwellings outside of the PAC approval (this DA is associated to the PAC approval and does not apply) will be subjected to such consideration, and generally is part of the Warriewood Valley Strategic Review.</p>
	<p><i>"Is the rumour true that Meriton is paying a lesser contribution than other developers with the trade off of surplus land not required which is possibly unstable?"</i></p>	<p>Developer contributions including Works In Kind are part of the Statement of Commitments imposed by condition under the Concept Approval issued by the PAC, and therefore cannot be modified or appealed in the Court.</p> <p>The total contribution for Stage 1 and Stage 2 has a cash contribution amount and Works In Kind that was attributed a monetary value by the Department and the PAC. Council's submissions to the Department and PAC argued a lower or no monetary value should be attributed to specific Works In Kind elements however this was not supported by the PAC. The result is a reduced cash contribution.</p>



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11	Stage 1 was a disgrace. It is especially important that the 2 storey limit be reimposed."	<p>The Concept Approval approved a development across the entire site at a specific density and height.</p> <p>The Concept Approval is the 'parent' approval on this site and permits a maximum building of 4 storeys for some buildings. Legislative provisions apply such that the approved height overrides Council's height control contained in the DCP.</p>
12	<i>"The current and planned level of density wanted by Meriton exacerbates the already strained peak hour traffic".</i>	Despite Council's submissions, a Concept Approval has now been issued for this site stipulating specifically the density for development on the site. The Concept Approval is the 'parent' development consent, requiring any consent issued by Council for a Stage of the development to be generally consistent with the Concept Approval.
	<i>"The claim that development below 36 dwellings per hectare is not economically viable for developers is simply not credible".</i>	This issue has no weight as the Concept Approval (parent consent) approved a density of 60 dwellings per hectare.
	Council publicised Stage 2 over Christmas which minimised submissions.	Council cannot dictate when DAs are lodged, and must advertise promptly. The application was placed on extended notification (usually only 31 days) from 22 December 2012 to 31 January 2013 to account for the holiday period.
13	Warriewood Valley not designed for the overdevelopment and residents were not advised when they bought in the area.	Noted however the PAC, through the Concept Approval, approved the intensification of development on this property under Part 3A legislation notwithstanding Council's argument that, inter alia, the development was not consistent with community expectations.
	Has the development considered its impact on schools, traffic, flooding, roads and shopping?	Note the concerns raised in regard to state infrastructure however the PAC has already approved the intensification of development on this site via the Concept Approval and Stage 1 Project Approval.

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		<p>Conditions relating to road improvements as result of the overall development of this site were imposed by the PAC through their approvals.</p> <p>The Concept Approval and Stage 1 Project Approval have approved a development at a specific density, building heights, setbacks to environmental zones and that 50% of the developable site is to have deep soil landscaping. It also approved the flood management regime and emergency response for this development.</p> <p>Any implications on infrastructure and services to any increase in dwellings outside of the PAC approval (this DA is associated to the PAC approval and does not apply) will be subjected to such consideration, and generally is part of the Warriewood Valley Strategic Review.</p>
14	Concerns over the usability of land to be dedicated to Council as per the Concept Approval. "Do the people of Pittwater have to maintain this land in perpetuity"? Access to this land appears to be across body corporate land.	Council's submissions to the Department and PAC advised that Council did not require this land for creekline corridor land and as this was surplus to the applicant's needs then this land could be dedicated free of charge if necessary. The PAC however did not support Council's submissions and attributed a value to that land. This land is to be dedicated to Council and adjoins the Fern Creek Corridor (also to be dedicated to Council). Any land dedicated to Council will be maintained by Council.
15	<p><i>"Overdevelopment of the site and totally against the original plan for Warriewood Valley which was earmarked for single and double storey houses and town houses".</i></p> <p>Will cause a dramatic increase in traffic throughout all of Warriewood Valley which is dangerous for pedestrians as there</p>	<p>Noted however the PAC, through the Concept Approval, approved the intensification of development on this property under Part 3A legislation notwithstanding Council's argument that, inter alia, the development was not consistent with community expectations.</p> <p>The PAC, through the Concept Approval, approved the intensification of development on this property under Part 3A.</p>

