

SYDNEY NORTH PLANNING PANEL COUNCIL ASSESSMENT REPORT

Panel Reference	2017SNH082
DA Number	DA2017/1183
LGA	Northern Beaches Council
Proposed Development	Demolition works and construction of a Mixed Use Development, comprising retail shops and shop top housing
Street Address	Lot 1 DP 710661, 2 Delmar Parade, Dee Why
Applicant	2dpd Pty Ltd
Owner	Margaret Mary Wells Simon Andrew Wykeham Wells Timothy William Wykeham Wells Peter Guilford Leonard Yvette Maree Leonard
Date of DA lodgement	4 December 2017
Number of Submissions	23 Submissions
Recommendation	Refusal
Regional Development Criteria (Schedule 7 of the SEPP) State and Regional Development) 2011	Development with a Capital Investment Value (CIV) of more than \$20 million Total Cost of the Development is \$20,303,314.00 (Application lodged prior to 1 March 2018)
List of all relevant s4.15(1)(a) matters	<ul style="list-style-type: none"> • Environmental Planning and Assessment Act 1979 • Environmental Planning and Assessment Regulation 2000 • State Environmental Planning Policy No. 55 – Remediation of Land • State Environmental Planning Policy (Building Sustainability Index: BASIX) • State Environmental Planning Policy – Infrastructure 2011 • State Environmental Planning Policy No 65 – Design Quality of Residential Apartment Development • Warringah Local Environmental Plan 2011 (WLEP 2011) • Warringah Development Control Plan 2011 (WDCP)
List all documents submitted with this report for the Panel's consideration	<ul style="list-style-type: none"> • Attachment 1 –Architectural Plans • Attachment 2- Pre-Lodgement Notes • Attachment 3 - Development Engineering Assessment by Land Development Certificates on behalf of the Council • Attachment 4 – Applicant's Clause 4.6
Report by	Melissa Messina – Acting General Manager for Planning Place & Community
Responsible Officer	Lashta Haidari - Principal Planner
Report date	13 June 2018

Summary of s4.15 matters

Have all recommendations in relation to relevant s4.15 matters been summarised in the Executive Summary of the assessment report? **Yes**

Legislative clauses requiring consent authority satisfaction

Have relevant clauses in all applicable environmental planning instruments where the consent authority must be satisfied about a particular matter been listed and relevant recommendations summarized, in the Executive Summary of the assessment report?
e.g. Clause 7 of SEPP 55 - Remediation of Land, Clause 4.6(4) of the relevant LEP **Yes**

Clause 4.6 Exceptions to development standards

If a written request for a contravention to a development standard (clause 4.6 of the LEP) has been received, has it been attached to the assessment report?	Yes
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Special Infrastructure Contributions

Does the DA require Special Infrastructure Contributions conditions (S94EF)?

Note: Certain DAs in the Western Sydney Growth Areas Special Contributions Area may require specific Special Infrastructure Contributions (SIC) conditions

**Not
Applicable**

Conditions

Have draft conditions been provided to the applicant for comment?

Note: in order to reduce delays in determinations, the Panel prefer that draft conditions, notwithstanding Council's recommendation, be provided to the applicant to enable any comments to be considered as part of the assessment report

No

Executive Summary

This report provides an assessment of the proposed mixed use development at No. 2 Delmer Parade, Dee Why (the site). The site is located on the southern corner of the intersection of Delmar Parade and Pittwater Road and is situated within the B4 Mixed Use zone under the WLEP 2011.

The proposed development involves the demolition of existing buildings and construction of a 7-storey mixed use development containing 5 retail units (340sqm), 74 residential apartments and three levels of basement car parking.

The proposed development constitutes 'Regional Development' requiring referral to the Sydney North Planning Panel (SNPP) as it has a Capital Investment Value (CIV) greater than \$20 million and was lodged prior to 1 March 2018. Whilst Council is responsible for the assessment of the DA, the SNPP is the consent authority.

The assessment of this DA has found that the application is deficient in addressing the issue of site isolation pertaining to the adjoining site to south of the subject site, being 814-816 Pittwater Road, Dee Why (also known as the "Avis Site"). The applicant has not demonstrated that the correct process as required by the Planning Principles established by the Land and Environment Court have been undertaken to the level required and hence the merits of the proposal as a stand alone development have not been fully established.

The assessment has found that the proposal cannot be supported because it fails to comply with the 'Height of Buildings' Development Standard under the WLEP 2011 which permits a maximum building height of 21m within the B4 Mixed Use zone. The proposed variation of 2.7m (12.86%) to the Height of Buildings Development Standard under WLEP 2011 has been found to be excessive in its own right, is not supported by a draft LEP that is imminent and certain (based on the DYTC Masterplan), there are not sufficient environmental planning grounds provided by the applicant to justify contravening the Development Standard to such an extent.

The proposal does however exhibit a high level of architectural quality, finishes and general design attributes and represents a good opportunity to provide for further urban renewal and revitalisation of the Dee Why Town Centre. Notwithstanding, it does not sufficiently satisfy the planning controls applying to the site under SEPP 65, WLEP 2011 and WDCP 2011 and contains insufficient compensatory design features or other form of community/public benefit to outweigh the non-compliances and deficiencies to be in the public interest.

The DA was publicly exhibited in accordance with Warringah Development Control Plan 2011 (WDCP 2011) and a total of 23 submissions were received, all of which objected to the proposal. The issues and concerns raised in the submissions are addressed in this report.

Based on a detailed assessment of the proposal against the applicable planning controls, it is considered that the proposal does not satisfy the appropriate controls. All relevant processes and assessments have been satisfactorily addressed.

Accordingly, it is recommended that the SNPP, as the determining authority, refuse this application for the reasons detailed within the recommendation section of this report.

DEVELOPMENT APPLICATION ASSESSMENT REPORT

ASSESSMENT INTRODUCTION

The application has been assessed in accordance with the requirements of the EP&A Act 1979 (as amended) and the associated Regulations. In this regard:

- An assessment report and recommendation has been prepared (the subject of this report) taking into account all relevant provisions of the EP&A Act 1979, and the associated regulations;
- A site inspection was conducted and consideration has been given to the impacts of the development upon all lands whether nearby, adjoining or at a distance;
- Consideration was given to all documentation provided (up to the time of determination) by the applicant, persons who have made submissions regarding the application and any advice provided by relevant Council / Government / Authority Officers on the proposal.

SUMMARY OF ASSESSMENT ISSUES

- Site Isolation (814-816 Pittwater Rd, Dee Why)
- Dee Why Town Centre Masterplan and Planning Proposal
- State Environmental Planning Policy No.65 - Design Quality of Residential Apartment Development (SEPP):
 - Principle 1: Context and Neighbourhood Character;
 - Principle 2: Built Form and Scale;
 - Principle 3: Density; and
 - Principle 6: Amenity Impact in relation to the adjoining site
- Apartment Design Guide (ADG)
 - 2F- Building Separation; and
 - 3D - Communal open Space
- Warringah Local Environmental Plan 2011(WLEP 2011):
 - Clause 4.3 – 'Height of Buildings' Development Standard

- Warringah Development Control Plan 2011 (WDCP):
 - Clause D6 - Access to Sunlight
 - Clause C2 – Traffic, Access and Safety;
 - Clause C4 – Stormwater; and
 - Part G (Area 7 – Pittwater Road)

SITE DESCRIPTION

The site comprises one (1) allotment, which is legally described as Lot 1 in DP 7100661, known as No. 2 Delmar Parade, Dee Why.



Figure 1 – Site Map

The site is located on the southern corner of the Delmar Parade and Pittwater Road intersection and is located within the B4 Mixed Use zone under the WLEP 2011.

The site has an approximate total area of 2,060m², is generally rectangular in shape and has frontages to both Pittwater Road and Delmar Parade. The frontage to Pittwater Road is 40.98 m and the frontage to Delmar Parade is 29m.

The site currently accommodates a two storey commercial building (Repco Auto Repairs and National Australia Bank Branch), which includes an open air customer car park to the rear. Vehicle access is currently gained from Delmar Parade.

Development surrounding the subject site is a mix of commercial, retail and residential buildings. To the north of the site is 822 Pittwater Road, which is a 7 to 8 storey, mixed use building. To the east of the site is a commercial office development.

To the south of the site is No. 814 - 816 Pittwater Road, which is currently used by Avis Car Hire and further to the south, is the Stony Range Garden. The sole frontage and access point to the Avis site is off Pittwater Road. This Avis site was the subject of previous approval, which was granted by Land and Environment Court on 26 June 2008 for a 31 residential unit development, however this consent was never activated and has since lapsed.

West of the site on the opposite side of Pittwater Road is a service station, a residential flat building and detached dwellings in the R2 zone.

RELEVANT HISTORY and BACKGROUND

Dee Why Town Centre Masterplan

The Dee Why Town Centre (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 (except for "Site A" and "Site B"). The amendment will also be accompanied by DCP controls that will provide further guidance on desired outcomes for the Dee Why Town Centre. Council at its meeting held on 19 December 2017 resolved to exhibit the Planning Proposal, which was placed on public exhibition until 15 March 2018.

