

Statement of Environmental Effects

Section 4.55(2) modification to development consent DA-125/2012,
seeking an additional level of basement parking.

20 Illawong Avenue, Tamarama



PREPARED FOR

The owners of Strata Plan 1731

MARCH 2019

Document Control

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Contents

1.0	Introduction	5
1.1	Background	5
2.0	Site Analysis	7
2.1	Site Description	7
2.2	Surrounding Development.....	10
3.0	Proposed Development	12
4.0	Regulatory Framework	17
4.1	Modification of consents	17
4.2	Environmental Planning Instruments	18
4.2.1	State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004	18
4.2.2	State Environmental Planning Policy No 65 – Design Quality of Residential Apartment Development (SEPP 65)	18
4.2.3	State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017.....	20
4.2.4	Waverley Local Environmental Plan	20
4.2.5	Waverley Development Control Plan 2012.....	28
4.3	Planning Agreements	36
4.4	The Regulations.....	36
4.5	Likely Impacts of the Development	37
4.6	The Suitability of the Site	37
4.7	Any Submissions	37
4.8	The Public Interest	37
5.0	Conclusion	38

Figures

Figure 1 – Location Map – Subject Site Identified by Red Pin	7
Figure 2 – View of eastern façade of Glenview Court building.....	8
Figure 3 – Aerial Photograph	9
Figure 4 – View of south-western façade from the existing open grade carpark	9
Figure 5 – View of neighbouring flat buildings– Illawong Avenue - Looking northwest	10
Figure 6 – Extract of Approved Ground Floor Plan, DA-125/2012/A	13
Figure 7 – Extract of Proposed Ground Floor Plan	14
Figure 8 – Extract of Approved Upper Basement Floor Plan, DA-125/2012/A	14
Figure 9 – Extract of Proposed Upper Basement Carpark (B1) Plan	15
Figure 10 – Extract of Approved Lower Basement (B2) Plan, DA-125/2012/A	15
Figure 11 – Extract of Proposed Lower Basement Parking (B2) Plan	16
Figure 12 – Extract of Proposed B3 Basement Floor Plan	16
Figure 13 – WLEP 2012 Zoning Map extract	21
Figure 14 – Height of Buildings Map extract.....	22
Figure 15 – Floor Space Ratio Map extract	23
Figure 16 – Heritage Map extract, showing nearby heritage items	27
Figure 17 – Flood Planning Map extract, with subject site outlined in red	28
Figure 18 – Parking Zone 1 and Parking Zone 2	30

Tables

Table 1 – Summary of parking changes throughout approval history.....	13
Table 2 – ADG Storage requirements	19
Table 3 – Car parking approval history at the site in relation to various DCP amendments.....	29
Table 4 – WDCP 2012 parking rates and their origins within the RMS Guide	31
Table 5 – Parking calculation based on the medium density parking rate for Zone 2.	32

1.0 Introduction

This Statement of Environmental Effects (SEE) is submitted to Waverley Council (Council) as part of a proposed Section 4.55 Modification Application seeking to modify development consent DA-125/2012/A, approved for alterations and additions to an existing multi-storey residential flat building, including two new penthouses, underground car parking, plus land subdivision to create 3 lots, at 20 Illawong Avenue, Tamarama.

The proposal seeks to increase the number of car parking spaces in order to provide much needed parking for existing and new (i.e. penthouse) residents of the development, as well as associated ancillary changes. The proposed modifications are sought pursuant to Section 4.55(2) of the *Environmental Planning and Assessment Act 1979* (the Act) and relevant state and local planning instruments.

This SEE has been prepared by Creative Planning Solutions Pty Limited (CPS) on behalf of the client, the owners of Strata Plan 1731. It is based on the architectural plans prepared by Group GSA as well as the following additional reports:

- Traffic Impact Assessment, prepared by The Transport Planning Partnership
- Geotechnical Report, prepared by Douglas Partners
- Letter from Structural Engineer, provided by James Taylor and Associates

This SEE describes the site, its environs and the proposed development, and provides an assessment of the proposal in terms of the matters for consideration under Section 4.55(2) of the Act. Within this report, references to “the site” mean the land to which this Section 4.55(2) application relates.

1.1 Background

The following recent approvals have been issued at the site:

DA 125/2012

Development consent (125/2012/01) was issued by the previous Sydney East Joint Regional Planning Panel in July 2012 for alterations and additions to an existing multi-storey residential flat building including two new penthouses, underground carparking, and land subdivision to create 3 lots (DA 125/2012). Specifically, this included:

- Alterations and additions to the existing residential flat building:
 - New balconies to the eastern façade;
 - New common walkway and entry porches to the western façade;
 - Additional penthouse level containing two units;
 - Demolition of existing stair and lift on western elevation and demolition of southern stair;
 - Two new lifts and fire stairs adjacent to the new walkway on the western façade; and
 - Transformative improvements to the building aesthetic.

- Torrens title subdivision to create three lots, including a rectangular lot to Tamarama Street;
- Demolition of the existing detached laundry building;
- Basement car park over 2 levels including laundry facilities;
- New at grade parking cars (including 2 spaces for loading area); and,
- Tree removal, tree transplanting and landscaping.

DA 125/2012/A

The consent has been modified once previously on 30 June 2017, pursuant to the former S96(1A) of the Act. The effect of the proposed modification is as follows:

- Basement footprint reconfigured;
- Bin room relocation;
- Balustrade changes;
- Lift and stair cores relocated to suit revised basement layouts
- New openings in blade walls on northwest and southwest corners of the building
- Planter box modification;
- Lift over run heights increased by 740mm (due to engineering advice), and to rectify errors on plans;
- Car parking reconfigured;
- Bicycle parking configuration;
- Modifications to following conditions:
 - Condition 1 (approved plans);
 - Condition 7 (security deposit);
 - Condition 20 (construction vehicle and pedestrian plan of management);
 - Condition 21 (modification to basement car park);
 - Condition 22 (covenant for parking);
 - Condition 32 (landscape plan)
 - New Condition 69 (marking of parking spaces); and
- Amended Landscape Design to respond to change in basement footprint.

2.0 Site Analysis

2.1 Site Description

The subject site is located in the suburb of Tamarama, within the Waverley Local Government Area (LGA). Refer to Figure 1 for a locality map of the subject site.

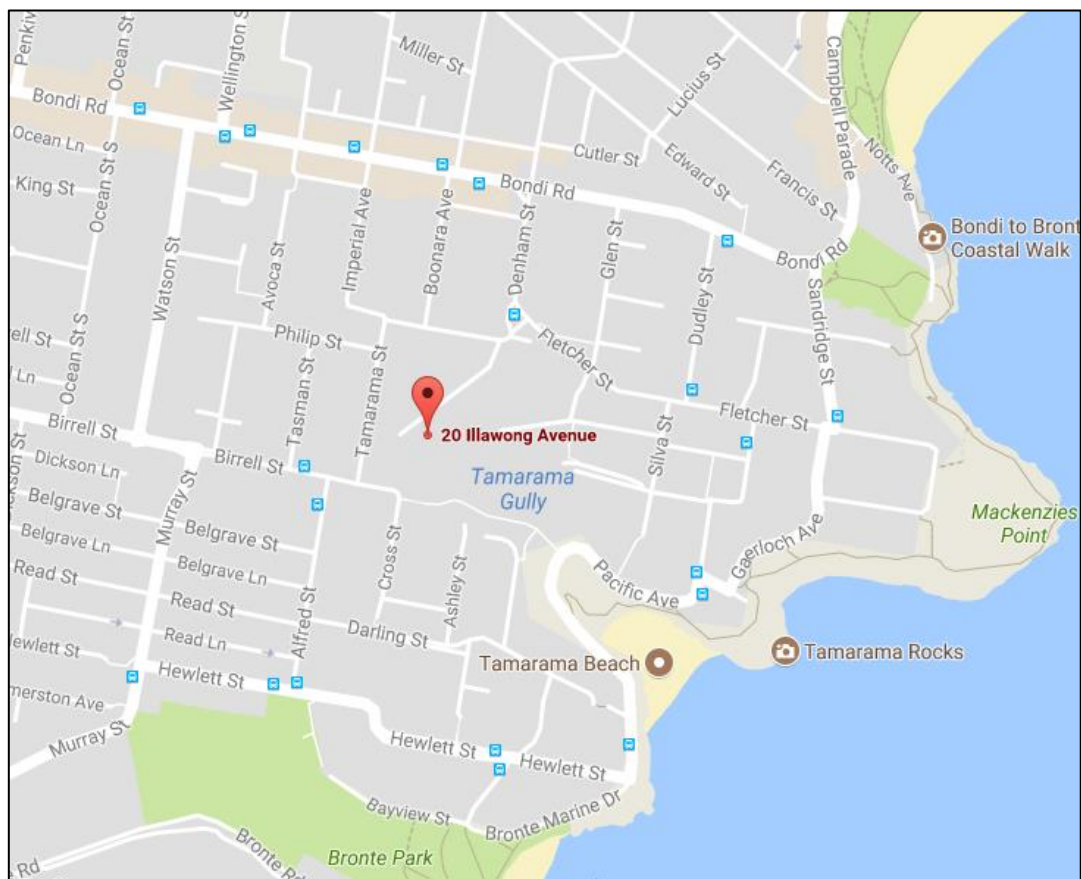


Figure 1 – Location Map – 20 Illawong Avenue, Tamarama – Subject Site Identified by Red Pin

Source: Google Maps

The legal description of the subject land is Strata Plan 1731, and the land is known as 20 Illawong Avenue, Tamarama NSW 2026.

The subject site consists of an irregular shaped parcel of land with an area of 4,353m² (survey) and the property shares a boundary with 17 properties. The site is currently occupied by an eight (8) storey residential flat building, known as “Glenview Court”, and includes eighty (80) units, with a southwest to northeast orientation. Each apartment has dual aspects towards Tamarama Beach (southeast) and Bondi Junction (northwest), with uninterrupted views to Tamarama Beach and surrounds.



Figure 2 – View of eastern façade of Glenview Court building, shown in the background and viewed from the south

Source: CPS

The building is located adjacent to the eastern boundary of the site bordering Tamarama Park (also referred to as Tamarama Gully). The site has a single vehicle entry point from Illawong Avenue and has an open bitumen car park accommodating 58 car parking spaces. A meeting room and laundry building with garbage facilities is located in the northern triangular-shaped portion of the site. The subject site has a street frontage of approximately 20m to Illawong Avenue (east) and a street frontage of approximately 12m to Tamarama Street (west) (survey).



