

SYDNEY NORTH PLANNING PANEL COUNCIL ASSESSMENT REPORT

Panel Reference	2018SNH042
DA Number	DA2018/1166
LGA	Northern Beaches Council
Proposed Development	Demolition Works and Construction of a Boarding House development made pursuant to State Environmental Planning Policy (Affordable Rental Housing) 2009
Street Address	Lot A DP 400997, 613 Pittwater Road, Lot 8 DP 22384, 615 Pittwater Road, and Lot 2 DP 22384, 11 May Road, Dee Why
Applicant	Leech Harmon Architects
Owner	Adam Jon Tesoriero
Date of DA lodgement	6 July 2018
Number of Submissions	68
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 \$5 million for affordable housing (which includes Boarding House)
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 (Affordable Rental Housing) 2009 • Warringah Local Environmental Plan 2011 (WLEP 2011) • Warringah Development Control Plan 2011 (WDGP)
List all documents submitted with this report for the Panel's consideration	<ul style="list-style-type: none"> • Attachment 1 – Architectural Plans • Attachment – Applicant's Clause 4.6
Report by	David Kerr – General Manager, Planning Place & Community
Responsible Officer	Lashta Haidari - Principal Planner
Report date	18 December 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? **Yes**
e.g. Clause 7 of SEPP 55 - Remediation of Land, Clause 4.6(4) of the relevant LEP

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**

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?

No

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

Executive Summary

Northern Beaches Council is in receipt of a Development Application (DA2018/1166) from Leech Harmon Architects for demolition works and construction of a Boarding House development for 122 boarding rooms, plus 3 manager's rooms over three (3) separate Lots known as No.613 to No.615 Pittwater Road and No 11 May Road, Dee Why ('the site').

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 \$5 million and is for affordable housing (which includes a boarding house). Whilst Council is responsible for the assessment of the DA, the SNPP is the consent authority.

Clause 30A of the State Environmental Planning Policy (SEPP ARH) requires the consent authority to take into consideration whether the design of the development is compatible with the character of the local area. However, the SEPP does not provide specific controls for assessing whether a proposal is compatible with an existing area. Therefore, this assessment has taken into consideration permissible forms of development within the R2 – Low Density Residential zone and the Planning Principle of the Land and Environment Court (LEC) to determine the compatibility of the development. The character assessment revealed that the development, as proposed, is incompatible and inconsistent with the surrounding character of detached dwellings. The proposal does not respond well to the local planning controls in terms of its impacts on adjoining development.

The proposal is recommended for refusal as it fails to comply with the 'Height of Buildings' Development Standard under the WLEP 2011 which permits a maximum building height of 8.5m within the R2 Low Density Residential zone. The proposed heights of up to 10m (17.6% variation) have been found to be excessive resulting in unacceptable impacts and not in public interest. There are not sufficient environmental planning grounds provided by the applicant to justify contravening the Development Standard to such an extent.

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 the south east of the subject site, being 613A Pittwater Road. 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.

Based on a detailed assessment of the proposal against the applicable planning controls, it is considered that the proposal does not satisfy the applicable 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 (613A Pittwater Road, Dee Why)
- State Environmental Planning Policy (Affordable Rental Housing) 2009
- Warringah Local Environmental Plan 2011 (WLEP 2011)
- Warringah Development Control Plan 2011 (WDCP)

RELEVANT PLANNING PRINCIPLES

The following Land and Environment Court (LEC) Judgements and Planning Principles have been considered in this assessment:

- *Project Venture Developments v Pittwater Council [2005] NSWLEC 191*
- *GPC No 5 (Wombarra) Pty Ltd v Wollongong City Council (2003) NSWLEC 268*
- *Melissa Grech v Auburn Council [2004] NSWLEC 40*
- *Cornerstone Property Group Pty Ltd v Warringah Council [2004] NSWLEC 189*

SITE DESCRIPTION

The site is made of three (3) separate properties known as No.613 to No.615 Pittwater Road and No and 11 May Road Dee Why. The combined site area for the three (3) properties will be 3168.68m².

The individual Properties are described as:

No. 613 Pittwater Road

This property is legally described as Lot A within DP 400997, which is located on the northern side of Pittwater Road with access via a battle-axe handle to access/service road running parallel to Pittwater Road, it has a site area of 1,981m². Excluding the access

handle, the land is around 18.13m wide and 103m deep. A 3m wide x 37.5m long access handle provides vehicular access to an access/service road running parallel to Pittwater Road.

The land rises around 16m from the eastern to the western boundaries. An existing single storey brick dwelling with tile roof is located toward the centre of the land and a dilapidated timber garage is located close to the eastern boundary. There are some large trees near the boundary in the eastern part of the site.

No.615 Pittwater Road

This property is legally described as Lot 8 within DP 22384 which is located on the high western side of the road, an access/service road lies between Pittwater Road and the eastern boundary of No. 615. The land has a 16.79m frontage to the service road with a depth of 36m and has site area of 580.88m².

The site falls around 4.2m from the rear boundary to the street boundary. A single storey weatherboard cottage is located on the site.

No. 11 May Road

This property is legally described as Lot 2 within DP 22384, adjoins the northern boundary of No 613. It has a depth of around 33.2m and a frontage to May Road of 18.3m. The site area is 606.95m². It contains a 1-2 level weatherboard and tile dwelling house. The land falls moderately from west to east and more gently from south to north. There is no significant vegetation on this site.



Figure 1 – Site Map

Adjoining and Surrounding Development

The subject site sits just to the south of the Dee Why Town Centre, which is undergoing significant urban renewal. Residential areas zoned R2 Low Density Residential under WLEP 2011 are located to the north, west and south of the subject property. These areas are characterised by single and double storey dwelling houses, with the exception of the

property to the immediate south of the subject site (605 - 611 Pittwater Road). This property has been developed into a 2 storey multi-unit housing development which was approved under the "Unique Development Site" or the "3,000m² site" provision of a previous Environmental Planning Instrument, being WLEP 2000.

The R3 Medium Density Residential zone under WLEP 2011 is located to the north on May Road and along Mooramba Road. At the corner of May Road and Mooramba Road is a 3 storey apartment development.

To the east across Pittwater Road are land uses zoned B4 Mixed Use, characterised by mixed use development and commercial buildings.

RELEVANT HISTORY and BACKGROUND

Pre-Lodgement Meeting (PLM)

A PLM was not held in relation to this proposal.

DEVELOPMENT APPLICATION HISTORY

The application was lodged with Council on 6 July 2018. 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 31 October 2018 with a view to addressing the specific concerns and preparing the required information and resubmitting a new DA 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.

Land and Environment Court

The applicant has since lodged a "Deemed Refusal" Appeal in the *NSW Land & Environment Court*, on 21 September 2018.

The Section 34 Conciliation Conference and possible hearing dates are yet to be set down.

PROPOSED DEVELOPMENT IN DETAIL

The applicant proposes to demolish all existing on-site structures and construct five (5) three storey buildings spread across the three (3) Lots over a split level basement car park, which accommodates 125 boarding rooms, including 12 accessible rooms and 3 manager rooms. The development includes landscape works and communal areas.

Figure 1 below is provided to assist in the identification of the proposed buildings within the site.

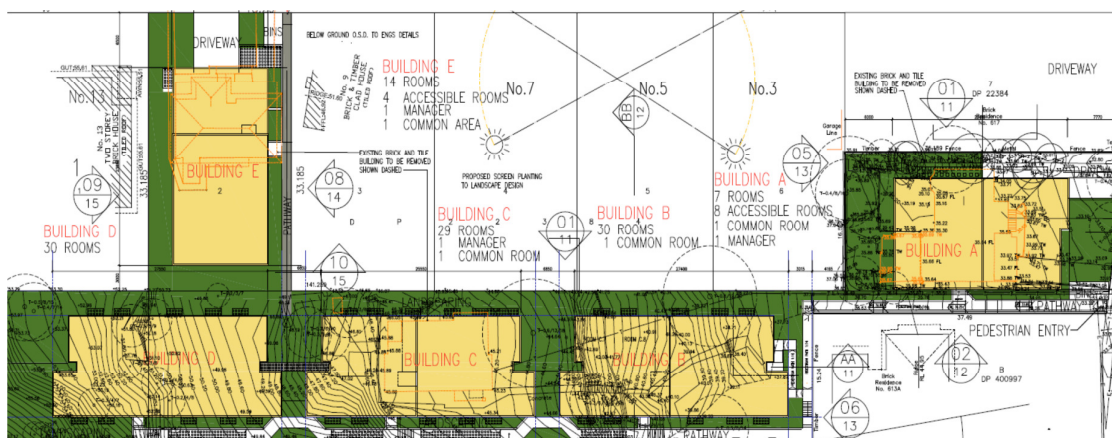


Figure 2 – Proposed building arrangement. (Source: Adapted by the author from Plan No. DA-01, dated 5 July 2018 and prepared by Leech Harmon Architects)

Further detail of the proposal is provided as follows:

- Total of 125 boarding rooms as shown on the plans, which include 12 accessible rooms and 3 manager rooms, spread across the five (5) building which includes:

