

COUNCIL ASSESSMENT REPORT

Panel Reference	PPSSNH-91
DA Number	DA2020/0272
LGA	Northern Beaches Council
Proposed Development	Demolition and construction of a mixed use building - "Shop-top boarding house" development
Street Address	Lot 1 DP 166322, 691 Pittwater Road, Dee Why
Applicant/Owner	A.C.N. 605 170 358 Pty Ltd (Owner) Gannet Developments (Applicant)
Date of DA lodgement	17 March 2020
Number of Submissions	5
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 a 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 (WDCP)
List all documents submitted with this report for the Panel's consideration	<ul style="list-style-type: none"> • Attachment 1 – Architectural Plans • Attachment 2 – Applicant's Clause 4.6 • Attachment 3 – Applicant's Traffic report
Clause 4.6 requests	Clause 4.6 application relates to Clause 30(1)(h) of SEPP ARH 2009 – Motorcycle Parking
Summary of key submissions	<ul style="list-style-type: none"> • Traffic and parking concerns • Privacy impact • Out of character
Report prepared by	Lashta Haidari – Principal Planner
Report date	12 August 2020

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 (S7.24)?

Not Applicable

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

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

The Development Application proposes substantial demolition and alterations to the existing heritage listed building and the construction of an eight (8) storey, mixed-use building comprising retail, office, and a boarding house.

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.

The proposed development provides no parking or access for the development and results in 100% non-compliance with the parking requirements under the SEPP (ARH) 2009 and Warringah Development Control Plan.

Additionally, the development does not provide for any loading/unloading facilities, nor does it comply with the clause 30(1)(h) of SEPP (ARH) 2009, which is a Development Standard, in that it fails to provide for motorcycle parking. A Clause 4.6 has been submitted by the Applicant, but it is considered to be not well founded and there are insufficient environmental planning grounds to justify contravening the Development Standard.

Clause 30A of the SEPP (ARH) 2009 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 any specific guidelines for assessing how a proposal is deemed to be compatible with the character of an existing area. Therefore, this assessment has taken into consideration the permissible forms of development within the B4 Mixed Use zone and the Planning Principle of the Land and Environment Court to determine the compatibility of the development.

The character assessment revealed that the appearance of the development is generally compatible and consistent with the character of surrounding town centre development. However, the character assessment found that the development does not provide adequate building separation to neighbouring properties, and therefore the development places unreasonable constraints on adjoining development.

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-west of the subject site, being No. 687 Pittwater Road.

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.

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.

It is noted that the Applicant has lodged a Class 1 Appeal in the Land and Environment Court in relation to the deemed refusal of this application.

PROPOSED DEVELOPMENT IN DETAIL

The proposal involves substantial demolition and alterations to the existing building (including retention of the heritage listed Pittwater Road façade and entry only) and development of an 8-storey, mixed-use building, comprising retail, office and a boarding house, which is being characterised as a “*shop-top boarding house*”. Specifically, the proposal will involve the following works:

- 82m² of retail floor space within the ground floor level,
- 130.7m² of commercial office space within level 1,
- 56m² of commercial office space within level 2,
- 63 room ‘new age’ boarding house, including 1 manager’s residence. The boarding house comprises Levels 2 to 8 of the proposed development, involving 59 double rooms (average size is 21m²), 4 single rooms (2 within Levels 5 & 6) and 4 accessible rooms (1 each within Levels 1 to 4),
- Various communal spaces distributed throughout the proposed development (ground floor, level 1 and roof terrace), including:
 - 138.45m² of communal open spaces within the ground floor including 67m² deep soil planting area
 - 78m² of communal open spaces and garden roof top level
 - 53m² communal living room at the upper level
 - 127 bicycle parking spaces
- A waste storage room is provided within the ground floor level directly accessible from Pittwater Road. The garbage room is also accessible from the front of the property.
- Stratum subdivision of the commercial and retail suites from the boarding house as proposed as shown in the submitted plans.

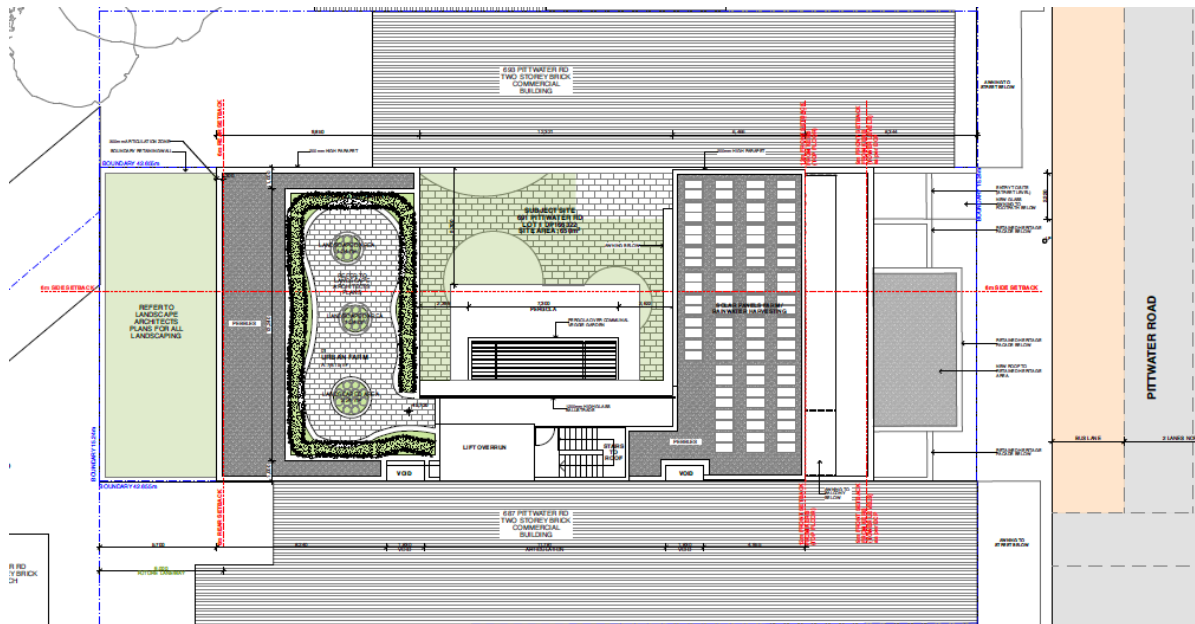


Figure 1 – Site Plan (Source: BKA Architects)



Figure 2 – View of the proposed development from Pittwater Road ((Source: BKA Architects)

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.

SITE DESCRIPTION

The Site

The property is located at 691 Pittwater Road, Dee Why. The property is legally described as Lot 1 within DP166322. The subject site is located on the western side of Pittwater Road, has a land area of 650m² and is rectangular in shape. The site's dimensions are as follows:

- South-east, front boundary of 15.24m (fronting Pittwater Road)
- North-east/South-west side boundaries of 42.655m
- North-west, rear boundary of 15.24m



Figure 1: Subject Site

The site has a public frontage to Pittwater Road, however there is no existing vehicular access to the property from Pittwater Road. No other means of vehicular access is available to the site. The property is zoned B4 Mixed Use under the Warringah Local Environmental Plan 2011 (LEP) as is most of the surrounding land.

Adjoining and Surrounding Development

The subject site is just south of the Dee Why Town Centre, which is undergoing significant urban renewal and revitalisation. The site is centrally located within the Dee Why Town Centre as defined in the Dee Why Town Centre Masterplan 2013 (DYTC Masterplan).

The existing character of the local area, including the immediate visual catchment (generally within 100m of the site) is characterised by older style commercial developments, generally two to three storeys in height, with retail uses at ground level and office or residential development on the floors above. Newer developments within the Dee Why Town Centre have generally been on larger amalgamated sites and achieve seven to nine storeys with a greater mix of land uses.

RELEVANT HISTORY and BACKGROUND

Pre-Lodgement Meeting (PLM)

On 9 December 2019, the Applicant had a pre-lodgement meeting with Council to discuss the proposed development. The key issue discussed at the PLM meeting was the fact that the proposal was to provide no off-street carparking and no off-street motorcycle parking.

The Applicant was advised in the meeting and in subsequent Notes that such a non-compliant proposal would not be supported.

DEVELOPMENT APPLICATION HISTORY

On 17 March 2020, the development application was lodged with Council

Land and Environment Court

The applicant has since lodged a "Deemed Refusal" Appeal in the *NSW Land & Environment Court*, on 29 May 2020.

