

**JOINT REGIONAL PLANNING PANEL  
(East Region)**

<b>JRPP No</b>	2014SYE093
<b>DA Number</b>	DA2014/1125
<b>Local Government Area</b>	Sydney East Region
<b>Proposed Development</b>	Alterations and Additions to an existing hotel, construction of a mixed use retail/commercial and residential development with an associated Voluntary Planning Agreement and stratum subdivision
<b>Street Address</b>	Lot 11 DP 1000708 , 511 - 513 Pittwater Road  BROOKVALE NSW 2100
<b>Applicant:</b>  <b>Owner:</b>	A+ Design Group  Prowl Pty Ltd
<b>Number of Submissions</b>	Three (3) individual submissions have been received, which include: <ul style="list-style-type: none"> <li>• 1 Letter of support; and</li> <li>• 2 Letters objecting to the development.</li> </ul>
<b>Regional Development Criteria (Schedule 4A of the Act)</b>	The development application is referred to the JRPP pursuant to Clause 3 of Schedule 4A of the Act as the Capital Investment Value (CIV) of the proposal is over \$20 million.
<b>List of All Relevant s79C(1)(a) Matters</b>	Refer to Assessment Under Section 79C within the attached Assessment Report
<b>List all documents submitted with this report for the panel's consideration</b>	Assessment Report Conditions of Consent Draft Voluntary Planning Agreement Pre-Lodgement Meeting Notes, dated 12 June 2014 List of Submitters Plans & Statement of Environmental Effects All other documentation supporting the application and public submissions
<b>Recommendation</b>	Approval
<b>Report by</b>	Malcolm Ryan, Deputy General Manager, Environment

## DEVELOPMENT APPLICATION ASSESSMENT REPORT

<b>Application Number:</b>	DA2014/1125
<b>Planner:</b>	Lashta Haidari
<b>Land to be developed (Address):</b>	Lot 11 DP 1000708 , 511 - 513 Pittwater Road BROOKVALE NSW 2100
<b>Proposed Development:</b>	Alterations and Additions to an existing hotel (Pub), construction of a mixed use development (commercial and residential uses) with an associated Voluntary Panning Agreement and strata and stratum subdivision
<b>Zoning:</b>	LEP - Land zoned B5 Business Development LEP - Land identified in Schedule 1 Additional Permitted Uses. Refer to attached extract of WLEP2011
<b>Development Permissible:</b>	Yes (under an additional permitted use in Schedule 1 of the WLEP 2011)
<b>Existing Use Rights:</b>	No
<b>Consent Authority:</b>	Joint Regional Planning Panel (JRPP)
<b>Land and Environment Court Action:</b>	No
<b>Owner:</b>	Prowl Pty Ltd
<b>Applicant:</b>	A+ Design Group
<b>Application lodged:</b>	24/10/2014
<b>Application Type:</b>	Integrated
<b>State Reporting Category:</b>	Mixed
<b>Notified:</b>	31/10/2014 to 04/12/2014
<b>Advertised:</b>	01/11/2014
<b>Submissions:</b>	Three (3) submissions received (2 against and 1 in support)
<b>Recommendation:</b>	Approval
<b>Estimated Cost of Works:</b>	\$ 27,500,000
<b>Attachments</b>	Attachment 1 – Conditions of Consent Attachment 2 – Site and Elevation plans Attachment 3 – Draft VPA offer Attachment 4 – PLM Notes, dated 12 June 2014

## 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.

## SUMMARY OF ASSESSMENT ISSUES

Warringah Local Environmental Plan 2011 - 4.3 Height of buildings

Warringah Development Control Plan - C3 Parking Facilities

Warringah Development Control Plan - D6 Access to Sunlight

## SITE DESCRIPTION

<b>Property Description:</b>	Lot 11 DP 1000708, 511 - 513 Pittwater Road, Brookvale
	<p>The Brookvale Hotel site is located at No. 511 Pittwater Road, Brookvale, and is legally described as Lot 11 DP 1000708 having a total site area of 6,172m<sup>2</sup> (by survey). The Brookvale Hotel site is an irregular shaped allotment with a 40.26 metre frontage to Pittwater Road, a 70.76 metre frontage to Old Pittwater Road and a 50.35 metre frontage to Roger Street.</p> <p>The site has a maximum fall of approximately 8m from the Old Pittwater Road-Roger Street corner to a point adjacent to the southern boundary and Pittwater Road. This represents an average 7.6% fall across the site.</p> <p>Vehicular access is provided on all three street frontages with the principal staff entrance, bottle shop entrance and loading/unloading area entrance located on Pittwater Road which exits via Old Pittwater Road. The entrance and exit for the rear customer car park is located on Roger Street. The site is currently occupied by a one and two storey brick and rendered building (Brookvale Hotel) with metal roof and a separate small single storey brick building with metal roof that is attached to the main hotel building via a metal roof above the staff vehicular driveway.</p> <p>Brookvale Hotel is located on the largest single parcel of land in the Brookvale locality.</p>

	<p>The surrounding area is characterised by two storey commercial buildings with shopfronts consisting of a mix of retail and office uses. Adjoining the site at No. 517 Pittwater Road, Brookvale is a 4 to 5 storey mixed residential and commercial building.</p> <p>To the south-west of the site along Roger Street, commercial, automotive and light industrial uses predominate, while the area to the north-west of the site is characterised by low to medium density residential development, Brookvale Oval and educational school uses.</p>
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Map:



## SITE HISTORY

### Previous Development Application

Development Application No. DA2011/0890 was received by Council on 14 July 2011. The Development Application sought consent for demolition works and construction of a mixed use Development including the redevelopment of Brookvale Hotel, Short Term Accommodation (Motel), Bottleshop, Showroom and 110 Residential Units.

The application was assessed by Council and reported to the Joint Regional Planning Panel (JRPP). The JRPP considered the application at its meeting held on 7 December 2011 and resolved to endorse Council's recommendation for refusal. The reasons for refusal related to non-compliances with the built form controls under the provisions of Warringah LEP 2000 and the fact the proposed development was listed as a prohibited land use when WLEP 2011 was a draft instrument.

The applicant lodged an appeal against the JRPP decision on 21 December 2011 (proceeding No.2011/11106). During the appeal process, Warringah LEP 2011 was gazetted on 9 December 2011 which permits shop top housing as an additional permitted use under Schedule 1 of WLEP 2011.

The application through a number of amendments was determined by way of approval by the Land and Environment Court on 10 January 2012.



Figure 1 – Photomontage of the approved development as it addresses the corner of Old Pittwater Road and Roger Street.

(Source: Photomontages Perspectives, prepared by Drew Dickson Architects, dated 8/07/2011)

### **Pre-Lodgement Meetings (PLMs)**

A number of PLMs have been held with the Council in relation to the proposed development.