Council received a total of 25 submissions, which are currently being reviewed. A report recommending whether the Planning Proposal should proceed will be submitted to a Council meeting following a review of the submissions received.

As noted earlier in this report, the applicant is seeking the additional height (1 additional storey) on the basis of the DYTC Masterplan and associated Planning Proposal. However, the development as proposed is found to be inconsistent with the DYTC Masterplan and Planning Proposal in terms of the podium heights.

Therefore, on the basis that the changes to WLEP 2011 do not have the status of a publicly exhibited Draft Local Environmental Plan under Section 4.15 of the EPA Act, 1979 and are not imminent and certain, the current application is assessed on the basis of the current planning controls under WLEP 2011.

Pre-Lodgement Meeting

A pre-lodgement meeting was held with Council on 10 October 2017 based on the current proposed development. At the meeting, Council raised concerns with the proposal in terms of site isolation, non-compliance with the building height development standard under WLEP 2011, non-compliance with the number of storeys control under the WDCP 2011 and inconsistencies with SEPP 65 and the ADG.

A copy of the Notes is attached to this report (refer to Attachment 2).

DEVELOPMENT APPLICATION HISTORY

The application was lodged with Council on 4 December 2017. The assessment of the proposal found that the application was deficient and unsupportable for a number of reasons as detailed within this report.

An opportunity was presented to the applicant to withdraw the application by letter dated 15 March 201 with a view addressing the specific concerns and preparing the required information and resubmitting at a later date. The applicant was advised that failure to withdraw the application would result in Council reporting the application based upon the information provided at lodgement.

The applicant advised Council that the application would not be withdrawn and requested that it proceed to the SNPP for determination.

PROPOSED DEVELOPMENT IN DETAIL

The development application seeks development consent for demolition works and construction of a mixed used development consisting of retail and residential units with associated car parking and landscaping. Specifically, the development comprises 74 residential units, 5 retail units (351m² of commercial floorspace), 3 levels of basement car parking and 668m² of landscaped communal open space.

Figure 2 below is provided to assist in the location of the proposed building layout within the site.

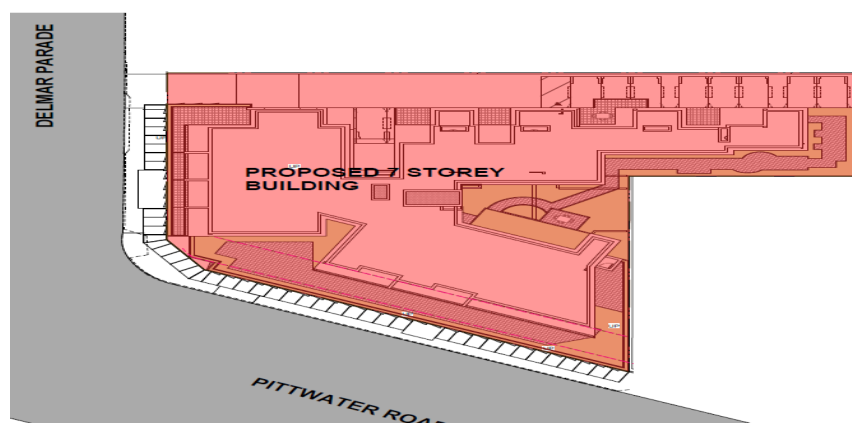


Figure 2 – Proposed building layout

(Source: Adapted by the author of the Plans, prepared by Marchese Partners)

Further detail of the proposal is provided as follows:

A shop-top-housing development with an overall height of 23.7m (7 storeys) containing:

- 21 x studio units, 44 x 1 bedroom unit; and 9 x 2 bedroom units
- 5 retail/commercial units comprising 351m² in total
- Car parking over three (3) levels accommodating a total of 117 spaces;
- Bicycle parking for 82 bikes; and
- Plant and bin storage rooms.

Vehicular access is provided from Delmar Parade to the car parking areas via a new 6.1m wide driveway and internal ramp;

Basement garbage room, storage and stair and lift access/egress.

Excavation works up to a maximum depth of approximately 8.7m to construct basement levels.



Figure 3 View of the north-west corner of the proposed development

(Source: Adapted by the author of the Plans, prepared by Marchese Partners)

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979

The relevant matters for consideration under Section 4.15 of the Environmental Planning and Assessment Act, 1979, are:

Section 4.15 'Matters for Consideration'	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on “Environmental Planning Instruments” in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	None Applicable. (see comments on DYTC Planning Proposal)
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Warringah Development Control Plan 2011 is applicable to this application.
Section 4.15 (1) (a)(iiia) – Provisions of any planning agreement	None Applicable
Section 4.15 (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 should this application be approved.</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>

Section 4.15 'Matters for Consideration'	Comments
	A Design Verification Statement was submitted with the Development Application and has been signed by the project architect.
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	<ul style="list-style-type: none"> i. Although the development does not comply with the provisions of Clause 4.3 – 'Height of Buildings' Development Standard, the development is not considered to have an adverse environmental impact on the natural and built environment. 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, better streetscape and better casual surveillance of public areas. 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.
Section 4.15 (1) (c) – the suitability of the site for the development	The site does not contain any significant physical constraints which would prevent the provision of this development on site. Therefore, the site is considered suitable for the proposed development.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	<p>A total of 23 written submissions have been received.</p> <p>The issues raised in the submissions are addressed later in this report.</p>
Section 4.15 (1) (e) – the public interest	<p>The planning controls contained within WLEP 2011 and the WDCP 2011, as well as the strategic direction provided in the Dee Why Town Centre Masterplan, provide the community with a level of certainty as to the scale and intensity of future development, and the form and character of development that is in keeping with the desired future character envisaged for the locality.</p> <p>The increased height from 21m to 24m for the subject site is envisaged by the Masterplan and is available provided the development provides a lower podium level (maximum of 3 podium levels on buildings fronting Pittwater Road and 2 podium levels on buildings fronting all other roads). The podium level of the proposed development is on level 4 and it is acknowledged that the architectural design of the building is of a sufficiently high standard which could provide a much needed boost to the urban design qualities and streetscapes in Dee Why Town Centre. However, the architectural merits of the development do not outweigh the fact that the proposal, in lieu of the provision of sufficient public benefit and</p>

Section 4.15 'Matters for Consideration'	Comments
	<p>subsequent support of the Dee Why Town Centre Masterplan, the development involves a significant departure from the applicable Height of Buildings Development Standard of WLEP 2011 and the associated uplift in the density of development.</p> <p>In light of the lack of the provision of sufficient public benefits and its inconsistency with the Masterplan with regards to the podium level, insufficient justification has been provided by the applicant for this variation.</p> <p>Consequently, as the proposal does not satisfy the planning controls under WLEP 2011, the proposal is not considered to be in the public interest.</p>

EXISTING USE RIGHTS

Existing Use Rights do not apply to this application.

NOTIFICATION & SUBMISSIONS RECEIVED

The Development Application has been publically exhibited in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000 and Warringah Development Control Plan 2011. As a result of the public exhibition, 23 submissions were received at the time of writing this report.

The issues raised in the submissions include the following:

1. *Site Isolation: (814-816 Pittwater Road, Dee Why)*

Concern is raised by owners of the adjoining site of 814-816 Pittwater Road that the development will isolate their site.

Comment

This matter has been addressed in detail later in this report. In summary, the applicant has not provided sufficient information to demonstrate that the correct process as required by the Planning Principles established by the Land and Environment Court have been undertaken to determine the planning merits of the proposal in this regard.

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

2. *Inconsistency with SEPP 65 in relation to building separation and associated amenity impacts*

Concern is raised by the owners of the adjoining site of 814-816 Pittwater Road that the development does not comply with the requirements of SEPP 65 and its associated ADG in that the development does not provide adequate building separation and will result in adverse consequences on the potential redevelopment with regards to amenity impact (such as privacy and solar access).

Comment

This matter has been addressed later in this report. In summary, the assessment has found that the proposed development does not provide adequate building separation to the adjoining site as required by the ADG.

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

3. Building Height

Concern is raised that the development does not comply with the Height of Buildings Development Standard under the WLEP 2011 and is therefore an overdevelopment for the site.

Comment

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

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

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

4. Traffic congestion

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

Comment

The Traffic and Parking Assessment Report submitted with the application advises that the proposed traffic generation for the development is considered to be acceptable as it would be able to be accommodated in the existing traffic volumes and would not substantially increase congestion on the surrounding road network.

However, the above comments provided in the applicant's traffic engineer's report are now redundant given the refusal by RMS to provide concurrence on the basis traffic generation survey undertaken is inaccurate and the additional height (which leads that the additional units) is not consistent with the current Planning controls.

Council's Traffic Engineer concurs with the RMS comments and therefore this issue constitutes a reason for the refusal of the application.

5. Insufficient community consultation

Concern is raised that the development has not undergone sufficient community were consultation. In particular, concern is expressed that details of the application not notified to enough residents along Delmar Parade.

Comment

The WDCP requires adjoining properties to be notified by letter. However, this can be extended at the discretion of Council should it be warranted due to the potential impacts of the development.