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

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	See discussion on draft EPI in this report
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 (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 'Matters for Consideration'	Comments
<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</p>	<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 2011 and the environmental 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 suitable conditions and the effective implementation of an Operational Plan of Management (OPM), the proposed development would not have a detrimental social impact in the locality. iii. The proposed would not have a detrimental economic impact on the locality considering the mixed commercial and residential nature of the proposed land use within a town centre.
<p>Section 4.15 (1) (c) – the suitability of the site for the development</p>	<p>The site does not contain any significant physical constraints which would prevent the provision of this development on this site.</p> <p>However, there are concerns in relation to the suitability and appropriateness of the site in terms of development of the size, scale, intensity and nature with no onsite parking and no means of providing suitable vehicular and servicing access.</p>
<p>Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs</p>	<p>A total of 5 written submissions have been received.</p> <p>The issues raised in the submissions are addressed later in this report and support the recommendation for refusal.</p>
<p>Section 4.15 (1) (e) – the public interest</p>	<p>The assessment has found the proposal to be contrary to the relevant provisions of SEPP (ARH) 2009 in relation to parking and motorcycle parking, , 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 and other 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 the Northern Beaches Community Participation Plan. 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 and being an eyesore in comparison to surrounding developments within Dee Why Town centre.

Comment:

This issue is discussed in detail under Clause 30 of SEPP (ARH) 2009. In summary, the proposed development is found to be consistent with the surrounding character of the area. However, proposal does not relate favourably to and imposes unnecessary constraints on neighbouring sites and will have a negative effect on their development potential.

This issue warrants the refusal of the application.

2. Impacts upon Neighbouring Residential Amenity

The submissions raise concern that the development will have an adverse impact upon areas of residential amenity such as visual privacy to the rear of the subject site being the Salvation Army site. The submission has requested privacy louvers to be provided to the windows facing the rear.

Comment:

This matter can be addressed by way of condition to provide appropriate privacy treatments to all the windows facing the adjoining development to the west.

Therefore, this issue can be addressed by way of condition.

3. Traffic Congestion and No Parking Provided

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 with no parking will increase demand on road network and will cause significant safety and congestion problems.

Comment:

This issue is been addressed in detail under the referrals section of this report (refer to comments made by Council's Traffic Engineer). In summary, 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 parking provisions.

MEDIATION

No mediation has been requested by the objectors.

INTERNAL REFERRALS

Internal Referral Body	Recommendation/ Comments
Building Assessment - Fire and Disability upgrades	<p>Supported (subject to conditions)</p> <p>No objections subject to conditions to ensure compliance with the Building Code of Australia.</p>
Environmental Health (Industrial)	<p>Supported (subject to conditions)</p> <p>This application is for a mixed use building comprising of commercial, retail and residential, although it appears that the predominant use will be that of a residential boarding house.</p> <p>The Environmental Health Team considers the proposal acceptable subject to conditions imposed to regulate the main concerns relating to noise, waste management and potential impacts of any future use of the retail component of the development.</p> <p>Recommendation</p> <p>APPROVAL - subject to conditions</p>
Development Engineers	<p>Supported (subject to conditions)</p> <p>The submitted drainage plans including the provision of OSD is satisfactory. The existing footpath is currently paved to Council's standards and will need to be protected as part of the works. The existing awning is to be removed and only partially replaced within the building footprint. This issue has been raised by Council's Road Asset team and will need to be addressed with Planning to resolve their concerns.</p> <p>There is no current vehicular access to the site but the design indicates a future rear access. This aspect is to be assessed By Council's Traffic team. The site is located adjacent to two bus stops on either side of Pittwater Rd and there is a signalised crossing for pedestrians to access the stop on the eastern side.</p> <p>No objection to approval, subject to conditions as recommended.</p>
Stormwater and Floodplain Engineering – Flood risk	<p>Supported</p> <p>The property is flood affected at the front on Pittwater Rd, with flood related data as follows:</p> <p>1% AEP flood level: 19.4m AHD Flood Planning Level: 19.9m AHD Probable Maximum Flood level: 20.4m AHD Flood Risk Precinct: Medium Land Use Category: Residential/Commercial</p> <p>The ground floor level adjacent to Pittwater Rd of</p>

Internal Referral Body	Recommendation/ Comments
	<p>20.42m AHD is above the FPL, and there is no basement car park.</p> <p>No flood related objections.</p>
Water Management	<p>Not supported</p> <p>This application was assessed for how it has addressed Water Sensitive Urban Design objectives, and controls associated with stormwater quality, groundwater and sediment and erosion.</p> <p>1. No basement is proposed. If any excavation takes place greater than 1.5m below ground level, a geotech report is required to identify whether any groundwater is present, as dewatering conditions would apply.</p> <p>2. The sediment and erosion control plan must be updated to show where the stabilised access for the site will be located and how sediment will be controlled around this access.</p> <p>3. The applicant is providing for stormwater quality treatment by installing a SPEL filter system. While these systems remove particulate pollutants, they don't remove dissolved nitrogen and phosphorus, and they don't allow for infiltration that contributes significantly to water quality issues in waterways. The roof garden and urban farm are good water sensitive urban design initiatives that contribute to reducing runoff and evaporation, but the 3kL rainwater tank proposed is the equivalent of that installed on most single dwellings.</p> <p>Due to the high impervious area of this site and the need to include canopy in landscaped areas, the use of the SPEL filter system will be accepted if the applicant reduces stormwater runoff discharged from the site so that post-development stormwater volumes during an average rainfall year are 70% of the volume if no measures were applied. There is significant potential for rainwater capture and re-use within this building given the large number of occupants and the predicted water use. The target mentioned could be achieved by connecting rainwater to toilets and laundry facilities in the building, and using it for irrigation of landscaped areas.</p> <p>The applicant must revise their sediment control plan and demonstrate how they will reduce stormwater runoff volumes</p>
Road Reserve	<p>Supported (subject to conditions)</p> <p>No objections subject to the recommended conditions.</p>
Strategic and Place Planning (Heritage Officer)	<p>Supported (subject to conditions)</p> <p>The proposal has been referred to Heritage as the subject site is a heritage item</p>

Internal Referral Body	Recommendation/ Comments
	<p>I48 - Commonwealth Bank - 691 Pittwater Road, Dee Why</p> <p>Details of the item as contained within the Warringah heritage inventory is as follows:</p> <p><u>Statement of significance:</u> A representative example of a suburban bank in the inter-war art deco style. Historically provides evidence of the development of business infrastructure during this period to serve growth of the area. Displays good integrity, retaining much original fabric</p> <p><u>Physical description:</u> Two storey commercial building with straight-edged parapet. Symmetrical front elevation. Central recess. Timber sash windows. Alterations at ground level to entry etc.</p> <p>The proposal seeks consent for the construction of an eight storey boarding house and the retention of the Art Deco bank facade to Pittwater Road. The proposal also includes a rooftop terrace and some commercial and retail floor space. The subject site is a heritage item and a heritage impact statement (HIS) has been provided with the application.</p> <p>The HIS has considered the subject site and determined that only the facade is of heritage value and thus the remainder of the building should not be retained. Heritage agrees with this assessment but will condition that a full photographic archival recording of the building be undertaken and provided to Council before works begin. This must include recording the internals of the building, annotated floorplans of the building as is, and the external elevations of the building where possible.</p> <p>The proposal includes the retention of the majority of the bank's facade, however there a number of changes proposed. This includes the removal of the existing awning, removal of the green walls, reinstatement of the lower section of the northern bay (infilled for an ATM), a fire escape through the southern bay and the restoration of the granite tile base. Heritage strongly supports the removal of the awning and green walls, as well as the reinstatement of the northern bay and red granite tile base.</p> <p>These changes will remove later unsympathetic additions. Heritage would prefer if the proposed fire escape through the southern bay could be relocated so as to avoid further penetrations to the facade, but on balance the impact can be tolerated. The upper levels of the boarding house have also been set back sufficiently so as to allow the heritage facade to be easily read from the street without an overwhelming dominant element above.</p>

