

1 October 2020

Clause 4.6 Exception to a Development Standard

State Environmental Planning Policy (Affordable Rental Housing) 2009 Clause 30 Standards for boarding houses, 30(1)(h) parking for motorcycles 691 Pittwater Road, Dee Why

1 Request for exception to Clause

1.1 Overview

Clause 4.6 of Warringah LEP 2011 provides a mechanism to allow an exception to a development standard.

The proposal contravenes Clause 30(1)(h) of State Environmental Planning Policy (Affordable Rental Housing) 2009 (the SEPP) relating to the provision of motorcycle parking spaces. Clause 30(1)(h) is a development standard and an exception is sought.

As required by clause 4.6(3) the following is a written request to justify this contravention for the consent authority's consideration.

Key summaries within this submission are provided at:

- Section 1.2 - Extent of the exception sought
- Section 4.1 - Summary of Environmental Planning Grounds
- Section 6 - Summary

1.2 Extent of the exception sought

Under Clause 30(1) of the SEPP, a number of development standards are established relevant to a boarding house application. Departures from these development standards are required to be justified by way of a cl 4.6 exception. Relevant to the subject matter clause 30(1)(h) states:

'(1) A consent authority must not consent to development to which this Division applies unless it is satisfied of each of the following:

(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'.

The proposed development has 63 boarding rooms which generates a requirement under the standard for 13 motorcycle spaces. Due to there being no vehicle access to the property, and changes to the building's heritage facade being restricted, the proposal does not provide parking for motorcycles.

It is noted that the design accommodates 13 compliant motorcycle spaces within its ground floor level that will be accessible once rear access to the property is constructed via an extension to the right-of-way from St David Ave, over 693 Pittwater Road or the creation of the 'Shared Laneway' shown of the LEP Key Sites Map (Figure 14) envisaged by cl 7.14 of the LEP as it relates to Key Site E.

Clause 30(1) of the SEPP is a development standard and this clause 4.6 is made to address the statutory provisions of the Act and the LEP. There is no statutory impediment to the consideration of this submission under clause 4.6.

1.3 Site and location

The site is at 691 Pittwater Road, Dee Why. It is legally described as, Lot 1 in Deposited Plan 166322. The site is 650m² in area.

The site has a street frontage to Pittwater Road of 15.24m however there is no vehicle access to the property from Pittwater Road.

The property has an historical built form and land use as a bank including commercial offices at the first-floor level; the property is listed as a local heritage item.

The existing building is 2 storeys comprising 588m² of floor area at ground floor level and 369m² at first floor level (figures 3 and 4).

The site is located within the Dee Why town centre (designated under clause 7.1 of the LEP), within the B4 Mixed Use zone, on the western side of Pittwater Road. Like most older stock commercial and retail premises, there is no rear lane access.

The site is situated within close walking distance of the public bus stops located (north bound) near the corner of Pittwater Road and St David Avenue and (south bound) opposite the site.

The exception submission is accompanied and supported by:

1. Traffic and parking assessment report dated 17 March 2020
2. Addendum traffic and parking report relating to parking demand and trip generation, dated 21 September 2020
3. Green Travel Plan dated 17 September 2020, each prepared by TEF Consultants (attached at Annexures 1 – 3)
4. Northern Beaches Affordable Housing Needs Analysis
5. Architectural plans by BKA Architects showing inter-alia the future rear lane access
6. 685 Pittwater Road - strata office block title search and company extracts

It is concluded from these documents that:

1. The proposal will have a low traffic generation and low vehicle parking demand including motorcycles.
2. The proposal will facilitate the creation of appropriate and functional rear access to the site and the adjoining property at 687 Pittwater Road and the design has made appropriate provisions for future on-site motorcycle parking.

3. There is sufficient off-site vehicle parking provision to accommodate the future residents of the proposed development that may need a vehicle until rear access can be provided to the property.
4. There are appropriate compensatory and alternative travel arrangements available to the site and made by the proposal including high quality and frequency public bus provision that is virtually adjacent to the site on Pittwater Road, car share parking provision (now and in the future), 43 bicycle parking spaces, including 10 electric bicycles, supported by appropriate operational management arrangements and a Green Travel Plan.

Figures 1 to 6 below provide illustrations of some of the above points and other matters within this submission. Furthermore, this submission is accompanied and supported by:



Figure 1– Location of the site and nearby bus stops (courtesy Northern Beaches Council maps)

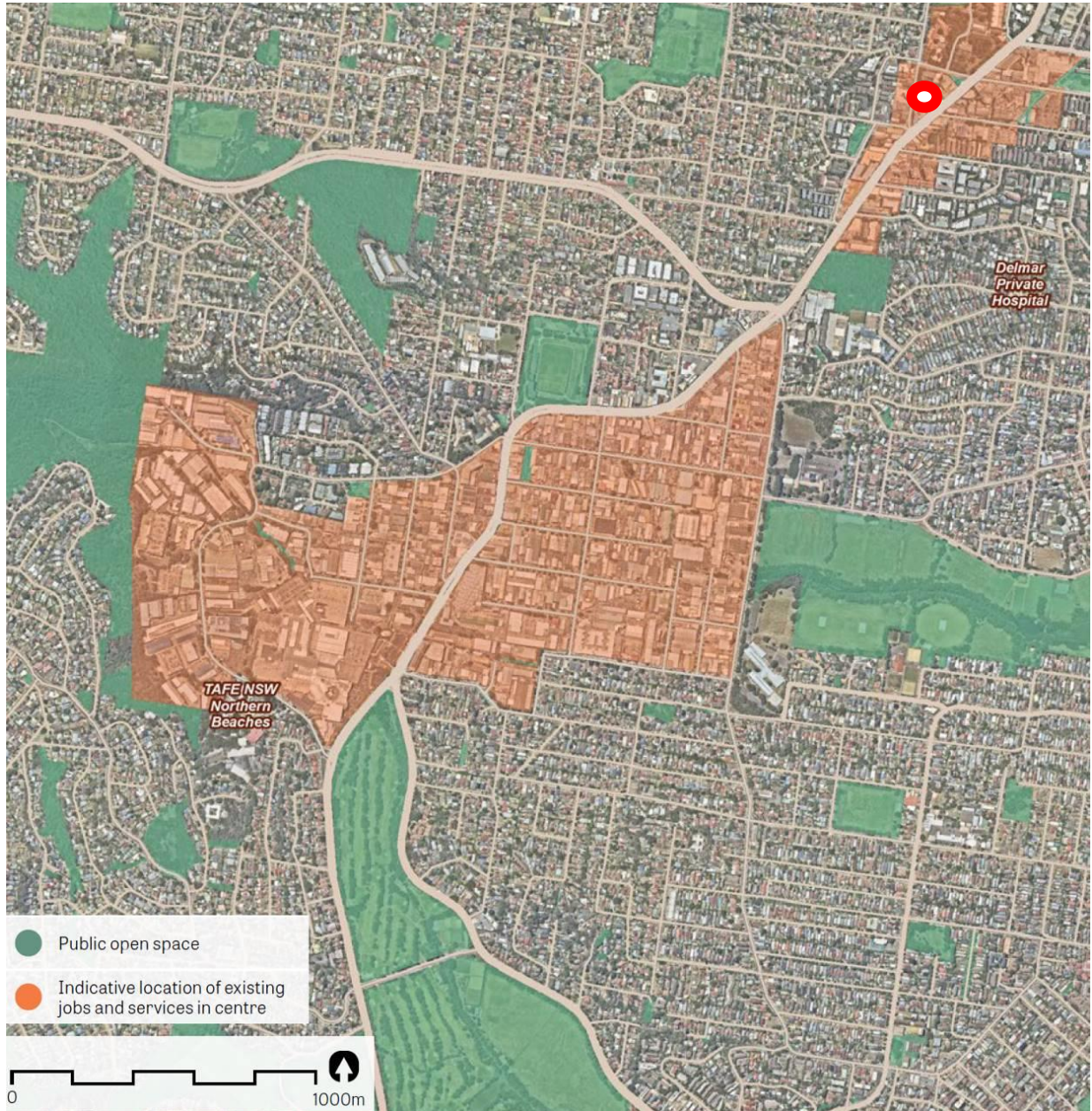


Figure 2 – the site's location within the context of the Brookvale–Dee Why combined strategic centre serving the subregion which has an established concentration of employment and services. It is the largest strategic centre within the Northern Beaches sub-region (source North District Plan).

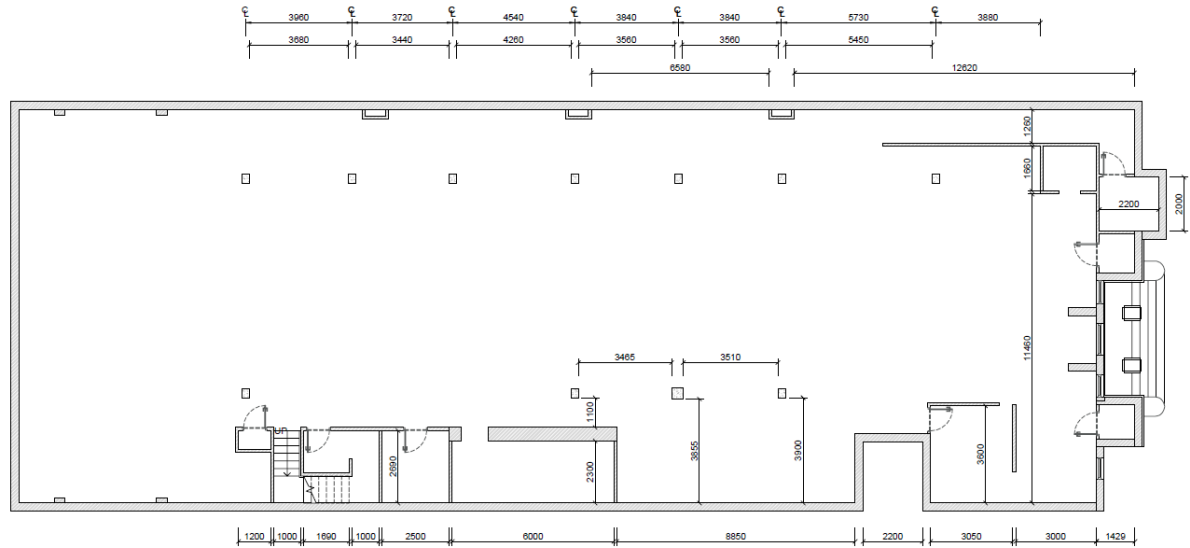


Figure 3 – Existing ground floor 587.63 m² (source: architectural plans)

