

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Assessment Officer:	Daniel Milliken Planner
Application No:	DA2015/1306
Application Lodged:	29 December 2015
Proposed Development:	Demolition works and construction of a shop top housing development consisting of retail and residential with associated car parking and landscaping.
Site Address:	<ul style="list-style-type: none"> • Lot 3A in DP 402105, No. 627 Pittwater Road, Dee Why; • Lot 4 in DP 659075, No. 629-631 Pittwater Road, Dee Why; • Lot 5 in DP 655009, No. 629-631 Pittwater Road, Dee Why; and • Lot 100 in DP 595110, No. 635 Pittwater Road, Dee Why.
Plans Reference:	DA00.004 to DA00.006 – Basement Plans DA01.001 to DA01.013 – Floor Plans DA02.001 to DA02.006 – Elevations DA03.001 to DA03.003 – Sections DA06.001 to DA06.002 – Colours and Materials DA06.005 - Waste Enclosure and Bike Rack Plan DA06.008 - Planter Details
Applicant:	Aranda Developments

Zone:	B4 Mixed Use
Permissible or Prohibited:	Shop Top Housing – Permissible with consent
Clause 4.6 Variation:	Clause 4.3 – Height of Buildings Development Standard (not supported)
Referred to JRPP:	18 May 2016

SUMMARY

Submissions:	<ul style="list-style-type: none"> • 29 individual submissions and one petition
Submission Issues:	<ul style="list-style-type: none"> • Height of buildings • Damage to surrounding properties during excavation / construction • Traffic and parking • Noise – construction and on-going • Construction • Waste disposal and loading dock facilities • Privacy • Contamination • Inconsistencies with the application • Insufficient landscaped open space • Stormwater Management – flooding and drainage • Overshadowing

	<ul style="list-style-type: none"> • Increased traffic congestion in Dee Why • Glare and reflection • Kallista fire exit • Location of driveway access – noise and exhaust fumes to “Kallista” building • Lack of notification • Property values
Assessment Issues:	<p><u>SEPP 65 Residential Apartment Development</u></p> <ul style="list-style-type: none"> • Principle 1: Context and neighbourhood character • Principle 2: Built form and scale • Principle 3: Density • Principle 4: Sustainability • Principle 5: Landscape • Principle 6: Amenity, and • The Apartment Design Guide <p><u>Warringah Local Environmental Plan 2011 (WLEP 2011)</u></p> <p>Non-compliance with:</p> <ul style="list-style-type: none"> • Clause 4.3 – ‘Height of Buildings’ Development Standard • Clause 4.6 – Exception to Development Standards • Clause 6.3 – Flood Planning <p><u>Warringah Development Control Plan 2011 (WDCP 2011)</u></p> <p>Non-compliance with:</p> <ul style="list-style-type: none"> • Clause C2 – Traffic, Access and Safety; • Clause C3 – Parking Facilities; • Clause C4 – Stormwater; • Clause C9 – Waste Management; and • Clause D2 – Private Open Space. <p><u>Insufficient Information</u></p> <ul style="list-style-type: none"> • Stormwater Management • Flooding • BASIX Certificate • Waste Management Plan • Assessment against the Apartment Design Guide
Recommendation:	Refusal
Attachments:	<ul style="list-style-type: none"> • Plans (as listed above) • Documents (from Council's website)

SITE DESCRIPTION

The site of the proposed shop-top housing development comprises four (4) allotments, which are legally described as Lot 3A DP 402105, No. 627 Pittwater Road; Lot 4 DP 659075, No. 629-631 Pittwater Road; Lot 5 DP 655009, No. 629-631 Pittwater Road; and Lot 100 DP 595110, No. 635 Pittwater Road, Dee Why.

The site has an approximate total area of 2,606m², is trapezoidal in shape (with the site being wider at the northern end and narrowing as it moves south) and has frontages to both Pittwater Road (primary frontage) and Mooramba Road (secondary frontage). The frontage to Pittwater Road is 76m and the frontage to Mooramba Road is 69m.

The site has a gentle slope down towards the north-east.

Adjoining the northern boundary of the site is a six (appears as eight due to mezzanine levels) storey mixed commercial and residential flat building known as the 'Kallista' building. Adjoining the southern boundary of the site is a service station operated by 'United'. The service station site (made up of three lots) is the corner lot at the junction of Pittwater Road, Mooramba Road and May Road.

SITE MAP



SITE HISTORY

There are no recent or relevant applications applying to this site.

No formal pre-lodgement meeting was held with Council to discuss the proposal.

An informal meeting was held with Council planning staff, however, no subject matter experts from other departments attended and no formal minutes were provided. The applicant was advised to attend a formal pre-lodgement meeting prior to lodging the Development Application (DA).

The application was lodged on 29 December 2015.

Dee Why Town Centre (DYTC) Masterplan

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

The draft LEP includes an increase in height for the subject site from 21m to 24m (or 1 storey) in exchange for a reduction in the podium height from 4 storeys to 3 storeys. These draft controls are neither imminent nor certain and have not been given determining weight in this assessment.

DESCRIPTION OF THE DEVELOPMENT (AS LODGED)

The development involves the demolition of the existing buildings on the site, excavation for a three level basement car park and the construction of an eight storey mixed use development (shop top housing) comprising 135 residential apartments; 10 SOHO units, 6 retail/commercial tenancies and 190 parking spaces.

In detail, the proposal includes the following:

- Demolition of all existing buildings;
- Excavation to a depth of approximately 9.0m to accommodate three levels of basement parking:

Below Ground Component:

Basement Level 3 (RL 18.340)

- 64 x residential parking spaces;
- 1 x car wash bay;
- 57 storage units; and
- 22 x bicycle parking spaces.

Basement Level 2 (RL 21.140)

- 51 x residential parking spaces;
- 13 x commercial parking spaces;
- 47 storage units; and
- 77 x bicycle parking spaces.

Basement Level 1 (RL 23.940)

- 15 x residential parking spaces;
- 6 x residential disabled parking spaces;

- 27 x visitor parking spaces;
- 2 x disabled visitor parking spaces;
- 11 x commercial parking spaces;
- 1 x disabled commercial parking space;
- 16 storage units; and
- 70 x bicycle parking spaces.

In summary, the basement levels of the development include:

- 130 x residential parking spaces;
- 6 x residential disabled parking spaces;
- 1 x carwash bay;
- 24 x commercial parking spaces;
- 1 x disabled commercial parking space;
- 27 x visitor parking spaces;
- 2 x disabled visitor parking spaces;
- 120 storage units; and
- 147 x bicycle parking spaces.

Above Ground Component:

- Construction of an eight storey (nine storeys if the SOHO mezzanine level is included) building that, above level four, splits into two towers and comprises:

Ground Level (RL 26.690, 26.750, 27.070 and 27.240)

- 6 x commercial tenancies;
- 10 x SOHO ground floor commercial units;
- Garbage bin storage and collection facilities;
- Toilet facilities; and
- The entrance ramp to the basement parking levels.

Ground Mezzanine Level (RL 29.240)

- 10 x SOHO residential units (attached to the ground floor SOHO commercial units);

Level 1 (RL 31.840)

- 6 x studio apartments;
- 11 x 1 bedroom apartments;
- 4 x 2 bedroom apartments; and
- The communal open space.

Level 2 (RL 34.740)

- 6 x studio apartments;
- 11 x 1 bedroom apartments; and
- 4 x 2 bedroom apartments.

Level 3 (RL 37.640)

- 6 x studio apartments;
- 11 x 1 bedroom apartments; and
- 4 x 2 bedroom apartments.

Level 4 (RL 40.540)

- 8 x studio apartments;
- 7 x 1 bedroom apartments; and
- 3 x 2 bedroom apartments.

Level 5 (RL 43.440)

- 8 x studio apartments;
- 7 x 1 bedroom apartments; and
- 3 x 2 bedroom apartments.

Level 6 (RL 46.340)

- 8 x studio apartments;
- 7 x 1 bedroom apartments; and
- 3 x 2 bedroom apartments.

Level 7 (RL 49.240)

- 8 x studio apartments;
- 7 x 1 bedroom apartments; and
- 3 x 2 bedroom apartments.

In summary, the above ground levels of the development include:

- 6 x commercial tenancies;
- 10 x SOHO units;
- 50 x studio apartments;
- 61 x 1 bedroom apartments; and
- 24 x 2 bedroom apartments.

THE ASSESSMENT PROCESS

The applicant has submitted a number of pieces of additional information in response to some of the referral comments from a number of Council departments including:

- A Flood Risk Management Plan
- Amended plans to address some of the waste and engineering issues.

In line with Warringah Council's long standing and consistently applied policy, additional information and amended plans are not accepted during the assessment of an application unless specifically requested. In situations where the application cannot be supported and the issues are fundamental, Council assesses the information submitted at the time of lodgement.

After all referral responses were received and a preliminary assessment was undertaken, a letter was sent to the applicant dated 29 March 2016. The letter outlined Council's concerns in relation to the development and requested that the application be withdrawn.

A meeting was held with the applicant on 6 April 2016 to discuss the matters raised in the letter. The applicants briefly presented a draft revised scheme that attempted to address some of the issues. No formal amended plans were provided or accepted at this meeting.

The applicant advised Council on 11 April 2016 that they would not withdraw the DA.

This assessment is therefore based on the plans and documentation submitted at the time of lodgement.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

Section 79C 'Matters for Consideration'	Comments
Section 79C (1) (a)(i) – Provisions of any environmental planning instrument	<p>The following Environmental Planning Instruments are applicable:</p> <ul style="list-style-type: none"> • State Environmental Planning Policy No. 55 – Remediation of Land; • State Environmental Planning Policy (BASIX: Building Sustainability Index) 2004; • State Environmental Planning Policy (Infrastructure) 2007; • State Environmental Planning Policy No. 65 – Design Quality of Residential Apartment Development; and • Warringah Local Environmental Plan 2011.
Section 79C (1) (a)(ii) – Provisions of any draft environmental planning instrument	None applicable.
Section 79C (1) (a)(iii) – Provisions of any development control plan	Warringah Development Control Plan 2011 is applicable to this application.
Section 79C (1) (a)(iia) – Provisions of any planning agreement	None applicable
Section 79C (1) (a)(iv) – Provisions of the regulations	<p>The EPA Regulations 2000 requires the consent authority to consider the provisions of the Building Code of Australia. This matter can be addressed via a condition of consent.</p> <p>Clause 92 of the EPA Regulations 2000 requires the consent authority to consider AS 2601 - 1991: <i>The Demolition of Structures</i>. This matter can be addressed via a condition of consent should this application be approved.</p> <p>Clause 50(1A) of the EPA Regulations 2000 requires the submission of a Design Verification Statement from the designer at lodgement of the development application.</p> <p>A Design Verification Statement was submitted with the Development Application and has been signed by the architects, Marchese Partners International.</p> <p>The statement contains a number of inconsistencies with the plans including; stating that 67% of apartments are cross ventilated when the plans state 60%</p> <p>In addition, there is no documentation providing an assessment of the proposal against the Apartment Design Guide.</p>
Section 79C (1) (b) – the likely impacts of the development, including	(i) The development is not considered to have an adverse environmental impact.

Section 79C 'Matters for Consideration'	Comments
environmental impacts on the natural and built environment and social and economic impacts in the locality	<p>(ii) The development is not considered to have a detrimental social impact in the locality considering the mixed use character of the proposal. In this regard, the proposal will result in positive social outcomes in terms of providing for urban renewal, improved aesthetics and visual amenity, better streetscape and better casual surveillance of public areas.</p> <p>(iii) The development is considered to have a positive economic impact on the area as the mixed uses of the development will assist to strengthen economic vitality in this area within the Dee Why Town Centre providing an active street front, additional housing opportunities and commercial activity.</p>
Section 79C (1) (c) – the suitability of the site for the development	The site is not considered suitable for the development, as proposed in its current form, due to its inability to meet flooding requirements (based on the information at the time of lodgement).
Section 79C (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	<p>A total of 29 written submissions and 1 petition have been received.</p> <p>The issues raised in the submissions are addressed later in this report.</p>
Section 79C (1) (e) – the public interest	<p>The planning controls contained within WLEP 2011 and the WDCP 2011, as well as the strategic direction within the Dee Why Town Centre Masterplan provide the community with a level of certainty as to the scale and intensity of future development and the form and character of development that is in keeping with the desired future character envisaged for the locality.</p> <p>The architectural design of the building is of a sufficiently high standard which could provide a boost to the urban design qualities and streetscapes currently in Dee Why Town Centre.</p> <p>However, this assessment has found that the development does not comply with the quantitative requirements of Clause 4.3 – ‘Height of Buildings’ Development Standard under the WLEP 2011. The proposed maximum building height of 27.8m exceeds the maximum height limit by 6.7m. The development does not satisfy the qualitative Objectives of Clauses 4.3 and 4.6 under WLEP 2011 and the proposed building height is not supported.</p>

the WLEP 2011. The proposed maximum building height of 27.7m exceeds the maximum height limit by 6.7m.

It has been found that the development does not satisfy the qualitative Objectives of Clauses 4.3 and 4.6 under WLEP 2011 and the proposed building height is not supported.

This issue warrants the refusal of the application.

- **Damage to surrounding properties during excavation / construction**

Concern is raised regarding the excavation and construction impacts on neighbouring properties associated with the development.