Figure 3 – Aerial Photograph – 20 Illawong Avenue, Tamarama

Source: maps.six.nsw.gov.au



Figure 4 – View of south-western façade from the existing open grade carpark

Source: CPS

2.2 Surrounding Development

The site is located within the R3 Medium Density Residential zone, and directly adjoins land within the R3 zone, to the east and north-east, as well as land within the RE1 Public Recreation zone, generally to the south-east, and a large portion of land within the R2 Low Density Residential zone, and the character of surrounding development reflects this zoning pattern.

Surrounding development to the west, south-west and north-west, located within the R2 zone and including Tamarama Street, is characterised primarily by single and double storey dwelling houses and semi-detached dwellings. The majority of these dwellings contain driveways and parking spaces, with landscaped ordinarily concentrated within rear yards.

Development to the east, and north-east towards Tamarama Beach and Bondi Beach, located within the R3 zone and including Illawong Avenue, is comprised primarily of 3-4 storey brick walk-up residential flat buildings with tiled pitched roofs, and limited parking located at the ground floor, either within garaged spaces, or within open hard stand areas. Very limited landscaping is provided to these developments, and some older flat buildings contain no parking. Many single dwellings are also located within the R3 zone, particularly along Dudley Street.



Figure 5 – View of neighbouring flat buildings– Illawong Avenue - Looking northwest

Source: CPS

Further to the north of the subject site, along Bondi Road, is a B4 Mixed Use zone comprising of cafes, restaurants, grocers, a medical centre, church and other business orientated developments served by

local bus routes traveling to and from the city centre. Apartment developments are common along Bondi Road, both within the B4 zone, and further to the east within the R3 zone.

Adjoining to the south and east respectively are 10A Illawong Avenue and 12 Illawong Avenue, which contain single dwellings located on unusually shaped allotments, and sitting significantly lower than the subject site, within the higher portions of Tamarama Gully.

Located to the south-east of the subject site is Tamarama Park, which contains the majority of Tamarama Gully and is public open space which eventually connects to Pacific Avenue, adjacent to Tamarama Beach. Tamarama Park is located within the RE1 zone, and is part of a continuous network of open space along the coastline.

The site is location approximately 300m to the north-west of Tamarama Beach, 1.85km to the south-east of Bondi Junction Railway Station and approximately 6km to the east of the Sydney CBD.

3.0 Proposed Development

The approved number of parking spaces does not provide sufficient flexibility to cater for the demands of existing and future residents (Refer to discussion within Section 4.2.5. of this SEE). The proposal seeks to increase the total number of car parking spaces by seeking an additional (third) basement level. The proposal also seeks a variety of changes to the existing car park layout and all changes are marked on the submitted architectural plans. Specifically, the following modifications are proposed:

Ground Floor

- Adjustment to the entry driveway geometry as recommended as part of the preparation of the Traffic Impact Assessment.
- Inclusion of steps and a ramp between the eastern boundary and eastern building access point, to account for an existing variation in site levels.
- Provision of a security door to basement.
- No changes to parking.

Upper Basement Carpark (B1)

- Amendments to the existing motor cycle parking layout.
- Modifications to the plant room configuration.
- Widening of the aisle as recommended as part of the preparation of the Traffic Impact Assessment.
- Provision of additional motorcycle and visitor parking.
- Reconfiguration of service rooms.

Lower Basement Carpark (B2)

- Extension to the existing lower basement carpark (B2) ramp.
- Amendments to the existing motor cycle parking layout.
- Widening of the aisle as recommended as part of the preparation of the Traffic Impact Assessment.

B3 Basement Parking

- Additional basement level added (B3) containing 32 car spaces, being
 - 31 car spaces including storage and provision for bicycles at the back of each car space.
 - 2 car spaces with allocated storage and provision for bicycles in separate designated areas.
- Provision of 5 additional motorcycle spaces.

The modification would seek to increase the overall number of parking spaces. The increased number of parking spaces will not impact on the bulk and scale of the development, being completely subterranean, and will create beneficial impacts on landscaping. For a more detailed summary of the proposed modification in comparison to past approved applications, refer to Table 1 below.

Stage of Development	Resident Car	Visitor Car	Disabled Car	Motorcycle	Bicycle Parking
Existing Development	58 spaces	N/A	N/A	N/A	N/A
Approved DA (DA-125/2012)	79 spaces	10 spaces	6 spaces	12 spaces	Bicycle storage shown within basement and one per unit (i.e. 82) required by condition
Approved modification (DA-125/2012/A)	88 spaces	10 spaces	Nil	12 spaces	90 spaces
Proposed modification	108 spaces	16 spaces	Nil	15 spaces	112 spaces

Table 1 – Summary of parking changes throughout approval history

Refer to **Figures 6 – 12** for a comparison between the approved car parking plans as per DA-125/2012/A, and the proposed car parking plans.

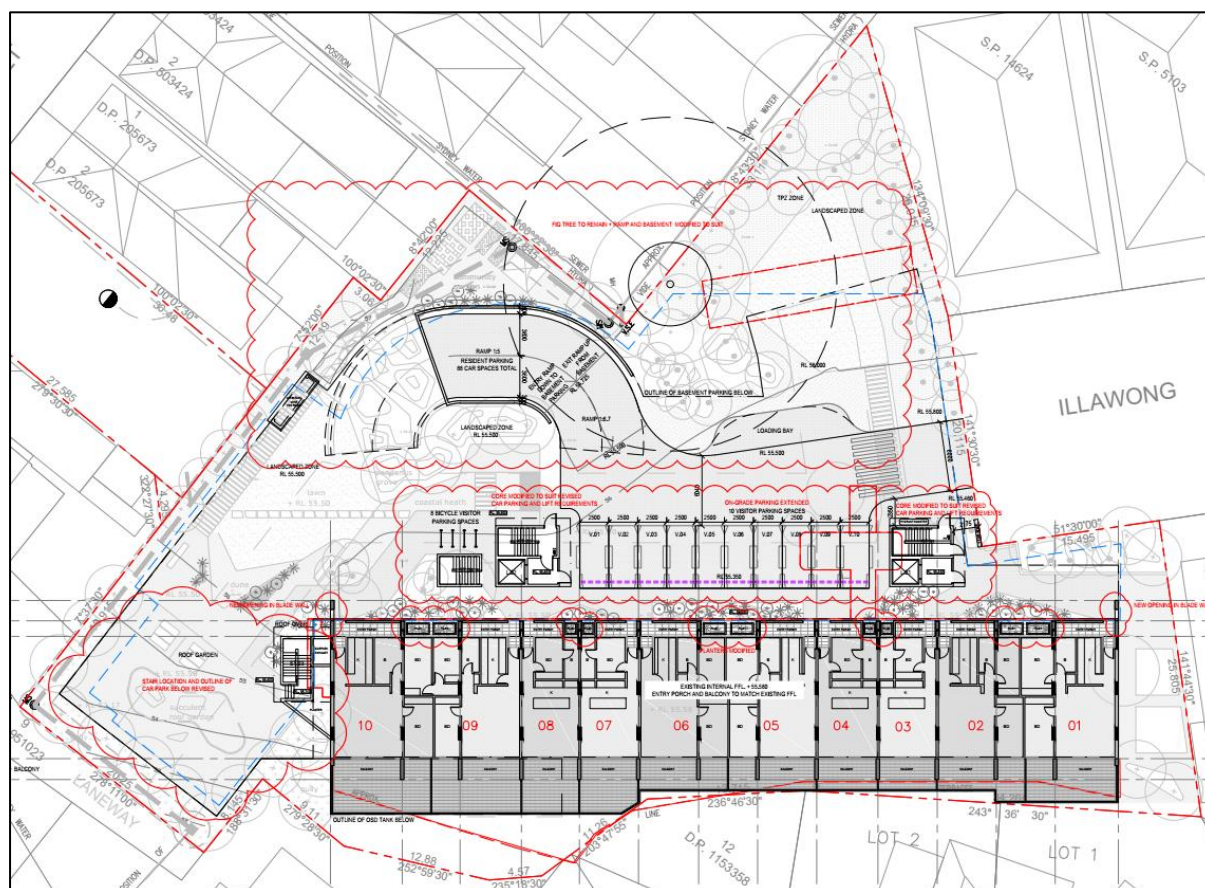


Figure 6 – Extract of Approved Ground Floor Plan, DA-125/2012/A – 20 Illawong Avenue, Tamarama

Source: Group GSA

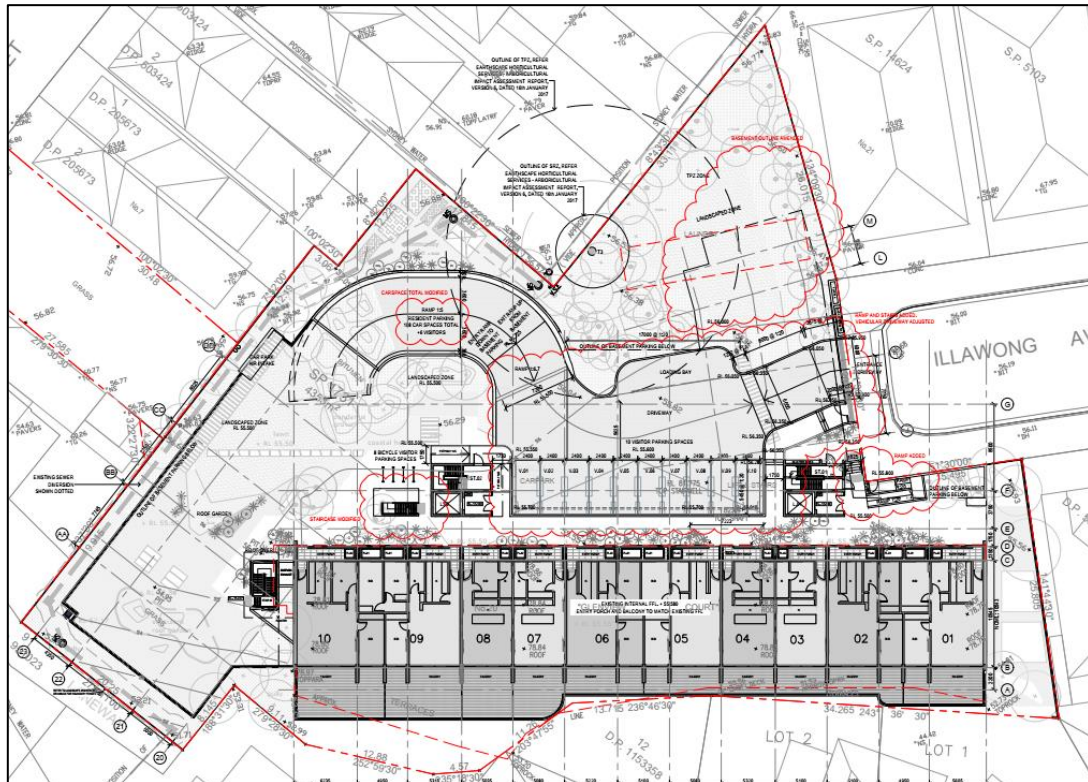


Figure 7 – Extract of Proposed Ground Floor Plan – 20 Illawong Avenue, Tamarama
Source: Group GSA

