

JOINT REGIONAL PLANNING PANEL
Sydney East Region

JRPP No	2013SYE091
Development Application No.	DA2013/1168
Local Government Area	Warringah Council
Proposed Development	Demolition works and construction of a mixed retail, commercial and residential development and use of premises as retail shops, a café and residential units.
Street Address	Nos.697, 699 and 701 Pittwater Road, Dee Why
Applicant/Owner	Jubilee Properties Pty Ltd and Life Property Group
Number of Submissions	<p><u>Public Exhibition 1</u> (19/1/2013 to 19/11/13)</p> <ul style="list-style-type: none"> • 225 individual submission; and • 1 petition with 17 signatures. <p><u>Public Exhibition 2</u> (1 February 2014 to 5 March 2014)</p> <ul style="list-style-type: none"> • 570 individual submissions; and • 1 on-line petition with 635 electronic signatures
Recommendation	Refusal
Reporting Officer	Malcolm Ryan, Deputy General Manager (Environment)

ASSESSMENT REPORT AND RECOMMENDATION

Assessment Officer:	Tony Collier Senior Development Assessment Officer
Application Lodged:	30 September 2013
Proposed Development:	Demolition works and construction of a mixed retail, commercial and residential development and use of premises as retail shops, a café and residential units.
Site Address:	Nos.697, 699 and 701 Pittwater Road, Dee Why
Plans Reference:	A03(C) dated 16/09/13; A04(C) dated 25/09/13; A05(C) dated 25/09/13; A06(C) dated 16/09/13; A07(C) dated 16/09/13; A08(C) dated 19/09/13; A09(C) dated 16/09/13; A10(C) dated 26/09/13; A11(C) dated 26/09/13; A12(C) dated 26/09/13; and A13(A) dated 16/09/13.
Amended Plans:	A02(A) dated 20/01/14; A03(A) dated 21/01/14; A04(A) dated 21/01/14; A05(A) dated 22/01/14; A06(A) dated 20/01/14; A07(A) dated 20/01/14; A08(A) dated 20/01/14; A09(A) dated 20/01/14; A10(A) dated 20/01/14; A11(A) dated 20/01/14; A12(A) dated 20/01/14; A13(A) dated 22/01/14; and A14(A) dated 20/01/14.
Owner:	Jubilee Properties Pty Limited

Zone:	B4 Mixed Use
Permissible or Prohibited:	Shop Top Housing – Permissible with consent
Clause 4.6 Variation:	Clause 4.3 – Height of Buildings Development Standard
Referred to WDAP:	27 March 2014
Referred to JRPP:	2 April 2014
Land and Environment Court:	No

SUMMARY

Submissions:	<p><u>Public Exhibition 1</u> (19/1/2013 to 19/11/13)</p> <ul style="list-style-type: none"> • 225 individual submission; and • 1 petition with 17 signatures. <p><u>Public Exhibition 2</u> (1 February 2014 to 5 March 2014)</p> <ul style="list-style-type: none"> • 570 individual submissions; and • 1 on-line petition with 635 electronic signatures
Submission Issues:	<ul style="list-style-type: none"> • Building height; • Character of the area; • Impact on airflows through Dee Why; • Overshadowing; • Traffic congestion; • Longer waiting times for commuters due to population increase; • Voluntary Planning Agreement; • Excessive building bulk; • Loss of views; • Rear laneway access; • Insufficient community consultation; • Garbage collection; • Increase in crime and anti-social behaviour; • Construction related impacts and site dewatering; • Insufficient provision of on-site car parking; and • Creation of an undesirable precedent.
Assessment Issues:	<ul style="list-style-type: none"> • Non-compliance with Clause 4.3 – ‘Height of Buildings’ Development Standard; • Inconsistency with Clause 4.6 under WLEP 2011; • Inconsistency with SEPP 65 and the RFDC; • Non-compliance with Part G under WDCP 2011; and • Insufficient provision of public benefit.
Recommendation:	Refusal
Attachments:	<ul style="list-style-type: none"> • Pre-lodgement Minutes (PLM2011/0025); • List of submissions; • Plans; and • Voluntary Planning Agreement.

ASSESSMENT INTRODUCTION

The application has been assessed in accordance with the requirements of the Environmental Planning and Assessment Act 1979 and the associated Regulations. In this regard:

- An assessment report and recommendation has been prepared (the subject of this report) taking into account all relevant provisions of the Environmental Planning and Assessment Act 1979, and the associated regulations;
- A site inspection was conducted and consideration has been given to the impacts of the development upon all lands whether nearby, adjoining or at a distance;

- Consideration was given to all documentation provided (up to the time of determination) by the applicant, persons who have made submissions regarding the application and any advice provided by relevant Council / Government / Authority Officers on the proposal.

SITE MAP



SITE DESCRIPTION

The site of the proposed shop-top housing development comprises three (3) allotments, including; Lot B, DP 381816, Lot 4, DP 417528 and Lot 1, DP 300967 and is known as Nos. 697, 699 and 701 Pittwater Road, Dee Why. The adjoining St. David's Park at Lot 1 in DP 364010, No. 703 Pittwater Road, Dee Why is part of the proposal as the park is the subject of the Voluntary Planning Agreement associated with the Development Application.

The subject site is located on the northern side of Pittwater Road, adjoining St David Park at the intersection with St David Avenue.

The site has a total area of 1,777m², is irregular in shape and has frontages to both Pittwater Road (primary frontage) and St David Avenue (secondary frontage). The frontage to Pittwater Road is 35.965m and the frontage to St David Avenue is 14.575m.

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

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

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

The site is adjoined as follows;

West: Uniting Church and Dee Why Police Station.
East: Pittwater Road and older style 2-3 storey commercial buildings opposite.
North: St David's Park and St David Avenue with Council's Civic and Library precinct opposite.
South: 3 to 5 storey commercial buildings.

SITE HISTORY

The site has been the subject of the following applications:

DA2011/0887

Development Application No. DA2011/0887 was lodged with Council on 14 July 2011 for demolition works and the construction of a mixed retail, commercial and residential development and use of premises as retail shops, a café and residential units on land at Nos.697, 699 and 701 Pittwater Road, Dee Why.

The application was referred to the meeting of the Joint Regional Planning Panel on 7 December 2011 with a recommendation for refusal. The reasons for refusal included the following:

1. *"Pursuant to Section 79C(1)(a) of the Environmental Planning and Assessment Act, 1979 and Clause 12(1)(b) of Warringah Local Environment Plan 2000 (as amended) the proposed development is considered to be inconsistent with the provisions of State Environmental Planning Policy No 65 – Design Quality for Residential Flat Development.*
2. *Pursuant to Section 79C(1)(a) of the Environmental Planning and Assessment Act, 1979 and Clause 12(3)(a) of Warringah Local Environment Plan 2000 (as amended) the proposed development is inconsistent with the Desired Future Character of the E9 – Pittwater Road Locality.*
3. *Pursuant to Section 79C (1) (a) (ii) of the Environmental Planning and Assessment Act, 1979, the proposed development does not comply with the development standard for "Height of Buildings" and is inconsistent with the objectives of the Height of Buildings standard under the provisions of the Draft Warringah Local Environmental Plan 2009.*
4. *Pursuant to Section 79C(1)(a) of the Environmental Planning and Assessment Act, 1979 and Clause 12(2)(b) of Warringah Local Environment Plan 2000 (as amended) the proposed development does not comply with the Built Form Controls under the E9 – Pittwater Road Locality statement as follows:*
 - *Building Height and*
 - *Build to Lines.*
5. *Pursuant to Section 79C(1)(a) of the Environmental Planning and Assessment Act, 1979 and Clause 12(1)(a) of Warringah Local Environment Plan 2000 (as amended)*

the development is considered to be inconsistent with the following General Principles of Development Control as follows:

- *Clause 58 – Protection of Existing Flora (Impact on Significant Trees),*
 - *Clause 70 - Site facilities (Waste Facilities), and*
 - *Clause 72 – Traffic Safety and Access (Design of the Rear Laneway).*
 - *Clause 76 – Management of Stormwater*
6. *Pursuant to Section 91A(4) of the Environmental Planning and Assessment Act, 1979, the NSW Office of Water has not provided its General Term of Approval that is required in order for the development to be granted consent.*
 7. *Pursuant to Section 79C(1)(e) of the Environmental Planning and Assessment Act, 1979 the proposed development is not in the public interest.*
 8. *Insufficient information has been submitted in relation to the following to allow a complete and proper assessment of the application:*
 - *Compliance with the daylight and natural ventilation requirements of the Residential Flat Design Code,*
 - *Stormwater design, and*
 - *Impact on significant trees.”*

At that meeting the Panel resolved the following:

1. *“The Panel resolves unanimously to defer determination of the application on the basis that the applicant has foreshadowed that it will amend its proposal so as to meet all of the planning assessment officer’s concerns expressed in the planning assessment report.*
2. *The applicant is to lodge a complete set of amended drawings by 19 December 2011. The council planning assessment officer is to report on the amended proposal and prepare draft conditions by 20 January 2012.*
3. *Following receipt of the above report the Panel will determine the application by communicating by electronic means.”*

The applicant submitted amended plans in accordance with the above resolution on 19 December 2011.

On 25 January 2012, a Supplementary Report on the above-mentioned amended plans was considered by the Panel members which included a recommendation for approval.

The Development Application was subsequently approved on 30 January 2012.

MOD2012/0087

An application to modify DA2011/0887 was lodged with Council on 4 May 2012.

The application sought numerous modifications including an increase in the number of apartments from 74 to 85; a reduction to the retail floor area from 284m² to 187m²; an increase to the floor space ratio from 4.08:1 to 4.15:1; and modifications to various conditions of consent.

No change was sought to the overall height or footprint of the building as approved under DA2011/0887.

The application was referred to the meeting of the Panel on 12 July 2012 with a recommendation for approval where it was subsequently approved.

Figure 1 below shows the 9 storey development as approved, and as viewed from Pittwater Road and St. David Avenue respectively:

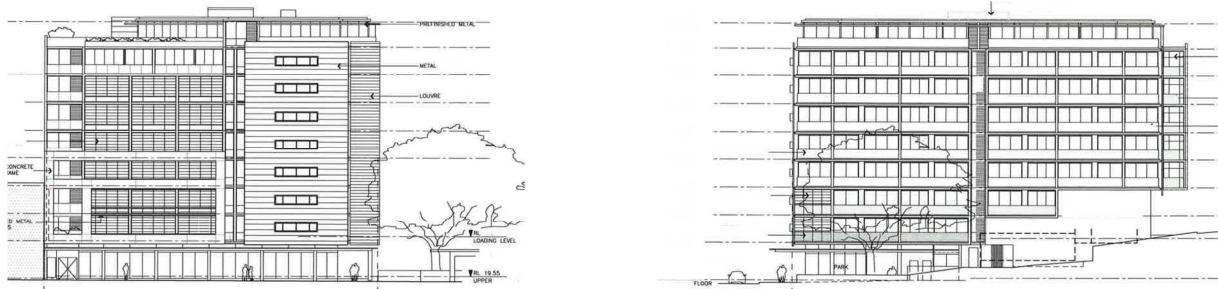


Figure 1 Elevations of the 9 storey development, as lodged.

Source: Plan No. S96-A10 dated 01/05/12 as prepared by Kann Finch

Note: The left hand image is viewed from Pittwater Road and the right hand image is viewed from St. David Avenue.

THE PROPOSED DEVELOPMENT (AS LODGED)

The proposal, as lodged on 30 September 2013, involved the demolition of existing structures and construction of a part 14/part 15 storey mixed use development, comprising 149 residential apartments, retail shops, retail/café space and 177 basement level carparking spaces.

Note: The WLEP 2011 defines a 'storey' as "a space within a building that is situated between one floor level and the floor level next above, or if there is no floor above, the ceiling or roof above, but does not include:

- (a) a space that contains only a lift shaft, stairway or meter room, or
- (b) a mezzanine, or
- (c) an attic"

The development includes a cantilevered roof form which is open to the sky within the central area containing the plant. However, the proposed cantilevered roof is open to the sky and does not include an enclosed space which could otherwise be regarded as a space 'within' the building that is situated between one floor level and the floor level above.

Therefore, the development has been classified as having a maximum of 15 storeys.

In support of the Development Application, the developer included a VPA which provided that the Developer make various contributions, with a total value of \$3,855,000 on the terms of the Planning Agreement. These contributions comprised:

1. Cash payment of \$250,000, being a contribution towards the cost of the upgrade of St David's Park and/or towards the construction of a future skybridge over Pittwater Road to the Multiplex Site (Site B) and over St David's Park/St David's Avenue to Councils Civic Centre Site, and

2. the transfer to Council of 3 retail units (Retail 1, 2 and 3) located on the Ground Floor Level of the building fronting Pittwater Road, together with 3 carparking spaces (combined area of 263m²), and
3. the transfer to Council of a commercial space on Level 2 of the building together with 1 carparking space and a dedicated lift to the ground floor level (combined area of 272m²), and
4. the inclusion of Council's public toilet facilities within the Ground floor Level of the building adjoining St David's Park (area of 37m²), and
5. the demolition of the existing public toilets in St David's Park (increasing park area by 50m²).

Note: The Voluntary Planning Agreement has since been amended and is addressed in a separate section later in this report.

The development had a total Gross Floor Area (GFA) of 10,308m² and a Floor Space Ratio (FSR) of 5.8:1.

The development achieved a total height of 51m (including lift overruns) from Pittwater Road.

Figure 2 below shows the development as lodged, and as viewed from Pittwater Road and St. David Avenue respectively:

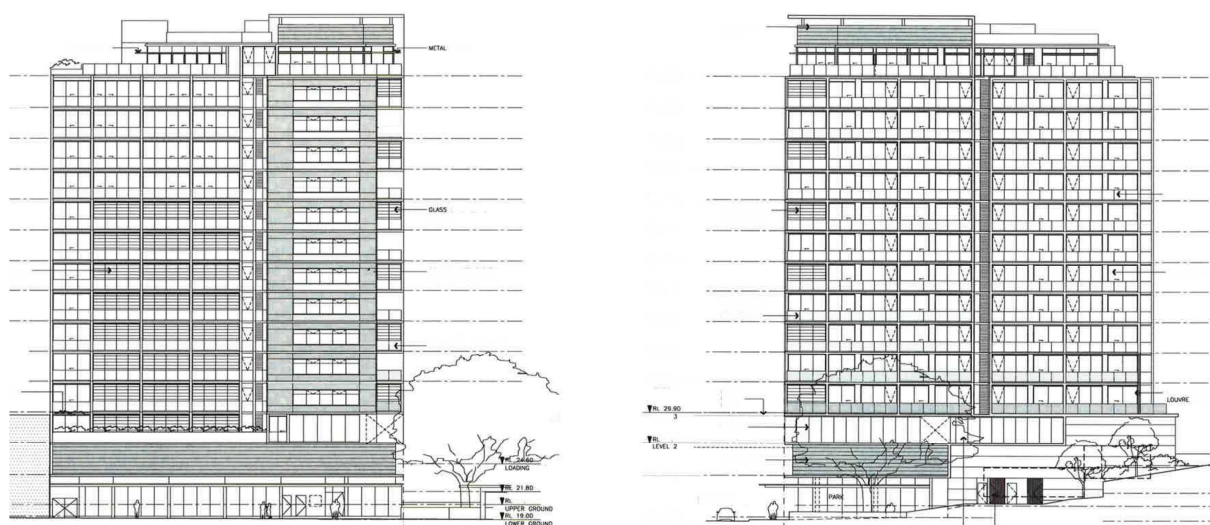


Figure 2 Elevations of the development, as lodged.

Source: Plan No. A11(C) dated 26/09/13 as prepared by Kann Finch

Note: The left hand image is viewed from Pittwater Road and the right hand image is viewed from St. David Avenue.

Specifically, the development, as lodged, included the following:

Basement Level 2 (RL 13.40 & 13.44)

- Parking for 59 residential vehicles including 5 disabled spaces;
- Storage spaces with a total volume of 141.48m³;
- Vehicle ramp access up to Basement Level 1; and
- Stair and lift access to Basement Level 1, Ground Floor lobby and residential units.

Basement Level 1 (RL 16.20 & 16.24)

- Parking for 56 residential vehicles including 7 disabled spaces
- Storage spaces with a total volume of 123.23m³;
- Vehicle ramp access down to Basement Level 2 and up to Lower Ground Floor Level; and
- Stair and lift access to Basement Level 2, Ground Floor lobby and residential units.

Ground Floor Level (RL 19.00, 19.31 & 20.35)

- Retail Units 1, 2, 3, 4 & 5 with the following GFA:
 - Retail 1: 90m² plus 38m² storage (total 128m² GFA);
 - Retail 2: 59m² plus 25m² storage (total 84m² GFA);
 - Retail 3: 35m² plus 16m² storage (total 51m² GFA);
 - Retail 4: 35m² plus 21m² storage (total 56m² GFA); and
 - Retail 5: 75m² plus 28m² storage total 103m² GFA).
- **Note:** Retail Units 1, 2 & 3 were offered to Council in the Voluntary Planning Agreement (VPA) associated with this original proposal and had a total gross floor area of 184m²;
- Parking for 24 residential vehicles;
- Vehicle ramp access down to Basement Levels 1 & 2 and up to Levels 1 & 2;
- Storage spaces with a total volume of 53.82m³;
- Retail Bin storage;
- Staff amenities;
- Retail Goods Lift up to Levels 1 & 2;
- Residential Lobby with direct access to Pittwater Road; and
- Stair and lift access to Basement Levels 1 & 2 and residential units.

Level 1 (RL 21.80 & 23.50)

- Parking for 38 vehicles consisting:
 - Residential: 13 spaces;
 - Retail: 8 spaces; and
 - Visitor: 17 spaces.
- Storage spaces with a total volume of 145.74m³;
- Plant, Switch and Comms Rooms;
- Gym for resident use with a an area of 44.1m² GFA;
- Retail Goods Lift down to Ground Floor Level and up to Level 2;
- Residential Lobby;
- Stair and lift access to Basement Levels 1 & 2, Ground Floor Level and residential units; and
- Vehicle ramp access down to Basement Levels 1 & 2, Ground Floor Level and up to Level 2.