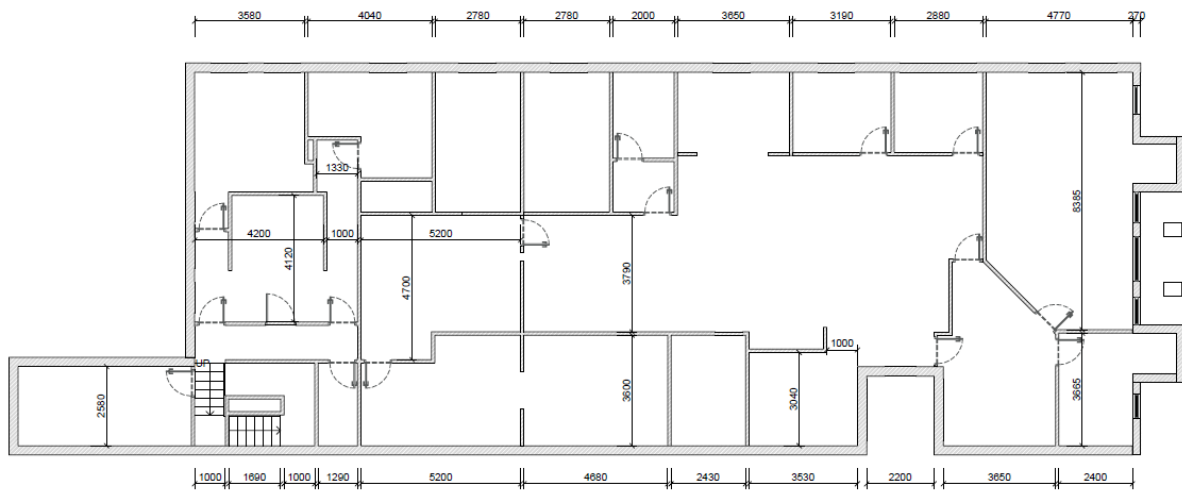


Figure 4 – Existing first floor 368.82 m² (source: architectural plans)

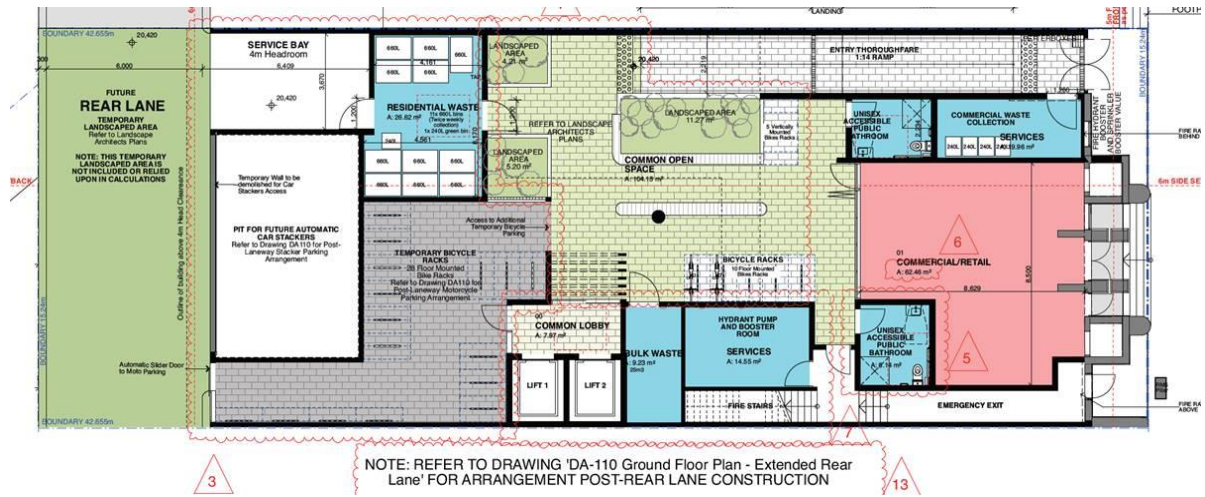


Figure 5 – proposed 'short-medium term' ground floor plan

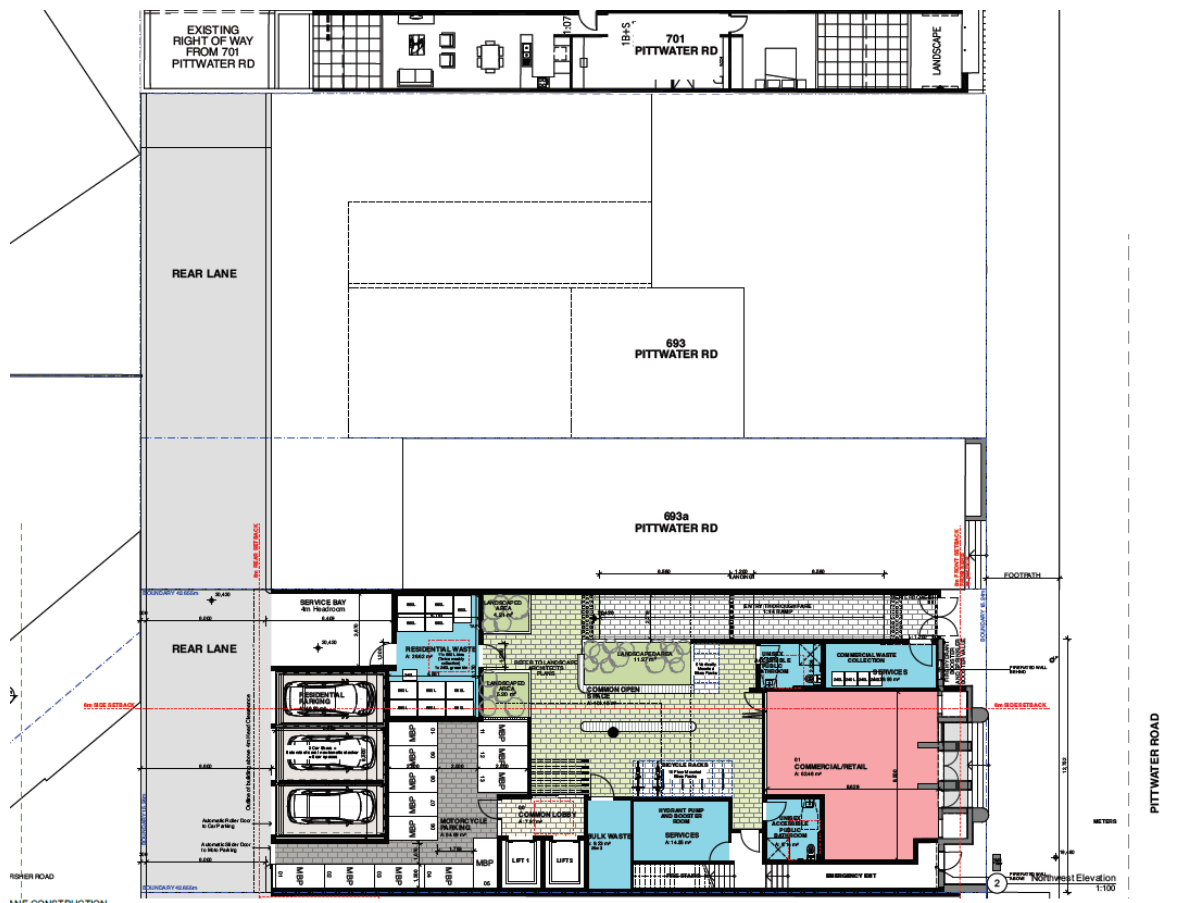


Figure 6 – Proposed future ground floor plan with rear access

2 LEP Clause 4.6

Relevant to the subject matter, Clause 4.6 states:

- (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.*
- (3) *Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:*
 - (a) *that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*
 - (b) *that there are sufficient environmental planning grounds to justify contravening the development standard.*
- (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.*

2.1 Context and format of this clause 4.6 submission

This “written request” has been prepared having regard to “Varying development standards: A Guide” (August 2011), issued by the former Department of Planning, and relevant principles identified in the following judgements:

- *Winten Property Group Limited v North Sydney Council [2001] NSWLEC 46;*
- *Wehbe v Pittwater Council [2007] NSWLEC 827;*
- *Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 1009;*

- *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 90;
- *Four2Five Pty Ltd v Ashfield Council* [2015] NSWCA 248;
- *Randwick City Council v Micaul Holdings Pty Ltd* [2016] NSWLEC 7;
- *Moskovich v Waverley Council* [2016] NSWLEC 1015; and
- *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118.
- *RebelMH Neutral Bay Pty Limited v North Sydney Council* [2019] NSWCA 130
- *Hansimikali v Bayside Council* [2019] NSWLEC 1353

In response to the provisions of Clause 4.6, and with the guidance provided by the above judgements, the matters in support of the proposal are documented with this *written request* to justify the exception to Clause 30(1)(h) which is a development standard under State Environmental Planning Policy (Affordable Rental Housing) 2009.

3 Compliance is unreasonable or unnecessary in the circumstances

Subsection 3 (a) of Clause 4.6 states:

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

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

Guidance is provided by the following court judgements in establishing what the relevant considerations are in assessing what is ‘unreasonable or unnecessary in the circumstances of the case’.

In addressing the requirements of Clause 4.6 (3) (a), the accepted five possible approaches for determining whether compliance is unnecessary or unreasonable were established by the NSW Land and Environment Court in *Wehbe vs Pittwater Council* (2007) LEC 827. Whilst at the time, this was specific to SEPP 1, in the matter of *Four2Five* (2007) LEC 827, the Commissioner stated within the judgement the following, in reference to a variation:

“...the case law developed in relation to the application of SEPP 1 may be of assistance in applying Clause 4.6. While Wehbe concerned an objection under SEPP 1, in my view the analysis is equally applicable to a variation under Clause 4.6 where Clause 4.6 (3)(a) uses the same language as Clause 6 of SEPP 1.”

In the decision of *Wehbe vs Pittwater Council* (2007) LEC 827, Preston CJ summarised the five (5) different ways in which an objection under SEPP 1 has been well founded and that approval of the objection may be consistent with the aims of the policy. The five possible ways are as provided below:

- 1st *The most commonly invoked way is to establish that compliance with the development standards is unreasonable or unnecessary because*

the objectives of the development standard are achieved notwithstanding non-compliance with the standard.

The rationale is that development standards are not ends in themselves but means of achieving ends. The ends are environmental or planning objectives. If the proposed development proffers an alternative means of achieving the objective, strict compliance with the standard would be unnecessary and unreasonable.

2nd *A second way is to establish that the underlying objective or purpose is not relevant to the development with the consequence that compliance is unnecessary.*

3rd *A third way is to establish that the underlying objective or purpose would be defeated or thwarted if compliance was required with the consequence that compliance is unreasonable.*

4th *A fourth way is to establish that the development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable.*

5th *A fifth way is to establish that "the zoning of particular land" was "unreasonable or inappropriate" so that "a development standard appropriate for that zoning was also unreasonable or unnecessary as it applied to that land" and that "compliance with the standard in that case would also be unreasonable or unnecessary.*

In response to the 5 Wehbe principles it is assessed that the first and third principles are relevant to the subject matter. Assessment of the proposal under clause 4.6(3)(a) finds that:

- Compliance with the development standard is unreasonable and unnecessary in the circumstances of the case because the proposal satisfies the key applicable environmental planning provisions including:
 - Given there are no objectives of clause 30(1)(h) it is appropriate to have regard to the objectives of SEPP ARH (as Commissioner Bish did in *M&C Property Pty Ltd v The Council of the City of Sydney* [2020] NSWLEC 1131). the aims of SEPP ARH relating to facilitating the delivery of new affordable rental housing 'close to places of work' (clause 3(f) of the SEPP) See section 5 below;
 - the local planning provisions relating to development within the area designated by the LEP as the Dee Why Town Centre (clause 1.2(b)) as they relate to urban renewal for multi-level mixed use development, including, the objectives of the B4 zone, retention of heritage values (clause 1.2(g) and 5.10 of the LEP),
 - good design (clauses 7.3, 7.4, and 7.5 of the LEP), and sustainable transport (clause 7.13).

These matters are further explained within the following sections of this submission to the extent the non-stated objective of the development standard is to provide suitable motorcycle parking.