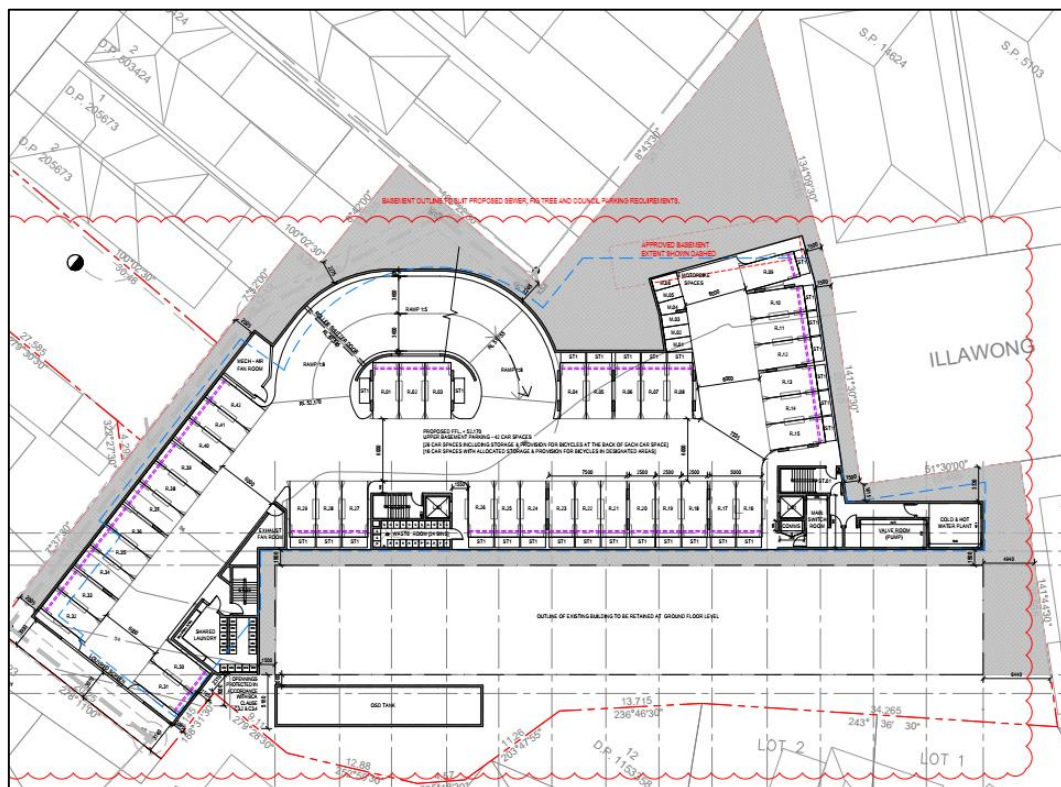


Figure 8 – Extract of Approved Upper Basement Floor Plan, DA-125/2012/A – 20 Illawong Avenue, Tamarama
Source: Group GSA

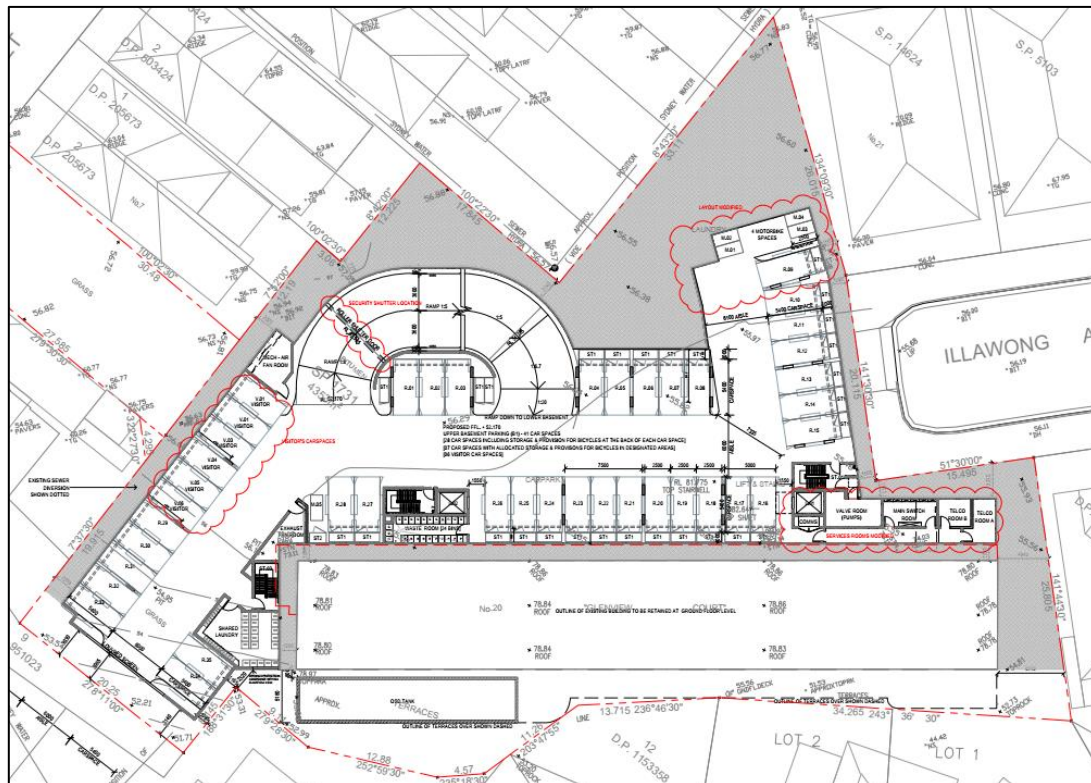


Figure 9 – Extract of Proposed Upper Basement Carpark (B1) Plan – 20 Illawong Avenue, Tamarama

Source: Group GSA

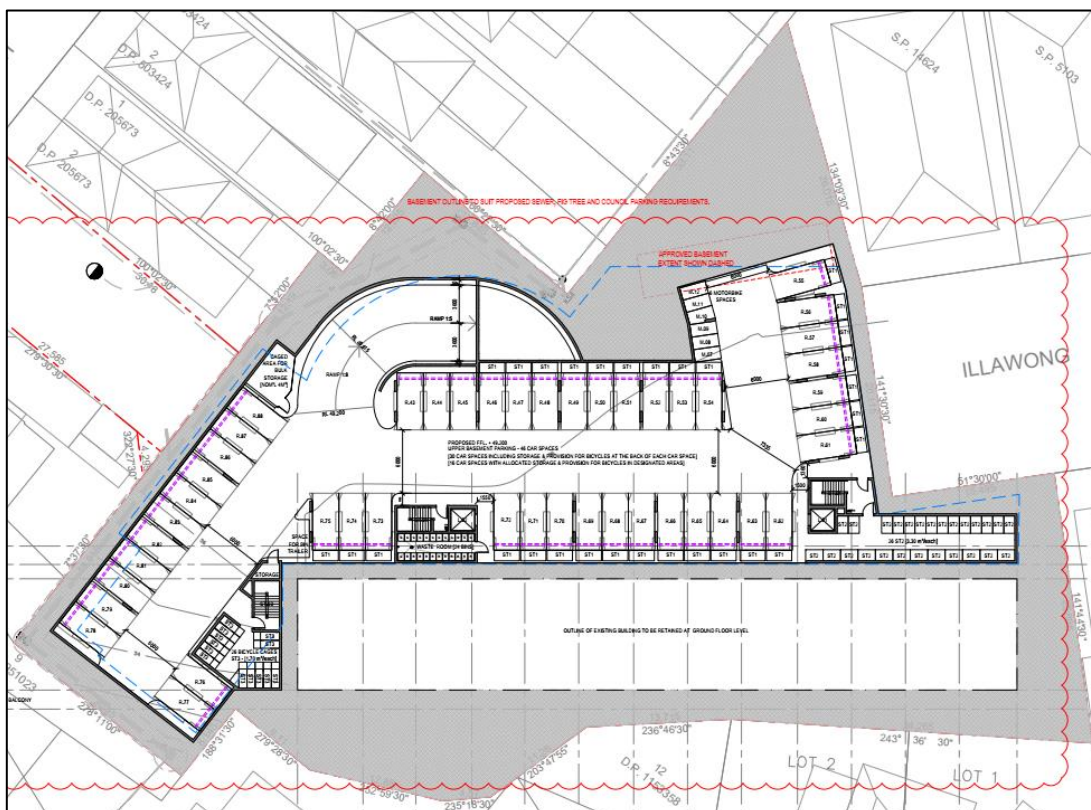


Figure 10 – Extract of Approved Lower Basement (B2) Plan, DA-125/2012/A – 20 Illawong Avenue, Tamarama