The latest PLM (PLM2014/0055) was held on 12 June 2014 to discuss the final proposal for the site. The plans presented at that meeting indicated a similar layout as proposed in the subject DA. A copy of the notes provided by Council in relation to the latest PLM meeting are attached to this report



## PROPOSED DEVELOPMENT IN DETAIL

The development application seeks approval for a mixed use development comprising the following:

- The construction of a five storey shop top housing development incorporating ground floor commercial floor space, 73 residential apartments, 6 work/ live SOHO style apartments with street level retail activation and associated car parking for 115 vehicles.
- A through site pedestrian link from the Pittwater Road frontage to the Old Pittwater Road, Roger Street and Beacon Hill Road intersection.
- The partial demolition of the existing hotel and adjacent bottle shop and alterations, additions and the refurbishment of the hotel premises.
- The reconfiguration of the existing car park and a reduction in the number of parking spaces for the hotel to reflect a reduction in the area of the hotel. The new at-grade car park for hotel patrons and staff will comprise 40 spaces.

The specific detail of the shop top housing component of the development incorporates the following (as stipulated within the Statement of Environmental Effects, prepared by Boston Blyth Fleming) and assessed as being accurate:

### Basement 2 (RL 21.00)

- 64 residential car parking spaces,
- Residential storage areas,
- Mechanical plant room, and
- Lift and stair access to the levels above.

### Basement 1 (RL 23.60)

- 13 residential spaces (including 8 disabled), 23 non-residential spaces and 15 residential visitor spaces,
- Residential storage areas,
- Mechanical plant room,
- Residential and commercial garbage storage and waste holding areas;
- Loading bay accessed from the Old Pittwater Road frontage;
- 38 bicycle parking areas; and
- Lift and stair access to other levels.

### Ground level plan (RL 26.40)

- 5 x retail tenancies having a combined floor area of 290sqm and associated garbage storage area 3 of which have shop frontage to Roger Street;
- 3 x office suits having a combined floor area of 238sqm and associated bathroom facilities;
- 6 x work/ live SOHO style tenancies with ground level retail accessed directly from the Old Pittwater Road frontage and separate service access to a non-residential

passageway providing access to a goods lift located at the rear of the loading dock below;

- A new substation;
- The east facing tenancies have access to adjacent terrace areas;
- A large communal open space area is located above the basement podium to the east of the non-residential floor plate;
- A publicly accessible through site link creating physical break in the facade and massing of the building as viewed from the east and west;
- Driveway access is provided from the Roger Street frontage to the basement car parking below; and
- 3 x residential lobbies from which lift and stair access is provided to the levels above and below.

#### Level 1 plan (RL 29.90)

- 20 residential apartments comprising 4 x studio apartments, 12 x 1 bedroom apartments and 4 x 2 bedroom apartments each having direct access to private balconies;
- Units A107 and C101 are adaptable; and
- 3 x lobbies from which lift and stair access is provided to the levels above and below.

#### Level 2 plan (RL 33.00)

- 24 residential apartments comprising 3 x studio apartments, 15 x 1 bedroom apartments and 6 x 2 bedroom apartments each having direct access to private balconies;
- Units A207 and C201 are adaptable; and
- 3 x lobbies from which lift and stair access is provided to the levels above and below.

#### Level 3 plan (RL 36.10)

- 14 residential apartments comprising 1 x studio apartments, 10 x 1 bedroom apartments and 2 x 2 bedroom apartments each having direct access to private balconies;
- Units A307 and A308 are adaptable; and
- 3 x lobbies from which lift and stair access is provided to the levels above and below.

#### Level 4 plan (RL 36.10)

- 14 residential apartments comprising 1 x studio apartments, 10 x 1 bedroom apartments and 2 x 2 bedroom apartments each having direct access to private balconies;
- Units A407 is adaptable; and
- 3 x lobbies from which lift and stair access is provided to the levels below.

The proposal provides the following unit mix:

9 x studio apartments (15.3%)  
47 x 1 bedroom apartments (62.5%)  
16 x 2 bedroom apartments (22.2%)

The development also incorporates 8 adaptable units comprising a mix of 1 and 2 bedroom apartments units representing 11.1% of all apartments.

### **Amendments to the Application**

The applicant lodged amended information and plans on 6 March 2015, addressing the various issues raised by Council's Traffic and Stormwater Engineers and Waste Management Officer.

There were no changes proposed to the external envelope of the development, just an addition of 9 car spaces to the lower basement level. The amended information and plans were therefore not required to be re-notified as per WDCP.

### **The Draft Voluntary Planning Agreement**

In support of the Development Application, the applicant included a Draft Voluntary Planning Agreement (VPA) which provided that the developer make material public benefits to be used towards a public purpose in conjunction with the carrying out of development in the DA.

#### Parties to the draft VPA

Kelly Trust No. 3 Pty Ltd of 268 Anzac Parade, Kensington NSW (the "**Developer**") and Warringah Council (the "**Council**") of 725 Pittwater Road, Dee Why NSW.

#### Summary of the draft VPA

The draft VPA provides as follows:

- *The Developer agrees to register an easement over the Pedestrian Link in favour of Council permitting pedestrian access through the Land between the hours of 7am and 10pm. That easement shall be registered on title prior to the issue of any occupation certificate for the Development for which approval is sought.*
- *The Developer acknowledges the additional height sought on the shop top housing component of the site by the Current Development Application. The Developer agrees to make no Development Application in respect of the Land that would, if approved, result in any building or buildings being constructed on or immediately above that portion of the Brookvale Hotel building proposed to be retained by the Development Application. This obligation shall cease on the coming into force of any change to the planning controls applicable to the Land.*
- *The application of s94 and s94A contribution levies to the DA is not excluded.*

#### Outcome of the draft VPA

The draft VPA was referred to Council at its meeting on 16 December 2014 consistent with Council's VPA policy, with a recommendation to accept the offer to execute the VPA. Council's resolved to accept the offer.



As the developer has offered to enter into the VPA, Council is exercising its right to condition the VPA as a condition of consent under Section 79C of the EP and A Act 1979.

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

The relevant matters for consideration under 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	See discussion on “Environmental Planning Instruments” in this report.
Section 79C (1) (a)(ii) – Provisions of any draft environmental planning instrument	None Applicable
Section 79C (1) (a)(iii) – Provisions of any development control plan	Warringah Development Control Plan applies to this proposal.
Section 79C (1) (a)(iiia) – Provisions of any planning agreement	<p>The applicant has approached Council with a view to entering into a VPA for the Brookvale Hotel Site. The VPA is pursuant to Section 93F of the EPAA 1979 and will be between Warringah Council and the Kelly Trust No. 3 Pty Ltd. The VPA is in relation to the provision of a pedestrian through site link and that no DA will be lodged above the Brookvale Hotel building until new Planning controls are adopted. The VPA will provide certainty as to the public benefit to be derived from this proposal.</p> <p>A condition is included within the recommendation of this report in relation to executing the VPA.</p>
Section 79C (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	<p>The EPA Regulations 2000 requires the consent authority to consider the provisions of the Building Code of Australia. This matter can be addressed via a condition of consent.</p> <p>Clause 92 of the EPA Regulations 2000 requires the consent authority to consider AS 2601 - 1991: <i>The Demolition of Structures</i>. This matter can be addressed via a condition of consent should this application be approved.</p> <p>Clause 50(1A) of the EPA Regulations 2000 requires the submission of a design verification certificate from the designer at lodgement of the development application. This documentation has been submitted, which satisfied this requirement.</p>
Section 79C (1) (b) – the likely impacts of the development, including environmental impacts on the natural and	(i) Although the development does not comply with Clause 4.3 – ‘Height of Buildings’ Development Standard, the