Level 2 (RL 24.60 & 26.80)

- 8 x 1 bedroom residential units;
- Commercial Unit with an area of 213m² GFA;
- Sky Link access corridor and lift to future Sky Bridge with an area of 56m² GFA
- **Note:** The Commercial Unit and the Sky Link were offered to Council in the VPA;
- Residential bin storage room;
- Loading dock;
- Residential Lobby;

- Stair and lift access to lower levels and residential units above;
- Vehicle ramp access down to low floor levels and up to St David Avenue;
- Rear laneway in the form of a driveway to allow access to neighbouring sites to the south from St. David Avenue;
- Landscape area to the south of the driveway to allow for future through-site access to neighbouring lots;
- Plant Rooms; and
- Landscaped area to the west above the proposed On-Site Stormwater Detention Tank (OSD) with proposed electricity kiosk.

Level 3 (RL 29.90)

- 12 x 1 bedroom residential units;
- 1 x 2 bedroom unit;
- Residential Lobby; and
- Stair and lift access to lower levels and residential units above.

Level 4 (RL 33.00)

- 11 x 1 bedroom units;
- 1 x 2 bedroom unit;
- Residential Lobby; and
- Stair and lift access to lower levels and residential units above.

Levels 5, 7, 9 & 11 (RL 36.10; 42.30; 48.50 & 54.70)

- 48 x 1 bedroom units;
- 4 x 2 bedroom;
- Residential Lobby;
- Stair and lift access to lower levels and residential units above.

Levels 6, 8, 10 & 12 (RL 39.20; 45.40; 51.60 & 57.80)

- 44 x 1 bedroom units;
- 4 x 2 bedroom units;
- Residential Lobby;
- Stair and lift access to lower levels and residential units above.

Level 13 (RL 60.90)

- 10 x 1 bedroom units;
- 2 x 2 bedroom units;
- Residential Lobby;
- Stair and lift access to lower levels and residential units above.

Level 14 (RL 64.20)

- 4 x 2 bedroom units;
- Residential Lobby;
- Stair and lift access to lower levels and roof above.

Roof Level (RL 70.40)

- Deck areas; and
- Screened plant area with partly covered cantilever roof; and
- Stair access to levels below.

THE PROPOSED DEVELOPMENT (AS AMENDED)

Following extensive discussions with Council staff regarding concerns over the bulk of the development and its potential impact upon future development to the south with respect to the provision of sufficient building separation, the proposal was amended to provide for a slimmer tower.

The amended design which was lodged on 29 January 2014 and which is the subject of this assessment, now involves the construction of a part 9/part 15 storey mixed use development, comprising 129 residential apartments, retail shops, retail/café space and 178 basement level carparking spaces.

The development has a total Gross Floor Area (GFA) of 10,308m² and a Floor Space Ratio (FSR) of 5.8:1.

The development achieves a height of between 29m (approved under DA2011/0887) and 51m from Pittwater Road.

Figure 3 below shows the development as amended and as viewed from Pittwater Road and St. David Avenue respectively:



Figure 3 Elevations of the development, as amended.

Source: Plan No. A13(A) dated 22/01/14 as prepared by Kann Finch.

Notes: The left hand image is viewed from Pittwater Road and the right hand image is viewed from St. David Avenue.

Specifically, the development, as amended, contains the following:

Basement Level 2 (RL 13.59 & 13.63)

- Parking for 58 residential vehicles including 5 disabled spaces;
- Storage spaces with a total volume of 150.8m³;
- Vehicle ramp access up to Basement Level 1; and
- Stair and lift access to Basement Level 1, Ground Floor lobby and residential units.

Basement Level 1 (RL 16.39 & 16.43)

- Parking for 55 residential vehicles including 7 disabled spaces
- Storage spaces with a total volume of 122.98m³;
- Vehicle ramp access down to Basement Level 2 and up to Lower Ground Floor Level; and
- Stair and lift access to Basement Level 2, Ground Floor lobby and residential units.

Ground Floor Level (RL 19.19, 19.50 & 20.54)

- Retail Units 1, 2, 3, 4 & 5 with the following gross floor areas (GFA):
 - Retail 1: 53.8m²;
 - Retail 2: 46.4m²;
 - Retail 3: 52.8m²;
 - Retail 4: 55.4m²; and
 - Retail 5: 102.3m².
- **Note:** Retail Unit 1, is still offered to Council in the revised VPA;
- Public toilets;
- Parking for 19 residential vehicles and 9 retail vehicles;
- Vehicle ramp access down to Basement Levels 1 & 2 and up to Levels 1 & 2;
- Storage spaces with a total volume of 59.8m³;
- Retail Bin storage;
- Staff amenities;
- Retail Goods Lift up to Levels 1 & 2;
- Residential Lobby with direct access to Pittwater Road; and
- Stair and lift access to Basement Levels 1 & 2 and residential units.

Level 1 (RL 21.99 & 23.69)

- Parking for 37 vehicles consisting:
- Retail: 11 spaces; and
- Visitor: 26 spaces.
- Storage spaces with a total volume of 155.5m³;
- Plant, Switch and Comms Rooms;
- Retail Goods Lift down to Ground Floor Level and up to Level 2;
- Residential Lobby;
- Stair and lift access to Basement Levels 1 & 2, Ground Floor Level and residential units;
- Vehicle ramp access down to Basement Levels 1 & 2, Ground Floor Level and up to Level 2; and
- Bicycle racks.

Level 2 (RL 24.79, 26.99)

- 8 x 1 bedroom residential units;
- Commercial Unit with an area of 136m² GFA;
- Sky Link access corridor and lift to future Sky Bridge with an area of 58m² GFA (Note: The Commercial Unit and the Sky Link are still offered to Council in the VPA);
- Gym for resident use with an area of 62m² GFA;
- Residential bin storage room;
- Loading dock;
- Residential Lobby;
- Stair and lift access to lower levels and residential units above;

- Vehicle ramp access down to low floor levels and up to St David Avenue;
- Rear laneway in the form of a driveway to allow access to neighbouring sites to the south from St. David Avenue;
- Landscape area to the south of the driveway to allow for future through-site access to neighbouring lots;
- Plant Rooms; and
- Landscaped area to the west above the proposed On-Site Stormwater Detention Tank (OSD) with proposed electricity kiosk.

Level 3 (RL 30.09)

- 12 x 1 bedroom residential units;
- 1 x 2 bedroom unit;
- Residential Lobby; and
- Stair and lift access to lower levels and residential units above.

Level 4 (RL 33.19)

- 11 x 1 bedroom units;
- 1 x 2 bedroom unit;
- Residential Lobby; and
- Stair and lift access to lower levels and residential units above.

Levels 5 & 7 (RL 36.29 & 42.49)

- 24 x 1 bedroom units;
- 2 x 2 bedroom;
- Residential Lobby;
- Stair and lift access to lower levels and residential units above.

Levels 6 & 8 (RL 39.39 & 45.59)

- 22 x 1 bedroom units;
- 2 x 2 bedroom units;
- Residential Lobby;
- Stair and lift access to lower levels and residential units above.

Level 9 (RL 48.89)

- 9 x 1 bedroom units;
- 1 x 2 bedroom units;
- Residential Lobby;
- Stair and lift access to lower levels and residential units above.

Level 10 (RL 51.99)

- 8 x 1 bedroom units;
- 1 x 1 bedroom unit;
- Residential Lobby;
- Stair and lift access to upper and lower levels.

Level 11 (RL55.09)

- 9 x 1 bedroom units;
- 1 x 1 bedroom unit;
- Residential Lobby;
- Stair and lift access to upper and lower levels.

Level 12 (RL 58.19)

- 6 x 1 bedroom units;
- 1 x 1 bedroom unit;
- Residential Lobby;
- Stair and lift access to upper and lower levels.

Level 13 (RL 61.29)

- 5 x 1 bedroom units;
- 2 x 1 bedroom unit;
- Residential Lobby;
- Stair and lift access to upper and lower levels.

Level 14 (RL 65.59)

- 3 x 2 bedroom units;
- Deck area;
- Residential Lobby;
- Stair and lift access to lower levels and roof above.

Roof Level (RL 70.40)

- Deck area; and
- Screened plant area with partly covered cantilever roof; and
- Stair access to levels below.

Therefore, in summary the proposal, as amended, consists of the following:

Level	Parking Bays	Retail/Comm	1 Bed	2 Bed	3 Bed	Total Units
Basement 2	58	0	0	0	0	0
Basement 1	55	0	0	0	0	0
Ground Floor	28	310.7m ² GFA*	0	0	0	0
Level 1	37	0	0	0	0	0
Level 2	0	136m ² GFA	8	0	0	8
Level 3	0	0	12	1	0	13
Level 4	0	0	11	1	0	12
Level 5	0	0	12	1	0	13
Level 6	0	0	11	1	0	12
Level 7	0	0	12	1	0	13
Level 8	0	0	11	1	0	12
Level 9	0	0	9	1	0	10
Level 10	0	0	8	1	0	9
Level 11	0	0	9	1	0	10

Level	Parking Bays	Retail/Comm	1 Bed	2 Bed	3 Bed	Total Units
Level 12	0	0	6	1	0	7
Level 13	0	0	5	2	0	7
Level 14	0	0	0	3	0	3
Total	178	446.7m²	114 (88.4%)	15 (11.6%)	0	129

***Note:** Gross Leasable Floor Area (GLFA) is used to determine car parking for retail premises. When applied, GLFA reduces the floor area of the retail units to 280.7m².

THE DRAFT VOLUNTARY PLANNING AGREEMENT

The proposal seeks to increase the height of the building already approved under DA2011/0887 from nine (9) storeys to 15 storeys to respond to the building height envisaged under the adopted Dee Why Town Centre Masterplan.

In support of the Development Application, the developer initially included a draft Voluntary Planning Agreement (VPA) which provided that the developer make various contributions, with a total value of \$3,855,000 on the terms of the Planning Agreement.

Following the afore-mentioned concerns raised by Council staff with regards to the bulk of the development and appropriate building separation, the application was amended to reduce the bulk of the upper six (6) storeys of the building at the southern side.

Subsequently, this amendment to the Development Application resulted in the developer amending the draft VPA to reflect the reduced floor space.

Parties to the draft VPA

The parties to the draft VPA are Jubilee Properties Pty Ltd and Warringah Council.

The contributions contained in the draft VPA partly relate to the adjoining property to the north known as St. David's Park (No. 703 Pittwater Road, Dee Why) which is included in the summary of the offer described below.

Summary of the draft VPA

The applicant advises that the total value of contributions made on the terms of the amended draft VPA will be in the vicinity of \$2,000,000. These contributions have been summarised as comprising:

1. A cash payment of \$250,000, being a contribution towards the cost of the upgrade of St David's Park and/or towards the construction of a future sky bridge over Pittwater Road to the Multiplex Site (Site B) and over St David's Park/St David's Avenue to Councils Civic Centre Site, and
2. The transfer to Council of 1 retail unit (Retail 1 with an area of 54m²) located on the Ground Floor Level of the building fronting Pittwater Road, together with 3 carparking spaces, and
3. The transfer to Council of a commercial space on Level 2 of the building together with 3 carparking spaces and a dedicated lift to the ground floor level (combined area of 194m²), and
4. The inclusion of Council's public toilet facilities within the Ground floor Level of the building adjoining St David's Park (area of 37m²), and

5. The demolition of the existing public toilets in St David's Park (increasing park area by 50m²).

With regards to Point 2 above, the applicant has since provided a letter to Council dated 27 February 2014 which indicates an increase to the floor area of Retail 1 from 54m² to 128m² together with three (3) car parking spaces. This represents an increase of 74m² to the offered floor area. The applicant's late amendments to the draft VPA have not been publicly exhibited.

The draft VPA will be referred to Council at its meeting on 25 March 2014 with a recommendation to reject the offer to sign the VPA (see detailed comments later in this report). Given the limitations of the various agenda reporting timeframes, Council's resolution on this matter was not available at the time of writing this report and will be provided to the Panel as supplementary advice.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

Section 79C 'Matters for Consideration'	Comments
Section 79C (1) (a)(i) – Provisions of any environmental planning instrument	The following Environmental Planning Instruments are applicable: <ul style="list-style-type: none"> • State Environmental Planning Policy No. 55 – Remediation of Land; • State Environmental Planning Policy (BASIX: Building Sustainability Index) 2004; • State Environmental Planning Policy (Infrastructure) 2007; • State Environmental Planning Policy No. 65 – Design Quality of Residential Flat Development; and • Warringah Local Environmental Plan 2011.
Section 79C (1) (a)(ii) – Provisions of any draft environmental planning instrument	Non applicable.
Section 79C (1) (a)(iii) – Provisions of any development control plan	Warringah Development Control Plan 2011 is applicable to this application.
Section 79C (1) (a)(iia) – Provisions of any planning agreement	A draft Voluntary Planning Agreement has been provided for Council's review and consideration as detailed earlier in this report. The outcome of Council's consideration was undetermined at the time of preparing this report.
Section 79C (1) (a)(iv) – Provisions of the regulations	The EPA Regulations 2000 requires the consent authority to consider the provisions of the Building Code of Australia. This matter can be addressed via a condition of consent. Clause 92 of the EPA Regulations 2000 requires the consent authority to consider AS 2601 - 1991: <i>The Demolition of Structures</i> . This matter can be addressed via a condition of consent should this application be approved. Clause 50(1A) of the EPA Regulations 2000 requires the submission of a design verification certificate from the designer at lodgement of the development application. This documentation has been submitted from Kahn Finch Group Architects, which satisfied this requirement.
Section 79C (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	(i) Although the development does not comply with the provisions of Clause 4.3 – 'Height of Buildings' Development Standard, the development is not considered to have an adverse environmental impact on the natural and built environment.

Section 79C 'Matters for Consideration'	Comments
	<p>(ii) The development is not considered to have a detrimental social impact in the locality considering the mixed use (retail/cafe and residential) character of the proposal. In this regard, the proposal will result in positive social outcomes in terms of providing for urban renewal, improved aesthetics and visual amenity, better streetscape, better casual surveillance of public areas, improved carparking and access, pedestrian safety and garbage storage.</p> <p>(iii) The development is considered to have a positive economic impact on the locality as the mixed uses of the development will assist to strengthen economic vitality in this area within the Dee Why Town Centre providing an active street front, additional housing opportunities and commercial activity.</p>
<p>Section 79C (1) (c) – the suitability of the site for the development</p>	<p>The site is considered suitable for the proposed development for the following reasons:</p> <p><u>Location</u> – The site is ideally located with respect to proximity to public transport, shops, civic services and Dee Why Library.</p> <p><u>Amalgamated Site</u> – The site comprises 3 lots which represent a significant opportunity to provide a well-integrated and coordinated design outcome which accords with the aims and objectives of the adopted Dee Why Town Centre Masterplan.</p> <p><u>Vehicular Access</u> – The site has a secondary frontage to St David Avenue and can facilitate the provision of a rear laneway to service the subject site and other future developments to the south as envisaged by the Dee Why Town Centre Masterplan.</p> <p><u>Open Space</u> – The site is situated adjacent to St David's Park which affords a higher degree of outlook and amenity to the north (sunlight access and views) which can be enjoyed by residential and commercial occupants.</p> <p><u>Topography</u> – The site has a moderate slope, however it has been excavated for the present commercial developments. The slope has presented some design challenges with providing the access for Council's waste disposal vehicles (see Council's Waste Management comments). These matters are yet to be resolved by the applicant and can be conditioned accordingly should this application be approved.</p> <p><u>Dee Why Town Centre</u> – The site is within the "Major Centre" (along with Brookvale) as identified under the North East Subregional Strategy under the Sydney Metropolitan Plan and will provide for part of the dwelling target and jobs targets for this centre. The development will also benefit from this location in being in close proximity to the future Dee Why Town Centre redevelopment comprising the Meriton Site (including the delivery of a Town Square) to the east and the Civic Precinct site to the north.</p> <p>In addition, the site is identified in the Dee Why Town Centre Masterplan as part of a group of 'key sites' within the triangular block bounded by Pittwater Road St. David Avenue and Fisher Road. The Masterplan indicates that development up to a maximum height of 15 storeys may be</p>

Section 79C 'Matters for Consideration'	Comments
	provided on the site subject to the satisfactory provision of public benefit through a VPA.
Section 79C (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	<p>A total of 570 written submissions and one on-line petition containing 635 electronic signatures (at the time of writing this report) have been received.</p> <p>The submissions are addressed later in this report.</p>
Section 79C (1) (e) – the public interest	<p>The planning controls contained within WLEP 2011 and the Dee Why Town Centre Masterplan provide the community with a level of certainty as to the scale and intensity of future development and the form and character of development that is in keeping with the desired future character envisaged for the locality.</p> <p>The increased height of 15 storeys is envisaged by the Masterplan and is available provided that sufficient public benefit is provided through a VPA.</p> <p>Because of the inadequate provision of public benefit in the draft VPA, the development becomes inconsistent with the aims and objectives of the Dee Why Town Centre Masterplan. In this regard, the development does not qualify for the greater building heights made available by the Masterplan. Instead, the development must be considered solely against the provisions of Clause 4.3 – 'Height of Buildings' Development Standard, under the WLEP 2011.</p> <p>This assessment has found that the development does not comply with the building height control of 24m as prescribed by the WLEP 2011. The proposed maximum building height of 51m exceeds the maximum height limit by 27m which equates to a variation of 112.5%.</p> <p>Notwithstanding, it is acknowledged that the design and external appearance of the building is of a high standard that could provide a much needed boost to the urban design qualities and streetscapes currently in Dee Why Town Centre. However, the architectural merits of the development do not outweigh the fact that the proposal, in lieu of the provision of sufficient public benefit and subsequent support of the Dee Why Town Centre Masterplan, the development proposes a significant departure from the applicable Height of Buildings Development Standard of WLEP 2011. In light of the lack of the provision of sufficient public benefit and its inconsistency with the Masterplan, insufficient justification has been provided by the applicant for this variation.</p> <p>Consequently, as the proposal does not satisfy the planning controls under WLEP 2011, the proposal is not considered to be in the public interest.</p>

EXISTING USE RIGHTS

Existing Use Rights do not apply to this application.

PUBLIC EXHIBITION & SUBMISSIONS RECEIVED

Due to the amended scheme, the Development Application, including the VPA, has been publically exhibited twice in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000 and Warringah Development Control Plan 2011.

Public Exhibition 1

The Development Application and VPA were notified to 2,022 land owners and occupiers for a minimum period of 30 calendar days commencing on 19 October 2013 and ending on 19 November 2013. Furthermore, an advertisement was placed in the Manly Daily on 19 October 2013 and a notice was placed upon the site.