Comment:

The development proposes excavation to a depth of approximately 9.0m below ground level.

With regards to excavation and construction management, appropriate conditions which aim to minimise impact and ensure neighbouring buildings are protected from damage can be imposed in a consent should this application be approved.

This issue does not warrant the refusal of the application.

- **Traffic and parking**

Concern is raised that the development will exacerbate traffic congestion in the Dee Why Town Centre and surrounding road network.

Concern is also raised that the development has insufficient parking.

Comment:

The development will decrease the number of crossovers on Mooramba Road, slightly increasing the number of on-street parking spaces.

The development will increase traffic movements on the local road network, however, the increase attributed to this development will not be unreasonable.

This matter has been addressed later in this report (refer to 'Clause C3 – Parking Facilities' under WDCP 2011).

In summary, this assessment has found that the development does not comply with the requirements of Clause C3 – 'Parking Facilities (under the WDCP 2011).

The development proposes a surplus of residential parking spaces (above the minimum requirements suitable for Dee Why Town Centre) but a deficit in commercial parking spaces.

This deficit is not supported for the reasons discussed later in this report and therefore, this issue warrants the refusal of the application.

- **Noise – construction and on-going**

Concern is raised that the construction of the development will result in unreasonable noise.

Concern is raised that the development will result in increased noise from mechanical ventilation, air conditioning units and the like.

Comment

With regards to noise generated by construction works, a condition of consent can be included in the Recommendation of this report should this application be approved which requires that works be limited to the following times:

- 7.00m to 5.00 pm inclusive Monday to Friday,
- 8.00m to 1.00 pm inclusive on Saturday,
- No work on Sundays and Public Holidays.

Additionally, demolition and excavation works are restricted to:

- 8.00 am to 5.00 pm Monday to Friday only.

Furthermore, a condition can be included in the Recommendation of this report should this application be approved which requires that all sound producing plant, equipment, machinery or fittings will not exceed more than 5dB(A) above the background level when measured from any property boundary and will comply with the Environment Protection Authority's NSW Industrial Noise Policy.

The matter of noise generated by residents, and the impact that may have upon neighbouring properties, is a civil matter which is dealt with through the body corporate and by the NSW Police.

This issue does not warrant the refusal of the application.

- **Construction**

Concern is raised that the construction of the development will result in unreasonable impacts on the local road network and surrounding residents.

Comment:

If the development is approved, the construction period will have unwanted but inevitable impacts on the local road network and surrounding properties.

A full construction management plan will be required should approval be granted and additional conditions (such as those above) can be imposed to minimise the impacts.

Construction is a necessary and unavoidable part of the process of redevelopment and all measures should be taken to limit the impacts on those that live nearby. However, a refusal based on construction impacts cannot be supported.

This issue does not warrant the refusal of the application.

- **Waste disposal and loading dock facilities**

Concern is raised that the waste disposal and loading dock facilities are inadequate and that heavy rigid vehicles are not suitable for Mooramba Road.

Comment:

This matter has been addressed later in this report (refer to 'Referrals' and 'Clause C9 – Waste Management' under WDCP 2011).

In summary, this assessment has found that the development does not comply with the requirements of Clauses C2 – 'Traffic, Access and Safety' and C9 – 'Waste Management' (under the WDCP 2011).

This issue forms a reason for refusal.

The matter of heavy rigid vehicles using Mooramba Road to collect waste from the development is not a reason for refusal as these types of vehicles already access Mooramba Road for normal waste collection services to other nearby residential flat buildings.

- **Privacy**

Concern is raised that the development will result in unreasonable privacy impacts upon units within the “Kallista” development to the immediate north.

Comment

The development includes appropriate devices, such as screens, planters and blade walls which will limit any unreasonable overlooking opportunities the “Kallista” development to the immediate north.

This issue does not warrant the refusal of the application.

- **Contamination**

Concern is raised that, given the site adjoins a service station, there is a risk of contamination.

Comment

The application included a Preliminary Site Investigation prepared by STS Geoenvironmental Pty Ltd.

The report has found that the site is suitable for the proposed residential use.

Council’s Environmental Investigations Officers reviewed the application and the report submitted by the applicant. No objections to approval, subject to conditions, were raised.

A condition requiring the development to comply with the recommendations and requirements within the Preliminary Site Investigation prepared by STS Geoenvironmental Pty Ltd can be included in any consent should this application be approved.

This issue does not warrant the refusal of the application.

- **Inconsistencies within the application**

Concern is raised that the plans and documents submitted with the application contain inconsistencies.

Comment:

It is noted that there are inconsistencies between the plans and some reports, for example, comparing the landscape plans with the architectural plans; and comparing the plans for sunlight and ventilation with the Design Verification Statement and the Direct Solar Access report.

The application did not contain sufficient information to enable Council to undertake a full assessment of the proposal.

Insufficient information is a reason warranting the refusal of the application.

- **Insufficient landscaped open space**

Concern is raised that there are inconsistencies between the plans and documentation submitted with the application.

Comment:

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

Notwithstanding, small areas of landscaping are incorporated on the Level 1 podium on the Mooramba Road side of the development which forms the communal open space area for the building. In addition, landscaped planters are provided on Level 4 (the upper podium level). However, these areas are not expansive and are purely for aesthetic purposes.

The 542.8m² of communal open space area is sufficient in area for the development, however, there are inconsistencies between the landscape plans and the architectural plans in relation to planter box soil depths.

Council's Landscape Officer reviewed the proposal and commented that, subject to conditions, the landscaping is acceptable.

This issue does not warrant the refusal of the application.

- **Stormwater Management – flooding and drainage**

Concern is raised that the development will not adequately manage flooding and drainage.

Comment:

This matter has been addressed later in this report (refer to 'Referrals' and 'Clause C4 – Stormwater' under WDCP 2011).

In summary, this assessment has found that the development does not comply with the requirements of Clause C4 – 'Stormwater'.

This issue forms a reason for refusal.

- **Overshadowing**

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

Comment

The Certified Shadow Diagrams indicate that the development will create additional overshadowing.

This additional overshadowing will impact mainly on the service station and Pittwater Road. Minor overshadowing will fall on residential properties to the west in the early mornings. The development will not prevent all surrounding residential properties from achieving more than 3hrs of sunlight between 9am and 3pm on June 21.

This issue does not warrant the refusal of the application.

- **Glare and reflection**

Concern is raised that the development will result in unreasonable glare impacts.

Comment

The development is accompanied by a Schedule of Materials and Finishes which indicate that no colours or materials will be used which would result in unreasonable glare to either the public domain or neighbouring private property.

This issue does not warrant the refusal of the application.

- **Kallista fire exit**

Concern is raised that the development may block a fire escape on the “Kallista” building.

Comment:

The fire escape would not be designed to open over or require access to the subject site to enable occupants to escape in the event of a fire. As the development does not propose to block any land on either the Pittwater Road or Mooramba Road sides of “Kallista”, the fire escape will remain accessible.

This issue does not warrant the refusal of the application.

- **Location of driveway access – noise and exhaust fumes to “Kallista” building**

Concern is raised that the driveway and loading dock, located adjacent to the “Kallista” building will result in unreasonable traffic noise and exhaust fumes from moving and queuing cars.

Comment:

The driveway access points are located in the most appropriate location for the site, away from the service station and the intersection with May Road.

The driveway design will not result in queuing cars as there is no barrier impeding access directly down to the basement levels. Cars heading out will queue no more than cars in any other driveway along Mooramba Road.

In a dense built up environment, some exhaust fumes from cars is inevitable. It is considered that the amount of traffic in and out of the development will not result in an unreasonable exhaust fume level.

This issue does not warrant the refusal of the application.

- **Lack of notification**

Concern is raised that Council did not notify enough properties and that the lack of notification is a sign that Council is trying to keep the development quiet so that it can be passed easily.

Comment:

989 owners and occupiers were notified in writing and the development was advertised, by Council, in the Manly Daily asking for comment. This report is also recommending refusal of the application.

Council endeavours to notify all affected properties and follows the correct processes of notification and assessment.

This issue does not warrant the refusal of the application.

- **Property values**

Concerns are raised that the development, if approved, will result in the devaluation of nearby properties.

Comment

The valuation/devaluation of property is not a valid planning consideration under Section 79C of the Environmental Planning and Assessment Act, 1979.

This issue does not warrant the refusal of the application.

MEDIATION

No mediation has been requested by the objectors.

REFERRALS

External Referrals

Roads and Maritime Service (RMS)

The application was referred to the RMS for comment as Traffic Generating Development under Schedule 3 of State Environmental Planning Policy (Infrastructure) 2007.

The RMS raised no objections to the development subject to conditions which can be included in any consent should this application be approved.

Department of Primary Industries Water

The application is Integrated Development and was referred to the Department of Primary Industries Water (DPIW), seeking General Terms of Approval (GTA).

The DPIW provided the following comments:

“DPI Water advises that, in addition to requiring development consent, parts of the development that intercept or extract groundwater are also required to be authorised under the Water Management Act 2000. The information requirements for such an authorisation are explicitly detailed in the NSW Aquifer Interference Policy—including the need for the applicant to provide a thorough hydrogeological assessment of the predicted impacts of the proposed development and calculations of the volumes likely to be extracted. As defined in that policy, such requirements apply to activities interfering with all aquifers, including low yielding and saline groundwater systems.

The proposed development is deemed to be an aquifer interference activity requiring an authorisation under water management legislation; therefore General Terms of Approval have been provided.”

The GTA can be included in any consent should this application be approved.

Ausgrid

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

Ausgrid raised no objections to the proposal, subject to conditions which can be included in any consent should this application be approved.

NSW Police

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

In their response NSW Police advised that the “*police have identified a number of Crime Prevention Through Environmental Design (CPTED) factors that should be considered in this development and through these Police will make a number of recommendations.*”

These recommendations can be included in any consent should this application be approved.

Internal Referrals

Strategic Planning (Urban Design)

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

1. *“The proposal has not provided adequate ceiling heights and allowance for structure and services. The Apartment Design Guide (ADG) stipulates floor to ceiling height of 2.7m for residential area(pg 86). Allowing 0.4m for structure and services (pg 31) the required floor to floor height will be 3.1m. The proposal allows 2.9m and 2.6m floor to floor height for the residential and SOHO area respectively. The proposed residential floor to floor height will need to be increased by 0.2m and the SOHO by 0.5m.*
2. *The proposal does not comply with the building height requirement of 21m. With the under provision of ceiling heights (item 1), the current proposed building height breach of 4.5m will be increased further. This is considered excessive and the proposal will be taller than the desired scale and character of the street and local area. The excessive bulk will increase overshadowing thereby not allowing reasonable daylight access to surrounding developments and the public domain spaces.*
3. *The ADG stipulates minimum separation distances of 12m between habitable rooms/ balconies for building up to four storeys. The windows of habitable rooms facing the internal courtyard will need to comply for visual and acoustic privacy reasons.*
4. *The southern elevation has windows to habitable rooms opening out to a common boundary which could be built hard up against in the future. This is not acceptable.*
5. *Build-to lines of 5 metres from the kerb for the first 4 storeys and 9 metres from the kerb for storeys above the fourth storey have not been provided.*
6. *Planning Proposal for proposed amendments to WLEP 2011 for Dee Why Town Centre regarding Floor Space Ratio, additional 3m to Building Height and reducing podium height from 4 to 3 storeys has not been approved (anticipated to be exhibited in mid to late 2016). The proposal for this site cannot consider amendments to the WLEP unless they are imminent and certain.*

7. The proposal has not demonstrated that the corner site (874 Pittwater Road) next door will not be an isolated site as vehicle access cannot be from Pittwater Road and be able to have a feasible basement carpark ramp and layout."

Development Engineering

The application was referred to Council's Development Engineers for review. The following referral comments were provided:

"1. An engineering longitudinal section through the outlet pipe from the OSD tank to the connection into the stormwater drainage system in Pittwater Road must be provided. This long section is to show design invert levels, finished surface levels, pipes size, design flows, all utility services that may cross the line and a hydraulic grade line.

Note: It is the responsibility of the Applicant to provide full details of all relevant services that may conflict with the proposed OSD system(s) and stormwater lines. The exact locations of any crossings or connections are to be shown.

2. The development site fronts two public roads that are affected by flooding during the 1 in 100 year ARI storm. Adequate protection for the basement car parking from flood inundation will be required. This generally requires the driveway crest to be set at least 500mm above the 1 in 100 year ARI flood level. In this regard Development Engineers request Council's Flooding Team to determine the 1 in 100 year ARI flood level to then assess the vehicle access to the development site. Development Engineers have not received any of the above comments to adequately assess vehicle access for this development.

3. Development Engineers rely upon comments from Council's Traffic Engineers to adequately assess vehicle access for this development with respect to driveway gradients, dimensions and/or positions. Development Engineers have not received any of the above comments to adequately assess vehicle access for this development.

Not supported due to lack of information to address:

- *Stormwater drainage for the development in accordance with clause C4 Stormwater of the DCP*
- *Vehicle access for the development in accordance with clause C2 Traffic, Access and Safety*

Note:

Applicant's consultant recommends the basement car park to be permanently tanked. Appropriate conditions with respect to tanking the basement car park area will be issued upon satisfactory review of the above outstanding issues."