Building No.	Number of Boarding Rooms
Building A	15 Boarding Rooms plus 1 Manager Room
Building B	30 Boarding Rooms
Building C	29 Boarding Rooms plus 1 Manager Room
Building D	30 Boarding Rooms
Building E	18 Boarding Rooms plus 1 Manager
Total	122 Boarding Rooms plus 3 Managers rooms = 125 rooms

- A total of 64 car parking spaces are provided within the basement, plus 67 motor cycle spaces and 66 bicycle spaces
- Each boarding room has private facilities (kitchenette and en-suite bathroom) and a private balcony
- A communal laundry is provided in the basement of each building
- Three communal rooms are provided across the three (3) buildings

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	The NSW Department of Planning and Environment has publicly exhibited draft amendments to the SEPP (ARH) 2009. The amendments seek to cap the number of boarding rooms within a boarding house in the R2 – Low Density Residential zone to maximum of 12 rooms.
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)(iia) – Provisions of any planning agreement	None Applicable

Section 4.15 'Matters for Consideration'	Comments
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>
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. The environmental impacts of the proposed development on the natural and built environment are addressed under WDCP and SEPP (ARH) 2009 sections of this report. In summary, the proposed development is found to be inconsistent with the requirements of the SEPP (ARH) 2009 and WDCP, the environment impact is found to be unsatisfactory. ii. The development is not considered to have a detrimental social impact in the locality considering the proposal will provide a form of affordable housing. In this regard, subject to conditions and the effective implementation of an Operation Plan of Management (OPM), the proposed development will not have a detrimental social impact in the locality. iii. The proposed will not have a detrimental economic impact on the locality considering the nature of the proposed residential land use.
Section 4.15 (1) (c) – the suitability of the site for the development	<p>The site does not contain any significant physical constraints which would prevent the provision of this development on site. However, there are concerns in relation to the suitability and appropriateness of the site in terms of its configuration, shape and the size, scale and intensity of the development, as proposed for the site.</p> <p>In this regard, the exclusion of the adjoining site (613A Pittwater Rd) results in a Lot configuration that is challenging and problematic for the proposal.</p>
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	<p>A total of 68 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 controls provided within SEPP (ARH) 2009, provides 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>

Section 4.15 'Matters for Consideration'	Comments
	<p>The assessment has found the proposal to be contrary to the relevant provisions of SEPP (ARH) 2009 in relation to local character, WLEP 2011 in relation to building height, and a number of inconsistencies have been found in relation to the requirements for the site under WDCP 2011.</p> <p>Consequently, as the proposal does not satisfy the planning controls applying to the site, 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, 68 submissions were received at the time of writing this report.

The issues raised in the submissions include the following:

1. Out of Character

Concerns have been raised about the proposal being out of character with the street and neighbourhood, being an eyesore in comparison to surrounding developments and the design of the development has no architectural merit.

Comment:

This issue is discussed in detail in the various sections of this report (refer to discussion under Clause 30 of SEPP (ARH) 2009, and Clause D9 of WDCP 2011). In summary, the proposed development is found to be inconsistent with the surrounding residential character of the area. The assessment has found that the proposal does not relate favourably to the design requirements and is considered to exhibit excessive building bulk and scale and does not protect the amenity of adjoining developments and the streetscape.

This issue warrants the refusal of the application.

2. Inconsistency with the R2 – Low Density Residential Zone

Concerns have been raised that the proposed development is inconsistent with the objectives of the R2 zone, and the development appears as a medium density style development and is a significant increase in density.

Comment:

The consistency of the proposal with the zone objectives is discussed under WLEP 2011 section of this report. The issue in relation to the density of the proposal in terms of the number of rooms within the buildings and consequential impact on adjacent residential properties and the development “fitting-in” with the character of surrounding residential development has been raised as a major concern in the assessment of this application.

Therefore, this issue should be given determining weight and warrants refusal of the application.

3. Non-compliance with the Building Height

Concerns are raised that the development does not comply with the Height of Buildings Development Standard under the WLEP 2011 and that the breach of the height control will result in adverse amenity impact on the surrounding residential area, particularly in relation to solar access and privacy.

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 WLEP 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 where it was found that the development is inconsistent with the objectives of the Development Standard and the zone and the impact of the development on the adjoining residential development (particularly in relation to privacy and solar access is found to be unsatisfactory.

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

4. Impacts upon neighbouring residential amenity

The submissions raise concern that the development will have an adverse impact upon areas of residential amenity such as solar access, visual privacy, views and noise.

Comment:

These issues have been discussed at length throughout this report. In summary, it has been found that the development does not comply with the various requirements to manage visual privacy and solar access requirements.

Therefore, this issue should not be given determining weight.

5. Construction related impacts and site dewatering

Concern is raised regarding the excavation and construction impacts associated with the development and the potential impact on the suitability of adjoining development.

Comment:

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

Therefore, this issue should not be given determining weight.

6. Traffic congestion

A number of submissions received raised concern that the traffic produced by the development will exacerbate the already congested local road network. Concerns have been raised that the proposed access point adjoins a single lane access/service road, and that increased demand on this minor road will cause significant safety and congestion problems.

Comment:

This issue is addressed under the referral section of this report (refer to Council's Traffic Engineer and RMS comment). In summary, both the RMS and Council's Traffic Engineer have reviewed the proposal in terms of its traffic impact, and no specific issues were raised with respect to the development in terms of traffic generation.

However, Council's Traffic Engineer has recommended refusal of the application due to lack of onsite servicing provisions and non-compliance with Australia Standards.

7. Essential services

The submissions raise concern that the existing infrastructure will not be able to support a development of this scale.

Comment:

The provision of infrastructure is managed by the relevant providers (i.e. Telecommunications, water, electricity etc.). In this regard, it is unlikely that the development would impose a strain upon the provision of those services. If the application was recommended for approval, conditions would be included which will require approval by Sydney Water for access to Sydney Water's sewerage infrastructure prior to the issuing of a Construction Certificate.

Therefore, this issue should not be given determining weight.

8. Omissions in Support Documents

It is claimed that the documentation accompanying the DA omits major areas of assessment, namely:

- *Development will not be affordable/ not support affordable housing;*
- *Lots are not being consolidated as part on the application;*
- *No BASIX Certificate(s) has been provided;*
- *SEE does not sufficiently address/ acknowledge the impacts to neighbouring properties;*
- *General public/ community have not been given the opportunity to discuss with council the impacts of the development;*
- *Complete development application form (pages 4-7) have not been made available on Council's website; and*
- *CPTED assessment has not been provided.*

Comment:

The supporting documentation submitted with the DA describes the proposed development and provides information for Council to determine whether the proposal complies with all relevant controls. Council undertakes its own assessment of the proposal and considers the expert reports provided by the applicant. In this regard, the information provided by the applicant is not always agreed with or relied upon. Where Council cannot complete the assessment due to insufficient or inadequate information,

the applicant may be requested to provide additional details or that issue will be included as a reason for refusal.

In this case, the assessment has identified a number of discrepancies with the application, and there is also conflicting information in relation to the number of boarding rooms proposed. For example the Traffic Report submitted with the application states that the proposal is for 129 boarding rooms, whilst the architectural plans show a total of 125 rooms. There is also conflicting information in relation to various report and plans.

The issues raised in relation to the documentation are concurred with in part, and included as reason for refusal where relevant.

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	<p>The stormwater drainage proposal is acceptable to Council.</p> <p>However, Council's Traffic Engineers have not recommended approval due to lack of information to address vehicle access. As Council's Traffic Engineers have not recommended approval specifically to address required driveway and footpath requirements in the public domain, Development Engineers are not able to issue complete comments and/or conditions related to works in the public domain. Not supported for approval due to lack of information to address:</p> <ul style="list-style-type: none"> • Vehicle access for the development in accordance with clause C2 Traffic, Access and Safety as raised by Council's Traffic Engineers.
Traffic Engineer	<p><u>Servicing:</u></p> <p>Due to the narrow nature of the sites street frontages, all servicing of the site by removalist vehicles shall be accommodated wholly within the site. This shall require removalist vehicles to be accommodated within the basement levels. Appropriate height clearances shall be provided to cater for the largest anticipated vehicle to enter the site. Currently the height clearances only allow for general vehicles to enter/exit.</p> <p>NOTE: Due to the number of bins required to be serviced and the lack of Street frontage, the Traffic Team would recommend the applicant provide waste servicing facilities onsite. The plans will need to be amended to demonstrate the servicing can occur wholly within the site, however this is to be confirmed via Waste Team.</p>

