

**N0180/15 – 2 Orchard Street and 204 Garden Street, Warriewood (Future Lot 99 resulting from the re-subdivision of Lot B DP 37884 and Lot A DP 959150)**

**The construction of a 33 unit residential flat building, 22 attached dwellings and 6 semi-detached dwellings, and associated civil works and landscaping. The development will comprise 29 Community Title allotments, with the residential flat building to be Strata subdivided by means of a separate application.**

**DETERMINATION LEVEL:** Joint Regional Planning Panel

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**SUMMARY OF RECOMMENDATION:** Refusal

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**REPORT PREPARED BY:** Rebecca Englund  
**APPLICATION SUBMITTED ON:** 22 May 2015  
**APPLICATION SUBMITTED BY:** ABAX Contracting Pty Ltd  
**OWNERS:** ABAX Contracting Pty Ltd

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## **1.0 INTRODUCTION**

The proposal is commonly referred to as Stage 3 of a residential development involving three separate allotments, being 2 Orchard Street (Lot A DP 959150), 2A Orchard Street (Lot 100 DP 1033854) and 204 Garden Street (Lot B DP 378841) in the Warriewood Valley Urban Land Release Area. The proposed development is limited to the yet to be created new allotment, referred to as Lot 99, which results from the subdivision in Stage 2, approved pursuant to Development Consent N0379/14.

The applicant has indicated a cost of works, or Capital Investment Value (CIV), of approximately \$23.14 million, and as such, the application must be referred to the Sydney East Joint Regional Planning Panel (JRPP) for determination.

## **2.0 SITE DETAILS**

The yet to be created Lot 99 comprises land from two existing allotments, being 2 Orchard Street (Lot A DP 959150) and 204 Garden Street (Lot B DP 378841) in the Warriewood Valley Urban Land Release Area. The site forms part of the area referred to as Sector 901A, as identified on the Urban Release Area Map of PLEP 2014. With the exception of existing low-density residential development to the south and east, the site is surrounded by land zoned for medium density development that is yet to be developed.

Lot 99 has a total area of 14,270m<sup>2</sup>, divided into three parts by two yet to be constructed or dedicated public road reserves, known as 'Proposed Road No.1' and 'Proposed Road No.2'. Proposed Road No.1 provides access to the site from Garden Street, with Proposed Road No.2 providing access to the length of the site, with potential for future connections to the adjoining sites at 4 Orchard Street to the west and 206 Garden Street to the north.

The first part of Lot 99 is a slightly irregular rectangular shaped allotment in the north-eastern corner of the site. It will have a 89.26m wide frontage to Garden Street to the east, a 22.01m wide frontage to the Proposed Road No.1 to the south, a 88.63m wide frontage to the Proposed Road No.2 to the west, a 31.46m wide common boundary with the adjoining property to the north, and a total area of 2902m<sup>2</sup>. In accordance with the approval issued in relation to Stage 2, a water detention basin referred to as 'Basin A' is to be constructed in the northern portion of this part of the Lot. The northern portion of this part of the Lot is also affected by the outer creekline corridor.

The second part of Lot 99 is a slightly irregular rectangular shaped allotment in the north-western corner of the site. It will have a 180.51m wide frontage to the Proposed Road No.2 to the east, a 29m wide frontage to the Proposed Road No.2 to the south, a 184.26m wide common boundary to the adjoining property to the west, a 33.01m wide common boundary to the adjoining property to the north, and a total area of 6077m<sup>2</sup>.

The third part of Lot 99 is an L-shaped lot at the southern end of the site. It will have a 81.16m wide frontage to Garden Street to the east, a 64.7m wide common boundary to the residential allotments approved under Stage 1 to the south, a 30m wide common boundary to the adjoining property to the west, a 49m wide frontage to the Proposed Road No.2 to the north, a 81m wide frontage to the Proposed Road No.2 to the west and a 19.29m wide frontage to the Proposed Road No.1 to the north, with a total area of 5291m<sup>2</sup>. In accordance with the approval issued in relation to Stage 1, a water detention basin referred to as 'Basin B' is to be constructed in the south-eastern portion of this part of the Lot.

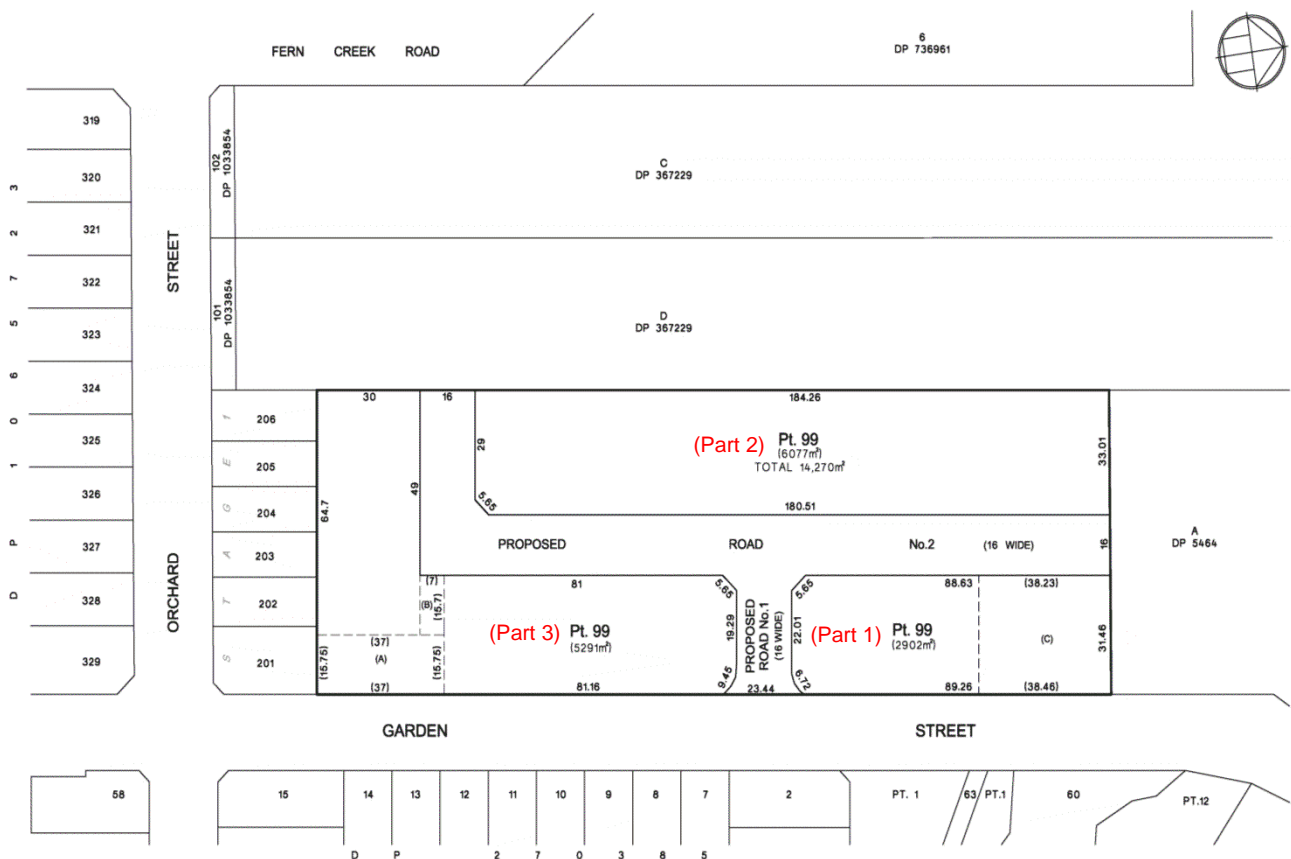


Figure 1 - Lot 99 with proposed public roads and nomination of Parts 1, 2 and 3

### 3.0 PROPOSED DEVELOPMENT

The applicant seeks consent for the following development to the site;

- Community title subdivision of 29 allotments of varying sizes
- Construction of a 33 unit residential flat building (RFB), comprising;
  - 12 x 1 bedroom units
  - 15 x 2 bedrooms units
  - 6 x 3 bedroom units
  - Basement parking for 65 cars
- Construction of 22 x two storey attached dwellings
- Construction of 6 x two storey semi-detached dwellings

- Civil works, including;
  - Water management system cut and fill
  - Waste management
  - Revegetation and landscaping
  - The creation of an above ground on-site detention basin adjacent to Garden Street
  - Electrical services
  - Stormwater drainage
  - Sewer drainage
  - Water supply
  - Light and power
- Landscaping.

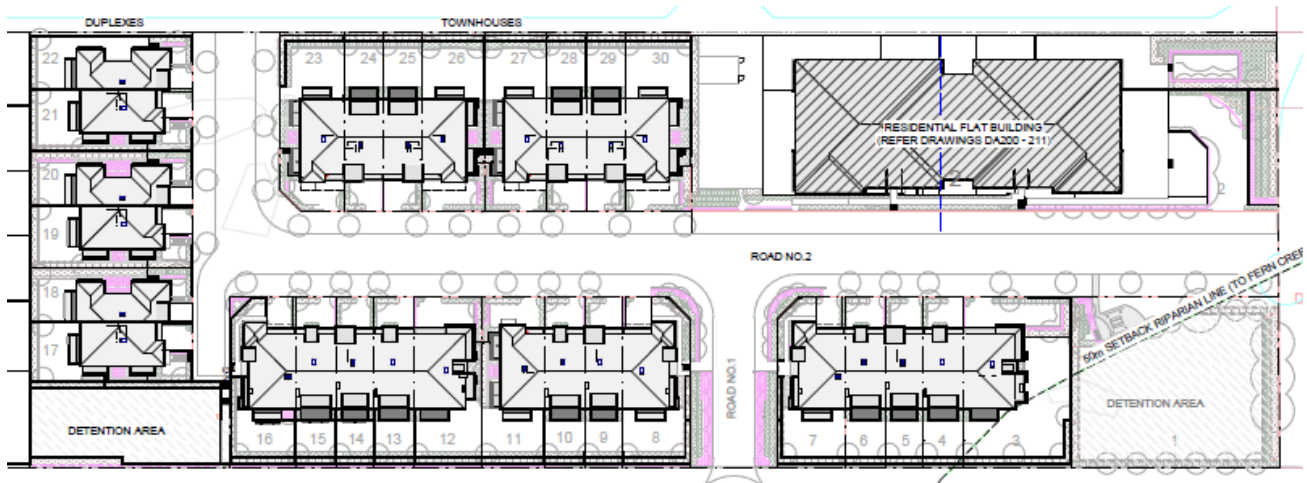


Figure 2 - Site Plan

#### 4.0 LEGISLATION, PLANS AND POLICIES

The following relevant state and local policies apply:

- Environmental Planning and Assessment Act 1979 ('the Act')
- Environmental Planning and Assessment Regulation 2000 ('the Regulations')
- Water Management Act 2000
- State Environmental Planning Policy No.55 – Remediation of Land
- State Environmental Planning Policy No.65 – Design Quality of Residential Flat Development ('SEPP 65')
- Residential Flat Design Code ('RFDC')
- State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004
- Pittwater Local Environmental Plan 2014 ('PLEP 2014');
  - Acid Sulphate Soils Map - Area 5
  - Height of Buildings Map – Area 6
  - Urban Release Area Map – Warriewood Valley (Sector 901A)
  - Acid Sulphate Soils Map – Class 5
- Warriewood Valley Strategic Review Report 2012
- Warriewood Valley Strategic Review Addendum Report 2014
- Warriewood Valley Roads Masterplan 2015
- Pittwater 21 Development Control Plan ('P21 DCP');
  - Warriewood Valley Land Release Area Locality
  - Geotechnical Risk Management Policy for Pittwater
  - Flood Risk Management Policy for Development in Pittwater

## 5.0 ZONING

The site is zoned R3 Medium Density Residential, as shown on the Zoning Map of PLEP 2014. Pursuant to the provisions of PLEP 2014, the proposed development is permitted with consent.