- Compliance with the development standard would defeat the underlying objective or aims of the SEPP, which is to increase the supply of affordable rental housing in local business centres that are close to places of work and public transport, and the LEP which is to encourage development of increased intensity and scale within Dee Why, noting 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 proximity and direct pedestrian access to public transport as the site is 30 and 50 metres walking distance from the main two bus stops serving 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 areas that are in close proximity (for example Brookvale, which contains a regionally significant concentration of employment serving the subregion). 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 them to own a motorbike or car.
 - The proposal facilitates a boarding house that satisfies the statutory controls under the Affordable Rental Housing SEPP 2009 and Warringah LEP 2011.
 - The proposal facilitates the redevelopment of the land in a manner that is envisaged by the local planning provisions for the Dee Why town centre, including facilitating the creation of rear vehicle access to the site and the adjoining property at 687 Pittwater Road.

For these reasons it is assessed at the requirements of clause 4.6(3)(a) are satisfied and Council has the authority to grant approval to the proposal.

4 Environmental Planning Grounds

Subsection 3 (b) of Clause 4.6 states:

(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:

(b) that there are sufficient environmental planning grounds to justify contravening the development standard.

4.1 Summary of Environmental Planning Grounds

The following section outlines the environmental planning grounds upon which the exception is justified. These are considered sufficient to justify the exception and summarised as follows:

1. The vehicle parking demand generated by the proposal can be met by off-site parking availability near the property and other more sustainable transport alternatives including public transport, electric (& regular) bicycles, car share, and walking to nearby amenities. Furthermore, expert traffic assessments conclude that the proposal will generate minimal traffic impact in the surrounding road network given it provides no onsite parking for vehicles in the short term, and compliant motorcycle parking when rear access can be constructed.

2. It is practical and appropriate that the traffic generation and parking demand generating by the existing bank development, to which there are no impediments to its continued use, be considered as a credit in relation to the existing development.
3. To not allow the exception prevents the achievement of various State and Local environmental planning policy objectives. The proposal is consistent with the objectives for the Dee Why town centre masterplan, LEP, & DCP. Furthermore, in this instance State and Local planning strategies are aligned in increasing housing in this location, decreasing dependency on individual car ownership and encouraging use of other sustainable transport means. The proposed development is entirely consistent with these planning objectives even without motorcycle parking in the short term.
4. The proposal secures future vehicle access to the site and unlocks access to the rear of the adjoining property at 687 Pittwater Road at which time motorcycle parking will be provided. This is consistent with the objects of the E&A Act to promote the orderly and economic development of land. It is not economic to require one landowner to provide rear lane access when it is not provided for the entire block. However, this landowner is willing to provide rear lane access to enable motorcycle parking on its site and other sites (access) as the block is developed over time. Strict application of the motorcycle parking standard would be an unreasonable burden in the circumstances because renewal of the site in the manner intended by the planning objectives would not be achieved.
5. The proposal promotes ecologically sustainable development, noting it: has significant bicycle parking provision; provides electric bikes in place of motorcycles; is adjacent to multiple bus routes and the high frequency B-Line bus service; offers immediate off-site car share provision for exclusive use by future residents; provides future onsite car share parking provision - when rear access can be developed; rooftop solar power generation; rainwater quality control provisions; onsite stormwater detention; and BASIX compliance
6. The proposal is consistent with the aims of SEPP ARH because it will increase the supply of affordable rental housing, within a regional scale strategic centre, close to public transport and 'close to places of work'.
7. Given the location of the site and the merits of the design there are appropriate compensatory alternative transport provisions including:
 - an adaptive design that accommodates future rear vehicle access for motorcycle parking, car parking, car share, and waste collection;
 - 43 bicycle parking spaces (30 additional) including 10 electric bicycles that will be supplied maintained and shared under a managed arrangement until rear access can be developed for motorcycle parking;
 - high quality and frequency public transport provision adjacent to the site that is equivalent, if not, greater to the frequency of a train line;
 - proximity to existing public car share parking provision near the site and additional provision 2 car share vehicles within 400m at 5 Mooramba Road shared under a managed arrangement, until rear access can be developed for motorcycle parking.
8. To provide a driveway and ramp would impede transport, pedestrian amenity and adversely impact the heritage façade.

9. The proposal will not establish a precedent for future developments with vehicle parking deficits because it is the only privately owned heritage building fronting Pittwater Rd within the Dee Why Town Centre's B4 zone.
10. The exception sought is 'temporary' in nature because the design accommodates 13 compliant motorcycle spaces within its ground floor level that will be accessible once rear access to the property is constructed via either an extension to the right-of-way from St David Ave, over 693 Pittwater Road, or the creation of the 'Shared Laneway' shown of the LEP Key Sites Map envisaged by cl 7.14 of the LEP as it relates to Key Site E.
11. The proposal is consistent with the relevant objectives of the Environmental Planning and Assessment Act including: orderly and economic use of a strategically located property, various ecologically sustainable development features, conservation of heritage and increased provision of affordable rental housing 'close to places of work'.

These matters are further expanded upon below.

4.2 Parking demand, supply, and credit appropriate for the existing development

There is no vehicle parking currently provided upon the site and the site has long been developed for a bank comprising retail and commercial floorspace. It is appropriate in the circumstances that the existing vehicle parking demand associated with the bank be used as a credit for the proposed boarding house for the following reasons:

1. The 956.5 m² of retail and commercial floor space that is developed for a bank on the site is calculated to generate a parking demand for 45 car spaces (7 of traffic report). The proposed development's car parking demand is calculated to be 31 spaces, inclusive of retail, office, and boarding house (10(d) of traffic report). The traffic generation for the existing development is likely to be significantly less than the bank in terms of car based trips because the bank generates trips throughout the day whereas trip generation from boarding houses is likely to be mostly in the morning and afternoon commuter peak hours (source: 15b of the traffic report). Council's traffic engineer response confirms this view in stating *"The anticipated traffic generation from the site is considered negligible on the network with some 20 vehicles being generated in the peak hour"*.
2. Parking demand surveys were conducted to measure the availability of car parking spaces near the site. The surveys found that during the typical peak parking demand for residential developments before 9:00 am and after 5:00 pm there were at least 87 parking spaces vacant (it is noted that two motorcycles can fit within one car parking space). It is subsequently concluded in the traffic report that: *'Ample parking opportunities exist during the typical residential peaks to cater for the likely additional parking demand by the proposed boarding house. Occasional short-term parking demand from residents during the business hours (for those residents leaving to work later or returning earlier) is also well catered for by car parking areas with time restrictions'*. Paragraphs 34 to 42 of the accompanying traffic report address carparking demand and availability in relation to the proposed development.
3. Whilst the proposal includes a significant increase in gross floor area on the property, it generates less parking demand than the existing retail and commercial use and at different times of the day. The proposal involves an increase in residential gross floor area (none currently) and a reduction in retail / commercial GFA from 956.5m² to 271m², a 72% reduction. Such reductions provide grounds to apportion credit to the property's existing parking deficiency because the proposal generates increased car parking demand during

the overnight time period when there are no time limits on parking within the local vicinity. The Addendum traffic and parking report dated 21 September 2020 further addresses this issue (at 7(d)).

4. The motorcycle parking demand generated by the proposal can be met by public transport, bicycles and off-site parking along Pittwater Road and the Council owned car parks (including the multi-level PCYC car park) accessed via Civic Drive and bordered by Pittwater Road to the east, St David Ave to the south, and Civic Drive to the west. Notwithstanding, it is recognised that some residents of the proposed development may still own a motorcycle and the potential impact of this is a relevant assessment issue. It is reasonable to anticipate that some of these residents would use a motorcycle to travel to their place of employment. In these circumstances they would require long term parking primarily outside of typical business hours (overnight) (34 of the traffic report). Off-site parking (including on-street and other publicly available parking areas) have time restrictions during the day; however, these do not apply overnight during the typical residential demand periods (source: 37 of the traffic report).
5. It is noted that the continued use of 956.5 m² of floor space within the existing bank development for retail and office, generating demand for 45 car parking spaces, may occur without any further land use planning approval aside from, for example, a Complying Development Certificate for internal fit out. This characteristic of the existing development is a valid consideration and provides grounds to apportion credit to the property's existing parking deficiency.

4.3 The circumstances of the site and the proposal are appropriate for the consent authority to be flexible in applying the development standard

1. The planning strategy for Dee Why and Brookvale, as a major centre serving the subregion, encourages higher density living on a strategic public transport corridor. The proposed development is consistent with this strategy by increasing housing in this location and decreasing dependency on individual car ownership and encouraging use of other sustainable transport means. The proposed development will positively *reinforce the role of Dee Why as the major centre in the sub-region* by development of a contemporary 8-storey mixed use development, appropriately combining retail, commercial and residential uses, and providing a design of appropriate architectural merit that will improve the streetscape (public spaces) within the site's visual catchment to the benefit of land renewal within the town centre.
2. In these regards:
 - a) Clause 7.13 (c) of the LEP is 'to encourage alternative forms of transport from private vehicle use'
 - b) the Warringah DCP establishes provisions to, inter-alia, encourage car share, reduce the reliance on private vehicle ownership, and reduce traffic impacts which the proposal addresses (Section 8 "Car share" of Part G1 Dee Why Town Centre). Car share is further addressed at 4.5 below.
 - c) The proposed exception positively advances achieving the second and third objectives of the B4 Mixed use zone (noting that the area designated as the Dee Why town centre is the only location that the B4 zone applies), which state:
 - *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.*

In response, the site is located within a highly accessible location. The absence of on-site parking (for motorcycles and cars) will maximise public transport patronage and encourage walking and cycling. Furthermore, the 8 Storey scale, form, and intensity of the proposed development will reinforce the location's role as a major centre in the subregion.

4.4 The proposal is consistent with the Dee Why town centre masterplan, LEP, & DCP

1. The development, unlike the existing use, will support the Dee Why town centre masterplan goal of creating a future rear lane access. This means the proposed motorbike parking exception is supported by strong strategic and statutory planning merit because the outcome will be consistent with the range of planning provisions applicable to the site, the urban renewal, and sustainable transport objectives for the Dee Why town centre.
2. Dee Why, along with Brookvale, is a major strategic centre serving the subregion (North District Plan, Sydney Commission), serviced by high frequency and quality public transport where it is appropriate to concentrate affordable rental housing with reduced reliance on private vehicles. This is aligned with planning policy objectives to achieve more sustainable transport outcomes. State and Local strategic and statutory planning policies articulate these environmental planning objectives in the following ways:
 - a) Action 41(d) of the North District Plan states: 'Strengthen Brookvale-Dee Why through approaches that: d. promote walking, cycling and public transport to Warringah Mall, the Brookvale industrial area and Dee Why'.
 - b) The Dee Why town centre masterplan is a key strategic plan that was adopted by the Council (ex-Warringah) in 2013 following extensive public exhibition and community involvement. The master plan led to an expanded Part 7 of the Warringah LEP and a new DCP (Section G1, 1 to 14) which came into effect in February 2020.
 - c) Dee Why's significance as a major centre serving the subregion is recognised in the LEP. Clause 1.2(2)(b) of the LEP states:

(b) to recognise the role of Dee Why and Brookvale as the major centres and employment areas for the sub-region,
 - d) Objective 7.3(c) of the LEP is 'to ensure that development is consistent with the role of Dee Why as a major centre for the sub-region. Furthermore, it is noted that Pittwater Road is a strategic bus corridor. Urban renewal within the Dee Why B4 zone for medium density, 7-8 storey development, has long been the centrepiece of the Council's (ex-Warringah Council area) housing growth strategy since approximately 1995 (when Council was exempted from the State's dual occupancy policy). Key planks upon which it is based are: increased use of public transport, reduced reliance on private vehicles, improved amenity of public spaces within the town centre, concentration of growth within a designated location, and preservation of established low-density areas outside of Dee Why.