Internal Referral Body	Recommendation/ Comments
	<p><u>Car Park layout:</u></p> <p>The layout of the car park should be in accordance with AS 2890.1:2004 Off-Street Parking Facilities and Council's DCP. Currently the arrangement of the driveway access on May Road does not comply with respect to grades, cross falls and widths. The applicant shall review the access arrangement to ensure the appropriate length for the following:</p> <ul style="list-style-type: none"> • standing area (1:20 for the first 6.0m from the boundary): this is required to ensure suitable sight visibility when a car is stationary with the correct approach angle; and • Transition ramps (1:8 for a length of 2.0m at grade changes greater than 12.5%). <p>Further, the swept path of vehicles should be demonstrated showing ingress/egress with the following parameters:</p> <ul style="list-style-type: none"> • A vehicle must not cross the double centre line when turning left into the driveway; • Two (2) vehicles must be capable of passing one another when entering/exiting the site at the kerb (a wider splay may be necessary to accommodate this); • A truck must be able to exit the driveway safely with minimal 'tilt'. <p>Additionally, the applicant shall demonstrate compliance with one or more of Council's Standard driveway profiles. The design can be discussed with Council's Traffic Engineer and Development Engineer to ensure a smooth and aesthetically pleasing finish.</p> <p>The application cannot be supported due to lack of onsite servicing provisions and non-compliance with AS 2890.1:2004.</p>
Environmental Health (Industrial)	No objections subject to the recommended conditions.
Landscape Officer	<p>The proposal generally provides some setbacks capable of supporting landscaping that would assist in addressing the character of the areas however further articulation or separation of buildings would be beneficial to the landscape setting to this development which proposes significant building mass.</p> <p>Concern is raised however with regard to the proposed landscaping along the southern boundary.</p> <p>Little opportunity is proved for adequate space to accommodate taller planting, which is considered important in consideration of the interface with the</p>

Internal Referral Body	Recommendation/ Comments
	<p>adjoining town house development to the south.</p> <p>Particular concern is raised in the vicinity of Building D at the western end of the site.</p> <p>It is difficult to ascertain if there is soil depth provided above the basement car-parking to accommodate planting between the building and the southern boundary.</p> <p>Additionally, the levels provided indicate that there is a 7 metre difference between the adjoining land (Indicated at RL57.17) and the lower ground floor of the proposal (Indicated at RL50.18). How this is treated is unclear as the landscape plan does not indicate any retaining or terracing, however architectural sections indicate that stepped planters are proposed.</p> <p>Further detail is required to clarify how the significant level change is to be accommodated whilst providing a suitable level of amenity to the lower ground floor rooms.</p> <p>At this stage, further detail is required regarding soil depth to be provided between the development and the southern boundary, how taller planting can be incorporated to provide a landscape buffer to the adjoining townhouses to the south and how the significant level differences are to be resolved between the building and the south western area of the site.</p> <p>Further assessment can be made following clarification, and it is also considered that additional taller growing trees should be provided across the development site to assist in providing for local character and residential amenity with regard to landscape setting.</p>
Natural Environment (Flood)	The property is outside the Medium Flood Risk Precinct and flood related development controls do not apply.
Strategic Planning - Urban Design	<p>The proposal in its current form cannot be supported for the following reasons:</p> <p>1. SEPP Affordable Rental Housing (ARH) 2009</p> <p>The proposed development does not comply with the building height control. Future designs are to consider deletion of the upper storey of all buildings across the site to bring the buildings within the 8.5m height control. This will have the additional effect of mitigating some overshadowing to the southern boundary properties' private open space. Overshadowing impacts to the neighbouring properties to the south are significant enough to refuse a variation in the height control under clause 4.6 of the WLEP 2011.</p> <p><u>Clause 30 (1) (a) Communal Living Area</u></p> <p>The larger building mass should be broken down further to create two building forms for each of the proposed</p>

Internal Referral Body	Recommendation/ Comments
	<p>(x5) building footprints. The placement of a common room (currently 3 proposed) between the split forms of each of these buildings located central to provide readily accessible common space to each of the 5 x buildings is highly recommended.</p> <p><u>Clause 30 A – Character of Local Area</u> The proposal needs to be compatible with the architectural form and style of the established low rise detached dwelling character. The proposal will have unacceptable impacts on the amenity of neighbouring properties outdoor private open space to the south of the proposed development by virtue of the non-compliant height casting shadows to these areas for the majority of the day.</p> <p>The impacts described above can be minimised by breaking down the form of the 5 large building footprints with a considered modulation and articulation of building form across the site in a well-considered landscape setting. This applies particularly to the 3 buildings (B, C and D) running east west down the slope of the site which present an overbearing elevation to the neighbouring properties. The larger building mass could be broken down further to create two building forms for each of the proposed (x5) building footprints, placement of a common room (currently 3 proposed) between the split forms of each of these buildings located centrally to provide readily accessible common space to each of the 5 x buildings is highly recommended.</p> <p>Smaller scale development of pavilion style buildings stepping down the site in sympathy with the contours is recommended to reduce the impacts of excavation and fill.</p> <p>Contrary to the applicants statement regarding the 'highly articulated vertical and horizontal planes' (SEE page14, Table 5 – Scale and Form of Buildings, the proposed development demonstrates little articulation in all the wall planes with no articulation in the building footprints to provide for any variation, relief or articulation of wall planes that are up to 30m long. The current drawings demonstrate flat walls to almost all walls of the building envelope(s).</p> <p>The recommended break down of mass of each of the five buildings across the site will assist this articulation of smaller building footprints across the site to be in sympathy with the surrounding neighbourhood and detached housing character.</p> <p><u>2. Built Form Controls WLEP 2011</u> The aims of the zone, to ensure residential environments are in harmony with the surrounding single and double storey houses, has not quite been achieved.</p>

Internal Referral Body	Recommendation/ Comments
	<p>The proposed bulk and scale of the development needs to be broken up into similar bulk and relief to be in sympathy with the neighbouring houses. Reduction in height with the deletion of the upper storey will assist to mitigate overshadowing of the properties to the southern boundary of the site. Shadow diagrams demonstrating a full three hour period of direct sunlight to 50% of the private open spaces of these properties is required to be demonstrated. Currently the proposed design demonstrates the entirety of private open spaces to the majority of adjacent dwellings to the south are in shadow for most if not all of the day.</p> <p>A considered response to the site coverage, breaking down further of the built form and appropriately distributed open landscaped space is required to achieve a development that is more in sympathy with the surrounding neighbourhood, provides amenity in terms of privacy and acoustics and sits in sympathy with the topography of the site and its surrounding environment.</p> <p><u>WDCP 2011</u></p> <p>Long Section AA on drawing DA-11 shows wall heights exceeding the 7.2m from ground line across the entire development. A reduction in height to bring the development within the building envelope is required to address the wall height exceedance.</p> <p><u>B3 – Side Boundary Envelope</u></p> <p>The side boundary envelope is encroached in several locations by virtue of the 7.2m wall height exceedance and the extents of the building footprint across the site. Deletion of the top level across all buildings on the site will go some way to bring the proposal up to compliance.</p> <p><u>B7 Front Boundary Setbacks</u></p> <p>Compliance with the front boundary setback requires the setback zone to be free of structures; platform lift structure, roofs and any other structures.</p> <p><u>B9 – Rear Boundary Setbacks</u></p> <p>Rear boundary setback is to be 6m. With two street frontages on both May Road and Moorilla Road it is determined that the rear setback is to be the southern long boundary, thus a 6m setback will be required. This setback along with the reduction in height by deletion of the upper storey will assist to mitigate overshadowing of the neighbouring residential private open space areas. Additionally, an increased setback to this boundary (Rear Boundary) will allow for deep soil planting zones to achieve landscape buffer zone to assist with visual and acoustic privacy.</p>

Internal Referral Body	Recommendation/ Comments
	<p>D1 Landscaped open space and bushland setting Deck structures and impervious finishes are not to be included in the Landscape open space calculations. Built structures including hard surface paved areas are not to be included in the landscape open space.</p> <p><u>D6 Access to Sunlight</u></p> <p>The shadow diagrams demonstrates that the required 50% of access to sunlight to private open space of the adjoining properties on the southern boundary do not receive the required percentage for compliance. Further analysis demonstrating the required 50% of area receives 3 hours of sunlight needs to be demonstrated in future designs. Shadow diagrams showing hourly increments should demonstrate compliance with this control.</p> <p><u>3. APARTMENT DESIGN GUIDELINES (ADG)</u></p> <p>Reference to recommendations/guidance from the ADG is highly encouraged for the proposed development, considering the scale of development proposed across the site.</p> <p><u>2F Building Separation / 3F Visual Privacy</u></p> <p>Whilst not enforceable, it is highly recommended the principals of building separation for apartment buildings under the ADG be applied to the proposed development in order to achieve minimum amenity and to be in keeping with the desired future character of the area.</p> <p>A minimum separation of 6 metres between habitable and non-habitable rooms, 3 metres between blank walls and non-habitable rooms and 12 metres between habitable rooms.</p> <p>Application of building separation principles is recommended to achieve a reasonable amount of amenity across the site.</p> <p>Additionally, privacy and overlooking issues exist on the southern boundary where south facing habitable rooms from the proposed development will directly overlook the properties' private open space. Measures to screen views on this elevation are recommended.</p> <p><u>4F Common Circulation and Spaces</u></p> <p>The site provides for an adequate redistribution of smaller pavilion style buildings across the site as previously discussed. Any redesign should consider the recommendations of the ADG to minimise the number of apartments off a circulation core on a single level.</p> <p>Reduction in the building footprint(s) (x5) by breaking each block down into two smaller pavilions will assist to reduce the length of unarticulated internal corridors</p>