## 6.0 BACKGROUND OF SITE

Council's Land Release team provided the following background information in relation to the subject site;

*The Warriewood Valley Strategic Review Report 2012 (Strategic Review) and the recently adopted Warriewood Valley Strategic Review Addendum Report 2014 (Addendum Report) are the planning strategy documents for the Release Area. The Strategic Review identifies the subject sites within Sector 901A; this sector comprised ten (10) separate land parcels, 3 of which formed the Orchard Street road reserve (already closed under the Roads Act 1993).*

*A dwelling density of 32 dwellings per developable hectare was allocated to Sector 901A, and equates to a dwelling yield of up to 192 dwellings accommodated across the sector.*

*The Strategic Review in relinquishing the 'sector based' approach to allow individual land parcels to develop on their own recognised the opportunity to use the already closed Orchard Street road reserve, wherein:*

*"Landowners may wish to consolidate sites as a means of achieving better quality outcomes at a density of 32 dwellings per hectare. For example, properties fronting Orchard Street may take advantage of the available closed Orchard Street road reserve (and amalgamate) for its future development."*

*Notwithstanding, the closed Orchard Street road reserve did not contribute to the developable area in the Sector 901A dwelling yield calculation.*

*Rezoning the roads, except for classified roads, as per the adjoining zone is a practice adopted under the Standard LEP Template. Its rezoning to "R3 Medium Density Residential", consistent with the zoning of adjoining lands, affords an opportunity to incorporate the closed portion of Orchard Street road reserve to be developed and assist in achieving better quality design outcomes for the overall development.*

*The recommendations of the Strategic Review as they relate to the subject properties are now reflected in Pittwater Local Environmental Plan 2014 (PLEP 2014).*

*The Addendum Report (adopted 17 November 2014), in detailing the pro-rata dwelling yield allocation of individual land parcels within Sector 901A adopted the approach already established in the 2012 Strategic Review:*

- *The density for Sector 901A is 32 dwellings per developable hectare,*
- *The dwelling range for Sector 901A as 156 dwellings to 192 dwellings, and*
- *Noted that the site areas of 2A, 4A and 6A Orchard Street (being the closed Orchard Street road reserve) did not contribute towards the developable area for the purpose of calculating the pro-rata dwelling yield.*

## 7.0 BACKGROUND OF APPLICATION

Development Application N0180/15 was lodged at Council on 22 May 2015, and subsequently referred to Council's Development Engineer and Warriewood Valley Technical Team on 28 May 2015 for comments and/or recommendations.

A meeting was held with the Warriewood Valley Technical Team on 2 June 2015.

An internal JRPP Review Unit briefing was held on 25 June 2015.

A response was received from the Warriewood Valley Technical Team on 2 July 2015, identifying deficiencies relating to the following;

- Inconsistency with the dwelling yield prescribed by the Strategic Review;
- Adaptable housing allocation;
- Inadequate groundwater investigations;
- Presence of fill and retaining structures within outer creekline corridor;
- Clarification of site coverage calculation;
- Presentation of retaining walls to Garden Street;
- Clarification of staging sequence;
- Clarification of easements;

In addition to those listed above, the applicant was also asked to address the following issues raised following a preliminary assessment of the proposal;

- Height of RFB (non-compliance with two building height development standards);
- Amenity of houses;
  - inadequate solar access;
- Amenity of RFB;
  - Orientation on block;
  - Inadequate solar access;
  - Size of balconies (Units 205, 206, 211, 305, 306 and 311)
  - Cross ventilation;
  - Habitable rooms with no windows (Units 101, 110, 201, 210, 301 and 310);
  - Distance between kitchens and windows (107, 207 and 307);
  - Conflict between room uses in adjoining apartments;
- Non-compliant setbacks of RFB;
- Visual impact of RFB;
- Accessibility – Non-compliance with 50% requirement and inconsistencies in information;
- Building colours;
- Excessive cut and fill, and unacceptable resultant impacts upon amenity;
- Inadequate siting of proposed canopy trees;
- Inconsistencies with works approved under Stages 1 and 2;
- Inadequate information

Additional information was requested on 13 July 2015 and the applicant was granted 28 days to amend the proposal in order to address the issues outlined above.

Following requests from the applicant for an extension to the 28 day additional information timeframe, Council asked for detailed clarification as to how the issues were to be addressed in the amended proposal. On 12 August 2015, the applicant provided a brief written response that identified radical changes to the development, essentially deleting the majority of the proposed works.

Council briefed the Sydney East JRPP on 19 August 2015.

On 20 August 2015, Council advised the applicant that the opportunity to provide additional information had expired, and that the application should be withdrawn. The applicant has continually refused to withdraw the application.

## **8.0 ADVERTISEMENT AND NOTIFICATION**

The application was notified to adjoining property owners for a period of thirty-one days from 3 June through to 4 July 2015 in accordance with the Regulations and Council's Notification Policy.

The application was also advertised in the local paper on 6 June 2015. During the advertisement/notification period, five submissions were received from nearby residents, raising objection with regards to;

- Density;
- Traffic and parking;
- Insufficient infrastructure;
- Location of egress point;
- Lack of amalgamation with 206 Garden Street;

These objections are considered in regards to the relevant DCP controls, in the compliance table and discussion section (below).

## **9.0 KEY ASSESSMENT ISSUES**

- **Density**
  - Clause 6.1 (Warriewood Valley Release Area)
- **Extent of earthworks**
  - Clause 7.2 (Earthworks) of PLEP 2014
  - Clause B8.1 (Construction and Demolition - Excavation and Landfill) of P21 DCP
  - Clause C6.7 (Water Management and Creekline Corridors) of P21 DCP
  - Clause D16.7 (Fences - Warriewood Valley Residential Sectors) of P21 DCP
  - Clause D16.8 (Construction, retaining walls and terracing) of P21 DCP
- **Design and amenity of attached and semi-detached dwellings**
  - Clause 4.3 (Height of Buildings) of PLEP 2014
  - Clause C6.14 (Form of Subdivision and Subdivision Layout) of P21 DCP
  - Clause C6.25 (Sector 901A to 901G) of P21 DCP
  - Clause D16.13 (Solar Access) of P21 DCP
  - Clause A4.16 (Warriewood Valley Land Release Area Locality) of P21 DCP
  - Clause D16.1 (Character as viewed from a public place) of P21 DCP
  - Clause D16.2 (Building colours and materials) of P21 DCP
- **Design and amenity of the residential flat building**
  - Clause 4.3 (Height of Buildings) of PLEP 2014
  - Clause A4.16 (Warriewood Valley Land Release Area Locality) of P21 DCP
  - Clause D16.1 (Character as viewed from a public place) of P21 DCP
  - Clause D16.2 (Building colours and materials) of P21 DCP
  - Clause D16.5 (Building Envelope) of P21 DCP
  - Clause D16.3 (Front Building Line) of P21 DCP
  - Clause D16.12 (Landscaping) of P21 DCP
  - Clause D16.13 (Solar Access) of P21 DCP
  - SEPP 65
- **Adaptable housing**
  - Clause C1.9 (Adaptable Housing and Accessibility) of P21 DCP
  - Clause C6.17 (Social Environment) of P21 DCP
  - SEPP 65
- **Stormwater Management**
  - Clause 7.3 (Flood Planning) of PLEP 2014
  - Clause B5.1 (Water Management Plan) of P21 DCP
  - Clause B5.7 (Stormwater Management – OSD) of P21 DCP
  - Clause B5.11 (Stormwater discharge into waterways) of P21 DCP
  - Clause C6.23 (Landscaped Area) of P21 DCP
  - Clause D16.6 (Landscaped Area) of P21 DCP

These issues, and other areas of concern and non-compliance, are identified in the following compliance tables and are discussed in greater detail further in the report.

## 10.0 COMPLIANCE TABLE – PLEP 2014 and P21 DCP

T - Can the proposal satisfy the technical requirements of the control?

O - Can the proposal achieve the control outcomes?

N - Is the control free from objection?

Control	Standard	Proposal	T	O	N
<b>Pittwater Local Environmental Plan 2014</b>					
Zone R3 Medium Density Residential			Y	Y	Y
4.3 Height of Buildings	10.5 metres 8.5 metres at street frontage	Max. height of RFB: 12.34 metres Max. height of dwelling to Garden St: 9.01 metres	N	N	Y
4.6 Exceptions to development standards		See discussion.	N	N	Y
6.1 Warriewood Valley Release Area		See discussion.	N	N	N
7.1 Acid sulphate soils			Y	Y	Y
7.2 Earthworks		See discussion.	N	N	Y
7.3 Flood Planning		See discussion.	N	N	Y
7.4 Floodplain risk management			-	-	-
7.7 Geotechnical hazards			Y	Y	Y
7.10 Essential services			Y	Y	Y
<b>Pittwater 21 Development Control Plan</b>					
3.1 Submission of a Development Application and payment of appropriate fee			Y	Y	Y
3.2 Submission of a Statement of Environmental Effects		See discussion.	N	N	Y
3.3 Submission of supporting documentation - Site Plan / Survey Plan / Development Drawings		See discussion.	N	Y	Y
3.4 Notification			Y	Y	Y
3.5 Building Code of Australia			Y	Y	Y
4.1 Integrated Development: Water Supply, Water Use and Water Activity		See discussion.	N	N	Y
4.2 Integrated Development: Rivers, Streams and Foreshores		See discussion.	Y	Y	Y
6.6 Section 94 Contributions – Warriewood Valley			Y	Y	Y
A1.7 Considerations before consent is granted			Y	Y	Y
A4.16 Warriewood Valley Release Area Locality		See discussion.	N	N	Y
B1.3 Heritage - General			Y	Y	Y
B1.4 Aboriginal Heritage Significance			Y	Y	Y
B3.1 Landslip Hazard			Y	Y	Y
B3.6 Contaminated Land and Potentially Contaminated Land		See discussion.	Y	Y	Y
B3.23 Climate Change (Sea Level Rise and Increased Rainfall Volume)			Y	Y	Y
B4.5 Landscape and Flora and Fauna Enhancement Category 3 Land			Y	Y	Y
B5.1 Water Management Plan		See discussion.	N	N	Y
B5.2 Wastewater Disposal			Y	Y	Y
B5.7 Stormwater Management – Onsite Stormwater Detention		See discussion.	N	N	Y
B5.11 Stormwater Discharge into waterways and coastal areas		See discussion.	N	N	Y
B6.2 Access Driveways and Works on the Public Road Reserve			Y	Y	Y
B6.4 Internal Driveways			Y	Y	Y