3. Many areas within Dee Why's B4 zone have experienced redevelopment, however, there has been slower take-up of opportunities within the triangular shaped block (bounded by Fisher Rd, St David Ave, and Pittwater Rd) that the subject site is within, with only one property being redeveloped to-date at 701 Pittwater Rd in 2016 (under development consent DA2011/0887). Retention of the bank building in its current form makes no advancement towards achieving the goal of creating access to the rear of the site from St David Ave. It does not facilitate the orderly development of land in the manner intended. It does not provide an opportunity for medium density housing development located close to high quality and frequency public transport that is adjacent to the land within the block. It is not consistent with Dee Why's role as a strategic centre for increased housing, having less reliance on private vehicles and increasing utilisation of public transport and other alternate transport means. The proposed development will help activate the western side of Pittwater Road and bring the Dee Why town centre masterplan vision one step closer to being realised.

4.5 Promoting ecologically sustainable development

In response to the exception to the motorbike parking standard, alternative compensatory measures are proposed which are aligned with the ESD objects of the EP&A Act and the applicable planning provisions. These are summarised as follows.

4.5.1 Significant bicycle parking provision

1. The proposal includes 43 bicycle parking spaces as an alternative means of transport which is encouraged by DCP. This provides a bicycle parking provision which is significantly above the requirement of 1 space per 5 boarding rooms standard within the ARH SEPP. Furthermore, end-of-trip amenities for cyclists are also provided, including two unisex accessible bathrooms with sufficient space for showers, located near the bicycle racks within the proposed within the ground floor level, to further support the use of bicycles.

4.5.2 Electric bikes in place of motorcycles

1. The proposal makes provision for 10 electric bicycles that can be parked on-site and walked from the footpath through the pedestrian entry, as part of the 43 bicycle spaces.
2. The Road Rules 2014 under the Road Transport Act 2013 define a *bicycle*, and what is commonly referred to as an electric bicycle (*Power-assisted pedal cycle*), as follows:

'bicycle means a vehicle with 2 or more wheels that is built to be propelled by human power through a belt, chain or gears (whether or not it has an auxiliary motor), and includes—

- (a) a pedicab, penny-farthing and tricycle, and*
- (b) a power-assisted pedal cycle within the meaning of vehicle standards, as amended from time to time, determined under section 7 of the Motor Vehicle Standards Act 1989 of the Commonwealth other than one that has an internal combustion engine or engines, but does not include—*
- (c) a wheelchair, wheeled recreational device, wheeled toy, or*
- (d) any vehicle with an auxiliary motor capable of generating a power output over 200 watts (whether or not the motor is operating), other than a vehicle referred to in paragraph (b), or*
- (e) any vehicle that has an internal combustion engine or engines.*

Note 1—

Power-assisted pedal cycle is defined in the Vehicle Standard (Australian Design Rule—Definitions and Vehicle Categories) 2005 determined under section 7 of

*the Motor Vehicle Standards Act 1989 of the Commonwealth. The definition of **power-assisted pedal cycle** includes pedalecs within the meaning of that Standard (which may have one or more auxiliary propulsion motors generating a combined power output not exceeding 250 watts).*

Note 2—

Vehicle is defined in rule 15, and **wheelchair, wheeled recreational device** and **wheeled toy** are defined in this Dictionary.

Note 3—

This definition is not uniform with the corresponding definition in the Dictionary of the Australian Road Rules. Different definitions may apply in other Australian jurisdictions’.

3. Where an electric bicycle meets the criteria above, then it is a bicycle that can be walked on a footpath. If the above criteria are not met, the vehicle is not authorised (as per Road Rule 288 ‘Driving on a path’).
4. The provision of *Power-assisted pedal cycles* (electric bicycles) provides an appropriate interim sustainable transport alternative to motorcycles in the short-to-medium terms until motorcycle parking can be provided on site. The advantages of electric bicycles in the circumstances of the subject DA include:
 - a) Power assisted transport means the bikes are more suited to work related trips and undulating topography than regular bikes; higher speed than regular bikes; extended travel range to regular bikes for ‘casual’ riders.
 - b) The travel range of an electric bicycle varies depending on characteristics like the size of the battery. An electric bike with a less powerful battery (for example 500W batteries) travel range may be approximately 50 to 60km whereas a more powerful battery (for example 3kW batteries) may travel as far as 350-400km.
 - c) An electric bicycle has more range and speed for the average rider than a regular bicycle. A 250W bicycle is limited to a speed of approximately 25km per hour providing a convenient motor assisted form of transport.
5. Noting the above, and in relation to the subject site and the proposed development:
 - a) An electric bicycle may be walked on the footpath and enter the site’s Pittwater Road frontage like regular bikes.
 - b) The increased range, speed, and convenience of electric bicycles provides a reasonable short-to-medium term alternative to motorcycle parking and these can be walked through the footpath entry to the property.
 - c) 10 electric bicycles will be provided and maintained within a development specific sharing system under site management (as provided within the operational management plan) until such time that rear access to the site is provided and motorcycle parking can be created. This is substantial considering the development standard only requires spaces for parking not provision of the vehicles themselves.
 - d) Sufficient charging points (standard 240-volt General Power Outlets) for 10 electric bicycles will be provided within the bicycle parking area and a condition of consent may be reasonably imposed requiring this outcome.
 - e) The provision of 10 electric bicycles would be complementary to the suite of sustainable transport means incorporated – particularly when combined with onsite rooftop solar power generation

- f) A condition of development consent may reasonably be imposed requiring these outcomes.
- g) Combined with the proposed rooftop solar panels, this makes for a very sustainable form of transport.

This aspect of the proposal provides an appropriate environmental planning ground and circumstance for the consent authority to be flexible in the application of the motorcycle parking development standard.

4.5.3 Multiple bus routes and high frequency B-Line bus service

1. The site is within 70 metres to the B-line bus stop on a strategic bus corridor, where there is high quality and frequency public transport provision equivalent, if not, greater to the frequency of a train line.
2. The following is stated within the Green Travel Plan:

The site has very good public transport provision, with bus stops within very close walking distance from the site (approximately 30 and 50 metres).

Bus

- *The closest bus stop is the Dee Why Shops, Pittwater Rd bus stop which is approximately 30 metres walking distance from the site. It services bus routes 146, 154X, 158, 160X, 169, 169X, 185 and 199.*
- *It has very frequent services that operate approximately every 2-5 minutes for the morning and afternoon peak hours.*
- *Routes 169 and 169X are express bus services that will help passengers reach Wynyard station (Sydney CBD) from the site or the site to Wynyard Station (Sydney CBD) within an hour.*
- *There is another bus stop within 50 metres walking distance from the site, Dee Why B-Line, Pittwater Rd. It services bus routes 151, 178, 178X, 179X, 180, 180X, 183X, 185X, 188, 190X and B1.*
- *It has very frequent services that operate approximately every 2-5 minutes for the morning and afternoon peak hours.*
- *Route B1 is a high volume express bus service that will help passengers reach Wynyard station (Sydney CBD) from the site or the site to Wynyard Station (Sydney CBD) within half an hour.*
- *The remaining bus routes will help passengers reach Wynyard station (Sydney CBD) from the site or the site to Wynyard Station (Sydney CBD) within 40 minutes to an hour.*
- *The morning peak hours were between 6:30 a.m. and 9:30 a.m. and the afternoon peak hours were between 3:30 p.m. and 6:30 p.m.*

4.5.4 Current proposed car share parking provision

1. To ameliorate the motorcycle parking deficiency and encourage non-private vehicle use, being a goal of the Dee Why town centre masterplan, the applicant has prepared a Green Travel Plan dated 21 September 2020.
2. In addition to reliance on public facilities, the applicant has offered to make car share provision at 5 Mooramba Rd, Dee Why, 2 (two) electric vehicles will be provided and maintained at lots 135 and 136 / 5 Mooramba Rd Dee Why (5 Mooramba Road is within 400m south along Pittwater Road). A development specific sharing system (online booking system) under site management is to be provided for the exclusive use of occupants at 691 Pittwater Road, Dee Why until rear access is provided to the development of rear vehicle access at 691 Pittwater Road. These vehicles will be available 24 hours a day.
3. These parking spaces would contain cars that are available for residents of the boarding house and will be managed by the boarding house until such time as motorcycle parking and car share spaces can be provided on site. These car spaces are in excess of the requirements for the development at 5 Mooramba Road.

4.5.5 Future car share parking provision - when rear access can be developed

1. The proposal makes provision within the design for two car share parking spaces at the rear of the site that will be operational when rear access can be developed. The significance and value of car share spaces has been considered in a range of NSW Land and Environment Court judgments, for example:
 - a) *Arkibis Pty Ltd t/a Arkhaus v Randwick City Council* [2019] NSWLEC 1020
 - b) *Sheer Property Group Pty Ltd & anor v Randwick City Council* [2013] NSWLEC 1168
 - c) *Dimitri Dilles v Randwick Council* [2017] NSWLEC 1202
 - d) *Turner Architects v City of Botany Bay Council* [2016] NSWLEC 1186 (Turner Architects)
2. A single car share space has been recognised as having the equivalent value of 10 to 12 car parking spaces, noting that in *Turner Architects* the judgment states at 38, 'I accept the applicant's submission that a car share vehicle replaces up to 10 to 12 private cars'. This is greater than the 1:5 Car Share replacement ratio nominated by Council's Traffic Engineer referral response.
3. Applying the accepted court ratios, 2 car share spaces is the equivalent of 20 to 24 regular car spaces which, would have the effect of satisfying the car parking demand generated by the proposed boarding house which the accompanying traffic report calculates to be 21 spaces.
4. Furthermore, in the case of *Williamson v Northern Beaches Council* [2020] NSWLEC 1110 relating to 10 Naree Road Frenches Forest, which is an R2 Low Density residential zone, Commissioner Horton stated in relation to the role of car share addressing an onsite parking shortfall:

93(3) '...in my view it is reasonable to expect potential occupants of the building will consider the availability of car parking in the context of their own needs when evaluating the suitability of this development as a place to reside. Those prospective occupants with a car, but without a guaranteed space in which to park it, may opt for accommodation elsewhere. Those without a car may be attracted by having access to a carshare vehicle for those times when one is needed.'

The commissioner further concluded as follows:

93(2) ‘.... being located in an accessible area with employment hubs in close proximity, that affordable housing for key workers is intended to support, I accept that some occupants are likely to be attracted to the development for its proximity to those places of employment that would not demand of them ownership of a car.

93(4) ‘.... the carshare vehicle is proposed to be available on a 24 hours basis via an online booking system with which occupants of the boarding house are likely to become familiar.

5. The circumstances for car share are appropriate noting that the site is within 70 metres to the B-line bus stop on a strategic bus corridor, where there is high quality and frequency public transport provision equivalent, if not, greater to the frequency of a train line. There is also a concentration of shops, services, recreation, and employment opportunities within Dee Why and Brookvale which are connected by high frequency buses and each within walking and cycling distance of site. The location is appropriate for reduced car parking provision and substitution with car share spaces because the car share can complement the range of other transport options available to the future residents at the location.
6. In summary, the provision of car share spaces is in-line with the intent of LEP and DCP to deliver sustainable transport measures and is an adequate substitute for the shortfall in on-site vehicle parking spaces proposed.