Internal Referral Body	Recommendation/ Comments
	<p>There is however no report or plan on how the facade is to be retained and protected during demolition and construction works. A condition shall be imposed that a structural engineering report, including retention strategies, be prepared and submitted for council approval. A condition will also be imposed that during works the recommendations of this document be adhered to.</p> <p>Lastly, Heritage will condition that a heritage interpretation plan with detailed strategies be developed and submitted for Council approval. This should identify the key historical themes and messages of the place, as well as the best channels and medium to communicate them to the public. Heritage will subsequently condition that the plan be implemented to Council's approval prior to the issuing of the occupation certificate.</p> <p>Consider against the provisions of CL5.10 of WLEP.</p> <p>Is a Conservation Management Plan (CMP) Required? No Has a CMP been provided? No Is a Heritage Impact Statement required? Yes</p>
Strategic and Place Planning (Urban Design)	<p>Supported</p> <p>The proposal seeks consent for the construction of an eight storey boarding house and the retention of the heritage Art Deco bank facade to Pittwater Road. The proposal also includes a rooftop terrace and some commercial and retail floor space.</p> <p>The proposed built form has complied with all the building setbacks to Pittwater Road and allowed for a 6m setback to the rear of the site where a future laneway will be located as required by Key Site 'E' in the DCP.</p> <p>The proposed building facades are well articulated and respond well to the heritage bank facade.</p> <p>As such, there is no objection to the proposal.</p>
Traffic Engineer	<p>Not Supported</p> <p>The proposal is for a mixed use development comprising;</p> <ul style="list-style-type: none"> - 64 room/119 bed Boarding House - 190.2m² of office space - 81.3m² of Retail space - 34 bicycle spaces <p>Traffic: The anticipated traffic generation from the site is considered negligible on the network with some 20 vehicles being generated in the peak hour.</p>

Internal Referral Body	Recommendation/ Comments
	<p>Parking: The parking supply severely deficient.</p> <p>The discount of 45 spaces only applies to the office and retail portions of the development as the existing site was of similar use.</p> <p>The parking requirements of the additional use of the boarding house must be fully accommodated onsite.</p> <p>Council's Traffic Team have reviewed the information provided in the letter prepared by TEF Consulting (dated 17 March 2020). Council's Traffic team do not support the assumptions being made in comparison to 'similar' sites as these 'similar' sites are not deemed similar.</p> <p>Further, assuming that Council's Traffic team were to support the study undertaken as part of the 'Research Paper by NSW University's City Futures Research Centre', the acceptance of one third of occupants owning a car would result in a need for at least 22 car spaces. This further confirms the fact that the 3 proposed spaces (which will not be available when a ROW becomes available) are deficient. Even in the instance where car share would be adopted, where 2 car share spaces are provided, the requirements for 12 regular parking spaces would still be required. And therefore the site simply does not provide adequate parking provisions.</p> <p>Access: Based on the need for additional parking, the access arrangements will need to be modified. No comment can be provided until suitable plans are resubmitted addressing the parking demand.</p> <p>Conclusion: Based on the parking demand deficiencies, Council Cannot support the application in the current form.</p>
Waste Officer	<p>Not Supported</p> <p>There are two waste collection arrangements that need to be considered with regards to this application. These being, waste collection from Pittwater Road and waste collection from the proposed privately owned laneway at the rear of the building.</p> <p>Waste collection will be undertaken from the rear of the building once the laneway has been constructed across all subject properties.</p> <p><u>Pittwater Road Collection (Initially)</u></p> <p>Waste collection (both bins and bulky goods) will be undertaken from Pittwater Road until such time as the laneway is completed.</p> <p>Whilst the bin storage room is more than 6.5 metres walking distance from the Pittwater Road this is</p>

Internal Referral Body	Recommendation/ Comments
	<p>acceptable considering the ultimate collection arrangement is from the rear laneway. Council will provide a "wheel out / wheel in service" for the bins. Under no circumstances are bins to be placed on the footpath by the boarding house manager.</p> <p><u>Rear Laneway Collection (when ROW available)</u></p> <p>This is unacceptable. Specifically:</p> <ul style="list-style-type: none"> - A loading dock or bay arrangement must be provided so that the waste collection truck does not block vehicle access along the laneway whilst servicing bins. - The proposed car parking arrangement completely blocks service access to the binroom and bulky goods room from the laneway. - Access to the bulky goods room must not be via the bin room. <p><u>Additionally</u></p> <ul style="list-style-type: none"> - Please provide ceiling clearance dimensions for the bin servicing area. - Waste will be collected via the use of an MR vehicle. Please provide swept path analysis detailing access to the rear of the building for waste truck access. - Please provide internal dimensions for the proposed bin room. - Collection will be via the use of 240 litre bins. - Twice weekly waste collection is acceptable to Council.

EXTERNAL REFERRALS

External Referral Body	Comments
Ausgrid: (SEPP Infra.)	<p>Supported (subject to conditions)</p> <p>The proposal was referred to Ausgrid who provided a response stating that the proposal is acceptable subject to compliance with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice.</p> <p>These recommendations will be included as a condition of consent, if the application was recommended for approval.</p>
Concurrence – Transport for NSW (TfNSW) - (SEPP Infrastructure. Traffic generating development)	<p>Supported (subject to conditions)</p> <p>The application was referred to the TfNSW for comment as traffic generating development under Schedule 3 of SEPP Infrastructure.</p> <p>The TfNSW provided their comments on 14 May 2020 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 – State and Regional Development 2011 (SRD SEPP)

The proposal is a regionally significant development pursuant to Clause 5 of Schedule 7 of State Environmental Planning Policy (State and Regional Development) 2011 (SRD SEPP) that has a Capital Investment Value (CIV) of more than \$5 million in accordance with the SRD SEPP. The proposal nominates a CIV of \$ 9,882,644. As such, the Sydney North Planning Panel is the consent authority for the development application.

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
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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, e) Zone B1 Neighbourhood Centre, f) Zone B2 Local Centre, g) Zone B4 Mixed Use.	Consistent The site is located within B4 Mixed and the proposed use is permissible with consent under WLEP 2011 and SEPP (ARH) 2009

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>	Consistent <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 subject site 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.</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>	Not Applicable <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
(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. <ul style="list-style-type: none"> WLEP 2011 requires FSR of 4:1 	The proposal has an FSR of 3.6:1	Yes
	(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.	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: <ul style="list-style-type: none"> 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 	The subject site contains a heritage item, therefore this Clause as relates to additional FSR is not applicable to the subject site.	Not Applicable

	floor space ratio is greater than 2.5:1.		
2) A consent authority must not refuse consent to development to which this Division applies on any of the following grounds:			
(a) Building Height	<p>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.</p> <p>WLEP 2011 permits 27m on the subject site</p>	The maximum building height is 27m	Yes
(b) Landscaped Area	If the landscape treatment of the front setback area is compatible with the streetscape in which the building is located	As the site is within the B4 zone, the proposal provides for compatible street frontage relevant to the Heritage status of the building.	Yes
(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,	The proposal incorporates a communal living space within the uppermost level. The communal area comprises a 52.6m ² room with connecting	Yes

		terrace, occupying (approximately) 35m ² , which will received adequate solar access.	
(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>The proposal provides for a communal private open space / terrace at the upper level.</p> <p>The terrace is accompanied by a communal room which comprises an area of 484.9m².</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>The development proposes 63 boarding rooms and 1 manager's residence, generating a parking requirement of 32.5 spaces (at 0.5 car spaces per room) for lodgers and 1 space for the operational manager. The proposal provides no parking for the development.</p>	<p>No</p> <p>(refer to discussion below)</p>

(f) accommodation size	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:	All rooms are more than 12 for single and 16m ² for double. The proposed manager's residence is slightly larger at 33.2m ² which is acceptable because it is not a boarding room as defined	Yes (subject to conditions)
	(i) 12 square metres in the case of a boarding room intended to be used by a single lodger, or (ii) 16 square metres in any other case.		
	(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,	As indicated above, the development provides sufficient communal living area.	Yes
(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,	No boarding rooms within the development have a gross floor area exceeding 25m 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	All rooms are provided with a bathroom and kitchenette facilities.	Yes

house for the use of each lodger,		
(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,	An operational manager's residence is provided within upper floor level of the proposed development. It is connected to a private rooftop terrace area of approximately 54m ²	Yes
(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.	<p>The proposed development has 63 rooms for lodgers, one manager's residence, generating a requirement for 12.8 (13) bicycle and 12.8 (13) motorcycle spaces.</p> <p>The development incorporates accommodation for 127 bicycles within the ground floor level in accordance with the standard satisfying clause 30(1) (h).</p> <p>No motorcycle parking is provided.</p>	No (refer to Clause 4.6)
(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 29(2) (e) – Parking

The development proposes 63 boarding rooms and 1 manager's residence, generating a parking requirement of **32.5 spaces** (at 0.5 car spaces per room) for lodgers and 1 space for the operational manager.