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	are not enough footpaths.	Missing sections of footpaths and other infrastructure such as traffic calming devices and pedestrian refuges are to be delivered through the direct provision and payment of Section 94 when development consent is issued. This infrastructure however can only be completed as development continues in the Valley.
	There appears to be no plans to replace large trees that are removed.	Many of the Angophora Trees along Boondah Road in the Road Reserve have been approved to be removed to enable already approved road and infrastructure upgrades. No alternative design would allow for their retention. Replacement planting with like species is required, and is dealt with by way of condition imposed in the Section 139 Roads Act Approval recently issued, and additionally through conditions to be imposed as part of this DA.
16	<i>"Advert placed in the press the day before Christmas smacks of corruption".</i>	Any evidence of corruption should be forwarded to ICAC.  The development application was lodged on 17 December 2012 and advertised in the local newspaper on 22 December 2012.  The application was also placed on extended notification (usually only 31 days) from 22 December 2012 to 31 January 2013 to account for the holiday period.
	Wish to support the Warriewood Valley Resident Association submission.	Noted.
17	Object to an increase in dwellings from the 2010 Framework.	The Concept Approval, as the 'parent' approval for the development on this site, permitted a maximum density of 60 dwellings per hectare. Part 3A legislative provisions apply such that the approved density overrides the dwelling yield allocated for the sector in 2010 Framework.
	Meriton will create 263 dwellings above this Framework so	The Concept Approval, as the 'parent' approval for the development

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	dwelling yields should be lowered in other areas to ensure vital planning factors such as traffic, flooding and open space are not compromised.	<p>on this site, permitted a maximum density of 60 dwellings per hectare. Part 3A legislative provisions apply such that the approved density overrides Council's LEP and DCP and the 2010 Framework.</p> <p>The issue regarding changes to dwelling density in other sectors relates to the Warriewood Valley Strategic Review Report and cannot be considered in the assessment of this application. Although not yet finalised, Council recognises that all undeveloped land in the Warriewood Valley release area has the potential to develop. The issue raised will be considered in the reporting of the Strategic Review including review of infrastructure delivery that would be commensurate to the revised total number of dwellings planned for Warriewood Valley.</p>
	"The flood study needs to be remodelled to take into account not only the 263 additional dwellings from Meriton but also the 120 additional dwellings from ARV and the 90 additional dwellings in the 2010 Warriewood Valley Planning Framework".	<p>The Concept Approval and Stage 1 Project Approval approved a development at a specific density, building heights, setbacks to environmental zones and that 50% of the developable site is to have deep soil landscaping. It also approved the flood management regime and emergency response for this development.</p> <p>In regard to ARV as with other developments in Warriewood Valley following the 2005 Flood Study Addendum (adopted 11 July 2005), the flood management for these developments was considered by Council and its hydrology consultant to ensure that compliance with the adopted Warriewood Valley Water Management Specification.</p>
	Land to be dedicated to Council as part of the Concept Approval is not usable as it is surrounded by private land with no public access provided.	Council's submissions to the Department and PAC advised that Council did not require this land for creekline corridor land and as this was surplus to the applicant's needs then this land could be dedicated free of charge if necessary. The PAC however did not support Council's submissions and attributed a residential value to that land. This land is to be dedicated to Council and adjoins the

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		Fern Creek Corridor (also to be dedicated to Council).
18	Development is inconsistent with the Metropolitan Plan 2036 as the site is too far from its nearest town centre (Mona Vale) and a mix of housing is not provided. <i>"Pittwater will already comfortably achieve its dwelling targets without the density of development on the subject site".</i>	<p>Noted. Despite Council's submissions, the PAC, in its determination report and in issuing the Concept Approval stated <i>"The Commission takes its lead from the Metropolitan Plan for Sydney 2036, which aims to ensure local planning controls include more low rise medium density housing in and around smaller local centres."</i></p> <p>The Concept Approval issued for this site conditioned the maximum permitted density for the development on the site. The Concept Approval is the 'parent' consent requiring all future stages of the development to be generally consistent with the Concept Approval.</p>
	Public transport routes inadequate to service such a large development and as a result congestion on already busy roads will increase.	<p>The availability of adequate public transport was an issue raised by Pittwater Council in its submission to the Planning Assessment Commission (PAC) during the assessment of the Concept and Project Approvals. The PAC considered Council's submission and acknowledged the challenges faced by all Pittwater residents to accessing public transport. As a result the PAC deemed that residential parking requirements for the site should meet Pittwater Council's requirements from Pittwater 21 DCP.</p> <p>The PAC approved the intensification of development on this site and considered the traffic implications as a result of the development.</p>
	2005 flood modelling did not take into account of larger scale developments such as Stage 2. The impact this will have on the STP and evacuation routes.	The Concept Approval and Stage 1 Project Approval approved a development at a specific density, building heights, setbacks to environmental zones and that 50% of the developable site is to have deep soil landscaping. It also approved the flood management regime and emergency response for this development. The PAC was made aware of all relevant flood information and studies prior to