Control	Standard	Proposal	T	O	N
B6.6 Off-Street Vehicle Parking Requirements		See discussion.	N	N	Y
B6.9 On-Street Parking Facilities			-	-	-
B6.10 Transport and Traffic Management		See discussion.	Y	Y	N
B8.1 Construction and Demolition - Excavation and Landfill		See discussion.	N	N	Y
B8.2 Construction and Demolition - Erosion and Sediment Management			Y	Y	Y
B8.3 Construction and Demolition - Waste Minimisation			Y	Y	Y
B8.4 Construction and Demolition - Site Fencing and Security			Y	Y	Y
B8.5 Construction and Demolition - Works in the Public Domain			Y	Y	Y
B8.6 Construction and Demolition - Traffic Management Plan			Y	Y	Y
C1.2 Safety and security			Y	Y	Y
C1.3 View Sharing			Y	Y	Y
C1.9 Adaptable Housing and Accessibility		See discussion.	N	N	Y
C1.12 Waste and Recycling Facilities			Y	Y	Y
C1.13 Pollution Control			Y	Y	Y
C1.18 Car/vehicle/boat wash bays			Y	Y	Y
C1.20 Undergrounding of utility services			Y	Y	Y
C1.23 Eaves		See discussion.	N	Y	Y
C1.25 Plant, equipment boxes and lift over-run			Y	Y	Y
C6.2 Aboriginal Heritage			Y	Y	Y
C6.3 European Heritage			Y	Y	Y
C6.4 Flood - Warriewood Valley Land Release Area			Y	Y	Y
C6.6 Bushfire Protection			Y	Y	Y
C6.7 Water Management and Creekline Corridors		See discussion.	N	N	Y
C6.8 The Road System		See discussion.	Y	Y	N
C6.9 Pedestrian and Cyclist Network			-	-	-
C6.10 Ecologically Sustainable Development		See discussion.	N	N	Y
C6.11 Natural Environment			Y	Y	Y
C6.12 Public Recreation and Open Space			-	-	-
C6.14 Form of Subdivision and Subdivision Layout		See discussion.	N	N	N
C6.17 Social Environment		See discussion.	N	N	Y
C6.18 Utilities and services - Warriewood Valley Land Release Area		See discussion.	N	Y	Y
C6.21 Provision of Infrastructure		See discussion.	N	Y	Y
C6.23 Landscaped Area – Sector, Buffer area or development site		See discussion.	N	N	Y
C6.25 Sector 901A to 901G - Additional Specifications Controls – Warriewood Valley Release Area		See discussion.	N	N	N
D16.1 Character as viewed from a public place		See discussion.	N	N	Y
D16.2 Building colours and materials		See discussion.	N	Y	Y
D16.3 Front Building Line – Warriewood Valley Residential Sectors	6.5m to Garden St 4m to internal road	Min. setback to Garden Street: 8.5m Min. setback to Internal road: 2.8m	N	N	Y
D16.4 Side and Rear Building Line – Warriewood Valley Residential Sectors			Y	Y	Y
D16.5 Building Envelope – Warriewood Valley Residential Sectors		See discussion.	N	N	Y
D16.6 Landscaped Area – Warriewood Valley Residential Sectors	45% minimum	40.7% - 67.4%	N	N	Y
D16.7 Fences - Warriewood Valley Residential Sectors		See discussion.	N	N	Y
D16.8 Construction, retaining walls and terracing		See discussion.	N	N	Y



Control	Standard	Proposal	T	O	N
D16.9 Utilities and Telecommunication Services			Y	Y	Y
D16.10 Pets and Companion Animals			Y	Y	Y
D16.11 Location and design of carparking facilities – Warriewood Valley Residential Sectors			Y	Y	Y
D16.12 Landscaping		See discussion.	N	N	Y
D16.13 Solar Access - Warriewood Valley Residential Sectors		See discussion.	N	N	Y
D16.15 Scenic Protection - General			Y	Y	Y
SEPP BASIX		See discussion.	N	N	Y

Controls marked with a (-) are not applicable in relation to the proposal.

## 11.0 DISCUSSION

### Building Height

- **Clause 4.3 (Height of Buildings) of PLEP 2014**
- **Clause 4.6 (Exceptions to development standards) of PLEP 2014**
- **Clause D16.5 (Building Envelope) of P21 DCP**

The site is situated within Area 6 on the Height of Buildings Map, which restricts the height of development to 8.5m at the street frontage and 10.5m for the remainder of the site. The proposed development is inconsistent with the building height development standards, with regard to both the RFB (that reaches 11.91m at the street frontage and a maximum of 12.34m at the pitch of the roof), and dwelling 16 (that reaches a maximum of 9.01m along the Garden Street frontage). The proposal is also seen to breach the prescribed building envelope, which is limited by the prescribed maximum height.

The non-compliant height of the RFB is partially attributed to the design of the basement carpark, which extends up to 1.6m above ground along the eastern elevation of the building. However, even if this basement was wholly located below existing ground levels, the areas of height non-compliance will still remain. The basement level, which extends beyond the footprint of the residential levels above, also restricts any ability to introduce sufficient deep soil screen planting that would assist to soften and screen the resultant built form. Without adequate landscaping, the bulk and scale of the development will dominate the setting and the desired future character of the locality will not be achieved.

The non-compliant height of dwelling 16 is directly associated with the extent of fill proposed along the Garden Street frontage. If proposed on existing ground level, this dwelling would be wholly maintained below the height limit. This height non-compliance could be addressed by reducing the extent of fill across the Garden Street frontage, or could be potentially justified, noting that the outcomes of the 8.5m street frontage height limit aim to achieve a two storey appearance to the street.

Unfortunately, the building height development standards prescribed by clause 4.3 of PLEP 2014 were not addressed by the applicant in any way, with no mention of building height in the statement of environmental effects (SOEE) provided. Without acknowledging the height non-compliance, the applicant has also failed to provide a written statement requesting any variation to the building height development standards under the provisions of clause 4.6 of PLEP 2014.

The proposed height non-compliance is not adequately justified, is not warranted, and is not in a position to be supported. The proposal is recommended for refusal based on non-compliance with the provisions of clause 4.3 of PLEP 2014.

## **Density and consistency with the Warriewood Valley Strategic Review**

- **Clause 6.1 (Warriewood Valley Release Area) of PLEP 2014**

Submissions have been received from residents within the Warriewood Valley Land Release Locality in objection to the density of the development. The submissions are not seen to be in objection to the exceedance of the maximum yield by one dwelling, but rather of the general density of the subsector as a whole.

Council's Land Release team provided the following comments in relation to dwelling density and consistency with the Strategic Review;

### Objectives under Clause 6.1(1)

- *Objective (a)*

*The Strategic Review allocated a dwelling density of 32 dwellings per developable hectare to Sector 901A. Sector 901A included the closed Orchard Street road reserve with the intention that:*

*"Landowners may wish to consolidate sites as a means of achieving better quality outcomes at a density of 32 dwellings per hectare. For example, properties fronting Orchard Street may take advantage of the available closed Orchard Street road reserve (and amalgamate) for its future development."*

*The closed Orchard Street road reserve however did not contribute to the developable area of Sector 901A for the purposes of calculating the dwelling yield (based on the density of 32 dwellings per developable hectare).*

*The Warriewood Valley Strategic Review Addendum Report (adopted 17 November 2014), in detailing the pro-rata dwelling yield allocation of individual land parcels within Sector 901A adopted the approach already established in the 2012 Strategic Review:*

- *The density for Sector 901A is 32 dwellings per developable hectare,*
- *The dwelling range for Sector 901A as 156 dwellings to 192 dwellings, and*
- *Noted that the site areas of 2A, 4A and 6A Orchard Street (being the closed Orchard Street road reserve) did not contribute towards the developable area for the purpose of calculating the pro-rata dwelling yield.*

*The pro-rata dwelling yield allocation of the individual land parcels in Sector 901A, known as Table 6 in the Addendum Report, is replicated below:*

Address	Developable Area* (m <sup>2</sup> )	Density range	Minimum Yield	Maximum Yield	Comments
9 Fern Creek Rd	9,297	25 to 32	0	0	This parcel was bought by Council for recreational purposes. Under the 2012 Strategic Review it was zoned R3 with no dwelling yield allocated against this parcel.
13 Fern Creek Rd	606	25 to 32	2	2	-
6 Orchard Street	15,170	25 to 32	39	48	6 and 6A Orchard Street are to be developed together.
6A Orchard Street	284				
4 Orchard Street	10,496	25 to 32	27	33	4 and 4A Orchard Street are to be developed together.

4A Orchard Street	289				
206 Garden Street	3,149	25 to 32	8	10	-
204 Garden Street	7,082	25 to 32	18	23	-
2 Orchard Street	13,320	25 to 32	35	43	2 and 2A Orchard Street are to be developed together.
2A Orchard Street	573				
10 Fern Creek Road	10,240	25 to 32	27	33	-
<b>TOTAL</b>	<b>60,063</b>		<b>156</b>	<b>192</b>	

*\*Individual site area excluding creekline corridor*

*Based on the Table above, the pro-rata dwelling yield for the development site is from 53 to 66 dwellings.*

*The application is Stage 3 of an overall development of the subject property. Stage 3 proposes 61 dwellings and must be considered against the earlier approved stages of the overall development to ensure that the total number of dwellings on the subject property is consistent with the Warriewood Valley Strategic Review. The total number of dwellings for the subject property is 67 dwellings, being 1 dwelling above the maximum number allocated for the subject property.*

*The applicant has incorrectly included the area of the 2A Orchard Street road reserve in the total developable area to calculate the dwelling yield that equates to adopted density of 32 dwellings per developable area.*

*The exceedance of 1 dwelling may seem insignificant however this must be considered in the following context:*

- the Warriewood Valley Strategic Review Report and Warriewood Valley Strategic Review Addendum Report, following significant community consultation, are the contemporary strategic planning documents for the Warriewood Valley Release Area,*
- the recommendations arising from these have been agreed to by the Warriewood Valley community and adopted by Council,*
- the residents of the Warriewood Valley release area should be able to rely on what has been planned for Warriewood Valley, given that integral to the finalisation and adoption of the Strategic Review documents have been the extensive community consultation process that underpins an orderly planning process. It will be recalled that the Sydney East Joint Regional Planning Panel, in its determination of a development application in Warriewood Valley, stated:*