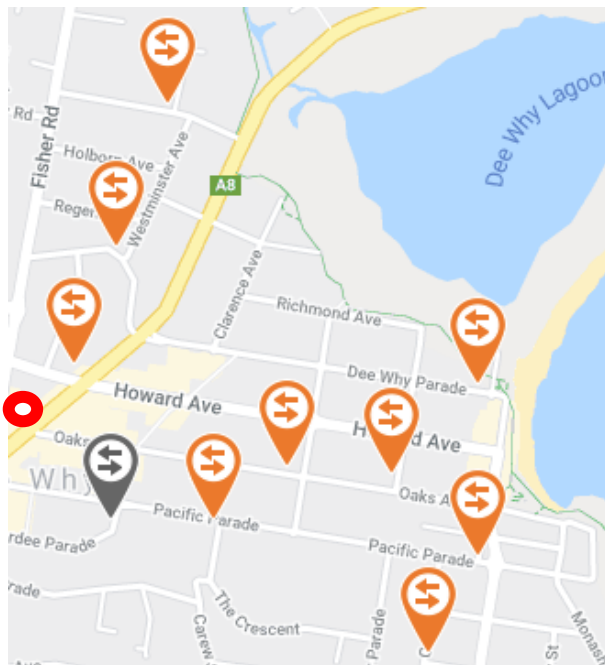


Figure 7 – car share ‘pod’ locations within Dee Why offered by car share provider Go Get (source: Go Get web page) the location of the subject site is marked in red

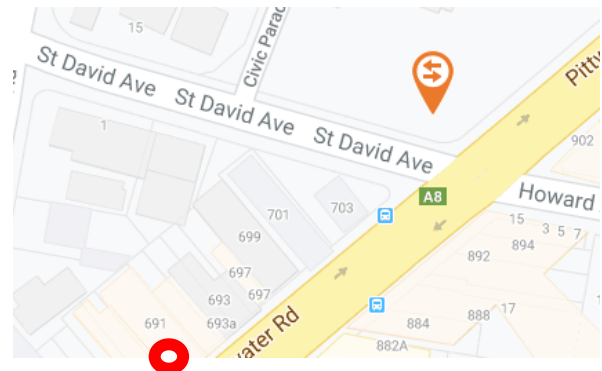


Figure 8 – car share ‘pod’ location with 2 cars near the site offered by car share provider Go Get (source: Go Get web page)

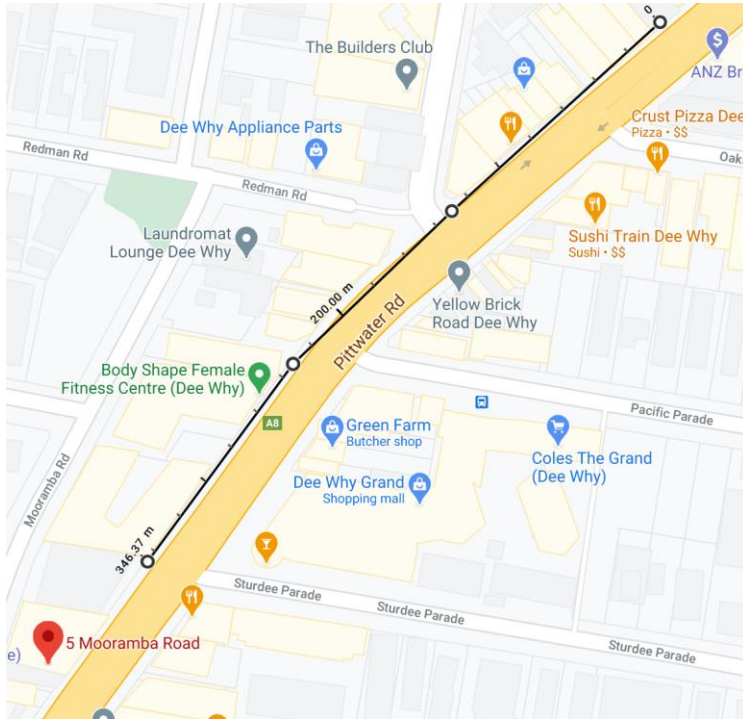


Figure 9 – It is proposed to establish 2 car share vehicles within the property at 5 Mooramba Road which is approximately 350m from the site as shown above (source: Google Maps)

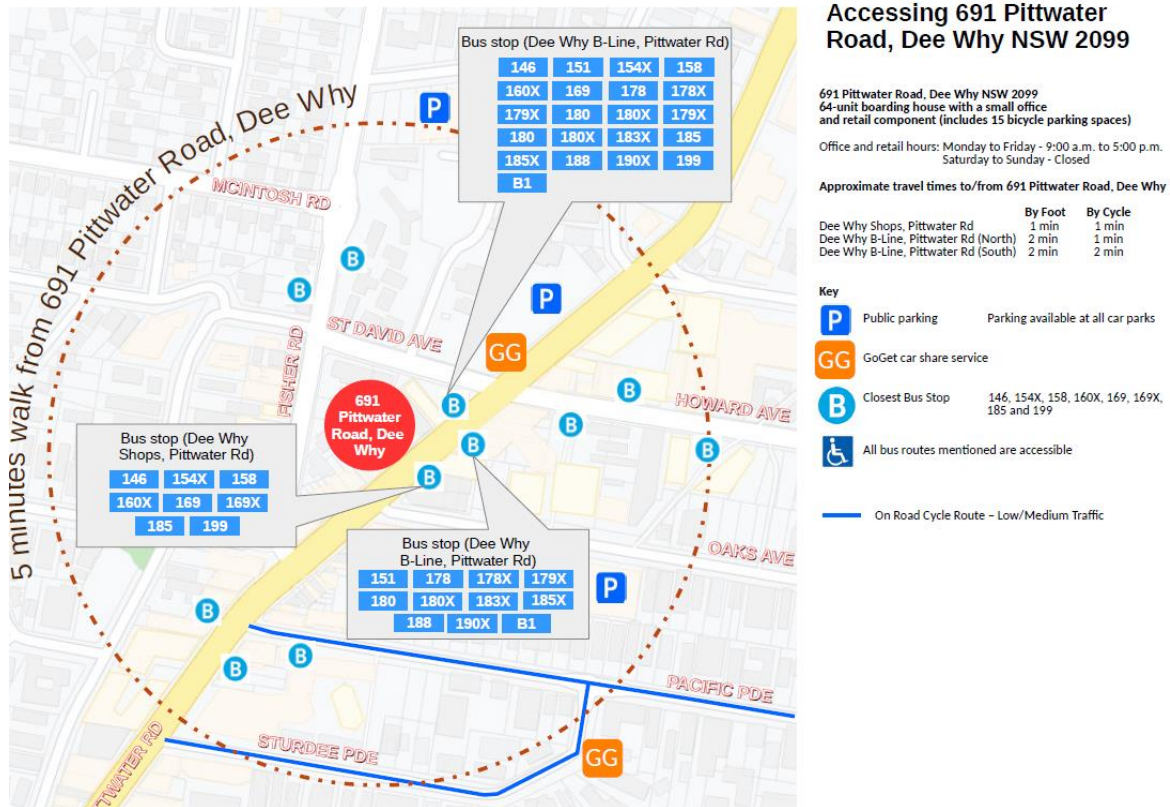


Figure 10 – accessibility characteristics of the location (source: Green Travel Plan, dated 17 September 2020)

4.6 Unlocking access to the rear of the property

The proposed development offers a significant opportunity to create vehicle access to the rear of the property via an extension of the established right-of-carriageway from St David Avenue.

1. The right-of-carriageway was created as part of the recent redevelopment of the land at 701 Pittwater Road. The easement is established in favour of Council and the neighbouring property at 693 to 697 Pittwater Road.
2. The right-of-carriageway may be extended to the subject site. The design of the proposed development accommodates this future access potential, as evident within plans and traffic report. Notably these aspects of the design include:
 - a) Proposed rear ground level of the property is RL 20.420. The level at the base of the right-of-carriageway driveway is approximately RL 21.7 located approximately 24 metres to the north east of the subject site's rear boundary.
 - b) Figures 5, 6 and 11 (below) illustrate that provision has been made within the design of the proposal for the conversion of the rear section of the site so that it can accommodate 8 car spaces within a mechanical stacker, 13 (compliant) motorcycle parking and waste collection can be diverted to the rear of the site for collection. 2 of the car spaces would all be for car share under an onsite management arrangement, 1 car space for the manager, and 5 car spaces for residents.

2. The LEP provisions relating to creating a 'shared laneway' and the so called 'Pittwater Road Accessway' (both being 'indicative only') are the subject of clause 7.14 of the LEP 'Community infrastructure floor space in Dee Why Town Centre' (figure 14 & 15 below). This clause and its provisions, including the public improvement works and access arrangements that it relates to, are not applicable to the subject DA. The clause is only applicable when a proposed development results in additional floor space or exceeds the maximum building height as per 7.14(3)(c) in relation to Key Site E.
3. Despite there being no statutory provision within the LEP compelling the subject application to create vehicle access to the rear of the property, the proposed development has made appropriate arrangements to create this access. The proposal therefore makes a significant contribution towards achieving a key objective of the Dee Why master plan which is to create vehicular access to the rear of the properties fronting Pittwater road between Fisher Road and St David Ave. It does this despite the proposal not seeking any additional building height or floor space ratio which are the provisions under close 7.13 of the LEP.

This is an appropriate environmental planning ground to consider the proposed exception to motorbike parking spaces because it achieves a strategic planning goal established in the LEP of creating vehicular access to the rear of the site other than from Pittwater road and will mean that the motorbike parking deficiency is a temporary outcome.

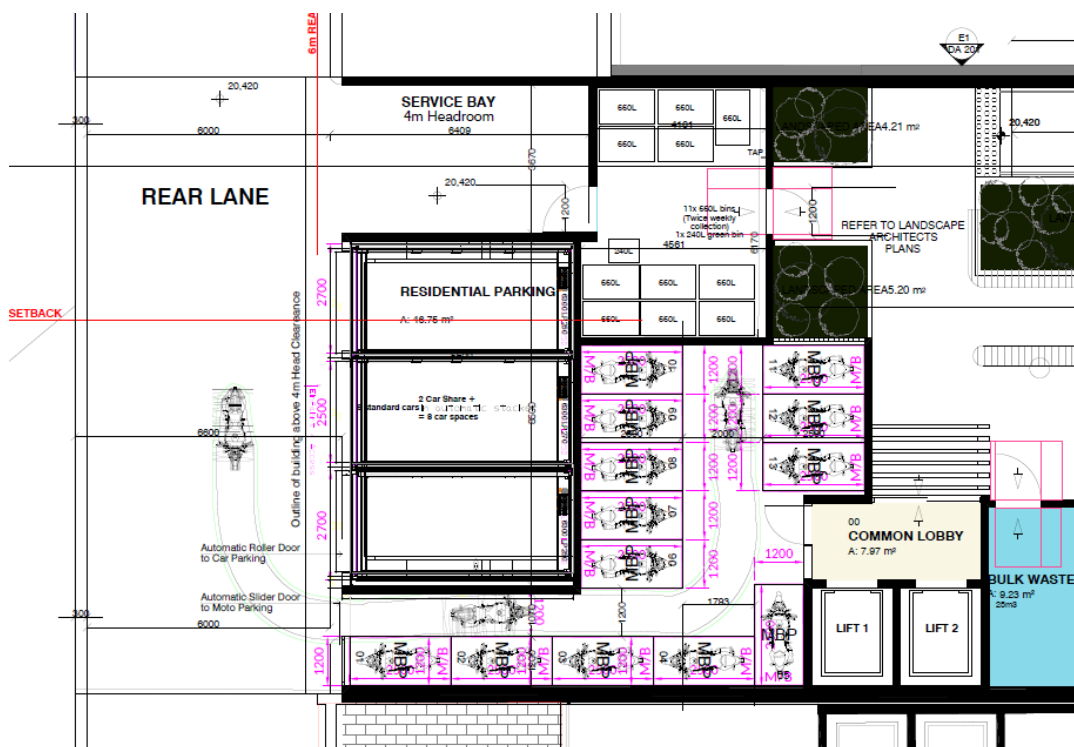


Figure 11 - Architectural plan excerpt showing future rear access and parking configuration