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		its determination of the Approvals.
19	Meriton development far exceeds 2010 Planning Framework.	The Concept Approval, as the 'parent' approval for the development on this site, permitted a maximum density of 60 dwellings per hectare. Part 3A legislative provisions apply such that the approved density overrides the dwelling yield allocated for the sector in 2010 Framework.
	2005 flood modelling did not account for development of this size and must be remodelled independently.	<p>The Concept Approval and Stage 1 Project Approval approved a development at a specific density, building heights, setbacks to environmental zones and that 50% of the developable site is to have deep soil landscaping. It also approved the flood management regime and emergency response for this development.</p> <p>The PAC was made aware of all relevant flood information and studies prior to its determination of the Approvals.</p>
	Other development in Warriewood is being held up over SES concerns of over evacuation. This development must be affected the same way.	The PAC in approving the Concept Approval has already approved the emergency response for this development and this DA. The Brown Consulting report states that the primary flood response for the site is vertical evacuation (sheltering-in-place) with occupants remaining inside the dwellings and moving to the upper levels. This flood emergency response embedded in the Concept Approval MP 09_0162. Any development needs to address flood emergency response including the SES position on flood evacuation. In regard to this DA, the PAC has already approved the emergency response for this development through the Concept Approval.
	Landscaping for Stage 1 was inadequate and needs to be improved for Stage 2. Bond should be lodged to ensure maintenance of landscaping for 10 years.	<p>Council's standard practice for new multi-unit housing developments is imposition of a condition requiring a 24 month maintenance program. The standard condition reads as follows:</p> <p><i>Evidence of a 24 month maintenance program is to be submitted to</i></p>

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		<p><i>the Private Certifying Authority with the Occupation Certificate application for the maintenance of all landscaped areas as required under this consent. During this period the nominated contractor shall maintain all approved landscape areas inclusive of weeding, watering, mowing and replacement of failed plant material.</i></p> <p>Conditions for Stage 1, as imposed by the PAC, require landscaping to be completed prior to the issue of the Final Occupation Certificate for Stage 1 buildings. A number of residential buildings are still under construction resulting in the landscaping not being completed. It is the responsibility of the Private Certifying Authority to ensure that landscaping is completed prior to the issue of the Final Occupation Certificate.</p>
	<p>Land to be dedicated to Council is unclear and needs to be “of real use to the people of Warriewood and not isolated, flood prone or inaccessible for some other reason”.</p>	<p>Council’s submissions to the Department and PAC advised that Council did not require this land for creekline corridor land and as this was surplus to the applicant’s needs then this land could be dedicated free of charge if necessary. The PAC however did not support Council’s submissions and attributed a value to that land. This land is to be dedicated to Council and adjoins the Fern Creek Corridor (also to be dedicated to Council).</p>
	<p><i>“The Commission considers it appropriate that the Stage 2 development application should demonstrate that the road improvement works that may be necessary to accommodate the project would be implemented before the intake of residents for Stage 2”. We need clarification on how the DA complies with this requirement.</i></p>	<p>The roadworks necessary for the overall development, including Stage 2, were conditioned as part of the Stage 1 Project Approval and required an application under the Roads Act.</p> <p>Condition C6 of the Project Approval, was modified to allow for the timing of the Boondah Road works “to be completed as part of the future Stage 2 development application, if they are not completed as part of Stage 1”.</p> <p>Roads Act Approvals have recently been issued for the full width</p>

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		<p>reconstruction of Boondah Road (to full length of the property) including the southern-most driveway entrance, Macpherson Street east (half road construction, fronting the property) and the roundabout at Macpherson Street-Boondah Road intersection. As such this DA does not seek consent for works associated with the reconstruction of Boondah Road.</p> <p>The timing of the reconstruction works to Boondah Road is the subject of negotiations between Meriton and Council.</p>
	Visitor parking spaces fall short of DCP requirements by 28 spaces.	Visitor parking provided as part of Stage 2 complies with Condition 9 of Schedule 3 of the Concept Approval which, consistent with the RTA's <i>Guide to Traffic Generating Developments</i> , which requires 1 visitor space per 5 dwellings. This condition overrides Council's DCP control in regard to visitor parking rates.
20	Land to be dedicated to Council does not have to be accepted as it is dangerous and unusable.	Council's submissions to the Department and PAC advised that Council did not require this land for creekline corridor land and as this was surplus to the applicant's needs then this land could be dedicated free of charge if necessary. The PAC however did not support Council's submissions and attributed a residential value to that land. This land is to be dedicated to Council and adjoins the Fern Creek Corridor (also to be dedicated to Council).
	It should be included on the 149 certificate that Council is not liable for any odour from the STP.	<p>The Environmental Planning and Assessment Regulation 2000 prescribe the matters that must be specified in a section 149(2) Planning Certificate. Matters relating to odour emission are not matters required to be specified in a Planning Certificate.</p> <p>A referral response from the Department of Planning &amp; Infrastructure in regard to this DA advises that satisfactory arrangements have</p>