*“The Panel notes that [Pittwater] DCP21 has a range of 800 to 2,222m<sup>2</sup> GFA, and the Panel puts major weight on this size range. This is because buyers into the area are likely to have consulted the DCP and made their decision on the basis that the maximum size of a shopping centre on the site will be 2,222m<sup>2</sup>. To allow a shopping centre that is 75% larger than [SIC] the maximum size indicated in the DCP, seems to us to breach the faith of those who relied on the DCP being upheld.” (Extract from minutes of meeting by Sydney East Joint Regional Planning Panel held 12 November 2009 in regard to DA N0283/09)*

*In this circumstance, the application will result in the total number of dwellings being accommodated on the subject property that exceeds this property’s pro-rata dwelling*

*allocation which is inconsistent with the recommendations of the Strategic Review and thereby, inconsistent with objective (a).*

- *Objective (b)*

*This objective relates to the development's impact on waterways and the creek line corridors. A section of Fern Creek is located north of the subject property. A portion of the Fern Creek outer creek line corridor encroaches on the north-eastern corner of the development site. Objective (b) is not satisfied given the issues raised by the Technical Team in the detailed commentary on LEP clauses 7.3 and 7.6 and Pittwater 21 DCP control C6.7 contained below.*

- *Objective (c)*

*The subject properties are not located within a Buffer Area; therefore the application does not require any consideration against Objective (c).*

#### *Clause 6.1(3)*

*Clause 6.1(3) prescribes the following dwelling range for Sector 901A "Not more than 192 dwellings or less than 156 dwellings".*

*Sector 901A comprises ten (10) separate land parcels, 3 of which formed the Orchard Street road reserve (already closed under the Roads Act 1993). As discussed earlier, the application will result in exceeding the pro-rata dwelling allocation for the subject property specified under the Addendum Report and will result in a non-compliance with the objective (a) of Clause 6.1(1). Nonetheless, Clause 6.1(3) specifies the dwelling range for Sector 901A of which the subject property is part of; the number of dwellings resulting from the overall development of the subject property will be within the dwelling range for Sector 901A.*

#### *Clause 6.1(4)*

*Clause 6.1(4) requires development to not have any significant adverse impacts on the following matters:*

- *opportunity for rehabilitation of aquatic and riparian vegetation, habitats and ecosystems within creek line corridors,*
- *the water quality and flows within the creek line corridors,*
- *the stability of the bed, shore, and banks of any watercourse within the creek line corridors.*

*This clause relates to the development's impact on the opportunities for rehabilitation within the creekline corridors.*

*The subject property does not contain the inner creek line corridor of Fern Creek. Rehabilitation works on the inner creek line corridor of Fern Creek will be undertaken through the works program as per the Warriewood Valley Section 94 Plan. This application will (if approved) be subject to Section 94 where part of the contributions will pay for future rehabilitation works associated with the creekline corridors in the Release Area.*

*Nonetheless, a portion of the 25 metre outer creek line corridor of Fern Creek is located on the north-eastern corner of the property. The development will impact on the outer creek line corridor as a residential allotment is proposed within this corridor contrary to the design intent for this corridor area to specifically perform the functions of part water quality control and a fauna/flora corridor (Lawson & Treloar, 1998).*

## **Earthworks and retaining walls**

- **Clause 7.2 (Earthworks) of PLEP 2014**
- **Clause B8.1 (Construction and Demolition - Excavation and Landfill) of P21 DCP**
- **Clause C6.7 (Water Management and Creekline Corridors) of P21 DCP**
- **Clause D16.7 (Fences - Warriewood Valley Residential Sectors) of P21 DCP**
- **Clause D16.8 (Construction, retaining walls and terracing) of P21 DCP**

The application seeks consent for a considerable extent of earthworks across the site, with excavation occurring along the western boundary and fill introduced along the southern and eastern boundaries. The key areas of concern are considered individually, as follows;

### **Western boundary**

Excavation is proposed along the western boundary, to a maximum depth of approximately 2.675m, without any justification within the SOEE. The minimal width of the terracing proposed between the side boundary and the rear yards of dwellings 23-20 will not provide sufficient space for landscaping, and the height of the retaining walls, in addition to boundary fencing, will result in overshadowing in the afternoon, when these western oriented sites should receive maximum direct sunlight.

The extent of the proposed excavation and the resultant impacts upon the amenity of these proposed dwellings will be further compounded when the adjoining site to the west is developed. The proposed excavation and associated retaining walls will add to the perceived height of any future buildings, which are able to reach up to 10.5m in height at a minimum distance of 6m from the common boundary.

### **Southern boundary**

Fill is proposed along the southern boundary of Lot 99, behind dwellings 17-22, with resultant retaining walls reaching up to 3m in height along the common boundary. Given the substantial change in levels proposed, fencing of a minimum height of 1m will also be required atop of the proposed retaining walls, situated with a nil setback to the adjoining residential lots to the south.

The proposed retaining wall and associated fencing will result in considerable impacts upon the amenity of the adjoining residential allotments, attributing to overshadowing of the rear yard and an unreasonable visual impact. Given the orientation of the proposed allotments, it is likely that future dwellings will be designed to maximise the northern orientation, with primary living spaces oriented towards an unarticulated retaining wall and fence reaching up to 4m in height.

The fill and associated retaining walls also act to emphasise the visual impact of dwellings 17-22 as seen from the adjoining properties at the rear and from the public domain. This visual impact is unable to be screened within the confines of the subject development site, and will be entirely reliant upon landscaping within the rear yards of the adjoining Torrens title allotments.

Council's Technical Team provided the following commentary in this regard;

*The retaining walls and fencing, up to 3 metre high, along the southern boundary (for Lots 17 to 22 inclusive) will create a visual impact to those properties (already approved as part of Stage 1) fronting Orchard Street, with residents getting a 'walled in effect' in their private open space areas thus reducing their enjoyment of these areas. Lots 17 to 22 are proposed on sloping land with Lot 22 being at the highest level. To lessen the visual impact on those lots fronting Orchard Street, lowering the building platform of Lot 22 to the natural ground level will result in lowering the building platforms for the remaining lots at this location (being Lots 17 to 21) and thereby results in reducing the overall height of the retaining wall.*

*The excessive excavation and retaining walls are not supported due to the loss of visual amenity created by the continuous mass built form of masonry walling and timber fencing, that will be visible from all levels of the residential buildings within Lots 17 to 22. No landscaping is proposed to soften the visual impact nor is a better building design presented to reduce the extent of excavation.*

### Garden Street

Fill is proposed along the Garden Street (eastern) frontage, adjacent to dwellings 3-16, with resultant retaining walls reaching up to 2.29m in height at the street frontage. Minimal terracing is proposed in front of the retaining walls, of insufficient width to provide any beneficial screen planting. The fill aims to provide level lawns to the east of dwellings 3-16; however a similar outcome could be achieved with a lesser degree of fill, if the building platform was stepped similar to the stepping proposed in dwellings 23-30.

The presentation of the retaining walls to Garden Street is poor and the bulk and scale of the proposed development is exaggerated by the unnatural platform introduced along the streetscape. The extent of fill also attributes to non-compliance with the design criteria for fencing as prescribed by clause D16.8 of P21 DCP.

Council's Technical Team provided the following comments in this regard;

*Retaining walls for Lots 3 to 16 inclusive, at up to 2.1m high in some parts, immediately front Garden Street. These walls forms the private open space areas of Lots 3 to 16 inclusive, within which 1 small to medium sized tree per lot and low shrub planting is proposed. Low groundcovers and shrub planting is the landscape treatment for the two stretches of retaining wall. The length of each continuous wall length being 54 metres and 85 metres fronting Lots 3 to 7 and Lots 8 to 16 respectively.*

*The main building frontage should be to Garden Street, being the higher order street in the road hierarchy compared to the internal street. A new typology rather than the proposed design is needed to treat Garden Street as its front address and adequately treat the internal street as a 'secondary' frontage. Using Garden Street as the frontage for dwellings with multiple entry points can help to break up the long stretch of retaining wall as well as avoid 'backing' onto the public domain and the development on the opposite side of Garden Street.*

*Dropping the level and having pedestrian entries from Garden Street will help improve the relationship to Garden Street. The first low wall should be setback at least 2 metres from the front boundary and the second high wall shall remain as a 900mm wide garden bed. A combination of dense small trees, shrubs and groundcovers are to be utilised.*

### Outer Creekline Corridor

A large volume of fill is proposed within the outer creekline corridor associated with dwelling 3. The fill is to provide a large level lawn area to the north and east of the proposed dwelling, with an area far exceeding that of other proposed dwellings. The introduction of fill and associated retaining walls is inconsistent with the requirements for the 25m wide outer creekline corridor as prescribed by clause C6.7 of P21 DCP, which identifies that the area is to be free of built structures, landscaped and should appear as part of the public domain (as opposed to being enclosed by fencing associated with one residential lot).

Overall, the extent of cut and fill proposed is inconsistent with the requirements of P21 DCP which emphasise a balance between maintenance of natural topography and the development of the land. Furthermore, the applicant has not had sufficient consideration for the provisions of clause 7.2 of PLEP 2014, particularly in relation to the effect of the earthworks upon the existing and likely amenity of proposed and adjoining properties.

## **Flood Planning**

- **Clause 7.3 (Flood Planning) of PLEP 2014**
- **Clause B3.23 (Climate Change) of P21 DCP**
- **Clause B5.1 (Water Management Plan) of P21 DCP**
- **Clause B5.7 (Stormwater Management – Onsite Stormwater Detention) of P21 DCP**
- **Clause B5.11 (Stormwater discharge into waterways and coastal areas) of P21 DCP**
- **Clause C6.7 (Water Management and Creekline Corridors) of P21 DCP**

The application was not supported by stormwater management plans for the individual allotments, which are required to demonstrate the way in which stormwater is collected on individual sites, and the incorporation of rain water tanks required by the stormwater management strategy proposed by the applicant and approved by Council for Stages 1 and 2.

Council's Climate Management and Climate Change team provided the following comments;

*Assessment of criteria under Clause 7.3 needs to be carried out in conjunction with the consideration of the relevant controls [in Pittwater 21 DCP being Controls B3.20 and C6.4 relevant to flood hazard consideration; B3.23 in terms of Climate Change; B5.1, B5.11, C6.4 and C6.7 as applying to water management] regarding the Integrated Water Cycle Management Report (including flood modelling) prepared for this development/site, being prepared in accordance with the Warriewood Valley Water Management Specifications (Water Management Specification). It is recognised that B5.1, B5.7 and B5.11 are general controls applying to all land in Pittwater however it is more appropriate to consider the development against the Warriewood Valley specific controls given the Integrated Water Cycle Management Report (including flood modelling) prepared for this development/site must be prepared in accordance with the Water Management Specification.*

*Assessment of the submitted report and associated plans addressing the requirements of the Warriewood Valley Water Management Specifications also results in whether Subclauses 6.1(4) (b) and (c) to be achieved or otherwise.*

*The application relies heavily on the integrated water management system prepared for the site's original application (known as Stage 1 & 2 DA, Ref N0379/14), which has since been approved for the development.*

### **Flood Affection**

*This application, being Stage 3, will not create flood affected properties or result in a net decrease in floodplain storage capacity.*

### **Climate Change**

*The development's water management system, approved under N0379/14 (being Stages 1 and 2 of the development of this site), has incorporated the climate change scenario.*

### **Water Management and Creekline Corridors (DCP Control B5.1 and C6.7)**

*The Integrated Water Cycle Management Report (including flood modelling) prepared for the site was undertaken for the total development of the subject properties (that included this current stage of the development). Although Council agreed to the Report under the previous development stages, this next phase of development raises concern with the lack of details on the rainwater tanks and the impact on groundwater.*

*Details of the location of rainwater tank systems including the lot-based and apartment-based system (required as part of the integrated water management scheme for the overall*

development, and was approved under Stages 1 and 2) has not been provided on the plans. Explanation is required as to how the apartment-based rainwater system is to function.