The notification associated with the subject DA was extended to include properties in Delmar Parade (No's 4 to 12), Pittwater Road (No's 613 to 635 and 822), May Road (No's 3 to 7) and Mooramba Road (No. 2). This resulted in 329 letters being sent by Council. Properties beyond this area were captured by the advertisement in the Manly Daily.

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

Therefore, this issue should not be given determining weight.

MEDIATION

No mediation has been requested by the objectors.

INTERNAL REFERRALS

Internal Referral Body	Recommendation/ Comments
Building Assessment - Fire and Disability upgrades	No objections subject to conditions to ensure compliance with the Building Code of Australia.
Development Engineers (Assessment by external consultant)	Not supported due to insufficient information submitted with the application (copy of the referral response attached – refer to attachment 2).
Traffic Engineer	<p>The proposal is to demolish the existing building on the site and construct a new retail and apartment building with underground car parking. The proposed development will contain a total of 74 apartments and five retail shops totalling 348m².</p> <p>A total of 117 car parking spaces and storage facilities for 81 bicycles have been provided the ground floor and two basement levels. The parking provision complies with the DCP requirements and is acceptable. The access driveway is located at the furthest point, about 30m from the intersection of Delmar Parade and Pittwater Road.</p> <p>The proposal shall provide vehicle access to the adjacent site (814-816 Pittwater Road) in order to prevent it from being land-locked as vehicular access from Pittwater Road will be prohibited. The access driveway and access to the adjacent site shall be 6m in width to provide adequate width for a two way access with 4.5m headroom clearance all along the access way to allow adequate headroom clearance for waste collection and removalists use.</p> <p>The location of the proposed tandem parking spaces off the main driveway adjacent to the access driveway is not supported due to increase in vehicular conflict and delay near the access driveway.</p>

Internal Referral Body	Recommendation/ Comments
	<p>Any vehicle control point at the access driveway is to be located at least 6m from the property boundary to allow for waiting area.</p> <p>The parking spaces allocated to the retail and residential uses are to be provided in separate areas with provision of vehicle control points at the entrance to the residential car parking area. An Intercom system is to be provided to allow access to the residential visitor spaces.</p> <p>The retail parking spaces are to be accessible for the customers during the retail working hours.</p> <p>A service bay is required to be provided for servicing the retail use and the removalist for the units. The service bay is to be designed in compliance with AS2890.2 and is to be designed for minimum size of small rigid vehicle (SRV). A swept path analysis is to be provided demonstrating the service vehicle expected to be used can turn in and out of the parking bay and the driveway.</p> <p>In compliance with Australian Standards AS2890.1:2004, clear sight distance to pedestrian is to be provided by provision of a clear 2m by 2.5m triangle at the property line, this is to ensure adequate visibility between vehicles leaving the car park and pedestrians on the frontage road footpath.</p> <p>Regarding the implication of traffic generating from the proposal on road network, please refer to Roads and Maritime Services referral response.</p> <p>In view of the above, the proposal is not supported on traffic grounds.</p>
Environmental Health (Industrial)	<p><u>Acoustic</u> Acoustic report titled DA Acoustic Assessment document No. 20171606.1/1512A/R0/JL dated 15 December 2017 provided recommendations to ensure compliance is met with the Industrial Noise Policy, furthermore with regards to construction noise and vibration the construction report titled Construction Management Plan dated 24 November 2017 outlined recommendations to ensure compliance with the Industrial Noise Policy and AS 2436 1981 "Guide to Noise Control on Construction, Maintenance and Demolition Sites. Environmental Health has recommended conditions to ensure these requirements are met.</p> <p><u>Contamination</u> Environmental Health assessed contamination report titled Due Diligence Contamination Investigation prepared by Douglas Partners Pty Ltd, Project 85260.01 dated February 2016 which states:</p> <p>Asbestos - asbestos screening samples did not record</p>

Internal Referral Body	Recommendation/ Comments
	<p>any detections of asbestos above the reporting limit of 0.1 g/kg however, there is still a potential for asbestos to be encountered during site excavation and would need to be managed accordingly through an unexpected finds protocol.</p> <p>Chemical contaminate - the results of chemical contaminants suggest there is no unacceptable risk to human health in the soil, however if contamination was encountered it would most likely be at concentrations which could be managed through the construction process.</p> <p>No objections to land contamination subject to the recommended conditions.</p>
Landscape Officer	<p>Edge planters on levels 1-4 are relatively narrow, being between 300 - 400 mm width for growing media.</p> <p>However, the provision of planters is supported and the relative narrowness of the balconies has implications for the available widths of the planters.</p> <p>Treatments indicated in the Landscape Proposal Report prepared by David Loudon are acceptable, though wider planters would naturally provide better support for plant establishment.</p> <p>Recommended conditions are provided if the proposal is to be approved.</p>
Natural Environment (Flood)	<p>The proposed works for the construction of a mixed-use development is considered to comply with Clause 6.3 of the Warringah Local Environmental Plan 2011 and Part E11 of the Development Control Plan, 2011 subject to conditions.</p>
Strategic Planning - Urban Design	<p>The proposal cannot be supported in its current form for the following reasons:</p> <ol style="list-style-type: none"> 1. The proposal does not comply with the building height requirement of 21m. Maximum Building height of 24m as per the pending Planning Proposal for proposed amendments to WLEP2011 regarding Dee Why Town Centre has not been approved. The proposal for this site cannot consider amendments to the WLEP unless they are imminent and certain. (The proposed WLEP amendments will allow building tower height up to 24m but the podium height will be reduced to 3 storeys for land fronting Pittwater Road.) 2. The SEPP65 Apartment Design Guide (ADG) provides guidelines on building separation between commercial and residential uses (pg. 37). The ADG states that when applying separation distances to buildings on adjoining sites, half the minimum separation distance measured to the boundary will apply. The

Internal Referral Body	Recommendation/ Comments
	<p>minimum separation distance for buildings 5 storeys and above is 18m between habitable rooms/ balconies i.e. 9m respectively building setback will be required at the fifth storey and above to all common boundaries. Building separation is measured from the outer face of building envelopes which includes balconies. The proposal does not comply.</p> <p>3. The proposed building bulk will limit sunlight access to surrounding buildings. Shadow diagrams submitted show that the new shadows from the proposal will affect solar access amenities to surrounding properties and future developments in the area especially on the eastern and southern boundaries.</p> <p>4. The proposal might have to provide future vehicle access (right-of-carriageway) to the next door site (814-816 Pittwater Road) in order to prevent it from being land-locked as vehicular access from Pittwater Road will be prohibited.</p> <p>5. Awning over footpath should step down in horizontal steps to follow the slope of street. The underside of the awning is to be no less than 3.2m above the footpath. The minimum width should be 2m. It should be set back 1m from the face of the kerb. Where street trees are required, it should be set back 1.5m from the kerb.</p>
Waste Officer	No objection subject to conditions
Water Management	<p>The proposed development has not addressed the water quality requirements as required by the Water Management Policy. The applicant is required to submit the following documentation:</p> <p>Water Sensitive Urban Design (WSUD) Strategy</p> <p>A WSUD Strategy must be prepared in accordance with Council's WSUD Technical Guidelines (attached) to demonstrate compliance with Council's Water Management Policy.</p> <p>The Strategy shall contain the following information:</p> <ul style="list-style-type: none"> Proposed development – Describe the proposed development at the site, including site boundaries, proposed land uses. Catchment analysis plan – clearly showing the surface type (roof, road, landscape, forest etc.) and the total areas. This must be consistent with the land use nodes within the MUSIC Model. Water conservation – Demonstrate how the potable water conservation targets in section 7.1 of

Internal Referral Body	Recommendation/ Comments
	<p>the Water Management Policy. For residential developments this maybe in the form of a BASIX Certificate. Rainwater reuse should be incorporated into the development which will also have a positive impact on water quality and reduce off site discharge.</p> <ul style="list-style-type: none"> Stormwater quality – Demonstrate how the General Stormwater Quality Requirements in Table 4, Section 8.1 of the Water Management Policy will be met, including the location, size and configuration of stormwater treatment measures proposed for the development. Council's preference is for the use of natural systems (raingardens, bioretention etc.) as they promote infiltration, provide amenity and environmental services rather than proprietary devices. MUSIC model - prepared in accordance with Council's WSUD Technical Guidelines unless alternative modelling parameters are justified on the basis of local studies. Details of the modelling of those elements, parameters and assumptions used. All MUSIC data files must be provided to Council. Integration with the urban design – Identify how the treatment measures will integrate with the development layout and the surrounding area such as the use of bioretention within the carpark areas etc.