Source: Group GSA

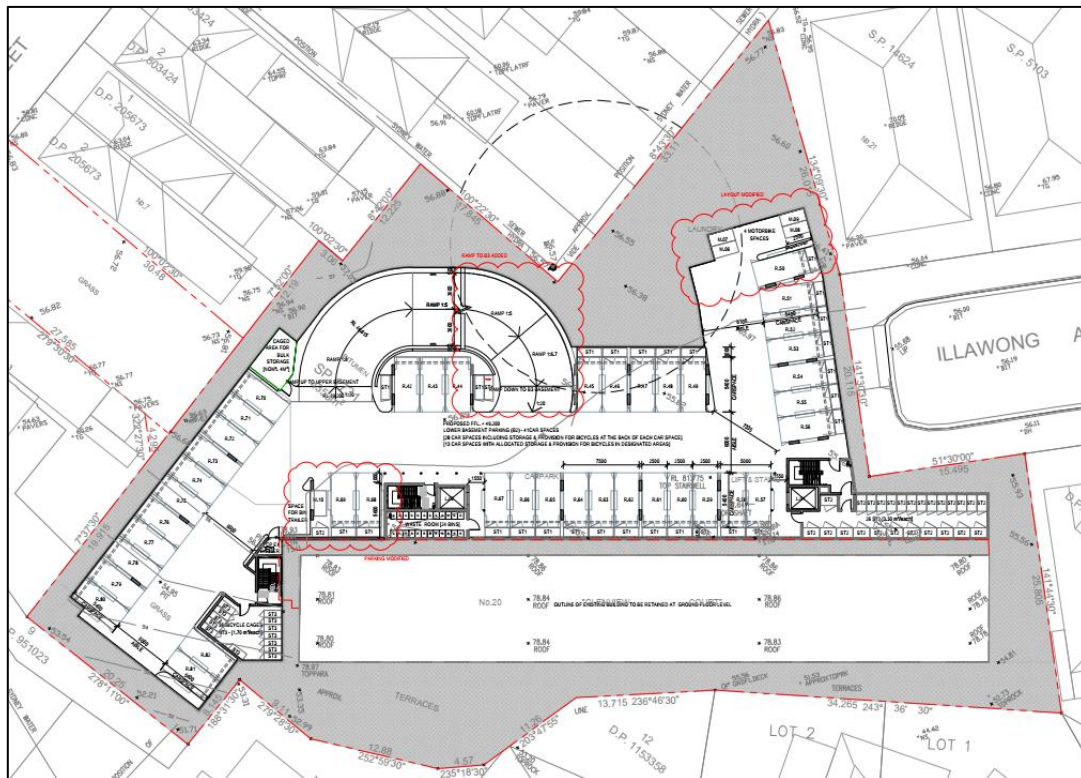


Figure 11 – Extract of Proposed Lower Basement Parking (B2) Plan – 20 Illawong Avenue, Tamarama

Source: Group GSA

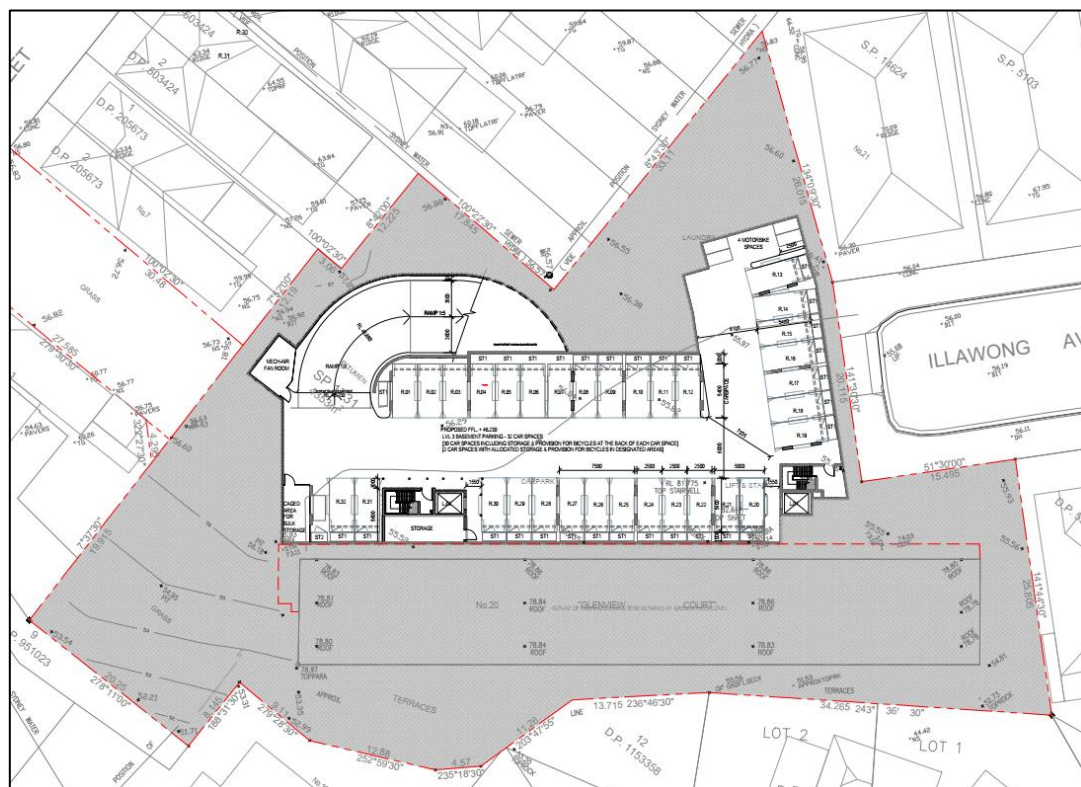


Figure 12 – Extract of B3 Basement Floor Plan – 20 Illawong Avenue, Tamarama

Source: Group GSA

4.0 Regulatory Framework

4.1 Modification of consents

The proposed modification to development consent D/125/2012 is sought pursuant to Section 4.55(2) of the Act.

In accordance with Section 4.55(2) of the Act the Consent Authority must consider the following requirements:

- (a) *It is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which consent was originally granted and before that consent as originally granted was modified (if at all), and***

Comment: The proposed modification seeks to maintain the land use and general building layout to which consent was originally granted. The modified development would be essentially or materially the same development as the development for which the consent was originally granted. Note that in *Meck v Waverley Council (2)* [2005] NSWLEC 363, the Land and Environment Court found that the addition of a basement to an approved dual occupancy did meet the 'substantially the same development' test. Similar logic would apply to this proposal.

- (b) *It has consulted with the relevant Minister, public authority or approval body (within the meaning of Division 4.8) in respect of a condition imposed as a requirement of a concurrence to the consent or in accordance with the general terms of an approval proposed to be granted by the approval body and that Minister, authority or body has not, within 21 days after being consulted, objected to the modification of that consent, and***

Comment: It is not expected that any such consultation will be required.

- (c) *It has notified the application in accordance with:***
(i) *the regulations, if the regulations so require, or*
(ii) *a development control plan, if the consent authority is a council that has made a development control plan that requires the notification or advertising of applications for modification of a development consent, and*

Comment: It is understood that the modification application will be notified in accordance with Council notification procedures.

- (d) *It has considered any submissions made concerning the proposed modification within any period prescribed by the regulations or provided by the development control plan, as the case may be.***

Comment: Council to consider any submissions made concerning the proposed modification.

It should also be noted that Section 4.55(3) requires that the consent authority must also take into consideration the reasons given for the grant of the consent that is sought to be modified. These reasons largely relate to the overall site improvements that are to be made to the development as a consequence of the original development consent.

4.2 Environmental Planning Instruments

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

The proposed development includes BASIX affected buildings and a BASIX Certificate is included within the development consent. However, an amended BASIX certificate is not required, given that the proposal will have no impact on BASIX score calculations.

4.2.2 State Environmental Planning Policy No 65 – Design Quality of Residential Apartment Development (SEPP 65)

The *State Environmental Planning Policy No 65 – Design Quality of Residential Flat Buildings* aims to improve the design quality of residential apartment development in New South Wales. The approved development was subject to the Residential Flat Design Code (RFDC), which pre-dated the Apartment Design Guide (ADG). The proposal involves changes predominantly associated with an additional basement level. However, the proposed modification requires consideration of some relevant requirements of the ADG, namely deep soil, access and storage.

3E Deep soil zones

Part 3E prescribes that for sites greater than 1,500sqm, deep soil zones are required to be no less than 7% of the site area. The proposal seeks minor improvements in the overall provision of the deep soil zones, associated with the reconfiguration to provide basement motorcycle parking over three floors. The basement footprint has been adjusted and now located 5.7m from the retained Fig Tree (T3) in comparison to 3.4m as per the previous approved modification (DA-125/2012/A), providing a greater separation to that tree.

The amended deep soil area will be increased by approximately 7.4m² to approximately 23%, comfortably maintaining compliance with the requirement for 7% of the site area to be utilised for deep soil planting.

3G Pedestrian access and entries

New steps and a new ramp are each proposed to be included adjacent to the south-eastern end of the Illawong Avenue Street frontage. Although these features have not been shown on previous plans, they are a necessary requirement to address a level change of approximately 0.45m, with the ramp required to ensure compliance with AS1428.1. These additional features are located as discreetly as

is possible and would not contravene the requirements of Part 3G. The pedestrian access will continue to connect to and address the public domain.

4G Storage

Section 4G of the ADG requires storage to be provided at the following rates:

Dwelling Type	Storage size volume
Studio	4m ³
1 Bed	6m ³
2 Bed	8m ³
3+ Bed	10m ³

Table 2 – ADG Storage requirements

The existing apartments do not provide any internal storage and the approved basement introduces storage areas behind the majority of parking spaces, as well as a new bulk storage area within the B3 level. This is provided in addition to separate dedicated storage cages and an additional bulk storage area on basement level B2. It is likely that the proposal would still be non-compliant with Part 4G, particularly, as it also requires that half of the required storage be provided within each individual apartment. However, currently neither the existing development, nor the approved development, comply with either the overall storage requirements or the requirements for storage within apartments. As the proposal seeks improvements to the overall provisions of storage, this discussion largely focusses on those improvements, rather than the precise level of compliance.

The additional basement level seeks to provide further storage areas behind the majority of the proposed parking spaces. Each storage area equates to approximately 6.5³, which is sufficient to comply with the requirements for the 39 x 1-bedroom apartments within the development. As the proposal provides further storage to accompany the additional parking spaces, it would be expected that larger apartments, provided with two parking spaces, would also be provided with additional overall storage spaces. That is, the provision of additional basement storage will provide some of the 2-bedroom and 3-bedroom units with 13m³ of storage, bringing them into compliance with the numerical requirement of the ADG (note that these calculations exclude storage cages and bulk storage areas, which would further add to the overall provision of storage).