Traffic Engineering

The application was referred to Council's Traffic Engineer for review. The following comments have been provided:

"The following traffic comments are provided on the proposed mixed use development containing approximately 1,000m² of commercial floor space, and 145 apartments, as stated in the SEE report provided by the applicant.

Traffic Generation:

The traffic report provided by the applicant indicates that in accordance with the RMS Guide to Traffic Generation Development, the proposed development will not result in additional

traffic generation to the existing (reduction of 5 veh/hr) in traffic peak hours taking into account the traffic generation rate of 2 veh/hr for the proposed office use. Therefore, no objection is raised on the traffic generating resulting from the proposed development.

Parking requirements:

The applicant's traffic report indicates that in compliance with Warringah DCP, the parking provision required for the proposed development is 180 spaces. No adequate information is provided to support the parking rate of 0.6 of a space per each studio and Soho apartment.

The proposed stacked parking is not supported. The use of stacked car parking is generally not supported but may be considered on merit for up to 10% of residential car parking provided that each module of stacked parking is allocated to an individual unit. The proposed stacked parking arrangement would mean that each of 21 proposed stacked modules would be allocated to one unit. Given that out of 145 proposed apartments, there are only 21 two bedroom apartments requiring the parking rate of more than 1 parking space (the total provision of 29 spaces for proposed 21 two bedroom apartments), the proposed stacked parking arrangements means the reduction of 16 parking spaces in the total proposed residential parking spaces.

Therefore, the proposed parking provision and arrangements is not acceptable.

Pedestrian Sight Distance at Access Driveway:

In compliance with Australian standards, a triangle of 2.5m by 2m is to be kept clear of obstruction at the property line boundary to provide adequate visibility between vehicle / service vehicles exiting the car park and pedestrians on the frontage road footpath.

Driveway gradients:

The gradients of the driveway and circulation roadways are to be in compliance with AS2890.1:2004. The grade change transition proposed on the ground floor driveway is not adequately long to prevent the vehicle scrapping and bottoming in compliance with AS2890.1:2004.

Service vehicle driveway:

The service vehicles swept path provided for the proposed loading dock driveway is to consider the vehicles parked on both sides of the road. Also the swept path for truck turning in and out of the driveway from /toward north is to be examined and demonstrated.

Conclusion:

In view of the foregoing, the proposal is not supported on traffic grounds."

The inability of the development to comply with the requirements of Clause C3 – 'Parking Facilities' under the WDCP 2011 is included as a reason for refusal.

Natural Environment Unit (Flood)

The application was referred to Council's Natural Environment Unit (Flood) for review. The following comments have been provided:

"A Flood Risk Assessment has not been provided with the Development Application. As a result an assessment of the Development Application against the objectives and conditions

in Section 6.3 of the Warringah LEP2011 and Part E11 of the DCP cannot be undertaken.

The Applicant must provide a Flood Risk Assessment in accordance with the guidelines available on Council's webpage. The Flood Risk Assessment must specifically determine the relevant 1 in 100 year flood levels from the gutter flood depths previously provided by Council."

Environment Investigations (Contaminated Land)

The application was referred to Council's Environmental Investigations team in relation to contaminated land. No objections were raised subject to conditions which can be included in any consent should this application be approved

Landscape

The application was referred to Council's Landscape Officer for review. The following comments have been provided:

"Some discrepancy is noted between the Landscape Plan for the Level One Podium space and the Architectural Plans for level 1.

The Architectural plans indicate narrow planters at RL 32.705. The Landscape Plan indicates wider planters, but with no wall heights.

As the paving level is indicated at RL31.84, matching the floor level of the level 1 units, the wall should be 1 metre high to provide soil volume.

The discrepancy can be dealt with via conditions of consent requiring planting as indicated on the landscape plan to be located in planters with minimum height of 1 metre.

Providing areas of landscaping comply with the relevant controls, no objections are raised, subject to conditions as recommended."

Waste Management

The application was referred to Council's Waste Management Officer for review. The following comments have been provided:

"1. Council does not provide 1100L capacity bins. Council only provides up to 660L capacity bins.

2. The bin room foot print is insufficient to accommodate 40 x 660L bins. Bins are also not allowed to be stacked in-front of one another.

3. The bulky good room foot print is insufficient for 145 units, a minimum of 56 cubic meters is required and this is to be of a practical dimension.

4. The loading dock must be able to support a heavy rigid vehicle (HRV), and the HRV must be able to enter and exit in a forward direction within a 3 point turn.

5. There is no separate commercial bin room for the proposed commercial shops.

6. Residents are required to walk through the loading dock to access the bin room. There needs to be internal access to the bin room for residents.

7. Doors to the bin room must be unsecured and able to be latched in an open position."

ENVIRONMENTAL PLANNING INSTRUMENTS

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

STATE ENVIRONMENTAL PLANNING POLICIES (SEPPs)

State Environmental Planning Policy No. 55 – Remediation of Land

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

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

The application included a Preliminary Site Investigation prepared by STS Geoenvironmental Pty Ltd. The report made the following conclusions:

- *“The site is approximately 2,609 m2 and was vacant until it was developed for residential purposes. Since the late 1950’s the site has been used for commercial use. It has continued to be used for commercial use to the present day. Land use prior to development is unknown.*
- *Potential contamination sources that were identified at the site include the presence of imported fill material from an unknown origin, and the service station located adjacent to the site. The potential for the soils on the site to be chemically contaminated at levels that would be significant for a high-density residential land use setting is considered to be generally low. However, there is a potential impact from groundwater contamination.*
- *Further, given that the entire site is proposed to be bulk excavated for a basement car parking facility, any chemically impacted soil and groundwater that is present would be removed from the site during redevelopment. The use of a cut off wall (see geotechnical report) to restrict groundwater flows should ameliorate any impacts.*
- *Based on the result of this investigation, the site is considered to be suitable for the proposed high-density residential redevelopment provided that the land is developed in accordance with the current development plans.*
- *However, a soil and groundwater sampling program will be necessary to classify the soils on the site for off-site disposal prior to any bulk excavation works commencing and to identify if there is a health risk from the service station previously located adjacent to the site. Because of the slope of the land and the location of the fuel storage tanks with respect to the site, it is considered that the risk of contaminated groundwater on the site is low.”*

The application was referred to Council's Environmental Investigations team in relation to contaminated land. No objections were raised subject to conditions which can be included in any consent should this application be approved.

Therefore, the site can be made suitable, subject to appropriate conditions concerning a Phase 2 Assessment and a Remediation Action Plan.

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

Clause 4 of State Environmental Planning Policy No. 65 – Design Quality for Residential Apartment Development (SEPP 65) stipulates that:

(1) This Policy applies to development for the purpose of a residential flat building, shop top housing or mixed use development with a residential accommodation component if:

- (a) the development consists of any of the following:
 - (i) the erection of a new building,
 - (ii) the substantial redevelopment or the substantial refurbishment of an existing building,
 - (iii) the conversion of an existing building, and
- (b) the building concerned is at least 3 or more storeys (not including levels below ground level (existing) or levels that are less than 1.2 metres above ground level (existing) that provide for car parking), and
- (c) the building concerned contains at least 4 or more dwellings.

As previously outlined, the proposed development is for the erection of an eight (nine if the SOHO mezzanine level is included) storey residential flat 'housing' development plus basement car parking for the provision of 145 self-contained dwellings (including 10 SOHO units).

As per the provisions of Clause 4 outlining the application of the policy, the provisions of SEPP 65 are applicable to the assessment of this application.

As previously outlined within this report, Clause 50(1A) of the Environmental Planning and Assessment Regulation 2000 requires the submission of a Design Verification Certificate from the building designer at lodgement of the development application. This documentation has been submitted.

Clause 28 of SEPP 65 requires:

(2) In determining a development application for consent to carry out development to which this Policy applies, a consent authority is to take into consideration (in addition to any other matters that are required to be, or may be, taken into consideration):

- (a) the advice (if any) obtained from the design review panel, and
- (b) the design quality of the development when evaluated in accordance with the design quality principles, and
- (c) the Apartment Design Guide.

A Design Verification Statement was submitted with the Development Application and has been signed by the architects, Marchese Partners International.

The statement contains a number of inconsistencies with the plans including; stating that 67% of apartments are cross ventilated when the plans state 60%.

DESIGN REVIEW PANEL

Warringah Council does not have an appointed Design Review Panel.

DESIGN QUALITY PRINCIPLES

Principle 1: Context and Neighbourhood Character

Good design responds and contributes to its context. Context is the key natural and built features of an area, their relationship and the character they create when combined. It also

includes social, economic, health and environmental conditions.

Responding to context involves identifying the desirable elements of an area's existing or future character. Well designed buildings respond to and enhance the qualities and identity of the area including the adjacent sites, streetscape and neighbourhood. Consideration of local context is important for all sites, including sites in established areas, those undergoing change or identified for change.

Comment:

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

The Masterplan defines the Town Centre and includes substantial areas referred to as Site A (Councils Howard/Oaks Avenue car park and adjoining sites) and Site B (the Meriton Site on the eastern side of Pittwater Road).

Notwithstanding, in terms of context, the remainder of the DYTC has experienced some redevelopment, including, the following notable mixed use developments:

- “Dee Why Grand” (redeveloped Dee Why Hotel Site – 6 to 8 storeys and 24 to 30 metres);
- “Kallista” (637-641 Pittwater Road – 6 to 7 storeys);
- “Nautilus” (647 Pittwater Road – 6 storeys);
- “DX/DY” 822 Pittwater Road (The Drummond Golf Site – 8 storeys in the tower element, 3 storeys for the remainder)
- “1-5 Dee Why Parade (The Northern Gateway Site – Up to 8 storeys); and
- “910 Pittwater Road (6 storeys).

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

- Development to the immediate west of the site is entirely three and four storey residential flat buildings;
- The site is within close visual proximity to the Dee Why Grand and future key development sites within the DYTC;
- The site has a main road frontage and is situated close to the main transport interchange in Dee Why; and
- The site adjoins the “Kallista” building to the north and a service station to the south.

While the site is prominent, on the basis that it is located close to the southern entrance to the Town Centre, it is not a corner site and is not identified as a key site or a gateway site in the DYTC Masterplan. Therefore, the development is expected to be generally consistent with the applicable planning controls under WLEP 2011, the WDCP 2011 and the DYTC Masterplan.

A mixed use shop top housing development is an appropriate development type as envisaged by the Dee Why Town Centre Masterplan. However, the proposal is a maximum of 6.9m (or two storeys) above the allowable height limit (21m) for the site. This will result in a building two storeys above the “Kallista” development (to the immediate north and the building that is most appropriate for comparison in relation to context). The development would also be 3.9m (or one storey) above the maximum height limit (24m) being considered in the Draft LEP for DYTC.

The extent of this non-compliance along with non-compliances with the “build-to-lines”, the number of storeys control, the podium height and various requirements within the Apartment Design Guide (ADG), result in a development that will appear out of context with the surrounding character and accordingly, it is considered that the proposal does not satisfy this principle.

Principle 2: Built Form and Scale

Good design achieves a scale, bulk and height appropriate to the existing or desired future character of the street and surrounding buildings.

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

Comment:

The proposed development has been conceived on the basis that the subject site is a ‘Gateway Site’ to the DYTC.

As noted in ‘Principle 1 – Context’ above, the scale of the development is considered to be inconsistent with the scale of existing and future developments within the DYTC, as envisaged by the Masterplan.

The proposed development does contain many examples of good design in terms of its architecture including the levels of articulation, the split tower design, use of balconies, podiums and strongly defined elements to both the Pittwater and Mooramba Road frontages.

However, while the architectural design of the building is a positive feature of the development, the height and bulk of the structure is not consistent with the controls applicable to the site and locality and the development will result in a built form and scale that does not meet the desired future character of the area.

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

Principle 3: Density

Good design achieves a high level of amenity for residents and each apartment, resulting in a density appropriate to the site and its context.

Appropriate densities are consistent with the area’s existing or projected population.

Appropriate densities can be sustained by existing or proposed infrastructure, public transport, access to jobs, community facilities and the environment.

Comment:

While it is noted that the WLEP 2011 does not include a density provision, the development proposes the provision of 145 apartments (including 10 SOHO units).

Density is therefore gauged by how the development responds to the Design Quality Principles of SEPP 65, the Desired Future Character of the area contained in the DYTC Masterplan and the relevant controls contained within the WLEP 2011 and the WDCP 2011.

This assessment has found that the development, as proposed, does not achieve a satisfactory level of compliance and consistency with these controls, in particular, the overall height of the building and the number of storeys proposed.

In this regard, the proposed number of units and the density is considered to be excessive.

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

Principle 4: Sustainability

Good design combines positive environmental, social and economic outcomes. Good sustainable design includes use of natural cross ventilation and sunlight for the amenity and liveability of residents and passive thermal design for ventilation, heating and cooling reducing reliance on technology and operation costs. Other elements include recycling and reuse of materials and waste, use of sustainable materials, and deep soil zones for groundwater recharge and vegetation.

Comment:

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

The applicant has submitted a short Construction Management Plan that is not adequate for the scale of the development.

No Waste Management Plan addressing the demolition and construction stages of the development was submitted.

A BASIX certificate for the residential component of the development was submitted, however, this certificate is invalid (as stated on the certificate itself).

No ABSA Certificate was submitted.

A "NCC Section 'J' JV3" Assessment Report was submitted from an Energy Management Consultant.