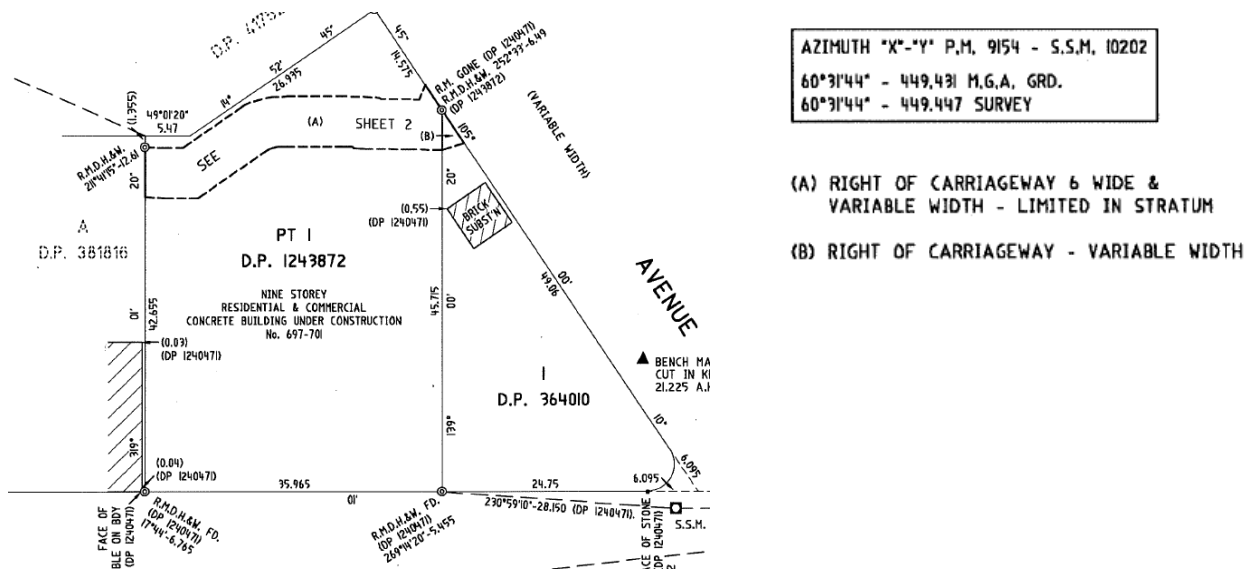


Figure 12 – except from the survey plan relating to the plan of easement for the right of carriageway with Lot 1 in DP 1243872 and Lot 1 in DP 364010 at 701 Pittwater Road

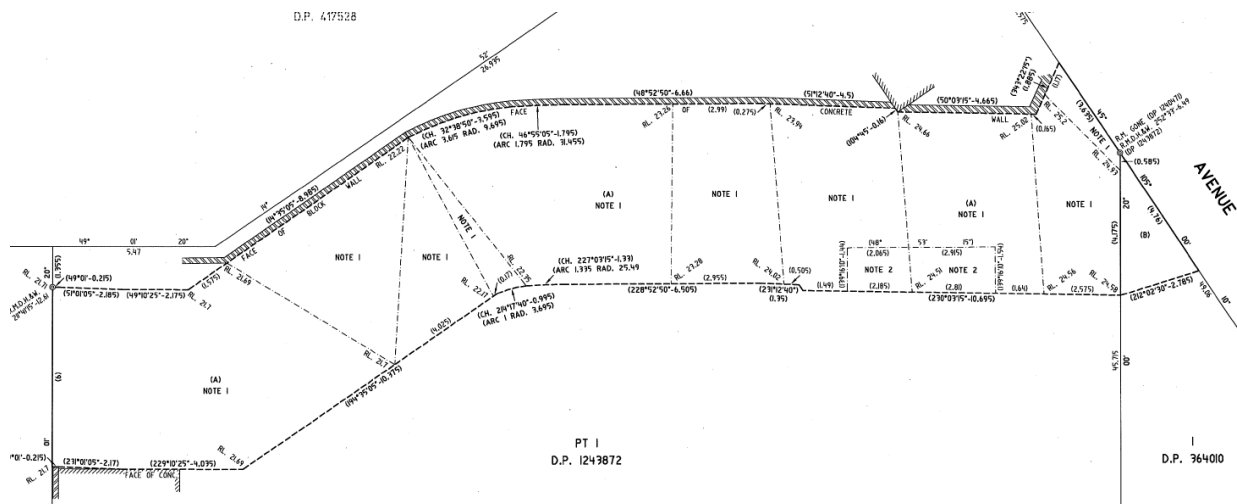


Figure 13 – further excerpt from the above mentioned plan of easement showing the configuration of the accessway

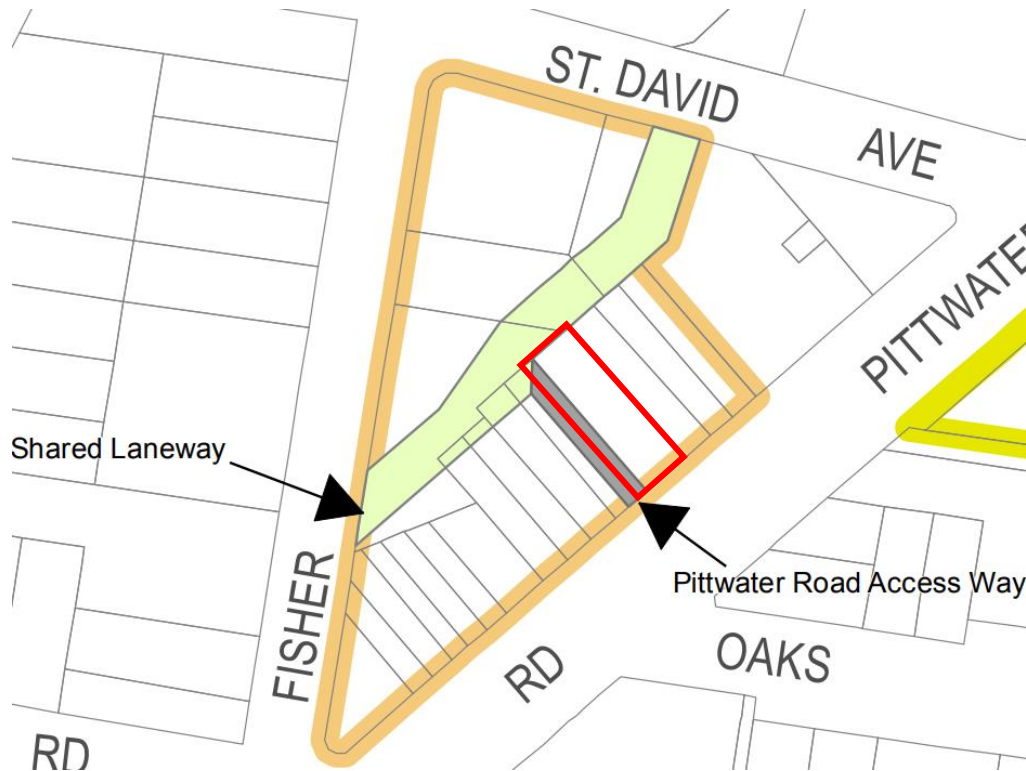


Figure 14 – excerpt from LEP Key Sites Map. Planned access provision to the rear of the site ('Shared Laneway - Indicative only' shaded light green) and to the south east of the site ('Pittwater Road Accessway - Indicative only' shaded grey)

Key Sites Map - Sheet KYS_010AA

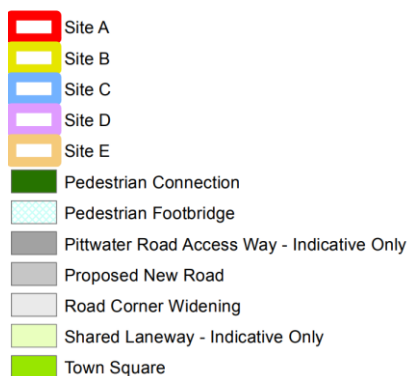


Figure 15 – excerpt from LEP Key Sites Map – map legend

4.7 The building's heritage facade is a constraint to achieving motorbike access through the street frontage of the property

The heritage character of the property and its location on a busy classified road are further constraints to providing motorbike access to the site.

1. Whilst the proposal involves a substantial redevelopment of the site, the retention of the heritage facade at the street frontage is a key consideration because it constrains the ability

to provide access from Pittwater Road until provision for rear access to the property is created. The retention of the existing building street facade is relevant to the consideration of the merits of the proposed motorbike parking variation.

2. The proposal will promote the sustainable management of the existing built heritage on the property, maintain and enhance its condition, and provide appropriate adaptable reuse of the building's valued heritage façade and streetscape interface. These measures are consistent with:
 - a. objective 1.3 (f) of the Environmental Planning and Assessment Act which is 'to promote the sustainable management of built and cultural heritage (including Aboriginal cultural heritage)'
 - b. the provisions of clauses 1.2(g) (Aims) and 5.10 (Heritage conservation) of the LEP
 - c. The public interest for the preservation of built heritage

4.8 Will not establish a precedent

Despite the deficit of on-site motorcycle parking, the proposed exception will not establish a precedent because there are no other heritage listed, privately owned properties fronting Pittwater Road, within the B4 zone and the Dee Why town centre, that are reliant on access from Pittwater Road (a classified road). Therefore, the circumstances relating to the property are unique in these ways. This conclusion has been drawn having regard to the principles established in *Goldin & Anor v Minister for Transport Administering the Ports Corporatisation and Waterways Management Act 1995* [2002] NSWLEC 75.

4.9 Unreasonable burden

In the circumstances, vehicle entry to the property from Pittwater Road cannot be achieved noting:

- Pittwater Road is a classified road from which the RMS is unlikely to grant consent for access.
- That such access would adversely impact upon the building elements of heritage value.

Access from Pittwater Road would be inconsistent with the townscape and streetscape objectives as they relate to pedestrian priority and activation of the ground floor level street frontage. Furthermore, in relation to rear access to the site within the immediate and short terms, the adjoining owner to the north at 693 Pittwater Road rejected the applicant's offer to establish a temporary and then permanent right of way over the rear of that property.

Notwithstanding these circumstances, and despite the deficit of on-site motorcycle parking:

- The motorcycle parking exception has minimal impact given that the parking demand for the proposal is less than the established land use on the site.
- Strict compliance in the circumstances would not achieve any significant gains with regards to the objectives for land renewal within the B4 zone. In fact, strict compliance would defeat the aims of the SEPP which are to increase the supply of affordable rental housing, within local business centres, 'close to places of work' and to public transport.
- There are positive impacts achieved by the development in its proposed form. It is appropriate that the merits of the proposal on environmental planning grounds be balanced with the impact that strict compliance with the standard places on the site, and whether such strict compliance would result in a better or neutral planning outcome. The proposed

exception will provide a compatible building and land use outcome consistent with various local and State planning provisions that relate to the site.