Internal Referral Body	Recommendation/ Comments
	<p><u>4C Ceiling Heights</u> Recommendations for floor to ceiling heights for apartments are contained in Figure 4C.1 and the accompanying design criteria for minimum amenity in the ADG.</p> <p>The proposed drawings demonstrate a floor to floor height of 2.8m approx. which would leave 100mm for slab alone and no allocation in the ceiling for services fit off.</p> <p>Any future design is encouraged to address the minimum requirements contained in the ADG to achieve a minimum level of amenity to apartments across the site.</p>
Waste Officer	<p>The applicant will need to comply with Northern Beaches Council Waste Management Guidelines. Council considers a boarding house as a development of 3 or more dwellings. The proposal submitted by the applicant is unacceptable for the following reasons:</p> <p><u>Bin room location and design</u> The bin room is not large enough to accommodate 35 x 240L bins. The bin room proposed only fits 11 x 240L bins.</p> <p>The door on the bin room must swing outwards and be able to latch in an open position. The door must not be secured.</p> <p><u>Bulk waste room</u> The applicant will need to provide 50 cubic meters of space for the storage of bulk waste such as fridges, mattress and lounges. The preference for this room is to be located adjacent to the bin room. This must be a separate and clearly labelled area.</p>

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>No response has been received within 21 day statutory period and therefore, it is assumed that no objections are raised and no conditions are recommended.</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 13 August 2018 in which no objection was raised subject to conditions.</p>

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 (Affordable Rental Housing) 2009

SEPP (ARH) aims to provide new affordable rental housing and retain and mitigate any loss of existing affordable rental housing by providing a consistent planning regime. Specifically, SEPP ARH provides for new affordable rental housing by offering incentives such as expanded zoning permissibility, floor space ratio bonuses and non-discretionary development standards.

Division 3: Boarding houses

Clause 25: Definition

For the Purpose of this Division, the Standard Instrument defines a 'boarding house' as a building that:

- a) *is wholly or partly let in lodgings, and*
- b) *provides lodgers with a principal place of residence for 3 months or more, and*
- c) *may have shared facilities, such as a communal living room, bathroom, kitchen or laundry, and*
- d) *has rooms, some or all of which may have private kitchen and bathroom facilities, that accommodate one or more lodgers,*

but does not include backpackers' accommodation, a group home, hotel or motel accommodation, seniors housing or a serviced apartment.

In this Division 'communal living room' means a room within a boarding house or on site that is available to all lodgers for recreational purposes, such as a lounge room, dining room, recreation room or games room.

Clause 26: Land to which this Division applies

Requirement	Comment
This Division applies to land which any of the following land use zones or within a land use zone that is equivalent to any of these zones	
a) Zone R1 General Residential, b) Zone R2 Low Density Residential, c) Zone R3 Medium Density Residential, d) Zone R4 High Density Residential,	Consistent The site is located within R2 Low Density Residential zone and the proposed use is permissible with consent under WLEP 2011 and

e) Zone B1 Neighbourhood Centre, f) Zone B2 Local Centre, g) Zone B4 Mixed Use.	SEPP (ARH)
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Clause 27: Development to which this Division applies

1. This Division applies to development, on land to which this Division applies, for the purposes of boarding houses.

Requirement	Comment
<p>(2) Despite subclause (1), this Division does not apply to development on land within Zone R2 Low Density Residential or within a land use zone that is equivalent to that zone in the Sydney region unless the land is within an accessible area.</p> <p>Note Accessible area means land that is within:</p> <p><i>400 metres walking distance of a bus stop used by a regular bus service (within the meaning of the Passenger Transport Act 1990) that has at least one bus per hour servicing the bus stop between 06.00 and 21.00 each day from Monday to Friday (both days inclusive) and between 08.00 and 18.00 on each Saturday and Sunday.</i></p>	<p>Not Consistent</p> <p>The definition only requires the development to be within 400m of a regularly serviced bus stop. In the case of the proposed development, the development is located within 400m of a bus stop that is serviced by a north and south bound bus service that complies with the time requirements. However, it is noted that there is no footpath along the May Road frontage, therefore the walking distance is not considered to be a safe distance. (The applicant has not proposed to construct a footpath).</p>
<p>(3) Despite subclause (1), this Division does not apply to development on land within Zone R2 Low Density Residential or within a land use zone that is equivalent to that zone that is not in the Sydney region unless all or part of the development is within 400 metres walking distance of land within Zone B2 Local Centre or Zone B4 Mixed Use or within a land use zone that is equivalent to any of those zones.</p>	<p>Not Applicable</p> <p>The site is located within the Sydney region.</p>

Clause 28: Development may be carried out with consent

Requirement	Comment
Development to which this Division applies may be carried out with consent.	The development involves the construction of a "boarding house", as defined by the standard instrument. Therefore, the development may be considered under this Division of the SEPP as development which may be carried out with consent.

Clause 29: Standards that cannot be used to refuse consent

Standard	Requirement	Proposed	Compliant/Comment
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(1) Density and Scale A consent authority must not refuse consent to development to which this Division applies on the grounds of density or scale if the density and scale of the buildings when expressed as a floor space ratio are not more than:	(a) the existing maximum floor space ratio for any form of residential accommodation permitted on the land, or	Floor space ratios are not applicable to the site under WLEP 2011 or WDCP 2011.	Not Applicable
	(b) if the development is on land within a zone in which no residential accommodation is permitted—the existing maximum floor space ratio for any form of development permitted on the land, or	Not Applicable	Not Applicable
	(c) if the development is on land within a zone in which residential flat buildings are permitted and the land does not contain a heritage item that is identified in an environmental planning instrument or an interim heritage order or on the State Heritage Register—the existing maximum floor space ratio for any form of residential accommodation permitted on the land, plus: 0.5:1, if the existing maximum floor space ratio is 2.5:1 or less, or 20% of the existing maximum floor space ratio, if the existing maximum floor space ratio is greater than 2.5:1.	The site is not within a zone that permits residential flat buildings and the site does not contain a heritage conservation area.	Not Applicable
2) A consent authority must not refuse consent to development to which this Division applies on any of the following grounds:			
(a) Building Height	If the building height of all proposed buildings is not more than the maximum building height permitted under another environmental planning instrument for any building on the land.	The maximum building height of all buildings are above the 8.5m height limit under WLEP 2011.	No (refer to Clause 4.6 of WLEP 2011)
(b) Landscaped Area	If the landscape treatment of the front setback area is compatible with the streetscape in which the building is located	The Landscape area of the development is not compatible with the adjacent streetscape in the vicinity of the site.	No (Refer to discussion under Landscape referral comments above).

(c) solar access	where the development provides for one or more communal living rooms, if at least one of those rooms receives a minimum of 3 hours direct sunlight between 9am and 3pm in mid-winter,	<p>Three (3) communal rooms are provided, across the five buildings. The size and location of the communal rooms is not considered to be sufficient to accommodate the all of the lodgers across the 5 buildings.</p> <p>In addition, there is insufficient information provided to demonstrate that the communal rooms will receive the required 3 hour sunlight.</p>	No
(d) private open space	<p>if at least the following private open space areas are provided (other than the front setback area):</p> <ul style="list-style-type: none"> • one area of at least 20 square metres with a minimum dimension of 3 metres is provided for the use of the lodgers, • If accommodation is provided on site for a boarding house manager—one area of at least 8 square metres with a minimum dimension of 2.5 metres is provided adjacent to that accommodation. 	<p>Three (3) communal rooms are provided. Each room has a minimum area of 20m² and width of a least 3m.</p> <p>Each of the three (3) managers room is provided with 8m² that are 2.5m width.</p>	Yes

(e) parking	<p>If: in the case of development not carried out by or on behalf of a social housing provider— at least 0.5 parking spaces are provided for each boarding room, and</p> <p>in the case of any development—not more than 1 parking space is provided for each person employed in connection with the development and who is resident on site</p>	<p>122 x 0.5 =61 spaces for lodgers plus 3 on site managers =64 spaces are required.</p> <p>64 car spaces are provided.</p>	Yes
(f) accommodation size	<p>if each boarding room has a gross floor area (excluding any area used for the purposes of private kitchen or bathroom facilities) of at least:</p> <p>(i) 12 square metres in the case of a boarding room intended to be used by a single lodger, or</p> <p>(ii) 16 square metres in any other case.</p>	All rooms are more than 16m ² and therefore can accommodate 2 lodgers.	Yes (subject to conditions)
	(3) A boarding house may have private kitchen or bathroom facilities in each boarding room but is not required to have those facilities in any boarding room.	All rooms have a private kitchen and bathroom facilities.	Yes
	(4) A consent authority may consent to development to which this Division applies whether or not the development complies with the standards set out in subclause (1) or (2).	Not supported	Variations are not supported

Clause 30: Standard for Boarding Houses

Standard requirement	Proposed	Compliant/Comment
(1) A consent authority must not consent to development to which this Division applies unless it is satisfied of each of the following		
(a) if a boarding house has 5 or more boarding rooms, at least one communal living room will be provided,	Given that each building contains more than 12 rooms each, it is considered that the three (3) communal rooms are insufficient.	No