No specific groundwater studies have been undertaken and the Geotechnique Contamination Assessment Report dated 25 September 2008 generally suggests that the groundwater table in the low-lying portions of the site is likely to be less than 2.0m below the ground surface. The more recent geotechnical study (dated 16 September 2014) and the supplementary report (dated 5 May 2015 but based on the original 2014 investigation) by Compaction and Soil Testing Services does not address groundwater management associated with the basement carpark.

The Giles Tribe Architect drawing entitled Site Sections – APT + Lots 3-7 dated December 2014 indicates that excavation depths could reach up to 3.5m depth below ground levels over the basement carparking area.

Additional groundwater investigations need to be undertaken to consider any potential groundwater impacts as a result of the proposed basement carparking (during and post construction) and to determine any required mitigation measures. The potential impacts to groundwater resulting from the proposed basement carpark will necessitate an additional integrated development referral to the NSW Office of Water under Clause 90 of the Water Management Act.

Council's Land Release team also raises the following issues:

The water management report submitted for this application is the one prepared for the earlier stages of the development on this property which assumed an impervious area of 55% of the sector site area. The earlier stages of the development required, via a consent condition, the provision of a footpath along the length of the internal road network. The footpath, given its length, will result in the total impervious area exceeding 55% therefore the extent of the additional impervious area needs to be accounted. Updated water management modelling has not been carried out as the water management report submitted for this application refers to the 55% impervious area. Given that the proposal will exceed the 55% impervious area, then the on-site detention systems for this development will be undersized due to the incorrect % of impervious area that was modelled. An undersized OSD system would mean that the post development peak flows would be greater than the existing peak flows and this could increase flood impacts on properties downstream.

The rehabilitation of the creeks and their associated buffer corridors is an essential component of the water sensitive urban design with the creek lines of Warriewood Valley intended to fulfil a multi-functional purpose. The rationale for the outer creek line corridor (private creek buffers) was to perform the functions of part water quality control and a fauna/flora corridor (Lawson & Treloar, 1998). Under the Water Management Specification, the outer 25 metres of the creek (being a private riparian buffer area) is not to be within residential lots as "...the use of buffer areas assist in reducing stream warming. Urban Streams without buffer areas and riparian vegetation have less shading, and the stream water temperatures can be elevated. This increases the likelihood of water quality issues."

### **Supporting Documentation**

- **Clause 3.2 (Submission of a Statement of Environmental Effects) of P21 DCP**
- **Clause 3.3 (Submission of supporting documentation - Site Plan / Survey Plan / Development Drawings) of P21 DCP**

Clause 3.2 of P21 DCP requires the preparation of a SOEE to demonstrate how the development satisfies the relevant provisions of PLEP 2014 and P21 DCP, and justify any areas of non-compliance. A SOEE has been provided to support the application, however, it does not address key standards and controls, such as building height, and a number of areas of non-compliance



have not been addressed. There are also a number of discrepancies in the architectural drawings and within the supporting documentation provided, including incorrect shadow diagrams and insufficient geotechnical investigations. Whilst the proposal is not recommended for refusal for this reason alone, the deficiencies in the application are not seen to assist the applicant in obtaining a favourable outcome in regards to the proposed non-compliant development.

### **Integrated development**

- **Clause 4.1 (Integrated Development – Water Supply, Use and Activity) of P21 DCP**
- **Clause 4.2 – (Integrated Development: Rivers, Streams and Foreshores) of P21 DCP**

The works proposed in the subject application constitute Integrated Development pursuant to s.91 of the *Environmental Planning and Assessment Act* and the *Water Management Act*. The application was referred to the NSW Office of Water who provided General Terms of Approval, to be incorporated as conditions in any consent issued.

However, in accordance with the findings of the Geotechnique Contamination Assessment Report (dated 25 September 2008), the water table is likely to be less than 2m below the ground surface on low lying portions of the site. Concern is raised in this regard, with further ground water investigations required in relation to the proposed basement carpark. Subject to the findings of these groundwater investigations, further referral to the NSW Office of Water may be required.

### **Provision of infrastructure**

- **Clause 7.10 (Essential Services) of PLEP 2014**
- **Clause C6.18 (Utilities and services) of P21 DCP**
- **Clause C6.21 (Provision of Infrastructure) of P21 DCP**

The application was not supported by a plan detailing the provision of infrastructure to individual allotments. However, conditions of consent could be imposed to ensure that all essential services are provided to each dwelling, and that they are located underground in locations that do not impact upon canopy trees proposed within individual lots.

Council's Land Release team provided the following comment in this regard;

*This application is the third stage of the overall development on this property. Servicing arrangements associated with this stage (being stormwater drainage, supply of water and electricity, and disposal and management of sewage) typically must be satisfied prior to registration of the allotments.*

### **Parking and Traffic**

- **Clause B6.10 (Transport and Traffic Management) of P21 DCP**
- **Clause C6.8 (The Road System) of P21 DCP**

A submission has been received from an adjoining property owner with regard to the location of the new access road where it intersects with Garden Street. This issue was addressed in detail in the assessment of Stages 1 and 2 of the development, when the overall road layout was considered and ultimately approved by Council.

Submissions were also received in relation to the additional traffic within the locality resulting for the proposed development. Council's Technical Team provided the following comment in this regard;

*The development will not generate pedestrian, cyclist or vehicular traffic and transport requirements in excess of the capacity of the existing or proposed (N0379/14) road and transport network.*

Council's Technical Team confirms that the traffic report prepared by Transport & Traffic Planning Associates (dated April 2015) has been reviewed and the proposal is considered to satisfy the requirements of the *Warriewood Valley Roads Masterplan 2015*.

### **Contaminated Land**

- **Clause B3.6 (Contaminated Land and Potentially Contaminated Land) of P21 DCP**

Council's Land Release Team provided the following comment in this regard;

*The Environmental Health Officer agrees with the recommendations of the Preliminary Site Contamination Assessment. The complete recommendations stated with the Preliminary Site Contamination Assessment prepared by Geotechnique should be imposed as conditions of consent.*

### **Adaptable Housing**

- **Clause B6.6 (Off-street vehicle parking requirements) of P21 DCP**
- **Clause C1.9 (Adaptable Housing and Accessibility) of P21 DCP**
- **Clause C6.17 (Social Environment) of P21 DCP**

Clause C6.17 of P21 DCP encourages adaptable housing designs for all housing products and clause C1.9 of P21 DCP currently requires 50% of units in RFBs to be adaptable, in accordance with the criteria of *AS 4299-1995 Adaptable Housing*. With this in mind, 17 of the proposed 33 units would be required to be adaptable. However, this requirement has been the subject of recent review, and a draft amended control has since been publically exhibited, requiring 25% of the dwellings proposed to be adaptable. In consideration of the draft control, 16 of the 61 dwellings proposed would be required to be adaptable.

Based upon the SOEE, the RFB provides 5 adaptable units, equating to 15% of the 33 units proposed. The applicant justifies the non-compliance with the 50% requirement of the current control based upon an approval by the PAC at 14-18 Boondah Road, Warriewood (the Meriton site), which provided adaptable units at a rate of 10% of the total proposed.

Council's Technical Team provided the following comment in this regard;

*When compared to the population of Greater Sydney, Pittwater has a significantly ageing population. In 2011 the proportion of the Pittwater population aged 65 years or older was 19% and is forecast to increase to 25% by 2041 (Bureau of Transport Statistics, 2014). This is compared to 13% in 2011 and 19% by 2041 for Greater Sydney (Bureau of Transport Statistics, 2014). This profile means 'ageing in place' needs to be a key consideration in the design of new housing, in order to ensure people can remain in their communities and maintain their social networks as they age.*

*The Pittwater Social Plan (2012-2016) explains that in relation to housing needs and preferences, older people generally want to remain living in their own home or neighbourhood as long as they can. The Social Plan gives further consideration to how Pittwater can meet the housing needs of older people over the coming years and reports that although many prefer to remain in the family home, some older people remain living in large family homes because of a lack of suitable alternatives in the local area. Consistent with the draft North East Subregional Strategy, which recognises a demand for 'ageing in place', the conclusion reached in the Social Plan is that new dwellings built today in Pittwater need to allow for this through the incorporation of adaptable housing principles, so that residents are able to remain in their homes longer and*

*down-sizing empty-nesters have suitable alternatives that will not compromise their lifestyle and allow them to remain in their communities.*

*Council's current DCP addresses these life stage housing needs by requiring certain forms of development and development in particular areas to provide a percentage of units meet the Australian Standard AS 4299-1999, which describes specific adaptable housing features. The current DCP control requires that certain developments in the Warriewood Valley Release Area ensure that 20-100% of dwellings (dependent on location and development type) be constructed as adaptable dwellings. The DCP control was recently been revised, although yet to be adopted, to require 25% of all residential development in Warriewood Valley be constructed as adaptable dwellings.*

*The aim of this provision is to achieve the underlying principle of social sustainability. Given the particular characteristics of the Pittwater population, it is not considered unreasonable to require a moderately high provision of adaptable dwellings. The PAC's determination of the development at 79-91 Macpherson Street, approved under a now abolished and highly contentious legislative framework cannot be considered as setting a precedent for varying this requirement*

*To permit a reduction in the percentage of adaptable units required to be provided when other sites and developments within Warriewood Valley and Pittwater generally have been required to satisfy this provision would be inequitable.*

Furthermore, Council's Land Release Team commented that "agreeing to a requirement less than 25% greatly erodes the intent and policy direction established by Council".

The commentary of the SOEE is inconsistent with the architectural drawings, which demonstrate 4 adaptable units (with 4 adaptable parking spaces) and 5 adaptable dwellings. Furthermore, both the SOEE and the architectural drawings also differ from the accessibility report, which makes reference to 17 adaptable units, with only 4 adaptable parking spaces.

It is also noted that the communal area of open space provided to the south of the RFB can only be accessed by stairs, inconsistent with the requirement for public spaces to be entirely accessible. Furthermore, the basement carpark does not provide an accessible parking space for visitors, as required by clause B6.6 of P21 DCP.