Based on the above, strict compliance would result in an unreasonable burden on the proposed development with insufficient environmental planning outcomes.

4.10 The proposal is consistent with the relevant objectives of the Environmental Planning and Assessment Act

Having regard to *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118, and further to the proposal's consistency with the above strategic and statutory environmental planning provisions for the Dee Why town centre, the proposal is consistent with the following objectives at under Section 1.3 of the Environmental Planning and Assessment Act 1979 (the Act):

(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; and

(d) to promote the delivery and maintenance of affordable housing

(f), 'to promote the sustainable management of built and cultural heritage (including Aboriginal cultural heritage)'

1. **In response to (b)**, appropriate alternative and compensatory, short-to-medium term measures to on-site motorbike parking are proposed and will achieve sustainable transport outcomes that are consistent with objective 1.3(b) which is *'to facilitate ecologically sustainable development by integrating relevant economic, environmental and social considerations in decision-making about environmental planning and assessment'*. These alternatives are outlined within section 4.4 of this submission.
2. **In response to (c)**, the proposal will facilitate the orderly and economic use and development of the land, in a highly appropriate location, in a manner that is desired by the planning controls because it will facilitate urban renewal for affordable rental housing, employment generating floor space, and secure the legal mechanisms for future vehicular access to the rear of the property (and the adjacent property known as 697 Pittwater Road) for the onsite parking of motorbikes, carshare vehicles, and service vehicles in the future.

In considering the contrary (refusal of the DA), retention of the bank building in its current form would not promote the orderly and economic use and development of land in the manner that council's strategic and statutory planning provisions seek. Retention of the bank building in its current form (vacant since July 2018) makes no advancement towards achieving the goal of creating access to the rear of the site from St David Ave. In fact, it places uncertainty over the achievement of this outcome. It does not provide an opportunity for medium density housing development located close to high quality and frequency public transport that is adjacent to the land within the block. It is not consistent with Dee Why's role as a strategic centre for increased housing, having less reliance on private vehicles and increasing utilisation of public transport and other alternate transport means. retention of the bank building would not facilitate activation of land on the western side of Pittwater Road and bring the Dee Why town centre masterplan vision one step closer to being realised.

3. **In response to (d)**, the proposal will advance the delivery of increased affordable rental housing provision in a highly accessible location where tenants would have the option of utilising other transport modes and avoid the costs associated with purchasing, running, and maintaining their own private motor vehicle. Furthermore, such housing would be close to established employment areas within the major centre of Dee Why and Brookvale in accordance with Aim 3(f) of State Environmental Planning Policy (Affordable Rental Housing) 2009 which is 'to support local business centres by providing affordable rental housing for workers close to places of work'.
4. **In response to (f)**, the proposal will promote the sustainable management of the existing built heritage on the property, maintain and enhance its condition, and provide appropriate adaptable reuse of the building's valued heritage façade and streetscape interface.

4.11 Conclusion

The proposal is consistent with the aims of the SEPP because it will increase the supply of affordable rental housing, within a regional scale business centre, close to public transport and employment areas. Based on the above, there are appropriate environmental planning grounds to support the proposed development based on its accessibility, and insufficient grounds to refuse the proposal based on its on-site parking deficit.

For these reasons, the proposed motorcycle parking exception is assessed as being appropriate to the circumstances of the site, and its context. It is assessed that there are appropriate and sufficient environmental planning grounds to support the proposed motorcycle parking exception.

5 The Public Interest

Subsection (4)(a)(ii) of Clause 4.6 states:

- (4) Development consent must not be granted for development that contravenes a development standard unless:*
 - (a) the consent authority is 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, and...*

5.1 Objectives of the development standard

In accordance with 4.6 (4)(a)(ii) the proposed development will be in the public interest because it is consistent with the objectives of the development standard, the objectives of the B4 zone, and the objectives for the redevelopment of land within the area designated as the Dee Why Town Centre established under the local planning controls (LEP – Part 7 and DCP – Part G1).

The objectives of Clause 30(1)(h) are not specifically expressed in the SEPP, however the aims of the SEPP are stated within clause 3 and repeated below:

- (a) to provide a consistent planning regime for the provision of affordable rental housing,*
- (b) to facilitate the effective delivery of new affordable rental housing by providing incentives by way of expanded zoning permissibility, floor space ratio bonuses and non-discretionary development standards,*
- (c) to facilitate the retention and mitigate the loss of existing affordable rental housing,*
- (d) to employ a balanced approach between obligations for retaining and mitigating the loss of existing affordable rental housing, and incentives for the development of new affordable rental housing,*
- (e) to facilitate an expanded role for not-for-profit-providers of affordable rental housing,*
- (f) to support local business centres by providing affordable rental housing for workers close to places of work,*
- (g) to facilitate the development of housing for the homeless and other disadvantaged people who may require support services, including group homes and supportive accommodation.*

In response -

The proposal is assessed as being consistent with the aims of the SEPP, noting that:

- It facilitates a boarding house that is compliant with the statutory controls under the Affordable Rental Housing SEPP 2009 (except Clause 30(1)(h) as it relates to motorcycle parking) and the Warringah LEP 2011.

- The property benefits from excellent proximity and direct access to public transport as the site is 30 and 50 metres walking distance from the main two bus stops serving Dee Why including access to the B-Line (B1) high frequency service.
- The property is located in a highly accessible area with employment hubs in close proximity. Given that 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 them to own a motorbike or car.
- Furthermore, the site is within convenient walking and cycling distance to places of recreation that would not demand occupants to own a motorbike or car, notably, sports fields (Dee Why Oval), Stony Range Botanical Garden, Dee Why beach, children's playgrounds, Walter Gorrs Park, the Dee Why PCYC, etc.
- Under the North District Plan (Greater Sydney Commission), Brookvale–Dee Why is recognised as a 'strategic centre' of significance to the Northern Beaches sub-region. Brookvale–Dee Why is recognised as containing significant employment, business, and shopping that serves the region. Furthermore, the Pittwater Road Corridor is recognised as the principal movement corridor with the highest concentration of housing, services, jobs, and public transport provision serving the Northern Beaches sub-region. Being located on this roadway means that the proposed development is highly accessible via walking, cycling and public transport to these employment areas. The proposal will therefore *provide* affordable rental housing in a location that is likely to *support local business centres close to places of work*.
- It results in new affordable housing opportunities for the Dee Why town centre for which there is strong demand within the area (source: Northern Beaches Affordable Housing Needs Analysis).

5.2 The local planning provisions are satisfied by the proposal

Guidance as to the environmental planning intent for the property is also taken from the LEP (cl 1.2 Aims of Plan, Part 7 - Dee Why Town Centre, cl 5.10 Heritage conservation) and DCP (Part G1) as they relate to the development of land within the Dee Why Town Centre.

5.2.1 cl 1.2 Aims of Plan

The proposal is consistent with Aims (1(b) and 1(g) under cl 1.2 of the LEP, noting:

- 1(b) in relation to the significance of Dee Why and Brookvale states: '*to recognise the role of Dee Why and Brookvale as the major centres and employment areas for the sub-region*'. In response, the proposal provides a development of increased intensity and scale within Dee Why town centre, close to public transport and to places of work.
- 1(g) in relation to environmental heritage states: '*to recognise, protect and conserve items and areas of natural, indigenous and built heritage that contribute to the environmental and cultural heritage of Warringah*'. In response, the proposal preserve and enhance the heritage characteristics of the property.

5.2.2 Part 7 - Dee Why Town Centre

Consistent with LEP clause '7.3 Objectives for development within Dee Why Town Centre' and LEP clause '7.5 Design excellence within Dee Why Town Centre', the proposal includes a range of sustainable development initiatives including:

- the high provision of bicycle parking as a substitute for motorcycle and car parking not only promotes healthy lifestyles, but further reduces the environmental impact of traffic congestion and pollution from vehicle emissions.
- the configuration and design of communal access and communal recreational areas within the development incorporates an appropriate mix of indoor and outdoor spaces including terraces, gardens, rooms and social spaces with innovative treatments (like a community garden) that will promote a socially effective urban village atmosphere,
- the proposed building design incorporates an open, atrium style ground floor designed to facilitate the movement of pedestrians, either on foot or with bicycles, entering and leaving the site from the street or the future anticipated shared rear laneway or right-of-way. In these ways the proposed development connects with and provides a high-quality interface with Pittwater Road and the future foreshadowed rear shared laneway at the pedestrian level,
- The site benefits from convenient proximity to car share opportunities. Figure 7 and 8 shows car share 'pod' locations within Dee Why by car share provider Go Get. There are 2 car share parking spaces approximately 50m to the north east of the site within the Civic Centre carpark as shown by Figure 8. This is not the full extent (but an indication) of local car share capacity as there are other providers in the marketplace. In addition to reliance on public facilities, the applicant has offered to make available two car spaces at 5 Mooramba Road which is 400m south along Pittwater Road. These parking spaces would contain cars that are available for residents of the boarding house and will be managed by the boarding house until such time as motorcycle parking and car share spaces can be provided on site. These car spaces are in excess of the requirements for the development at 5 Mooramba Road.
- the proposed building design incorporates provision for onsite rooftop solar power generation, 43 bicycles, including 10 electric bicycles, rainwater quality control provisions, onsite stormwater detention, and BASIX compliance which are sustainability initiatives complementary to the objectives for redevelopment within the town centre.
- Being located in a highly accessible area, with employment areas in close proximity, and 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 a proximity to places of employment that would not demand them to own a motorbike or car.

The proposal is consistent with the objectives of clause 7.13 of the LEP related to 'Mobility, traffic management and parking' within the Dee Why town centre, noting that:

- Appropriate arrangements are proposed for waste collection and delivery functions suitable for the demands generated by the proposed development. These are further addressed within the accompanying operational management plan and traffic submission addressing Waste collection requirements dated 22 September 2020.

- The proposal will have minimal disruption to retail and commercial activity at street level because the proposed development does not propose vehicle access at the street frontage and incorporates 3 levels of non – residential use at this interface.
- The proposal will reinforce the priority of pedestrian movements and provides improved streetscape activation due to the absence of a driveway across the site Pittwater Road frontage. By not interrupting such movements at the site's street frontage it will positively contribute to pedestrian safety within the town centre,
- The proposal will improve vehicle access and circulation within the Dee Why Town Centre by not providing car parking, promoting public transport use, and based on the accompanying traffic and parking assessment report, result in a net reduction in traffic and parking demand as compared with the approved bank use, which, by its nature generates trips throughout the day.
- Consistent with key access objectives for development within the B4 zone as it will result in a safe pedestrian environment, activation of the street frontage and avoidance of the impacts of additional traffic and parking that is often generated by the intensification of development within the town centre.

5.3 What is the public benefit of maintaining the standard?

The proposed development is generally consistent with, or not antipathetic to, the objectives of the development standard, notwithstanding the numerical variation.

Compliance with the development standard would defeat the underlying objective 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, noting 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 public transport as the site is 30 and 50 metres walking distance from the main two bus stops serving 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 areas that are in close proximity. Given key workers are one of the 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's proximity to places of employment that would not demand them to own a motorbike (or car).
- The proposal facilitates the redevelopment of the land in a manner that is envisaged by the local planning provisions for the Dee Why town centre, including facilitating the creation of rear vehicle access to the site and the adjoining property at 687 Pittwater Road.