	A communal living room should be provided for each of the proposed building.	
(b) no boarding room will have a gross floor area (excluding any area used for the purposes of private kitchen or bathroom facilities) of more than 25 square metres,	The proposed maximum room sizes are 19.4m ² .	Yes
(c) no boarding room will be occupied by more than 2 adult lodgers,	This is addressed, within the OPM, including room leasing. This can be imposed as a condition of consent, If the application was recommended for approval.	Yes (subject to condition)
(d) adequate bathroom and kitchen facilities will be available within the boarding house for the use of each lodger,	All rooms are provided with a bathroom and kitchenette facilities.	Yes
(e) if the boarding house has capacity to accommodate 20 or more lodgers, a boarding room or on site dwelling will be provided for a boarding house manager,	The boarding house has 122 double rooms creating a capacity to accommodate 244 lodgers within five (5) separate buildings. Each building therefore should require accommodation for a boarding house manager.	No (3 managers for five separate buildings is not sufficient)
(g) if the boarding house is on land zoned primarily for commercial purposes, no part of the ground floor of the boarding house that fronts a street will be used for residential purposes unless another environmental planning instrument permits such a use,	The site is not zone for commercial purposes	Not Applicable
(h) at least one parking space will be provided for a bicycle, and one will be provided for a motorcycle, for every 5 boarding rooms.	66 bicycle spaces and 67 motorbikes spaces are provided	Yes
(2) Subclause (1) does not apply to development for the purposes of minor alterations or additions to an existing boarding house.	Not Applicable	Not Applicable

Clause 30: Character of the local area

The matter of assessing the character compatibility of development has been examined by the Land and Environment Court in *GPC No 5 (Wombarra) Pty Ltd v Wollongong City Council (2003) NSWLEC 268 (GPC)* and *Project Venture Developments v Pittwater Council (2005) NSWLEC 191 (Project Venture)*, where Senior Commissioner Roseth set out Planning Principles to better evaluate how a development should respond to the character

of its environment. While the Planning Principle related to a Senior's Housing development, it is relevant to a boarding house development since the planning principle deals with "*local character*" and how new development should respond sympathetically to the "character of the local area".

The following provides an assessment of the proposal against the Planning Principles established in those two cases:

In the case of GPC, Senior Commissioner Roseth developed the following Planning Principles:

The first principle is that buildings in a development do not have to be single-storey to be compatible with the streetscape even where most existing buildings are single storey. The principle does not apply to conservation areas where single storey dwellings are likely to be the major reason for conservation.

Comment:

The site is located within the R2 - Low Density Residential zone, and whilst there are a number of mixed-use developments within the vicinity of the site, particularly developments fronting Pittwater Road, they are situated within the Dee Why Town Centre. There is also a multi dwelling housing development located on the property to the south of the subject site, being (611 Pittwater Road), which was approved as a "Unique Development Site" or "3,000m² site" under a previous planning instrument, being WLEP 2000. The character of the development should be assessed against the requirements of the R2 zone, where the majority of residential buildings are single storey detached dwellings in landscape settings.

The development consists of five buildings that reach a maximum height of 10m and are 2-3 storeys. Developments within the R2 zone are generally two storeys in height with the exception of the development that is located to the south of the site.

In this regard, it is considered that the 3 storey scale of the proposed development is incompatible within R2 zone and the streetscape and so is inconsistent with the first principle.

The site is not located within, or near to, a conservation area which limits building heights to single storey.

The second principle is that where the size of a development is much greater than the other buildings in the street, it should be visually broken up so that it does not appear as one building. Sections of a building, or separate buildings should be separated by generous breaks and landscaping.

Comment:

The development provides the following building lengths and number of storeys:

Building A

Block A fronts the Access/Service Road and has an overall length of 22.4m, and is part three storey development with basement parking.

Building B, C and D

The buildings each have an overall length of 29.4m, and all are three storey developments over basement parking. The buildings have a separation of 3.0m between each building.

Building E

Block E fronts May Road and has an overall length of 23.8m and is a three storey development.

As discussed throughout this report, the proposed development is considered to be significantly greater in scale, size and massing when compared with other developments in the surrounding vicinity and with that anticipated within the R2 zone. The proposed buildings do not provide sufficient physical breaks to appear 'visually broken up' or sufficient landscaping to contribute to mitigating the visual impact of the built form.

In this regard, the development is considered to be incompatible with the scale of surrounding development and so is inconsistent with the second principle.

The third principle is that where a site has existing characteristics that assist in reducing the visual dominance of development, these characteristics should be preserved. Topography that makes development appear smaller should not be modified. It is preferable to preserve existing vegetation around a site's edges to destroying it and planting new vegetation.

Comment:

The site is relatively featureless in terms of its characteristics, however the shape and configuration of the subject site does present design challenges and is problematic in achieving a suitable and appropriate planning outcome. As a result, the proposed buildings will be visually dominant when viewed from the streetscapes and surrounding residential development.

As discussed above, the proposed development is designed as a series of residential flat buildings. The lengths, width, and height of the proposed development is not dissimilar to development within the R3 zone.

Therefore, the development is considered to be inconsistent with this principle.

The fourth principle is that a development should aim to reflect the materials and building forms of other buildings in the street. This is not to say that new materials and forms can never be introduced only that their introduction should be done with care and sensitivity.

Comment:

The schedule of finishes and materials proposed by the application are stark in appearance and are not considered to be compatible with the colours and textures of the natural landscape. Instead, the colours and materials emphasise the built form and establish a distinct contrast with the natural landscape.

Therefore, the development is considered to be inconsistent with this principle.

The above principles were further developed in "*Project Venture*" to include the following:

Capable of existing together in harmony

Comment:

In particular circumstances, some developments are able to co-exist in harmony despite there being different densities, scales and visual appearances between the buildings.

The assessment of this application has found that the development, as proposed, is significantly greater in density and scale than that anticipated within the R2 zone. The built form is also of a visual appearance that is at odds with the prevailing detached style housing in the surrounding vicinity.

Were this application to be proposed within a medium density area, the built form and density may be considered appropriate, however the zoning of the site for the purpose of providing Low Density development, results in the proposed development being incongruous with the prevailing built form and character of the area, and it is therefore considered that the development is inconsistent with this principle.

Constraints on the development potential of surrounding sites

Comment:

The relationship of a building to surrounding spaces is determined by the height, setbacks and provision of open space that are afforded by development.

The proposed development is designed in the form of five (5) separate buildings. The height and scale of the development is not considered to be in keeping with the size and scale of existing development in the R2 zone. In this regards, the horizontal built form (massing) of the development consists of a continual 3 storey development which reduces the building separation.

In addition to the above, the impact of the development on the surrounding development is assessed as follows:

Privacy

The design of the proposed boarding house will enable overlooking into adjoining properties from boarding room windows on the southern and northern elevations of Buildings A, B, C, and D and east and west elevations for Building E. Owing to the high occupancy nature of boarding house rooms, the level of privacy loss is unacceptable.

Overshadowing

The shadow diagrams demonstrate that the required 50% of access to sunlight to private open space of the adjoining properties (605-611 Pittwater Rd) on the southern boundary do not receive the required percentage for compliance. This impact is considered to be significant and unacceptable in its current form.

View Loss

No specific view analysis was submitted with this application. View loss concerns have been raised by the adjoining properties to the south (605-611 Pittwater Rd), who obtain views across their side boundary over the subject site towards the ocean and Long Reef Headland.

It is acknowledged that any future development on the site will have some impact on properties to the south that currently enjoy views over the site towards the Long Reef Headland and the ocean and beyond. However, the current design is not suitable response to the site and its impact on views are unacceptable.

Acoustic Privacy

The 125 room (including 3 manager rooms) boarding house spread over 5 buildings will have significantly higher occupation compared to that of adjacent and surrounding single dwellings, therefore potential noise disturbance between adjacent private open space areas should be managed by having an on-site manager for each individual building. It is considered that 3 on-site managers for 5 individual buildings is not sufficient. In addition to this, no details are provided as to air conditioning units that may be needed for each room and where they may be installed.

Conclusion on Character Assessment

The above character assessment has found that, in the context of the Land and Environment Court Planning Principle, the proposal is unsatisfactory with respect to how it responds to the existing character of the local area and the public interest to ensure an acceptable design outcome.

In this regard, the proposal does not put forward a good design response to the requirements of the Planning controls that apply to the site. Whilst the SEPP (ARH) permits a higher density and occupancy of use on the land, the proposal does not adequately respond to ensure a “good fit” within the low density residential surroundings and maintain a built form that is not an abrupt change in terms of its visual impact when viewed from surrounding land and how it sits within the streetscape.

The proposal will therefore create an unfavourable development precedent that is not in the public interest and so this matter warrants the refusal of the application.

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.

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.

Council's records indicate that the subject site has been used for residential purposes for a significant period of time with no prior land uses. In this regard, it is considered that the site poses no risk of contamination and therefore, no further consideration is required under Clause 7 (1) (b) and (c) of SEPP 55 and the land is considered to be suitable for the residential land use, subject to conditions to ensure appropriate safe handling of any lead paint asbestos material that may be present/identified in the demolition process.

SEPP (Building Sustainability Index: BASIX) 2004

The proposal, being a boarding house is not subject to SEPP BASIX, but is required to conform to Section J of the Building Code of Australia to demonstrate energy efficiency. A Section J BCA Report application demonstrating compliance.