The storage spaces provided towards the rear of each parking space within the additional basement level are also counted towards the calculation of bicycle parking, consistent with the approach taken in the approved development. Although this particular allocation of bicycle parking and storage may be unusual for a new development, it should be noted that the trigger for both storage and bicycle parking is the provision of new or extra apartments. This modification proposal seeks no extra apartments, but does seek to provide extra bicycle parking and/or storage. Overall, the provisions of both bicycle parking and storage proposed within this application represents an improvement to that currently provided and that currently approved. Furthermore, the provisions of bicycle parking within a basement storage area are permitted by clause 8.2.6, Control (a), within WDCP 2012. Although

Council have previously opposed the dual usage of these storage areas, it should be noted again that the current development, and the approved development do not comply with the ADG storage requirements.

In summary, the provision of extra storage and bicycle parking will unquestionably improve the resident's opportunities for the provision of general storage and bicycle parking.

4.2.3 State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017

The *State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017* (Vegetation SEPP) has been taken into consideration as part of this modification. The Vegetation SEPP provides approval pathways for the removal of vegetation in non-rural areas and matters for consideration in the assessment of applications to remove vegetation.

This application of this policy includes land in the Local Government Area of Waverley within land zoned R3 Medium Density Residential. However, no tree removal is proposed as part of this Section 4.55 modification application and the increased excavation associated with the proposal would not be expected to impact on any significant vegetation located on the site. It should be noted that as part of the reconfiguration to provide basement motorcycle parking over three floors, the footprint has been adjusted and is now located 5.7m from the retained Fig Tree (T3), in comparison to 3.4m, which is currently approved by DA-125/2012/A. This provides greater separation to the Fig Tree.

The proposal also seeks small increases to the deep soil zones, associated with the reconfiguration to provide basement motorcycle parking over three floors.

4.2.4 Waverley Local Environmental Plan

The *Waverley Local Environmental Plan 2012* (WLEP 2012) applies to the subject site. The matters of relevance within the WLEP 2012 are considered as follows:

Zoning and Permissibility

The land is within Zone R3 Medium Density Residential pursuant to the provisions of the WLEP 2012. (**Figure 13**). Residential flat buildings are permitted with consent in the zone. However, there is no change proposed to the land use considered and approved under DA-125/2012.

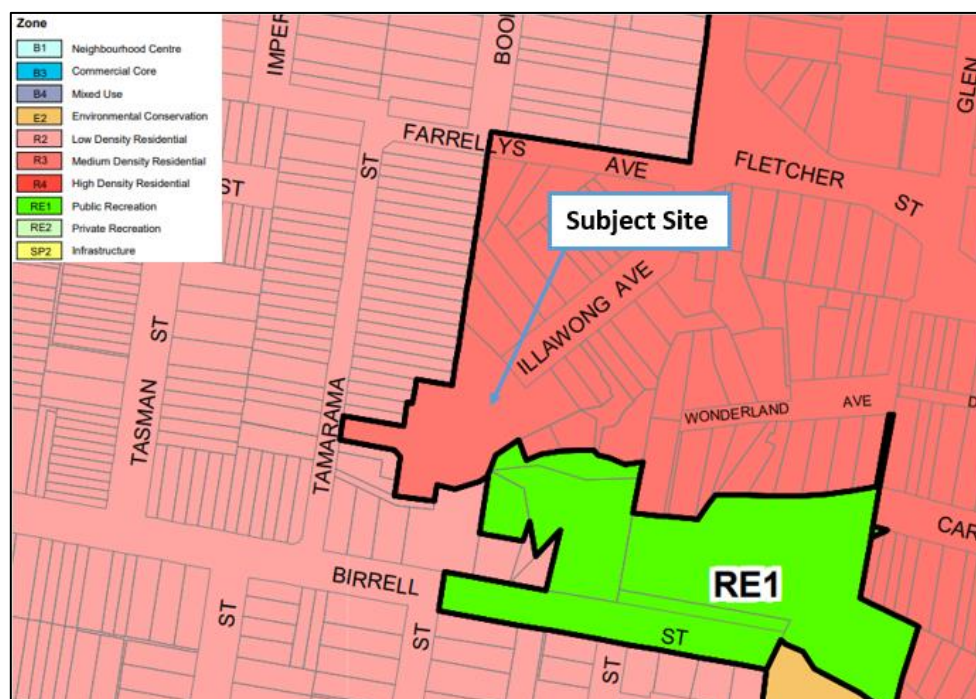


Figure 13 – WLEP 2012 Zoning Map extract
Source: legislation.nsw.gov.au

The objectives of the R3 Medium Density Residential Zone, as well as commentary on how the proposal satisfies these objectives, are provided below:

- *To provide for the housing needs of the community within a medium density residential environment.*

The proposal seeks to provide additional parking to meet the needs of existing and future residents. The proposal maintains the existing residential density that is approved at the site, although additional parking results in additional gross floor area (refer to later discussion of floor space ratio standard).

- *To provide a variety of housing types within a medium density residential environment.*

The proposal contributes to the provision of a variety of housing types, with basement parking for high density developments being relatively unusual in this locality.

- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*

This objective relates to the various non-residential uses that are permissible within the zone and does not strictly apply to the proposed development. However, the proposal would not affect the viability of non-residential uses within the locality.

Clause 4.3 – Height of buildings

The subject site is affected by a maximum building height of 9.25m. Sites located to the south and west of the subject site are affected by a maximum building height of 8.5m, as illustrated in **Figure 14**. Surrounding properties consist of single storey and double storey dwellings, as well as multi-storey residential flat buildings.

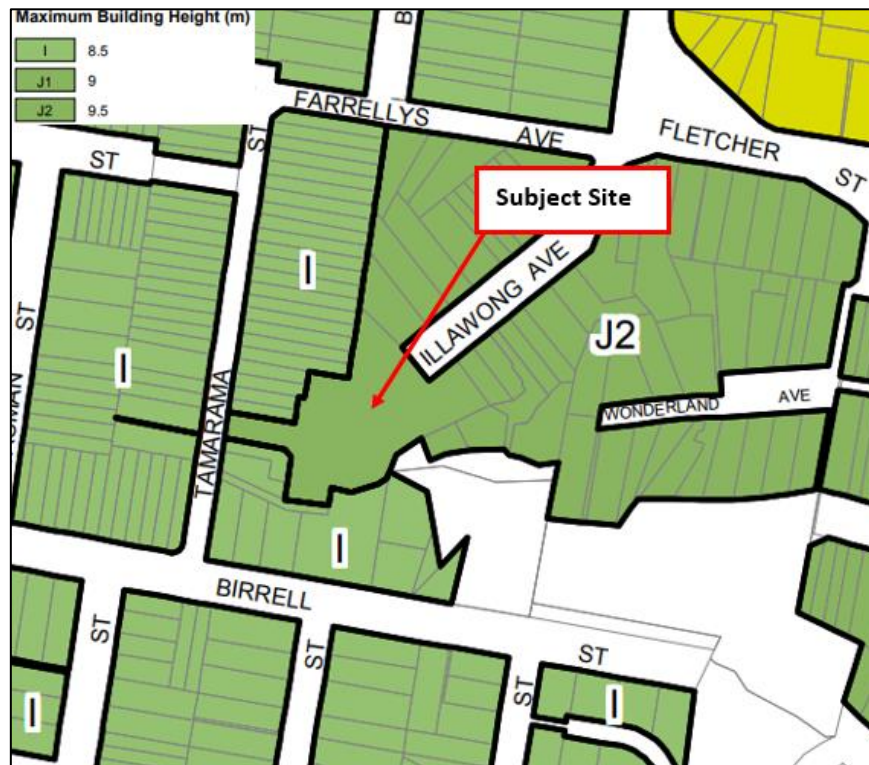


Figure 14 – Height of Buildings Map extract

Source: legislation.nsw.gov.au

The approved development has an overall height of 27.145m, which does not comply with the development standard. However, no changes are proposed to the approved height of the building.

Clause 4.4 – Floor space ratio

The subject site is affected by a maximum floor space ratio of 0.60:1, as illustrated in **Figure 15**.

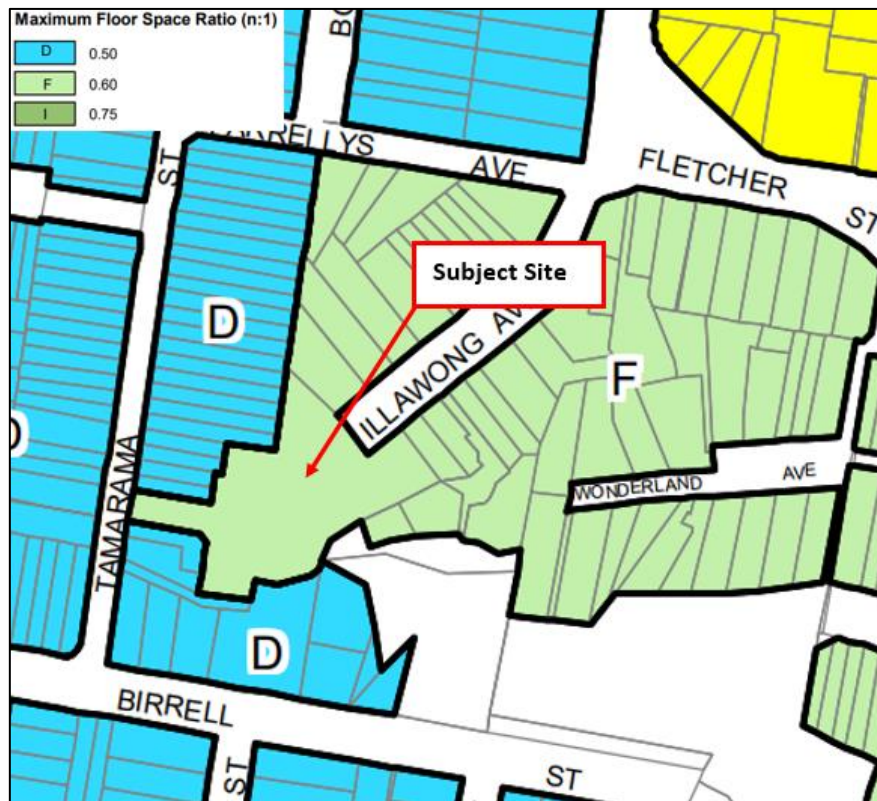


Figure 15 – Floor Space Ratio Map extract

Source: legislation.nsw.gov.au

The definition for gross floor area (GFA), excludes the following components of basements:

- storage
- vehicular access, loading areas, garbage and services

The following extract of the GFA definition also qualifies when car parking should be excluded from the GFA calculation:

- “car parking to meet any requirements of the consent authority (including access to that car parking)”

Given the recent amendments to WDCP 2012 (discussed in further detail within Section 4.2.5 of this SEE), the proposal provides parking that is well in excess of the minimum resident parking requirement, which is given within WDCP 2012 as being zero. Certain elements of the three basement levels will include basement storage and services, areas for common vertical circulation, as well as visitor, motorcycle and bicycle parking provided in accordance with the minimum requirements of WDCP 2012; these areas would be excluded from the GFA. However, the majority of the three levels of basement parking are to be used for car parking over the minimum requirements of the consent authority.