A full assessment of the sustainability performance of the development cannot be completed given the insufficient information provided with the application.

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

Principle 5: Landscape

Good design recognises that together landscape and buildings operate as an integrated and sustainable system, resulting in attractive developments with good amenity. A positive image and contextual fit of well designed developments is achieved by contributing to the landscape character of the streetscape and neighbourhood.

Good landscape design enhances the development's environmental performance by retaining positive natural features which contribute to the local context, co-ordinating water and soil management, solar access, micro-climate, tree canopy, habitat values, and preserving green networks. Good landscape design optimises usability, privacy and opportunities for social interaction, equitable access, respect for neighbours' amenity, provides for practical establishment and long term management.

Comment:

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

Notwithstanding, small areas of landscaping are incorporated on the Level 1 podium on the Mooramba Road side of the development which forms the communal open space area for the building. In addition, landscaped planters are provided on Level 4 (the upper podium level). However, these areas are not expansive and are purely for aesthetic purposes.

The 542.8m² of communal open space, as required under the ADG, is sufficient in area for the development, however, this space directly adjoins 10 Level 1 units and is in close proximity to the 20 units on the immediate two levels above. It is not considered that this space will provide a good amenity for those 30 adjoining or nearby units.

Council's Landscape Officer reviewed the proposal and commented that, subject to conditions, the landscaping is acceptable.

While conditions could be imposed to ensure planting as indicated on the landscape plan is located in planters with minimum heights of 1 metre (to ensure adequate soil depth), the "landscaped" area (i.e. the communal open space) does not provide visual and acoustic amenity for the immediately adjoining units within the subject development.

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

Principle 6: Amenity

Good design positively influences internal and external amenity for residents and neighbours. Achieving good amenity contributes to positive living environments and resident well being.

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

Comment:

The development has been assessed against the amenity design criteria within the ADG.

Overall, the design does not provide a reasonable level of amenity for future occupants in relation to access to sunlight, natural ventilation, visual and acoustic privacy, waste disposal, noise and pollution.

It is estimated that 66 units (45.5%) will achieve two hours of sunlight to their living rooms and private open spaces between 9am and 3pm at mid-winter. The design criteria require a minimum of 101 (70%) apartments to achieve two hours of sunlight.

It is estimated that 19 units (13.1%) will achieve actual cross-ventilation. The design criteria require a minimum of 87 (60%) apartments to be cross ventilated.

As mentioned in Principle 5 above, 10 Level 1 units directly adjoin the communal open space area. In addition, 20 units in the two floors immediately above are in reasonably close proximity. A number of these units are studios which have their main “room” (i.e. bedroom/living room) visible from the communal open space. Screens could be installed on these units for privacy protection, however, this would not result in a desirable outlook for the future residents.

The proposed waste room is located on the northern side of the ground floor. There is no separate commercial bin room and residents must walk into the loading dock to enter the bin room. The bin room layout is inefficient with the plans showing that at least three of the bins are not readily accessible.

The site is also adjacent to Pittwater Road and to a service station. The noise and pollution impacts from these uses are undesirable but also unavoidable.

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

Principle 7: Safety

Good design optimises safety and security, within the development and the public domain. It provides for quality public and private spaces that are clearly defined and fit for the intended purpose. Opportunities to maximise passive surveillance of public and communal areas promote safety.

A positive relationship between public and private spaces is achieved through clearly defined secure access points and well lit and visible areas that are easily maintained and appropriate to the location and purpose.

Comment:

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

Generally, the development provides secure access which is separated from all vehicular access points. All apartments provide balconies or terraces and windows which provide passive surveillance over Pittwater Road, Mooramba Road and the properties to the north.

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

Principle 8: Housing Diversity and Social Interaction

Good design achieves a mix of apartment sizes, providing housing choice for different demographics, living needs and household budgets.

Well designed apartment developments respond to social context by providing housing and facilities to suit the existing and future social mix. Good design involves practical and flexible features, including different types of communal spaces for a broad range of people, providing opportunities for social interaction amongst residents.

Comment:

The provision of a mix of apartment sizes in this location is considered reasonable due to the site's close proximity to major bus interchanges, commercial facilities and opportunities within the DYTC and being within walking distance to the beach and public amenities and facilities and the future Dee Why Town Centre redevelopment.

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

Principle 9: Aesthetics

Good design achieves a built form that has good proportions and a balanced composition of elements, reflecting the internal layout and structure. Good design uses a variety of materials, colours and textures.

The visual appearance of well designed apartment development responds to the existing or future local context, particularly desirable elements and repetitions of the streetscape.

Comment:

The proposed development exhibits a high standard of architecture and overall aesthetics, which would contribute positively to the streetscape of DYTC, subject to the development meeting the height and number of storeys controls.

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

The building provides a modern and contemporary form with a well-considered use of physical and material articulation and modulation to provide a distinctive and strongly defined two tower element. The quality of urban design would provide for further impetus for redevelopment and enhancement of the town centre streetscapes.

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

APARTMENT DESIGN GUIDE

The following table is an assessment against the criteria of the ‘Apartment Design Guide’ as required by SEPP 65.

Development Control	Criteria / Guideline	Comments
Part 3 Siting the Development		
Site Analysis	Does the development relate well to its context and is it sited appropriately?	Inconsistent As discussed in the principles above, the building’s height, bulk and number of storeys will not be consistent with the desired future character of the area as envisaged by the prevailing planning controls and the DYTC Masterplan.
Orientation	Does the development respond to the streetscape and site and optimise solar access within the development and to neighbouring properties?	Inconsistent The building is orientated to fit the site dimensions, however, only 45.6% of units will

		achieve the minimum solar access requirement in mid-winter.										
Public Domain Interface	<p>Does the development transition well between the private and public domain without compromising safety and security?</p> <p>Is the amenity of the public domain retained and enhanced?</p>	<p>Inconsistent</p> <p>The Pittwater Road ground level frontage is separated from the public footpath by a series of columns and planter boxes. The development does not comply with the "build-to-lines". The applicant argues that the difference in levels between the site and the footpath, and the separated walk ways, are the result of the need for flood protection.</p>										
Communal and Public Open Space	<p>Appropriate communal open space is to be provided as follows:</p> <ol style="list-style-type: none"> 1. Communal open space has a minimum area equal to 25% of the site 2. Developments achieve a minimum of 50% direct sunlight to the principal usable parts of the communal open space for a minimum of 2 hours between 9 am and 3pm on 21 June (mid-winter) 	<p>Consistent</p> <ol style="list-style-type: none"> 1. 20.83% (542.8sqm) of the site area has been allocated to communal open space. The communal area has been provided on the Level 1 podium. This is appropriate in the built up urban context of the site and the inability to provide ground level landscaped open spaces. 2. The communal open space will achieve more than two hours of sunlight between 9 am and 3pm on 21 June. 										
Deep Soil Zones	<p>Deep soil zones are to meet the following minimum requirements:</p> <table border="1"> <thead> <tr> <th>Site area</th><th>Minimum dimensions</th><th>Deep soil zone (% of site area)</th></tr> </thead> <tbody> <tr> <td>Less than 650m²</td><td>-</td><td rowspan="3">7%</td></tr> <tr> <td>650m² – 1,500m²</td><td>3m</td></tr> <tr> <td>Greater than 1,500m²</td><td>6m</td></tr> </tbody> </table>	Site area	Minimum dimensions	Deep soil zone (% of site area)	Less than 650m ²	-	7%	650m ² – 1,500m ²	3m	Greater than 1,500m ²	6m	<p>Consistent</p> <p>With the exception of some planters (which, as discussed in the landscaping principle above, could be conditioned to be at least 1.0m deep) within the communal open space area and in places around the edges of Level 4, the development does not provide for any notable deep soil landscaping.</p> <p>Given the location of the site, ground level deep soil areas are impractical and the</p>
Site area	Minimum dimensions	Deep soil zone (% of site area)										
Less than 650m ²	-	7%										
650m ² – 1,500m ²	3m											
Greater than 1,500m ²	6m											

	<table border="1"> <tr> <td>Greater than 1,500m² with significant existing tree cover</td><td>6m</td><td></td></tr> </table>	Greater than 1,500m ² with significant existing tree cover	6m		development is acceptable in this regard.									
Greater than 1,500m ² with significant existing tree cover	6m													
Visual Privacy	<p>Minimum required separation distances from buildings to the side and rear boundaries are as follows:</p> <table border="1"> <tr> <th>Building height</th><th>Habitable rooms and balconies</th><th>Non-habitable rooms</th></tr> <tr> <td>Up to 12m (4 storeys)</td><td>6m</td><td>3m</td></tr> <tr> <td>Up to 25m (5-8 storeys)</td><td>9m</td><td>4.5m</td></tr> <tr> <td>Over 25m (9+ storeys)</td><td>12m</td><td>6m</td></tr> </table> <p><i>Note: Separation distances between buildings on the same site should combine required building separations depending on the type of rooms.</i></p> <p><i>Gallery access circulation should be treated as habitable space when measuring privacy separation distances between neighbouring properties.</i></p>	Building height	Habitable rooms and balconies	Non-habitable rooms	Up to 12m (4 storeys)	6m	3m	Up to 25m (5-8 storeys)	9m	4.5m	Over 25m (9+ storeys)	12m	6m	<p>Inconsistent</p> <p>The building abuts the "Kallista" development to the north, the service station to the south and is otherwise separated from surrounding development by Pittwater Road and Mooramba Road.</p> <p>The building is split into two towers above Level 4.</p> <p>The separation distances between units (balcony to balcony) within the two tower elements of Levels 4, 5, 6 and 7 are 7.25m and 9.0m.</p> <p>The two towers elements of the development can reasonably be considered to be two separate buildings for the purpose of visual privacy. This requires minimum separation distances of 18m (balcony to balcony).</p> <p>Separation distances of 7.25m and 9.0m are not considered to be sufficient and while privacy screens could be installed to minimise impacts, a better design outcome is considered necessary.</p>
Building height	Habitable rooms and balconies	Non-habitable rooms												
Up to 12m (4 storeys)	6m	3m												
Up to 25m (5-8 storeys)	9m	4.5m												
Over 25m (9+ storeys)	12m	6m												
Pedestrian Access and entries	<p>Do the building entries and pedestrian access connect to and addresses the public domain and are they accessible and easy to identify?</p> <p>Large sites are to provide pedestrian links for access to streets and connection to destinations.</p>	<p>Consistent</p> <p>The building provides a pedestrian arcade to give a through site link from Mooramba Road to Pittwater Road.</p> <p>The entries to the building are easily accessible.</p>												
Vehicle Access	Are the vehicle access points designed and located to achieve safety, minimise conflicts	Consistent												

	between pedestrians and vehicles and create high quality streetscapes?	The vehicle access point is in an appropriate location on Mooramba Road.
Bicycle and Car Parking	<p>For development in the following locations:</p> <ul style="list-style-type: none"> On sites that are within 80m of a railway station or light rail stop in the Sydney Metropolitan Area; or On land zoned, and sites within 400m of land zoned, B3 Commercial Core, B4 Mixed Use or equivalent in a nominated regional centre <p>The minimum car parking requirement for residents and visitors is set out in the Guide to Traffic Generating Developments, or the car parking requirement prescribed by the relevant council, whichever is less.</p> <p>The car parking needs for a development must be provided off street.</p> <p>Parking and facilities are provided for other modes of transport.</p> <p>Visual and environmental impacts are minimised.</p>	<p>Consistent</p> <p>A technical note from the Department of Planning & Environment, titled "Car Parking Requirements in SEPP 65" includes the following advice:</p> <p><i>"The Guide to Traffic Generating Development (GTTGD) prescribes car parking rates for residential flat buildings based on both the scale of development (whether it contains up to 20 units, or 20 or more units), as well as on location – whether the centre is a Metropolitan Regional Centre (CBD) or Metropolitan Subregional Centre."</i></p> <p>And:</p> <p><i>"It is appropriate to use the current metropolitan strategy for Sydney, A Plan for Growing Sydney, to define the scale of centres. This approach is consistent with the policy intent of both the Metropolitan Parking Policy and the GTTGD."</i></p> <p><i>"Therefore, those centres defined in A Plan for Growing Sydney as a CBD, Regional City Centre or Strategic Centre should apply the Metropolitan Regional Centre (CBD) rates of the GTTGD, while the remaining Sydney centres serviced by railway or light rail stations should be classified as a Metropolitan Subregional Centre for the purposes of the GTTGD."</i></p> <p>Dee Why/Brookvale is classified as a Strategic Centre and so the <u>Metropolitan Regional Centre (CBD)</u> rates should apply.</p> <p>However, Dee Why/Brookvale is unique in that there is only one form of public transport (buses) and the vast majority of bus services run north/south along Pittwater Road. A relatively small number of services deviate from this linear route.</p> <p>In addition, while the Northern Beaches is beginning to transition away from private vehicle ownership, the relatively low population densities, the geography and the relatively limited public transport options have meant that the transition is not as fast as in other Metropolitan Regional Centres. In this regard, on</p>