The proposal provides zero parking for the development, although it is noted that the plans show 3 spaces for future use when a Right of Way becomes available, and therefore is non-compliant with Clause 29(2) (e). This is considered to be a critical and fundamental failure of the proposed development, as addressed by Council's Traffic Engineer and under WDCP section of this report.

Clause 30 – Development Standards

Clause 30(1) of the SEPP contains a number of development standards that the consent authority is required to take into consideration when assessing boarding house applications. Departures from development standards are required to be justified by way of a cl 4.6

exception. The development standards amongst other requirement includes requirements for bicycle and motorcycle parking.

The proposed development has 63 rooms for lodgers, one manager's residence, generating a requirement for 12.8 (13) bicycle and 12.8 (13) motorcycle spaces. The development incorporates accommodation for 127 bicycles within the ground floor level in accordance with the standard satisfying clause 30(1) (h). However, no motorcycle parking is proposed.

A Clause 4.6 exception has been made in response to this aspect and has been addressed under Clause 4.6 section of WLEP 2011 of this report.

Clause 30A: Character of the local area

Clause 30A states that Council cannot grant consent to a boarding house unless it has taken into consideration whether the design of the development is compatible with the character of the local area. Case law has held that the test in Clause 30A is "one of compatibility not sameness" (*Gow v Warringah Council [2013] NSWLEC 1093 (15 March 2013)*). Compatibility is widely accepted to mean "capable of existing together in harmony" (*Project Venture Developments Pty Ltd v Pittwater Council [2005] NSWLEC 191*).

It has also been held that in assessing 'compatibility' both the existing and future character of the local area needs to be taken into account (*Sales Search Pty Ltd v The Hills Shire Council [2013] NSWLEC 1052 (2 April 2013)* and *Revelop Projects Pty Ltd v Parramatta City Council [2013] NSWLEC 1029*).

Relationship to the Existing and Future Character of the Local Area

In *Revelop Projects Pty Ltd v Parramatta City Council [2013] NSW LEC 1029*, Commissioner Morris concluded that the 'local area' includes both sides of the street and the 'visual catchment' as the minimum area to be considered in determining compatibility. The 'local area' in this case is taken to include both sides of Pittwater Road and the immediate surrounding streets. Within this local area, development is primarily characterised by the mix of 2-5 storey commercial buildings, intermixed with recent 8, and up to 18 storey mixed commercial and residential developments.

In *Project Venture Developments v Pittwater Council [2005] NSWLEC 191*, the Land and Environment Court specifically set out a relevant planning principle. Consideration has therefore been given to the two key questions identified in the Land and Environment Court Planning Principles:

- (a) Are the proposal's physical impacts on surrounding development acceptable?**
The physical impacts include constraints on the development potential of surrounding sites.

Comment:

The development typology is permissible in this zone, and the transition of this location from medium to high densities is being increased in the form of larger built forms is evident within the visual catchment. The proposal has been designed in a scale and form with an attempt for this development to integrate with the adjoining built form. The

location and form being horizontally and vertically does assist in the integration of the development with the adjoining built form.

The building design has an 8-storey scale and mixed-use development composition. The building design retains the property's heritage street interface, with restorative enhancements, and comprises the equivalent of a 3-storey commercial podium frontage and 3-8 storey tower building setback behind.

The proposed built form has complied with all the building setbacks to Pittwater Road and allowed for a 6.0m setback to the rear of the site, where a future laneway will be located as required by *Key Site 'E'* in the WDCP 2011. The proposed building facades are well articulated and respond well to the heritage facade.

However, it is noted that the central component of the development includes habitable rooms which face towards the north/eastern side boundary (693 Pittwater Road). The habitable rooms are setback approximately 6m from the side boundary. The apartment Design guidelines (Clause 2F and 3F) require building separation (i.e. setback) of between 6m and 9m from the habitable windows to the side boundary. Should the neighbouring site be developed, the proposed building separation of the central component could unreasonably prejudice the building separation (setback) of new building.

Conversely, the development on the neighbouring site may opt to construct a blank wall along the entire property boundary to circumvent the building separation requirements influenced by this development. Should this occur, the amenity of the habitable rooms in the central component would be compromised such that they would face a blank wall, would not receive sufficient sunlight access and would be exposed to greater levels of acoustic impact due to the cavernous nature of the void space.

In addition to the above, the development does not satisfactorily address the issue of site isolation pertaining to the adjoining site to the south west (being 687 Pittwater Road).

Given the above, it is considered that the development does not satisfy this Principle.

(b) Is the proposal's appearance in harmony with the buildings around it and the character of the street?

As indicated above, the overall built form as proposed is not harmonious with the adjoining development. Due to the orientation of the site the development will result in adverse impacts on neighbouring sites.

Assessing 'compatibility' requires both the 'existing' and 'future' character of the local area to be taken into account (*Sales Search Pty Ltd v The Hills Shire Council [2013] NSWLEC 1052 and Revelop Projects Pty Ltd v Parramatta City Council [2013] NSWLEC 1029*). It is acknowledged that there are sites within Key Site E that are yet to reach their development potential immediately to the north and south of the subject site. However, it is considered that the proposed development will prejudice the development of these adjoining sites or result in a development which compromises its own amenity due to the centrally located habitable room component.

Given the above, it is considered that the proposal satisfies the character test however results in a built form which provides poor occupant amenity and an unresolved interface to adjoining residential development to the north and south.

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 retail/offices 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

A BASIX certificate has been submitted with the application (see Certificate No. 1083495M, dated 23 March 2020)

A condition could be included in the recommendation of this report, if the application was worthy of approval requiring compliance with the commitments indicated in the BASIX Certificate.

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 proposal was referred to Ausgrid who provided a response stating that the proposal is acceptable subject to compliance with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice. These recommendations will be included as a condition of consent, if the application was recommended for approval.

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 Acoustic Logic, dated 16 March 2020). 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 Transport for NSW 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.

The application was referred to the Transport for NSW for comment as Traffic Generating Development under Schedule 3 of State Environmental Planning Policy (Infrastructure) 2007, as the proposed development is located on Pittwater Road.

The TfNSW has provided their response which raises no objection to the proposed development, subject to conditions.

Draft State Environmental Planning Policies Draft State Environmental Planning Policy – Remediation of Land

The Department of Planning and Environment ('DPE') has announced a Draft Remediation of Land SEPP ('Draft SEPP') which will repeal and replace the current State Environmental Planning Policy No 55—Remediation of Land ('SEPP 55').

The main changes proposed include the expansion of categories of remediation work which requires development consent, a greater involvement of principal certifying authorities particularly in relation to remediation works that can be carried out without development consent, more comprehensive guidelines for Councils and certifiers and the clarification of the contamination information to be included on Section 149 Planning Certificates.

Whilst the proposed SEPP will retain the key operational framework of SEPP 55, it will adopt a more modern approach to the management of contaminated land.

As discussed above with regards to SEPP 55, the site is considered to be suitable for the proposed development and unlikely to be subject to land contamination.