In the circumstances, the proposed development does not affect the public benefit of maintaining the motorcycle parking standard in other instances.

5.4 Objectives for development within the B4 Mixed Use zone

The proposed development will be in the public interest because it is consistent with the objectives for development within the B4 Mixed Use zone in which the development is proposed to be carried out. These are each stated and responded to below:

a) *'To provide a mixture of compatible land uses'.*

The proposal is assessed as being consistent with objective (a) noting that:

- The proposal will provide a suitable a mixture of compatible land uses that are capable of working in harmony. The proposal will provide commercial areas within the first three floor levels at the site's Pittwater Road frontage;
- The proposal will provide additional affordable housing, which is close to and within convenient walking and cycling distance of services and established employment areas in Brookvale, and for which there is strong demand within the area (source: Northern Beaches Affordable Housing Policy Needs Analysis).

b) *'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'.*

The proposal is assessed as being consistent with objective (b) noting that:

- the proposed *commercial premises* and *boarding house* uses will optimise public transport usage given its excellent proximity and direct access to public transport as the site is 30 and 50 metres walking distance from the main two bus stops serving Dee Why including access to the B-Line (Route B1) high frequency service.
- the proposal generates a requirement for 13 bicycle and 13 motorcycle spaces whereas the proposed development incorporates accommodation for 43 bicycles including 10 electric bicycles within the ground floor level. To assist in compensating for its motorcycle parking deficit the proposal provides increased provision for bicycle parking in a location where there are various facilities within convenient cycling distance.
- The site is within convenient walking and cycling distance to public transport, services, and employment opportunities that exist within the Dee Why town centre.

c) *'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'.*

The proposal is assessed as being consistent with objective (c) noting that it:

- is for a mixed use development containing commercial *premises* (meaning any of the following: business, office, or retail premises) and boarding rooms (a form of affordable residential housing) being permitted uses;
- is for a mix of uses that are capable of working in harmony;
- is of appropriate height and scale to reflect the status of Dee Why as a major centre serving the Northern Beaches;
- is of appropriate height and scale to be complementary to the built form that has been recently constructed on the properties within the site's visual catchment.

- is of appropriate height and scale to be complementary to the planning objectives and desired building character within the B4 Mixed Use zone;
- maintains an active street frontage without vehicle access but providing for a future arrangement of rear access away from the civic activity.
- preserves the function of Pittwater Roads public classified road status while ensuring quieter residential uses are suitably distanced and acoustically attenuated from the road.

d) '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'.

The proposal is assessed as being consistent with objective (d) noting that:

- the building design addresses the range of improvements sought for the renewal of the town centre;
- the site is of sufficient size and proportions to be developed in the manner proposed.
- the shape and lot pattern respects the heritage facade and maintains its significance ensuring an interesting street frontage
- the proposal will reinforce the priority of pedestrian movements and provides improved streetscape activation due to the absence of a driveway across the Pittwater Road frontage. By not interrupting such movements at the site's street frontage it will positively contribute to pedestrian safety and amenity (from motorcycle noise and hazards) within the town centre;
- it provides commercial premises over the first three floor levels at the site's Pittwater Road frontage, to facilitate future 'activation';
- it will result in higher utilisation of the land use in a central, highly accessible location;
- it will result in improved urban design quality of the property's built-form.

e) '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'.

The proposal is assessed as being consistent with objective (e) noting that in order to 'reinforce the role of Dee Why as the major centre in the subregion' mixed use development of increased 'scale and intensity' is desired. The proposal is consistent with this objective (e) because:

- the proposal provides suitable provision for commercial premises at the ground level. Features of the commercial premises include: sufficient flexibility to enable different configurations of the commercial space to accommodate different business types and scales.
- the proposal is for a mixed use development containing commercial *premises* (meaning any of the following: business, office, or retail premises) and boarding rooms (a form of affordable residential housing) being permitted uses;

f) 'To encourage site amalgamations to facilitate new development and to facilitate the provision of car parking below ground'.

The proposal is assessed as being consistent with objective (f) noting that:

- The proposed development demonstrates through its design and compatibility with its context that the property is capable of being developed in isolation from adjoining land in a manner that is consistent with the planning controls applicable to the land. It therefore does not require amalgamation with other land to enable its redevelopment in a multi-storey, mixed-use form.
- The encouragement of amalgamation is given strength by clause 7.14 of the LEP via FSR and building height bonuses which are not relied upon and therefore this objective does not strictly apply in the circumstances.
- The proposed development makes appropriate arrangements to facilitate creation of vehicle access to the rear of the property including the adjoining property known as 687 Pittwater Road. This is an outcome of significant importance to the intent of redevelopment within the area known as Key Site E as sought by clause 7.14 of the LEP. Creation of such vehicle access will contribute to the planning objective to create a laneway between Fisher Rd and St David Ave to provide vehicle access to the rear of properties fronting the western side of Pittwater road in this location.
- 697 Pittwater Road (land to the north) benefits from a right of carriageway to St David Ave. Being of regular shape, with an approximate 20m wide frontage to Pittwater Road, at approximately 1,000m² in area, it is capable of being developed without amalgamating with adjoining land.
- Further consideration has been made of potential amalgamation with the 687 Pittwater Road and information accompanies this submission to demonstrate that it will not be effectively isolated, including details of legal arrangements to provide a right of way over the site for access to 687 Pittwater Road.
- The Council has been provided with a letter of offer dated 11 September 2020 with accompanying valuation report by Savills dated 31 August 2020 to purchase 687 Pittwater Road. The owner of 687 Pittwater Road has not responded despite numerous follow ups.
- The applicant has submitted architectural drawings Rev C dated 21 September 2020 which shows that the property at 687 Pittwater can be developed on its own. Views from the sun have been prepared to show that the Apartment Design Guide solar access controls can be met assuming it is developed as shop top housing. Motorcycle and car parking is achieved once the rear lane is activated in a manner similar to the proposal at 691 Pittwater Road.
- As for future rear lane access to that property, the Applicant is prepared to accept a condition of consent similar to that imposed on the redevelopment of 701 Pittwater Road that requires an easement to be registered on the title of 691 Pittwater Road benefitting Council that enables Council to authorise use of the rear lane for the benefit of 687 Pittwater and all lots to the south until Fisher Road. We enclose a copy of the easement terms and plan for the right of way over 701 Pittwater Road.
- The Applicant submits that the Land and Environment Court site isolation planning principle in *Karavellas v Sutherland Shire Council* [2004] NSWLEC 251 does not strictly apply considering there is no minimum lot size criteria that is being breached with the development of 691 Pittwater. Nevertheless, the principles have been considered and met because:
 1. Amalgamation is not feasible.

- a. Although negotiations have only commenced recently with 687 Pittwater Road, the planning controls do not dictate it and Council has never raised amalgamation with 687 Pittwater until recently.
 - b. An offer has been made to the owner based on a valuation report. There has been no response.
 - c. We also note that there are existing registered leases over 687 Pittwater Road that lapse in 31 January 2023 (Dentist Level 2) and 30 June 2022 for the Cash Converters on the ground floor (see title searches attached).
2. Orderly and economic use and development of the separate sites can be achieved without amalgamation.
- a. A hypothetical building envelope for 687 Pittwater has been prepared including details on apartments, retail and car parking. See plans DA 750 – DA 787 Rev C dated 21 September 2020 which depict a seven storey development with 7 apartments and retail/commercial at the lower levels. The scheme complies with the planning controls and obtains the setbacks and minimum solar access required by the Apartment Design Guide assuming it is built as shop top housing.
- There remains a possibility that 687 Pittwater can be amalgamated with 685 Pittwater Road even though 685 Pittwater Road is a strata office block. This is because that property being SP 58682 consists of 9 lots and 8 of the 9 lots (being 88.88%) are held by the same owner or companies controlled by these owners. See attached title search and company extracts. This exceeds the threshold of 75% for a collective sale.

6 Summary

The proposed building does not result in a development that is unable to service the travel needs of residents either within the short, medium, or long terms. The site is in an accessible location and has ready access to a range of shops, services, employment, and recreation opportunities which can be reached by walking, cycling, and buses for residents.

The proposed lack of motorcycle parking is not inconsistent with the zone and LEP objectives relating to the Dee Why Town Centre, as the proposed development provides ample bicycle parking, plus off-site parking is available, is easily accessible to public transport and has a range of shops and services within its walking catchment.

There are no specific objectives for this standard (for motorcycles) in the SEPP ARH, although there is sufficient bicycle parking, including 10 electric bicycles, in lieu of motorcycle parking. The proposal makes future provision for rear lane vehicle access to the site and proposes a design that accommodates compliant motorcycle parking when that rear lane vehicle access is developed.

It is noted that the exception sought is 'temporary' in nature because the design accommodates 13 compliant motorcycle spaces within its ground floor level that will be accessible once rear access to the property is constructed via either an extension to the right-of-way from St David Ave, over 693 Pittwater Road, or the creation of the 'Shared Laneway' shown on the LEP Key Sites Map envisaged by cl 7.14 of the LEP as it relates to Key Site E.

The non-compliance with motorcycle parking does not determinately impact adjoining properties or the public domain, and together with sufficient bicycle parking, compliance with the motorcycle standard is both unreasonable and unnecessary.

In the circumstances, insistence of compliance with the motorcycle parking standard would be inconsistent with the aims of the SEPP ARH and would not provide a better planning outcome, as it would require a driveway and parking area that would impact the building's heritage presentation within the streetscape.

There are sufficient environmental planning grounds to justify the variation in consideration of the design of the building in retaining its heritage characteristics, ready access to public transport, its walking catchment, and the potential to impact the building's heritage qualities to achieve driveway access for motorcycles. The proposed development is assessed to be compatible with the development setting and satisfies the LEP's requirements for the Dee Why Town Centre. The variation in the motorcycle variation is therefore in the public interest.

7 Secretary's considerations

With regards to the Secretary's considerations the proposed variation of the development standard:

- Does not raise any matter of significance for State or regional environmental planning, consistent with 4.6 (5)(a) except to note that the proposal involves growth and urban renewal of a strategic centre consistent with State planning policy.
- The public benefit is not served by maintaining the development standard consistent with 4.6 (5)(b).

8 Conclusion

The exception proposed to the *motorcycle parking* development standard has been appropriately acknowledged and the circumstances assessed, having regard to the objectives of the control.

In conclusion, Council can be satisfied that:

- This written request has adequately addressed the matters required to be demonstrated by 4.6 (3) & 4.6(a)(i);
- Is well founded and adequately address the matters required in accordance with & 4.6(a)(i);
- The exception is appropriate taking into account the range of relevant environmental planning considerations, the circumstances of the case, and public interest matters.
- The proposal succeeds when assessed against the Heads of Consideration pursuant to clause 4.6. There is no statutory planning impediment to the assessment and approval of the application.

Yours sincerely,



Michael Haynes
Director - BBF Town Planners

Annexure 1 - Traffic and parking assessment by TEF Consultants dated 17 March 2020

**Annexure 2 – Addendum traffic and parking report from TEF
traffic consultants - Parking demand and trip generation, dated
21 September 2020**

Annexure 3 – Green Travel Plan, dated 17 September 2020

Annexure 4 - Northern Beaches Affordable Housing Needs Analysis

Annexure 5 - Architectural plans by BKA showing, inter-alia, the future rear lane access

Annexure 6 - 685 Pittwater Road a strata office block title search and company extracts