Irrespective of the alternative solutions presented in the application, the proposal does not satisfactorily address the provisions of clauses C1.9 and C6.17 of P21 DCP.

### **Subdivision Layout**

- **Clause C6.14 (Form of Subdivision and Subdivision Layout) of P21 DCP**
- **Clause C6.25 (Sector 901A to 901G - Additional Specifications Controls – Warriewood Valley Release Area) of P21 DCP**
- **Clause D16.13 (Solar Access - Warriewood Valley Residential Sectors) of P21 DCP**

The general subdivision, including the internal road layout, was approved as part of Stages 1 and 2 pursuant to development consent N0379/14. Whilst the road layout is not consistent with the indicative layout plan of clause C6.25 of P21 DCP, the layout is in keeping with the indicative road layout demonstrated in the draft DCP controls for the Warriewood Land Release Area and was ultimately supported by Council.

A submission has been received from an adjoining property owner with regard to the exclusion of their site at 206 Garden Street from the proposed redevelopment of the subject site. This issue was addressed in detail in the assessment of Stages 1 and 2 of the development, when the overall subdivision layout was considered and ultimately approved by Council.

### Attached and semi-detached dwellings

The applicant now seeks to further subdivide the site to provide for attached/semi-detached dwellings and the RFB. The proposed subdivision provides for a variety of lot sizes and dimensions, with the lots for the attached/semi-detached dwellings ranging in width from a minimum of 7m to a maximum of 19.9m. The applicant has demonstrated adequate provision of off-street parking, and areas of private open space are generously sized.

However, concern is raised in relation to the design response of the attached/semi-detached dwellings in consideration of the orientation of the lots. As discussed in the assessment report prepared for Stages 1 and 2, the subdivision pattern places added pressure on the design of future development in order to ensure that adequate levels of solar access are achieved. In particular, the east-west dwellings need to be adequately spaced and well-articulated in order to ensure maximum solar access to living rooms and areas of private open space.

The current requirements of clause D16.13 of P21 DCP require a minimum of 4 hours of direct sunlight to windows associated with living areas and areas of private open space. However, in consideration of the recent increase to dwelling densities within the land release area, the required amount of direct sunlight has been reduced to 3 hours in recently exhibited draft DCP controls. Although this is only a draft control, it is seen to be reasonable to consider this lesser requirement for this current proposal.

Even with the lesser requirement applied, the attached and semi-detached dwellings are non-compliant, with only 13 of the 28 dwellings receiving 3 or more hours of direct sunlight to minor portions of glazing associated with the primary living space between 9am and 3pm in midwinter. This has not been addressed in any way by the applicant, noting that the SOEE nominates the proposal to be entirely compliant with the 4 hour requirement. The extent of solar access received by each dwelling, based upon the solar access diagrams prepared by the applicant, can be seen in the table below.

Lot #	Primary Orientation	Private Open Space (hrs of sunlight)	Living area (hrs of sunlight)	Compliance
3	North and East	>3	>3	Yes
4	East	>3	<1	No
5	East	>3	<2	No
6	East	>3	<2	No
7	South and East	>3	<2	No
8	North and East	>3	>3	Yes
9	East	>3	<2	No
10	East	>3	<2	No
11	South and East	>3	<2	No
12	North and East	>3	>3	Yes
13	East	>3	<2	No
14	East	>3	<2	No
15	East	>3	<2	No
16	South and East	>3	<2	No
17	North and East	2	>3	No
18	North and West	2	>3	No
19	North and East	2	>3	No
20	North and West	2	>3	No
21	North and East	2	>3	No
22	North and West	2	>3	No
23	East, South and West	>3	>3	Yes
24	West	>3	<3	No
25	West	>3	<3	No
26	East, North and West	>3	>3	Yes

27	East, South and West	>3	>3	Yes
28	West	>3	<3	No
29	West	>3	<3	No
30	East, North and West	>3	>3	Yes

22/28 or 78% compliant	13/28 or 46% compliant	7/28 or 25% compliant
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In relation to the east-west oriented attached dwellings, the primary concern is in relation to the centre dwellings of each block, which are overshadowed by the each of the larger dwellings to the north. The northern dwellings of each block have been designed to be of a greater width, and include living areas at both the eastern and western ends of the dwelling with a courtyard centred between the spaces. This allows for the both of the living areas of the northern allotments to receive direct sunlight throughout the entire day in midwinter.

Whilst a courtyard would not be feasible in the centre blocks, the design approach with living areas to both the eastern and western ends of the dwelling would be better suited to the centre dwellings, providing future occupants with the opportunity for both morning and afternoon sun, achieving technical compliance with the 3 hour requirement by adding together the solar access received in all living areas throughout the dwelling. Whilst the majority of dwellings would not receive northern sunlight to living areas, as required by clause C6.14 of P21 DCP, a reasonable level of amenity would be achieved in consideration of the orientation of the site.

In relation to the north-south oriented semi-detached dwellings, it is the area of private open space that is inconsistent with the 3 hour requirement for direct sunlight. Despite the inclusion of a side courtyard and a generously sized rear yard, the scale of the buildings results in overshadowing of both spaces for the majority of the day. It is noted that the applicant has nominated compliance with the 3 hour requirements based upon varying locations across each site. However, the solar access diagrams are inconsistent with the landscape plan, which demonstrate the inclusion of garden beds and canopy tree plantings in the areas nominated as private open space by the applicant.

#### Units (RFB)

The units within the RFB have also been considered in regards to the lesser 3 hour requirement of the draft DCP controls for the Warriewood Land Release Area. The proposed RFB falls well short of the 3 hour requirement, with only 6 units of the 33 units proposed (18%) receiving 3 hours of sunlight to areas of private open space and windows associated with living rooms between 9am and 3pm in midwinter. This has not been addressed by the applicant, who has nominated that the proposal achieves total compliance with 4 hour requirement of P21 DCP. The following table demonstrates the extent of solar access received by each of the proposed units and is based upon the solar access diagrams prepared by the applicant.

	Primary Orientation	Private Open Space (hrs of sunlight)	Living area (hrs of sunlight)	Compliance
101	East	2	1	No
102	South and East	<2	<1	No
103	South and West	3	<2	No
104	West	3	<2	No
105	East	<2	<2	No
106	East and West	>3	<1	No
107	West	3	<1	No
108	North and West	>3	3	Yes
109	North and East	>3	3	Yes
110	East	<1	<1	No
111	East	<2	<2	No

	Primary Orientation	Private Open Space (hrs of sunlight)	Living area (hrs of sunlight)	Compliance
201	East	2	1	No
202	South and East	<2	<1	No
203	South and West	2	<2	No
204	West	2	<2	No
205	East	<2	<2	No
206	East and West	>3 (combined)	<1	No
207	West	2	<1	No
208	North and West	>3	3	Yes
209	North and East	>3	3	Yes
210	East	1	<2	No
211	East	<2	2	No
301	East	<2	1	No
302	South and East	<2	<1	No
303	South and West	2	<2	No
304	West	2	<2	No
305	East	<2	<2	No
306	East	>3 (combined)	<1	No
307	West	2	<1	No
308	North and West	>3	3	Yes
309	North and East	>3	3	Yes
310	East	1	<2	No
311	East	<2	2	No

12/33 or 36% compliant	6/33 or 18% compliant	6/33 or 18% compliant
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Overall, the design of the units and dwellings and the size of the allotments are not considered to maximise solar access for future occupants, and the proposal is seen to fail with respect of the technical requirements and outcomes of clauses C6.14, C6.25 and D16.13 of P21 DCP.

### **Site Coverage**

- **Clause C6.23 (Landscaped Area – Sector, Buffer area or development site) of P21 DCP**
- **Clause D16.6 (Landscaped Area – Warriewood Valley Residential Sectors) of P21 DCP**

Clause C6.23 of P21 DCP specifies that the landscaped area of the entire development site shall be 50%, however the water management specifications for the development site as a whole were addressed in Stages 1 and 2, and provided for a total landscaped area of 45%. Consistency with the water management specification approved for the site is crucial, as any lesser landscaped area calculation could attribute to the failure of the water management solution.

The applicant nominates that the proposal is consistent with the 45% requirement, however there is no one drawing or series of drawings that accurately reflects the resultant landscaped area of the site as a whole. The site coverage calculations prepared by the applicant in the architectural drawings are inconsistent with the landscape plans and site coverage calculation plans, and the landscape plans and site coverage calculation plans do not reflect the shared paths/footpaths approved as part of Stages 1 and 2.

The proposal appears to be inconsistent with the 50% requirement of this control and the 45% landscaped area calculation adopted by the applicant in the water management solution for the site. Until clarification is provided to demonstrate consistency with the adopted water management solution, the application is unable to be supported in this regard.

Clause D16.6 of P21 DCP acts to minimise the extent of hard surfaces on each individual allotment to 55%, requiring a minimum landscaped area calculation of 45%. Of the 28 attached and semi-detached dwellings proposed, 12 or 43% of those proposed, do not meet the minimum landscaped area requirement. The landscaped area calculations are shown in the table below.

Lot #	Lot size (m <sup>2</sup> )	Landscaped Area (m <sup>2</sup> )	Landscaped Area (%)	Lot #	Lot size (m <sup>2</sup> )	Landscaped Area (m <sup>2</sup> )	Landscaped Area (%)
3	626.05	421.65	67.4	17	330.0	150.6	45.6
4	253.95	97.45	41.3	18	285.0	144.15	50.6
5	220.22	89.72	40.7	19	330.0	150.6	45.6
6	235.95	97.45	41.3	20	285.0	144.15	50.6
7	385.21	205.81	53.4	21	330.0	150.6	45.6
8	385.21	195.76	50.8	22	315.12	174.27	55.3
9	220.22	89.69	40.7	23	387.92	207.1	53.4
10	236.0	97.47	41.3	24	239.17	104.71	43.8
11	361.79	182.39	50.4	25	239.17	104.71	43.8
12	393.25	188.85	48.0	26	379.16	198.12	52.3
13	235.95	97.45	41.3	27	379.46	198.42	52.3
14	220.22	89.72	40.7	28	239.22	104.76	43.8
15	235.95	97.45	41.3	29	239.22	104.76	43.8
16	377.52	188.12	49.8	30	395.96	215.27	54.4

One of the objectives of this control is to ensure a reasonable level of amenity for future occupants of the dwelling, including the provision of adequate solar access. It is noted that there is a direct correlation between the dwellings that do not receive adequate levels of solar access and the blocks with landscaped areas of less than 45%. Furthermore, the landscape treatment of the individual sites is insufficient, such that landscaping will not act to screen the resultant built form or provide a landscaped outcome commensurate with the desired future character of the locality.

Clause D16.6 of P21 DCP also requires a minimum landscaped area of 45% in regards to the proposed RFB. The proposed RFB is inconsistent with this requirement, with a landscaped area calculation of 1019.93m<sup>2</sup> or 29.6% of the total site. P21 DCP provides a variation to the landscaped area calculation on the basis that the site in its entirety complies with the sector wide landscaped requirement of 50% (or in this instance, a slightly lesser requirement of 45%). As this has not been demonstrated at this stage, a variation is not supported in this regard.