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

Zoning and Permissibility

The fundamentals	
Key definitions (ref. WLEP 2011 Dictionary)	Retail Premises Office Premises Boarding house means 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.
Zone:	B4 Mixed Use
Permitted with Consent or Prohibited:	Boarding House – Permitted with consent Retail Premises - Permitted with consent

The fundamentals

Office Premises - Permitted with consent

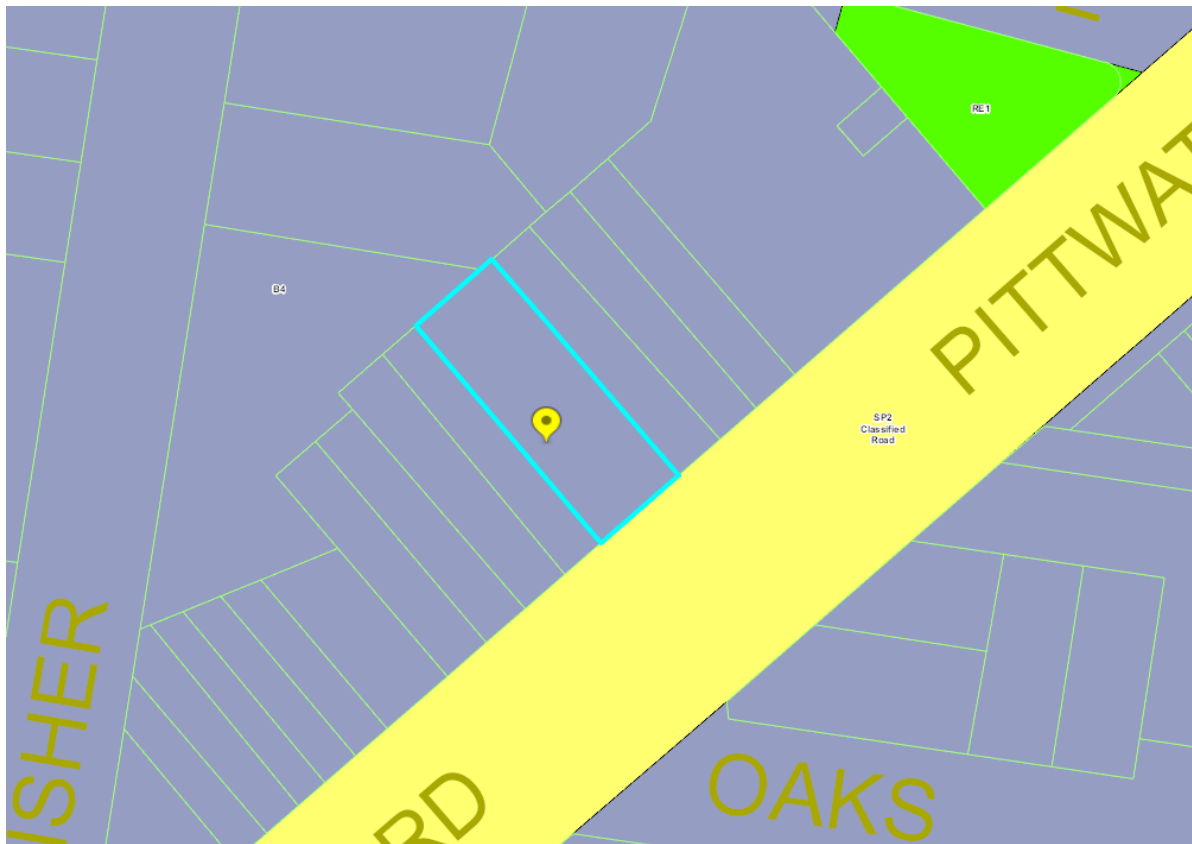


Figure 4 – Site Zoning under WLEP 2011 (note: site boundaries shown in light blue)

Principal Development Standards

Relevant Development Standard	Requirement	Proposed	Variation (%)	Compliance
Clause 4.3 Height of Buildings	27m	27m	Nil	Yes
Clause 4.4 Floor Space Ratio	4:1	3.64:1	Nil	Yes

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	Yes
4.6 Exceptions to development standards	Yes

Relevant Clauses	Compliance with Requirements
	Clause 30 (1)(h) of SEPP (ARH) 2009
Part 5 Miscellaneous Provisions	
5.9 Preservation of trees or vegetation	Yes
5.10 Heritage	Yes The existing building on the site is listed as a heritage item in the WLEP 2011 and identified in the LEP Maps as item I48. The building is a two storey, Art Deco style building, built around 1941 and continuously used as premises for a branch of the Commonwealth Bank until 2018. Council's Heritage officer has reviewed the proposal (including the Heritage report) and have raised no objection subject to conditions.
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 Development Standard Associated with SEPP (ARH) 2009

Assessment of Request to vary a Development Standard:

Clause 30(1) of the SEPP contains a number of development standards that the consent authority is required to take into consideration when assessing boarding house applications. Departures from development standards are required to be justified by way of a cl 4.6 exception. The development standards amongst other requirement includes requirements for motorcycle parking.

The proposed development has 63 rooms for lodgers, one manager's residence, generating a requirement for 12.6 motorcycle spaces. No motorcycle parking is proposed.

A recent judgement of the NSW LEC in *Baron Corporation Pty Limited v Council of the City of Sydney* [2019] NSWLEC 61 provides direction to the consent authority that they may need to themselves in fact form a view as to whether the matters in Clause 4.6(3) (a) and (b) are met and not simply rely on the applicant to do so. It is not enough for the applicant to simply cover the matters or that an argument had been advanced.

As such the following assessment against Clause 4.6 and presents both the applicant's argument and an assessment of that argument to ensure that Clause 4.6 is wholly considered:

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 30(1) (h) of SEPP (ARH) 2009 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 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:

- *Compliance with the development standard is unreasonable and unnecessary in the circumstances of the case because the proposal satisfies the aims of the SEPP and the local planning provisions relating to the B4 zone within the Dee Why Town Centre.*
- *Compliance with the development standard would defeat the underlying objectives or aims of the SEPP, which is to increase the supply of affordable rental housing in local business centre locations that are close to places of work and public transport, if compliance was required, nothing that:*

- *The proposal will result in a reduced onsite parking demand and reduced traffic generation as compared to the development currently on the site.*
- *The site benefits from excellent proximity and direct pedestrian access to the public transport as the site is 30 and 50 metres walking distance from the main two bus stops servicing Dee Why including access to the B-line (B1) high frequency service.*
- *The site is located in an area that is highly accessible to employment hubs that are in close proximity. Given key workers are one of the community cohorts that affordable rental housing is targeted at, the proposal responds positively to the likelihood that some occupants are likely to be attracted to the development for its proximity to places of employment that would not demand then to own a motorbike or car.*
- *The proposal facilities a boarding house that satisfies the statutory controls under the Affordable Housing SEPP 2009 and Warringah LEP 2011.*

Assessment Officers 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 motorcycle parking provision and trigger such flexibility in the application of the standard, apart from the fact that they have no access and there is heritage building on the site.

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 and the Master planning for Dee Why Town Centre.

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 B4 – Mixed use zone.

Assessments against these objectives are provided below.

Objectives of the Development Standard

There are no objectives of the Development Standards, it's a requirement if SEPP (ARH) 2009 to provide motorcycle parking for boarding houses.

What are the Underlying Objectives of the Zone?

The objectives of the B4 Mixed Use zone are as follows:

- *To provide a mixture of compatible land uses.*
- *To integrate suitable business, office, residential, retail and other development in accessible locations so as to maximise public transport patronage and encourage walking and cycling.*
- *To reinforce the role of Dee Why as the major centre in the sub-region by the treatment of public spaces, the scale and intensity of development, the focus of civic activity and the arrangement of land uses.*
- *To promote building design that creates active building fronts, contributes to the life of streets and public spaces and creates environments that are appropriate to human scale as well as being comfortable, interesting and safe.*
- *To promote a land use pattern that is characterised by shops, restaurants and business premises on the ground floor and housing and offices on the upper floors of buildings.*
- *To encourage site amalgamations to facilitate new development and to facilitate the provision of car parking below ground.*

Comment:

The proposed development is found to be inconsistent with the objectives of the zone in that the site does not include the amalgamations of any other lot and therefore the development does not provide any parking for the development.

The development is therefore inconsistent with this objective, which is considered to be fundamental issue with the application.

Conclusion:

The non-compliance with the clause 30(1) (h) of SEPP (ARH) 2009 is not in the public interest as the proposed development is found to be inconsistent with 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 clause 30(1) (h) of SEPP (ARH) 2009 Development Standard cannot be assumed.