Section 79C 'Matters for Consideration'	Comments
built environment and social and economic impacts in the locality	<p>development is not considered to have an adverse environmental impact on the natural and built environment as discussed in the report.</p> <p>(ii) The development is not considered to have a detrimental social impact in the locality considering the mixed use (commercial 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 pedestrian access through the site, car parking 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 within the development will assist to strengthen economic vitality in the Brookvale area by providing an active street fronts, additional housing opportunities and commercial activity.</p>
Section 79C (1) (c) – the suitability of the site for the development	<p><b>Location</b></p> <p>The site is suitably located for a mixed commercial and residential development being within the heart of the Brookvale town centre. This location lends itself to a higher density use comprising a mix of complementary active and passive uses.</p> <p>The site is within close proximity to a range of retail, commercial, health and open space and recreation services and facilities and it is expected that future residents of the proposed building will seek local employment opportunities, minimising the need for unnecessary travel. Also, the development will allow for the refurbishment of the existing Brookvale Hotel into a modern licensed venue, which is an important entertainment and meeting point for the community.</p> <p>Furthermore, the site has access to the regional road network and various bus routes and these connect the site to the wider metropolitan area.</p>

Section 79C 'Matters for Consideration'	Comments
	<p><b>Site Constraints</b></p> <p>There are no constraints that will prevent the redevelopment of this site. Physically, the site has a moderate slope and well drained; hence it is suitable for development of this type. The slight slope also assists the incorporation of basement levels on the high side.</p> <p><b>Essential Services and Infrastructure</b></p> <p>Being situated within the existing Brookvale Town Centre, an established urban setting, the site has ready access to water, sewer, power and telecommunication infrastructure and is not likely to place any excessive burden on this existing infrastructure.</p>
Section 79C (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on “Public Exhibition” in this report.
Section 79C (1) (e) – the public interest	The proposal is considered to be favourable in respect to the wider and sectionalised public interest as the development provides for a wider housing choice in the area, provides a greater range of commercial facilities, will retain the hotel as a valued entertainment facility in the area, satisfies the requirements of the applicable planning controls and is satisfactory with regards to impacts on streetscape, neighbouring development and the character of the area.

## EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

## NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000 and Warringah Development Control Plan.

As a result of the public exhibition process council is in receipt of 3 submissions, two (2) opposing the development and one (1) in support of the development.

The following relevant issues were raised in the submissions and each has been addressed below:

### 1. Inconsistent with the objectives of the Zones

Comment:

This issue has been addressed in detail under Clause 4.6 of this report. In summary, the proposed development is found to be consistent with the objectives of the zone and therefore, the concern does not warrant the refusal of the application.

**2. Non- compliance with Building Height**

The following specific concerns have been raised in relation to the non-compliance with the building height:

- The building exceeds the maximum height limit of 11m with non-compliance of between 6.2m and 9.35m;
- The development would have an adverse impact on the surrounding area due to the height, bulk and scale of the development;
- The proposal would establish an undesirable precedent for future development in the precinct;
- A pedestrian through link is appropriate for the site, and consistent with the zone objective relating to a pedestrian environment, but does not justify a significant height increase; and
- The proposal for 73 apartments and 6 SOHO units is an over-development of the site.

Comment:

The issues relating to the non-compliance with the building height are addressed in detail under Clause 4.6 of WLEP 2011 of this report. In summary, the proposal is considered to be consistent with the intent of these standards and the objectives of the zone. The exceedence of the development standards applying to this site does not result in unacceptable or unreasonable impacts on adjoining and surrounding properties that would be symptomatic of overdevelopment.

**3. The proposal does not allow for open space at ground level, such as a plaza, that would complement the permitted uses at ground level**

Comment:

There are no relevant controls or related legislation that requires a plaza for the subject site. The proposed development provides open space for use of the future occupiers of the site, which is considered to be satisfactory.

The concern raised does not warrant the refusal of the application.

**4. The SOHO units on the ground floor are not consistent with the permitted uses for the B5 zone**

Comment:

The proposal is permissible as “Shop Top Housing” under Schedule 1 of WLEP 2011. Shop Top Housing’ means one or more dwellings located above ground floor retail premises or

business premises. A recent Land and Environment Court judgment (Sheahan 14.8.14) regarding this issue concluded that *to qualify as shop top housing the relevant part of the building must be truly above the relevant retail or commercial parts*. The judgment found that apartments do not need to be 'directly above' only 'above the level of the topmost part' of retail premises. In this instance, there are no dwellings proposed on the ground floor that would not be above ground floor retail and or commercial activities.

The SOHO units are designed such that the commercial component are at the ground level with residential above, which is consistent with the definition of shop top housing.

The concern raised does not warrant the refusal of the application.

## **5. The retention of Brookvale Hotel as a community hub**

Concern has been raised that there is no guarantee that the hotel would remain as a community hub, as a subsequent development application could be submitted at any time to redevelop the site for mixed use.

### Comment:

The proposed development includes the retention and refurbishment of the existing hotel on site. Any future development on site will be the subject of a separate application, which will be assessed against the applicable controls at the time of lodgement.

The concern does not warrant the refusal of the application.

## **6. Solar Access and Light**

A submission has been received from the owner of Unit 113/517 Pittwater Road raising concerns with respect to the impact associated with sunlight and light available to the unit.

### Comment:

Unit 113/517 is within the recently constructed shop top housing development that is located north of the subject site.

The two (2) bedrooms of the unit are located on the southern side of the building at levels 1 and 2. There is a terrace off bedroom 1 on this elevation, built to the boundary.

Directly south of bedrooms 1 and 2 is a 4 metre strip of land belonging to No. 515 Pittwater Road. It functions as the access point to this site. Immediately south is a brick building with a pitched roof located on the subject development site.

The adjoining properties to the south of No. 517 Pittwater Road are all commercial properties with frontages to Pittwater Road.

The bedrooms of Unit 113 face south. Given the orientation, they have no access to direct sunlight.

It is noted that the main living areas of Unit 113 are located on the Old Pittwater Road frontage, which is the primary source of solar access – which remains unaffected by the proposed development.

The proposed development will have some minor impact on access to light on Unit 113. However, the location of the building so close to the boundary with the commercial property to the south means that the amenity of that unit has a high potential of being compromised. It is noted, that access to light will continue to be available to Unit 113 from the south and south east.

The concern raised in this regard is noted, however does not warrant any amendments or the refusal of the application.

## MEDIATION

No requests for mediation have been made in relation to this application.