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 the SEPP. No response has been received within 21 day statutory period and therefore, it is assumed that no objections are raised and no conditions are recommended.

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) states that the consent authority must not grant consent to residential development (which includes boarding house) 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 Wilkinson Murray, dated June 2018). In summary, the acoustic report recommends design measures to minimise the acoustic impact of the traffic on the proposed 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 122 boarding rooms and proposes a new crossover onto the access/service road for Building A and onto May Road for the remainder of the development. Both access points of the development are 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 raises no objection to the proposed development, subject to conditions.

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	8.5 (maximum)	Building A – 8.3m	Nil	Yes
		Building B – 8.6m	1.7%	No
		Building C – 10m	17.6%	No
		Building D – 10m	17.6%	No
		Building E - 9.4m	10.5%	No

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	Yes
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	N/A

Detailed Assessment of the Non-Compliance with the Height of Buildings

Assessment of Request to vary a Development Standard:

The following assessment of the variation to Clause 4.3 - Height of Buildings development standard, has taken into consideration the recent judgement contained within Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118.

Clause 4.6 Exceptions to Development Standards:

- 1) *The objectives of this clause are as follows:*
 - a) *to provide an appropriate degree of flexibility in applying certain development standards to particular development,*
 - b) *to achieve better outcomes for and from development by allowing flexibility in particular circumstances.*

- 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:

Clause 4.3 Height of buildings development standard is not expressly 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:*

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

- 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*
- 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, and*

(b) *the concurrence of the Secretary has been obtained.*

Clause 4.6 (4)(a)(i) (Justification) Assessment:

Clause 4.6 (4)(a)(i) requires the consent authority to be satisfied that the applicant's written request, seeking to justify the contravention of the development standard, has adequately addressed the matters required to be demonstrated by cl 4.6(3). There are two separate matters for consideration contained within cl 4.6(3) and these are addressed as follows:

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

Comment:

The Applicant's written request (attached to this report as Attachment 2) has not demonstrated that the objectives of the development standard are achieved. The non-compliance is found to be inconsistent with the objectives of the standard as detailed in the later section of this report.

- a. *That there are sufficient environmental planning grounds to justify contravening the development standard.*

Comment:

In the matter of Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118, Preston CJ provides the following guidance (para 23) to inform the consent authority's finding that the applicant's written request has adequately demonstrated that there are sufficient environmental planning grounds to justify contravening the development standard.

"As to the second matter required by cl 4.6(3) (b), the grounds relied on by the applicant in the written request under cl 4.6 must be "environmental planning grounds" by their nature: see Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90 at [26]. The adjectival phrase "environmental planning" is not defined, but would refer to grounds that relate to the subject matter, scope and purpose of the EPA Act, including the objects in s 1.3 of the EPA Act."

Section 1.3 of the EPA Act

Section 1.3 of the EPA Act reads as follows:

- (a) to promote the social and economic welfare of the community and a better environment by the proper management, development and conservation of the State's natural and other resources,*
- (b) to facilitate ecologically sustainable development by integrating relevant economic, environmental and social considerations in decision-making about environmental planning and assessment,*
- (c) to promote the orderly and economic use and development of land,*
- (d) to promote the delivery and maintenance of affordable housing,*
- (e) to protect the environment, including the conservation of threatened and other species of native animals and plants, ecological communities and their habitats,*
- (f) to promote the sustainable management of built and cultural heritage (including Aboriginal cultural heritage),*
- (g) to promote good design and amenity of the built environment,*
- (h) to promote the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants:*
- (i) to promote the sharing of the responsibility for environmental planning and assessment between the different levels of government in the State,*
- (j) to provide increased opportunity for community participation in environmental planning and assessment.*

Applicant's Written Request

The Applicant's written request argues, in part:

"it is considered that the proposed variation is justified on the basis that compliance is unnecessary and unreasonable in the circumstances of the case and there are sufficient environmental planning grounds supporting the variation, as detailed below:

- *The non-compliances are minor and do not create a height or scale that is incompatible with surrounding development;*

- *The non-compliances are direct consequences of the slope of the land. The extent of non-compliance has been reduced to the minimum possible extent by dividing the development into a series of separate buildings. Each building steps down the slope and the upslope portion has been recessed into the hillside to the maximum extent that can be achieved while maintaining good amenity;*
- *The non-compliance does not create or exacerbate amenity impacts on neighbouring properties;*
- *Achieve strict compliance would require the buildings to be excavated deeper into the ground or ceiling heights to be reduced which would reduce the amenity or rooms.*

Planners Comments:

The applicant's justification is not agreed with and it is considered that the written request does not contain sufficient environmental planning grounds to justify contravening the development standard to such a significant extent.

In this regard, 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 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 zone.

Conclusion on Environmental Planning Grounds

Therefore, the applicant's written request has not adequately demonstrated that there are sufficient environmental planning grounds to justify contravening the development standard as required by cl 4.6 (3)(b).

Accordingly, Council is not satisfied that the applicant's written request has adequately addressed the matters required to be demonstrated by cl 4.6(3).

Clause 4.6 (4)(a)(ii) (Public Interest) Assessment:

cl 4.6 (4)(a)(ii) requires the consent authority to be satisfied that:

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

Comment:

In considering whether or not the proposed development will be in the public interest, consideration must be given to the underlying objectives of the Height of Buildings development standard and the objectives of the R2 – Low Density Residential zone.

Assessments against these objectives are provided below.

Objectives of the Development Standard

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

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

Comment:

As discussed in the Clause 30 of SEPP (ARH) 2009 section of this report, the proposed development is designed in the form of 5 separate buildings. The height and scale of the development are not considered to be in-keeping with the size and scale of existing development in the area, particularly the development within the R2 zones. The visual pattern of the development is inconsistent with the visual pattern of the area, especially when viewed from the public domains of Pittwater Road and May Road, and from a number of private properties, whereby the horizontal and vertical scale of the proposal is more attributed to a residential flat building development, and thus conflicts with the scale of detached dwelling development.

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

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

Comment:

The impact of the development on amenity of the adjoining residential properties is addressed in the WDCP section of this report. In summary, the proposed development will cause adverse impacts on the adjoining properties, particularly with regards to visual and acoustic privacy and solar access impact.

Accordingly, the impact of the development is found to be unsatisfactory.

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

Comment:

The development is located in the middle of a residential area. It will have a negligible impact on the area's coastal and bush environments.

Accordingly, the proposal is consistent with 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 visual impact of the development as viewed from the adjoining streets has not been minimised and the height of the proposed development is not compatible and is excessive in terms of its scale as compared to other housing developments within the R2 zoning.

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

What are the Underlying Objectives of the Zone?

In assessing the development's non-compliance, consideration must be given to its consistency with the underlying objectives of the zone. The site is zoned R2 Low Density Residential and the objectives of the R2 zoning aims are:

- *To provide for the housing needs of the community within a low density residential environment.*
- *To enable other land uses that provides facilities or services to meet the day to day needs of residents.*
- *To ensure that low density residential environments are characterised by landscaped settings that are in harmony with the natural environment of Warringah.*

Comment:

The proposed development is found to be inconsistent with the objectives of the R2 zone for the following reasons:

- The built form character within the R2 zone is low density residential which is dominated by single storey detached dwellings in landscape settings. The proposed 3 storey boarding house development comprising of five, (5) large buildings with limited opportunities between the buildings and in setback areas for effective landscaping to be provided.
- The proposed development includes unacceptable impacts on the amenity of adjoining development.

Conclusion:

The non-compliance with the building height standard is not 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 zone objectives.

The public interest, in this case, is to maintain the standard contained in the environment planning instrument which has been duly prepared with public consultation and establishes the community expectation and is designed to protect the public interest.

Therefore, it is concluded that the proposal is contrary to the public interest.

Clause 4.6 (4) (b) (Concurrence of the Secretary) Assessment:

cl. 4.6(4) (b) requires the concurrence of the Secretary to be obtained in order for development consent to be granted.

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.