As a result of the public exhibition, 225 (11.1%) submissions were received which consisted of the following:

- Form letters: 165 (73.3%)
- Individual letters: 60 (26.7%)

In addition to the above individual submissions, one (1) petition was received which contained 17 signatures.

Public Exhibition 2

The amended Development Application and amended VPA were re-notified to the same 2,022 land owners and occupiers for a minimum period of 30 calendar days commencing on 1 February 2014 and ending on 5 March 2014. Furthermore, an advertisement was placed in the Manly Daily on 1 February 2014 and a notice was placed upon the site.

As a result of the public exhibition, 570 (28.1%) submissions were received at the time of writing this report (12 March 2014) which consists of the following:

- Form letters: 523 (91.7%)
- Individual letters: 47 (8.3%)

In addition to the above individual submissions, one (1) petition is currently being received via an external website (www.change.org/petitions/the-cobalt-dee-why-5-st-davids-avenue-15-level-development-to-set-precedent-in-dee-why) which contains 635 signatures at the time of writing this report. The petition raises the following issues and requests the objector to electronically sign the petition if they agree that the proposed building height is too high:

- a) *A significant increase to commuter waiting times for the Northern Beaches only form of transport, buses.*
- b) *The lack of infrastructure to support a mass population means traffic congestion will be enhanced beyond the day-to-day battle in which the Community already endure.*
- c) *Overshadowing of neighbouring properties.*
- d) *The 'skyline' of the suburb from locations around Dee Why, including the beautiful beach will now resemble that of a mini-city, or Chatswood'.*

The issues raised in the submissions overall include the following:

- a) Building height;
- b) Character of the area;
- c) Impact on airflows through Dee Why;
- d) Overshadowing;
- e) Traffic congestion;
- f) Longer waiting times for commuters due to population increase;

- g) Voluntary Planning Agreement;
- h) Excessive building bulk;
- i) Loss of views;
- j) Rear laneway access;
- k) Insufficient community consultation;
- l) Garbage collection;
- m) Increase in crime and anti-social behaviour;
- n) Construction related impacts and site dewatering;
- o) Insufficient provision of on-site car parking; and
- p) Creation of an undesirable precedent.

The following commentary addresses the issues raised:

a) Building height

Concern is raised that the development does not comply with the Height of Buildings Development Standard under the WLEP 2011.

Comment

This matter has been addressed later in this report (refer to the 'Detailed Assessment of the Variation to Clause 4.3 – Height of Buildings Development Standard' under the Warringah Local Environmental Plan 2011).

In summary, the development proposes a building height of between 29m and 51m which is between 4.0m and 27m above the maximum building height permitted under the WLEP 2011. This represents a variation of 112.5% at the maximum proposed height.

The development is reliant upon the Height of Buildings Development Standard under the WLEP 2011 and has been appropriately assessed against Clause 4.6 of the WLEP 2011 where it was found that the development was inconsistent with the objectives of the Development Standard and the zone.

This issue constitutes a fundamental reason for the refusal of the application.

b) Character of the area

The majority of submissions raise concern that the development is inconsistent with the character of Dee Why.

In particular, the submissions suggest that the development will not complement the coastal setting and beachside atmosphere of Dee Why and that it will encourage similar development resulting in a more urbanised character likened to Chatswood or North Sydney.

Comment

The site is located within the Dee Why Town Centre and is addressed in the Dee Why Town Centre Masterplan as having the potential to develop up to a height of 15 storeys.

This scale of development is envisaged at various sites throughout the Town Centre and, in this regard, the Masterplan has established the desired future character of the area beyond what is currently evident.

The development, as proposed, is considered to be generally consistent with the vision of the Masterplan and, therefore, the desired future character of the Town Centre. However, there

are issues, as raised by Council's Urban Designer, in relation to the bulk and visual impact of the development as discussed in this report

Discussion on the Dee Why Town Centre Masterplan can be found under the 'Other Matters' section in this report.

Therefore, this issue should not be given determining weight.

c) Impact on airflows through Dee Why

Concern is raised that the development will create a wind tunnel effect along Pittwater Road.

Comment

The development will have some impact upon airflow through the Dee Why Town Centre area but this would be very localised and is to be expected for tower development of which the Dee Why Town Centre Masterplan envisages.

It should be remembered that the site is already the subject of an approved 9 storey building (which forms the base building of the current tower proposal). It is at this lower level that wind effects will become more noticeable along the street. The increased height above the approved 9 storey height is not expected to significantly add to that wind effect at street level.

Therefore, this issue should not be given determining weight.

d) Overshadowing

Concern is raised that the development will create unreasonable overshadowing to surrounding residential and commercial properties.

Comment

The shadow diagrams submitted with the application (see Plan Nos. SD01 to SD03 dated 24 January 2014 as prepared by Kann Finch) illustrate that properties to the south along Pittwater Road will experience increased amounts of overshadowing as a result of the proposed development.

However, it is noted that, due to the north-east orientation of the row of shops along this length of Pittwater Road, all retail and commercial premises to the south are under self-shadow. Therefore, the development will not add to the level of shadow cast over these properties.

Furthermore, because of the orientation and location of the site, the shadow diagrams demonstrate that the development will not cast any unreasonable shadow over residential and commercial properties to the west along Fisher Road or the Church site to the west.

Therefore, this issue should not be given determining weight.

e) Traffic congestion

Concern is raised that the increase in population as a result of the development will exacerbate traffic congestion in the Dee Why Town Centre and surrounding road network.

Comment

This matter has been addressed by the applicant in the form of a detailed Traffic Report and by Council's Traffic Engineer (refer to comments provided in the 'Internal Referrals' section of this report).

The Dee Why Town Centre was subject to a comprehensive traffic study by GTA Consultants in 2007 as part of the preparation of the WLEP 2011.

A review of the amended traffic report submitted with the application (refer to Traffic and Parking Assessment Report dated 24 January 2014 as prepared by GTA Consultants) indicates that the development will generate the following traffic flows:

Peak Period	Dee Why Town Centre Traffic Study	Current Proposal	Change
Weekday Morning	80 vph	43 vph	-37 vph
Weekday Evening	126 vph	51 vph	-75 vph
Weekend Peak	91 vph	34 vph	-57 vph

Source: Traffic and Parking Assessment Report dated 24 January 2014 GTA Consultants (Page 9)

Council's Traffic Engineer has reviewed the Traffic and Parking Assessment Report and advises that the proposed traffic generation for the development is considered to be acceptable as it would be able to be accommodated in the existing traffic volumes and would not substantially increase congestion on the surrounding road network.

Therefore, Council's Traffic Engineer raises no objection to the proposal subject to conditions which may be included in a consent should this application be approved.

Therefore, this issue should not be given determining weight.

f) Longer waiting times for commuters due to population increase

Concern is raised that the increase in population as a result of the development will exacerbate waiting times for commuters travelling to the city and that the current level of transport infrastructure is not capable of supporting such an increase.

Comment

A review of the bus schedules in Dee Why reveal that the development (and Dee Why generally) is serviced by a total of 29 scheduled high-frequency bus routes to various centres. A total of 27 of those bus routes travel to the city.

However, with regards to the availability of bus services and the provision of other public transport infrastructure servicing Dee Why, this is beyond the jurisdiction of Council and is a matter for NSW Transport to consider and address through their regular service monitoring.

Therefore, this issue should not be given determining weight.

g) Voluntary Planning Agreement

The issues raised in relation to the VPA includes the following sub-issues:

i) Allegation that the VPA is equivalent to bribery/corruption

A concern has been raised that the offer made in the VPA equates to "bribery" and "corruption" and that the VPA process should not be allowed on any level of government.

Comment

A VPA is a legal mechanism entrenched in the NSW planning legislation under Subdivision 2, Sections 93F to 93L of the Environmental Planning and Assessment Act, 1979 and under Division 1A, Clauses 25B to 25H of the Environmental Planning and Assessment Regulation, 2000.

The purpose of a VPA is to allow a developer to dedicate either/or land free of cost, pay a monetary contribution, or provide any other material public benefit, or any combination of them, to be used for or applied towards a public purpose.

The public purpose in this instance is identified under Section 93F(2)(a) and (d) of the Act as “the provision of (or the recoupment of the cost of providing) public amenities or public services” and “the funding of recurrent expenditure relating to the provision of public amenities or public services, affordable housing or transport or other infrastructure” respectively.

The VPA has been made in accordance with the relevant provisions of the Act and its Regulations.

Therefore, the VPA is legal and the allegations made in the submission are unfounded and incorrect.

ii) The nature of the public benefit

Concern has been raised that the public benefit presented in the VPA is not in favour of the public but, rather, in favour of the developer.

It is suggested in the submissions that the inclusion of public toilets into the VPA as a public benefit serves the development more than the community as the development will have to overlook a public toilet in the park.

Additionally, the submissions note that the provision of public toilets within the building should be discounted from the VPA as these were already included in the approved Development Application (DA2011/0887).

Comment

Generally, the VPA is considered to offer a public benefit in the upgrading of St. David's Park, the provision of floor space to enhance Council's shop-front presence and accessibility and to improve through site pedestrian and vehicular access to facilitate the long-term vision of the Dee Why Town Centre Masterplan.

Specifically, it is acknowledged that the relocation of the public toilets into the building was an element that was approved under DA2011/0887. In this regard, it is agreed that the public toilets should not be included in the VPA and should be discounted from the total value of the offer.

Notwithstanding, the demolition and relocation of the public toilets is considered to be a relatively minor component of the VPA and the remaining components continue to offer important public benefit.

iii) Elements of the VPA are reliant upon the support of third parties

Concern is raised that the sky bridge across Pittwater Road and St. David Avenue requires the agreement of parties developing the site on the opposite side of Pittwater Road (the 'Meriton' site) and from Council on the opposite side of St David Avenue to proceed.

Comment

The sky bridge element of the VPA does rely upon third party agreement to make it a reality.

In this respect, the VPA includes a cash payment to Council of \$250,000 which forms a contribution towards the cost of the upgrade of St David's Park and/or towards the construction of a future sky bridge over Pittwater Road to the Meriton Site (Site B) and over St David's Park/St David Avenue to Councils Civic Centre Site

Obviously, if third party agreement cannot be reached then the money (or a part of the money) would be directed towards the upgrade of St. David's Park.

Therefore, this issue should not be given determining weight.

h) Excessive building bulk

Concern is raised that the proposed built form is excessively bulky, is not of a human scale and that it will have an adverse impact upon the streetscape and nearby parks.

Comment

This matter has been addressed later in this report (refer to SEPP No. 65 and Clause D9 – Building Bulk).

In summary, the proposed built form is not considered to be visually offensive given the combination of setbacks, materials and contemporary architectural elements used in the treatment of the facade which, on balance, provides for an acceptable built form for the Dee Why Town Centre.

Therefore, this issue should not be given determining weight.

i) Loss of views

Concern is raised that the scale of the development will have an adverse impact upon distant ocean and district views and the development will be an eyesore in the Dee Why townscape when viewed from surrounding ridgelines.

Comment

This matter has been addressed later in this report (refer to Clause D7 – Views).

In summary, the application includes a view sharing analysis which demonstrates that the long distance and panoramic views to the ocean and the surrounding district will be generally maintained from the ridgelines which surround the Dee Why Town Centre basin.

It is acknowledged that a reduced building height or more slender/slim line tower would increase these available views but, in the context of Clause D7, the scale of development envisaged by the Dee Why Town Centre Masterplan and the Planning Principles established

in the Land and Environment Court case 'Tenacity Consulting v Warringah Council (2004) NSWLEC 140, it is considered that the development, as proposed, satisfies the view sharing requirements of this Control.

It should also be noted that the development fits within the context of the Dee Why Town Centre Masterplan in terms of its proposed height. In this regard, the development should not be regarded as a 'stand-alone' feature in the townscape but rather a contributing element in a changing urban landscape which would complement the approved 18 storey towers on the Meriton site to the east.

Therefore, this issue should not be given determining weight.

j) Rear laneway access

Concern is raised that the development will prevent through site access from St. David Avenue to neighbouring properties to the south.

Comment

The development includes a 6.0m wide driveway which extends from St. David Avenue along the western property boundary to a landscaped area abutting the neighbouring site to the south at No. 693 Pittwater Road.

The driveway is designed to accommodate through-site access to the properties to the south to satisfy the rear laneway envisaged in the Dee Why Town Centre Masterplan. This will require the deletion of the landscaped area from the plans which could be addressed through the imposition of a condition in a consent should this application be approved.

Therefore, this issue should not be given determining weight.

k) Insufficient community consultation

Concern is raised that the development has not undergone sufficient community consultation. In particular, concern is expressed that details of discussions between Council assessment staff and the applicant leading up to the submission of amended plans were not made available to the public.

Comment

Due to the scale of the development, the application was notified extensively to include the key ridgelines to the north, west and south of the Town Centre. Overall, a total of 2,022 residents were notified over two consecutive 30 day periods due the amendments made to the plan.

The public exhibition of the application was in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000 and Warringah Development Control Plan 2011 and also included advertising in the Manly Daily on both occasions.

The discussions which were held between Council staff and the applicant, and which prompted the amendment to the plans (which were subsequently publicly exhibited as discussed above) were conducted as part of the ongoing assessment process and it is not considered appropriate, nor practical, to consult with the community during each phase of the assessment.

Therefore, this issue should not be given determining weight.

l) Garbage collection

Concern is raised that the development does not provide sufficient manoeuvring space to enable Council's Waste Management trucks to service the property.

Comment

This matter has been addressed by Council's Waste Management Officer (refer to comments provided in the 'Internal Referrals' section of this report).

The Traffic and Parking Assessment Report dated 24 January 2014 as prepared by GTA Consultants indicates a swept path for 9.5m waste truck into the loading dock.

Council's Waste Management Officer has reviewed the Traffic and Parking Assessment Report and advises that Council uses waste trucks with a length of 11.0m and that the swept path and depth of the loading is inadequate.

In this regard, it is considered that appropriate conditions could be imposed requiring that the depth of the loading dock be increased to accommodate the length of Council's waste trucks and that the swept path be increased by including a 2.0m x 2.0m truncation at the south-western corner of the loading dock.

Notwithstanding the above, Council's Waste Management Officer does not raise any objections to the proposal subject to conditions which can be imposed in a consent should this application be approved.

Therefore, this issue should not be given determining weight.

m) Increase in crime and anti-social behaviour

Concern is raised that the increased population resulting from the development will, in turn, result in an increase in crime and anti-social behaviour.

Comment

The application has been assessed against the principles of Crime Prevention Through Environmental Design (CPTED) where it was found that the development achieved consistency.

Further to this, there is no evidence to support the claim that the development will generate or attract an increase in crime and/or anti-social behaviour because of an increase in population. Conversely, the increased levels of social activity and casual surveillance of the streets, park and bus stops will enhance public safety.

Beyond consideration given to CPTED, crime and anti-social behaviour are not matters for consideration under s.79C of the Environmental Planning and Assessment Act, 1979. Rather, as with any incident which involves crime or anti-social behaviour, the NSW Police are the regulative authority and should be called in the first instance.

Therefore, this issue should not be given determining weight.

n) Construction related impacts and site dewatering

Concern is raised regarding the excavation and construction impacts associated with the development, and the potential impact on the water table.

Comment

The development proposes excavation to a depth of between 6.0m and 9.0m below ground level (the variable depth is due to the slope of the site up St. David Avenue).

The application was referred to the NSW Office of Water as Integrated Development due to the intersection with the water table and the requirement to dewater and tank the below ground levels.

The NSW Office of Water did not raise any objection to the proposal and granted their General Terms of Approval on 19 December 2013 (refer to the 'Referrals' section in this report) which includes conditions that are required to be imposed in a consent should this application be approved.

With regards to excavation and construction management, appropriate conditions which aim to minimise impact can also be imposed in a consent should this application be approved.

Therefore, this issue should not be given determining weight.

o) Insufficient provision of on-site car parking

Concern is raised that the development does not provide sufficient or compliant on-site car parking.

Comment

This matter has been addressed later in this report (refer to Appendix 1 – Car Parking Requirements).

In summary, the assessment of car parking found a non-compliance with Council's car parking requirements of 0.6 of a parking space. This has been rounded up in the above table to reflect 1 parking space which increases the total car parking requirement to 179 spaces. This is a result of Retail 1 being increased in size and allocated as Council premises in the VPA.

However, should the VPA not be accepted by Council and the use of Retail 1 reverts back to a retail/shop use then the total required car parking for the development will be 178.5 spaces (ie 0.5 of a parking space above the requirement) which could reasonably be rounded down to 178 spaces.

Notwithstanding, the non-compliance of 1 space is considered to be minor and acceptable given that the accessibility of the site to a major transport interchange, shops, services and recreational facilities which would encourage residents to walk or cycle.

Therefore, this issue should not be given determining weight.

p) Creation of an undesirable precedent

Concern is raised that the approval of the application will create an undesirable precedent for similar development in Dee Why, thereby eroding the character of the Town Centre specifically and the local area generally.

Comment

As detailed throughout this report, and under the section 'Other Matters' which provides a summary of the Dee Why Town Centre Masterplan, the development is considered to be consistent with the vision established in the Masterplan.

In this regard, the development, in the context of the Masterplan, will not create an undesirable precedent because that precedent has already been formalised.

However, the increased height allowed for under the Masterplan is contingent upon the provision of an appropriate level of material public benefit. As noted throughout this report, the level of public benefit offered to Council in the draft VPA is considered to be inadequate in terms of allowing for the additional height, bulk and floor area under the Dee Why Town Centre Masterplan. Therefore, the development cannot rely upon the provisions of the Masterplan.

When considered solely against the objectives and requirements of WLEP 2011 which envisages that buildings do not to exceed the 24m height limit, the proposed variation of 112.5% is considered to be excessive and unjustified.

The approval of such a significant variation will create an undesirable precedent by encouraging other developments which do not satisfy the public benefit provisions in the Masterplan, to also exceed the height limit.

The flow-on effect of approving the proposed building height, in isolation of the Masterplan, will be an erosion of the Development Standard, the Dee Why Town Centre Masterplan itself and the diminution of the urban spaces within the Town Centre.

Therefore, this issue should be given determining weight.

MEDIATION

No mediation has been requested by the objectors.