## REFERRALS

Internal Referral Body	Comments
<b>Building Assessment - Fire and Disability upgrades</b>	No objection to proposed development subject to conditions
<b>Development Engineers</b>	Development Engineers have reviewed the proposal and raise no objections to the proposal subject to conditions
<b>Environmental Investigations (Contaminated Lands)</b>	No objections subject to conditions
<b>Health and Protection (Food Premises)</b>	No objections for the proposed development subject to conditions
<b>Landscape Officer</b>	<p>The proposed landscape treatment fronting Pittwater Road indicates removal of an existing <i>Platanus</i> sp. (London Plane) tree. Whilst one replacement tree is indicated, there appears to be no corresponding landscape treatment on the northern side of the site, despite removal of existing landscaping. The plans indicate that the existing front walls remain, with the existing <i>Ficus</i> (Fig) climber being retained. It is unclear how this is achieved in consideration of the planter bed being removed on the northern side. There appears to be no means of growing the plant. This issue was raised in the previous referral regarding this site.</p> <p>Notwithstanding this, the void between the Pittwater Road and the existing wall should be reinstated with landscaping, even if the proposed planter and tree on the southern side is replicated on the northern side,</p>

Internal Referral Body	Comments
	<p>though there is ample room for more soft landscape. It is unclear in the application why the removed areas of soft landscape are not being replaced.</p> <p>In the absence of particular reasons for not planting on the northern side, it is recommended that a second tree and landscaping be provided in this area. This can be conditioned if required.</p> <p>No objection is raised to other areas of landscape being proposed, subject to conditions.</p>
<b>Natural Environment (Flood)</b>	The proposed development is outside the adopted Flood Planning Level extent taken from the Manly Lagoon Flood Study, 2013. No flood related development controls apply.
<b>Strategic Planning - Urban Design</b>	No objection to the proposed development
<b>Traffic Engineer</b>	<p>The applicant has provided further information. This provides an increase in the resident parking area on Basement Level 2 of nine (9) spaces, to accommodate the parking for the studio apartments. This is in addition to the shared parking arrangements for the commercial and residential visitor spaces. As highlighted in the additional information provided by the traffic consultant, there is the opportunity for the sharing of the visitor spaces for the commercial and residential spaces.</p> <p>This provision of the additional resident parking for the studio apartments is acceptable. All car parking spaces should comply with AS2890.1 and 29890.6 for disabled spaces.</p>
<b>Waste Officer</b>	No objection subject to conditions.

External Referral Body	Comments
<b>Ausgrid</b>	<p>The proposal was referred to Ausgrid who made the following comments in part:</p> <p><i>The proposed development will comply with statutory clearances from Ausgrid's electrical mains and accordingly there is no objection to this development. In Addition, Ausgrid may require a substation on the site of this development to cater for the new electrical load.</i></p> <p>Ausgrid recommended a number of conditions which will be</p>



External Referral Body	Comments
	included as part of the recommendation of this report.
<b>NSW Roads and Maritime Services</b>	The NSW RMS raised no objection to the proposal, subject to conditions that will be included as part of the recommendation of this consent.
<b>NSW State Transit (Bus stops)</b>	The proposal was referred to NSW State Transit on 27 October 2014. No response has been received and therefore it is assumed that no objections are raised.
<b>NSW Police - Local Command (CPTED)</b>	The proposal was referred to NSW Police - Local Area Command on 27 October 2014. No objection was raised to the proposed development.
<b>NSW Department of Transport (Roads and Maritime Services)</b>	The NSW RMS raised no objection to the proposal, subject to conditions that will be included as part of the recommendation of this consent.
<b>NSW Office of Water (NOW) (Site Dewatering)</b>	<p>Based on the information provided, the NOW understands that the project proposal involves the construction of a five (5) storey mixed use development over two (2) levels of basement car parking. Construction of the development will involve excavations to depths up to 6 m below existing ground levels. Preliminary assessment indicates the groundwater table will be intercepted as a result of the excavation works.</p> <p>An authorisation is not required for the minimal groundwater as identified in the application documents. However, should significantly greater inflows be encountered during construction, the Office of Water must be consulted and the proponent may be required to obtain an authorisation at that time.</p> <p>A condition has been included within the recommendation of this report in this regard.</p>

## **ENVIRONMENTAL PLANNING INSTRUMENTS (EPis)\***

All, Environmental Planning Instruments (SEPPs, REPs and LEPs), Development Controls Plans and Council Policies have been considered in the merit assessment of this application.

In this regard, whilst all provisions of each Environmental Planning Instruments (SEPPs, REPs and LEPs), Development Controls Plans and Council Policies have been considered in the assessment, many provisions contained within the document are not relevant or are enacting, definitions and operational provisions which the proposal is considered to be acceptable against.

As such, an assessment is provided against the controls relevant to the merit consideration of the application hereunder.

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

## **Plans (SREPs)**

### **State Environmental Planning Policy 55 - Remediation of Land**

State Environmental Planning Policy 55 – Remediation of Land, aims to promote the remediation of contaminated land for the purposes of reducing risk to human health or any other aspect of the environment. Clause 7 of SEPP 55 states that a consent authority must not consent to the carrying out of development unless it has considered whether the land is contaminated. If the land is contaminated, it must ascertain whether it is suitable in its contaminated state for the proposed use or whether remediation of the land is required.

A Phase 1 Preliminary Environmental Site Assessment has been carried out by Environmental Investigations, dated 6 July 2011. The report concludes that a field based investigation comprising of Stage 2 Environmental Site Assessment should be undertaken to determine the suitability of the site, however this investigation cannot be carried out until after the demolition work and prior to excavation.

Council's Health and Environmental Section has reviewed the proposal and raise no objection in relation to the contamination issue, subject to conditions which requires that the Stage 2 investigation be prepared prior to excavation works on site.

Having regard to the above, Council is satisfied that the land, by way of appropriate conditions, can be made suitable for the proposed residential development to satisfy the requirements of the SEPP.

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

The proposed development is a 'BASIX Affected Development' as defined within the Regulations and consequently, a BASIX Certificate has been submitted with the development application. The BASIX Certificate identifies compliance with water, thermal comfort and energy targets.

### **State Environmental Planning Policy 65 - Design Quality of Residential Flat Development**

The proposed development falls within the definition of a "Residential Flat Building" under SEPP 65 and therefore requires assessment under the provisions of the SEPP. The policy aims to achieve good design outcomes and provide a guide for evaluating the merits of development proposals involving residential flat development, including shop-top housing.

The development application has been accompanied by a detailed Design Verification Statement, prepared by the registered architect for the project, which addresses the proposal against the ten design principles and an assessment of the proposal against those matters contained within the 'Better Design Practice' provisions and suggested 'Rules of Thumb'. The following provides a discussion of the proposal against the SEPP 65 Principles.

#### **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 site is located within the B5 Business Development zone pursuant to WLEP 2011, which permits shop top housing as an additional permitted use. The area is undergoing a transition as more similar types of development to the proposal are expected along this part of Brookvale.

Because of the transitional nature of the immediate area, the key built features of the area are varied and primarily consist of industrial / warehouse developments along the Old Pittwater and Roger Street frontages.

In this regard, the development achieves a transitional scale commensurate to its future context and has been designed to respond to the key built and natural features of the area by incorporating appropriate articulation which includes the stepped form of the building and considered façade fenestration, materials and finishes.

The development 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 proposal is appropriate in terms of its bulk and scale when compared to similar developments in the vicinity. As this area is undergoing a transition, it creates a bulk and scale identified for the future character of the area.