Part 7 Dee Why Town Centre

Part 7 contains local provisions that relate to the Dee Why Town Centre, including a number of specific development controls for Key Site E, which the subject site is located within. The specific controls as it relates to Site E are addressed as follows:

7.4 Development must be consistent with objectives for development and design excellence

This clause states that development consent must not be granted to development on land in the Dee Why Town Centre, unless the consent authority is satisfied that the development is consistent with the objectives of this Part (addressed above under Clause 7.3 of this report) that are relevant to that development, and incorporates:

Requirement	Comment	Compliant
i. Stormwater management measures, including water sensitive urban design and ecologically sustainable development principles.	This issue is addressed by the Water Management referral comments. In summary, additional information is required to address the requirement of this Clause.	No
ii. Innovative design solutions that minimise stormwater impacts, including stormwater quantity and quality impacts, on the Dee Why Lagoon system.	The application has been assessed in detail by Council's Development Engineers, whom have raised no objection subject to conditions.	Yes

iii.	Finished floor levels and basement car park entry levels that include adequate freeboards to protect against the entry of stormwater from the Council's street drainage system.	<p>The Dee Why South Catchment Flood Study identified that the Dee Why CBD was affected by overland flow with depths in the range of 200-900mm in the 1 in 100 Year ARI storm event. These overland flow levels resulted in new buildings requiring elevated ground floor levels and basement driveway entry levels at or above the 1 in 100 Year ARI storm event levels.</p> <p>The finished floor levels of all commercial premises and residential lobbies are in the majority above the Flood Planning Levels.</p>	Yes
iv.	Continuous colonnades or pedestrian awnings on those parts of any building that are on the edges of streets or public spaces.	Awnings have been provided above the new ground (commercial/retail) floor as required for the development.	Yes

7.5 - Design Excellence within Dee Why Town Centre

in determining whether development exhibits design excellence, the consent authority must have regard to the following matters:

Matters of Consideration	Comment
a) Whether a high standard of architectural design, materials and detailing appropriate to the building type and location will be achieved.	<p>The development has an appropriate built form which will contribute positively to the streetscapes within Dee Why Town Centre.</p> <p>The height, bulk and scale of the proposed development are considered appropriate having regard to its location.</p>
b) Whether the form and external appearance of the proposed development will improve the quality and amenity of the public domain.	<p>The proposed development is considered to be appropriate in terms of the composition of building elements, textures, materials and colours and reflect the use, internal design and structure of the resultant building.</p> <p>The proposal responds aesthetically to the environment and context, contributing to the desired future character of the area.</p>
c) Whether the building meets sustainable design principles in terms of sunlight, natural ventilation, wind, reflectivity, visual and acoustic privacy, safety and security and resources, energy and water efficiency.	The proposed development has been designed to meet BCA energy efficiency requirements through the deemed-to-satisfy or Alternative Solutions Approach provisions of the BCA. The National Construction Code (NCC) BCA section J sets minimum energy performance requirements of all new development and covers building fabric and glazing thermal performance, air-

	conditioning, ventilation, lighting, power and hot water.
d) Whether satisfactory arrangements have been made to ensure that the proposed design is carried through to the completion of the development concerned.	The development is considered to be a satisfactory urban design response to the site's context, location and surrounding land uses, and is consistent with the outcome as envisaged in the Masterplan.
e) Whether the configuration and design of communal access and communal recreational areas within the residential elements of development incorporate exemplary and innovative treatments and will promote a socially effective urban village atmosphere.	Communal areas have been included within the proposed development that will provide social gathering for the residents of the development.

7.12 - Provisions promoting retail activity

The objective of this clause is to promote retail activity on the ground and first floors of new buildings in the Dee Why Town Centre.

This clause imposes additional restrictions on the type of uses that may be accommodated within the development, specifically on the ground and first floor levels of the development.

The uses within the proposed development as they relates to the ground floor levels is consistent with the requirement of this clause in that there is no residential accommodation, medical centre, and office premises on the ground floor of the proposed development.

The proposed development also includes an office component within the first floor level.

7.13 - Mobility, traffic management and parking

The objective of this clause is to ensure improved vehicle access and circulation in the Dee Why Town Centre, through good design and the management of traffic flows within the existing and new roads servicing the Dee Why Town Centre.

The DA was accompanied by a traffic assessment report which addresses the existing and future traffic flows within the Dee Why Town Centre. The report has been reviewed by Council's Traffic Engineer, who have stated the development is deficient in providing adequate parking provisions for the development and therefore the finding of the applicant's traffic report is not concurred with by Council's Traffic Engineer and the application is recommended for refusal on this basis.

Further to the above, as the development provides no vehicular access or servicing access for cleaning, garbage, repairs and maintenance and removals and such would not be allowed from Pittwater Road due to safety and traffic conflict issues.

DEVELOPMENT CONTROL PLANS

WARRINGAH DEVELOPMENT CONTROL PLAN 2011

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

Compliance Assessment Summary

Clause	Compliance with Requirements	Consistency Aims/Objectives
Part A Introduction		
A.5 Objectives	No	No
Part B Built Form Controls		
B1 Wall Height	N/A	N/A
B3 Side Boundary Envelopes	N/A	N/A
B5 Side Boundary Setbacks	N/A	N/A
B7 Front Boundary Setbacks	N/A	N/A
B9 Rear Boundary Setbacks	N/A	N/A
D1 Landscaped Open Space	N/A	N/A
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	No	No
C3(A) Bicycle Parking and End of Trip Facilities	Yes	Yes
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	No	No (refer to Waste comments in the referral section of this report)
Residential accommodation - 3 or more dwellings	Yes	Yes
Part D Design		
D2 Private Open Space	Yes	Yes
D3 Noise	Yes	Yes
D6 Access to Sunlight	Yes	Yes
D7 Views	Yes	Yes
D8 Privacy	Yes	Yes
D9 Building Bulk	Yes	Yes
D10 Building Colours and Materials	Yes	Yes
D11 Roofs	Yes	Yes
D12 Glare and Reflection	Yes	Yes
D14 Site Facilities	No	No
D18 Accessibility	Yes	Yes
D20 Safety and Security	Yes	Yes
D21 Provision and Location of Utility Services	Yes	Yes


Clause	Compliance with Requirements	Consistency Aims/Objectives
D22 Conservation of Energy and Water	Yes	Yes
Part E The Natural Environment		
E1 Private Property Tree Management	Yes	Yes
E10 Landslip Risk	Yes	Yes
Part G1 – Dee Why Town Centre	No	No (refer to discussion below)

Part G1- Dee Why Town Centre

The site is located within Dee Why Town Centre within B4 Mixed use zone under the WDCP 2011.

Note: Clause A.6 of the WDCP 2011 stipulates that, in the event of any inconsistency between Part G and Parts C, D and E, the requirements of Part G will prevail. The following table provides an assessment of the development against the controls of Part G1 as it specifically relates to the subject site:

Requirement	Comment	Compliance
<p>3. Desired Character for the Dee Why Town Centre</p> <p>The vision for Dee Why Town Centre identified in the 2013 Masterplan is as follows:</p> <p><i>“Dee Why will be home to a thriving cosmopolitan community who cherish their past, celebrate its unique and engaging vibe and embrace its bold commitment to urban sustainability. It will be a place of both energy and refuge, a city at the beach, with a distinctive modern urban identity.”</i></p> <p>The North District Plan 2018 identifies Dee Why Town Centre as a mixed-use area that offers a vibrant local night-time economy. It outlines actions that are interpreted as objectives within this section of the DCP.</p> <p>The desired character for the Dee Why Town Centre is further defined by objectives within this Development Control Plan.</p>	<p><i>The proposed development is found to be acceptable with regards to its built form in accordance with Desired Character, however the fact that the proposed development does not provide suitable vehicular access or servicing access (cleaning, garbage, repairs and maintenance, removals).</i></p> <p><i>The proposed development is found to be inconsistent with Desired Character statement for Dee Why Town Centre.</i></p>	No
<p>4. Streetscape and Public Domain</p> <p>This section details design requirements for places accessible to the public, being either on public land or as part publicly accessible areas of a private</p>	<p>The proposed development is acceptable with regards to the requirement of this Clause.</p> <p>The proposal also allows for a 6m setback to the rear of the site where a future</p>	Yes

Requirement	Comment	Compliance
<p>development. This includes building frontages addressing the street, awnings over footpaths, pedestrian access ways and open spaces.</p> <p>It also includes requirements for the provision of new public infrastructure on Key Sites shown in Figure 2, including:</p> <ul style="list-style-type: none"> - Key Site E – New Shared Pathway and Pedestrian Accessway  <p>Figure 6- Key Sites Map indicating public domain upgrades</p>	<p>laneway will be located as required by Key Site 'E'.</p>	
<p>5. Design and Architectural Diversity</p> <p>1. New developments must be designed to avoid the use of blank walls fronting streets and the public domain. In circumstances where blank walls are unavoidable, they are to be designed in a manner that is consistent with the overall building form that contributes to the public domain and create visual interest.</p> <p>2. Corner sites must:</p> <ol style="list-style-type: none"> Adequately address both street frontages; Combine architectural features, materials and landscape design to define corners 	<p>As advised by Council's Urban Designer, the proposed development is found to be acceptable in terms of its design and architecture.</p>	<p>Yes</p>
<p>6. Site Amalgamation</p> <p>Development should not result in the isolation of land adjacent to the development site, preventing the reasonable development of that land.</p> <p>2. Development that would result in an isolated lot must be supported by documentary evidence to demonstrate that a genuine and reasonable attempt has been made to purchase an isolated lot adjacent to the development site, based on a fair market value. This is to include at least one recent independent valuation by a licensed valuer and a written offer to cover reasonable expenses likely to be incurred by the owner of the isolated lot during the sale of the property.</p>	<p>The issue of site amalgamation is discussed below, where it is concluded the applicant has not made reasonable attempts to amalgamate the adjoining site (687 Pittwater Road).</p>	<p>No</p>