EXTERNAL REFERRALS

External Referral Body	Comments
Ausgrid: (SEPP Infra.)	<p>The application was referred to Ausgrid under clause 45(2) of State Environmental Planning Policy (Infrastructure) 2007 (SEPP Infrastructure).</p> <p>Ausgrid provided their comments on 18 December 2017 in which no objection was raised subject to conditions.</p> <p>The conditions provided by Ausgrid may be included in a consent should this application be approved.</p>
Concurrence - NSW Roads and Maritime Services (RMS) - (SEPP Infrastructure. Traffic generating development)	<p>The application was referred to the RMS for comment as traffic generating development under Schedule 3 of SEPP Infrastructure. The RMS provided their comments on 19 January 2018. The RMS does not support the proposal on the following grounds:</p> <ul style="list-style-type: none"> <i>The proposed development is not permissible under the current LEP. There is a planning proposal currently underway which addresses amendments to building heights and no FSR changes which is still progressing. Therefore Roads and Maritime will review the development application once the planning proposal is</i>

External Referral Body	Comments
	<p><i>finalised and consistent with the LEP.</i></p> <ul style="list-style-type: none"> <i>The traffic generation rates adopted for the proposed development is 0.19 trips per unit during AM peak hours and 0.15 trips per unit during PM peak hours. This level of traffic generation is more applicable to high density residential development with high level of public transport accessibility (i.e. walking distance to rail stations with frequent services). Since the site is not within walking distance of a train station, the proponent should be requested to undertake a traffic generation survey of an existing high density residential development with a similar level of public transport accessibility. The proponent may also consider conducting surveys of comparable sites to justify the trip generation rates that have been used.</i> <i>Given the nature of the proposal and its traffic generation, all access to the site should be restricted to left in and left out on Delmar Parade given its proximity to the intersection of Delmar Parade/Pittwater Road. Therefore a 500mm median should be provided on Delmar Parade to enforce left in and left out access to the site.</i>

ENVIRONMENTAL PLANNING INSTRUMENTS (EPIs)*

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

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

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

State Environmental Planning Policy 55 - Remediation of Land (SEPP 55)

SEPP No. 55 – Remediation of Contaminated Lands establishes State-wide provisions to promote the remediation of contaminated land.

The SEPP states that land must not be developed if it is unsuitable for a proposed use because it is contaminated. If the land is unsuitable, remediation must take place before the land is developed. The policy makes remediation permissible across the State, defines when consent is required, requires all remediation to comply with standards, ensures land is investigated if contamination is suspected, and requires councils to be notified of all remediation proposals. The Managing Land Contamination: Planning Guidelines were prepared to assist councils and developers in determining when land has been at risk.

Clause 7 of the SEPP requires that a consent authority must not grant consent to a development if it has considered whether a site is contaminated, and if it is, that it is satisfied that the land is suitable (or will be after undergoing remediation) for the proposed use.

In response to these requirements, the applicant has submitted a Due Diligence Contamination Investigation Report, prepared by Douglas Partners dated February 2016.

The report makes the following conclusions:

“From the results of the preliminary investigations generally low levels of contaminants appear to be present in soil and groundwater at the site.

The presence of hydrocarbon odours in two bores (BH1 and 2) indicates the potential for Contamination to be present in the central area of the site, although any such contamination (if encountered) is anticipated to be manageable during the construction process (bulk excavation, tanked basement, etc.). Therefore, it is expected that the site can be made suitable for the proposed development. This would need to be confirmed by undertaking a detailed site investigation (in the order of four to five additional test bores including one further centrally located groundwater well)”.

The application was also referred to Council’s Environmental Health Officer who raised no objection to the proposal subject to conditions. Accordingly, based on the information submitted, the requirements of SEPP have been satisfied and the land is considered to be suitable for the development subject to conditions.

State Environmental Planning Policy 65 - Design Quality of Residential Apartment Development (SEPP 65)

The development is required to comply with SEPP 65 and the associated Apartment Design Guide (ADG) provides additional details and guidance for applying the nine design quality principles outlined in SEPP.

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

As previously outlined within this report Clause 50(1A) of the EP&A Regulation 2000 requires the submission of a Design Verification Statement from the building designer at lodgement of the development application. This documentation has been submitted.

Clause 28 of SEPP requires that in determining a development application for consent to carry out development to which SEPP 65 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 ADG.*

DESIGN REVIEW PANEL

Northern Beaches 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 site is located within the Dee Why Town Centre which is undergoing significant contextual change through the gazettal of, and proposed amendments to, the WLEP 2011 and the adoption by Council of the DYTC Masterplan.

The local area on and around the site has been disturbed through historical development within the Dee Why Town Centre and there is little context remaining in terms of key natural features. However, it is acknowledged that the coastline to the east and surrounding escarpment to the north remain as key natural features.

The subject site is a prominent site, on the basis that it is corner site and located at southern entry to the Town Centre. However, the site not identified as a "key Site" or a gateway site in the DYTC Masterplan.

The assessment of the application has identified that the development does not provide sufficient public benefit to support a claim for increased building height. In this regard, the development cannot rely upon the future building heights envisaged for the site under the Masterplan and any variation to the building height must therefore be assessed solely under the provisions of the WLEP 2011.

The proposed variation of 12.86% (2.7m) to the Height of Buildings Development Standard under WLEP 2011 has been found to be excessive in its own right, and without the support of the Masterplan, there are not sufficient environmental planning grounds provided by the applicant to justify contravening the Development Standard to such an extent.

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

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 does contain many examples of good design in terms of its architecture including the levels of articulation, the split tower design, use of balconies, landscape communal podium and strongly defined elements to both the Delmer Parade and Pittwater Road frontages.

However, while the architectural design and massing 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 the development will result in a built form and scale that does not meet the requirements of the current controls for the site.

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:

The planning controls under WLEP 2011 and the WDCP 2011 do not specify a maximum housing density for the zone. The appropriate density is determined by how the development responds to the Design Quality Principles of SEPP 65, 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 Waste Management Plan with the application. Further, a condition of consent could be imposed requiring the submission of a Construction Management Plan (CMP) detailing disposal and recycling of demolition and excavation materials, should the Development Application be approved.

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

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

Principle 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:

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 4 podium at the front of the development which forms the communal open space area for the building. In addition, landscaped planters are provided in front of some of private balconies fronting Delmar Parade and Pittwater Road. However, these areas are not expansive and are purely for aesthetic purposes.

Accordingly, it is considered that the proposal does 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 various amenity requirements of the Apartment Design Guideline (ADG) where it has been found that the development is capable of complying with the relevant control.

Generally, it is agreed that the design provides a good level of amenity for future occupants, with the majority of apartments having good levels of sunlight access and cross ventilation. The orientation and layout of the apartments on each level has taken advantage of the northern and eastern exposure over the Delmar Parade and Pittwater Road.

Notwithstanding the above, the proposed development does not provide adequate building separation to the adjoining property (Avis Site) and as result, the amenity of the future development on that site will be compromised.

Accordingly, 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 is accompanied by a formal Crime Risk Assessment as required by the ADG.

Generally, the development provides secure access which is separated from all vehicular access points. All apartments provide balconies and windows which provides passive surveillance over Pittwater Road, Delmar Parade and adjoining properties.

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:

This principle essentially relates to design responding to the social context and needs of the local community in terms of lifestyles, affordability and access to social facilities and optimising the provision of housing to suit the social mix and provide for the desired future community.

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

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

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 is considered to be appropriate in terms of the composition of building elements, textures, materials and colours and reflect the use, internal design and structure of the resultant building. The development responds aesthetically to the environment and context, contributing in an appropriate manner to the desired future character of the area.

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

APARTMENT DESIGN GUIDE

SEPP 65 also requires consideration of the ADG prepared by NSW Department of Planning and Environment in 2015. The ADG includes development controls and best practice benchmarks for achieving the design principles of SEPP 65.

The following table sets out the proposal's compliance with the ADG:

Criteria / Guideline	Comments
Part 3 Siting the Development	
Site Analysis	Not Consistent
Does the development relate well to its context and is	A context plan is provided to accompany the

it sited appropriately?	application. The building form does not reflect the current character as anticipated by the WLEP 2011 for the site.								
Orientation Does the development respond to the streetscape and site and optimise solar access within the development and to neighbouring properties?	Consistent The proposal activates the street by providing retail premises at Pittwater Road frontage at the ground level.								
Public Domain Interface Does the development transition well between the private and public domain without compromising safety and security? Is the amenity of the public domain retained and enhanced?	Consistent The development has been found to be consistent with the current and desired streetscape character (as envisaged in the Dee Why Town Centre Masterplan) by retaining the public amenity and providing an improved public domain interface.								
Communal and Public Open Space Appropriate communal open space is to be provided as follows: 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).	Not Consistent The proposed development provides a total of 32% of the site area of communal open space for the residents of the development in the form of podium terraces. The level 4 (Podium Garden) fronting Pittwater Rd, is located in front of the private open space of units of the development which is not appropriate and should be deleted or this area should be allocated to the 3 units it adjoins. The remaining spaces allocated to the communal open space (including the indoor space) will not receive adequate solar access. Accordingly, the development is found to be inconsistent with this requirement of the guide.								
Deep Soil Zones Deep soil zones are to meet the following minimum requirements: <table><tr><th>Site area</th><th>Minimum dimensions</th><th>Deep soil zone (% of site area)</th></tr><tr><td>Less than 650m²</td><td>-</td><td rowspan="2">7%</td></tr><tr><td>650m² – 1,500m²</td><td>3m</td></tr></table>	Site area	Minimum dimensions	Deep soil zone (% of site area)	Less than 650m ²	-	7%	650m ² – 1,500m ²	3m	Consistent The development provides sufficient area of Deep Soil zone. It is noted that the proposed edge planters on levels 1-4 are relatively narrow, being between 300 - 400 mm width for growing media. However, the provisions of planters are supported by Council's Landscape officer.
Site area	Minimum dimensions	Deep soil zone (% of site area)							
Less than 650m ²	-	7%							
650m ² – 1,500m ²	3m								