Furthermore, the articulated built form, which includes the progressive setting back of the upper floor levels, detailed façade fenestration to incorporate upper floor balconies, the use of subtle materials and finishes will ensure that the development maintains a human scale within a zone which is subject to transition.

The development satisfies 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 building alignments, proportions and types are considered to be appropriate in that the development will reinforce the transitional role of the site by introducing a built form which will be of a character, scale and intensity appropriately suited to the area and to the neighbouring industrial area.

The proposed building alignments along street frontages define the public domain through the setting back of buildings to align with the street which, in turn, contributes towards the future character of the streetscape within the Brookvale industrial / residential environment.

The development 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:

Although it should be noted that WLEP 2011 does not include a density development standard for the B5 Business Development zone, the development proposes the provision of 73 apartments which translates to a residential density of 1 dwelling per 84.5 m<sup>2</sup>.

Given the absence of a density development standard, density is controlled by how the development responds to the Design Quality Principles of SEPP 65, the relevant Development Standards of the WLEP 2011 and the relevant controls within the WDCP. This assessment has found that the development achieves a satisfactory level of compliance and consistency with these Principles, Standards and controls.

As discussed previously in this report, the industrial / commercial nature of the area is subject to transition. In this regard, the proposed density is not considered to be contrary to the future regional context, the availability of infrastructure, public transport, community facilities and environmental quality.

The development satisfies 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 re-use of water".*

Comment:

The residential elements of the development have been designed to achieve the targets set by SEPP (BASIX) and satisfy the relevant Primary Development Controls under the Residential Flat Design Code.

The development 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:

The buildings and landscaping are designed to operate together as an integrated and sustainable system, resulting in greater aesthetic quality and amenity for both occupants and the adjoining public domain. The landscaping has been designed to respond to the site's features in responsible and creative ways.

With regards to co-ordinating water and soil management, the application was referred to Council's Development Engineer who did not raise any objection subject to conditions. These conditions have been included in the Recommendation of this report.

The development 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 primary emphasis of this design principle is to create a pleasant living environment for future occupants, both within the individual dwellings and the overall development. In this regard, the development demonstrates that the regular shape and configuration of the built forms are capable of achieving satisfactory levels of amenity with regards to natural ventilation, access to sunlight, views and outlooks for individual dwellings in accordance with the requirements of the Residential Flat Design Code (discussed later in this report). The general location, shape and configuration provides for appropriate levels of amenity for future residents, in terms of cross ventilation, privacy, storage areas and the provision of individual areas of private open space.

Accordingly, the proposal is considered capable of achieving sufficient sustainability provisions for a development of this type. Therefore, the proposal is considered to satisfy the objectives of 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 proposed development is satisfactory with regards to safety and security in that, all of the units provide optimum passive surveillance. Internal security is achieved by providing lockable entry doors at street level and a gated car park entrance.

In this regard, the proposal is considered to adequately achieve safety and security for future occupants of the development providing good casual visual surveillance of the public and private domains.

The development 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 development provides a mix of apartments which will vary in size and affordability. This mix suits the social evolution of the community as purchasers will choose to buy because of the proximity of the site to Warringah Mall, services in Brookvale and Dee Why, and the high frequency public transport route along Pittwater Road.

The development 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 development provides a highly articulated built form, which includes the detailed façade fenestration to incorporate upper floor balconies and the use of suitable materials and finishes. In this regard, the development is considered to incorporate an appropriate composition of building elements, textures, materials and colours to reflect the mixed-use nature, internal design and structure of the development and which achieves an appropriate urban form that is considered to relate favourably in both architectural scale and landscape treatment to neighbouring mixed-use.

The development satisfies this Principle.

### **Residential Flat Design Code**

The following table is a general consideration against the criteria of the 'Residential Flat Design Code' as required by SEPP 65



Primary Development Controls	Guideline	Consistent/Comments
<b>PART 01 LOCAL CONTEXT</b>		
<b>Floor space ratio</b>	Where there is an existing floor space ratio (FSR), test height controls against it to ensure a good fit.	<b>Not Applicable</b> Floor space ratios do not apply under WLEP 2011
<b>Building height</b>	Test heights against the number of storeys and the minimum ceiling heights required for the desired building use.	<b>Consistent</b> No storey height control applies.  <b>Note:</b> Despite the heights tested below, WLEP 2011 permits an 11.0m overall building height. This is discussed under WLEP 2011 in this report.  <u>Maximum height</u> 11.0m  <u>Proposed</u>  17.3m - 20.35m at the highest point of the building ( <b>Note:</b> the variation has been considered as acceptable under Clause 4.6 of the WLEP 2011)
<b>Street Setbacks</b>	Identify the desired streetscape character, the common setback of buildings in the street, the accommodation of street tree planting and the height of buildings and daylight access controls.	<b>Consistent</b>  The proposed setback is consistent with the streetscape.
	Test street setbacks with building envelopes and street sections.	<b>Consistent</b>  The first, second and third floor levels are setback sufficiently from the primary street alignment (Roger Street & Old Pittwater Road) to provide adequate vertical

		articulation. The layout of the development results in a vertical articulation which visually complements the commercial character of the street.
	Test controls for their impact on the scale, proportion and shape of building facades.	<b>Consistent</b>  The development exhibits a satisfactory level of articulation to all elevations which is in keeping with the relative scale, proportion and shape of the more contemporary building facades within the commercial centre. The overall scale of the development is considered to be appropriate given the nature of the adjoining and surrounding development.
<b>Side &amp; Rear setbacks</b>	Relate side setbacks to existing streetscape patterns.	<b>Consistent</b> The site is located within a commercial precinct which encourages zero setbacks.
<b>Floor space ratio</b>	Test the desired built form outcome against proposed floor space ratio to ensure consistency with building height- building footprint the three dimensional building envelope open space requirements.	<b>N/A</b>  Floor space ratios do not apply under WLEP 2011
<b>PART 02 SITE DESIGN</b>		
<b>Deep soil zones</b>	A minimum of 25% of the open space area of a site should be a deep soil zone; more is desirable. Exceptions may be made in urban areas where sites are built out and there is no capacity for water infiltration. In these instances, Stormwater treatment measures must be integrated with the	<b>Consistent</b>  The proposal provides 25% deep soil zone through the development.