Requirement	Comment	Compliance
<p>3. Where amalgamation of an isolated lot adjacent to the development site is not feasible, applicants will be required to:</p> <p>a. Demonstrate that an orderly and economic use and development of the separate sites can be achieved;</p> <p>b. Provide a building envelope for the adjacent isolated lot, indicating height, setbacks, resultant site coverage (building and basement), sufficient to understand the relationship between the application and the adjacent isolated lot;</p> <p>c. Detail the likely impacts of development on the adjacent isolated lot in terms of solar access, visual privacy, building separation, streetscape and vehicular access.</p>		
<p>7. Traffic and Parking</p> <p>1. Site amalgamation is encouraged to enable integrated car parking and service provision using shared driveways where possible.</p> <p>2. New developments are to be accompanied by a service delivery and loading dock plan.</p> <p>3. Car parking and vehicle access points shall incorporate the following design elements:</p> <p>a. Recessed car park entries from the main building facade alignment;</p> <p>b. Avoidance of large voids in the facade by providing security doors or decorative grills to car park entry;</p> <p>c. Returning the facade finishes into the car park entry recess for the extent visible from the street;</p> <p>d. Concealing all services, pipes and ducts.</p>	<p>The site does not include site amalgamation and does not any capering for the site. This issue has been included as a reason for refusal.</p>	<p>No</p>
<p>8. Car Share</p> <p>1. For properties with more than 25 dwellings, one (1) car share space must be provided per 25 dwellings with each car share space replacing one (1) regular car parking space.</p> <p>2. Where the proposed number of car share spaces exceed the above minimum, Council may consider reduced private parking, where suitable evidence and justification is provided to Council of the benefits to the road network.</p>	<p>The Traffic Report submitted with the application states that there is an opportunity as part of rear access arrangement to provide three (3) car share parking spaces.</p> <p>However, the issue with the application is that development does not provide another parking for the site and given nature and scale of the proposed development, the 3 share parking spaces is not sufficient.</p> <p>This issue has been included as reason for refusal.</p>	<p>No</p>
<p>9. Sustainability</p>	<p>The proposed development has been designed to meet BCA energy efficiency requirements through the deemed-to-</p>	<p>Yes</p>

Requirement	Comment	Compliance
<p>New development with a cost of works equal to or greater than \$5 Million must achieve a minimum 4 Star, Green Star – Design and As Built rating in the Green Building Council of Australia rating system.</p> <p>2. Compliance with another rating tool may be considered by Council, so long as it can be demonstrated this tool:</p> <p>a. Is a holistic third party certifying green building rating system covering at least energy, indoor environmental quality, water, transport and waste:</p> <p>b. Awards ratings following a review by impartial third-party certifying bodies that meet the 'Principles for Inspiring Confidence' outlined in the international standard ISO/IEC 17021.</p>	<p>satisfy or Alternative Solutions Approach provisions of the BCA. The National Construction Code (NCC) BCA section J sets minimum energy performance requirements of all new development and covers building fabric and glazing thermal performance, air-conditioning, ventilation, lighting, power and hot water.</p>	
<p>10. Water Sensitive Urban Design A water sensitive urban design (WSUD) Strategy shall be prepared for all new buildings. The Strategy shall demonstrate compliance with WSUD objectives of this DCP and with Council's Water Management Policy (PL 850). The Strategy must be prepared by a Civil Engineer, who has membership to the Institution of Engineers Australia (NPER-3). The Strategy shall include the following:</p> <p>a. Proposed development – Describe the proposed development at the site, including site boundaries and proposed land uses;</p> <p>b. Catchment analysis plan – Clearly showing the surface type (roof, road, landscape, forest etc.) and the total areas. This must be consistent with the land use nodes within the Model for Urban Stormwater Improvement Conceptualisation (MUSIC) Model;</p> <p>c. Stormwater quality requirements – Demonstrate how Stormwater Quality Requirements of the Water Management Policy will be met, including the location, size and configuration of stormwater treatment measures proposed for the development;</p> <p>d. MUSIC model - Prepared in accordance with the draft NSW MUSIC Modelling Guidelines unless alternative modelling parameters are justified based on local studies. Details of the modelling of those elements, parameters and assumptions used. All MUSIC data files must be provided to Council. Two models are</p>	<p>This requirement can be imposed as condition of consent, should the application for worthy of approval.</p>	<p>Yes (subject to condition)</p>

Requirement	Comment	Compliance
required to be submitted – the existing site, and the proposed development. The modelling should demonstrate a neutral or beneficial effect over the existing scenario; e. Integration with the urban design – Identify how the treatment measures will integrate with the development layout and the surrounding area. Proprietary devices in isolation to WSUD features are unlikely to be approved.		
11 Landscaping 1. Where possible, existing trees should be retained, particularly where they are adjacent to the public domain. 2. A minimum of 20% of the site area is to be provided as landscaped area, which may be located on balconies, ground, podium and roof top levels or green walls of buildings. 3. Facades at the street level may incorporate planting on structures to enhance views from the public domain. 4. Where green walls are provided, they must be via a cladding structure with growing medium to facilitate extensive plant growth.	20% of the site area is to be provided as landscaped area, which may be located on balconies, ground, podium and roof top levels or green walls of buildings. The proposal satisfies the control by providing 147m ² of landscaped areas. These are located within the ground floor level, level 7 and the rooftop.	Yes
12 Key Sites Requirements - Key Site E 1. The bonus development provisions outlined in WLEP 2011 for Key Site E are subject to the provision of a publicly accessible through site shared pedestrian /vehicular link, landscaped open space areas and other pedestrian connections to Pittwater Road , in accordance with the Key Sites Map within WLEP 2011: a. Maximum building heights: i. 49 metres for land fronting Pittwater Road; ii. 20 metres for land fronting Fisher Road and St David Avenue. 2. The new buildings are to designed to: a. Provide generous ground level circulation space including a direct path of travel between Fisher Rd and St Davids Ave with a minimum width of 10m; b. Maximise solar access to pedestrian areas;	The subject site is within the land shown as Key Site E on the LEP map. However, the site does not seek to gain the additional building height for FSR offered by the LEP's Key Site provisions.	N/A

Detailed Assessment

Clause C3- Parking Facilities

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

Component	Required	Provided	Compliance
Boarding House	0.5 space per room under the provision of SEPP (ARH) 2009 63 rooms = 32.5 spaces	Nil	No
Retail (Dee Why Town Centre)	1 space per 23.8 GLFA 3.4 spaces for 81.3m ²	Nil	No
Office premises	1 space per 40 m ² GFA. 9.2 spaces required for 368.8m ²	Nil	No
Total	45.1 (46 spaces)	Nil spaces (3 spaces shown on plans which are not able to be accessed)	No

The proposed development provides no parking for the proposed development. To justify the non-compliance with the car parking provision, the applicant has submitted a traffic report which states that the site currently has no parking, which has been used for business premises, that has a gross floor area (GFA) of 956.5m², split between two floors (customer service area on the ground floor and offices on the first floor). The traffic report states if the DCP rate is applied to the current situation, it would require 45 spaces, therefore the site has a historical parking deficiency of 45 spaces and hence should be able to factor those spaces in the provision of parking for the current development.

The applicant's justification is not agreed with on the basis that the existing approved development is a commercial/business use and the proposed use is predominantly a residential use. The proposal is for a complete redevelopment of the site, not for alterations and additions to an existing commercial development.

Hence, the proposal should satisfy the current parking requirements of the WDCP.

Additionally, the nature of the existing use and its parking requirements are that of short term and high turnover. The proposed development consists of boarding houses as well as commercial/office space, which significant intensification of the site, which cannot be accommodated in the local streets.

The fact that the site provides no parking cannot be supported and this issue has been issued as reason for refusal.