		<p>advice from Council's Traffic Engineers and from external consultants, the <u>Metropolitan Subregional Centre rates</u> are more appropriate and have therefore been used.</p> <p>The Metropolitan Subregional Centre residential rates are as follows:</p> <ul style="list-style-type: none"> • 0.6 spaces per 1 bedroom unit. • 0.9 spaces per 2 bedroom unit. • 1.40 spaces per 3 bedroom unit. • 1 space per 5 units (visitor parking). <p>The development comprises: 50 x Studios (30 spaces) 61 x 1 Bedroom (36.6 spaces) 24 x 2 bedroom (21.6 spaces) 10 x SOHO units (10 spaces)</p> <p>Total requirement: 98.2 spaces plus 29 visitor spaces. = <u>127.2 spaces</u></p> <p>The development proposes 136 spaces for residents and 29 visitor spaces. = <u>165 spaces</u></p> <p>The development meets the minimum residential parking requirements.</p> <p>The development does not meet the minimum commercial parking requirements. This is discussed in detail below in the WDCP 2011 section of this report.</p>
Part 4 Designing the Building		
Amenity		
Solar and Daylight Access	<p>To optimise the number of apartments receiving sunlight to habitable rooms, primary windows and private open space:</p> <ul style="list-style-type: none"> • Living rooms and private open spaces of at least 70% of apartments in a building are to receive a minimum of 2 hours direct sunlight between 9 am and 3 pm at mid-winter. • A maximum of 15% of apartments in a building receive no direct sunlight between 9 am and 3 pm at mid-winter 	<p>Inconsistent</p> <p>It is estimated that 66 apartments (45.5%) will achieve two hours of sunlight to their living rooms and private open spaces between 9am and 3pm at mid-winter.</p> <p>The design criteria requires a minimum of 101 (70%) apartments to achieve two hours of sunlight</p> <p>Four apartments (2.75%) will receive no sunlight</p>

		between 9am and 3pm in mid-winter.												
Natural Ventilation	<p>The number of apartments with natural cross ventilation is maximised to create a comfortable indoor environment for residents by:</p> <ul style="list-style-type: none">At least 60% of apartments are naturally cross ventilated in the first nine storeys of the building. Apartments at ten storeys or greater are deemed to be cross ventilated only if any enclosure of the balconies at these levels allows adequate natural ventilation and cannot be fully enclosed.Overall depth of a cross-over or cross-through apartment must not exceed 18m, measured glass line to glass line.	<p>Inconsistent</p> <p>It is estimated that 19 apartments (13.1%) will achieve actual cross-ventilation.</p> <p>The design criteria require a minimum of 87 (60%) apartments to be cross ventilated.</p>												
Ceiling Heights	<p>Measured from finished floor level to finished ceiling level, minimum ceiling heights are:</p> <table><tr><th colspan="2">Minimum ceiling height</th></tr><tr><td>Habitable rooms</td><td>2.7m</td></tr><tr><td>Non-habitable</td><td>2.4m</td></tr><tr><td>For 2 storey apartments</td><td>2.7m for main living area floor 2.4m for second floor, where its area does not exceed 50% of the apartment area</td></tr><tr><td>Attic spaces</td><td>2.7m for main living area floor 2.4m for second floor, where its area does not exceed 50% of the apartment area</td></tr><tr><td>If located in mixed used areas</td><td>2.7m for main living area floor 2.4m for second floor, where its area does not exceed 50% of the apartment area</td></tr></table>	Minimum ceiling height		Habitable rooms	2.7m	Non-habitable	2.4m	For 2 storey apartments	2.7m for main living area floor 2.4m for second floor, where its area does not exceed 50% of the apartment area	Attic spaces	2.7m for main living area floor 2.4m for second floor, where its area does not exceed 50% of the apartment area	If located in mixed used areas	2.7m for main living area floor 2.4m for second floor, where its area does not exceed 50% of the apartment area	<p>Inconsistent</p> <p>The commercial premises on the ground floor level achieve a floor to ceiling height of between 4.6m and 4.77m.</p> <p>The development proposes 2.9m floor-to-floor heights for all residential apartments on Levels 1 - 7.</p> <p>To achieve the minimum 2.7m floor-to-ceiling heights, the developer is relying on 200mm spaces for slabs and services between each floor.</p> <p>The residential floors of the SOHO units are proposed with 2.6m floor-to-floor (2.4m floor-to-ceiling relying on a 200mm slab) heights.</p>
Minimum ceiling height														
Habitable rooms	2.7m													
Non-habitable	2.4m													
For 2 storey apartments	2.7m for main living area floor 2.4m for second floor, where its area does not exceed 50% of the apartment area													
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If located in mixed used areas	2.7m for main living area floor 2.4m for second floor, where its area does not exceed 50% of the apartment area													
Apartment Size and Layout	Apartments are required to have the following minimum internal areas:	Inconsistent												

	<table><tr><td>Apartment type</td><td>Minimum internal area</td></tr><tr><td>Studio</td><td>35m²</td></tr><tr><td>1 bedroom</td><td>50m²</td></tr><tr><td>2 bedroom</td><td>70m²</td></tr><tr><td>3 bedroom</td><td>90m²</td></tr></table> <p>The minimum internal areas include only one bathroom. Additional bathrooms increase the minimum internal area by 5m2 each.</p> <p>A fourth bedroom and further additional bedrooms increase the minimum internal area by 12m2 each.</p> <p>Every habitable room must have a window in an external wall with a total minimum glass area of not less than 10% of the floor area of the room. Daylight and air may not be borrowed from other rooms.</p> <p>Habitable room depths are limited to a maximum of 2.5 x the ceiling height.</p> <p>In open plan layouts (where the living, dining and kitchen are combined) the maximum habitable room depth is 8m from a window.</p> <p>Master bedrooms have a minimum area of 10m2 and other bedrooms 9m2 (excluding wardrobe space).</p> <p>Bedrooms have a minimum dimension of 3m (excluding wardrobe space).</p> <p>Living rooms or combined living/dining rooms have a minimum width of:</p> <ul style="list-style-type: none">• 3.6m for studio and 1 bedroom apartments• 4m for 2 and 3 bedroom apartments <p>The width of cross-over or cross-through apartments are at least 4m internally to avoid deep narrow apartment layouts</p>	Apartment type	Minimum internal area	Studio	35m ²	1 bedroom	50m ²	2 bedroom	70m ²	3 bedroom	90m ²	<p>All apartments meet the minimum size requirements with the exception of two SOHO units (with floor areas of 20sqm and 22sqm). The ADG does not cover SOHO units, however, given the upper floor of the SOHO units are designed for residential use, a floor space less than the minimum requirement for a studio are not considered to be adequate.</p>		
Apartment type	Minimum internal area													
Studio	35m ²													
1 bedroom	50m ²													
2 bedroom	70m ²													
3 bedroom	90m ²													
Private Open Space and Balconies	<p>All apartments are required to have primary balconies as follows:</p> <table><tr><td>Dwelling Type</td><td>Minimum Area</td><td>Minimum Depth</td></tr><tr><td>Studio apartments</td><td>4m²</td><td>-</td></tr><tr><td>1 bedroom apartments</td><td>8m²</td><td>2m</td></tr><tr><td>2 bedroom apartments</td><td>10m²</td><td>2m</td></tr></table>	Dwelling Type	Minimum Area	Minimum Depth	Studio apartments	4m ²	-	1 bedroom apartments	8m ²	2m	2 bedroom apartments	10m ²	2m	<p>Inconsistent</p> <p>A number of balconies and terraces do not meet the minimum sizes or dimensions required by the ADG. These include:</p> <ul style="list-style-type: none">• The terraces or “wintergardens” of units 111, 112, 113, 114 and 115 (these
Dwelling Type	Minimum Area	Minimum Depth												
Studio apartments	4m ²	-												
1 bedroom apartments	8m ²	2m												
2 bedroom apartments	10m ²	2m												

	<table><tr><td>3+ bedroom apartments</td><td>12m²</td><td>2.4m</td></tr></table> <p>For apartments at ground level or on a podium or similar structure, a private open space is provided instead of a balcony. It must have a minimum area of 15m² and a minimum depth of 3m.</p>	3+ bedroom apartments	12m ²	2.4m	<p>units sit on the podium and require private open space areas of a minimum of 15sqm in area and a minimum dimension of 3.0m).</p> <ul style="list-style-type: none">The balconies of units 514, 614 and 714 are less than 10sqm.							
3+ bedroom apartments	12m ²	2.4m										
Common Circulation and Spaces	<p>The maximum number of apartments off a circulation core on a single level is eight.</p> <p>For buildings of 10 storeys and over, the maximum number of apartments sharing a single lift is 40.</p>	<p>Inconsistent</p> <p><u>Northern circulation core:</u> On Levels 1, 2 and 3 – 11 units per level share the core. On Levels 4, 5, 6 and 7 – 9 units per level share the core</p> <p><u>Southern circulation core:</u> On Levels 1, 2 and 3 – 10 units per level share the core. On Levels 4, 5, 6 and 7 – 9 units per level share the core</p>										
Storage	<p>In addition to storage in kitchens, bathrooms and bedrooms, the following storage is provided:</p> <table><tr><td>Dwelling Type</td><td>Storage size volume</td></tr><tr><td>Studio apartments</td><td>4m²</td></tr><tr><td>1 bedroom apartments</td><td>6m²</td></tr><tr><td>2 bedroom apartments</td><td>8m²</td></tr><tr><td>3+ bedroom apartments</td><td>10m²</td></tr></table> <p>At least 50% of the required storage is to be located within the apartment.</p>	Dwelling Type	Storage size volume	Studio apartments	4m ²	1 bedroom apartments	6m ²	2 bedroom apartments	8m ²	3+ bedroom apartments	10m ²	<p>Consistent</p> <p>Studio – 50 x 4.0m³ = 200m³ 1 bedroom – 61 x 6.0m³ = 366m³ 2 bedroom – 24 x 8.0m³ = 192m³ Total storage required = 758m³ Total storage provided = 818.4m³ (approx.)</p>
Dwelling Type	Storage size volume											
Studio apartments	4m ²											
1 bedroom apartments	6m ²											
2 bedroom apartments	8m ²											
3+ bedroom apartments	10m ²											
Acoustic Privacy	Noise sources such as garage doors, driveways, service areas, plant rooms, building services, mechanical equipment, active communal open spaces and circulation areas should be	<p>Inconsistent</p> <p>All garage doors, driveways, service areas, plant rooms, building services and mechanical</p>										

	located at least 3m away from bedrooms.	<p>equipment, are located more than 3m away from bedrooms.</p> <p>As mentioned in Principle 5 above, 10 Level 1 units directly adjoin the communal open space area. In addition, 20 units in the two floors immediately above are in reasonably close proximity.</p> <p>The acoustic impact on these units caused by the close proximity to the communal open space is unreasonable.</p>
Noise and Pollution	Siting, layout and design of the building is to minimise the impacts of external noise and pollution and mitigate noise transmission.	<p>Consistent</p> <p>The site is adjacent to Pittwater Road and to a service station. The noise and pollution impacts from these uses are undesirable but also unavoidable.</p> <p>The application included an Acoustic Report, the requirements of which could be included as a condition of consent should this development be approved.</p>
Configuration		
Apartment Mix	Ensure the development provides a range of apartment types and sizes that is appropriate in supporting the needs of the community now and into the future and in the suitable locations within the building.	<p>Inconsistent</p> <p>The development provides a mix of SOHO, studios, 1 bedroom and 2 bedroom apartments.</p> <p>The studios, 1 bedroom and 2 bedroom apartments are between 35m² and 102m² in size which satisfies the ADG requirements.</p> <p>Two SOHO units, at 20m² and 22m² do not meet the minimum size requirements for a studio.</p>
Facades	Ensure that building facades provide visual interest along the street and neighbouring buildings while respecting the character of the local area.	<p>Consistent</p> <p>The proposed building includes good levels of vertical and horizontal articulation such that the resulting building alignments and proportions are generally balanced and reflective of the internal layout and structure.</p> <p>Through the provision of articulation and the use of a variety of materials, the development would contribute towards</p>

		the existing or future local context of the DYTC.				
Roof Design	Ensure the roof design responds to the street and adjacent buildings and also incorporates sustainability features. Test whether the roof space can be maximised for residential accommodation and open space.				Consistent The development includes a flat and parapet roof form which is considered to reasonably respond to the street and adjacent buildings.	
Landscape Design	Was a landscape plan submitted and does it respond well to the existing site conditions and context.				Capable of Consistency A landscape plan was submitted with the application. Council’s Landscape Officer provided the following comments: <i>Some discrepancy is noted between the Landscape Plan for the Level One Podium space and the Architectural Plans for level 1.</i> <i>The Architectural plans indicate narrow planters at RL 32.705. The Landscape Plan indicates wider planters, but with no wall heights.</i> <i>As the paving level is indicated at RL31.84, matching the floor level of the level 1 units, the wall should be 1 metre high to provide soil volume.</i> <i>The discrepancy can be dealt with via conditions of consent requiring planting as indicated on the landscape plan to be located in planters with minimum height of 1 metre</i>	
Planting on Structures	When planting on structures the following are recommended as minimum standards for a range of plant sizes:				Capable of Consistency As above, conditions could be included in any consent deepening the planter boxes, should this application be approved.	
	Plant type	Definition	Soil Volume	Soil Depth		Soil Area
	Large Trees	12-18m high, up to 16m crown spread at maturity	150m ³	1,200mm		10m x 10m or equivalent
	Medium Trees	8-12m high, up to 8m crown spread at maturity	35m ³	1,000mm	6m x 6m or equivalent	

	<div>Small trees</div> <div>6-8m high, up to 4m crown spread at maturity</div> <div>9m³</div> <div>800mm</div> <div>3.5m x 3.5m or equivalent</div>	
	<div>Shrubs</div> <div></div> <div></div> <div>500-600mm</div> <div></div>	
	<div>Ground Cover</div> <div></div> <div></div> <div>300-450mm</div> <div></div>	
	<div>Turf</div> <div></div> <div></div> <div>200mm</div> <div></div>	
Universal Design	Developments are to achieve a benchmark of 20% of the total apartments incorporating the Livable Housing Guideline's silver level universal design features.	Inconsistent 19 (13.1%) apartments are adaptable. 20% would require 29 apartments to be adaptable.
Adaptive Reuse	New additions to existing buildings are contemporary and complementary and enhance an area's identity and sense of place.	N/A The development is a new building.
Mixed Use	<p>Can the development be accessed through public transport and does it positively contribute to the public domain?</p> <p>Non-residential uses should be located on lower levels of buildings in areas where residential use may not be appropriate or desirable.</p>	Consistent The site is close to public transport. Retail tenancies and service areas are located on the ground floor.
Awnings and Signage	<p>Locate awnings along streets with high pedestrian activity, active frontages and over building entries. Awnings are to complement the building design and contribute to the identity of the development.</p> <p>Signage must respond to the existing streetscape character and context.</p>	Consistent The proposed awnings over the Pittwater Road frontage are acceptable. No signage is proposed as part of this development.
Performance		
Energy Efficiency	Have the requirements in the BASIX certificate been shown in the submitted plans?	Inconsistent The BASIX certificate submitted with the application is invalid.
Water Management and Conservation	Has water management taken into account all the water measures including water infiltration, potable water, rainwater, wastewater, stormwater and groundwater?	Inconsistent The development provides for an On-Site Stormwater Detention tank above the vehicle ramps accessing the basement car park.