	design of the residential flat building.	
<b>Open Space</b>	The area of communal open space required should generally be at least between 25% and 30% of the site area. Larger sites and brownfield sites may have potential for more than 30%.	<b>Inconsistent</b>  The communal open space is in the form of the central landscape area of 890m <sup>2</sup> (14%), which is considered to be satisfactory due to the limitations of the site and the mixed -use nature of the development.
	The minimum recommended area of private open space for each apartment at ground level or similar space on a structure, such as on a podium or car park, is 25m <sup>2</sup> ; the minimum preferred dimension in one direction is 4.0m. (See 'Balconies' for other private open space requirements).	<b>Consistent</b>  No apartments are located at the ground level.
<b>Safety</b>	Carry out a formal crime risk assessment for all residential developments of more than 20 new dwellings.	<b>Consistent</b>  Refer to Clause 7 - 'Safety and Security' under Warringah Development Control Plan.
<b>Visual amenity</b>	Refer to Building Separation minimum standards.	<b>Consistent</b>  The development is vertically and horizontally articulated. The design uses the site configuration and sloping topography to guide the built form.
<b>Pedestrian access</b>	Identify the access requirements from the street or car parking area to the apartment entrance.	<b>Consistent</b>  The development provides level pedestrian access throughout the site from the lift lobby, and from the basement car parking area.
	Follow the accessibility	<b>Consistent</b>

	standard set out in AS 1428 (parts 1 and 2), as a minimum	Conditions will be imposed which require compliance with AS 1428.2 – 1992 'Design for Access and Mobility.
	Provide barrier free access to at least 20% of dwellings in the development.	<b>Consistent</b> Approximately 20% of the apartments will have barrier free access via a lift to all floors.
<b>Vehicle access</b>	Generally limit the width of driveways to a maximum of 6.0m.	<b>Consistent</b> The development provides a driveway with a width of 8m which is considered to be appropriate in providing safe vehicle access/egress for both customer and delivery vehicles and pedestrian sightlines.
	Locate vehicle entries away from main pedestrian entries and on secondary frontages.	<b>Consistent</b> The development proposes to locate the primary vehicle entry/exit point on Roger Street.
<b>PART 03 BUILDING DESIGN</b>		
<b>Balconies</b>	<p>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.</p> <p>Provide scale plans of balcony with furniture layout to confirm adequate, useable space when an alternate balcony depth is proposed.</p>	<b>Consistent</b> All balconies achieve a minimum depth of 2.0m.

<p><b>Ceiling heights</b></p>	<p>The following recommended dimensions are measured from finished floor level (FFL) to finished ceiling level (FCL). These are minimums only and do not preclude higher ceilings, if desired.</p> <ul style="list-style-type: none"> <li>- 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</li> <li>- 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</li> <li>- 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.</li> <li>- for two storey units, 2.4m minimum for second storey if 50 percent or more of the minimum wall height at edge</li> <li>- for two-storey units with a two storey void space, 2.4m minimum ceiling heights</li> <li>- Attic spaces, 1.5 metre</li> </ul>	<p><b>Consistent</b></p> <p>The development consists of commercial uses on the lower ground and ground floor levels. These spaces have floor-to-ceiling heights of 3.3m.</p> <p>All apartments achieve floor-to-ceiling heights of 2.7m.</p>
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	minimum wall height at edge of room with a 30 degree minimum - ceiling slope.	
<b>Ground Floor Apartments</b>	Optimise the number of ground floor apartments with separate entries and consider requiring an appropriate percentage of accessible units. This relates to the desired streetscape and topography of the site.	<b>Consistent</b> No apartments are located on the ground floor.
<b>Storage</b>	<p>In addition to kitchen cupboards and bedroom wardrobes, provide accessible storage facilities at the following rates:</p> <ul style="list-style-type: none"> <li>- studio apartments 6.0m<sup>3</sup></li> <li>- one-bedroom apartments 6.0m<sup>3</sup></li> <li>- two-bedroom apartments 8.0m<sup>3</sup></li> <li>- three plus bedroom apartments 10m<sup>3</sup></li> </ul>	<b>Consistent</b> Adequate storage areas are provided through the basement levels for the proposed development.
<b>Building Amenity</b>		
<b>Daylight Access</b>	Living rooms and private open spaces for at least 70% of apartments in a development should receive a minimum of three hours direct sunlight between 9am and 3pm in mid-winter. In dense urban areas a minimum of two hours may be acceptable.	<b>Consistent</b> The site is located within a dense urban area and approximately 71% of apartments will receive a minimum of 2 hours direct sunlight between 9am and 3pm in mid-winter.
	Limit the number of single-aspect apartments with a southerly aspect (SWSE) to a maximum of	<b>Consistent</b> The development does not provide any apartments which are single aspect with

	<p>10% of the total units proposed.</p> <p><b>Note:</b> The RFDC does not define single-aspect apartments but does define dual aspect apartments as having at least two major external walls facing in different directions, including corner, cross over and cross through apartments.</p>	a southerly outlook
<b>Natural Ventilation</b>	Building depths, which support natural ventilation typically, range from 10m to 18m.	<b>Consistent</b> All apartments achieve a satisfactory depth, which supports natural ventilation
	Sixty percent (60%) of residential units should be naturally cross ventilated.	<b>Consistent</b> All apartments are capable of providing natural through ventilation.
<b>Building Performance</b>		
<b>Waste management</b>	Supply waste management plans as part of the development application submission as per the NSW Waste Board.	<p><b>Consistent</b> A Waste Management Plan has been provided as part of the application.</p> <p>Notwithstanding, appropriate conditions have been included in the Recommendation of this report which requires the development to comply with Council's DCP requirement relating to Waste.</p>
<b>Water conservation</b>	Rainwater is not to be collected from roofs coated with lead- or bitumen-based paints, or from asbestos- cement roofs. Normal guttering is sufficient for water collections provided that it is kept clear of leaves and debris.	<b>Consistent</b> Subject to condition.



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

### Ausgrid

Clause 45 of the SEPP 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.
- within 5.0m of an overhead power line.
- includes installation of a swimming pool any part of which is: within 30m of a structure supporting an overhead electricity transmission line and/or within 5.0m of an 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 10 November 2014 in which no objection was raised subject to conditions.

The conditions provided by Ausgrid has been included within the recommendation of this report.

### 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 Acoustics Pty Ltd dated 14 August 2014). In summary, the acoustic report recommends design measures to minimise the acoustic impact of traffic on the 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:

<b>Purpose of Development</b>	<b>Size or Capacity</b> Site with access to any road	<b>Size or Capacity</b> 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 73 dwellings plus 6 SOHO units and proposes a new crossover onto Roger Street 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 17 November 2014 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 Environmental Planning Policy (State and Regional Development) 2011**

Development applications with an estimated capital investment value exceeding \$20 million are to be determined by a Joint Regional Planning Panel under the provisions of Schedule 4A of the Environmental Planning and Assessment Act 1979 and State Environmental Planning Policy (State and Regional Development) 2011. The proposal has a capital

investment value of \$27,500,000 and is therefore referred to the Sydney East Region Joint Regional Planning Panel (JRPP) for determination.

## STATE REGIONAL ENVIRONMENTAL PLANS (SREPs)

There are no SREPs applicable to the site.

## LOCAL ENVIRONMENTAL PLANS

### Warringah Local Environment Plan 2011

Is the development permissible?	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

Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings:	11m	Variable from 17.3m to 20.35m	Variable up to 85%	No

### Compliance Assessment

Clause	Compliance with Requirements
2.5 Additional permitted uses for particular land	Yes
2.6 Subdivision - consent requirements	Yes
2.7 Demolition requires consent	Yes
4.3 Height of buildings	No* (see detail under Clause 4.6 below)
4.6 Exceptions to development standards	Yes
5.3 Development near zone boundaries	Yes
5.8 Conversion of fire alarms	Yes
6.2 Earthworks	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:

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

Comment:

Because of the topography, the stepping down of the building to address the slope of the site and the high level of vertical and horizontal articulation of the upper levels, the development achieves visual consistency and compatibility with the heights and scale of the nearby developments that are envisaged for the locality in the future.