<table><tr><td>Greater than 1,500m²</td><td>6m</td><td rowspan="2"></td></tr><tr><td>Greater than 1,500m² with significant existing tree cover</td><td>6m</td></tr></table>	Greater than 1,500m ²	6m		Greater than 1,500m ² with significant existing tree cover	6m								
Greater than 1,500m ²	6m												
Greater than 1,500m ² with significant existing tree cover	6m												
<p>Visual Privacy</p> <p>Minimum required separation distances from buildings to the side and rear boundaries are as follows:</p> <table><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>Not Consistent</p> <p><u>Eastern Boundary</u></p> <p>The development, through the gradual stepping in at the eastern elevation, demonstrates that compliance can be achieved in providing sufficient building separation between the subject building and any future neighbouring building to the east.</p> <p><u>Southern Boundary</u></p> <p>However, the proposed development provides a setback of 0.7m – 3.0m to the southern boundary (adjoining the Avis site) and 3.7m – 4.5m to western boundary (also adjoining Avis) , which is not consistent with the requirement of this guide. This issue is discussed in Urban Design referral comments.</p> <p>The proposed building separation to the Avis site will limit the future development of that site if it were to be developed on its own right.</p> <p>This issue has been included as a reason for refusal.</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>Pedestrian Access and entries</p> <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 development provides level pedestrian access to all floor levels from the basement car parking area.</p>												
<p>Vehicle Access</p> <p>Are the vehicle access points designed and located to achieve safety, minimise conflicts between pedestrians and vehicles and create high quality streetscapes?</p>	<p>Consistent</p> <p>The proposed vehicular access has been assessed by Council's Traffic Engineer who has raised no objections to the proposal in terms of the location of the vehicular access.</p>												
<p>Bicycle and Car Parking</p> <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	<p>Consistent</p> <p>An assessment of car parking provision, having regard to WDCP 2011 and location of the site, has been undertaken.</p> <p>In summary, the amount of car parking is sufficient for the development, as addressed</p>												

<p>Metropolitan Area; or</p> <ul style="list-style-type: none"> 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>elsewhere in this report.</p>
Part 4 Designing the Building	
Amenity	
<p>Solar and Daylight Access</p> <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>Consistent</p> <p>70 units (94%) will receive a minimum of 2 hours direct sunlight between 9 am and 3 pm at mid-winter.</p> <p>2 units (2.7%) will receive less than 2 hours of sunlight.</p>

<p>Natural Ventilation</p> <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 10 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>Consistent</p> <p>63% of the units are naturally cross ventilated.</p> <p>No apartments exceed the 18m requirement.</p>												
<p>Ceiling Heights</p> <p>Measured from finished floor level to finished ceiling level, minimum ceiling heights are:</p> <table border="1" data-bbox="280 905 850 1682"> <thead> <tr> <th colspan="2">Minimum ceiling height</th></tr> </thead> <tbody> <tr> <td>Habitable rooms</td><td>2.7m</td></tr> <tr> <td>Non-habitable</td><td>2.4m</td></tr> <tr> <td>For two 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> </tbody> </table>	Minimum ceiling height		Habitable rooms	2.7m	Non-habitable	2.4m	For two 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>Consistent</p> <p>The floor to ceiling heights of the apartments within the development meet the minimum 2.7m as required by the ADG.</p>
Minimum ceiling height													
Habitable rooms	2.7m												
Non-habitable	2.4m												
For two 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.												
<p>Apartment Size and Layout</p> <p>Apartments are required to have the following minimum internal areas:</p> <table border="1" data-bbox="280 1818 850 1911"> <thead> <tr> <th>Apartment type</th><th>Minimum internal area</th></tr> </thead> <tbody> <tr> <td>Studio</td><td>35m²</td></tr> </tbody> </table>	Apartment type	Minimum internal area	Studio	35m ²	<p>Consistent</p> <p>All apartments within the development comply with the minimum area.</p>								
Apartment type	Minimum internal area												
Studio	35m ²												

1 bedroom	50m ²
2 bedroom	70m ²
3 bedroom	90m ²

The minimum internal areas include only one bathroom. Additional bathrooms increase the minimum internal area by 5m² each.

A fourth bedroom and further additional bedrooms increase the minimum internal area by 12m² each.

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.

Habitable room depths are limited to a maximum of 2.5 x the ceiling height.

In open plan layouts (where the living, dining and kitchen are combined) the maximum habitable room depth is 8m from a window.

Master bedrooms have a minimum area of 10m² and other bedrooms 9m² (excluding wardrobe space). Bedrooms have a minimum dimension of 3m (excluding wardrobe space).

Living rooms or combined living/dining rooms have a minimum width of:

- 3.6m for studio and 1 bedroom apartments;
- 4m for 2 and 3 bedroom apartments

The width of cross-over or cross-through apartments are at least 4m internally to avoid deep narrow apartment layouts.

<p>Private Open Space and Balconies</p> <p>All apartments are required to have primary balconies as follows:</p> <table><tr><th>Dwelling Type</th><th>Minimum Area</th><th>Minimum Depth</th></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><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>	Dwelling Type	Minimum Area	Minimum Depth	Studio apartments	4m ²	-	1 bedroom apartments	8m ²	2m	2 bedroom apartments	10m ²	2m	3+ bedroom apartments	12m ²	2.4m	<p>Consistent</p> <p>All apartments within the development comply with the minimum balcony area and depth.</p>
Dwelling Type	Minimum Area	Minimum Depth														
Studio apartments	4m ²	-														
1 bedroom apartments	8m ²	2m														
2 bedroom apartments	10m ²	2m														
3+ bedroom apartments	12m ²	2.4m														
<p>Common Circulation and Spaces</p> <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>Consistent</p> <p>The maximum number of apartments off a circulation core on a single level is 7.</p> <p>The proposed development includes access to all floors via a lift.</p>															
<p>Storage</p> <p>In addition to storage in kitchens, bathrooms and bedrooms, the following storage is provided:</p> <table><tr><th>Dwelling Type</th><th>Storage size volume</th></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 (subject to condition)</p> <p>The proposed building includes resident storage areas for all units within the building and as well as within the basement levels.</p> <p>A condition of consent could be recommended, if the application was recommended for approval to ensure the proposed storage areas are allocated in accordance with the size requirements of the ADG for the respective units.</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>Acoustic Privacy</p> <p>Noise sources such as garage doors, driveways, service areas, plant rooms, building services, mechanical equipment, active communal open spaces and circulation areas should be located at least 3m away from bedrooms</p>	<p>Consistent (subject to condition)</p> <p>An acoustic assessment which considers both internal and external noise sources including surrounding traffic noise, noise emissions associated with traffic generated by activities on site. The acoustic assessment found that noise generated by the development will comply with all relevant standards.</p>															
<p>Noise and Pollution</p> <p>Siting, layout and design of the building is to minimise the impacts of external noise and pollution and mitigate noise transmission.</p>	<p>Consistent</p> <p><u>Noise</u></p> <p>The development has been designed in a manner to minimise impacts of external noise and to mitigate noise transmission, as discussed elsewhere in this report.</p>															

	<p><u>Pollution</u></p> <p>The completed development is unlikely to impact adversely on air quality or alter the microclimate of the area.</p> <p>No details regarding dust control relating to the construction have been provided. These details will be required to be submitted as a condition of consent, should the application be worthy of approval.</p>			
Configuration				
<p>Apartment Mix</p> <p>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>			<p>Consistent</p> <p>The development proposes a mix of studio, one, and two bedroom apartments. Given the town centre location array of land uses, it is considered that the development has the capacity to accommodate numerous residents who have opportunities to live, work and leisure within the same district. Further to this, the apartments proposed will offer a different housing type and affordability to that of detached housing which is generally seen throughout the Northern Beaches.</p>	
<p>Facades</p> <p>Ensure that building facades provide visual interest along the street and neighbouring buildings while respecting the character of the local area.</p>			<p>Consistent</p> <p>The development is respectful of the surrounding residential character through the massing and as such, it is considered that the facade treatment is appropriate to enhance the streetscape and character of the area.</p>	
<p>Roof Design</p> <p>Ensure the roof design responds to the street and adjacent buildings and also incorporates sustainability features.</p> <p>Test whether the roof space can be maximised for residential accommodation and open space.</p>			<p>Consistent</p> <p>The roof space is not readily accessible and cannot be used to serve the residential accommodation.</p>	
<p>Landscape Design</p> <p>Was a landscape plan submitted and does it respond well to the existing site conditions and context.</p>			<p>Consistent</p> <p>Landscape plans have been submitted with the application, providing detailed plans for the landscape treatment. The landscape plans have been designed to act as integral part of the redevelopment of the site and will respond to the site and its Town Centre location.</p>	
<p>Planting on Structure</p> <p>When planting on structures the following are recommended as minimum standards for a range of plant sizes:</p>			<p>Consistent</p> <p>There is no minimum landscaped open space provision required under the WDCP 2011 for such development within the zone.</p> <p>This is due to the dense urban environment and envisaged character of development in Dee Why Town Centre, which is abutting mixed development (shop top housing or retail/office) development sites. Due to the urban context within which this site is</p>	
Plant type	Definition	Soil Volume	Soil Depth	Soil Area
Large Trees	12-18m high, up to 16m	150m ³	1,200mm	10m x 10m or equivalent