		However, the applicant did not provide sufficient information for Council's Development Engineers to be satisfied that the requirements of Clause C4 – 'Stormwater' under the WDCP 2011 have been met.
Waste Management	Supply waste management plans as part of the development application demonstrating safe and convenient collection and storage of waste and recycling.	Inconsistent Council's Waste Officers have reviewed the proposal and recommended refusal for a number of reasons (please see the Waste Referral Response above in this report).
Building Maintenance	Incorporates a design and material selection that ensures the longevity and sustainability of the building.	Consistent The materials and design chosen, should ensure the longevity and sustainability of the building.

STANDARDS THAT CANNOT BE USED TO REFUSE DEVELOPMENT CONSENT

Clause 30 of SEPP 65 Standards that Cannot be used as Grounds to Refuse Development Consent or Modification of Development Consent states that:

(1) If an application for the modification of a development consent or a development application for the carrying out of development to which this Policy applies satisfies the following design criteria, the consent authority must not refuse the application because of those matters:

- (a) if the car parking for the building will be equal to, or greater than, the recommended minimum amount of car parking specified in Part 3J of the Apartment Design Guide,***
- (b) if the internal area for each apartment will be equal to, or greater than, the recommended minimum internal area for the relevant apartment type specified in Part 4D of the Apartment Design Guide,***
- (c) if the ceiling heights for the building will be equal to, or greater than, the recommended minimum ceiling heights specified in Part 4C of the Apartment Design Guide.***

Note. The Building Code of Australia specifies minimum ceiling heights for residential flat buildings.

Comment:

The development satisfies the requirements of Clause 30(1)(a).

The development does not satisfy the requirements of Clause 30(1)(b) and (c) for the following reasons:

(b) The internal areas of two SOHO units will be less than the recommended minimum internal area for the relevant apartment type specified in Part 4D of the Apartment Design Guide.

(c) The ceiling heights of the SOHO units are less than 2.7m. The ceiling heights of the remaining residential levels rely on 200mm spaces for slabs and services.

(2) Development consent must not be granted if, in the opinion of the consent authority, the development or modification does not demonstrate that adequate regard has been given to:

(a) the design quality principles, and

(b) the objectives specified in the Apartment Design Guide for the relevant design criteria.

(3) To remove doubt:

(a) subclause (1) does not prevent a consent authority from refusing an application in relation to a matter not specified in subclause (1), including on the basis of subclause (2), and

(b) the design criteria specified in subclause (1) are standards to which clause 79C (2) of the Act applies.

Note. The provisions of this clause do not impose any limitations on the grounds on which a consent authority may grant or modify development consent.

Comment:

It is considered that adequate regard has been given to:

(a) the design quality principles, and

(b) the objectives specified in the Apartment Design Guide for the relevant design criteria.

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

A BASIX certificate was submitted with the application, however, the document submitted states that it is not a valid BASIX certificate.

The failure to provide a valid BASIX certificate is a reason for refusal and has been included in the recommendation of this report.

State Environmental Planning Policy (Infrastructure) 2007

Clause 45

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

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

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

Ausgrid raised no objections to the proposal, subject to conditions which can be included in any consent should this application be approved.

STATE REGIONAL ENVIRONMENTAL PLANS (SREPs)

There are no SREPs applicable to the site.

LOCAL ENVIRONMENTAL PLANS

WARRINGAH LOCAL ENVIRONMENT PLAN 2011

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

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

Principal Development Standards

Relevant Development Standard	Requirement	Proposed	Variation (%)	Compliance
Clause 4.3 Height of Buildings	Area 7 - 21m	Maximum of 27.8m	32.38%	No
	Area 8 - 13m	Maximum of 14.1m	8.46%	No

Compliance Assessment Summary

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

Relevant Clauses	Compliance with Requirements
6.4 Development on sloping land	Yes
6.7 Residential Flat Buildings in Zone B4 Mixed Use	Yes

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

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

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

Is the planning control in question a development standard?

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

What are the underlying objectives of the development standard?

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

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

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

Comment

The proposed height is not compatible with the height for this site as envisaged by the current planning controls. The height is also inconsistent with the surrounding development, in particular, the "Kallista" building.

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

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

Comment

The development has not been designed to minimise the visual impact of the building in terms of its height and bulk as a result of the significant breaches of the height and number of storeys controls.

The two additional levels above the height limit will result in a loss of views from some residential properties to the west of the site.

The development will not have an unreasonable impact on solar access to private and public domains around the site.

The development is considered to be a sufficient distance from residential properties to not have any unreasonable impact upon privacy.

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

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

Comment

The building will be visible from many properties around DYTC and in the streets to the west. However, the building will form part of the Dee Why Town Centre redevelopment and will not have an adverse impact on any coastal and bush environments.

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

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

Comment:

The proposed development exhibits a high standard of architecture and overall aesthetics, which would contribute positively to the streetscape of DYTC. The design incorporates a substantial use of glazing, recessed balconies, architectural framing devices and a variety of materials and textures which are integrated and will provide a visual “uplift” of this site and this portion of DYTC.

However, the building does not fit reasonably within the context created by the current planning controls and by existing redeveloped lots. The site is not a corner lot, is not a ‘gateway’ site and is not identified as a ‘key’ site under the current WLEP 2011 or the DYTC Masterplan and Planning Proposal. In this regard, the two additional storeys above the height limit will not minimise the visual impact of the development when viewed from the public domain around the site.

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

What are the underlying objectives of the zone?

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

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

Comment

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

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

The proposal satisfies this objective.

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

Comment

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

The proposal satisfies this objective.

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

Comment

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

The development provides a mix of commercial and residential uses within a dual tower built form. This is considered consistent with the objectives and intent of the Sydney Metropolitan Strategy and North East Sub-regional Strategy.

The proposal satisfies this objective.

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

Comment

The development contains commercial premises at the ground level, facing Pittwater Road, which could feasibly include cafe or restaurant uses. This would provide appropriate activation at the street level.

The proposal satisfies this objective.

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

Comment

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

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

The proposal satisfies this objective.

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

Comment:

The applicant has provided sufficient evidence of offers to purchase the neighbouring property to the south (the United Service Station). A reasonable attempt has been made to seek amalgamation.

Car parking is located within the basement car park levels. Space has been left for potential access to the basement levels of the property to the south, should it be redeveloped.

The car parking areas are not visible from the public or neighbouring private domains and form an integrated and visually inoffensive element in the overall architecture of the development.

In this regard, the proposal satisfies this objective.

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

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

- (a) to provide an appropriate degree of flexibility in applying certain development standards to particular development.**
- (b) to achieve better outcomes for and from development by allowing flexibility in particular circumstances.**

Comment

The variation to the Development Standard and the granting of an increased building height is not considered to be necessary to achieve a better outcome for the site or for the DYTC.

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

Comment:

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

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

- (a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and**
- (b) that there are sufficient environmental planning grounds to justify contravening the development standard.**

Comment:

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

The written request argues, in part:

“Compliance with the development standard is unnecessary. The distribution of building height on the site is appropriate, achieved by reduced heights fronting Mooramba Road and increased heights fronting Pittwater Road as explained below.

Different building height designations are applicable to the site which the proposal respects.

The proposed building height is concentrated at the land's Pittwater Road frontage.

The proposed building height is lower than what is permitted along the Mooramba Road frontage. Within height designation Area N the building height limit is 13m whereas the proposal is approximately 5.0m plus parapet / balustrade in this part of the site.

It is in this location that the site presents to the R3 Medium Density zone and the 4 storey apartment developments that front the western side of the street.

It is also noted that the proposal presents a lower building height to the Mooramba Road frontage than the northern adjoining building at No. at 637-641 Pittwater Road which is subject to the same building height of building standard (13m).

Taking these characteristics into account compliance with the development standard is unnecessary, given that:

- The proposal will have an appropriate visual impact as confirmed by the assessment of visual impact analysis made by Dr Richard Lamb & Associates.*
- The proposal will have an appropriate shading impact onto nearby land as confirmed by the analysis from Marchese and Partners Architects.*
- The proposal will have an appropriate privacy impact taking into account the permitted density of the location and the separation between the proposal and nearby residential apartments."*

The applicant also argues, in part:

"In summary the proposal's building height:

- Is compatible with 822 Pittwater Road. 822 Pittwater Road is particularly relevant to the proposal as it is directly opposite the site on the eastern side of Pittwater Road.*
- Is comparable to the extent of the other building height exceedances approved at 697-701 Pittwater Road.*
- Is complementary to and compatible with the land's built form context.*
- Is consistent with the desired future character because it is within an area designated as 5-10 storeys as contemplated by the Masterplan 2013.*
- Satisfies the objectives of the Height of Buildings standard and the B4 Mixed Use Zone.*

For the reasons provided above it is our considered opinion that strict compliance is unreasonable or unnecessary because strict compliance has been abandoned in recent approvals with the Dee Why Mixed Use zone and there is evidence that this is part of a larger strategic change in council's approach to the land use planning for the zone."

Council's Comment:

The applicant's argument focuses on the fact that the building has allocated its height and bulk to the Pittwater Road frontage thereby reducing the massing along Mooramba Road facing the R3 Medium Density zone to the west allowing the provision of communal open space in the north western corner of the development.

The applicant also compares the development to other recent approvals in the vicinity, namely No. 822 Pittwater Road (the Drummond Golf site) and No. 697-701 Pittwater Road (the Cobalt development).

While the reduction in height (compared to the control) along a part of Mooramba Road is a positive outcome, the area containing the communal open space is required by the planning controls to have a maximum height of 13m.

No. 822 Pittwater Road (Drummond Golf Site) is a corner site and is, in effect a southern 'gateway' to the DYTC. In this regard, an increased height was considered appropriate for the tower element of the development, which covers less than half the site but is its dominant feature.

The subject site is not a corner, 'gateway' or 'key' site and therefore, comparing the two developments to argue that a similar height is appropriate is not sustainable.

No. 697-701 Pittwater Road (Cobalt Site) is directly opposite the DYTC Meriton Development. The Meriton Development has a maximum height limit of 75m and 78m for the two tower elements. The Cobalt Site has a current height limit of 24m, is a corner location with an adjoining park and is in close proximity to the Meriton Development. During the assessment of the Cobalt proposal, a greater height was considered appropriate given the context of the site.

The subject site is at the southern end of the DYTC. The proposed height is two storeys above the current 21m control and a storey above the 24m proposed as part of the draft planning controls (which are not imminent and certain) and will not result in an outcome that is envisaged by the planning instrument or consistent with surrounding development. In particular, the "Kallista" and "Nautilus" buildings to the north and the R3 Medium Density zone on the western side of Mooramba Road.

Overall, full compliance with the control is not unreasonable or unnecessary. The height of the proposed development will not result in a better development outcome for the DYTC.

Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC90

In this relevant case, the Court decision stated that merely showing that the development achieves the objectives of the development standard is insufficient to justify that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case for the purposes of an objection under Clause 4.6 and more specifically Clause 4.6(3)(a).

Further, the requirement in Clause 4.6(3)(b) to justify that there are sufficient environmental planning grounds for the variation, requires the identification of grounds "particular to the circumstances of the proposed development", as opposed to grounds that would apply to any similar development on the site or in the vicinity.

In the case of the current application, the applicant has not demonstrated that there are sufficient grounds particular to the development in the objection regarding the non-compliant building height.

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

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

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

Comment:

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

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

Comment:

The non-compliance with the building height standard is not considered to be in the public interest as the proposed development is found to be inconsistent with the objectives of the Height of Buildings Development Standard and the strategic direction of the DYTC Masterplan embodied in the Planning Proposal.