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		been made to ensure that the impact of odours from the Warriewood Sewerage Treatment Plant on residents within the proposed development is mitigated.
	The claim that "Works planned under Council's S94 plan would be sufficient to cater for the proposed increase in dwelling density and that no additional road or intersection upgrades would be required" as made by Halcrow and commissioned by Meriton, is not understood. Common sense would indicate that congestion will worsen due to the increase in density.	The PAC approved the intensification of development on this site through the Concept Approval and Stage 1 Project Approval, having considered the traffic implications as a result of the development and where there was a traffic improvement not covered by Council's listed infrastructure requirements in the Warriewood Valley Section 94 Plan, then imposed a condition requiring the applicant to construct the traffic improvement (Eg extending the right hand turn lane at Pittwater Road).
21	Lack of clarity and transparency around Meriton's reduced developer contributions.	Council was not party to the formulation of Works In Kind listed in the Concept Approval, the value attributed to the Works In Kind nor the cash contributions to be paid.
	Land to be dedicated to Council should be independently valued "To determine land value in the context of other land of similar position in Pittwater, and also public access to the land." Land to be dedicated to Council has not been independently assessed.	Council's submissions to the Department and PAC advised that Council did not require this land for creekline corridor land and as this was surplus to the applicant's needs then this land could be dedicated free of charge if necessary. Council's submissions to the Department and PAC however on this were not supported by the PAC.
	Insufficient visitor parking spaces provided. Parking on roads in the area is already an issue.	Visitor parking provided as part of Stage 2 complies with Condition 9 of Schedule 3 of the Concept Approval which, consistent with the RTA's <i>Guide to Traffic Generating Developments</i> , which requires 1 visitor space per 5 dwellings. This condition overrides Council's DCP control in regard to visitor parking rates.
	DA for Stage 2 must not be assessed until the Strategic Review is	This site is not undeveloped land in the Warriewood Valley Release Area for the purpose of density consideration under the Warriewood

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	released.	<p>Valley Strategic Review as the Concept Approval for the site was issued prior to the Strategic Review officially commencing.</p> <p>The assessment of this DA is associated with the prevailing Concept Approval for the overall development of the site and does not rely on the outcomes of the Strategic Review.</p>
	Council must regulate trucks on the roads as damage is occurring.	<p>Three tonne load limits do not apply to vehicles that have no other way of reaching their destination. It must be acknowledged that traffic such as delivery and construction vehicles will use these roads where property owners have sought delivery or where approvals for construction have been issued.</p> <p>Enforcement is within the limits of resources available to Council's Rangers, Police and the Roads &amp; Maritime Services.</p> <p>A condition was issued for Stage 1 Project Approval that requires the developer to bear the costs of any damage incurred as a result of construction works. The condition reads as follows:-</p> <p><i>The cost of repairing any damage caused to Council or other public Authority's assets in the vicinity of the subject site as a result of construction works associated with the approved development, is to be met in full by the Proponent/developer prior to the issue of the Final Occupation Certificate.</i></p> <p>If the DA is approved, a condition will also be imposed as above.</p>
	New road [Boondah Road reconstruction] to be build by Meriton should include a cycleway.	<p>The PAC approved a Shareway linking the two driveways required at each street frontage. The Shareway is for use by Emergency vehicles and as a pedestrian/cycleway that connects to the off-road cycleway network within Warriewood Valley.</p>

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	Has there been provision to monitor gas supply? The development will increase demand.	Jemena Gas Network (NSW) Ltd provided comments during the assessment of the Concept Plan and raised no objection to the original proposal (600 dwellings).
22	Flood models have not been updated since 2005 which did not account for development of this magnitude. The flood report submitted with the DA does not adequately address flood risk associate with other parts of the Valley.	<p>The Concept Approval and Stage 1 Project Approval approved a development at a specific density, building heights, setbacks to environmental zones and that 50% of the developable site is to have deep soil landscaping. It also approved the flood management regime and emergency response for this development.</p> <p>Further it is noted that:</p> <ol style="list-style-type: none"> <li>1. A new flood model of the Narrabeen Lagoon catchment (incorporating the Warriewood Valley area) has been prepared and is currently being refined by BMT-WBM. The new model will form the basis of a revised Narrabeen Lagoon Flood Study, a joint project between Warringah and Pittwater Councils. The draft Flood Study will be reported to the Narrabeen Lagoon Floodplain Risk Management Community Working Group on 2 May 2013 for consideration, prior to reporting to both councils. The flood level information from the new flood model should be used in the proponent's flood risk assessment.</li> <li>2. Water quantity management for the Warriewood Valley area requires maintaining existing peak flows so that following development, flooding will not be worse than the pre-existing condition. This requirement is not dependent on development density, but rather the ability of the proposal to satisfy the Site Storage Requirement (SSR) set for the sector relative to a percentage site imperviousness of 50%. The site for the proposed development is considered in the Warriewood Valley Urban Land Release Water Management Specification (2001) and the hydrology model and is allocated SSRs values.</li> </ol>