Built Form Controls

Principle Numerical Controls	Requirement	Proposed	Complies
B1 Wall Height	7.2	Up to 8.4m	No
B3 Side Boundary Envelopes	4/45° Southern Elevation	<u>Building A</u> – 0.79m in height x 7m in length (south-eastern corner)	No
		<u>Building B</u> - 0.76m in height x 9.46m in length	No
		<u>Building C</u> – 1.83m in height x 12.51m in height (front portion) and 1.04m in height x 3m in length (rear portion)	No
		<u>Building D</u> – 1.8m in height x 14.49m in length.	No
	Northern Elevation	<u>Building A</u> – 1.605m – 0.385m in height x 11.25m in length (entire rear portion)	No
		<u>Building B</u> - 1.53m in height x 9.91m in length (front portion) and 1.15m in height x 6.22m in length (rear portion)	No
		<u>Building C</u> – 1.46m in height down to nil (over full 15m front portion) and 2.4m – 1.33m in height (over full 10.3m rear portion)	No
		<u>Building D</u> – 2.96m in height down to nil x 16.3m in length	No
B3 Side Boundary Envelopes	4/45° Eastern Elevation	<u>Building E</u> – 4.3m in height x 9.42m in length	No
	Western Elevation	<u>Building E</u> – Within	Yes
B5 Side Boundary Setbacks	0.9m	2.8-3.2m	Yes
B7 Front Boundary Setbacks	6.5m	6.5m – May Road	Yes
		7.7m to Access/Service Road	
B9 Rear Boundary Setbacks	6m	6m to western boundary (Building A)	Yes
		6m to western boundary (Building D)	
D1 Landscaped Open Space	40% (1,250m ²)	35.7% (1,113m ²)	No (Deficiency 137m ²)

Compliance Assessment Summary

Clause	Compliance with Requirements	Consistency Aims/Objectives
Part A Introduction		
A.5 Objectives	No	No
Par B Built Form Controls		
B1 Wall Height	No	No
B3 Side Boundary Envelopes	No	No
B5 Side Boundary Setbacks	Yes	No
B7 Front Boundary Setbacks	Yes	No
B9 Rear Boundary Setbacks	Yes	No
D1 Landscaped Open Space	Yes	Yes
Part C Siting Factors		
C2 Traffic, Access and Safety	No	No (refer to Traffic comments in the referral section of this report)
C3 Parking Facilities	N/A	N/A
C3(A) Bicycle Parking and End of Trip Facilities	N/A	N/A
C4 Stormwater	Yes	Yes
C5 Erosion and Sedimentation	Yes	Yes
C6 Building over or adjacent to Constructed Council Drainage Easements	Yes	Yes
C7 Excavation and Landfill	Yes	Yes
C8 Demolition and Construction	Yes	Yes
C9 Waste Management	Yes	Yes
Residential accommodation - 3 or more dwellings	Yes	Yes
Part D Design		
D2 Private Open Space	Yes	Yes
D3 Noise	No	No
D6 Access to Sunlight	No	No
D7 Views	No	No
D8 Privacy	No	No
D9 Building Bulk	No	No
D10 Building Colours and Materials	Yes	Yes
D11 Roofs	Yes	Yes
D12 Glare and Reflection	Yes	Yes
D14 Site Facilities	Yes	Yes
D18 Accessibility	Yes	Yes
D20 Safety and Security	Yes	Yes
D21 Provision and Location of Utility Services	Yes	Yes
D22 Conservation of Energy and Water	Yes	Yes
Part E The Natural Environment		
E1 Private Property Tree Management	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
E10 Landslip Risk	Yes	Yes

Clause B1 - Wall Height

The development is non-compliant with the 7.2m Wall Height control, resulting in wall heights of up to 8.4m.

Merit consideration:

With regard to the consideration for a variation, the development is considered against the underlying Objectives of the Control as follows:

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

Comment:

The combination of the length of the buildings proposed on this site results in an unarticulated building mass, which will have a significant visual impact upon the streetscape.

To ensure development is generally beneath the existing tree canopy level

Comment:

The development is generally beneath the tree canopy level, In this regard, the non-compliance is consistent with this objective.

To provide a reasonable sharing of views to and from public and private properties.

Comment:

As discussed later in this report, the current design is not suitable response to the site and its impact on views are unacceptable.

To minimise the impact of development on adjoining or nearby properties.

Comment:

The impact of the development on adjoining development is found to be unsatisfactory as discussed in elsewhere in this report.

To ensure that development responds to site topography and to discourage excavation of the natural landform.

Comment:

The development proposes up to 8m of excavation for the basement car parking area. This amount of excavation is considered to be excessive for the subject site and inconsistent with this objective.

To provide sufficient scope for innovative roof pitch and variation in roof design.

Comment:

The roof form is flat and provides no innovative roof scape or variation in roof design.

Having regard to the above assessment, it is concluded that the proposed development is inconsistent with the relevant objectives of WDCP and the objectives specified in section 5(a) of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is not supported, in this particular circumstance

Clause B3 - Side Boundary Envelopes

The development is non-compliant with the building envelope control in relation to the following areas of the development:

B3 Side Boundary Envelopes	4/45° Southern Elevation	Building A – 0.79m in height x 7m in length (south-eastern corner)	No
		Building B - 0.76m in height x 9.46m in length	No
		Building C – 1.83m in height x 12.51m in height (front portion) and 1.04m in height x 3m in length (rear portion)	No
		Building D – 1.8m in height x 14.49m in length.	No
	Northern Elevation	Building A – 1.605m – 0.385m in height x 11.25m in length (entire rear portion)	No
		Building B - 1.53m in height x 9.91m in length (front portion) and 1.15m in height x 6.22m in length (rear portion)	No
		Building C – 1.46m in height down to nil (over full 15m front portion) and 2.4m – 1.33m in height (over full 10.3m rear portion)	No
		Building D – 2.96m in height down to nil x 16.3m in length	No
B3 Side Boundary Envelopes	4/45° Eastern Elevation	Building E – 4.3m in height x 9.42m in length	No

Merit consideration

With regard to the consideration for a variation, the development is considered against the underlying Objectives of the Control as follows:

To ensure that development does not become visually dominant by virtue of its height and bulk.

Comment:

The combination of the vertical and horizontal massing of the side elevations in conjunction with the proposed building height results in a visually dominant building bulk that has no sympathy or relationship to the pattern, contrast or character of surrounding residential development.

The visual dominance of the development is symptomatic of the non-compliant building envelopes and are indicative of the development which will result in an unreasonable sense of enclosure to established neighbouring properties.

To ensure adequate light, solar access and privacy by providing spatial separation between buildings.

Comment:

The impact of the development on the amenity of adjoining properties is addressed in other sections of this report and is found to be unsatisfactory. In summary, the development proposes considerable massing along the side elevations. Because of the high intensity of the development and the associated non-compliant building envelopes, this massing is excessive and will result in a reduction to the sense of openness currently enjoyed by neighbouring properties.

To ensure that development responds to the topography of the site.

Comment:

The development has been designed to step down the site and so responds to the topography of the site.

Having regard to the above assessment, it is concluded that the proposed development is inconsistent with the relevant objectives of WDCP and the objectives specified in section 5(a) of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is not supported, in this particular circumstance

Clause D1 Landscaped Open Space

Description of non-compliance

The proposal has a landscaped open space area of 1113m² (35.7%), which represents a deficiency of 10.9% (137m²).

Merit consideration

With regard to the consideration for a variation, the development is considered against the underlying Objectives of the Control as follows:

- *To enable planting to maintain and enhance the streetscape.*

Comment:

The proposal has not provided sufficient areas of soft landscaping within the front setback area, given the front setback areas are occupied by driveways and pedestrian paths. The proposal is unsatisfactory in terms of the streetscape presentation and does not provide an adequate buffer to the adjoining properties and does not enhance the appearance of the development from the street.

- *To conserve and enhance indigenous vegetation, topographical features and habitat for wildlife.*

Comment:

The proposal does not provide adequate landscaped open space due to the excessive building footprint and hard paved/covered areas. The shortfall in landscaped open space does not enable sufficient area/buffers for substantial indigenous vegetation to complement the landscaped areas on surrounding land.

- *To provide for landscaped open space with dimensions that are sufficient to enable the establishment of low lying shrubs, medium high shrubs and canopy trees of a size and density to mitigate the height, bulk and scale of the building.*

Comment:

The proposal does not provide an adequate width of landscaping within the setback areas, it is compromised by the need for pedestrian pathways, driveways, and private open space areas for the development. Overall, the minimalist landscape screen planting will not provide effective mitigation of the bulk and scale of the development.

- *To enhance privacy between buildings.*

Comment:

The proposed side setbacks are compromised by pathways and private open space areas, hence the planting shown on the landscape plan cannot be established to provide for effective privacy protection. Overall, the provision of screen landscaping will not satisfactorily address privacy loss concerns.

- *To accommodate appropriate outdoor recreational opportunities that meet the needs of the occupants.*

Comment:

The development has limited outdoor open space areas to meet the needs of the occupants, which is unsatisfactory.

- *To provide space for service functions, including clothes drying.*

Comment:

The proposal includes an internal laundry and no facilities are shown to allow open air clothes drying outside the building.

- *To facilitate water management, including on-site detention and infiltration of stormwater.*

Comment:

The development is satisfactory with regards to the water management and infiltration of stormwater.

Having regard to the above assessment, it is concluded that the proposed development is inconsistent with the relevant objectives of WDCP and the objectives specified in section

5(a) of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is not supported, in this particular circumstance.

Clause D3 - Noise

An Acoustic Report was lodged with the application which considers both internal and external noise sources including surrounding traffic noise, noise emissions associated with traffic generated by activities on site, noise associated with mechanical plant and noise generated by the proposed development. The acoustic assessment found that noise generated by the development will comply with all relevant standards.

However, it is noted that the private terrace areas for each room are orientated towards the side boundaries, which has the potential to negatively impact the amenity of neighbouring properties in terms of acoustic privacy, as it is not shielded by the building itself, or significantly separated from neighbouring buildings. It is considered that the private open space areas for each of the boarding rooms are not well located to minimise noise intrusion to adjacent land.

Therefore, this matter forms a reason for refusal.

Clause D6 - Access to Sunlight

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.