As the amendment to include maximum parking rates within the WDCP 2012 is relatively recent, it is not clear how Council may approach the calculation of the GFA within the basement. Council may exclude parking aisles, basement ramps, or may only include parking provided in excess of the maximum requirement (rather than excess of the minimum requirement). Given the existing and

approved development exceed the maximum floor space ratio permitted by WLEP 2012, and that the additional GFA compared with the current approval would be limited to basement floor area (either previously excluded GFA or new GFA within the third basement level), the actual measure used to calculate GFA is largely trivial. That is, all new GFA is either a consequence of the proposed third level of basement (completely hidden from view and completely beneath two existing basement levels), or as a technical increase associated with the recent amendments to the parking requirements within WDCP 2012, and exactly how the extra GFA is calculated is not of critical importance for the assessment of this proposal.

The GFA at the site was previously calculated to be 5,755sqm, and the approved GFA was previously calculated to be 6,200sqm. This gave an existing FSR of 1.32:1, and an approved FSR of 1.56:1.

The total area of the upper two levels of the basement, measured from within the internal walls, is approximately 1,790sqm, and the total area of the proposed new level of the basement, measured from within the internal walls, is approximately 1,310sqm. The sum of these areas is approximately 4,890sqm. Depending on the method used by Council, the GFA of the development could be calculated to be anywhere up to 11,090sqm, which would equate to an FSR of anywhere up to 2.79:1; however, the GFA is likely to be less than this given the exclusions provided by the clause.

The NSW Land and Environment Court has established that written statutory variation requests are not a requirement for modification applications, as they are only a precondition for the granting of development consent. This was initially established by the decision in *North Sydney Council v Michael Standley & Associates Pty Ltd* [1998] NSWSC 163. The Court's decision in *Gann & Anor v Sutherland Shire Council* (2008) NSWLEC 157 further clarified that:

"This does not mean development standards count for nothing. Section 96(3) still requires the consent authority to take into consideration the matters referred to in s 79C, which in turn include the provision of any environmental planning instrument. That is, any development standard in an environmental planning instrument must be taken into consideration by the consent authority, but the absolute prohibition against the carrying out of development otherwise than in accordance with the instrument in s 76A(1) does not apply."

Note that the previous judgements concerned *State Environmental Planning Policy No 1—Development Standards* (SEPP 1), an environmental planning instrument that is now rarely used, given the breadth of application of clause 4.6 within LEPs prepared under the Standard Instrument. However, the same rationale should apply to 4.6 variations (for instance in *SDHA Pty Ltd v Waverley Council* [2015] NSWLEC 65). Note also that the numbering system of the EPAA was revised on 1 March 2018, and the legislation cited within the quote above refers to what is now obsolete numbering. However, the content of the relevant parts of the Act was largely unchanged as a consequence of the 1 March 2018 amendment.

Although a 4.6 variation request is not a statutory requirement for a modification application, justifications to the departures from the development standard accompany this application in order

to properly demonstrates the reasons why the departure from the standard is acceptable. Additional departures from the FSR standard should be supported for the following reasons:

- The original departure to the FSR standard was largely a consequence of an existing building which currently far exceeds the requirement of the development standard, and is not consistent with the character of the area. The approved development represented an opportunity to improve the aesthetic of the building, its visual relationship with surrounding locality, as well as the amenity of the individual apartments. The approved façade improvements resulted in an aesthetic design that is appropriate to modern standards, with the rooftop penthouses, lift shafts and balconies providing a façade variation which was otherwise unable to be provided on the site. The additional FSR was a necessary bi-product of this process.
- The approved basement also represented an opportunity to modernise the existing development, as well as improve the aesthetic and amenity of the development site. The site currently contains no communal open space and the provision of the basement enabled communal open space – as well as landscaping and deep soil – to be provided on the site.
- The majority of the additional FSR ‘created’ by the current application, at least when compared with the approval, would be as a result of the introduction of reduced minimum parking rates, as well as the inception of a new maximum parking provision. The two basement levels are subject to a valid development consent, with related works being physically commenced, and will be delivered to the site in the near future, irrespective of the outcome of this application.
- The additional area not contained within the approved development plans relates to a third level of basement which sits completely and directly underneath the two approved basement levels, and is completely concealed from view.
- Although a 4.6 variation is not required, the departure associated with the third basement level would largely meet the intent of permitting variations to development standards. The FSR standard effectively seeks to control the bulk and scale of a development, and the proposal creates no impact in this regard.
- The point above is demonstrated in a consideration of the proposal against the relevant objectives of the FSR standard, as follows:
 - The approved development does not offend the correlation between the building height and density control. The existing non-compliances to each of these standards largely contribute to the visual obtrusiveness of the existing building, and the approved development somewhat mitigates the impact of the building. The approved development results in an appropriate correlation between the height and density of the development, and the proposed additional basement level would not impact on this outcome.
 - The proposed development will have no impact on the compatibility of the building with the bulk, scale, streetscape and desired future character of the locality.
 - The additional scale of the development, being floor space that is completely subterranean, will create no impacts on the environmental amenity of neighbouring properties and will create no adverse impacts on the amenity of the locality.
- The proposal is also consistent with the relevant objectives of the zone, as outlined earlier within this Section of the SEE.

A variation to the FSR standard in this instance would be a relatively uncontentious use of clause 4.6 (if this was required). All new GFA is either a consequence of the proposed third level of basement (completely hidden from view and completely beneath two existing basement levels), or as a technical increase associated with the recent amendments to the parking requirements within WDCP 2012. These increases in the overall GFA at the site have little association with the purpose or intent of the development standard, and the changes to the GFA would not be perceived externally.

Given the above, compliance with the standard would be considered is unnecessary and unreasonable and the variation to the floor space ratio development standard can be approved.

Clause 5.10 – Heritage Conservation

The WLEP 2012 maps indicate that an item of environmental heritage is not situated on the land. The nearest heritage items are I290, I62, I25 and A547, all of which are identified in **Figure 16**. The nearest heritage items at the southern end of Tasman Street is identified as a group of semi-detached dwellings.

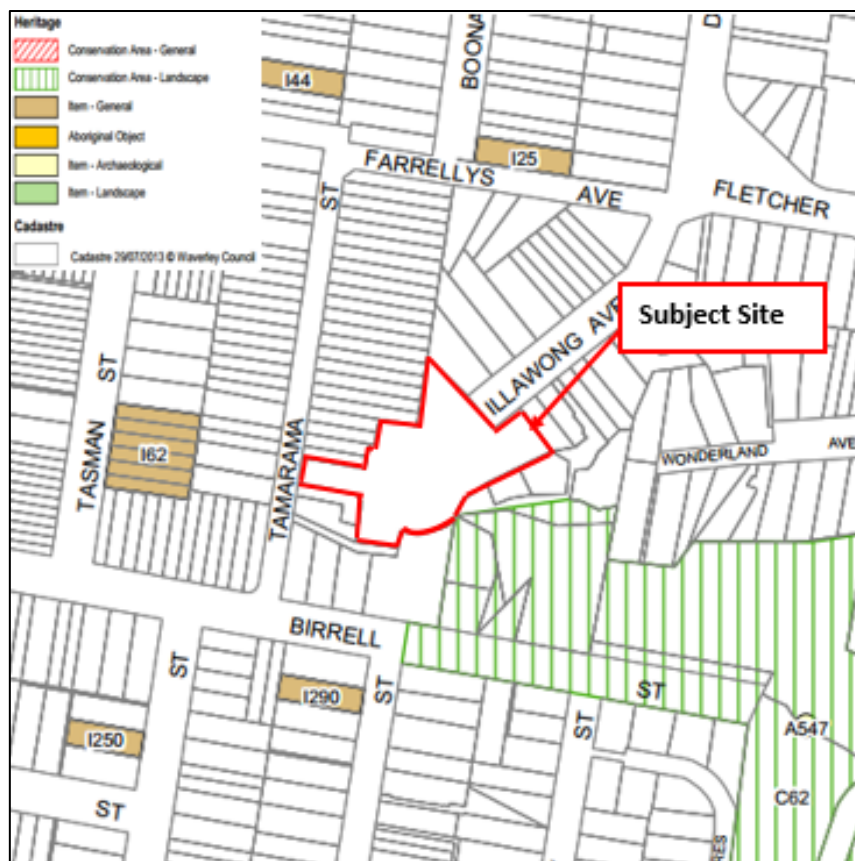


Figure 16 – Heritage Map extract, showing nearby heritage items, with subject site outlined in red

Source: legislation.nsw.gov.au

The WLEP 2012 maps indicate the land is not within a conservation area. The area to the southeast, including Tamarama Gully and Tamarama Beach is part of a landscape conservation area. Given the proposal is subterranean, there will be no impact to this landscape conservation area.