	crown spread at maturity				located, no landscaping has been provided at ground level.
Medium Trees	8-12m high, up to 8m crown spread at maturity	35m ³	1,000mm	6m x 6m or equivalent	The development provides for communal landscape space at podium level and further landscaping is provided throughout the development on terrace-like areas scattered on varying facades and levels of the building.
Small trees	6-8m high, up to 4m crown spread at maturity	9m ³	800mm	3.5m x 3.5m or equivalent	The landscaping of podium area is satisfactory.
Shrubs			500-600mm		
Ground Cover			300-450mm		
Turf			200mm		
Mixed Use Can the development be accessed through public transport and does it positively contribute to the public domain? Non-residential uses should be located on lower levels of buildings in areas where residential use may not be appropriate or desirable.					Consistent The site is close to public transport and has ready access to services and amenities. It is well located in terms of providing for additional retail floor space and residential accommodation. The proposed development appropriately utilises existing infrastructure whilst expanding the retail offer and providing new residential accommodation on a well located and serviced site.
Awning and Signage 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. Signage must respond to the existing streetscape character and context.					Consistent The proposal includes awnings along the street frontage. The DA does not propose any signage and as such, this clause is not considered in the assessment of this application. It is noted that the retail premises located on the ground floor of the development will require signage in the future, and this will be subject to future development applications or be exempt development under the provision of State Environmental Planning (Exempt and Complying Development Codes) 2008.
Performance					
Energy Efficiency Have the requirements in the BASIX certificate been shown in the submitted plans?					Consistent A BASIX certificate report has been prepared for the development. The BASIX

	certificate confirms that required targets for water, thermal comfort and energy efficiency will be met.
Water Management and Conservation Has water management taken into account all the water measures including water infiltration, potable water, rainwater, wastewater, stormwater and groundwater?	Consistent Water management and conservation through the means of retention of stormwater for reuse has been assessed as compliant and further, compliance with the supplied BASIX Certificate can be conditioned, if the application was recommended for refusal. Areas of landscaping are located throughout the site, and these areas will allow for natural water infiltration into the ground.
Waste Management Supply waste management plans as part of the development application demonstrating safe and convenient collection and storage of waste and recycling.	Consistent Subject to condition .
Building Maintenance Incorporates a design and material selection that ensures the longevity and sustainability of the building.	Consistent The application includes a Schedule of Materials and Finishes which ensures the longevity and sustainability of the building.

SEPP (Building Sustainability Index: BASIX) 2004

The application has been accompanied by a BASIX certificate that lists commitments by the applicant as to the manner in which the development will be carried out. The requirements outlined in the BASIX certificate have been satisfied in the design of the proposed development. Nonetheless, a condition could be imposed, should the application be worthy of approval to ensure such commitments are fulfilled during the construction of the development.

SEPP (Infrastructure) 2007

Clause 45 - Electricity Infrastructure

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

- Within or immediately adjacent to an easement for electricity purposes (whether or not the electricity infrastructure exists);
- Immediately adjacent to an electricity substation;
- Within 5m of an overhead power line;
- Includes installation of a swimming pool any part of which is: within 30m of a structure supporting an overhead electricity transmission line and/or within 5m of an overhead electricity power line.

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

Ausgrid provided their comments on 18 December 2017 in which no objection was raised subject to conditions.

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

Clause 102 – Residential development adjacent to a road corridor

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

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

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

In this regard, the applicant has submitted an acoustic report (prepared by Acoustic Logic, dated 15 December 2017). In summary, the acoustic report recommends design measures to minimise the acoustic impact of the traffic on residential development.

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

Clause 106 - Traffic generating development

Pursuant to Clause 106(1) (a) the clause applies to new premises of the relevant size or capacity. (2) In this clause, "relevant size or capacity" means: *"in relation to development on a site that has direct vehicular or pedestrian access to any road-the size or capacity specified opposite that development in Column 2 of the Table to Schedule 3"*.

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

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

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

The development consists of 74 residential apartments and proposes a new crossover onto Delmar Parade which is within 90 metres of Pittwater Road, a classified road (Arterial Road).

The application was referred to the RMS for comment as traffic generating development under Schedule 3 of State Environmental Planning Policy (Infrastructure) 2007.

The RMS has provided their response which advises that RMS does not support the proposal for the reasons as stipulated in the referral sections of this report.

Given the above, the subject application does not satisfy the provisions of Clause 106 and this issue has been included as a reason for refusal.

STATE REGIONAL ENVIRONMENTAL PLANS

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?	No
Zone objectives of the LEP?	No

Principal Development Standards

Relevant Development Standard	Requirement	Proposed	Variation (%)	Compliance
Clause 4.3 Height of Buildings	21m (maximum)	23.7m (at the height point of the building)	12.86%	No
		23.78m Lift overrun	13%	

Compliance Assessment Summary

Relevant Clauses	Compliance with Requirements
Part 1 Preliminary	
1.2 Aims of the Plan	No
Part 2 Permitted or prohibited development	
2.1 Land Use Zones	No
2.7 Demolition requires consent	Yes
Part 4 Principal development standards	
4.3 Height of buildings	No
4.6 Exceptions to development standards	Yes
Part 5 Miscellaneous Provisions	
5.9 Preservation of trees or vegetation	Yes
Part 6 Additional Local Provisions	
6.2 Earthworks	Yes
6.3 Flood planning	Yes
6.4 Development on sloping land	Yes
6.7 Residential Flat Buildings in Zone B4 Mixed Use	Yes

Detailed Assessment of the Non-Compliance with the Height of Buildings Development Standard (Clause 4.3 of WLEP 2011)

Clause 4.3 requires that buildings are to not exceed a maximum height of 21.0m above the existing ground level.

The development proposes a building height of 23.7m above the existing ground level which represents a variation of 2.7m or 12.85% to the building height standard, which equates to an additional storey of units.

The proposed lift overrun also contravenes the Height of Buildings development standard measured at 23.78m (RL52.050) equating to a 13% variation to the standard.

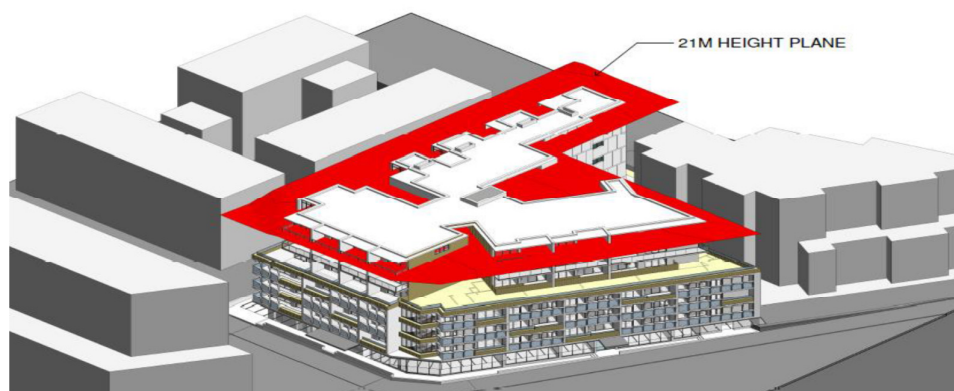


Figure 4 – The proposed building height plane (source: Adapted by the author from Plans, prepared by Marchese Partners)

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 control pursuant to Clause 4.3 of the WLEP 2011 is a development standard.

What are the underlying objectives of the development standard?

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

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

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

Comment

The proposed height is considered to be compatible with the height with some of the recently approved heights in Dee Why Town Centre, and the heights envisaged under the Dee Why Town Centre Masterplan.

However, the increased height envisaged for under the Masterplan is contingent upon providing lower podium level (3 storeys to Pittwater Road and 2 Storeys to Delmar Parade). Therefore, the proposed development with a 4 storey podium does not qualify for the exceptions embodied in the Masterplan.

When considered solely against the objectives and requirements of WLEP 2011 which envisages that buildings do not to exceed the 21m height limit, the proposed development of 23.7m is considered to be excessive and unjustified.

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

The flow-on effect of approving the proposed 24m building height, in isolation of the Masterplan, will be an erosion of both the Development Standard and the Dee Why Town Centre Masterplan.

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

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

Comment

As noted above, the proposed height is considered to be compatible with the height of recently approved developments within close proximity of the site and the heights envisaged under the Dee Why Town Centre Masterplan. In this regard, the subject development would blend in with the development envisaged within the Town Centre.

However, the impact of the development on the future development of the Avis Site is considered unacceptable and given that the development is being assessed against the

'Height of Buildings' Development Standard under the WLEP 2011, the proposed building height significantly exceeds the permitted building height of 21m and, in this regard, the visual impact of the development and overshadowing would be significantly lessened if the development achieved compliance.