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		<p>The proposal is required to demonstrate that there is no additional adverse flood impact on surrounding properties or flooding processes for any event up to the Probable Maximum Flood event. In particular, it should be demonstrated that there is no adverse effects on the Sewage Treatment Plant, Warriewood Square, and the lower reaches of the Narrabeen /Mullet Creek. The Brown Consulting report does not provide evidence that this requirement has been considered and satisfied.</p> <p>A deferred commencement condition is to be applied in this regard.</p>
	<p>Flooding issues highlighted by the Strategic Review have held up development in other parts of Warriewood and it would be inappropriate for this development to proceed without the issues being addressed.</p>	<p>The PAC in approving the Concept Approval has already approved the emergency response for this development and this DA. The Brown Consulting report states that the primary flood response for the site is vertical evacuation (sheltering-in-place) with occupants remaining inside the dwellings and moving to the upper levels. This flood emergency response is embedded in the Concept Approval MP 09_0162.</p> <p>The PAC has already approved the emergency response for this development through the Concept Approval. This DA does not rely on the outcomes of the Strategic Review.</p>
	<p>Road system was never envisaged to accommodate traffic generated by this proposal. Stage 2 should demonstrate that the road improvement works that may be necessary to accommodate the project would be implemented before the intake of residents for Stage 2 as per the PAC requirement however it is not shown how this will occur.</p>	<p>The PAC approved the intensification of development on this site through the Concept Approval and Stage 1 Project Approval, having considered the traffic implications as a result of the development and where there was a traffic improvement not covered by Council's listed infrastructure requirements in the Warriewood Valley Section 94 Plan, then imposed a condition requiring the applicant to construct the traffic improvement (Eg extending the right hand turn lane at Pittwater Road).</p>

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		<p>The roadworks necessary for the overall development, including Stage 2, were conditioned as part of the Stage 1 Project Approval and required an application under the Roads Act.</p> <p>Condition C6 of the Project Approval, was modified to allow for the timing of the Boondah Road works “to be completed as part of the future Stage 2 development application, if they are not completed as part of Stage 1”.</p> <p>Roads Act Approvals have recently been issued for the full width reconstruction of Boondah Road (to full length of the property) including the southern-most driveway entrance, Macpherson Street east (half road construction, fronting the property) and the roundabout at Macpherson Street-Boondah Road intersection. As such this DA does not seek consent for works associated with the reconstruction of Boondah Road.</p> <p>The timing of the reconstruction works to Boondah Road is the subject of negotiations between Meriton and Council.</p>
	<p>Lack of transparency with S94 fees payable. Questions over value of land dedicated to Council and why it is valued so high if it is fragmented, not developable and does not appear in the S94 plan as planned expenditure.</p>	<p>Developer contributions including Works In Kind are part of the Statement of Commitments imposed by condition under the Concept Approval issued by the PAC, and therefore cannot be modified by Council or appealed in the Court.</p> <p>Council was not party to any negotiations that led to the itemised Works In Kind listed in the Concept Approval nor the value attributed to the Works In Kind.</p>
	<p>Visitor parking spaces do not comply with DCP requirement.</p>	<p>Visitor parking provided as part of Stage 2 complies with Condition 9 of Schedule 3 of the Concept Approval which, consistent with the RTA's <i>Guide to Traffic Generating Developments</i>, which requires 1 visitor space per 5 dwellings. This condition overrides Council's DCP</p>