Note: The landscaped outcome associated with the RFB is considered in more detail with regard to SEPP 65, further in this report.

### **Character**

- **Clause A4.16 (Warriewood Valley Land Release Area Locality) of P21 DCP**
- **Clause D16.1 (Character as viewed from a public place) of P21 DCP**
- **Clause D16.2 (Building colours and materials) of P21 DCP**

Considered in isolation, the proposed attached and semi-detached dwellings are well articulated and have been designed so that the garages do not appear as the dominant feature of the site. Subject to a revised schedule of colours and finishes and an amended landscape plan, the bulk and scale of the proposal is considered to be minimised and appropriately softened by plantings. However, it is the impact of the fill proposed across the southern and eastern frontage of the site that actively increases the visual impact of the development as viewed from the street.

The RFB is also situated above a podium, associated with the basement carpark, which acts to increase the apparent size and the visual impact of the development as viewed from the street. The podium also restricts planting opportunities within the setback areas, such that the non-compliant built form will not be screened by landscaping. The RFB is also proposed to be finished

in white and light colours, inconsistent with the requirement for dark and earthy tones prescribed by clause D16.2 of P21 DCP. The landscape treatment surrounding the RFB is ineffectual, and will not ensure that the built form is softened or screened by sufficient vegetation.

As proposed, the development does not comply with the requirements of clauses D16.1 and D16.2 of P21 DCP and the desired future character of the locality is not achieved.

### **Front Setbacks**

- **Clause D16.3 (Front Building Line – Warriewood Valley Residential Sectors) of P21 DCP**

Residential development is to be situated at a minimum distance of 6.5m from Garden Street, or 4m from internal roads. Garages are to be situated with slightly greater setbacks ranging between 5.5m and 6.5m, based upon the street frontage. A variation of 2m is permitted for secondary street frontages to internal roads.

The attached and semi-detached dwellings are generally consistent with the policy in this regard, and the outcomes of this control are readily achievable. However, the proposed RFB falls short of the 4m required to the new internal road, with the partially above ground basement carpark located approximately 2.4m from the front boundary and balconies associated with upper levels situated within 3.4m of the front boundary.

The 4m minimum setback requirement is by no means unreasonable or unattainable on the site, and the applicant has not provided any real reason as to why the compliance with this requirement cannot be achieved. The applicant has requested the application of a variation in this regard, however there are no variations applicable for this component of the development and the design of the RFB is not seen to achieve consistency with the outcomes of the front setback control.

In particular, the proposal is seen to fail with respect to the landscaped treatment between the RFB and the new internal road. The reduced setback proposed in association with the basement carpark removes any ability to introduce substantial canopy tree plantings that are required to screen the non-compliant built form. As such, the proposal not able to achieve the desired future character of the locality and the visual impact of the built form as viewed from the street is not minimised.

### **Sustainable Development**

- **Clause C6.10 (Ecologically Sustainable Development) of P21 DCP**
- **SEPP BASIX**

The proposed development is inconsistent with the recommendations of the BASIX Certificate in relation to the incorporation of windows in all kitchens within the proposed RFB. The proposal is also inconsistent with the ecologically sustainable design principles outlined in clause C6.10 of P21 DCP, particularly in relation to the design of the dwellings and the orientation of the site, and solar access.

### **Landscaping**

- **Clause D16.12 (Landscaping) of P21 DCP**

Council's Technical Team provided the following comments in this regard;

*On-slab planting is proposed to the area north and south of the residential flat building that provides for small and tall canopy tree planting. The submitted plans do not detail the soil depth to ascertain the on-slab depth and soil volume areas at this location. As the basement parking area is directly underneath, it is unlikely there will be insufficient soil volume to support the proposed Angophora, Banksia, Acer and Hymenosporum canopy trees. No large canopy*



*trees are to be planted within 5m from a building face, including any external structure such as retaining walls, driveways and paths. No small trees are to be planted within 3m from a building face and 1.5m from any external structure including retaining walls, driveways and paths.*

*Retaining walls for Lots 3 to 16 inclusive, at up to 2.1m high in some parts, immediately front Garden Street. These walls forms the private open space areas of Lots 3 to 16 inclusive, within which 1 small to medium sized tree per lot and low shrub planting is proposed. Low groundcovers and shrub planting is the landscape treatment for the two continuous stretches of retaining wall divided by the entry road into the overall development (wall sections being 41 metres and 23 metres in length respectively).*

*The main building frontage should be to Garden Street, being the higher order street in the road hierarchy compared to the internal street. A new typology rather than the proposed design is needed to treat Garden Street as its front address and adequately treat the internal street as a 'secondary' frontage. Using Garden Street as the frontage for dwellings with multiple entry points can help to break up the long stretch of retaining wall as well as avoid 'backing' onto the public domain and the development on the opposite side of Garden Street.*

*Dropping the level and having pedestrian entries from Garden Street will help improve the relationship to Garden Street. The retaining wall should be setback at least 2 metres from the front property boundary and stepped back (rather than present as a single height wall) for additional landscape areas and that denser planting is utilised.*

## **Eaves**

- **Clause C1.23 (Eaves) of P21 DCP**

Minor elements of the proposed attached/semi-detached dwellings and the RFB do not incorporate eaves. However, these minor portions of the proposed built form provide added visual interest to the facades of the development, and are not seen to warrant the refusal of the application due to technical non-compliance in this regard.

## **Staging of development**

- **Clause A1.7 (Considerations before consent is granted) of P21 DCP**

Council's Land Release Team provided the following comments in this regard;

*With the exception of the residential flat building, the proposal as submitted will result in individual dwellings being accommodated on individual residential lots. Nonetheless, no details has been provided on the staging sequence for the development in terms of the land subdivision to create the residential lots and community lot followed by construction of a dwelling on each lot or the construction of the dwellings first and then subdivision of the land.*

*The form of titling, being Community Title subdivision, is reasonable with the 30 lots consisting of:*

- *1 common lot containing the water management basins,*
- *28 residential lots, assumed to contain a dwelling on each, ranging in lot sizes from 220m<sup>2</sup> to 626m<sup>2</sup>, and*
- *1 lot (Lot 2, 3577m<sup>2</sup> in size) containing the residential flat building (the residential flat building will be the subject of a future application for Strata Subdivision).*

*Nonetheless, it is unclear if easements for access and maintenance to party walls are proposed on the residential allotments.*

## **12.0 STATE ENVIRONMENTAL PLANNING POLICY NO.65 – DESIGN QUALITY OF RESIDENTIAL FLAT DEVELOPMENT**

State Environmental Planning Policy No. 65 provides a framework for local and regional planning with regard to the design of residential flat buildings. The policy specifically provides a series of design principles which aim to improve the design quality such development. These design principles are considered in relation to the proposed RFB, as follows;

### Principle 1: Context

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

The desired future character of the Warriewood Valley Release Area is outlined by clause A4.16 (Warriewood Valley Release Area) of P21 DCP. The statement has a key emphasis on landscaping, and the importance of the incorporation of canopy trees and vegetation to minimise the bulk and scale of development and to enhance the new community with a high quality landscape character. Due to the design of the basement carpark area, all substantial canopy tree plantings are situated at a distance from the built form at either end of the RFB, with minimal plantings proposed around the perimeter of the built form and along the streetscape.

The desired future character statement also outlines the need to minimise bulk and scale through good design and the colours and materiality of the external fabric of the building. The proposal is not seen to be consistent with this requirement, with the visual impact of the built form exaggerated by the basement parking podium, non-compliance with regard to building height and the front setback, and the choice of light colours for the external facades. Overall, the desired future character of the locality is not seen to be achieved in the design of the RFB.

### Principle 2: Scale

*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.*

The scale of the building is inconsistent with that permitted by PLEP 2014 and P21 DCP with regard to building height, front setbacks and landscaped area. Sector 901A is in transition, and the proposed RFB will appear to be inconsistent with the character of the locality until such time that the adjoining sites are developed. However, given the areas of non-compliance, and the lack of adequate landscaping, it is unlikely that the development is able to achieve consistency with the desired future locality of the land release area.

### Principle 3: Built form

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

The alignment and proportion of the building does not adequately respond to the streetscape or the orientation of the site. The extent of development within the front setback area restricts the ability to introduce plantings of a sufficient scale, resulting in a dominance of built form as viewed from the street.

#### Principle 4: Density

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

The applicant seeks consent for a dwelling yield greater than that allocated to the site by the Strategic Review Addendum Report. Furthermore, the density is a range, with no certainty that the upper limits can be accommodated on each site. Given the poor amenity of the proposed dwellings, the utilisation of the maximum density is not considered to be appropriate in this instance.

#### Principle 5: Resource, energy and water efficiency

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

The proposed development is seen to be relatively inefficient, with poor passive solar design, inadequate natural ventilation and no means of water reuse. Future occupants will be reliant upon air-conditioning and artificial lighting, within apartments that are too deep, with inadequate solar access. Whilst the proposal has been supported by a BASIX Certificate, which highlights that the absolute minimum requirements are satisfied, the proposal is seen to be inconsistent with the recommendations of the BASIX Certificate, noting that the BASIX Certificate requires the architectural plans to demonstrate that all kitchens in the RFB are fitted with a window or skylight. As noted in the RFDC compliance table further in the report, only 36% of the kitchens proposed are fitted with windows.

#### Principle 6: Landscape

*Good design recognises that together landscape and buildings operate as an integrated and sustainable system, resulting in greater aesthetic quality and amenity for both occupants and the adjoining public domain. Landscape design builds on the existing site's natural and cultural features in responsible and creative ways. It enhances the development's natural environmental performance by co-ordinating water and soil management, solar access, micro-climate, tree canopy and habitat values. It contributes to the positive 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.*

The proposed landscape treatment has not had adequate regard for the desired future character of the locality, and does not adequately screen and soften the built form of the RFB. Furthermore, there are issues with the landscape plans with regard to soil depth and proximity of plantings to retaining structures, noting that canopy trees are proposed on top of the partially above ground basement carpark, and centred along retaining walls.

It is also noted that the communal landscaped garden area to the south of the RFB is not accessible, with a series of steps limiting access to the levelled lawn area above the basement carpark.

## Principle 7: Amenity

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

The majority of the apartments do not receive sufficient levels of solar access in midwinter, with poor natural ventilation. Habitable areas including studies are designed with no windows or skylights, and ceiling height of the upper floor apartments is less than that recommended by the RFDC. The layout of the units is not arranged to ensure like for like uses are adjacent to each other, with potential to result in unreasonable acoustic impacts between apartments. The balconies of some units are undersized and too narrow, and the minimum required area for communal open space is not provided.

## Principle 8: Safety and Security

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

The application was supported by a Crime Prevention Through Environmental Design (CPTED) Assessment Report. The safety and security principle of SEPP 65 can be achieved, subject to conditions of consent.