REFERRALS

External Referrals

NSW Office of Water (NoW)

The application was referred to the NoW as Integrated Development under s.91A(2) of the Environmental Planning and Assessment Act, 1979. The NoW provided the following comments on 19 December 2013:

"The construction dewatering proposed for the project is deemed to be an aquifer interference activity in accordance with the definition in the Water Management Act 2000. It is expected that the excavation and construction at the property will be conducted in accordance with the principles of the Aquifer Interference Policy (available on-line at <http://www.water.nsw.gov.au/Water-management/Law-and-policy/Key-policies/Aquifer-interference>).

An authorisation for the take of groundwater as part of the anticipated dewatering of the site is required. As such, General Terms of Approval appropriate to the proposed aquifer interference activity are provided as required by s.91A (2) of the Environmental Planning and Assessment Act 1979".

The General Terms of Approval (GTAs) provided by the NoW may be included in a consent should this application be approved.

Roads and Maritime Service (RMS)

The application was referred to the RMS for comment as traffic generating development under Schedule 3 of State Environmental Planning Policy (Infrastructure) 2007. The RMS provided their comments on 16 December 2013 in which no objection was raised subject to conditions.

The conditions provided by the RMS may be included in a consent should this application be approved.

Ausgrid

The application was referred to Ausgrid under clause 45(2) of State Environmental Planning Policy (Infrastructure) 2007.

Ausgrid provided their comments on 19 November 2013 in which no objection was raised subject to conditions.

The conditions provided by Ausgrid may be included in a consent should this application be approved.

NSW Police

The application was referred to the NSW Police for consideration and comment.

In their response dated 18 December 2013, NSW Police advised that *"given the nature of the development, we do not believe a Crime Risk Assessment and CPTED (Crime Prevention through Environmental Design) is required"*.

Notwithstanding the comments provided by NSW Police, an assessment of the development against the principles of CPTED has been conducted and is included in this report.

State Transit Authority

The application was referred to the State Transit Authority of NSW on 14 October 2013.

To date, no response has been provided and it is assumed that no objection has been raised with regards to the proposal.

Internal Referrals

Buildings, Property and Spatial Information (BP & SI)

The draft VPA (the 27 February 2014 version) was referred to Council's BP & SI for review and an analysis of the valuation of the offer. This version has been publicly exhibited. The following comments have been provided:

"With reference to the Cobalt Development VPA proposal, we note the following tangible financial benefits have been proposed by the developer:

1. \$350,000 – being the new public toilets within Cobalt (Jubilee Properties' estimate based on conservative opportunity cost),
2. \$250,000 – being a cash amount payable towards a specified Council project/s
3. \$1.1m – being the transfer to Council of 1 retail unit (area of 128m²) located on the ground floor level of the building fronting Pittwater Road, together with 3 car parking spaces.
4. \$50,000 – being the cost of demolishing the existing public toilet block in St. David's Park.
5. \$1.8 million – being a Council space on Level 2 (total internal area of 194m²). This value being the potential current market residential sales value should it be sold as residential units.
6. \$178,500 – being the cost of installing a lift between the Council office and St. David's Park.
7. \$143,814 - being Section 94 contributions, bonds and special levy already paid under the surrendered development consent 2000/5096, less the amount refunded.

This totals \$3,872,314 or 60% of the proposed total added value of the VPA (noted by the developer as \$6,421,000).

We also note the following intangible community benefits delivered by this project:

- *Larger public open space on Council's own land where the toilets will be demolished and re-located within the Cobalt building.*
- *The opportunity cost that gaining the Level 2 space enables, being a landing point for the future proposed sky bridge.*

Council officers have analysed this offer and note the following assessment of the offer and justifications in the same order as proposed:

1. *\$0 - attributable to the new public toilets – the stated value is slightly higher than our valuation, but is not considered able to be applied to the VPA, as the cost of the toilets were part of the previous development consent justification that enabled additional height at that stage and as such cannot be double counted.*
2. *\$250,000 – cash payable to a project – this is agreed*
3. *\$1,000,000 – attributable to the ground floor retail unit – the independent valuation from Council placed the value of this unit at \$900,000, but similar to the justification provided by the developer, an additional \$100,000 has been added for the allocation of two additional car spaces.*
4. *\$50,000 – demolition of the toilets – this is agreed*
5. *\$810,000 – attributable to the space on level 2 – this has been independently valued with the rate applied being a commercial space rate, for which it is proposed to be used. The \$1.8m valuation provided by the developer is essentially an opportunity cost and that value is not what Council would realise in accepting this space as proposed.*

6. \$178,500 – attributable to the lift – this has not been valued, but is accepted as a reasonable cost for this lift based on benchmarking.
7. \$0 – attributable to the Section 94 refund – this has been requested and addressed previously and is not deemed refundable at the time and Council's position is unchanged.

This totals \$2,288,500 or 36% of the total added value of the VPA.

Note that the stated added value (\$6,421,000) to the developer of the latest development proposal has not been independently valued due to timelines, but has been taken at the developers stated level.

Recommendation

This VPA asks the community and Council to step outside of an existing planning approach (Dee Why Town Centre Masterplan) that went through considerable public consultation, and as such:

- *The public/community benefit should be demonstrably significant.*
- *The value should be visual and tangible.*

As such it is recommended that Council should require a greater proportion for public benefit from this Voluntary Planning Agreement. While there is no formal policy position on this at this time, it is recommended that this be a minimum of 50% of the developer's added value and that is not what is being proposed'

Therefore, Council's BP & SI identifies that the level of public benefit offered to Council in the draft VPA is inadequate and recommends that the offer made by Jubilee Properties Pty Ltd should be rejected.

This recommendation will be made to Council at its meeting on 25 March 2014. Given the limitations of the various agenda reporting timeframes, Council's resolution on this matter was not available at the time of writing this report and will be provided to the Panel as supplementary advice.

Strategic Planning (Urban Design)

The application was referred to Council's Strategic Planning Department (Urban Design) for review. The following comments have been provided:

"DA2013/1168 has been submitted in the context of the adopted Dee Why Town Centre Masterplan by Council in August 2013.

There is a current JRPP approved MOD2011/0087 in place for the site.

The current proposal seeks additional building height and floor area in return for public benefits offered in the form of a Voluntary Planning Agreement as per the resolutions of the Masterplan.

The following table compares the Masterplan resolutions to the proposal:

	Masterplan Resolutions	DA2013/1168 'Cobalt' Development
Gross Floor Area (GFA)	No extra GFA except for Key Sites.	Current building control calculation has determined a Floor Space Ratio (FSR) of 4:1. The proposed FSR is 5.8:1 ie. 3,200m ² over. Car parking is also proposed above ground which will add to the bulk of

	Masterplan Resolutions	DA2013/1168 'Cobalt' Development
	Consider above-ground car parking as GFA	the building and therefore should be considered as floor area.
Height	Building Height Principle Diagram	<p>The Masterplan Building Height Principle Diagram indicates a 15 storey building can be considered provided there are acceptable public benefits offered in return and the built form allows for better public amenities at street level.</p> <p>The proposed building is 16 storeys at the highest point counting the roof plant room.</p>
Public Benefits	Voluntary Planning Agreement (VPA)	<p><u>New Toilets</u> These facilities were offered in the previously approved Development Application (DA).</p> <p><u>Right- of- Carriageway</u> (Vehicle access for neighbouring sites) This was provided for in the previously approved DA.</p> <p><u>Section 94</u> This is not considered as public benefit as it is a compulsory contribution by all building developments.</p> <p><u>Cash/ Property/ Demolition Works contribution</u> \$3.4M worth of properties, cash and demolition works were offered. Please refer to VPA comments for responses.</p> <p><u>Future Sky bridge</u> The proposal provided lift and stairs access to the future potential sky bridge link to the Meriton site across Pittwater Road and spaces for Council facilities at the ground floor and level two. A more direct access in the form of a ramped pedestrian walkway direct from St David Avenue footpath level to the future sky bridge incorporated within the proposed building would be preferred for the potential sky bridge to function properly.</p>
Built Form	Slender tower on top of low podium built form to improve public amenities at street level	<p>The proposed tower form steps from 9,12,13,14,15 to 16 storeys with no distinctive podium building form.</p> <p>Car parking has been proposed above ground adding to the bulk of the building.</p> <p>The Masterplan objective is to allow the bulk of the podium built form to be transferred to a taller slender tower element to cater for a lower building podium which will facilitate more sun penetration and human scaled building elements at street level.</p> <p>The proposal is not consistent with this objective. In fact, it has taken the previously approved DA built form and added a stepping tower form on top.</p>
Conclusion		The proposal as it stands is not consistent with the resolutions of the Masterplan

Therefore, Council's Strategic Planning Department identifies that the development is inconsistent with the Dee Why Town Centre Masterplan due to the additional floor area of 3,200m² (ie: 10,308m² (FSR 5.8:1) minus 7,108m² (FSR 4.0:1)) and the lack of a distinctive podium built form.

The matter of the number of storeys has been discussed at the beginning of this report (refer to 'The Proposed Development (As Lodged)' section) where it was identified that the number of storeys proposed by the development is 15.

As per the findings of Council's BP & SI above, the level of public benefit offered to Council in the draft VPA has also been identified as inadequate in terms of allowing for the additional height, bulk and floor area under the Dee Why Town Centre Masterplan.

The conclusions made by Council's Strategic Planning Department will be made to Council at its meeting on 25 March 2014. Given the limitations of the various agenda reporting timeframes, Council's resolution on this matter was not available at the time of writing this report and will be provided to the Panel as supplementary advice.

Development Engineering

The application was referred to Council's Development Engineer for review. The following comments have been provided on 13 February 2014:

"Development Engineers have reviewed the proposal and advise the stormwater drainage proposal is generally satisfactory. Council's records indicate that Council's pipeline traverses the development site and will be impacted by the development. In this regard, appropriate conditions to divert or re-direct the pipeline around the development have been issued to facilitate future access to Council's pipeline.

Development Engineers note that Traffic Engineers have yet to comment on the recent plans submitted by the applicant. In this regard, Development Engineers have issued conditions related to the proposed vehicle crossing, assuming that Traffic Engineers have no objections to the widths of the proposed vehicle crossing.

If Traffic Engineers require amendment(s) to the conditions related to the proposed vehicle crossing, Development Engineers will need to be advised in order to amend the conditions according to the Traffic Engineers' requirement(s).

No objection to approval and subject to conditions as recommended".

Therefore, Council's Development Engineer raises no objection to the proposal subject to conditions which may be included in a consent should this application be approved.

Traffic Engineering

- (i) The application (as initially lodged) was referred to Council's Traffic Engineer for review. The following comments were provided on 1 November 2013:

"The proposed development is for 149 residential units, 435 m2 of retail and 273 m2 of commercial use.

- The proposed parking provides a shortfall of 38 spaces for the level of development. The Traffic Report indicates that the shortfall will occur in the provision of parking for the commercial/retail components (-25 spaces) and the residential visitor spaces (-13). This is a significant impact and does not meet the requirements of councils DCP.*
- The Traffic Report indicates that the shortfall in parking can be accommodated in the council car park located on the opposite side of St David's Avenue. This car park already has a high occupancy during the day and reliance on the car park for additional parking could not be guaranteed.*
- Two of the Disabled parking spaces on both Basement Level 1 and Basement Level 2 do not conform to the requirement of AS2890.6 for the width of the shared area adjacent to the car parking space. The shared area for a single disabled car space is to be 2.4 metres in width, the same width as the car space.*
- The proposed loading dock for the garbage collection vehicle does not provide for council's waste trucks, which are 11 metres in length, not 9.5 metres as used for the swept path diagram. This also creates potential conflict with vehicles entering and*

exiting the car park area while a garbage truck is attempting to manoeuvre into, or out of, the loading bay.

- *The gutter crossing and footpath crossing is required to be of sufficient width to accommodate all movements in and out of the driveway. The swept path provided showing the movement of the truck indicates that it would be running over the footpath and kerb and gutter.*
- *The applicant needs to confirm the provision of end of trip facilities in the retail/commercial premises for cyclists”.*

(ii) The amended application was referred to Council's Traffic Engineer for review. The following comments were provided on 25 February 2014:

“The proposed development has reduced the number of residential units from 149 to 132 [note: this is an error. The amended proposal has reduced the number of residential units to 129], retail from 435m² [note: the total retail originally proposed (including storage) was 422m² GFA] to 281m² and commercial from 273m² [note: the commercial floor area originally proposed was 213m² GFA] to 136m². This has reduced the overall parking requirement to 178 spaces. The revised development provides 178 spaces. This is acceptable.

It is noted that the revised traffic report provides a different allocation of the spaces to that shown on the revised plans. The revised plans provide a suitable allocation of car parking spaces.

Bicycle parking is proposed to be 61 secure spaces for residents and 13 spaces for visitors. While the resident bicycle parking is less than that outlined in the DCP it is considered acceptable. The amount of visitor bicycle parking is acceptable.

As the proposed adaptable unit parking spaces dimensions are less than the disabled parking spaces, these parking spaces will need to be allocated to the specific adaptable units. The parking spaces for the adaptable units are to comply with AS4299 with regard to length, width (6.0m x 3.8m min.) and vertical clearance. All disabled parking spaces are to comply with AS2890.6 with regard to length, width, provision of the shared area and vertical clearance.

The gutter crossing and footpath crossing is required to be of sufficient width to accommodate all movements in and out of the driveway”.

(iii) Additionally, the following comments were provided by Council's Traffic Engineer on 13 March 2014 to address the impact of traffic volume of the surrounding road network:

“The traffic generation from the proposed development is similar to that previously approved for the sites and considered in the assessment for the Dee Why Town Centre Traffic study carried out by GTA consultants in 2007. At that point it was considered along with a number of other developments within the town centre to provide an overall traffic management plan. In that study the traffic generation from this development was able to be accommodated on the road network.

With the current mix of uses in the development it is calculated that it would generate approximately 40 - 60 vehicle trips during the peak periods. This traffic generation is considered suitable and acceptable for the development. The traffic generated by the development would be able to be accommodated in the existing traffic volumes, that is, it would not substantially increase congestion on the surrounding road network.”

Therefore, Council's Traffic Engineer raises no objection to the proposal subject to conditions which may be included in a consent should this application be approved.

Parks, Reserves and Foreshores

The application was referred to Council's Parks, Reserves and Foreshores Department for review. The following comments were provided on 4 February 2014:

"In relation to management of the significant tree on the adjacent reserve, the conditions as recommended in the arborists report are supported."

It is noted that the Planning Agreement: Demolition, Office Unit, Public Toilets, Retail Unit, Monetary Contribution and Future Sky Bridge includes a clause to allow Jubilee to occupy a portion of St David's Park during the construction period. Use of community land for construction usually requires a Working on Reserves permit to ensure the community land is not left in an inappropriate state following works and fees and bonds apply to these permits."

Given the clause in the agreement, a Working or Reserves Permit will not be required. It is also noted that Clause 6.5 of the Planning Agreement requires the Park to be left clean, level and turfed when returned to public access".

Therefore, Council's Parks, Reserves and Foreshores Department do not raise any objection to the proposal subject to conditions which may be included in a consent should this application be approved.

Roads and Assets

The application was referred to Council's Roads and Assets Department for review. The following comments were provided on 30 October 2013:

The development does not propose any physical change to the existing footpath areas along Pittwater Road and St David Drive.

"Road Asset has no objection to the proposed development."

However, the applicant must construct a full width footpath along the entire frontage of Pittwater Road and St David Drive in accordance with Council's Dee Why town centre design".

Therefore, Council's Roads and Assets department raises no objection to the proposal subject to conditions which may be included in a consent should this application be approved.

Environmental Health and Protection (Contaminated Lands)

The application was referred to the Contaminated Lands Section of Council's Environmental Health and Protection Unit for review. The following comments were provided on 29 October 2013:

"Referral assessed by Environmental Health and protection and has no objections subject to...conditions".

Therefore, Council's Environmental Health and Protection Unit raises no objection to the proposal subject to conditions which may be included in a consent should this application be approved.

Natural Environment Unit (Flood Affected Land)

The application was referred to the Flood Affected Land section of Council's Natural Environment Unit for review. The following comments were provided on 29 October 2013:

"The proposed development is approved with conditions, noting that the finished floor level of the ground floor must be at or above the Flood Planning Level (19.5m AHD [ie: 0.19m above the proposed floor level]). This will be conditioned".

Therefore, the Flood Affected Land section of Council's Natural Environment Unit raises no objection to the proposal subject to conditions which may be included in a consent should this application be approved.

Waste Management

The application was referred to Council's Waste Management department for review. The following comments were provided on 17 October 2013:

"The DA is refused for the following reasons:

- 1) *The bin room is inadequate to store the minimum amount of bins required (113 x 240L or 32 x 660L bins).

The residential waste service is to be provided my Council only (No permission has been given in the past that allow this building (residential) to be serviced by a private contractor). This service will be done weekly only.*
- 2) *The access doors to the bin room must open flat against the wall and be able to be latched in this position.*
- 3) *The bulky goods room is inadequate, and it must have its own separate space. The minimum space required is 60 cubic metres.*
- 4) *The size of the loading dock is unacceptable. The waste vehicle utilised is a heavy rigid vehicle and is 11m long and there must be a 2m clearance between the waste vehicle and the rear of the loading dock to allow for the bins to be wheeled and serviced. The roller shutter on the loading dock is also unacceptable. Council requires unobstructed access to waste bin storage areas.*
- 5) *The truck movements required to manoeuvre into the loading dock is unacceptable. There is only limited vision in each direction for the waste collection vehicle and other vehicles entering or leaving the building.*
- 6) *The proposed plan to leave wheel commercial bins up to the loading dock for emptying is also unacceptable, as it may obstruct the path of Council's waste collection vehicle.*
- 7) *The proposed on-going waste management on each level is unacceptable. The plan proposes that the recycling cupboards will be emptied by a dedicated waste manager on a weekly to a bi-weekly basis – this does not address the concern that these bins may get filled up before they are emptied (weekly or biweekly) and will force residents to throw recyclable materials down the garbage chute. In addition, it is not practical to force residents on level 02 to go up to level 03 to use the waste facilities.*
- 8) *No construction and demolition plan, consistent with Warringah DCP C8, has been supplied. Waste Services' recommend that we meet with the architect to ensure the*

bin room, bin room location and waste vehicle loading area is appropriately designed".

Following a review of the above comments it was considered that the concerns raised by Council's Waste Management Officer could be appropriately addressed by condition. Council's Waste Management Officer has reviewed the above comments and advised the following on 13 March 2014:

"The application is supported subject to conditions. The 'Waste and Recycling Requirement's condition must be submitted to Council's Waste Services for approval prior to the issue of the construction certificate".