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		control in regard to visitor parking rates.
23	<p>Approved planning conditions under the Warriewood Valley Masterplan [Warriewood Valley Planning Framework 2010] should apply to all developers. Masterplan [Warriewood Valley Planning Framework 2010] should be enforced on Stage 2 as Council is assessing the application.</p> <p><i>"We now believe that due to a change in government (along with the associated planning regulations) and the clause in the concept approval stating that all future stages are to be lodged with the council for assessment, have clearly given to council the opportunity to again enforce the Warriewood valley plan [Warriewood Valley Planning Framework 2010]..."</i></p> <p><i>The long list of why we must oppose stage 2 of this development is basically the same used by the council to put its original case to the PAC, and we do not see that these have changed"</i></p>	<p>A Concept Approval has been issued for this site and is the 'parent' consent. This DA (currently before Council) is subservient to the Concept Approval.</p> <p>Transitional Part 3A provisions still apply to this development/site particularly the application of Section 75P(2) of the EP&amp;A Act whereupon <i>"(a) the determination of a development application for the project or that stage of the project under Part 4 is to be generally consistent with the terms of the approval of the concept plan,..."</i></p> <p>Specific matters already established by the Concept Approval such as density, building height, setbacks and parking rates and specific consultant reports prevent substantial changes in via the DA process or refusal of the DA.</p>
24	<p>The parking proposed for this development does not comply with the DCP</p> <p>Flood report does not assess the flood risk caused by this development in other parts of Warriewood Valley.</p>	<p>Visitor parking provided as part of Stage 2 complies with Condition 9 of Schedule 3 of the Concept Approval which, consistent with the RTA's <i>Guide to Traffic Generating Developments</i>, which requires 1 visitor space per 5 dwellings. This condition overrides Council's DCP control in regard to visitor parking rates.</p> <p>The Concept Approval and Stage 1 Project Approval approved a development at a specific density, building heights, setbacks to environmental zones and that 50% of the developable site is to have deep soil landscaping. It also approved the flood management regime and emergency response for this development.</p>

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		<p>The amended Water Management Report (received by Council on 15 March 2013) was required to demonstrate that there is no additional adverse flood impact on surrounding properties or flooding processes for any event up to the Probable Maximum Flood event. In particular, it should be demonstrated that there is no adverse effects on the Sewage Treatment Plant, Warriewood Square, and the lower reaches of the Narrabeen /Mullet Creek.</p> <p>The Brown Consulting report does not provide evidence that this requirement has been considered and satisfied and will be dealt with by way of deferred commencement condition.</p>
	<p>Road system was not designed for this type of intensification. Trucks are ignoring the 3 tonne road limit.</p>	<p>Three tonne load limits do not apply to vehicles that have no other way of reaching their destination. It must be acknowledged that heavy traffic such as delivery and construction vehicles will use these roads where property owners have sought delivery or where approvals for construction have been issued.</p> <p>Enforcement is within the limits of resources available to Council's Rangers, Police and the Roads &amp; Maritime Services.</p> <p>A condition was issued for Stage 1 Project Approval that requires the developer to bear the costs of any damage incurred as a result of construction works. The condition reads as follows:-</p> <p><i>The cost of repairing any damage caused to Council or other public Authority's assets in the vicinity of the subject site as a result of construction works associated with the approved development, is to be met in full by the Proponent/developer prior to the issue of the Final Occupation Certificate.</i></p>

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		If the DA is approved, a condition will also be imposed as above.
	Parking along the roads has also become an issue.	<p>Note the concerns regarding the current construction related parking on site and note this is the subject of a Construction Management Plan including the management of vehicles associated with the construction. Enforcement is carried out within the limits of resources available to Council's Rangers and the Roads &amp; Maritime Services.</p> <p>If this DA is approved, a condition will be imposed regarding the preparation and implementation of a Construction Management Plan and the management and parking of vehicles.</p> <p>Pittwater 21 DCP sets on-site parking requirements which must be satisfied by any new development. The parking requirements in the DCP however do not provide for separate boat trailer or caravan storage facilities. Boat trailers and caravans, if registered and deemed a motor vehicle, are allowed to be parked on the street. Consideration of any additional parking requirements must be examined across the Pittwater Local Government Area, rather than specific development application.</p>
	<i>"The documents included with the application do not show in a clear and transparent manner how the credits (S94's) have been calculated"</i> . How is land to be dedicated to Council valued?	<p>Developer contributions including Works In Kind are part of the Statement of Commitments imposed by condition under the Concept Approval issued by the PAC, and therefore cannot be modified or appealed in the Court.</p> <p>Council was not party to any negotiations that led to the itemised Works In Kind listed in the Concept Approval, the value of the Works In Kind nor the cash contributions.</p> <p>Council's submissions to the Department and PAC argued a lower</p>