## Principle 9: Social dimensions and housing affordability

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

In accordance with the *draft North East Subregional Strategy* and the *Pittwater Social Plan (2012-2016)*, new dwellings built in Pittwater should be designed to allow for residents to age in place. As such, the current provisions of P21 DCP require 50% of dwellings to be adaptable, which is to be reduced to 25% of units proposed in draft exhibited controls. Neither the 25% or 50% requirement is met in the current application, with only 4 adaptable units (12% of the 33 units proposed) meeting the relevant accessibility standards.

## Principle 10: Aesthetics

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

The development is well articulated, with the scale of the front façade broken down by modulation and with the use of varied materials. However, the proposed schedule of colours and finishes, which predominately involves the use of white and light colours, is inconsistent with the requirement for dark and earthy colours, as prescribed by clause D16.2 (Building colours and materials) of P21 DCP and as identified in the desired future character of the locality statement.

## Residential Flat Design Code – Guidelines

The Residential Flat Design Code includes a series of guidelines for RFB development, which are considered as follows;

RFDC REFERENCE	GUIDELINE	CONSISTENCY WITH GUIDELINE
<b>PART 01 PRIMARY DEVELOPMENT CONTROLS</b>		
Building height	To ensure future development responds to desired scale and character of the street and the area	<b>No</b> Inconsistent with building height development standard and insufficient landscaped solution.
Building depth	Limit depth of building to 10-18 metres	<b>No</b> Building reaches depths of 19.4m to 24.6m, with poor internal amenity.
Building separation	For buildings up to 4 storeys: <ul style="list-style-type: none"> <li>- 12m between habitable rooms and balconies</li> <li>- 9m between habitable rooms and non-habitable rooms</li> <li>- 6m between non-habitable rooms</li> </ul>	<b>No</b> Balconies on western elevation situated within 6m of side setback with future RFB's able to be developed on adjoining site.
Street setbacks	Establish a dimension to match other development to allow for street landscape character. Basement parking structures no more than 1.2m above ground.	<b>No</b> Development not consistent with minimum setbacks of P21 DCP. Landscape treatment within setback area is not sufficient to screen or soften built form. Basement protrudes more than 1.2m above existing ground levels.
Side and rear setbacks	Minimise overshadowing and visual privacy impacts	<b>Yes</b>
<b>PART 02 SITE DESIGN</b>		
<b>Site Configuration</b>		
Deep soil zones	A minimum of 25 percent of the open space area of a site should be a deep soil zone; more is desirable.	<b>Yes</b>
Fences and walls	Clearly delineate private and public space and provide privacy and security.	<b>Yes</b>
Landscape design	Improve amenity of open space, and contribute to streetscape character. Provide a sufficient soil depth above paving slabs to enable growth of mature trees.	<b>No</b> Landscaping has not been sited appropriately in response to below ground structures and retaining walls. Plantings do not have sufficient maturity heights to screen or soften the built form as seen from the street.
Open space	Communal open space should generally be at least between 25 and 30 percent of the site area. Minimum recommended area of private opens space for apartments at ground level is 25m <sup>2</sup> with a minimum dimension of 4m.	<b>No</b> The applicant nominates a total communal open space area of approximately 741.5m <sup>2</sup> or 21% of RFB site. However, this includes portions allocated to individual units. Apartments 101, 102, 105, 110 and 111 have less than 25m <sup>2</sup> and dimensions less than 4m.
Orientation	Maximise northern oriented apartment and solar access.	<b>No</b> The rectangular shaped RFB is not designed to maximise the number of apartments with northern aspects and solar access to apartments is not maximised.
Planting on structures	Provide sufficient soil depths for plantings above structures.	<b>No</b> Sectional detail has not been provided in this regard, however RLs do not indicate sufficient

RFDC REFERENCE	GUIDELINE	CONSISTENCY WITH GUIDELINE
		soil depths.
Stormwater management	Reduce the volume impact of stormwater on infrastructure by retaining it on site.	<b>No</b> The applicant has not satisfactorily demonstrated that the proposal is consistent with the water management strategy approved for Stages 1 and 2.
Safety	Maximise casual surveillance. Carry out a formal crime risk assessment for developments with more than 20 dwellings.	<b>Yes</b>
<b>Site Amenity</b>		
Visual privacy	Design apartments to minimise overlooking and maximise visual privacy, without impacting upon solar access and ventilation.	<b>Yes</b>
<b>Site Access</b>		
Building Entry	Provide as direct a physical and visual connection as possible between the street and entry. Ensure equal access to all. Provide safe and secure access.	<b>Yes</b>
Parking	Preference to underground parking. Meet relevant DCP standards, including bicycle parking.	<b>No</b> The required number of accessible parking spaces is not provided.
Pedestrian access	Provide high quality accessible routes to public and semi-public areas. Promote equity by integrating ramps into the overall building and landscape design. Maximise the number of accessible, visitable and adaptable apartments.	<b>No</b> The areas of communal open space are not accessible. The required amount of adaptable units is not provided.
Vehicle access	Limit driveway width to 6 metres and locate away from main pedestrian entries.	<b>Yes</b>
<b>PART 03 BUILDING DESIGN</b>		
<b>Building Configuration</b>		
Apartment layout	Single-aspect apartments should be limited in depth to 8 metres from a window. The back of a kitchen should be no more than 8 metres from a window.	<b>No</b> Apartments 104, 204 and 304 are 9.7m deep with poor solar access and no cross ventilation, and the back of kitchen in these apartments is 9.7m from a window.
Apartment Mix	Include a mixture of unit types for increased housing choice. Provide ground floor apartments with access to private open space, preferably as a terrace or garden.	<b>Yes</b> The proposal includes: - 12 x 1 bedroom units - 15 x 2 bedrooms units - 6 x 3 bedroom units However, the overall development fails to provide enough adaptable dwellings.
Balconies	Minimum depth of 2m.	<b>No</b> Balconies of apartments 206 and 306 are too narrow.
Ceiling heights	2.7m minimum for habitable rooms.	<b>No</b> The ceiling height of the upper floor apartments is limited to 2.4m, and the ceiling heights of levels 1 and 2 are unable to be calculated as the ceiling RL is not nominated.

RFDC REFERENCE	GUIDELINE	CONSISTENCY WITH GUIDELINE
Flexibility	Promote accessibility and maximise adaptable apartments, with adequate accessible pathways provided.	<b>No</b> The development fails to provide the required amount of adaptable units and accessible pathways are not provided to communal landscaped areas.
Ground floor apartments	Design gardens or terraces to contribute to streetscape whilst maintaining privacy for future occupants. Promote housing choices.	<b>Yes</b>
Internal Circulation	In general, the number of units accessible from a single core/corridor should be limited to eight.	<b>Yes</b>
Storage	The following storage is required: - 6m <sup>3</sup> for one bedroom units - 8m <sup>3</sup> for two bedroom units - 10m <sup>3</sup> for three bedroom units	<b>Yes</b>
<b>Building Amenity</b>		
Acoustic privacy	Ensure a high level of amenity by protecting the privacy of residents within RFBs both within apartments and in private open spaces. Group like for like uses together.	<b>No</b> The units have not been designed such that like for like uses adjoin. Bedrooms in one unit are adjacent to living rooms or bathrooms of other units.
Daylight access	Living rooms and areas of private open space for at least 70% of units should receive 3 hours of sunlight between 9am and 3pm in midwinter. Limit single aspect apartments with a southerly aspect to a maximum of 10% of units proposed.	<b>No</b> Only 18% of units receive 3 hours of sunlight to areas of private open space and windows associated with living areas.
Natural ventilation	Sixty percent (60%) of residential units should be naturally cross ventilated and Twenty five percent (25%) of kitchens within a development should have access to natural ventilation.	<b>No</b> 45% of units are naturally cross-ventilated. 36% of kitchens with windows.
<b>Building Form</b>		
Facades	Promote high quality architectural design and ensure new developments have facades which define and enhance the public domain.	<b>Yes</b>
Roof design	Integrate the roof design with the overall design of the building. Increase longevity through weather protection.	<b>Yes</b>
Energy efficiency	Reduce necessity for heating and cooling through good design. Reduce reliance on fossil fuels. Support and promote renewable energy initiatives.	<b>No</b> The design is inadequate with regard to solar access and ventilation. Future occupants will be reliant upon air-conditioning and artificial lighting. No efforts to incorporate solar power or re-use roof water.
Maintenance	Ensure long life and ease of maintenance for the development.	<b>Yes</b>
Waste management	To ensure efficient storage and collection of waste and quality design of facilities.	<b>Yes</b>
Water conservation	Reduce mains consumption of potable water.	<b>Yes</b>

### **13.0 CONCLUSION**

The proposed development has been assessed in accordance with the Act, PLEP 2014, P21 DCP, SEPP 65 and other relevant plans and policies. Assessment of the application has found that the proposal is inconsistent with a number of development standards and controls, resulting in a poor outcome on the ground that is inconsistent with objectives of the Warriewood Valley Strategic Review and the desired future character of the Warriewood Valley Land Release Locality.

Despite certification from a registered architect, as required by the provisions of SEPP 65, the design of the residential flat building is non-compliant with the built form and amenity controls of PLEP 2014, P21 DCP and SEPP 65, attributing the an overly large development that is unable to be screened by appropriate landscaping, with a poor level of amenity for future occupants.

The extent of cut and fill proposed across the site is excessive, resulting in unreasonable impacts upon the outer creekline corridor, the Garden Street streetscape, and the amenity of adjoining properties to the south and proposed dwellings situated along the west of the site. The amenity of the proposed attached and semi-detached dwellings is also compromised by the limited provision of direct sunlight during mid-winter, with the proposal falling well short of the current and reduced draft controls for the locality.

The development fails with respect to the provision of adaptable housing and accessibility throughout the site, which is compounded by the inconsistent information presented by the applicant to support the application. Unfortunately, deficiencies in the information submitted are not limited to accessibility, with information relating to water management and ground water assessment missing from the application, and the SOEE failing to adequately justify or even nominate areas of non-compliance with development standards and controls.

The proposed development exceeds the pro-rata dwelling allocation by 1 dwelling, resulting in inconsistency with the Warriewood Valley Strategic Review Report and Addendum Report. However, even if the proposal was reduced by 1 dwelling, the dwelling yield is a range, with a minimum yield of 53 dwellings and a maximum yield of 66 dwellings. Given the extent of issues in the subject application, particularly in relation to the substandard amenity of the proposed dwellings, the applicant has not demonstrated that the full utilisation of the dwelling yield is appropriate in this regard.

Accordingly, the application is recommended for refusal.

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### **RECOMMENDATION**

That the Sydney East Joint Regional Planning Panel endorse the proposed recommendation for the refusal of Development Application N0150/15 for the construction of a 33 unit residential flat building, 22 attached dwellings and 6 semi-detached dwellings, and associated civil works, landscaping and community title subdivision at 2 Orchard Street and 204 Garden Street, Warriewood for the reasons in the draft determination attached.

Report prepared by

Rebecca Englund  
**EXECUTIVE PLANNER**