It is considered that the development satisfies this objective.

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

Comment:

**Visual impact**

The development has been designed to present as a mixed use commercial / residential building, which is consistent with the objectives of the B5 Business Development zone. By stepping the building to respond to the topography, the inclusion of recessed verandahs and balconies, the progressive setting back of the upper-most residential levels and the incorporation of a contemporary schedule of colours and finishes, it is considered that the development achieves an appropriate level of horizontal and vertical articulation which contributes towards minimising its visual impact on the streetscape of Roger Street and Old Pittwater Road.

The non-compliant building will not have any unreasonable discernible visual impacts. In this regard, and in the context of the area, the proposed building height is considered to achieve an acceptable level of visual impact.

**Privacy**

The non-compliant element is orientated towards the street and will therefore not have any unreasonable impacts upon the privacy of neighbouring properties.

**Solar Access**

The shadow diagrams provided by the applicant indicate that the non-compliant elements of the development will not result in significant overshadowing of the adjoining industrial building to the south.

## **Views**

The proposal allows for a reasonable sharing of views from the neighbouring residential development. In determining the extent of potential view loss to adjoining and nearby properties, the four (4) planning principles outlined within the Land and Environment Court Case of Tenacity Consulting Pty Ltd Vs Warringah Council (2004) NSWLEC 140, were applied to the proposal. While no objections regarding view loss were received, the view assessment has been undertaken having regard to all surrounding residential properties.

The assessment has found that the proposed development does not unreasonably affect the outcome in regards to the view sharing. Overall, the proposal is considered appropriate for the subject site and acceptable with regards to view sharing principle.

It is considered that the development satisfies this objective.

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

### Comment:

The site is not located within visual proximity to a coastal or bush environment such that it would have an adverse impact.

It is considered that the development satisfies this objective.

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

### Comment:

Although not readily visible from any parks and reserves, the development is visible from the public domains of Pittwater Road, Roger Street and Old Pittwater Road.

Through the incorporation of effective architectural articulation and the sensitive application of appropriate colours and finishes, the development has been designed to visually relate to its surrounding urban environment.

It is considered that the development satisfies this objective.

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

In assessing the developments non-compliance, consideration must be given to its consistency with the underlying objectives of the B5 Business Development zone:

- *To enable a mix of business and warehouse uses, and bulky goods premises that require a large floor area, in locations that are close to, and that support the viability of, centres.*

Comment:

The proposed development is for a mixed-use development, which comprises commercial uses at the ground level and residential above. The proposal is not a land use that is envisaged in the above objective, however, Schedule -1 Additional permitted uses should be considered along with the above objective in this circumstance.

The proposed development will include retail/business uses on the ground level in a location that will support the viability of the Brookvale Centre. Accordingly, the proposal is consistent with the above objective.

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

Comment:

This objective is not applicable to the proposed development as it does not propose vehicles sales and hire premises.

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

Comment:

The proposal will create a pedestrian environment which is safe and active by incorporating the through site line and street level commercial uses and therefore the proposal is found is consistent with the above 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:

The variation is considered to provide an appropriate degree of flexibility in enabling this development to achieve a consistent and compatible building height with existing and future development in the immediate vicinity.

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

Comment:

The variation enables a better outcome by encouraging architectural flexibility to design a development which is compatible with other existing mixed-use development in the locality.

- (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:

It is considered that there are sufficient environmental planning grounds to justify contravening the height standard in WLEP 2011, as follows:

- The proposed scale, bulk and height of the proposal is consistent with the character of the surrounding area;
  - The development meets the objectives of the relevant WLEP 2011 building height standard and the objectives of the B5 Business Development zone;
  - The proposal will result in reasonable visual impacts, and improves the urban built form of the locality; and
  - The proposal reduces the scale and floor space of development that was approved on site as part of the Land and Environment Court, and will improve the level of solar access to the site, and the surrounding locality.
- (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:

In the context of a public interest test, the proposed variation to the height development standard under the WLEP 2011 can be justified for the following reasons:

- The proposed development will provide positive social outcomes through the provision of onsite housing and other facilities, and strict compliance with the height standard will impact on the provision of these services that are in demand within the locality. The provision of a pedestrian link offered through the VPA will add to the public benefits.
- An assessment of the proposed variation against the zone objectives is provided above in this report. In this case, it is considered that the proposal will satisfy the public interest test as it is aligned to the objectives of the zone insofar as the development in its proposed form is not antipathetic to the nature of existing built form and in many respects is an improved built form than many existing buildings within the vicinity.

For the above reasons, the proposed built form and height is considered to be compatible with zone objectives, and therefore is in public interest.

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

Comment:

The matters which shall be taken into consideration in deciding whether concurrence should be granted are:

- a) Whether contravention of the development standard raises any matter of significance for State or regional environmental planning; and*
- b) The public benefit of maintaining the development standard.*
- c) Any other matters required to be taken into account by the Director-General before granting concurrence.*

It is not considered that the non-compliance with the height standards raises any matter of significance for State or regional environmental planning. The proposal provides a diversification of uses on the site, improving the current community hub (Brookvale Hotel). Additionally, the proposal provides for new business and office premises and housing for the wider community.

Despite the non-compliances with the height controls, the proposal is compatible with the scale and height of the surrounding area and is not out of character. Aside from the public benefit of providing a diversification of land uses on the sit and an improved pedestrian site link, the proposal will significantly improve the visual appearance of the site and reduced the overall bulk and appearance of the previously approved development on site. This will therefore result in an improvement to the built form of the site.

Having regard to the above, the concurrence of the Director-General required by clause 4.6(5) of WLEP 2011 is assumed in accordance with Planning Circular PS 08-003 dated 9 May 2008.

## DEVELOPMENT CONTROL PLANS

### WARRINGAH DEVELOPMENT CONTROL PLAN 2011

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

#### Built Form Controls

Built Form Control	Requirement	Proposed	Complies
B5 Side Boundary Setbacks	Merit assessment	<p>Southern boundary:</p> <p>Basement - Nil</p> <p>Ground floor - Nil</p> <p>First floor - Nil</p> <p>Second floor - Nil</p> <p>Third floor - 14.2m</p> <p>Forth floor - 14.2m</p> <p>Eastern boundary:</p> <p>Basement - between 8m and 12m</p> <p>Ground floor - between 8m and 12m</p> <p>First floor - between 3m and 10m</p> <p>Second floor - between 3m and 10m</p> <p>Third floor - between 12m and 18m</p> <p>Forth floor - between 12m and 18m</p>	The development is appropriately set back from the side boundaries given the unique context of the site. The two upper most floors are stepped in from the side boundaries thereby reducing the element of the development that exceeds the height limit.
B7 Front Boundary Setbacks	Consistent with adjacent buildings	Front boundary to Old Pittwater Road - Nil	<p>The development to the north includes a nil setback to Old Pittwater Road and the building to the south has a minimum setback of 1.7m to Old Pittwater Road.</p> <p>The setbacks of the proposed development are consistent with the</p>

			adjacent buildings.
B9 Rear Boundary Setbacks	Merit assessment	The site has two street frontages and therefore, no rear boundary.	N/A