The shadow diagrams provided with the application indicate non-compliance in terms of the overshadowing by the development of adjoining properties located to the south of Block B, C and D. The shadow diagrams show that the dwellings at 605-611 Pittwater Road will not receive the required 3 hours of sunlight and therefore the development does not comply.

Therefore, this matter forms a reason for refusal.

Clause D7 – Views

Clause D7 requires that development is to allow for the reasonable sharing of views. In determining the extent of potential view loss to adjoining and nearby properties, the four (4) planning principles outlined within the Land and Environment Court case of *Tenacity Consulting Pty Ltd vs Warringah Council 2004* (NSWLEC 140) are applied to the proposal, in particular to potential impacts upon the residential properties at 605-611 Pittwater Road, which have raised view loss as a matter of concern in submissions.

The residents of 605-611 Pittwater Rd, obtain views across a side boundary over the subject site towards the ocean and Long Reef Headland.

It is acknowledged that any future development on this site will have some impact on views of the properties. However, the current design is not a suitable response to the site and its impact on views is unacceptable.

Therefore, this matter forms a reason for refusal.

Clause D8 – Privacy

Clause D8 under the WDCP 2011 requires the windows of a dwelling to be located so they do not provide direct or close views (i.e. from less than 9m away) into the windows of other dwellings. Additionally, the clause also recommends that the windows of one dwelling are to be offset from the windows of adjoining dwellings to minimise the potential for overlooking.

The majority of windows and private open spaces of the development are oriented towards the side boundaries, which will result in overlooking of the private open spaces of the adjoining dwellings in May Road and direct viewing of the dwellings and private open space of the adjoining residential development to the south at 605-611 Pittwater Road. The physical separation between development and the adjoining properties is not sufficient to prevent direct visual privacy.

Therefore, this matter forms a reason for refusal.

Clause D9 - Building Bulk

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

The proposed development is unsatisfactory in relation to the requirement of the control for the following reasons:

- The design of the building includes extensive three storey wall planes along the side elevations. This is symptomatic of the excessive number of boarding rooms within the development compared to the site area and width, which translates into excessive building bulk that is incompatible and inconsistent with the surrounding predominant pattern and scale of housing in the R2 zone; and
- The development has insufficient building articulation and modulation along the side walls and a distinct absence of any single storey elements or significant stepped-in side walls as height increases. The resultant built form does not appropriately respond to the character of the surrounding residential area.

Therefore, this matter forms a reason for refusal.

Other Matters

Site Isolation (613A Pittwater Road)

A key consideration during the assessment of the application was the impact of the proposal upon the orderly development of this section of residential area. In this regard, the adjoining site (known as 613A Pittwater Rd) will be isolated, as it will be sandwiched between the subject site and the adjoining multi dwelling development to the south.

Figure 3 below is provided to show the 613A Pittwater Road (outline in red) as it relates to the subject site.



Figure 3 – Site Plans showing the isolated site at 613A Pittwater Road

The applicant has not addressed or provided any details in relation to attempting to include the adjoining site in the development.

The Land and Environment Court (LEC) has established a Planning Principle 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 not addressed or provided any evidence in terms of negotiations including an independent valuation and a reasonable offer between the property owners any information to amalgamation of the adjoining site. In this regard, it is clear that amalgamation of the 613A Pittwater Road with the subject site will achieve a better planning outcome and be consistent with the objects of the Environmental Planning and Assessment Act, 1979 (EP&A Act) as it relates to orderly development of land.

It is accepted that agreement may not be able to be reached for the purchase of the adjoining property, however, it is reasonable for council 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.

Accordingly, it is considered that the proposal has not satisfied the accepted process set down in the Planning Principle and this matter is included as reason for refusal.

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

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

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

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

The application was referred to the NSW Police who 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 \$ 11,517,188		
Contributions	Levy Rate	Payable
Total Section 94A Levy	0.95%	\$109,413
Section 94A Planning and Administration	0.05%	\$5,759
Total	1%	\$115,172

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 assessment of the application has been carried out having regard to the provisions of Section 4.15 of the EP&A Act, 1979, the provisions of relevant EPIs, including SEPP 55, SEPP (ARH) 2009, SEPP Infrastructure, WLEP 2011, the relevant codes and policies of Council, including the relevant provisions of the WDCP 2011.

The application has been lodged pursuant to the State Policy for affordable housing (SEPP (ARH) 2009). The assessment against the requirements of the SEPP has concluded that the proposed character and built form does not provide an appropriate contextual fit to the surrounding low density residential character. The proposal is significantly at odds with the established local pattern, does not provide for a suitable and appropriate response to the existing size, scale, setbacks, street level treatment and streetscape of the surrounding area, and does not allow for adequate separation between the proposed buildings internally and with adjacent dwellings.

The selected shape and configuration of the subject site is a challenge in itself and problematic as evidenced by the level of non-compliance, poor relationships internally and externally and poor amenity and streetscape outcomes. It requires a skilful design in order to overcome such self-imposed constraints. From the list of constraints generated by the shape and configuration of the site, the capacity to support the proposed built form without generating undesirable amenity impacts is of very high relevance. The proposal has failed to properly recognise and respond to the challenges presented by the site, resulting in an out-of-context, unsuitable, incompatible and over-development, which severely impacts on the amenity of the adjoining neighbours.

In order to achieve a proposal that “*responds and contributes to its context*”, the proposal needs to be entirely re-examined and redesigned. A more skilful design would have regard to the particular character, the zoning and the constraints of the subject site, investigate the option of amalgamating the adjoining site to the south (613A Pittwater Road), for the amenity of neighbours and would positively contribute to the character and amenity of the urban environment.

Accordingly, the current proposal is recommended for refusal.

The assessment of the proposed development against the provisions of WLEP 2011 has found that the proposal does not comply with the ‘Height of Buildings’ Development Standard. In this regard, it has been found that the development is inconsistent with the objectives of the Development Standard and the objectives of the R2 Low Density Residential zone. Furthermore, the applicant has not provided sufficient justification in terms of Environmental Planning Grounds for the substantial departure from the Development Standard.

The assessment of the proposed development against the provisions of the WDCP 2011 has found that the proposal is not consistent with number of sections which translate to adverse amenity, character and visual/streetscape impacts, and a number of non-compliances have been identified with respect to the built form controls 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 (613A Pittwater Road) and the applicant has not demonstrated that the correct process has been addressed to satisfy the LEC Planning Principle which is used to determine the planning merits of the proposal for the purposes of a stand-alone development.

The development attracted 68 individual submissions. The majority of the submissions raised concerns with regards to the density and scale, pedestrian safety and traffic congestion. Other issues raised include the impact on the amenity of adjoining properties in terms of overshadowing, visual/acoustic privacy and visual impact. The issues raised in the submissions are generally concurred with and have been addressed in the “Public Notification Section” of this report.

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. DA2018/1166 for Demolition Works and Construction of a Boarding House development made pursuant to State Environmental Planning Policy (Affordable Rental Housing) 2009 at Lot A DP 400997, 613 Pittwater Road, Lot 8 DP 22384, 615 Pittwater Road, and Lot 2 DP 22384, 11 May Road, Dee Why for the following reasons:

1. State Environmental Planning Policy (Affordable Rental Housing) 2009

The proposed development should not be approved in its current form as it is inconsistent with the requirements for a Boarding House in Division 3 of the SEPP.

Particulars:

1. The development form is not characteristic or compatible with the surrounding built form, and is therefore inconsistent with Clause 30A of the SEPP (ARH) 2009.
2. The development does not provide sufficient landscape area within the boundaries of the site commensurate with the bulk and scale of the proposed built form.
3. The development is not consistent with the requirement of Clause 27(2) of SEPP (ARH) 2009, in that the development does not provide a safe walking distance to the bus stops, therefore the site is not considered to be within an Accessible Area.
4. The development is not consistent with the requirement of Clause 29 of SEPP (ARH) 2009 in relation to the Building Height, Landscape Area, and Solar Access provisions.

2. 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 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.
- b) 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.

3. Non-compliance with Warringah DCP 2011

Particulars:

- a) The proposed development is inconsistent with the Objectives of the *Warringah Development Control Plan 2011*. In particular, streetscape, building bulk, landscaping and residential amenity.

- b) The proposed development does not comply with the provisions of Part B – Built form Controls as it relates to:
 - B1 Wall Height
 - B3 Side Boundary Envelopes
 - D1 Landscape Open Space
- c) The proposed development does not comply with Clause D6 – Access to Sunlight in relation to the impact on the adjoining properties to the south of the site.
- d) The proposed development is inconsistent with Clause C2 - Traffic, Access and Safety, D3 –Noise, D7 – Views, and D9 – Building Bulk.

4. Site isolation of 613A Pittwater Road, Dee Why

Particulars:

- a) The proposed development would result in the future redevelopment of 613A Pittwater Road being constrained to the extent that it would hinder any redevelopment of the site in accordance with the planning controls for the range of permissible uses.
- 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 613A Pittwater Road, Dee Why has been undertaken.

5. Public Interest

The proposal is not in the public interest

Particulars

- a) The development is inconsistent with the scale and intensity of development that the community can reasonably expect to be provided on this site and within the respective zoning.
- b) Having regard to the public submissions and the adverse impacts of the proposed development, the approval of the application is not considered to be in the interest of the public.