Therefore, the Council's Waste Management Department raises no objection to the proposal subject to conditions which may be included in a consent should this application be approved.

Building Assessment

The application was referred to Council's Building Assessment Unit for review who, in their response dated 30 January 2014, did not raise any objection to the proposal subject to conditions which may be included in a consent should this application be approved.

ENVIRONMENTAL PLANNING INSTRUMENTS

All relevant Environmental Planning Instruments, Development Controls Plans and Council Policies have been considered in the merit assessment of this application.

STATE ENVIRONMENTAL PLANNING POLICIES (SEPPs)

State Environmental Planning Policy No. 55 – Remediation of Land

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

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

In response to these requirements, the applicant has submitted a Stage 1 – Environmental Site Assessment Report prepared by Coffey Environments dated 30 June 2011.

The report makes the following conclusions:

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

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

The key AECs that may affect the proposed development are:

- *ACM being present within the existing buildings on the site;*

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

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

- *A Hazardous Material Survey be conducted across the site and within the building structures to identify ACM and/or SMF;*
- *Removal of all refuse across the site to a licensed disposal facility;*
- *Limited soil sampling in the above AECs and in garden beds and analysis for identified PCOCs; and*
- *Should contamination be detected in these areas, that presents an unacceptable risk to human health or the environment, then management and/or remediation may be required”.*

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

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

The Stage 1 Environmental Site Assessment Report as prepared by Coffey Environments may be included as an approved document should this application be approved.

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

SEPP 65 applies to new residential flat buildings, substantial redevelopment/refurbishment of existing residential flat buildings and conversion of an existing building to a residential flat building.

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

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

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

As previously outlined, the proposed development is for the construction of a part 9/part 15 storey mixed retail, commercial and residential development plus basement car parking for the provision of 129 residential dwellings, 5 retail shops and 1 commercial premises.

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

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

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

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

The 10 principles are outlined as follows:

Principle 1: Context

Clause 9 (Principle 1: Context) stipulates that:

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

Comment

The subject site is contained within a defined area identified by the Dee Why Town Centre Masterplan.

The area known as DYTC was rezoned on 28 November 2008 (Amendment No. 21 of WLEP 2000) to facilitate the redevelopment of the ‘core’ of the DYTC on what is known as Site A (Council Car park Site) and Site B (Meriton Site). Site B is located directly opposite the subject site on the eastern side of Pittwater Road. The rezoning permits maximum building heights of 18 storeys (RL 78.00) for the two mixed-use towers within Site B.

As a contextual reference, Site B will comprise mixed use development which includes residential, retail and commercial uses consisting of 3 storey street front buildings to Oaks Avenue and part of Howard Avenue, an 8 storey commercial office building fronting Pittwater Road, 7 storey mid-rise residential buildings, two residential tower buildings (one of part 15/part 18 storeys and one of part 14/part 17 storeys), a publicly accessible “town square” and north-south pedestrian link, 5 levels of carparking (4 basement levels and 1 above ground level), a bus bay and vehicular access.

Therefore, the subject site is in close physical proximity to the Site B and that the contextual solution for the subject site is influenced to a significant extent by the approved tower elements on Site B, as the proposed development, and the Meriton development, will be read in close relationship, as will any other future development within the areas defined by the Dee Why Town Centre Masterplan.

The remainder of the DYTC has experienced some redevelopment, including, the following notable mixed use developments:

- “Dee Why Grand” (redeveloped Dee Why Hotel Site – 6 to 8 storeys and 24 to 30 metres);

- “kallista” (637-641 Pittwater Road – 6 to 7 storeys);
- “Nautilus (647 Pittwater Road – 6 storeys);
- “1-5 Dee Why Parade (The Northern Gateway Site – Up to 8 storeys); and
- “910 Pittwater Road (6 storeys).

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

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

Therefore, with regards to context, the design response of the development, as amended, is considered to be appropriate, as envisaged by the Dee Why Town Centre Masterplan.

Accordingly, it is considered that the proposal satisfies this principle.

Principle 2: Scale

Clause 10 (Principle 2: Scale) stipulates that

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

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

Comment

The proposed development has been conceived on the basis that the subject site is a ‘Gateway Site’ to the DYTC and will provide a transition between the older existing commercial developments along Pittwater Road and the towers of the future Meriton development approved on Site B of the DYTC.

It is accepted that the subject site is a significant site within the DYTC on the basis that it is located on (or the closest site to) the main or primary intersection in the commercial centre of Howard Avenue/St David Avenue and Pittwater Road. The site, and its immediate surrounds, should be treated in a manner that emphasizes its marker status which is generally consistent with the applicable planning controls under WLEP 2011, the WDCP 2011 and the Dee Why Town Centre Masterplan.

In this regard, it has been identified that the development does not provide sufficient public benefit to support a claim for increased building height under the Dee Why Town Centre Masterplan. In this regard, the development cannot rely upon the building heights allowed

for under the Masterplan and any variation to the building height must therefore be assessed solely under the provisions of the WLEP 2011.

The proposed variation of 112.5% (27m) to the Height of Buildings Development Standard under WLEP 2011 has been found to be excessive in its own right, and without the support of the Masterplan, there are not sufficient environmental planning grounds provided by the applicant to justify contravening the Development Standard to such an extent.

Therefore, the non-compliance with the Height of Buildings Development Standard, which ultimately determines the scale of the building, cannot be supported.

Accordingly, it is considered that the proposal does not satisfy this principle.

Principle 3: Built Form

Clause 11 (Principle 3: Built Form) stipulates that

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

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

Comment

The proposed development is considered to contain many examples of good design in terms of its built form, including the composition of building setbacks, levels of articulation, stepped design, use of balconies, podiums, cantilevered roof forms, recessing and strongly defined elements (especially to the NE corner).

The proportions, transitions and flow of the building are considered to be favourable aspects of its built form. The building responds well to its particular location, being a ‘Gateway Site’ and bordered by 4 different interfaces (the park, the street, the church and the existing commercial buildings). The facades of the building provide some good transitions to these interfaces, incorporating areas of strength to the NE corner and relief where required to the church, park and Pittwater Road.

The design provides for a 2.6m wide ‘podium’ to the east where the building gradually steps back at Levels 2 to 8 (inclusive) along the Pittwater Road frontage then, in turn, stepping in along the southern elevation by 6.0m between Levels 9 and 12, then 9.0m at Level 13 and finally 19.5m at Level 14.

The development also includes generous setbacks to St David’s Church, again gradually stepping back from the St. David Avenue due to the offset configuration of the site to the road alignment.

The development incorporates a strong vertical design element at the north-eastern corner to emphasise the corner status of the building and the gateway significance of the site.

Accordingly, it is considered that the proposal satisfies this principle.

Principle 4: Density

Clause 12 (Principle 4: Density) stipulates that:

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

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

Comment

The planning controls under WLEP 2011 and the WDCP 2011 do not specify a maximum housing density for the zone. Rather, density is a function of the other applicable Development Standards and built form controls.

The density envisaged under WLEP 2011 is commensurate with the controls and the determined traffic capacity of DYTC, which is calculated by Council's Strategic Planning department to be an FSR of 4.0:1 (ie: 7,108m²). It should be noted that the FSR for the approval granted under DA2011/0887 is 4.2:1 (ie: 7,463m²).

In respect to the current proposal, the non-compliance with the Height of Buildings Development Standard, results in an FSR of 5.8:1 (ie: 10,308m²) which is 3,200m² greater than that anticipated under the Dee Why Town Centre Masterplan.

Council's Strategic Planning Department has noted that the Masterplan will not permit additional floor area over the current controls and, in this regard, and in the absence of support through the Dee Why Town Centre Masterplan and provision of adequate public benefit, the density, as proposed, is considered to be excessive and cannot be supported.

Accordingly, it is considered that the proposal does not satisfy this principle.

Principle 5 – Resource, energy and water efficiency.

Clause 13 (Principle 5: Resource, Energy and Water Efficiency) stipulates that:

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

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

Comment

The proposed works include demolition of all structures currently on the site and excavation works to accommodate the new development.

The applicant has submitted a Waste Management Plan with the application. Further, a condition of consent could be imposed requiring the submission of a Construction Management Plan (CMP) detailing disposal and recycling of demolition and excavation materials, should the Development Application be approved.

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

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

Accordingly, it is considered that the proposal satisfies this principle.

Principle 6: Landscape

Clause 14 (Principle 6: Landscape) stipulates that:

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

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

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

Comment

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

Notwithstanding, small pockets of landscaping are incorporated at Level 1 at the Pittwater Road frontage and adjoining the Church site. However, these areas are not expansive and do not provide for functional or useable communal open space and are purely for aesthetic purposes.

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

The development provides 319.5m² (17.9%) communal open space (including a Gym and a Communal Room).

The communal open space areas (in conjunction with the Gym and a Communal Room and the proximity of the site to parks and Dee Why Beach) are in the form of roof terraces at Levels 12, 13 and 14 which provide sufficient amenity for occupants.

Accordingly, it is considered that the proposal satisfies this principle.

Principle 7: Amenity

Clause 15 (Principle 7: Amenity) stipulates that:

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

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

Comment

The development has been assessed against the various amenity requirements of the Residential Flat Design Code (RFDC) where it has been found that the development is capable of complying with the relevant Rules of Thumb.

Generally, it is agreed that the design provides a good level of amenity for future occupants, with the majority of apartments having good levels of sunlight access and cross ventilation.

The orientation and layout of the apartments on each level has taken advantage of the northern exposure over the park, the church site and Pittwater Road. The units on the south-western side of the site are the ones which will not be afforded with such high levels of amenity, particularly those units immediately on that south-western boundary with No. 693 Pittwater Road. It is acknowledged that not all units can be provided with superior levels of amenity and that some units will only achieve “satisfactory” amenity considering the constraints imposed by the shape and orientation of the site and the nature of adjoining land uses.

Accordingly, it is considered that the proposal satisfies this principle.

Principle 8 Safety and Security

Clause 16 (Principle 8: Safety and Security) stipulates that:

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

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

Comment

The application was not accompanied by a formal Crime Risk Assessment as required by the RFDC.

Generally, the development provides secure access which is separated from all vehicular access points. All apartments provide balconies and windows which provides passive surveillance over Pittwater Road, St. David's Park and St. David's Church.

Accordingly, it is considered that the proposal satisfies this principle.

Principle 9 Social Dimensions

Clause 17 (Principle 9: Social Dimensions) stipulates that

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

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

Comment

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

The development provides a reasonable mix of apartments and includes active street front uses in the form of 5 x retail premises on the ground floor level which is considered to contribute to the social context by encouraging and providing for social interaction and engagement.

The application was referred to the NSW Police who did not stipulate any requirements for the proposal.

Accordingly, it is considered that the proposal satisfies this principle.

Principle 10 Aesthetics

Clause 18 (Principle 10: Aesthetics) stipulates that:

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

Comment

The proposed development exhibits a high standard of architecture and overall aesthetics, which would contribute positively to the streetscapes of DYTC.

The design incorporates a substantial use of glazing, recessed balconies, architectural framing devices and a variety of materials and textures which are integrated and will provide a visual “uplift” of this site and this portion of DYTC.

The building provides a modern and contemporary form with a well-considered use of physical and material articulation and modulation to provide a distinctive and strongly defined corner element to this intersection. The quality of urban design would provide for the

rejuvenation of a significant amalgamated site within DYTC which would provide further impetus for redevelopment and enhancement of the town centre streetscapes.

The design incorporates transitional elements which step back from the southern boundary as the height of the building increases. This 'stepping back' provides a reasonable level of articulation which relates to the slim-line tower concept approved for Site B and generally as envisaged in the DYTC Masterplan.

Accordingly, it is considered that the proposal satisfies this principle.

Residential Flat Design Code

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

Primary Development Controls	Guideline	Consistent/Comments
PART 01 LOCAL CONTEXT		
Floor space ratio	Where there is an existing floor space ratio (FSR), test height controls against it to ensure a good fit.	<p>Consistent</p> <p>The WLEP 2011 does not include a FSR control. Therefore, this Rule of Thumb has not been considered against the WLEP 2011.</p> <p>While not a planning instrument, the Dee Why Town Centre Masterplan is based on maintaining an FSR of 4.0:1 (ie: 7,108m²). This FSR has been used in the Dee Why Town Centre Masterplan as a base figure to regulate the scale of future development within the town centre. The development proposes an FSR of 5.8:1 (ie: 10,308m²) which consists of an additional 3,200m² above than that envisaged by the Masterplan.</p> <p>Notwithstanding, and with regard to the particular question asked by this Rule of Thumb, the proposed building height is considered to be a good fit on the site and within the DYTC in terms of what is envisaged by the Masterplan.</p>
Building height	Test heights against the number of storeys and the minimum ceiling heights required for the desired building use.	<p>Inconsistent</p> <p><u>Maximum permitted height</u> (WLEP 2011) 24m (approximately 9 storeys)</p> <p><u>Proposed:</u> Between 29m and 51m (+4m and +27m)</p>
Building separation	<p>Design and test building separation controls in plan and section.</p> <p>For buildings up to four storeys/12m:</p> <ul style="list-style-type: none"> (a) 12m between habitable rooms/balconies; (b) 9.0m between habitable rooms/balconies and non-habitable rooms; (c) 6.0m between non-habitable rooms. <p>Note: The RFDC defines a habitable room as any room or area used for normal</p>	<p>Consistent</p> <p>The development, through the gradual stepping in at the southern elevation, demonstrates that compliance can be achieved in providing sufficient building separation between the subject building and any neighbouring building to the south (at No. 693 Pittwater Road) subject to a future Development Application for that land.</p>

Primary Development Controls	Guideline	Consistent/Comments
	domestic activities, including living, dining, family, lounge, bedrooms, study, kitchen, sun room and play room	
Street Setbacks	Identify the desired streetscape character, the common setback of buildings in the street, the accommodation of street tree planting and the height of buildings and daylight access controls.	<p>Consistent</p> <p>The development has been found to be consistent with the current and desired streetscape character (as envisaged in the Dee Why Town Centre Masterplan) which is reflected in the apartment styles of contemporary development within Dee Why.</p> <p>Additionally, the development does not reduce the planting of street trees along Pittwater Road.</p> <p>The development does not unreasonably reduce sunlight to surrounding properties. It is considered that reasonable and equitable level of sunlight is provided and the development is satisfactory.</p> <p>However, while the building height has been found to not be compliant with the Height of Buildings Development Standard under WLEP 2011, it is acknowledged that it is consistent with the vision of the Dee Why Town Centre Masterplan.</p>
	Test street setbacks with building envelopes and street sections.	<p>N/A</p> <p>Building envelopes do not apply to the development.</p>
	Test controls for their impact on the scale, proportion and shape of building facades.	<p>Consistent</p> <p>The development exhibits an appropriate level of articulation which is in keeping with the relative scale, proportion and shape of building facades along Pittwater Road (as approved for Site B and as envisaged in the Dee Why Town Centre Masterplan).</p> <p>The development responds to the existing topography of the site and the overall scale of the development is considered to be appropriate given the context of the site and its relationship to the Dee Why Town Centre Masterplan.</p>
Side & Rear setbacks	Relate side setbacks to existing streetscape patterns.	<p>N/A</p> <p>There are no applicable side and rear setback controls under WDCP 2011.</p>
Floor space ratio	Test the desired built form outcome against proposed floor space ratio to ensure consistency with building height- building footprint the three dimensional building envelope open space requirements.	<p>Consistent</p> <p>The WLEP 2011 does not include an FSR control.</p> <p>However, the Dee Why Town Centre Masterplan recommends an FSR of 4.0:1 (ie: 7,108m²).</p> <p>The development proposes an FSR of 5.8:1 (ie: 10,308m²) which consists of an additional floor area of 3,200m² above than that envisaged by the Masterplan.</p> <p>Notwithstanding the increased floor area, the proposed FSR does not result from a built form</p>

Primary Development Controls	Guideline	Consistent/Comments
		which is inconsistent with that generally envisaged by the Masterplan for the site.
PART 02 SITE DESIGN		
Deep soil zones	A minimum of 25% of the open space area of a site should be a deep soil zone; more is desirable. Exceptions may be made in urban areas where sites are built out and there is no capacity for water infiltration. In these instances, Stormwater treatment measures must be integrated with the design of the residential flat building.	<p>Consistent (Subject to condition)</p> <p>The development provides for 4.8% deep soil landscaping.</p> <p>The total deep soil landscaped area is 86.6m² of which 33m² will be required to be removed at a future date to allow for through site access to No. 693 Pittwater Road.</p> <p>However, the development provides for effective stormwater /treatment management measures to facilitate drainage and water flow which have been supported by Council's Development Engineer and the Flood Prone Land section of Council's Natural Environment Unit, subject to conditions.</p>
Open Space	The area of communal open space required should generally be at least between 25% and 30% of the site area. Larger sites and brownfield sites may have potential for more than 30%.	<p>Consistent (Subject to condition)</p> <p>The development provides 319.5m² (17.9%) communal open space (including a Gym and a Communal Room).</p> <p>The communal open space areas (in conjunction with the Gym and a Communal Room and the proximity of the site to parks and Dee Why Beach) are in the form of roof terraces at Levels 12, 13 and 14 which are considered to provide sufficient amenity for occupants.</p> <p>Further, the communal open space areas in the form of roof-top terraces may be feasibly increased in area to comply with the recommended percentage. For example, the Open Terraces located on Level 9 & the Roof could be increased to achieve a further 72m² thereby increasing the provision of communal open space to 391m² (or 22%).</p>
	Where developments are unable to achieve the recommended communal open space, such as those in dense urban areas, they must demonstrate that residential amenity is provided in the form of increased private open space and/or in a contribution to public open space.	<p>N/A</p> <p>Notwithstanding that the site is located within a dense urban area, the development, as discussed above, is capable of providing a compliant level of communal open space.</p>
	The minimum recommended area of private open space for each apartment at ground level or similar space on a structure, such as on a podium or car park, is 25m ² ; the minimum preferred dimension in one direction is 4.0m. (see 'Balconies' for other private open space requirements).	<p>Inconsistent</p> <p>The development does not provide for private open space areas to those units on or adjacent to the 9th storey podium which achieve the minimum recommended area of 25m².</p>
Planting on structures	In terms of soil provision there is no minimum standard that can be applied to all situations as the requirements vary with the size of plants and trees at maturity.	<p>Consistent</p> <p>There is no minimum landscaped open space provision required for such development within</p>