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		or no monetary value should be attributed to the land dedicated for 'active and passive land' (but not Fern Creek corridor land) however this was not supported by the PAC.
	Details of landscaping are not specified and as seen in Stage 1 it is inadequate to screen the buildings.	<p>The Concept Approval and Stage 1 Project Approval approved a development at a specific density, building heights and setbacks, setbacks to environmental zones and that 50% of the developable site is to have deep soil landscaping.</p> <p>The setbacks to street frontages and deep soil landscaping areas were approved in the Concept Approval. There is potential for canopy trees to be established along the street frontage but it unlikely to adequately screen the buildings due to the limited deep soil area along the front setback areas.</p> <p>Amended landscaping plans were received by Council on 15 March 2013. If this DA is approved, landscaping conditions will be imposed requiring landscaping is established and maintained in accordance with Council requirements.</p>
	The application does not provide adequate information in relation to noise and traffic management during construction.	Should Stage 2 be approved, a condition will be imposed requiring the lodgement of a Construction Management Plan and a Traffic and Pedestrian Management Plan prior to the issue of a Construction Certificate. The Construction Management Plan must include a report from a qualified acoustic consultant demonstrating compliance with applicable construction noise levels. The Traffic and Pedestrian Management Plan must address, but not be limited to, the ingress and egress of vehicles to the site, loading and unloading, predicting traffic volumes, pedestrian and traffic management methods.
	Notification on 149 Certificates is necessary to avoid Council being sued over not ensuring capping of odours from the STP.	The Environmental Planning and Assessment Regulation 2000 prescribe the matters that must be specified in a section 149(2) Planning Certificate. Matters relating to odour emission are not

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		<p>matters required to be specified in a Planning Certificate.</p> <p>A referral response from the Department of Planning &amp; Infrastructure in regard to this DA advises that satisfactory arrangements have been made to ensure that the impact of odours from the Warriewood Sewerage Treatment Plant on residents within the proposed development is mitigated.</p>
25	<p>Stage 2 should not proceed until flooding issues in the Valley are properly assessed. Submitted flood report "Did not provide an assessment of the impact of the proposed works on the flooding of other, downstream properties. Furthermore, it relied on flood information that predated other, previously unplanned, intensification (ARV), so potentially did not analyse the current situation".</p>	<p>The Concept Approval and Stage 1 Project Approval approved a development at a specific density, building heights, setbacks to environmental zones and that 50% of the developable site is to have deep soil landscaping. It also approved the flood management regime and emergency response for this development.</p> <p>For other developments in Warriewood Valley following the 2005 Flood Study Addendum (adopted 11 July 2005), the flood management for these developments was considered by Council and its hydrology consultant to ensure that compliance with the adopted Warriewood Valley Water Management Specification.</p> <p>The amended Water Management Report (received by Council on 15 March 2013) is required to demonstrate that there is no additional adverse flood impact on surrounding properties or flooding processes for any event up to the Probable Maximum Flood event. In particular, it should be demonstrated that there is no adverse effects on the Sewage Treatment Plant, Warriewood Square, and the lower reaches of the Narrabeen /Mullet Creek.</p> <p>The Brown Consulting report does not provide evidence that this requirement has been considered and satisfied and will be dealt with by way of deferred commencement condition.</p>

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		<p>Further it is noted that:</p> <ol style="list-style-type: none"> <li>1. A new flood model of the Narrabeen Lagoon catchment (incorporating the Warriewood Valley area) has been prepared and is currently being refined by BMT-WBM. The new model will form the basis of a revised Narrabeen Lagoon Flood Study, a joint project between Warringah and Pittwater Councils. The draft Flood Study will be reported to the Narrabeen Lagoon Floodplain Risk Management Community Working Group on 2 May 2013 for consideration, prior to reporting to both councils. The flood level information from the new flood model should be used in the proponent's flood risk assessment.</li> <li>2. The proposal is required to demonstrate that there is no additional adverse flood impact on surrounding properties or flooding processes for any event up to the Probable Maximum Flood event. In particular, it should be demonstrated that there is no adverse effects on the Sewage Treatment Plant, Warriewood Square, and the lower reaches of the Narrabeen /Mullet Creek. The Brown Consulting report does not provide evidence that this requirement</li> </ol>
	<p><i>"The PAC should be provided with the opportunity to reconsider their previous 'in principle' approval for Stage 2 in light of the fact that the original decision demonstrably was not founded on up to date information".</i></p>	<p>Note the suggestion provided however there is no opportunity for third parties, such as Council's or a person who made a submission, to appeal a decision by the PAC or seek a review by the PAC. The applicant is the only party afforded opportunity to seek a modification to the Concept Approval.</p> <p>Council did challenge the PAC's decision in the Land and Environmental Court and failed to overturn the Approvals.</p>
	<p>Before further approvals are issued the overall water and flood management, and ongoing maintenance regime of Warriewood Valley be revisited to ensure that decisions on current and future</p>	<p>The Concept Approval and Stage 1 Project Approval approved a development at a specific density, building heights, setbacks to environmental zones and that 50% of the developable site is to have</p>