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

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

Comment

The building could be visible from the Long Reef Headland but, because of the north-easterly angle, will form part of the Dee Why Town Centre redevelopment and will eventually be obscured by the greater DYTC development further to the north of the site.

However, given that the development is being assessed against the 'Height of Buildings' Development Standard under the WLEP 2011 and not the Dee Why Town Centre Masterplan, the proposed building height exceeds the permitted building height of 21m and, in this regard, the impact of the development on the scenic quality of Northern Beaches coastal environment in this regard, the impact of the development would be significantly lessened if the development achieved compliance.

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

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

Comment:

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

The site is located within the area defined by the Dee Why Town Centre Masterplan which envisages a building of up to 24m in height.

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

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

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

What are the underlying objectives of the zone?

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

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

Comment

The development provides for a mix of uses consisting 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.

The development provides a mix of commercial and residential uses. 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 a cafe use. 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 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:

A key consideration during the assessment of the application was the impact of the proposal upon the orderly development of land within B4 zone. In this regard, the adjoining site being 814-816 Pittwater Road, Dee Why (refer to as the 'Avis Site' for the purpose of this report) will be isolated, as the Avis Site is constrained in terms of its configuration and there is no alternative access apart from Pittwater Road.

Figure 5 below is provided to show the Avis Site (outline in red) as it relates to the subject site.



Figure 5 – Site Plans showing the adjoining “Avis Site”

Council has actively encouraged the applicant to undertake negotiations with the owner/s of the Avis Site from the pre-lodgement stage of the application.

The applicant has provided a copy of a letter which offers to purchase the Avis Site at market value. No written response was provided from the owner of the Avis Site, the applicant has verbally advised that the land owner did not provide any comments on the offer.

During the assessment of the application, Council received a submission from the owners of the Avis Site stating their site will in fact be isolated, thus prohibiting the orderly

development of their site in accordance with the planning controls and particularly in regard to site access (given councils and RMS concerns with primary ingress and egress points off and onto Pittwater Road).

The Land and Environment Court (LEC) has established a Planning Principles to address isolated sites, which is set out in **Melissa Grech v Auburn Council [2004] NSWLEC 40** where the Court required the following two questions to be considered when assessing whether it is reasonable to isolate a site through redevelopment:

1. *Is amalgamation of the sites feasible?*
2. *Can orderly and economic use and development of the separate sites be achieved if amalgamation is not feasible?*

The above was further developed in the Planning Principles established in **Cornerstone Property Group Pty Ltd v Warringah Council [2004] NSWLEC 189** which requires the submission of development schemes for isolated site(s) where negotiations have failed.

The applicant has submitted a building scheme for the Avis Site which provides for a shop top housing with 31 residential units development. The submission received from the Avis Site states that the site is capable of accommodating 43 units, if it was amalgamated with the subject site. However, before determining whether a building scheme is acceptable, consideration must be given to whether appropriate steps have been taken to amalgamate with any potentially isolated sites. It is not until this process is followed that consideration should be given to building schemes on an isolated site(s).

In this regard, it is clear that amalgamation of the Avis Site with the subject site will achieve a better planning outcome, and the development would be consistent with applicable planning controls and the objects of the Environmental Planning and Assessment Act, 1979 (EP&A Act).

It is acknowledged that agreement may not be reached for the sale of the adjoining property, however, it is reasonable to require information to determine whether adequate steps have been made to avoid site isolation. If this process is not followed, the issue has not been properly resolved and therefore any decision to approve the current application is premature.

In relation to the Avis Site, no evidence has been provided in terms of negotiations including an independent valuation and a reasonable offer between the property owners. This is evident by the written submission made by the owner of the Avis Site, and it is clear that site amalgamation may still be feasible option.

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

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

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

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

Comment:

The non-compliance building height proposed in this application has no sound basis, therefore the degree of flexibility in applying the variation to the Development Standard is considered to be inappropriate.

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

Comment

The applicant has not presented information to demonstrate that the variation to the Development Standard will achieve a better outcome compared to a compliant development. Additionally, the assessment notes that there are no site constraints or difficulties that warrant a variation to the building height and trigger such flexibility in the application of the standard. Therefore, the approval of the proposed variation would create an undesirable precedent for other development to seek similar variations and would undermine the aims, objectives and requirements of the Development Standard and the strategic intent of the Masterplan.

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

Comment:

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

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

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

Comment:

The applicant has provided a written request that addresses the non-compliance in relation to varying the building height development standard under the provisions of the WLEP 2011 (refer to attachment 4).

The written request relies upon the exceptions embodied in the Dee Why Town Centre Masterplan and the recent approvals granted within Dee Why Town Centre.

Because of the non-compliance podium level, the development is inherently inconsistent with the aims and objectives and intent of the Dee Why Town Centre Masterplan. In this regard, the development does not qualify for an assessment of greater building height made available by the Masterplan.

In this regard, the written request does not contain sufficient environmental planning grounds to justify contravening the development standard to such a significant extent and

compliance with the Development Standard is therefore considered to be reasonable and necessary under the circumstances.

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

(a) the consent authority is satisfied that:

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

Comment:

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

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

- (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.

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

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

Comment:

Planning Circular PS-18-003, as issued by the NSW Planning and Environment on 21 February 2018, advises that the concurrence of the Secretary may be assumed for exceptions to development standards under environmental planning instruments that adopt Clause 4.6 of the Standard Instrument. In this regard, given the inconsistency of the variation to the objectives of the zone, the concurrence of the Secretary for the variation to the Height of buildings Development Standard cannot be assumed.

DEVELOPMENT CONTROL PLANS

WARRINGAH DEVELOPMENT CONTROL PLAN 2011

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

Compliance Assessment Summary

Clause	Compliance with Requirements	Consistency Aims/Objectives
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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	Yes	Yes
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	Yes	Yes
C9 Waste Management	Yes	Yes
Residential accommodation - 3 or more dwellings	Yes	Yes
Part D Design		
D2 Private Open Space	Yes	Yes
D3 Noise	Yes	Yes
D6 Access to Sunlight	No	No
D7 Views	Yes	Yes
D8 Privacy	Yes	Yes
D9 Building Bulk	Yes	Yes
D10 Building Colours and Materials	Yes	Yes
D11 Roofs	Yes	Yes
D12 Glare and Reflection	Yes	Yes
D14 Site Facilities	Yes	Yes
D18 Accessibility	Yes	Yes
D20 Safety and Security	Yes	Yes
D21 Provision and Location of Utility Services	Yes	Yes
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
Part H Appendices		
Appendix 1 Car Parking Requirements	Yes	Yes

Built Form Controls

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

Principle Numerical Controls	Requirement	Proposed	% Variation	Complies
B9 Rear Boundary Setbacks	N/A	N/A	N/A	N/A
D1 Landscaped Open Space	N/A	N/A	N/A	N/A

Part G Special Area Controls

The site is located within Area 7 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 Pittwater Road, which will provide a consistent streetscape for future developments extending to the east along Pittwater Road as envisaged by the DYTC Masterplan.</p> <p>However, the proposal does not include adequate physical separation to the adjoining property (Avis Site) which is a function of the requirements of the ADG in ensuring adequate space between the proposed residential components of the building and existing and future development.</p>	No
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.	Whilst a reduced building height would increase these available views further in the context of this Clause, it is considered that the development, as proposed, satisfies the requirements of this requirement.	Yes
4. Site amalgamation will be encouraged to facilitate new development and enable all cars parking to be provided below ground or behind buildings using shared driveways where possible.	The issue of site amalgamation is discussed above, where it is concluded the applicant has not made reasonable attempts to amalgamate the adjoining site (Avis Site).	No
5. Building layout and access are to be in	The proposed does not propose a shared	No

Requirement	Comment	Compliance
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.	vehicle access to the adjoining site (Avis Site). This issue has been included as a reason for refusal.	
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	This requirement stipulates that 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. The development is situated south of this intersection and proposes 7 storeys fronting Pittwater Road, therefore exceeding the control by two (2) storeys. Given the non-compliance with the building height and the impact of the development on the adjoining site (Avis Site) the non-compliance with number of storeys cannot be supported. This issue has been included as reason for refusal.	No
7. The maximum area of the floor plate of the upper floors of buildings is to be in accordance with the Build To Lines and Central Courts map as follows: <ul style="list-style-type: none"> • above the topmost storey (including plant and equipment rooms, lofts etc.): 30% of the area of the ground floor plate; • topmost storey: 50% of the area of the ground floor plate; and • second topmost storey: 70% of the area of the ground floor plate 	The proposed development complies with the maximum area as prescribed by this control.	Yes
8. Minimum floor to ceiling heights have been established. The minimum floor to ceiling height are as follows: <ul style="list-style-type: none"> • ground floor storey: 3.6 metres; • upper storeys: 2.7 metres 	The commercial premises at the ground floor level achieve a floor to ceiling height of 4.5m. All apartments achieve a floor-to-ceiling height of 3.1 m which is in accordance with this control and Building Code of Australia.	Yes
9. Build-to lines have been established to ensure future development defines the streets and public spaces. 10. For the first 4 storeys of buildings, build-to lines have been set at:	The development provides for the following build-to-lines: <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 4th storeys. 	Yes

Requirement	Comment	Compliance
<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. 		
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 mature canopy coverage of 70% over the area.	<p>Car parking is located with the part below ground basement car park level and within the ground floor level, behind the building line.</p> <p>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.</p>	No (Satisfactory on merit)

Detailed Assessment

Clause D6 - Access to Sunlight

Note: Clause 4A under ADG establishes precedence for solar access over the WDCP 2011, however it is also noted that Clause 4A only refers to the internal amenity of the proposed development and not the amenity of neighbouring properties.