Primary Development Controls	Guideline	Consistent/Comments
	<p>The following are recommended as minimum standards for a range of plant sizes:</p> <ul style="list-style-type: none"> • Large trees such as figs (canopy diameter of up to 16m at maturity) - minimum soil volume 150m³ - minimum soil depth 1.3m - minimum soil area 10m x 10m area or equivalent. • Medium trees (8.0m canopy diameter at maturity) - minimum soil volume 35m³ - minimum soil depth 1.0m - approximate soil area 6.0m x 6.0m or equivalent. • Small trees (4.0m canopy diameter at maturity) - minimum soil volume 9.0m³ - minimum soil depth 800mm - approximate soil area 3.5m x 3.5m or equivalent. • Shrubs - minimum soil depths 500-600mm • Ground cover - minimum soil depths 300-450mm • Turf- minimum soil depths 100-300mm • Any subsurface drainage requirements are in addition to the minimum soil depths quoted above. 	<p>the zone. This is due to the dense urban environment and envisaged character of development in DYT, which is abutting mixed development (shop top housing or retail/office) development sites. Accordingly, due to the urban context within which this site is located, minimal landscaping has not been provided nor could be provided at ground level.</p> <p>Notwithstanding, small pockets of landscaping are incorporated at Level 1 at the Pittwater Road frontage and adjoining the Church site. However, these areas are not expansive and do not provide for functional or useable communal open space and are purely for aesthetic purposes.</p> <p>Owing to the location of the site adjacent to St David's Park, the site is afforded with enhanced levels of landscape amenity for the residential apartments and commercial uses which would look directly over the park. The large tree on the park site will soften and screen parts of the proposed development when viewed from the north.</p>
Safety	Carry out a formal crime risk assessment for all residential developments of more than 20 new dwellings.	<p>Consistent</p> <p>The development accommodates 129 units and is therefore subject to an assessment under the principles of Crime Prevention Through Environmental Design (CPTED).</p> <p>CPTED is a strategy focusing on the planning, design and structure of areas. The concept identifies opportunities for reducing crime through design and place management principles which block opportunities for crime or by making crimes more difficult by creating obstacles or barriers to targets.</p> <p>CPTED employs four key strategies:</p> <p>Access control is a design concept directed primarily at decreasing crime opportunity. It seeks to attract, channel or restrict the movement of people through landscaping, barriers and personnel. Access control can be organised (guards), mechanical (locks) or natural (spatial definition).</p> <p><u>Comment:</u></p> <p>The development provides for a mechanical form of access control with the use of secured entries to create a defined boundary between the public and private domain.</p> <p>Territorial reinforcement occurs when physical design creates or extends a sphere of influence so that users develop a sense of proprietorship.</p>

Primary Development Controls	Guideline	Consistent/Comments
		<p>Territorial reinforcement can be achieved through design that encourages people to gather in public space and to feel some responsibility for its use and condition; design with clear transitions and boundaries between public and private space; and clear design cues on who is to use the space and what it is used for.</p> <p><u>Comment:</u></p> <p>The design of the development includes a main entrance to Pittwater Road and balconies to the street frontage which encourages the residents of the building to develop a sense of ownership and responsibility.</p> <p>Natural surveillance is a design concept directed primarily at keeping intruders/offenders under observation. This can be achieved by maximising sightlines, improving lighting and the removal of barriers and hiding spots.</p> <p><u>Comment:</u></p> <p>The development permits passive surveillance of the street frontage. The development, particularly at the lower levels, is in full sight of approaching traffic and surrounding development.</p> <p>Space management is linked to the principle of territorial reinforcement. Space management ensures that space is appropriately utilised and well cared for. Examples include: activity coordination, site cleanliness, rapid repair, removal or refurbishment of decayed physical elements. From this perspective, the design of the built environment is critical for the prevention of crime.</p> <p><u>Comment:</u></p> <p>The ongoing maintenance of the development is subject to a private arrangement with the body corporate of the development.</p> <p>The Development Application was referred to the NSW Police and no requirements were made in response.</p>
Visual amenity	Refer to Building Separation minimum standards.	<p>Consistent</p> <p>The development achieves side setbacks to the south between Levels 9 and 14 which will enable future development to occur on the neighbouring property (No. 693 Pittwater Road) without undue constraint.</p>
Pedestrian access	Identify the access requirements from the street or car parking area to the apartment entrance.	<p>Consistent</p> <p>The development provides level pedestrian access to all floor levels from the basement car parking area.</p>
	Follow the accessibility standard set out in AS 1428 (parts 1 and 2), as a minimum.	<p>Consistent</p>

Primary Development Controls	Guideline	Consistent/Comments																																																		
		A condition may be imposed requiring the development to comply with the Australian Standard, should the application be approved.																																																		
	Provide barrier free access to at least 20% of dwellings in the development.	Consistent 100% of apartments have barrier free access via a direct lift to all floors.																																																		
Vehicle access	Generally limit the width of driveways to a maximum of 6.0m.	Consistent The development proposes a driveway width of 6.0m.																																																		
	Locate vehicle entries away from main pedestrian entries and on secondary frontages	Consistent The development locates the driveway on the secondary road frontage of St. David Avenue.																																																		
PART 03 BUILDING DESIGN																																																				
Building depth	The back of a kitchen should be no more than 8.0m from a window.	Consistent All residential units within the development achieve a building depth of 8.0m or less.																																																		
Balconies	Provide primary balconies for all apartments with a minimum depth of 2.0m. Developments which seek to vary from the minimum standards must demonstrate that negative impacts from the context-noise, wind – can be satisfactorily mitigated with design solutions.	Consistent (Subject to condition) The development provides for a minimum of 10m ² private open space area per dwelling in the form of balconies with exception to the following units: <table><tr><th>Apartment</th><th>POS Area</th></tr><tr><td>3.01</td><td>9m²</td></tr><tr><td>3.02</td><td>8.75m²</td></tr><tr><td>3.13</td><td>9m²</td></tr><tr><td>4.01</td><td>9m²</td></tr><tr><td>4.02</td><td>8.75m²</td></tr><tr><td>4.12</td><td>9m²</td></tr><tr><td>5.01</td><td>9m²</td></tr><tr><td>5.02</td><td>8.75m²</td></tr><tr><td>5.13</td><td>9m²</td></tr><tr><td>6.01</td><td>9m²</td></tr><tr><td>6.02</td><td>8.75m²</td></tr><tr><td>6.12</td><td>9m²</td></tr><tr><td>7.01</td><td>9m²</td></tr><tr><td>7.02</td><td>8.75m²</td></tr><tr><td>7.13</td><td>9m²</td></tr><tr><td>8.01</td><td>9m²</td></tr><tr><td>8.02</td><td>8.75m²</td></tr><tr><td>8.12</td><td>9m²</td></tr><tr><td>9.01</td><td>9m²</td></tr><tr><td>9.02</td><td>8.75m²</td></tr><tr><td>9.07</td><td>8,8m²</td></tr><tr><td>9.09</td><td>9m²</td></tr><tr><td>9.10</td><td>9m²</td></tr><tr><td>10.01</td><td>9m²</td></tr></table>	Apartment	POS Area	3.01	9m ²	3.02	8.75m ²	3.13	9m ²	4.01	9m ²	4.02	8.75m ²	4.12	9m ²	5.01	9m ²	5.02	8.75m ²	5.13	9m ²	6.01	9m ²	6.02	8.75m ²	6.12	9m ²	7.01	9m ²	7.02	8.75m ²	7.13	9m ²	8.01	9m ²	8.02	8.75m ²	8.12	9m ²	9.01	9m ²	9.02	8.75m ²	9.07	8,8m ²	9.09	9m ²	9.10	9m ²	10.01	9m ²
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Provide scale plans of balcony with furniture layout to confirm adequate, useable space when an alternate balcony depth is proposed.																																																				

Primary Development Controls	Guideline	Consistent/Comments																															
		<table><tr><td>10.02</td><td>8.75m²</td></tr><tr><td>10.08</td><td>9m²</td></tr><tr><td>10.09</td><td>8.75m²</td></tr><tr><td>11.01</td><td>9m²</td></tr><tr><td>11.02</td><td>8.75m²</td></tr><tr><td>11.09</td><td>8.75m²</td></tr><tr><td>11.10</td><td>8.75m²</td></tr><tr><td>12.01</td><td>9m²</td></tr><tr><td>12.02</td><td>8.75m²</td></tr><tr><td>12.06</td><td>8.75m²</td></tr><tr><td>12.07</td><td>8.75m²</td></tr><tr><td>13.01</td><td>8.75m²</td></tr><tr><td>13.02</td><td>8.75m²</td></tr><tr><td>13.05</td><td>8.75m²</td></tr><tr><td>13.06</td><td>8.75m²</td></tr></table>	10.02	8.75m ²	10.08	9m ²	10.09	8.75m ²	11.01	9m ²	11.02	8.75m ²	11.09	8.75m ²	11.10	8.75m ²	12.01	9m ²	12.02	8.75m ²	12.06	8.75m ²	12.07	8.75m ²	13.01	8.75m ²	13.02	8.75m ²	13.05	8.75m ²	13.06	8.75m ²	<p>The above table indicates that 39 of the 129 units (ie: 30.2%) are below the minimum area required under the WDCP 2011.</p> <p>Notwithstanding, the reduced areas are considered to be small and can be addressed through an appropriate condition requiring their increase to 10m², should this application be approved.</p>
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Ceiling heights	<p>The following recommended dimensions are measured from finished floor level (FFL) to finished ceiling level (FCL). These are minimums only and do not preclude higher ceilings, if desired.</p> <ul style="list-style-type: none">• in mixed use buildings: 3.3m minimum for ground floor retail or commercial and for first floor residential, retail or commercial to promote future flexibility of use• in residential flat buildings in mixed use areas: 3.3m minimum for ground floor to promote future flexibility of use in residential flat buildings or other residential floors in mixed use buildings• in general, 2.7m minimum for all habitable rooms on all floors, 2.4m is the preferred minimum for all non-habitable rooms, however 2.25m is permitted.• for two storey units, 2.4m minimum for second storey if 50 percent or more of the minimum wall height at edge• for two-storey units with a two storey void space, 2.4m minimum ceiling heights• attic spaces, 1.5 metre minimum wall height at edge of room with a 30 degree minimum - ceiling slope.	<p>Consistent</p> <p>The retail premises at the ground floor level achieve a floor to ceiling height of 3.3m.</p> <p>All apartments achieve a floor-to-ceiling height of 2.7m which is in accordance with Part F3 (Clause F3.1(iii)) of the Building Code of Australia.</p>																															
Ground Floor Apartments	Optimise the number of ground floor apartments with separate entries and	N/A																															

Primary Development Controls	Guideline	Consistent/Comments
	consider requiring an appropriate percentage of accessible units. This relates to the desired streetscape and topography of the site.	There are no apartments located at ground floor level.
	Provide ground floor apartments with access to private open space, preferably as a terrace or garden.	N/A There are no apartments located at ground floor level.
Storage	<p>In addition to kitchen cupboards and bedroom wardrobes, provide accessible storage facilities at the following rates:</p> <ul style="list-style-type: none"> • studio apartments 6.0m³ • one-bedroom apartments 6.0m³ • two-bedroom apartments 8.0m³ • three plus bedroom apartments 10m³ 	<p>Consistent (Subject to condition)</p> <p>1 bedroom – 114 x 6.0m³ = 684m³ 2 bedroom – 15 x 8.0m³ = 120m³ Total storage required = 804m³ Total storage provided = 590m³ Deficiency = 214m³</p> <p>The deficiency in storage space is considered to be a matter which could be resolved by condition should this application be approved.</p>
Building Amenity		
Daylight Access	Living rooms and private open spaces for at least 70% of apartments in a development should receive a minimum of three hours direct sunlight between 9am and 3pm in mid-winter. In dense urban areas a minimum of two hours may be acceptable.	Consistent 78.3% (101) of apartments receive a minimum of two hours direct sunlight between 9am and 3pm in mid-winter.
	<p>Limit the number of single-aspect apartments with a southerly aspect (SWSE) to a maximum of 10% of the total units proposed.</p> <p>Note: The RFDC does not define single-aspect apartments but does define dual aspect apartments as having at least two major external walls facing in different directions, including corner, cross over and cross through apartments.</p>	<p>N/A</p> <p>There are no south-facing apartments.</p>
Natural Ventilation	Building depths, which support natural ventilation typically range from 10m to 18m.	Consistent (On Merit) Apartments achieve a depth of between 7.2m to 8.5m.
	Sixty percent (60%) of residential units should be naturally cross ventilated.	<p>Consistent</p> <p>Approximately 31% (40) of apartments are naturally cross ventilated. These apartments are located at each corner of the building and at the southern elevation.</p> <p>Notwithstanding, it is noted that those apartments which do not satisfy the requirement of this Rule of Thumb are relatively small and, because of their elevated position and access to balcony areas through sliding doors, have access to unrestricted airflow than if they were positioned closer to the ground where airflow would be more restricted.</p> <p>Given the shape of the site and the subsequent</p>

Primary Development Controls	Guideline	Consistent/Comments
		limitations in designing a tower flat building to fit the site, it is considered that the level of access to natural ventilation is reasonable in this instance.
Building Performance		
Waste management	Supply waste management plans as part of the development application submission as per the NSW Waste Board.	Consistent Subject to condition.
Water conservation	Rainwater is not to be collected from roofs coated with lead- or bitumen-based paints, or from asbestos- cement roofs. Normal guttering is sufficient for water collections provided that it is kept clear of leaves and debris.	Consistent The development provides for normal guttering. No lead or bitumen-based paints will be permitted.

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

An amended Multi-Dwelling BASIX certificate has been submitted with the application (see Certificate No. 500480M-02 dated 24 January 2014).

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

Commitment	Required Target	Proposed
Water	40	40
Thermal Comfort	Pass	Target Pass
Energy	20	20

A condition has been included in the recommendation of this report requiring compliance with the commitments indicated in the BASIX Certificate.

State Environmental Planning Policy (Infrastructure) 2007

Clause 45

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

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

The application was referred to Ausgrid under clause 45(2) of State Environmental Planning Policy (Infrastructure) 2007.

Ausgrid provided their comments on 19 November 2013 in which no objection was raised subject to conditions.

The conditions provided by Ausgrid may be included in a consent should this application be approved.

Clause 102

Clause 102 applies to residential development adjacent to a road corridor or freeway with an annual average daily traffic volume of more than 40,000 vehicles and which the consent authority considers would be likely to be adversely affected by road noise or vibration. The Road and Maritime Services (RMS), which was previously known as RTA, have published traffic volume maps for NSW (*Traffic Volume Maps for Noise Assessment for Building on Land Adjacent to Busy Roads*). The noise assessment for the development is indicated on Map 12 as mandatory under Clause 102 of the SEPP.

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

Clause 102(3) prohibits the consent authority from granting consent to residential development adjacent to a road corridor or freeway unless it is satisfied that appropriate measures will be taken to ensure that the above-mentioned LAeq levels are not exceeded. As the site is located adjacent to Pittwater Road which has volume in order of 47, 000 vehicles per day, this Clause applies to the proposed development.

In this regard, the applicant has submitted an acoustic report (prepared by Koikas Acoustic, dated 26 September 2013). In summary, the acoustic report recommends design measures to minimise the acoustic impact of the traffic on residential development.

Therefore, the subject application is considered to satisfy the provisions of Clause 102 subject to condition to be included in the consent if the application is worthy of approval to adopt the recommendations of the acoustic report in the design of the proposed development.

Clause 106

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

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

Clause 106 'Traffic generating development' of the SEPP requires the application be referred to the RMS within 7 days, and take into consideration any comments made within 21 days, if the development is specified in Schedule 3 of the SEPP.

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

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

The development consists of 129 dwellings and proposes a new crossover onto St David Avenue which is within 90 metres of Pittwater Road, a classified road (Arterial Road).

The application was referred to the RMS for comment as traffic generating development under Schedule 3 of State Environmental Planning Policy (Infrastructure) 2007. The RMS provided their comments on 16 December 2013 in which no objection was raised subject to conditions.

The conditions provided by the RMS may be included in a consent should this application be approved.

STATE REGIONAL ENVIRONMENTAL PLANS (SREPs)

There are no SREPs applicable to the site.

LOCAL ENVIRONMENTAL PLANS

WARRINGAH LOCAL ENVIRONMENT PLAN 2011

The Warringah Local Environmental Plan 2011 is applicable to the development.

Is the development permissible with consent?	Yes
After consideration of the merits of the proposal, is the development consistent with:	
Aims of the LEP?	Yes
Zone objectives of the LEP?	Yes

Principal Development Standards

Relevant Development Standard	Requirement	Proposed	Variation (%)	Compliance
Clause 4.3 Height of Buildings	24m (maximum)	Variable from 29m to 51m	Variable up to +27m (112.5%)	No

Compliance Assessment Summary

Relevant Clauses	Compliance with Requirements
Part 1 Preliminary	
1.2 Aims of the Plan	Yes
Part 2 Permitted or prohibited development	
2.1 Land Use Zones	Yes
2.7 Demolition requires consent	Yes
Part 4 Principal development standards	
4.3 Height of buildings	No
4.6 Exceptions to development standards	No
Part 5 Miscellaneous Provisions	
5.9 Preservation of trees or vegetation	Yes
Part 6 Additional Local Provisions	
6.2 Earthworks	Yes
6.3 Flood planning	Yes
6.4 Development on sloping land	Yes

Detailed Assessment of the Variation to Clause 4.3 – Height of Buildings Development Standard

The following assessment of the variation to Clause 4.3 – Height of Buildings development standard is assessed taking into consideration the questions established in *Winten Property Group Limited v North Sydney Council* (2001) NSW LEC 46.

The proposal must satisfy the objectives of Clause 4.3 – Height of Buildings, the underlying objectives of the particular zone, and the objectives of Clause 4.6 - Exceptions to Development Standards under the WLEP 2011. The assessment is detailed as follows:

Is the planning control in question a development standard?

The prescribed Height of Buildings limitation pursuant to Clause 4.3 of the WLEP 2011 is a development standard.

What are the underlying objectives of the development standard?