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

Comment:

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

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

Clause 6.3 - Flood Planning

The application was referred to Council's Natural Environment Unit (Flooding) for review. The following comments were provided:

"A Flood Risk Assessment has not been provided with the Development Application. As a result an assessment of the Development Application against the objectives and conditions in Section 6.3 of the Warringah LEP2011 and Part E11 of the DCP cannot be undertaken.

The Applicant must provide a Flood Risk Assessment in accordance with the guidelines available on Council's webpage. The Flood Risk Assessment must specifically determine the relevant 1 in 100 year flood levels from the gutter flood depths previously provided by Council."

Insufficient information has been provided and this is a fundamental part of the assessment of the suitability of the site for the proposed development. This has been included as a reason for refusal.

DEVELOPMENT CONTROL PLANS

WARRINGAH DEVELOPMENT CONTROL PLAN 2011

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

Compliance Assessment Summary

Clause	Compliance with Requirements	Consistency Aims/Objectives
Part A Introduction		
A.5 Objectives	Yes	Yes
Part C Siting Factors		
C2 Traffic, Access and Safety	No	No
C3 Parking Facilities	No	No
C3(A) Bicycle Parking and End of Trip Facilities	Yes	Yes
C4 Stormwater	No	No
C5 Erosion and Sedimentation	Yes	Yes
C6 Building over or adjacent to Constructed Council Drainage Easements	Yes	Yes
C7 Excavation and Landfill	Yes	Yes
C8 Demolition and Construction	No	No
C9 Waste Management	No	No
Residential accommodation - 3 or more dwellings	No	No
Part D Design		
D2 Private Open Space	Yes	Yes
D3 Noise	Yes	Yes
D6 Access to Sunlight	Yes	Yes
D7 Views	Yes	Yes
D8 Privacy	No	No
D9 Building Bulk	No	No
D10 Building Colours and Materials	Yes	Yes
D11 Roofs	Yes	Yes
D12 Glare and Reflection	Yes	Yes
D14 Site Facilities	Yes	Yes
D18 Accessibility	Yes	Yes
D20 Safety and Security	Yes	Yes
D21 Provision and Location of Utility Services	Yes	Yes
D22 Conservation of Energy and Water	Yes	Yes
Part E The Natural Environment		
E1 Private Property Tree Management	Yes	Yes
E10 Landslip Risk	Yes	Yes
Part G Special Area Controls (see separate table below)		
G1 Dee Why Mixed Use Area		
Area 7 – Pittwater Road	No	No
Area 8 – Mooramba Road	No	No
Part H Appendices		
Appendix 1 Car Parking Requirements	No	No

Built Form Controls

The Built Form Controls under Parts B and D of the WDCP 2011 do not apply to the proposed development.

Part G Special Area Controls

The site is located within Areas 7 and 8 under the WDCP 2011.

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

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

Area 7 – Pittwater Road

Requirement	Comment	Compliance
1. Entry to the area will be marked by a building at the southern corner of the intersection of Dee Why Parade and Pittwater Road. The scale and architectural treatment of this building will distinguish it from other buildings and define the edge of the town centre.	Not applicable	N/A
2. Buildings are to define the streets and public spaces and create environments that are appropriate to the human scale as well as comfortable, interesting and safe. In particular, future development is to ensure that a 4 storey podium adjoins the sidewalk and establishes a coherent parapet line along Pittwater Road. Above the parapet line additional storeys will be set back to maintain solar access to the sidewalks and ensure that the scale of buildings does not dominate public spaces. Building facades are to be articulated in such a way that they are broken into smaller elements with strong vertical proportions and spaces created between buildings at the upper levels to add interest to the skyline, reduce the mass of the building and facilitate the sharing of views and sunlight.	<p>The development provides a modern and contemporary architectural design incorporating distinct horizontal and vertical building elements over the various facades of the building. Included in these strong architectural design elements is a 4 storey podium facing part of the Pittwater Road frontage, which, if set back to meet the build-to-lines will provide a consistent streetscape for future developments extending to the north along Pittwater Road as envisaged by the DYTC Masterplan.</p> <p>In terms of the building façade, the design incorporates adequate articulation and modulation and uses high quality materials and finishes which will contribute a high level of urban design quality and streetscape enhancement.</p> <p>However, the additional height, storeys and the non-compliance with the build-to-lines results in a development that dominates the public space along Pittwater Road.</p>	No

Requirement	Comment	Compliance
	<p>A fully compliant proposal would provide better proportions to reduce the mass of the building and to be consistent with the desired future character of the DYTTC.</p> <p>The non-compliances with the build-to-lines are discussed in more detail below.</p>	
3. The overall height of buildings is to be such that long distance views of Long Reef Headland, the top of the escarpment to the west of Pittwater Road and the Norfolk Island Pines next to Dee Why Beach are preserved.	The development, as a result of the breach of the height limit, has the potential to disrupt distant view sharing from residential properties located on the hill to the west.	No
4. Site amalgamation will be encouraged to facilitate new development and enable all car parking to be provided below ground or behind buildings using shared driveways where possible.	The applicant has provided sufficient evidence of offers to purchase the neighbouring property to the south (the United Service Station). A reasonable attempt has been made to seek amalgamation.	Yes
5. Building layout and access are to be in accordance with the Build to Lines and Central Courts map. Shared laneways are to be established to ensure there is no vehicle access directly from Pittwater Road. The spaces behind buildings combine to form central courts with vehicle access limited to a restricted number of places.	<p>Central Courts and shared laneways are not applicable to the site.</p> <p>The development does not comply with the build-to-lines. A detailed discussion is undertaken in Requirement 9 below.</p>	No
6. Buildings are not to exceed 6 storeys north of the intersections of Fisher Road and Pacific Parade with Pittwater Road, and are not to exceed 5 storeys south of these intersections	<p>The building is south of the intersection of Fisher Road and Pacific Parade and should not exceed 5 storeys. The development proposes 8 storeys.</p> <p>A 6 storey development would be worthy of support in this particular case as it would meet the height control and would be consistent with the “Kallista” and “Nautilus” buildings to the immediate north.</p>	No
<p>7. The maximum area of the floor plate of the upper floors of buildings is to be in accordance with the Build To Lines and Central Courts map as follows:</p> <ul style="list-style-type: none"> • above the topmost storey 	Not applicable	N/A

Requirement	Comment	Compliance
<p>(including plant and equipment rooms, lofts etc): 30% of the area of the ground floor floor plate;</p> <ul style="list-style-type: none"> • topmost storey: 50% of the area of the ground floor plate; and • second topmost storey: 70% of the area of the ground floor plate 		
<p>8. Minimum floor to ceiling heights have been established.</p> <p>The minimum floor to ceiling height are as follows:</p> <ul style="list-style-type: none"> • ground floor storey: 3.6 metres; • upper storeys: 2.7 metres 	<p>The commercial premises at the ground floor level achieve a floor to ceiling height of between 4.6m and 4.77m.</p> <p>The development proposes 2.9m floor-to-floor heights for all residential apartments on Levels 1 - 7.</p> <p>To achieve the minimum 2.7m floor-to-ceiling heights, the developer is relying on 200mm spaces for slabs and services between each floor.</p> <p>The residential floors of the SOHO units are proposed with 2.6m floor-to-floor (2.4m floor-to-ceiling relying on a 200mm slab) heights.</p>	<p>Yes (commercial level and residential levels 1-7)</p> <p>No (SOHO units)</p>
<p>9. Build-to lines have been established to ensure future development defines the streets and public spaces.</p> <p>For the first 4 storeys of buildings, build-to-lines have been set at:</p> <ul style="list-style-type: none"> • 5 metres from the kerb for the first 4 storeys; and • 9 metres from the kerb for storeys above the fourth storey, except: • At the southern end of the intersection of Sturdee Parade and Pittwater Road as indicated on the Build to Lines and Central Courts map as follows, where the build-to line is the front property boundary for the first four storeys and 5 metres from the kerb for storeys above the fourth storey. 	<p>The development provides for the following build-to-lines:</p> <p><u>Area 7 (Pittwater Road)</u></p> <ul style="list-style-type: none"> • Approximately 4.5m from the kerb for the Ground Level, Level 1, Level 2, and Level 3 (i.e. the first 4 storeys); • Approximately 5.0m from the kerb for Level 4 (the 5th storey); • Approximately 8.0m to 9.5m from the kerb for Levels 5, 6 and 7 (the 6th, 7th and 8th storeys). <p>The non-compliances equal 500mm for the first 4 levels, 4.0m for the 5th level and up to 1.0m for the 6th, 7th and 8th levels.</p> <p>The site is not narrow and full</p>	<p>No</p> <p>No</p> <p>No</p>

Requirement	Comment	Compliance
	compliance should be able to be achieved to provide a built form envisaged by the DYTC Masterplan and its related WDCP 2011 controls.	
10. Car parking facilities must be provided below ground or behind buildings in shared parking areas. Ground level parking must be provided with trees that will have a mature canopy coverage of 70% over the area.	Car parking is located within the below ground basement car park levels.	Yes
Exceptions		
Consent may be granted for a building at the corner of Dee Why Parade and Pittwater Road above 6 storeys provided the massing of any additional storeys above the sixth storey is substantially reduced (i.e. they occupy a smaller floor plate compared to lower storeys).	Not applicable	N/A
Any building that directly adjoins St. David Avenue is to present as a 3 storey, for that part of the building to complement the existing scale of development along St. David Avenue.	Not applicable	N/A
<p>Future development is to observe the build-to lines as follows:</p> <ul style="list-style-type: none"> • The relevant building facades are to be built on these lines. Variations of up to 300 mm may be permitted to add visual interest and allow articulation of building facades. • Light weight structures that do not add to the visual mass of the building, such as pergolas and balconies, may penetrate the build-to lines. • At ground floor level strict compliance with the build-to lines is not essential 	The build-to-line breaches are greater than 300mm.	No

Area 8 – Mooramba Road

Requirement	Comment	Compliance
1. The height of buildings in this area will be less than in the adjacent Area 7 and will establish a transition between the B4 Mixed Use zone and	The development provides a reduced height along the Mooramba Road frontage to transition to the R3 Medium Density Zone to the west.	Yes

Requirement	Comment	Compliance
surrounding zones.		
2. Buildings are to help define the streets and public spaces and create environments that are appropriate to the human scale as well as comfortable, interesting and safe. In particular, buildings are to be articulated in such a way that they are broken into smaller elements with strong vertical proportions.	The portion of the development within Area 8 contains the communal open space, is two storeys and is of a minimal scale.	Yes
3. Site amalgamation will be encouraged to facilitate new development and enable car parking to be provided below ground or behind buildings using shared driveways where possible.	The applicant has provided sufficient evidence of offers to purchase the neighbouring property to the south (the United Service Station). A reasonable attempt has been made to seek amalgamation.	Yes
4. The maximum number of storeys permissible is 3.	The portion of the development within Area 8 is two storeys.	Yes
5. Minimum floor to ceiling heights have been established and are as follows: <ul style="list-style-type: none"> • ground floor storey: 3.6 metres • upper storeys: 2.7 metres 	The ground floor level achieves a floor to ceiling height of between 4.6m and 4.77m.	Yes
6. The build-to line has been set at 3.7 metres from the kerb.	The portion of the development within Area 8 provides the following build-to-lines: Approximately 4.5m from the kerb for the Ground Level and Level 1.	Yes
7. Where a proposed building, or part of a proposed building, adjoins a 100% build-to line, the whole of the relevant building facades is to be built on this line. 8. Where a proposed building, or part of a proposed building, adjoins a 60-80% build-to lines on the Build To Lines and Central Courts map, between 60% and 80% of the relevant building facades is to be built on this line. 9. Where a proposed building, or part of a proposed building, adjoins a 40-60% build-to line on the Build To Lines and Central Courts map, between 40-60% of the relevant building facades is to be built on this line.	The building adjoins a 40-60% build-to line. The Ground Level and Level 1 are approximately 800mm behind the build-to-line. Therefore, the proposal does not comply with the required build-to-lines.	No
10. Continuous footpath awnings must	No awnings are proposed over the	No

Requirement	Comment	Compliance
be provided over all footpaths.	footpaths within Area 8, however, the driveway entrances are located here meaning awnings are impractical.	(Satisfactory on merit)
11. Car parking facilities must be provided below ground or behind buildings. Ground level parking must be provided with trees that will have a 70% mature canopy coverage over the area.	All carparking is provided below ground.	Yes

Detailed Assessment

Clause C2 - Traffic, Access and Safety

Council's Traffic Engineers provided the following comments in relation to Clause C2:

"Car parking design"

The gradients of the driveway and circulation roadways are to be in compliance with AS2890.1:2004. The grade change transition proposed on the ground floor driveway is not adequately long to prevent the vehicle scrapping and bottoming in compliance with AS2890.1:2004.

These factors are included as a reason for refusal.

Clause C3 - Parking Facilities

Council's Traffic Engineers provided the following comments in relation to Clause C3:

"The following traffic comments are provided on the proposed mixed use development containing approximately 1,000m² of commercial floor space, and 145 apartments, as stated in the SEE report provided by the applicant.

Parking requirements:

The applicant's traffic report indicates that in compliance with Warringah DCP, the parking provision required for the proposed development is 190 spaces. No adequate information is provided to support the parking rate of 0.6 of a space for each studio and Soho apartment.