### Compliance Assessment Summary

Clause	Compliance with Requirements	Consistency Aims/Objectives
A.5 Objectives	Yes	Yes
B6 Merit Assessment of Side Boundary Setbacks	Yes	Yes
B7 Front Boundary Setbacks	Yes	Yes
Front Boundary Setbacks - B5	Yes	Yes
C2 Traffic, Access and Safety	Yes	Yes
C3 Parking Facilities	<b>No*</b>	Yes
C3(A) Bicycle Parking and End of Trip 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
Non-Residential Development	Yes	Yes
Mixed Use Premises (Residential/Non-Residential)	Yes	Yes
D2 Private Open Space	Yes	Yes
D3 Noise	Yes	Yes
D6 Access to Sunlight	Yes	Yes
D7 Views	Yes	Yes
D8 Privacy	Yes	Yes
D9 Building Bulk	Yes	Yes
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

Clause	Compliance with Requirements	Consistency Aims/Objectives
D22 Conservation of Energy and Water	Yes	Yes
E1 Private Property Tree Management	Yes	Yes
E10 Landslip Risk	Yes	Yes

## Detailed Assessment

### Clause C3 - Parking Facilities

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):

Use	Appendix 1 Calculation	Required	Provided	Difference (+/-)
Residential				
- Studio apartments	1 space per unit	9	9	0
- 1 Bedroom apartments	1 space per unit	47	47	0
- 2 Bedroom apartments	1.2 spaces per unit	20.4	21	+0.6
- Visitor spaces	1 per 5 units	15	15	0
Commercial				
- Retail	1 space per 16.4sqm	17.7	9	-8.7
- Office	1 space per 40sqm	8.9	8	-0.9
- Work/Live	1 space per 40sqm	14.025	6	-8.025
- Hotel	4.2 spaces per 100sqm	35.07	40	+4.93
<b>Total</b>		167.095 (168)	155	12.095 (-13)

**\*Note:** Gross Leasable Floor Area (GLFA) is used to determine car parking for retail premises.

As indicated above, the parking calculation indicates that the development will have a short fall of 13 spaces on the site.

The above requirements are based on each land use being assessed separately. However, the applicant argues that an oversupply of parking should be avoided on environmental sustainability grounds and that peak utilisation of each land use should be considered. In this regard, the consultant analysed peak utilisation for the residential, commercial offices, retail and the hotel components and found that the different uses that make up the development have the potential and the capacity to share parking resources at different times of the day and night.

The justification in the applicant's Traffic Report relating to different uses on site and parking demands throughout the course of the day and week is concurred with and the shortfall in the number of parking spaces is acceptable on that basis and given the site is within close proximity to public transport.

Council's Traffic Engineer reviewed the findings and recommendations of the applicant's traffic consultant in relation to the carparking requirements and raised no objections to the proposal, subject to conditions. The RMS also raised no objections in relation to the provision of carparking.

## **D6 Access to Sunlight**

Shadow diagrams have been prepared for the development at intervals of 9:00am, midday and 3:00pm, on 21 June and 21 December. The diagrams indicate the scenario for mid-winter on the shortest day of the year as well as mid-summer on the longest day of the year in order to ascertain shadowing impacts from the development throughout the year.

The building being on the western portion of the site extends from boundary to boundary in a wide 'V' angle shape to a maximum height of 20.35 meters. The orientation of the proposed building on the site is in a north-west direction. This results in mid-winter shadows being cast towards the southern side of the development across the subject site towards Brookvale Hotel.

There are no unreasonable amenity impacts resulting from solar access loss to any existing surrounding residential development or public areas as a consequence of the development. The most significant overshadowing impact resulting from the development is experienced in the communal open space area for the subject proposal, which is an unavoidable scenario given its orientation, size and location directly south of the proposed building.

With regards to the internal impact, it is acknowledged that shadowing in mid-winter is the worst case scenario and at all other times of the year, solar access is greater and shadowing is reduced. Overall, considering the site constraints and the desired increased density of development on the site under WLEP 2011, the proposed development is considered to be satisfactory in terms of shadowing impacts.

The overall extent of shadowing impact resulting from the proposal is not excessive or unreasonable given the nature of the development and the configuration and location of the site within an established area. The building design has responded to this site attribute by minimising the extent of potential overshadowing.

## **THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES**

The proposal will not significantly effect 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 raised no objections and commented that a CPTED assessment was not required.

## 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:

<b>Warringah Section 94 Development Contributions Plan</b>		
Contribution based on a total development cost of \$27,500,000		
<b>Contributions</b>	<b>Levy Rate</b>	<b>Payable</b>
Total Section 94A Levy	0.95%	\$ 261,250
Section 94A Planning and Administration	0.05%	\$ 13,750
<b>Total</b>	<b>1%</b>	<b>\$ 275,000</b>

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

## CONCLUSION

The site has been inspected and the application assessed having regard to the provisions of Section 79C of the Environmental Planning and Assessment Act, 1979, 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.

The proposed development represents a large mixed-use development on a large landholding in the Brookvale Commercial area. The proposal is important to the area for a number of reasons, including the significant physical changes to the streetscape, the changes to the levels of activity and intensity of land use on the site, the levels of accessibility through and around the site, the increased levels of onsite carparking and traffic on adjoining streets, the social and economic implications of the development, the temporary disruptions associated with a lengthy construction period and the public interest in the development.

The application was conceived through a number of pre-lodgement meetings with Council prior to lodgement of the application. The development is submitted pursuant to the provisions of WLEP 2011 and involves a variation to the building height development standards. In this case, the non-compliance is not considered to be determinative as the resultant built form is assessed as being compatible with surrounding development and suitable on the subject site. Other non-compliances such as variations to the number of parking spaces is not considered to be significant and found to be acceptable on the basis that the site is located within close proximity of public transport.

The development is considered to be consistent with the objectives of the controls for the site and generally consistent with Council's LEP and other DCP requirements. The proposal will deliver significant public benefit to the community in terms of the public pedestrian link.

The proposed development is suitable for the site and will represent a positive opportunity to provide additional services and employment opportunities within the local area.

The proposed development will revitalise the Brookvale Hotel, an important entertainment and cultural venue for the local community, and develop a historically underutilised open carparking area fronting Roger Street and Old Pittwater Road. Accordingly, the proposal is considered to be in the public interest.

The proposal is considered to satisfactorily respond to the opportunities and constraints of the site and the relevant legislation, is unlikely to result in adverse impacts in the locality and is worthy of JRPP approval.

## **RECOMMENDATION**

THAT the Joint Regional Planning Panel Sydney East Region (JRPP) as the consent authority grant Development Consent to DA2014/1125 for Alterations and Additions to an existing hotel (Pub), construction of a mixed use development (commercial and residential uses) with an associated Voluntary Panning Agreement and Strata and stratum subdivision on land at Lot 11 DP 1000708, 511 - 513 Pittwater Road, BROOKVALE, subject to the conditions contained in Attachment 1.