The underlying objectives of the standard, pursuant to Clause 4.3 – ‘Height of buildings’ of the WLEP 2011 are:

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

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

Comment

The proposed height is considered to be compatible with the height approved for the Meriton development on Site B and the heights envisaged under the Dee Why Town Centre Masterplan.

However, the increased height envisaged for under the Masterplan is contingent upon the provision of an appropriate level of material public benefit. As noted earlier in this report, Council's BP & SI and Strategic Planning Department advise that the level of public benefit offered to Council in the draft VPA is inadequate in terms of compensating for the additional height, bulk and floor area under the Dee Why Town Centre Masterplan. Therefore, the proposed development does not qualify for the exceptions embodied in the Masterplan.

The proposed tower design is also consistent with the vision embodied in the North-East Subregional Strategy which envisages taller buildings in the Major Centre of Dee Why.

When considered solely against the objectives and requirements of WLEP 2011 which envisages that buildings do not to exceed the 24m height limit, the proposed 51m height of the development is considered to be excessive and unjustified.

The approval of such a significant variation will create an undesirable precedent by encouraging other developments, which do not satisfy the public benefit requirements in the Masterplan, to also exceed the height limit.

The flow-on effect of approving the proposed building height, in isolation of the Masterplan, will be an erosion of both the Development Standard and the Dee Why Town Centre Masterplan.

Accordingly, it is considered that the proposal does not satisfy this Objective.

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

Comment

As noted above, the proposed height is considered to be compatible with the height approved for the Meriton development on Site B directly opposite the subject site and the heights envisaged under the Dee Why Town Centre Masterplan. In this regard, the subject development would blend in with the development envisaged within the Town Centre.

The development, as amended, has been designed to minimise impact in terms of bulk through the reduction to the overall width of the building between Levels 9 and 14. This narrower built form enables a greater provision of distant view sharing from residential properties located on the ridgeline and hillsides to the west and minimises the loss of solar access to private and public domains around the site. The development is considered to be a sufficient distance from residential properties to not have any unreasonable impact upon privacy.

However, given that the development is being assessed against the 'Height of Buildings' Development Standard under the WLEP 2011, the proposed building height of 51m significantly exceeds the permitted building height of 24m and, in this regard, the visual impact of the development would be significantly lessened if the development achieved compliance.

Accordingly, it is considered that the proposal does not satisfy this Objective.

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

Comment

The site is located on the western side of Pittwater Road directly opposite Site B in the Dee Why Town Centre. As such, views of the building will be concealed from Dee Why Beach and the ocean when the Meriton development is constructed.

The building will be visible from the Long Reef Headland but, because of the north-easterly angle, will form part of the Dee Why Town Centre redevelopment.

However, given that the development is being assessed against the 'Height of Buildings' Development Standard under the WLEP 2011 and not the Dee Why Town Centre Masterplan, the proposed building height of 51m significantly exceeds the permitted building height of 24m and, in this regard, the impact of the development on the scenic quality of Warringah's coastal environment in this regard, the impact of the development would be significantly lessened if the development achieved compliance.

Accordingly, it is considered that the proposal does not satisfy this Objective.

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

Comment:

The site is located within the area defined by the Dee Why Town Centre Masterplan which envisages a building of up to 15 storeys in height.

However, given that the development is assessed against the 'Height of Buildings' Development Standard under the WLEP 2011 and not the Dee Why Town Centre Masterplan, the proposed building height significantly exceeds the permitted building height and, in this regard, the visual impact of the development would be significantly lessened if the development achieved compliance.

Accordingly, it is considered that the proposal does not satisfy this Objective.

In conclusion, a variation to the Building Height Development Standard under Clause 4.6 of WLEP 2011 cannot be supported for reasons that the proposed height of the development is inconsistent with the objectives of the Standard.

What are the underlying objectives of the zone?

In assessing the development's non-compliance, consideration must be given to its consistency with the underlying objectives of the B4 Mixed Use zone.

- ***To provide a mixture of compatible land uses.***

Comment

The development provides for a mix of uses consisting retail, commercial and residential.

The uses accommodated within the development are considered to be compatible with the surrounding area of the Dee Why Town Centre.

The proposal satisfies this objective.

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

Comment

The development provides retail and commercial floor space in an area which is easily accessible to public transport links. Additionally, the site is within walking and cycling distance to local parks, reserves and Dee Why Beach.

The proposal satisfies this objective.

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

Comment

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

The development provides a mix of apartments and contains retail and commercial premises and provides for a taller built form in the form of a tower building. This is considered consistent with the objectives and intent of the Sydney Metropolitan Strategy and North East Sub-regional Strategy.

The proposal satisfies this objective.

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

Comment

The development contains retail premises at the ground level, facing Pittwater Road, which could feasibly include a cafe use. This would provide appropriate activation at the street level, particularly given its location close to the bus stop.

The proposal satisfies this objective.

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

Comment

The development includes retail and commercial premises at the ground floor level which contribute towards the commercial land use pattern within the Dee Why Town Centre.

The incorporation of housing at the upper levels contributes towards the growth of living space is within the Town Centre.

The proposal satisfies this objective.

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

Comment:

The development will require the amalgamation of 3 sites which enables a more substantial and consistent scale of development more in keeping with the approved development on Site B within the Town Centre and the vision established in the Dee Why Town Centre Masterplan.

However, while the majority of car parking is located within the below ground basement carpark levels, it is noted that a portion of the car parking is also located within the above-ground mezzanine level over the retail premises.

In this regard, the proposal does not satisfy this objective.

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

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

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

Comment:

Due to the excessive building height proposed by the development, the degree of flexibility in applying the variation to the Development Standard is considered to be inappropriate.

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

Comment:

The variation to the Development Standard will not achieve a better outcome. Rather, because the development cannot rely on any exceptions envisaged under the Dee Why Town Centre Masterplan, the approval of the proposed variation would create an undesirable precedent for other development to seek similar variations and would undermine the aims, objectives and requirements of the Development Standard and the strategic intent of the Masterplan.

- (2) Development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.

Comment:

The site is not excluded from the operation of this Clause.

- (3) Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:

- (a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and**

- (b) that there are sufficient environmental planning grounds to justify contravening the development standard.**

Comment:

The applicant has provided a written request that addresses the non-compliance in relation to varying the building height development standard under the provisions of the WLEP 2011.

However, the written request relies upon the exceptions embodied in the Dee Why Town Centre Masterplan where an increased height of up to 15 storeys is envisaged on this site provided that sufficient public benefit is provided through a VPA.

Because of the inadequate provision of public benefit in the draft VPA, the development is inconsistent with the aims and objectives and intent of the Dee Why Town Centre Masterplan. In this regard, the development does not qualify for an assessment of greater building height made available by the Masterplan.

In this regard, the written request does not contain sufficient environmental planning grounds to justify contravening the development standard to such a significant extent and compliance with the Development Standard is therefore considered to be reasonable and necessary under the circumstances.

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

(a) the consent authority is satisfied that:

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

Comment:

The written request provided by the applicant to vary the Development Standard adequately addresses the matters required to be demonstrated by subclause (3).

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

Comment:

Given the absence of support from the Dee Why Town Centre Masterplan, the non-compliance with the building height standard is not considered to be in public interest as the proposed development is found to be inconsistent with the objectives of the building height development standard.

Therefore, for reasons detailed above, the proposal is considered to be inconsistent with the objectives of the B4 Mixed Use zone in the WLEP 2011.

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

Comment:

Planning Circular PS 08-003 dated 9 May 2008, as issued by the NSW Department of Planning, advises that the concurrence of the Director-General may be assumed for exceptions to development standards under environmental planning instruments that adopt Clause 4.6 of the Standard Instrument.

In this regard, the concurrence of the Director-General for the variation to the Height of Buildings Development Standard is assumed.

DEVELOPMENT CONTROL PLANS

WARRINGAH DEVELOPMENT CONTROL PLAN 2011

The Warringah Development Control Plan 2011 is applicable to the development.

Compliance Assessment Summary

Clause	Compliance with Requirements	Consistency Aims/Objectives
Part A Introduction		
A.5 Objectives	Yes	Yes
Part C Siting Factors		
C2 Traffic, Access and Safety	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
C3 Parking Facilities	Yes	Yes
C4 Stormwater	Yes	Yes
C5 Erosion and Sedimentation	Yes	Yes
C6 Building over or adjacent to Constructed Council Drainage Easements	Yes	Yes
C7 Excavation and Landfill	Yes	Yes
C8 Demolition and Construction	Yes	Yes
C9 Waste Management	Yes	Yes
Residential accommodation - 3 or more dwellings	Yes	Yes
Part D Design		
D2 Private Open Space	No	Yes
D3 Noise	Yes	Yes
D6 Access to Sunlight	Yes	Yes
D7 Views	Yes	Yes
D8 Privacy	Yes	Yes
D9 Building Bulk	Yes	No
D10 Building Colours and Materials	Yes	Yes
D11 Roofs	Yes	Yes
D12 Glare and Reflection	Yes	Yes
D14 Site Facilities	Yes	Yes
D18 Accessibility	Yes	Yes
D20 Safety and Security	Yes	Yes
D21 Provision and Location of Utility Services	Yes	Yes
D22 Conservation of Energy and Water	Yes	Yes
Part E The Natural Environment		
E1 Private Property Tree Management	Yes	Yes
E7 Development on land adjoining public open space	Yes	Yes
E10 Landslip Risk	Yes	Yes
Part G Special Area Controls (see separate table below)		
G1 Dee Why Mixed Use Area Area 7 – Pittwater Road	No	No
Part H Appendices		
Appendix 1 Car Parking Requirements	Yes	Yes
Appendix 8 Removal of Tree Tests	Yes	Yes
Appendix 9 Tree Retention Assessment	Yes	Yes
Appendix 10 Details to be contained within an Arborists Report	Yes	Yes
Appendix 11 Class 2-9 Buildings	Yes	Yes

Built Form Controls

Principle Numerical Controls	Requirement	Proposed	% Variation	Complies
B1 Wall Height	N/A	N/A	N/A	N/A
B2 Number of Storeys	N/A	N/A	N/A	N/A
B3 Side Boundary Envelopes	N/A	N/A	N/A	N/A
B4 Site Coverage	N/A	N/A	N/A	N/A
B5 Side Boundary Setbacks	N/A	N/A	N/A	N/A
B7 Front Boundary Setbacks	N/A	N/A	N/A	N/A
B9 Rear Boundary Setbacks	N/A	N/A	N/A	N/A

Principle Numerical Controls	Requirement	Proposed	% Variation	Complies
D1 Landscaped Open Space	N/A	N/A	N/A	N/A

Part G Special Area Controls

The site is located within Area 7 – Pittwater Road under the WDCP 2011.

Note: Clause A.6 of the WDCP 2011 stipulates that, in the event of any inconsistency between Part G and Parts C, D and E, the requirements of Part G will prevail.

The following table provides an assessment of the development against the controls of Part G:

Requirement (as applicable under Area 7 – Pittwater Road)	Comment	Compliance
1. Entry to the area will be marked by a building at the southern corner of the intersection of Dee Why Parade and Pittwater Road. The scale and architectural treatment of this building will distinguish it from other buildings and define the edge of the town centre.	Not applicable	N/A
2. Buildings are to define the streets and public spaces and create environments that are appropriate to the human scale as well as comfortable, interesting and safe. In particular, future development is to ensure that a 4 storey podium adjoins the sidewalk and establishes a coherent parapet line along Pittwater Road. Above the parapet line additional storeys will be set back to maintain solar access to the sidewalks and ensure that the scale of buildings does not dominate public spaces. Building facades are to be articulated in such a way that they are broken into smaller elements with strong vertical proportions and spaces created between buildings at the upper levels to add interest to the skyline, reduce the mass of the building and facilitate the sharing of views and sunlight.	<p>The development provides a modern and contemporary architectural design incorporating distinct horizontal and vertical building elements over the various facades of the building. Included in these strong architectural design elements is a 9 storey podium (ie, the top of the building approved under DA2011/0887) facing part of the Pittwater Road frontage, which will provide a consistent streetscape for future developments extending to the south along Pittwater Road as envisaged by the Dee Why Town Centre Masterplan. The podium level also provides a transition toward the 3 storey heritage listed Commonwealth Bank Building located at 691 Pittwater Road.</p> <p>The proposal also includes adequate physical separation of between 11.5m to 25m) to St David's Church site to the west which is a function of the requirements of the RFDC in ensuring adequate space between the proposed residential components of the building and existing and future development on the church site. The substantial setbacks to the church site provide some respect to that sensitive land use.</p> <p>As mentioned previously, the site is considered to be a gateway site at the main intersection within the DYTC and that its significance should be emphasised. In this regard, the development provides a strong corner definition at the NE corner of the site by using strong vertical elements. It is noted that the subject site is not actually on the corner, rather the park is on the corner. Nevertheless, the corner 'build-to' treatment is generally considered an appropriate design response to the location and context of the site and the visual prominence of the site when viewed from Pittwater Road and across the park.</p>	Yes

Requirement (as applicable under Area 7 – Pittwater Road)	Comment	Compliance
	<p>In relation to the adjoining park, the control is not specific as to how this interface should be dealt with, except to say that the control states that “above the parapet line additional storeys will be set back to maintain solar access to the sidewalks and ensure that the scale of buildings does not dominate public spaces”. This objective is primarily intended to ensure an appropriate scale relationship is provided to streets (in this case Pittwater Road and St David Avenue), but should extend to the adjoining park and church. This is despite the fact that the park is located on the north-eastern side of the site (the church being on the north-west) and for these reasons sunlight access and is not critical for these spaces.</p> <p>It is noted that the north-eastern façade of the building does not incorporate 4th storey podium and is not stepped back the upper levels to provide some human scale to this interface. Whilst it may be argued that a less overbearing and more sympathetic response to users of the park would be provided proposal incorporated a fourth storey podium and stepped back upper levels, the overall urban design response is considered sound.</p> <p>In terms of the various building façades, the design incorporates adequate articulation and modulation and uses high quality materials and finishes which will contribute a high level of urban design quality and streetscape enhancement.</p> <p>The proposed form incorporates an articulated building mass at upper levels to facilitate in the sharing of views and sunlight, however this would be improved with a building that complied with the Height of Buildings Development Standard under which the application now relies.</p>	
3. The overall height of buildings is to be such that long distance views of Long Reef Headland, the top of the escarpment to the west of Pittwater Road and the Norfolk Island Pines next to Dee Why Beach are preserved.	The development, as amended, has been designed to minimise impact in terms of bulk through the reduction to the overall width of the building between Levels 9 and 14. This narrower built form enables a greater provision of distant view sharing from residential properties located on the ridgeline and hill to the west.	Yes
4. Site amalgamation will be encouraged to facilitate new development and enable all carparking to be provided below ground or behind buildings using shared driveways where possible.	The development will require the amalgamation of 3 sites which enables a more substantial and consistent scale of development more in keeping with the approved development on Site B within the Town Centre and the vision established in the Dee Why Town Centre Masterplan.	Yes
5. Building layout and access are to be in accordance with the Build to Lines and Central Courts map. Shared laneways are to be established to ensure there is no vehicle access directly from Pittwater Road. The	No applicable	N/A

Requirement (as applicable under Area 7 – Pittwater Road)	Comment	Compliance
spaces behind buildings combine to form central courts with vehicle access limited to a restricted number of places.		
6. Buildings are not to exceed 6 storeys north of the intersections of Fisher Road and Pacific Parade with Pittwater Road, and are not to exceed 5 storeys south of these intersections	Not applicable	N/A
7. The maximum area of the floor plate of the upper floors of buildings is to be in accordance with the Build To Lines and Central Courts map as follows: <ul style="list-style-type: none"> above the topmost storey (including plant and equipment rooms, lofts etc): 30% of the area of the ground floor floor plate; topmost storey: 50% of the area of the ground floor plate; and second topmost storey: 70% of the area of the ground floor plate 	Not applicable	N/A
8. Minimum floor to ceiling heights have been established. The minimum floor to ceiling height are as follows: <ul style="list-style-type: none"> ground floor storey: 3.6 metres; upper storeys: 2.7 metres 	The retail premises at the ground floor level achieve a floor to ceiling height of 3.3m. All apartments achieve a floor-to-ceiling height of 2.7m which is in accordance with this control and Part F3 (Clause F3.1(iii)) of the Building Code of Australia.	Yes
9. Build-to lines have been established to ensure future development defines the streets and public spaces. For the first 4 storeys of buildings, build-to lines have been set at: <ul style="list-style-type: none"> 5 metres from the kerb for the first 4 storeys; and 9 metres from the kerb for storeys above the fourth storey, except: At the southern end of the intersection of Sturdee Parade and Pittwater Road as indicated on the Build to Lines and Central Courts map as follows, where the build-to line is the front property boundary for the first four storeys and 5 metres from the kerb for storeys above the fourth storey. 	The development provides for the following build-to-lines: <u>Pittwater Road</u> <ul style="list-style-type: none"> Ground Floor Level: 5m from the kerb Level 1: 3.5m Level 3: 3.5m to 6.4m Levels 4 to 8: 3.5m, 6.4m & 9.0m Levels 9 to 11: 3.5m to 6.4m Level 12: 3.5m to 15m Level 13: 3.5m to 19.5m Level 14: 3.5m to 19.5m Roof: 4.5m to 18.5m <u>St. David Avenue</u> <ul style="list-style-type: none"> Level 3: 7.0m to 29m Level 4: 10m to 29m Levels 5 & 7: 9.0m to 29m Levels 6 & 8: 10m to 29m Level 9 to 13: 10m to 29m Level 14: 12m to 29m Roof: 23m to 30m 	Yes No No No No No No No No No Yes Yes Yes Yes Yes Yes Yes
10. Car parking facilities must be provided below ground or behind buildings in shared parking areas. Ground level parking must be provided with trees that will have a mature canopy coverage of 70% over the area.	Car parking is located with the below ground basement carpark levels and within the above-ground mezzanine level over the retail premises.	No
Exceptions		
Consent may be granted for a building at the corner of Dee Why Parade and Pittwater Road above 6 storeys provided the massing of any additional storeys above the sixth storey is substantially reduced (i.e. they occupy a smaller	Not applicable	N/A

Requirement (as applicable under Area 7 – Pittwater Road)	Comment	Compliance
floor plate compared to lower storeys).		
Any building that directly adjoins St. David Avenue is to present as a 3 storey, for that part of the building to complement the existing scale of development along St. David Avenue.	<p>The development adjoins St. David Park and presents as a continual 15 storey built form.</p> <p>The proposal also includes adequate physical separation of between 11.5m to 25m) to St David's Church site to the west which is a function of the requirements of the RFDC in ensuring adequate space between the proposed residential components of the building and existing and future development on the church site. The substantial setbacks to the church site provide some respect to that sensitive land use.</p> <p>Notwithstanding, it is noted that this scale is subject to change in the future due to the building heights envisaged in the Dee Why Town Centre Masterplan.</p>	Yes
<p>Future development is to observe the build-to lines as follows:</p> <ul style="list-style-type: none"> • The relevant building facades are to be built on these lines. Variations of up to 300 mm may be permitted to add visual interest and allow articulation of building facades. • Light weight structures that do not add to the visual mass of the building, such as pergolas and balconies, may penetrate the build-to lines. • At ground floor level strict compliance with the build-to lines is not essential 	<p>The development includes a high level of fenestration treatments to articulate the facades of the building.</p> <p>This fenestration includes recessed balconies, blade walls and architectural framing.</p>	Yes

Detailed Assessment

Clause D2 – Private Open Space

Clause D2 requires that dwellings within shop top housing are required to have private open space areas (in the form of balconies) with a total area of 10m² and a minimum dimension of 2.5m.