The proposed stacked parking is not supported. The use of stacked car parking is generally not supported but may be considered on merit for up to 10% of residential car parking provided that each module of stacked parking is allocated to an individual unit. The proposed stacked parking arrangement would mean that each of 21 proposed stacked modules would be allocated to one unit. Given that out of 145 proposed apartments, there are only 21 two bedroom apartments requiring the parking rate of more than 1 parking space (the total provision of 29 spaces for proposed 21 two bedroom apartments), the proposed stacked parking arrangements means the reduction of 16 parking spaces in the total proposed residential parking spaces.

Therefore, the proposed parking provision and arrangements is not acceptable.”

Commercial Parking

Notwithstanding the concerns regarding the stacked parking arrangements, as outlined in the ADG section above, the development complies with the Metropolitan Sub Regional Parking Rates and in fact, provides a surplus of residential car parking. However, the proposal does not comply with the minimum commercial parking requirements.

A calculation of the commercial parking rates and number of spaces provided is as follows:

Use	Requirement	Provided	Difference +/-
Assuming the 6 ground floor tenancies are retail premises (622m ²)	38 spaces	25 spaces	-13 spaces
Assuming the 6 ground floor tenancies are restaurants (622m ²)	93.3 spaces	25 spaces	-68.3 spaces

The development does not meet the minimum commercial parking requirements. The traffic and parking report submitted with the application does not adequately address this and does not discuss the possibility of the ground floor tenancies being cafe or restaurant uses, instead relying on an office parking rate.

Given there is a large surplus of residential parking, sufficient commercial parking can be provided within the basement parking levels.

Basement Parking Layout

The arrangement of the basement car parking results in numerous stacked spaces, disabled car parks located relatively large distances from lifts, and residential, visitor and commercial spaces mixed into each other, particularly on Basement Level 1, rather than having the residential spaces on the lower basement levels behind gates and the commercial and visitor spaces clearly separated on Basement Level 1.

The inability of the development to comply with the requirements of Clause C3 – ‘Parking Facilities’ under the WDCP 2011 is included as a reason for refusal.

Clause C4 - Stormwater

Council's Development Engineer advises that insufficient information was provided with the application to enable a full assessment of both stormwater and flood requirements. Detailed comments from Council's Development Engineers included:

“1. An engineering longitudinal section through the outlet pipe from the OSD tank to the connection into the stormwater drainage system in Pittwater Road must be provided. This long section is to show design invert levels, finished surface levels, pipes size, design flows, all utility services that may cross the line and a hydraulic grade line.

Note: It is the responsibility of the Applicant to provide full details of all relevant services that may conflict with the proposed OSD system(s) and stormwater lines. The exact locations of any crossings or connections are to be shown.

2. The development site fronts two public roads that are affected by flooding during

the 1 in 100 year ARI storm. Adequate protection for the basement car parking from flood inundation will be required. This generally requires the driveway crest to be set at least 500mm above the 1 in 100 year ARI flood level. In this regard Development Engineers request Council's Flooding Team to determine the 1 in 100 year ARI flood level to then assess the vehicle access to the development site. Development Engineers have not received any of the above comments to adequately assess vehicle access for this development."

Therefore, this matter forms a reason for refusal.

Clause C8 – Demolition and Construction

A Construction Management Plan was submitted with the application, however, for the scale of the project, the plan lacks detail. In particular, traffic management on Mooramba Road, material delivery, crane location, protection of neighbouring properties and the impact of construction generally on nearby residents, are not addressed.

A more detailed construction management plan could be required via a condition of consent should this application be approved.

Clause C9 - Waste Management

It is noted that Council's Waste Management Officer raised the following fundamental issues:

- "1) Council does not provide 1100L capacity bins. Council only provides up to 660L capacity bins.*
- 2) The bin room foot print is insufficient to accommodate 40 x 660L bins. Bins are also not allowed to be stacked in-front of one another.*
- 3) The bulky good room foot print is insufficient for 145 units, a minimum of 56 cubic meters is required and this is to be of a practical dimension.*
- 4) The loading dock must be able to support a heavy rigid vehicle (HRV), and the HRV must be able to enter and exit in a forward direction within a 3 point turn.*
- 5) There is no separate commercial bin room for the proposed commercial shops.*
- 6) Residents are required to walk through the loading dock to access the bin room. There needs to be internal access to the bin room for residents.*
- 7) Doors to the bin room must be unsecured and able to be latched in an open position."*

These matters form reasons for refusal.

Clause D2 – Private Open Space

The ADG takes precedence over the WDCP 2011 in relation to private open space requirements for individual units.

A number of balconies and terraces do not meet the minimum sizes or dimensions required by the ADG. These include:

The terraces or "wintergardens" of units 111, 112, 113, 114 and 115 (these units sit on the podium and require private open spaces of a minimum of 15sqm in area with a minimum dimension of 3.0m).

The balconies of units 514, 614 and 714 (these units require a balcony of at least 10sqm).

Appendix 1 – Car Parking Requirements

Appendix 1 of the WDCP 2011 requires development to provide on-site car parking at set rates.

As previously discussed, the residential parking calculations are based on the Metropolitan Subregional Rate under the RMS Guide to Traffic Generating Development.

Component	Required	Provided	Compliance
Residential			
0.6 spaces per 1 bedroom unit. 0.9 spaces per 2 bedroom unit. 1.40 spaces per 3 bedroom unit. 1 space per 5 units (visitor parking).	50 x Studios (30 spaces) 61 x 1 Bedroom (36.6 spaces) 24 x 2 bedroom (21.6 spaces) 10 x SOHO units (10 spaces) 29 visitor spaces	The development proposes 136 spaces for residents and 29 visitor spaces.	Yes – 27.8 spaces in surplus
Sub Total	127.2 spaces	165 spaces	Yes
Commercial			
Assuming the 6 ground floor tenancies are retail premises only (622m ²)	38 spaces	25 spaces	No - 13 spaces in deficit
Assuming the 6 ground floor tenancies are restaurants (622m ²)	93.3 spaces	25 spaces	No – 68.3 spaces in deficit
Sub Total	Between 38 and 93.3 spaces	25 spaces	No

The proposal complies with the residential car parking component but does not comply with the commercial component.

The application does not specify any anticipated uses for the six ground floor commercial tenancies and does not meet the minimum commercial parking requirements for either retail or restaurant uses. The traffic and parking report submitted with the application does not adequately address this and does not discuss the possibility of the ground floor tenancies being restaurant uses, instead relying on an office parking rate for the commercial calculation.

The surplus residential parking spaces should be re-allocated to the commercial tenancies to at least provide the minimum retail rate.

The applicant has elected to maintain the car parking split between the residential and commercial components, hence the application cannot be supported on the grounds of inadequate commercial car parking. Accordingly, this will form a reason for refusal.

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

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

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

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

The application was referred to the NSW Police who made a number of recommendations that can be included in any consent should this application be approved.

COST OF WORKS

The application did not include a Capital Investment Value (CIV), only a preliminary cost estimate was provided. Council is concerned that the estimated cost of works is undervalued. This impacts the extent to which the fees have covered the cost of the assessment. A lower cost of works also reduces the Section 94A contributions payable.

Council requires a full CIV for the proposed development prior to the matter going to the Joint Regional Planning Panel for determination.

POLICY CONTROLS

Warringah Section 94A Development Contribution Plan

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

The following monetary contributions are applicable (based on the current estimated cost of works which, as discussed above, is considered to be undervalued):

Warringah Section 94 Development Contributions Plan		
Contribution based on a total development cost of \$34,381,697		
Contributions	Levy Rate	Payable
Total Section 94A Levy	0.95%	\$326,626
Section 94A Planning and Administration	0.05%	\$17,191
Total	1%	\$343,817

If the application is approved, the applicant should be requested to provide the required CIV and a condition of consent can be included to ensure the required contributions (as per the CIV) are paid prior to the issue of the Construction Certificate.

OTHER MATTERS

Dee Why Town Centre Masterplan and Planning Proposal

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

Public Consultation

On 11 December 2012, Council resolved to consult broadly on the draft Dee Why Town Centre Masterplan to seek community and stakeholders input. Wider community engagement commenced on 6 February 2013 and concluded on 5 April 2013. The public exhibition was extensively notified through advertising in the Manly Daily, letters to over 1400

property and business owners, pamphlets dropped to over 95,000 households and businesses, and notices on Council's website.

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

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

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

Adoption by Council

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

Presently it is anticipated that the amendment to WLEP 2011 and DCP amendment will be exhibited in 2016.

In this regard, for the purposes of Section 79C of the *Environmental Planning and Assessment Act, 1979*, the new planning controls are neither imminent, nor certain and should not be given determining weight in this case. Notwithstanding, the proposal goes beyond the anticipated height controls embodied in the Draft LEP, which envisages a 1 storey or 3.0m additional height for the subject site (or 24m overall height)

CONCLUSION

The development involves the demolition of the existing buildings on the site, excavation for a three level basement car park and the construction of an eight storey mixed use development (shop top housing) comprising 135 residential apartments; 10 SOHO units, 6 retail/commercial tenancies and 190 parking spaces.

The site is located towards the southern end of the DYTC and adjoins the "Kallista" development (a 6 storey shop top housing building) to the north and a United Service Station to the south.

The application did not include sufficient information and proposed non-compliances with the Apartment Design Guide, the Height of Buildings Development Standard in the WLEP 2011 and a number of clauses in the WDCP 2011 including with the site specific controls in Clause G1 – Dee Why Mixed Use Area.

The applicant sought these variations on the basis that the site is a "gateway" site to the DYTC and therefore is suitable for additional height and floor space.

While the site is prominent, on the basis that it is located close to the southern entrance to the Town Centre, it is not a corner site and is not identified as a "key" or "gateway" site in the DYTC Masterplan. Therefore, the development is expected to be generally consistent with

the applicable planning controls under SEPP 65, the WLEP 2011, the WDCP 2011 and the DYTC Masterplan.

A mixed use shop top housing development is an appropriate development type as envisaged by the Dee Why Town Centre Masterplan. However, the proposal is a maximum of 6.9m (more than two storeys) above the allowable height limit (21m) for the site. This will result in a building two storeys above the “Kallista” development (to the immediate north and the building that is most appropriate for comparison in relation to context). The development would also be a maximum of 3.9m (more than one storey) above the maximum height limit (24m) being considered in the Draft LEP for DYTC.

The applicant’s request under Clause 4.6 to vary the Height of Building Development Standard did not demonstrate that compliance is either unreasonable or unnecessary. The request also did not provide sufficient justification on environmental planning grounds, particular to the circumstances of the proposed development, for the variation.

The extent of the Height of Buildings non-compliance along with non-compliances with the “build-to-lines”, the number of storeys control, the podium height and various requirements within the Apartment Design Guide (ADG), result in a development that will appear out of context with the surrounding character and is not consistent with the built form and scale envisaged by the applicable planning controls.

Accordingly, the application is not supported and is recommended for refusal.

RECOMMENDATION - REFUSAL

That Development Application No. DA2015/1306 for demolition works and the construction of a mixed use development (shop top housing) with basement car parking at Lot 3A in DP 402105, No. 627 Pittwater Road; Lot 4 in DP 659075, No. 629-631 Pittwater Road; Lot 5 in DP 655009, No. 629-631 Pittwater Road, Dee Why; and Lot 100 in DP 595110, No. 635 Pittwater Road, Dee Why, be refused for the following reasons:

1. Pursuant to Section 79C(1)(a)(i) of the Environmental Planning and Assessment Act 1979, the proposed development is inconsistent with the relevant provisions of State Environmental Planning Policy No 65 – Design Quality of Residential Apartment Development. In particular, the proposal is inconsistent with:
 - a. The following Design quality principles:
 - (i) Principle 1: Context and neighbourhood character
 - (ii) Principle 2: Built form and scale
 - (iii) Principle 3: Density
 - (iv) Principle 4: Sustainability
 - (v) Principle 5: Landscape
 - (vi) Principle 6: Amenity
 - b. The Apartment Design Guide
2. Pursuant to Section 79C(1)(a)(i) of the Environmental Planning and Assessment Act 1979, the proposed development is inconsistent with the relevant provisions of the Warringah Local Environmental Plan 2011. In particular, the proposal is inconsistent with the provisions of the following clauses:
 - (i) Clause 4.3 – Height of buildings;
 - (ii) Clause 4.6 – Exceptions to development standards;

(iii) Clause 6.3 – Flood Planning;

3. Pursuant to Section 79C(1)(a)(iii) of the Environmental Planning and Assessment Act 1979, the proposed development is inconsistent with the relevant provisions of the Warringah Development Control Plan 2011. In particular, the proposal is inconsistent with the provisions of the following clauses:
 - (i) Clause C2 – Traffic, Access and Safety;
 - (ii) Clause C3 – Parking Facilities;
 - (iii) Clause C4 – Stormwater;
 - (iv) Clause C9 – Waste Management; and
 - (v) Clause D2 – Private Open Space.
 - (vi) Clause G1 – Dee Why Mixed Use Area
4. Pursuant to Section 79C(1)(e) of the Environmental Planning and Assessment Act, 1979, the proposed development is not in the public interest.
5. Insufficient information has been submitted to enable Council to undertake a full assessment of the proposal.