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 assessment recommends that certain acoustic treatments be implemented to ensure internal noise levels comply with relevant Australian Standards. These can be included as conditions on the draft consent, should the application will be worthy of approval.

Other Matters

Site Isolation (687 Pittwater Road, Dee Why)

A key consideration during the assessment of the application was the impact of the proposal upon the orderly development of this section of the Dee Why Town Centre. In this regard, the adjoining site, known as 687 Pittwater, will be isolated, as it will be sandwiched between the subject site and the adjoining strata office development to the south which is unlikely to be redeveloped due to many individual owners.

Figure 5 below is provided to show the 687 Pittwater Road (outline in red) as it relates to the subject site.

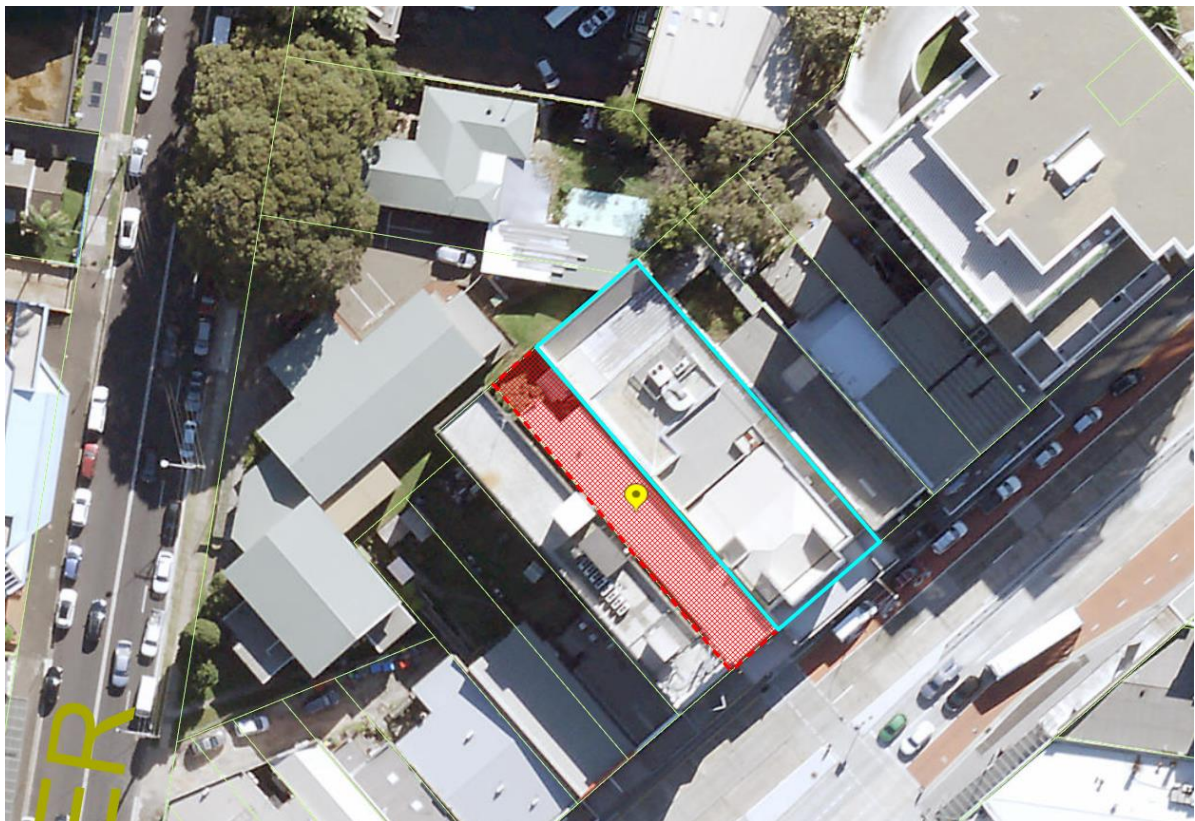


Figure 3 – Showing the isolated site at 687 Pittwater Road

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 687 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.

POLICY CONTROLS

Dee Why Town Centre Contributions Plan 2019

The contribution is calculated as follows:

The Dee Why Town Centre Contributions Plan 2019 applies to this development. The development will increase the demand for local infrastructure levied by the Plan.

The Plan identifies that the contribution amount is attributable to the net increase in infrastructure demand. Clause 4.3 of the Plan identifies that there must be an allowance for existing development. The assessment officer has advised that the existing development comprises 956.5sqm of non-residential floor space. Notwithstanding, the Plan stipulates that an allowance for existing non-residential development cannot be applied to residential development therefore an allowance is applied for the non-residential floor space only.

In accordance with Table 1 in the Contributions Plan, the contribution is calculated as follows:

Proposed Non-Residential Development		
Proposed Development (m ²)	Contribution Rate	
	\$16,731.87/100m ²	
450.1	\$167.32m ²	

	\$75,310.15	
Proposed Boarding House Development		
Proposed beds/rooms	Contribution Rate	
64	\$6,374.04	
	\$407,938.56	
Allowance for Existing Non-Residential Development		
Existing floor space (m ²)	Contribution Rate	
956.5sqm	\$75,310.15	
	-\$75,310.15	
	Total	\$407,938.56

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 does not provide for a suitable and appropriate response to the setbacks and adequate separation between the proposed building with adjacent development to the north and south.

The configuration of the subject site is a challenge in itself and problematic as evidenced by the poor relationships to the neighbouring properties. It requires a skilful design in order to overcome such self-imposed constraints. From the list of constraints generated by the 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 unacceptable constraints on adjoining neighbours.

The lack of vehicular access and 100% non-compliance with car parking provision is a serious deficiency in the proposal as no vehicular access or servicing access (cleaning, garbage, repairs and maintenance, removals) would be allowed from Pittwater Road due to safety and traffic conflict issues. This deficiency is fatal to the application.

The assessment of the proposed development against the provisions of SEPP (ARH) 2009 has found that the proposal does not comply with the 'motorcycle parking' Development Standard. In this regard, it has been found that the development is inconsistent with the objectives of the B4 Mixed use zone. Furthermore, the applicant has not provided sufficient justification in terms of Environmental Planning Grounds for the 100% 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 relating to Dee Why Town centre controls, which translate to adverse impacts on surrounding street network, particularly with regards no parking.

Finally, the assessment has found that the proposal would result in the isolation of the adjoining site to the south (687 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 5 individual submissions. The majority of the submissions raised concerns with regards to the density and scale, out of character with Dee Why Town Centre developments, safety concerns, and traffic congestion. Other issues raised include the impact on the amenity of adjoining properties in terms of 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. DA2020 for part demolition works and Construction of Demolition and construction of a mixed use building (shop-top boarding house) at Lot 1 DP 166322, 691 Pittwater Road, Dee Why.

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 and imposes unnecessary constraints on surrounding built form, and is therefore inconsistent with Clause 30A of the SEPP (ARH) 2009.
2. The development is not consistent with the requirement of Clause 29(e) of SEPP (ARH) 2009, in that the development does not provide any parking for the boarding house component of the development.

2. Motorcycle Parking (Clause 30 (1)(h))

The proposed deficiency in motorcycle parking does not comply with clause 30 (1) (h) Development Standard of the Statement Environment Plan (Affordable Rental Housing) 2009, and the contravention of the development standard is not justified under clause 4.6.

Particulars:

- a) The proposed development provides no motorcycle parking and is contrary to clause 4.6 and it is not consistent with the objectives of the B4 mixed use zone.

- 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 does not comply with the provisions of Part G1 Dee Why Town Centre Controls as it relates to:
 - 6. Site Amalgamation
 - 7. Traffic and Parking
 - 8. Car share
- b) The proposed development does not comply with Clause 3 – Parking Facilities in that the proposed development does not provide any parking on site for the retail/commercial and boarding house components of the development.
- c) The proposed development is inconsistent with Clause C2 - Traffic, Access and Clause 3 – Waste Management.

4. Site isolation of 687 Pittwater Road, Dee Why

Particulars:

- a) The proposed development would result in the future redevelopment of 687 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 687 Pittwater Road, Dee Why has been undertaken.

5. Public Interest

The proposal is not in the public interest

Particulars

- a) The proposed development with no parking on the subject site is contrary to the reasonable expectations of the community.
- b) Having regard to the public submissions and the adverse impacts of the proposed development in relation to parking, the approval of the application is not considered to be in the interest of the public.