Clause 6.3 – Flood planning

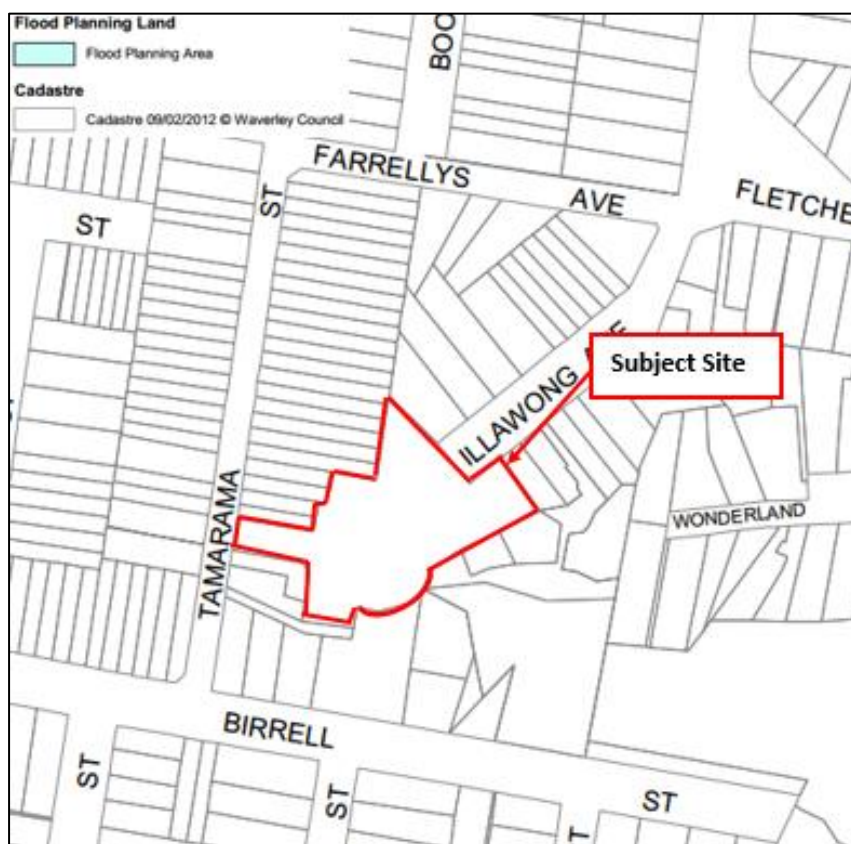


Figure 17 – Flood Planning Map extract, with subject site outlined in red

Source: NSW legislation

The WLEP2012 flood planning maps show the subject site and properties surrounding the subject site as being unaffected by flooding.

4.2.5 Waverley Development Control Plan 2012

The Waverley Development Control Plan 2012 (WDCP 2012) applies to the subject site. The parts of the WDCP 2012 that are relevant to the proposed modification include sections 3A (Parking and Access) and 4C (Residential Apartment Buildings). Relevant provisions are discussed below.

B8 – Transport

Amendment 6 to the WDCP 2012 was formally adopted by Council on 4 September 2018 and became effective on 1 November 2018. One of the major components of the amendment related to an imposition of maximum car parking rates, set generally in line with the minimum rates prescribed by the *RMS Guide to Traffic Generating Development*.

The draft amendment was exhibited from Wednesday 27 June to Friday 27 July 2018 and during this time the owners of the building were well into preparations for a third basement level, with individual

unit owners having already committed to purchasing new parking spaces in the expanded basement carpark. The owners were partly encouraged by WDCP 2012 Amendment Number 4, which came into effect on only 13 January 2016, and which introduced higher minimum parking rates and deleted maximum parking rates.

The following table outlines the car parking history at the site as it relates to the DCP in force at the time.

State of Development	DCP requirement	Provided/proposed	Outcome
Existing Development	Minimum of 56 and maximum of 84 (original DCP)	58 overall	Compliant
Approved DA	Minimum of 56 and maximum of 84 (original DCP)	79 resident and 10 visitor	Compliant
Approved modification	WDCP2012 requires 108 for residents and 16 for visitors	88 resident and 10 visitor	Not compliant
Proposed modification	Minimum of nil resident parking and 17 visitor; maximum of 93 resident parking spaces	108 resident and 16 visitor	Proposed non-compliance

Table 3 – Car parking approval history at the site in relation to various DCP amendments

Within the WDCP 2012, Control 8.2.2(h) indicates that the car parking rates are based on the *RMS Guide to Traffic Generating Developments* (“the RMS Guide”). It is not clear exactly how the RMS Guide has informed the DCP amendment. Some aspects of the DCP amendment that are not made clear include:

- The RMS Guide prescribes minimum car parking rates. It is not made clear how these minimum rates have informed the maximum rates that are now contained within WDCP 2012. There is no inference made within the RMS Guide implying that minimum rates can in anyway be used to inform maximum rates, and it would be expected that a maximum rate would be significantly higher than a minimum rate.
- The research which informed the RMS Guide was undertaken in 2002 through surveys of existing developments. It is understood that the sites selected to inform this research met particular characteristics. Although it is not suggested that these rates have *no* relevance in 2019, a further interrogation of the data that informed these rates would reveal that some of the characteristics that informed the rates may not apply across all developments.

Within WDCP 2012, the parking rates vary depending on the location of the site, and the number of units within an individual development. The locational criteria are presented through the separation of the entire LGA into two “parking zones”. Parking Zone 1 somewhat reflects an 800m radius

stemming from Bondi Junction Station, but excludes land within the R2 zone. Parking Zone 2 accounts for all other land within the LGA, including the R2 zone land that is excluded from the 800m radius surrounding Parking Zone 1. Each parking zone is split into two categories – medium density residential development (2-19 dwellings) and high density residential development (20+ dwellings).

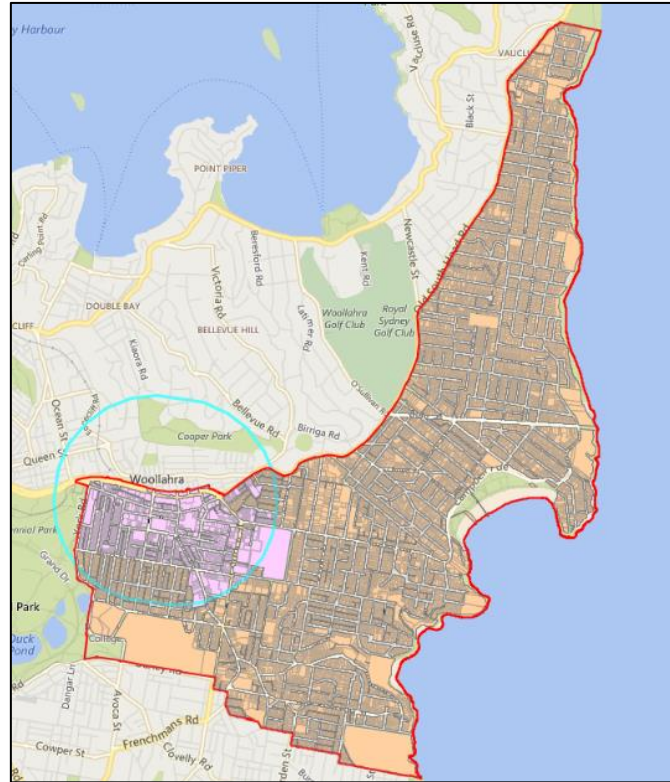


Figure 18 – Parking Zone 1 and Parking Zone 2
Source: Waverley Council Planning Maps Online

The table below shows the origins of each of the parking rates having regard to where these rates are listed within the RMS Guide (within the RMS Guide, refer to Section 5.14 Summary table of the RMS Guide for parking requirements):

Maximum Parking Rate (WDCP 2012)	Related minimum parking rate within RMS Guide
Parking Zone 1 – Medium Density	High density development within Metropolitan Regional Centres
Parking Zone 1 – High Density	High density development within Metropolitan Regional Centres
Parking Zone 2 – Medium Density	Medium density residential flat buildings
Parking Zone 2 – High Density	High density development within Metropolitan Sub-regional Centres

Table 4 – WDCP 2012 parking rates and their origins within the RMS Guide to Traffic Generating Development

All parking within Parking Zone 1, is required at a rate given for high density development within Metropolitan Regional Centres. As Bondi Junction has consistently been defined as a Metropolitan Regional Centre or similar within various strategic planning documents, the rates within WDCP 2012 for Parking Zone 1 would be consistent with the RMS Guide (although higher rates for medium density development are not in place).

Furthermore, the rate applied to the medium density development within Parking Zone 2 also directly correlates with the rate given for medium density development within the RMS Guide. This rate would apply to the majority of multi-unit developments surrounding the subject site, which typically contain 3-4 storey walk-up apartment developments.

However, as the subject development contains greater than 19 dwellings, it is subject to the requirements derived from the rates within the RMS Guide for 'high density development within Metropolitan Sub-regional Centres'.

"Sub-regional centres" are generally regarded as areas surrounding smaller train stations, and these areas would ordinarily be expected to contain a commercial precinct of some description. The subject site is located amongst predominately medium and low-density developments, within a medium density zone, and well removed from commercial areas. It is clear that the medium density rates are more appropriate to the subject site.

The anomalies of the selective use of figures within the RMS Guide becomes more obvious once the rates for single dwellings are considered. The RMS Guide recommends parking rates of between 1 -2 spaces for single dwellings, and the DCP amendment has adopted this recommendation. This gives the odd scenario whereby small dwellings within the R2 zone and located less than 800m from Bondi Junction station, will be permitted to provide two parking spaces, whereas the approved penthouses within the subject development, well removed from any major commercial centres, are able to provide no more than 1.4 parking spaces on average. Were these two apartments proposed as part of the current modification, they would be permitted to provide no more than 3 spaces between them.

Dwellings located along Tamarama Road – adjacent to the development site - will also be permitted to provide up to 2 parking spaces, irrespective of the dwelling size.

Furthermore, given the lack of clarity relating to the use of the RMS Guide, there is less information still on why a blanket maximum parking rate is appropriate within the Waverley LGA in the first instance. It is understood that the amendment is purported to be informed by the recent report prepared by Bitzios and the UTS Institute for Sustainable Futures, entitled *Waverley's People, Movement and Places*. This report recommends imposing maximum parking rates within Parking Zone 1, and reducing the minimum parking rate within Parking Zone 2, but does not recommend maximum parking rates for Parking Zone 2. The report states that maximum rates should only be considered elsewhere within the LGA (through expansion of Parking Zone 1), if high frequency, high capacity public transport, such as light rail or bus priority, is implemented from Bondi Junction to Bondi Beach. The basis for the maximum rates within Parking Zone 2 is not clear, and appears to be largely ideological.

The application of the medium density parking rates would be consistent with the assessment obligations contained within S4.15(3A)(b) of the Act. In light of the above discussion, the number of parking spaces required in accordance with the medium density parking rates for Parking Zone 2, is shown in the table below:

Dwelling Type	Required Parking & Dwelling Mix	Number of Dwellings	Total Required Parking
Studio	0.5	0	0
1 Bed	1	39	39
2 Bed	1.2	34	40.8
3+ Bed	1.5	9	13.5
Total Resident Parking			93.3
Visitor	0.2	82	16.4
Total Parking			109.7
Bicycle	1 space per 10 dwellings	82	8.2
Motorcycle	1 per 3 spaces	-	37
Disabled	10% of all spaces	-	11

Table 5 – Parking calculation based on the medium density parking rate for Zone 2.