Therefore, the development's impact on the adjoining site needs to be assessed against the requirements of clause D6 under the WDCP 2011 to evaluate how the development impacts surrounding properties. In this regard Clause D6 requires at least 50% of the required areas of private open space of adjoining dwellings to receive a minimum of three hours of sunlight between 9am and 3pm on June 21.

814- 816 Pittwater Road, Dee Why (Avis Site)

The Avis Site shares part its northern and eastern boundary with the subject site. The shadow diagrams submitted with the application show that the adjoining site will receive no sunlight between 9am-3pm in mid-winter. Therefore, any redevelopment of the Avis site needs to orientate all residential units towards the eastern and western boundaries (i.e. Pittwater Road and 6-8 Delmar Parade). In this regard, the impact of development is found to be unacceptable in its current form.

Therefore, this matter forms a reason for refusal.

Clause C2 - Traffic, Access and Safety

Council's Traffic Engineer advises that the proposal cannot be supported in its current form given that there no is vehicle access provided to the adjoining property to the south (814-

816 Pittwater Road) in order to prevent it from being land-locked as vehicular access from Pittwater Road will be n.

In addition, the implication of traffic generating from the proposal on road network is unsatisfactory as stipulated within the RMS referral response.

Therefore, this matter forms a reason for refusal.

Clause C4 - Stormwater

An external assessment of the stormwater issue was conducted by Land and Development Certificate, who advises that there is insufficient information being provided to demonstrate the suitability of the development in relation to compliance with the requirement of this Clause.

Therefore, this matter forms a reason for refusal.

Appendix 1 – Car Parking Requirements

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

Component	Required	Provided	Compliance
Residential 1 Bedroom/studio (65 Units)	65 spaces	65 spaces	Yes
2 Bedroom (9 Units)	10.8 spaces 11 rounded up	11 Spaces	
Commercial (GFA) Commercial (348m ²)	21.2 spaces (1 space per 16.4m ²) 22 rounded up	22spaces	Yes
Visitors Total Dwellings (74)	14.8 spaces 15 rounded up	15 spaces	Yes
Total	113 spaces	117 spaces	Yes

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

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

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

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

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

POLICY CONTROLS

Warringah Section 94A Development Contribution Plan

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

The following monetary contributions are applicable:

Warringah Section 94 Development Contributions Plan		
Contribution based on a total development cost of \$ 20,303,314		
Contributions	Levy Rate	Payable
Total Section 94A Levy	0.95%	\$192,881
Section 94A Planning and Administration	0.05%	\$10,152
Total	1%	\$203,033

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

CONCLUSION

The site has been inspected and the application assessed having regard to the provisions of Section 4.15 of the EP&A Act, 1979, the provisions of relevant EPIs, including SEPP 55, SEPP 65, SEPP Infrastructure, WLEP 2011, the relevant codes and policies of Council, the relevant provisions of the WDCP 2011 and the DYTC Masterplan/Planning Proposal.

The application was referred to internal departments and external authorities. In the responses, the RMS has declined to issue concurrence for the proposed development thereby prohibiting the consent authority from issuing consent under the provisions of the Environmental Planning and Assessment Act 1979.

Council's Urban Designer, Development Engineer and Traffic Engineer each raised fundamental concerns with the proposal. Council's Water Management section has indicated that additional information is required to properly assess the stormwater quality requirements of the proposal.

The development attracted 23 individual submissions. The majority of the submissions raised concerns with regards to the proposed density and scale, pedestrian safety and traffic congestion. Other issues raised include the impact of the development upon existing infrastructure, the issue of site isolation, and the impacts upon neighbouring site to the south/west of the site. The issues raised in the submissions have been addressed in the "Public Notification Section" of this report.

The assessment of the application against the provisions of SEPP 65 found that the proposal is inconsistent with number of the design principals and a number of relevant requirements as contained under the associated ADG.

The assessment of the proposed development against the provisions of WLEP 2011 found that the proposal does not comply with the 'Height of Buildings' Development Standard under the WLEP 2011 which permits a maximum building height of 21m within the B4 Mixed Use zone. The development exceeds this maximum limit by 2.7m which equates to one (1) additional storey. In this regard, it has been found that the development is inconsistent with the objectives of the Development Standard and the zone. Furthermore, the applicant has not provided sufficient justification for the substantial departure from the Development Standard.

The assessment of the proposed development against the provisions of *WDCP 2011* found that the proposal is not consistent with Clauses D6, C2, C4, and a number of non-

compliances have been identified with respect to the controls under Part G (Area 7) of the WDCP, which specifically relates to the subject site.

Finally, the assessment has found that the proposal would result in the isolation of the adjoining site to the south (Avis Site) and in this regard the applicant has not demonstrated that the correct process has been fully undertaken to satisfy the Courts Planning Principles to determine the planning merits of the proposal to develop the subject site alone.

Based on the assessment contained in this report, it is recommended that the Sydney North Planning Panel (SNPP) refuse the application for the reasons detailed within the recommendation attached to this report.

RECOMMENDATION (REFUSAL)

That the Sydney North Planning Panel, as the relevant consent authority pursuant to Clause 4.16(1) (a) of the EP&A Act 1979 (as amended), refuse to grant consent to Development Application No. DA2017/1183 for demolition works and construction of a Mixed Use Development, comprising retail shops and shop top housing at Lot 1 DP 710661, No. 2 Delmar Parade, Dee Why for the following reasons:

1. Concurrence - NSW Roads and Maritime Services (RMS)

Particulars:

- a) Pursuant to Section 4.51 of the Environmental Planning and Assessment Act 1979, the RMS will not grant an approval (concurrence) that is required in order for the development to be lawfully carried out.
- b) The proposed development is inconsistent with the provisions of *State Environmental Planning Policy (Infrastructure), 2007*, in particular:
 - Clause 106 - Traffic generating development

2. State Environmental Planning Policy No. 65 – Design Quality of Residential Apartment Development (SEPP 65) and Associated Apartment Design Guide (ADG)

The proposed development should not be approved in its current form as it fails the principles of SEPP 65 insofar as they apply to context and neighbourhood character, built form scale, density and amenity:

Particulars:

- a) The proposed building is not compatible with the context of the site that currently contemplates buildings of a scale significantly less than that proposed.
- b) The area is one that undergoing transition. However, this transition can only be reasonably envisaged within the development controls applying to the site.
- c) The proposed development does not comply with the building separation requirements in the ADG. Where areas are undergoing change, a sharing of these setbacks is important so as not to unreasonably constrain the potential for development on adjoining sites. The current proposal will unreasonably constrain adjoining development at 814-816 Pittwater Road, Dee Why.

- d) The height of the development results in unreasonable amenity impacts on adjoining site and future development potential with regards to solar access and overshadowing.
- e) The communal open space provide for the development does meet the solar access requirements of the ADG

3. Building Height

The proposed building height does not comply with clause 4.3 Height of Building Development Standard of the Warringah Local Environmental Plan 2011, and the contravention of the development standard is not justified under clause 4.6.

Particulars:

- a) The proposed development breaches the 21m height of buildings development standard by 2.7m or 12.85% to the building height standard, which equates to nearly full storey.
- b) The height of the proposed development is contrary to clause 4.6 and it is not consistent with the objectives of the development standard in Clause 4.3 of WLEP 2011.
- c) The written request seeking to justify contravention of the development standard under clause 4.6 WLEP 2011 is not well founded and does not satisfy the matters in clause 4.6 (5) of the WLEP 2011.

4. Non-compliance with Warringah DCP 2011

Particulars:

- a) The proposed development fails to comply with Part G – Special Area Controls (Area 7 – Pittwater Road Requirements which relates to site amalgamation and number of storeys).
- b) The proposed development fails to comply with Clause D6 – Access to sunlight in so far its impact on the adjoining property.
- c) The proposed development fails to comply with the requirement of Clause C2 - Traffic, Access and Safety and Clause C4 – Stormwater.

5. Site isolation of 814-816 Pittwater Road, Dee Why

Particulars:

- a) The proposed development would result in the future redevelopment of 814-816 Pittwater Road being constrained by the building separation requirements of SEPP 65 that would hinder any reasonable redevelopment of the site in accordance with envisaged outcome of the site governed by the prevailing planning controls.
- b) It has not adequately been demonstrated that the process required under the established case law/planning principle relating to the amalgamation of the adjoining property at 814-816 Pittwater Road has been undertaken. Specifically,

there is no evidence that negotiations have taken place or that a reasonable offer including independent valuations was made.

- c) Submissions have been received on behalf of the property owner of 814-816 Pittwater Road, raising concern that a reasonable negotiations have not taken place in accordance with the planning principle and that their site would become isolated.