As identified during the assessment of the application against the provisions of the RFDC, in this report, 39 of the proposed 129 units were found to be under the minimum 10m² requirement.

However, it was noted that the reduced areas are considered to be small and can be addressed through an appropriate condition requiring their increase to 10m², should this application be approved.

Accordingly, subject to condition, it is considered that the proposal could satisfy the requirements of this Control.

Clause D7 – Views

Clause D7 requires that development provide for the reasonable sharing of views.

The application includes a view sharing analysis which indicates that consideration has been given to the maintaining of views from the high point of McIntosh Road through the incorporation of articulated upper levels to Building A.

The analysis includes a series of photo montages taken from various highpoints to the west, south-east and north which, when shown, show that the long distance and panoramic views to the ocean and the surrounding district will be maintained.

Of course, a reduced building height would increase these available views further but, in the context of Clause D7 and the Planning Principles established in the Land and Environment Court case 'Tenacity Consulting v Warringah Council (2004) NSWLEC 140, it is considered that the development, as proposed, satisfies the requirements of this Control.

Clause D9 – Building Bulk

Clause D9 seeks to minimise the visual impact of development when viewed from adjoining properties, streets, waterways and land zoned for public recreation purposes.

The site is located within the area defined by the Dee Why Town Centre Masterplan which envisages a building of up to 15 storeys in height and to include a defined podium at the 4th storey to provide for a more human scale and a better visual relationship with the public domain which surrounds the site.

However, the approval of the 9 storey building under DA2011/0887 established the base upon which the current development is proposed, thereby lacking the fourth storey podium and adding a strong vertical element to the built form.

The development follows the same design principle as DA2011/0887 by essentially mounting the additional 6 storeys above the already approved built form thereby adding to the scale and mass of the development at the northern elevation (facing St. David Avenue) and north-east corner facing the St. David Avenue/Pittwater Road intersection.

It is acknowledged that the incorporation of a 4th storey podium would assist in reducing the mass of the building but the proposed built form is not considered to be visually offensive as the northern elevation and north-east corner of the building are setback up to 29m from the intersection by St. David's Park.

Further to the above, it is noted that the development provides for a continuous 3.2m wide setback from Level 2 to Level 11 at the south-eastern elevation facing Pittwater Road (this effectively reads from the street as 6.8m from the kerb alignment). This setback then progressively increases at Levels 12, 13 and 14 respectively. The effect of this setback is to provide sufficient articulation to visually reduce the mass of the building on the boundary, and to the street.

In this respect, and in the context of the Dee Why Town Centre Masterplan, it is considered that the combination of the setbacks, materials and contemporary architectural elements used in the treatment of the facade, provides for an acceptable built form for the Dee Why Town Centre.

It is acknowledged that a reduced building height (as required by the WLEP 2011) would further minimise building bulk but, in the context of Clause D9 and the Dee Why Town Centre Masterplan, it is considered that the development, as proposed, satisfies the requirements of this Control.

Part G Special Area Controls

The site is located within Area 7 – Pittwater Road under the WDCP 2011 which requires development to comply with the following build-to-lines:

- 5 metres for storeys 1 to 4; and
- 9 metres for all storeys above the fourth storey.

The development provides for the following build-to-lines to Pittwater Road (non-compliant elements are emphasised in bold):

- Ground Floor Level: 5m from the kerb
- Level 1: **3.5m**
- Level 3: **3.5m** to 6.4m
- Levels 4 to 8: **3.5m**, **6.4m** & 9.0m
- Levels 9 to 11: **3.5m** to **6.4m**
- Level 12: **3.5m** to 15m
- Level 13: **3.5m** to 19.5m
- Level 14: **3.5m** to 19.5m
- Roof: **4.5m** to 18.5m

In assessing these non-compliant elements of the proposal, it is necessary to consider the underlying objectives of the Build-to-Lines control.

Accordingly, compliance with the merit considerations are addressed below:

- ***Development will reinforce the Dee Why Town Centre as the focus of regional activity and will be reflected in the treatment of public spaces, the arrangement of land uses and the scale and intensity of development.***

Comment

The proposed mixed use development provides a combination of retail, commercial and residential uses which are all considered to add to a vibrant and active town centre on a main road.

The scale and intensity of this development generally reflects what is envisaged for the DYTC in terms of urban renewal and enhancement within the Dee Why Town Centre Masterplan.

The arrangement of land uses and the scale of the development are considered to be desirable in the town centre and are consistent with the objectives and intent of the Sydney Metropolitan Strategy and North East Sub-regional Strategy.

The proposal satisfies this objective.

- ***To encourage good design and innovative architecture.***

Comment

The development exhibits a high standard of architecture which would contribute positively to the streetscapes of DYTC.

The design incorporates a substantial use of glazing, recessed balconies, architectural framing devices and a variety of materials and textures which are integrated and will provide a visual “uplift” of this site and this portion of DYTC.

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

The design incorporates transitional elements which step back from the southern boundary as the height of the building increases. This ‘stepping back’ provides a reasonable level of articulation which relates positively to the slim-line tower concept approved for Site B.

The proposal satisfies this objective.

- ***To ensure shops and dwellings enjoy good access to natural light.***

Comment

The shadow diagrams submitted with the application (see Plan Nos. SD01 to SD03 dated 24 January 2014 as prepared by Kann Finch) demonstrate that properties to the south along Pittwater Road will experience increased amounts of overshadowing as a result of the proposed development.

However, it is noted that, due to the north-east orientation of the row of shops along this length of Pittwater Road, all retail and commercial premises to the south are under self-shadow anyway. Therefore, the development will not add to the level of shadow cast over these properties.

Furthermore, because of the orientation and location of the site, the development will not cast any shadow over residential and commercial properties to the west.

The development provides for 78.3% (101) apartments to receive a minimum of two hours direct sunlight between 9am and 3pm in mid-winter. This is compliant with the Daylight Access provisions under the Residential Flat Design Code.

The proposal satisfies this objective.

- ***To ensure that buildings have an active street frontage.***

Comment

The development contains retail premises at the ground level, facing Pittwater Road, which could feasibly include a cafe use. This would provide appropriate activation at the street level, particularly given its location close to the bus stop.

The proposal satisfies this objective.

- ***To create an environment that is human in scale as well as comfortable, interesting and safe.***

Comment

The development is considered to be a generally satisfactory urban design response to the site's context, location and surrounding land uses, especially as envisaged in the Dee Why Town Centre Masterplan.

The development proposes a built form which is considerably higher than that permitted under the WLEP 2011 and which omits the fourth storey podium as required by this control under the WDCP 2011 and, as reinforced by the Dee Why Town Centre Masterplan. The purpose of the fourth storey podium is to reduce the scale of development to a human scale. In this regard, the development cannot be considered to satisfy this component of the objective.

With regards to safety, the application has been assessed against the principles of Crime Prevention Through Environmental Design (CPTED) where it was found to be consistent with the four key strategies.

Therefore, due to the development not providing sufficient human scale, the proposal is considered to be inconsistent with this objective.

Appendix 1 – Car Parking Requirements

Appendix 1 of the WDCP 2011 requires a development to provide on-site car parking at the following rates (note: required car parking spaces are rounded up):

Component	Required	Provided	Compliance
Residential			
1 Bedroom (114 Units)	114 x 1 = 114 spaces	132 spaces	Yes
2 Bedroom (15 Units)	15 x 1.2 = 18 spaces		
3 Bedroom (Nil)	Nil		
Sub Total	132 spaces	132 spaces	
Retail (GLFA)*			
Retail 2 (41.4m ²)	14 spaces	14 spaces	Yes
Retail 3 (47.0m ²)			
Retail 4 (49.9m ²)			
Retail 5 (93.2m ²)			
Commercial (GFA)			
Retail 1 (128m ²)	6.6	6.6	Yes
Commercial (136m ²)			
Visitors			
Total Dwellings (129)	1/5 Dwellings = 26 spaces	26 spaces	Yes
Total	178.6 (179) Spaces	178 Spaces	No

*Note: Gross Leasable Floor Area (GLFA) is used to determine car parking for retail premises. When applied, GLFA reduces the floor area of the retail units to 231.5m².

Following the submission of an amendment to the floor area of Retail 1 from 54m² to 128m² on 27 February 2014, the car parking has been found to result in a non-compliance of 0.6 of a parking space. This has been rounded up in the above table to reflect 1 parking space.

It should be noted that the increase to Retail 1 was done to increase the offer to Council for its use as a Council facility such as a customer service shop front. In this respect, the application of the Commercial parking rate of 1 space per 40m² GFA was considered appropriate as opposed to the Retail parking rate of 1 space per 16.4m² GLFA.

Should the use of Retail 1 revert back to a retail/shop use then the total required car parking for the development will be 178.5 spaces (ie 0.5 of a parking space above the requirement) which could reasonably be rounded down to 178 spaces.

Notwithstanding, the non-compliance as provided in the current scheme is considered to be minor and acceptable given that the site abuts a major transport interchange where alternative means of transport is available and that the development is well-served by the Dee Why Town Centre within which it is located and within walkable distance.

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

The proposal will not significantly affect threatened species, populations or ecological communities, or their habitats.

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

The proposal is consistent with the principles of Crime Prevention Through Environmental Design.

The application was referred to the NSW Police who did not stipulate any requirements.

POLICY CONTROLS

Warringah Section 94A Development Contribution Plan

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

The following monetary contributions are applicable:

Warringah Section 94 Development Contributions Plan Contribution based on a total development cost of \$31,550,000		
Contributions	Levy Rate	Payable
Total Section 94A Levy	0.95%	\$299,725
Section 94A Planning and Administration	0.05%	\$15,775
Total	1%	\$315,500

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

OTHER MATTERS

Dee Why Town Centre Masterplan

The following provides a brief background and context to the Dee Why Town Centre Masterplan and the principles which affect this Development Application.

Public Consultation

On 11 December 2012, Council resolved to consult broadly on the draft Dee Why Town Centre Masterplan to seek community and stakeholders input. Wider community engagement commenced on 6 February 2013 and concluded on 5 April 2013. The public exhibition was extensively notified through advertising in the Manly Daily, letters to over 1400 property and business owners, pamphlets dropped to over 95,000 households and businesses, and notices on Council's website.

During the exhibition, there were over: 10,000 webpage views, 1,380 YouTube video views and 380 people visited the mobile kiosks/ Civic Centre displays. Numerous walking tours and information sessions were also conducted.

Council received 81 feedback forms of which the majority of respondents were satisfied that the draft Dee Why Town Centre Masterplan achieved a positive plan for rejuvenating the Dee Why Town Centre. The most common comment was that something needed to change urgently in Dee Why to improve the appearance of the town centre and support business activity.

Considering the extensive notification process and the large number of individuals consulted, and based on the majority of positive responses, it was concluded that the community is in broad support of the vision in the Masterplan.

Adoption by Council

The Dee Why Town Centre Masterplan was adopted by Council on 6 August 2013 and serves as the basis for a future amendment to WLEP 2011 which will cover the Town Centre area. The amendment will also be accompanied by a DCP that will provide further guidance on desired outcomes for the Dee Why Town Centre. Both these documents will be subject to formal public exhibition prior to consideration by the NSW Planning and Infrastructure. Presently it is anticipated that the WLEP 2011 and DCP amendment will be exhibited in late 2014.

The Masterplan defines the Town Centre as having an area of 36ha which extends along Pittwater Road and includes areas referred to as Site A (Councils Howard/Oaks Avenue car park and adjoining sites) and Site B (the Meriton Site on the eastern side of Pittwater Road). Sites A and B were the subject of Amendment No. 21 to WLEP 2000 which put into legislation Council's current and future visions for Dee Why Town Centre partly realising Councils commitment to the Subregional Plan.

The Height Principles Diagram (refer to page 68 of the Masterplan) places the site within an area which allows for building heights of between 10 and 15 storeys. This increased building height allowance is subject to the afore-mentioned provision that acceptable public benefit is offered to Council through a Voluntary Planning Agreement.

As noted earlier in this report, the applicant is seeking the additional height of 15 storeys through the resolutions of the Masterplan. However, the public offer made in the Voluntary Planning Agreement has been found to be unacceptable and the benefit of obtaining the additional height and floor space under the Masterplan can no longer be relied upon.

Therefore, as detailed in this report, the development is instead reliant upon the permitted building heights under WLEP 2011.

CONCLUSION

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

Public Exhibition

The application was publicly exhibited twice, due to the submission of amendments made to the plans and the associated VPA.

The first public exhibition attracted a total of 225 individual submissions against the proposal and one petition which contained 17 signatures.

The second public exhibition attracted a total of 570 individual submissions against the proposal and one on-line petition which contains (at the time of writing this report) 635 electronic signatures.

The issues raised in the submissions have been addressed in the "Public Exhibition & Submissions Received" section" in this report.

Referrals

The application was referred to external referral authorities who did not raise any objection to the proposal subject to conditions which can be included in a consent should this application be approved.

The application was also referred to internal departments who, with exception to Council's 'Buildings, Property and Spatial Information' and 'Strategic Planning (Urban Design)' departments, did not raise any objection to the proposal subject to conditions which can be included in a consent should this application be approved.

Council's Buildings, Property and Spatial Information Department objected to the insufficient provision of public benefit offered in the Voluntary Planning Agreement associated with the Development Application.

Similarly, Council's Strategic Planning Department (Urban Design) also raised the same concern and noted that the development, as proposed, was inconsistent with the Dee Why Town Centre Masterplan in terms of FSR, podium heights and the location of car parking above ground.

The effect of the above comments required the application to be assessed under the building height provisions of the Warringah Local Environmental Plan 2011 as the benefit of additional building height afforded in the Masterplan no longer applied.

Environmental Planning Instruments

The application was assessed against all relevant Environmental Planning Instruments and was found to be inconsistent and/or non-compliant with the following:

- *State Environmental Planning Policy No 65 – Design Quality for Residential Flat Development*
 - Principle 2 – Scale; and
 - Principle 4 – Density.
- *Residential Flat Design Code*
 - Open Space.
- *Warringah Local Environmental Plan 2011*

- Clause 4.3 – Height of Buildings Development Standard

Development Control Plans

The application was assessed against the relevant controls contained in the Warringah Development Control Plan 2011 and was found to be inconsistent and/or non-compliant with the following:

- Part G – Special Area Controls (Area 7 – Pittwater Road):
 - Requirement 9 – Build-to-Lines.

On balance, the development cannot be supported because it fails to comply with the 'Height of Buildings' Development Standard under the WLEP 2011 which permits a maximum building height of 24m within the B4 Mixed Use zone. The development exceeds this maximum limit by 27m which equates to a variation of 112.5%.

In this regard, it has been found that the development is inconsistent with the objectives of the Development Standard and the zone. Furthermore, the applicant has not provided sufficient justification for the substantial departure from the Development Standard.

Therefore, whilst the proposal exhibits a high quality of architecture, finishes and general design attributes and represents a good opportunity to provide for further urban renewal and revitalisation of the Dee Why Town Centre on a disused prominent corner site, it does not sufficiently satisfy the planning controls applying to the site under WLEP 2011, SEPP 65 and the Residential Flat Design Code and contains insufficient compensatory design features and community benefit to outweigh these non-compliances and onsite deficiencies to be in the public interest.

It is considered that all processes and assessments have been satisfactorily addressed and that proposed development does not constitute the proper and orderly planning for the site or the locality.

Accordingly, it is considered that the Development Application should be refused for the reasons detailed within the "Recommendation" section of this report.

RECOMMENDATION - REFUSAL

That Development Application No. DA2013/1168 for demolition works and the construction of a mixed retail, commercial and residential development and use of premises as retail shops, a café and residential units and associated Voluntary Planning Agreement at Lot B, DP 381816, Lot 4, DP 417528, Lot 1, DP 300967 and Lot 1 in DP 364010 known as Nos. 697, 699, 701 and 703 Pittwater Road, Dee Why be refused for the following reasons:

1. Pursuant to Section 79C(1)(a)(i) of the Environmental Planning and Assessment Act 1979, the proposed development is inconsistent with the provisions of *State Environmental Planning Policy No 65 – Design Quality for Residential Flat Development*. In particular, the following Design Principles:
 - (i) Principle 2 – Scale; and
 - (ii) Principle 4 – Density.

Additionally, the proposal is inconsistent with the following Rules of Thumb under the *Residential Flat Design Code*:

- (i) Open Space.

2. Pursuant to Section 79C(1)(a)(i) of the *Environmental Planning and Assessment Act 1979*, the development does not comply with the relevant provisions of the *Warringah Local Environmental Plan 2011*. In particular, the proposal does not satisfy the requirements of:
 - Clause 4.3 – Height of Buildings Development Standard
3. Pursuant to Section 79C(1)(a)(iii) of the *Environmental Planning and Assessment Act 1979*, the proposed development is inconsistent with the relevant provisions of the *Warringah Development Control Plan 2011*. In particular, the proposal is inconsistent with the provisions of Part G – Special Area Controls (Area 7 – Pittwater Road), Requirement 9 – Build-to-Lines.
4. Pursuant to Section 79C(1)(e) of the *Environmental Planning and Assessment Act, 1979*, the proposed development is not in the public interest as the development is inconsistent with the height of development that the community can reasonably expect to be provided on this site under the provisions of the *Warringah Local Environmental Plan 2011*.