The WDP 2012 should apply medium density parking rates to this development, and the development site is unfairly subject to overly restrictive parking rates. However, application of the medium density rates would enable 110 spaces at the site, whereas this proposal seeks to provide 124 spaces at the site.

In consideration of this non-compliance, it should firstly be noted that there a number of unusual circumstances that apply to this development and it would not be expected that these circumstances could be reproduced across the Waverley LGA.

- The existing development contains an unusually large open-air car parking area. This car parking area is physically separated from the apartment building, meaning that changes can be made to the parking area without affecting the apartment building. No structural changes are required to the apartment building in order to accommodate the basement car park.
- The owners of the building have agreed to finance the construction of the new basement (along with the other approved works) and the construction of the additional basement level is to be the existing owner's corporation, and not by a developer, who would ordinarily seek to minimise construction costs.
- Non-compliances with the new controls are unlikely to be common. This is particularly the case for new development, where parking spaces are mostly provided out of obligation. Applicants would typically obtain little private benefit in provided parking above the new maximum rates, and the additional purchase price associated with parking spaces within new apartments is typically only enough to offset the cost of construction of the basement, and within lower/deeper basement levels, it is often not sufficient to offset that cost. Maximum parking rates within areas surrounding Bondi Junction, as well as those applying to non-residential uses, are likely to be welcomed by developers and would also better translate to an increased uptake in alternative modes of transport.

Further discussion on each aspect of the proposed parking arrangement is included below.

Car Parking

The proposal would require a total of 110 parking spaces to achieve compliance with the maximum car parking rates for medium density development. The proposal seeks to provide 124 parking spaces and reasons given for the additional parking are outlined within the submitted Traffic Impact Assessment and throughout this section of the SEE.

Part B8.2.3 outlines the following considerations for variations to Parking Rates, which are each discussed individually below:

- a) *Variations to the relevant parking standards will only be accepted where the applicant can demonstrate that the requirement cannot be reasonably achieved (provision of less than the standard); or that exceeding the standard is in the public interest.***

Response: The public interest in reducing parking demand on surrounding streets is discussed within the Traffic Impact Assessment which accompanies this application.

- b) *Matters that the Council may consider in assessing variations include, but are not limited to, any of the following as are relevant:***
- ***Particular site design requirements such as setbacks, landscaping, solar access and streetscape controls.***

Response: The additional parking will not influence any of the matters described above.

- ***Site and building constraints such as the physical and topographical nature of the site.***

Response: These constraints will not affect the provision of additional parking at the site.

- ***Impacts of any increased building bulk on the streetscape or adjoining land, including overshadowing and loss of views.***

Response: The additional parking will not influence any of the matters described above.

- ***Compliance with deep soil landscape area requirements (side and rear boundary setbacks).***

Response: The proposal improves the provision of deep soil at the site and creates no impacts on landscaped area, or boundary setbacks.

- ***Impacts of excavation, including land form, structural integrity of buildings and structures on adjoining land, and stability of land on the subject site and adjoining sites.***

Response: A geotechnical report, prepared by Douglas Partners, accompanies the application, and demonstrates that the site can accommodate the additional excavation.

- ***Impacts from any increase in hard surface driveways and the building footprint on the availability of water permeable ground spaces.***

Response: The proposal will create no impacts on landscaped area at the site.

- c) ***Variations to the car parking standards will only be supported where the applicant can demonstrate that the development is unlikely to create significant additional demand for on-street car parking in surrounding streets. When a development application seeks to vary the car parking provisions, the following priority is to be adopted:***

1. ***Residential parking***
2. ***Visitor parking***
3. ***Commercial Parking (i.e. business, office, retail)***

Response: Priority has been given to resident parking over visitor parking.

The development will not create significant additional demand for on-street parking, the proposal provides additional parking which will necessarily reduce the demand placed on on-street parking within the locality. Further discussion is provided within the accompanying Traffic Impact Assessment.

Motorcycle Parking

The approved development contained a total of 12 motorcycle parking spaces, and the proposal seeks to increase the number of parking spaces to 15, with these spaces to now be spread across three basement levels. The previous amendment of WDCP 2012 required 3 motorcycle spaces per 15 car

spaces provided and the approved 98 spaces would have therefore required 20 motorcycle parking spaces.

Since the recent amendment, the WDCP 2012 now requires 1 motorcycle space for every 3 car parking spaces, rather than 3 for every 15 spaces as was previously required. Again, it is not clear why this abnormally high figure was selected for inclusion within WDCP 2012. Reference to Traffic Impact Assessment for further discussion on motorcycle parking rates.

The proposal will not comply with this requirement, and therefore a consideration of the objectives to Part B8.2.5 of WDCP 2012 are relevant. These objectives are reproduced below:

- (a) *To encourage alternative forms of transport.*
- (b) *To ensure the quantity of motorcycle parking available is enough to meet growing demand.*

There is no evidence to indicate that the abnormally high requirement for motorcycle parking has any empirical relationship with a potential growing demand for motorcycle parking. The provision of 15 motorcycle spaces would be expected to be sufficient for an 82-unit development. Moreover, there are no barriers to parking motorcycles in the existing and proposed new parking spaces.

Moreover, given this application seeks to provide parking in excess of the maximum car parking rate, it would be counterintuitive to also expect that extra motorcycle parking be provided at the same rate for as would be expected for a development that is compliant with the maximum parking rate. The provision of extra vehicle parking would be sufficient to accommodate an increased demand for motorcycle parking, and would not interfere with the uptake of this form of transport. Note that the provision of excessive bicycle parking is able to further assist with meeting objective (a). Despite this, additional motorcycle parking is provided by this modification, which will provide even further opportunity for motorcycle parking.

Bicycle Parking

Table 4 within Part 8.2.6 outlines bicycle parking requirements for different development types. Two rates are given in relation to residential development: one rate for resident parking within low density development (1 space per dwelling) and one rate for visitor parking within medium or high density developments (1 space per 10 dwellings). No bicycle parking rate is given for resident parking within medium or high density developments, and based on the information within Table 4, only 8 visitor bicycle parking spaces would be required for this development, and the proposal would comfortably comply with that requirement. Notwithstanding, a total of 112 bicycle parking spaces are provided to the proposed development, which is well in excess of either rate outlined within Table 4.

The provision of additional bicycle parking largely meets the intent of DCP Amendment 6, which is to encourage the use of sustainable transport. The provision of additional bicycle parking and car parking will provide the opportunity for all residents to store bicycles and motorcycles within the basement as may be desired. The ample opportunities for bicycle parking at this site will provide an actual alternative mode of sustainable transport, which is not otherwise required by WDCP 2012.

Reference should also be made to the discussion of storage within Section 4.2.2 of this SEE.

Disabled Parking

Part B8 requires that 10% of all car spaces are to be accessible in accordance with Part B7 Accessibility and Adaptability. However, Part B7 requires only that accessible parking be provided for adaptable dwellings.

Given the existing dwellings within the development are not accessible, no disabled parking is included within the approved development. Council has supported the deletion of Condition 21 as part of DA-125/2012/A, and this condition partly related to the provision of disabled parking. Given no new accessible dwellings are proposed, and that no changes are proposed to the overall dwelling layout, no new disabled parking spaces are proposed as part of this modification application.

Visitor Parking

The visitor parking rates were unchanged as a consequence of DCP Amendment 6. However, the proposal provides additional visitor parking, in order to now bring the development into compliance with the visitor parking rates. Of the total 16 visitor parking spaces, 10 remain at the ground floor, whilst 6 are allocated elsewhere in the basement and will be provided with intercom access.

C4.9 Landscaping

Section 4.9 of the WDCP2012 prescribes that 30% of the site area is to be provided as landscaped area; 50% of which must be deep soil zone. The proposal seeks to retain existing landscape arrangements as per the previous approved modification for DA-125/2012/A. However, the proposal seeks to increase deep soil zones as a result of the amendment to motorcycle parking arrangements within the basement levels.

As indicated earlier within this SEE, the amended deep soil area will account for an increase to deep soil of approximately 7.4m² when compared to the approved modification, DA-125/2012/A, further increasing the space utilised for deep soil planting.

4.3 Planning Agreements

No planning agreement has been found to apply to the subject site.

4.4 The Regulations

The pertinent considerations identified within the EPA Regulation 2000, are concerning conformity with the Building Code of Australia. The existing development consent, DA 125/2012, inclusive of BCA conditions, shall apply to the proposal.

4.5 Likely Impacts of the Development

The likely impacts of the proposed modification have been thoroughly considered, and the proposal is found to have reasonable and acceptable impacts on the natural and built environment. As such, the proposal is worthy of Council support.

4.6 The Suitability of the Site

The proposed modifications are considered to be suitable in the context of the existing and approved development. The proposed modification would not affect the overall perceived size of the development and would not detract from the broader streetscape. The additional parking spaces can be comfortably accommodated underneath the approved basement, and will generate minimal impacts on traffic within the locality; refer to Traffic Impact Assessment provided with this application.

4.7 Any Submissions

Council to consider any submissions received in respect to the proposed modification application.

4.8 The Public Interest

The public's interest is considered to have been satisfied by the proposal, as the modifications have been considered against the planning controls of Waverley Council and are found to be consistent with their intent.

5.0 Conclusion

The modification proposal been assessed against the provisions of Section 4.15 and Section 4.55(2) of the Environmental Planning and Assessment Act 1979. On balance, it is concluded that the proposal is satisfactory and warrants approval, having regard to the following matters:

- The proposed development is permissible under the prevailing land use zone.
- The proposal is generally consistent with the relevant objectives and controls of SEPP 65, WLEP 2012 and WDCP 2012. Where non-compliances have been identified, sufficient justification has been provided.
- The additional departure to the floor space ratio standard is largely inconsequential in the context of the surrounding development, and the increase in the depth of the basement is suitable in the context of the approved development.
- The proposed modification is anticipated to have a positive impact on the surrounding community through a reduction in demand for on-street parking, and the encouragement of bicycle ownership and use.
- The proposal modification provides exclusively positive impacts, with further improvements also made in relation to storage, deep soil area.
- No unreasonable external impacts will result from the development proposal, particularly in relation to streetscape and amenity impacts.
- It is considered there are no matters that warrant refusal of the proposal on the grounds of it being contrary to the public interest.

Accordingly, the proposed modification should be recommended for approval.