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	applications do not place existing developments at risk.	deep soil landscaping. It also approved the flood management regime and emergency response for this development.
	Impacts of flooding on the STP and Warriewood Square require special consideration.	<p>The amended Water Management Report (received by Council on 15 March 2013) was required to demonstrate that there is no additional adverse flood impact on surrounding properties or flooding processes for any event up to the Probable Maximum Flood event. In particular, it should be demonstrated that there is no adverse effects on the Sewage Treatment Plant, Warriewood Square, and the lower reaches of the Narrabeen /Mullet Creek.</p> <p>The Brown Consulting report does not provide evidence that this requirement has been considered and satisfied and will be dealt with by way of deferred commencement condition.</p>
26	<i>"60 dwellings per hectare is far too high a ratio for Warriewood Valley".</i>	The Concept Approval, as the 'parent' approval for the development on this site, permitted a maximum density of 60 dwellings per hectare, and legislative provisions apply such that the approved density overrides Council's LEP and DCP and the 2010 Framework.
	Development will add to congestion to roads.	The PAC approved the intensification of development on this site through the Concept Approval and Stage 1 Project Approval, having considered the traffic implications as a result of the development and where there was a traffic improvement not covered by Council's listed infrastructure requirements in the Warriewood Valley Section 94 Plan, then imposed a condition requiring the applicant to construct the traffic improvement (Eg extending the right hand turn lane at Pittwater Road.
	Meriton could set a precedent for development in Warriewood.	The development at this site was approved by the Planning Assessment Commission under the now repealed Part 3A provisions. A condition of the approval required the application for

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		<p>Stage 2 to be lodged with Council for assessment and determination. A number of transitional Part 3A provisions were introduced to deal with existing approved Part 3A projects, and require that this DA be consistent with the prevailing Concept Approval.</p> <p>With Part 3A now repealed there is no similar mechanism that allows assessment of proposals for residential development to be dealt with by the State government.</p> <p>Council and the Department of Planning and Infrastructure have undertaken a joint study to provide for future certainty in the Valley.</p>
	<p>Parking is an issue. Resident's spaces will be filled with their boats and trailers therefore parked cars will clog the roads.</p>	<p>The Concept Approval establishes the on-site parking requirements for this DA which are generally consistent with Council's parking rates contained in its DCP.</p> <p>It should be noted that boat trailers under NSW law, if registered, are allowed to be parked on the street.</p>
	<p>Front setbacks should be greater than those in Stage 1.</p>	<p>The Concept Approval and Stage 1 Project Approval approved a development at a specific density, building heights and setbacks, setbacks to environmental zones and that 50% of the developable site is to have deep soil landscaping. The setbacks to street frontages and deep soil landscaping areas were approved in the Concept Approval.</p>
	<p>"Colour schedule of Stage 1 is a poor choice and should attempt to harmonise with the surroundings".</p>	<p>Noted, however this is irrelevant to the Stage 2 DA as the issue relates to an approved and partially completed Stage 1. In regard to Stage 1, a condition was imposed on the Project Approval requiring an amended materials colour scheme in accordance with Pittwater 21 DCP. It is the responsibility of the Private Certifying Authority to</p>

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		<p>ensure that the Stage 1 development complies with the conditions.</p> <p>If approved, a condition will be imposed for this DA (Stage 2) requiring compliance with the building colours and materials outlined in Pittwater 21 DCP.</p>
27	DA must not be assessed until the Strategic Review has been approved.	<p>This site is not undeveloped land in the Warriewood Valley Release Area for the purpose of density consideration under the Warriewood Valley Strategic Review as the Concept Approval for the site was issued prior to the Strategic Review officially commencing.</p> <p>The assessment of this DA is associated with the prevailing Concept Approval for the overall development of the site and does not rely on the outcomes of the Strategic Review.</p>
	Visitor parking does not comply with DCP requirements.	Visitor parking provided as part of Stage 2 complies with Condition 9 of Schedule 3 of the Concept Approval which, consistent with the RTA's <i>Guide to Traffic Generating Developments</i> , which requires 1 visitor space per 5 dwellings. This condition overrides Council's DCP control in regard to visitor parking rates.
	S94 payments should be made prior to the issue of the first occupation certificate and not payable prior to the issue of the final occupation certificate as per Mod MP09-162.	<p>Noted. The timing of payment of the cash contribution relevant to this DA (Stage 2) has been established by the PAC as the determining authority of the Concept Approval.</p> <p>Developer contributions including Works In Kind are part of the Statement of Commitments imposed by condition under the Concept Approval issued by the PAC, and therefore cannot be modified or appealed in the Court.</p>
	Existing tree-scape along Boondah Road should be retained.	The Angophora trees along Boondah Road road reserve have been approved for removal as part of the full width reconstruction of

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		Boondah Road subject to replacement planting with like species being established as part of the roadworks.