

NORTHERN BEACHES COUNCIL SUPPLEMENTRY ASSESSMENT REPORT

Panel Reference	PPSSNH-155
DA Number	DA2020/1167
LGA	Northern Beaches Council
Proposed Development	Demolition works and Construction of a mixed use development to accommodate a café, church, conference centre, boarding house and two level of basement car park.
Street Address	Part Lot 28 DP 7313, 9 Francis Street and 28 Fisher Road, Dee Why
Applicant/Owner	Baptist Churches of NSW (Owner) The George Group Pty Ltd (Applicant)
Date of DA lodgment	22 September 2020
Number of Submissions	45 submissions which includes: <ul style="list-style-type: none"> • 23 submission in support • 22 submissions in opposition
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 2011)
List all documents submitted with this report for the Panel’s consideration	<ul style="list-style-type: none"> • Attachment 1 – Amended Architectural Plans • Attachment 2 – DASP minutes, dated 24 June 2021 • Attachment 3: Applicant’s schedule of changes • Attachment 4: Council’s original Assessment Report • Attachment 5: Draft Conditions of Consent
Clause 4.6 requests	Not Applicable
Summary of key submissions	<ul style="list-style-type: none"> • Traffic and parking concerns • Amenity impacts • Out of character – Bulk and Scale • Non-compliance with Warringah LEP and DCP
Report prepared by	Lashta Haidari – Principal Planner
Report date	10 August 2021

<p>Summary of s4.15 matters</p> <p>Have all recommendations in relation to relevant s4.15 matters been summarised in the Executive Summary of the assessment report?</p>	<p>Yes</p>
<p>Legislative clauses requiring consent authority satisfaction</p> <p>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?</p> <p><i>e.g. Clause 7 of SEPP 55 - Remediation of Land, Clause 4.6(4) of the relevant LEP</i></p>	<p>Yes</p>
<p>Clause 4.6 Exceptions to development standards</p> <p>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?</p>	<p>Not Applicable</p>
<p>Special Infrastructure Contributions</p> <p>Does the DA require Special Infrastructure Contributions conditions (S7.24)?</p> <p><i>Note: Certain DAs in the Western Sydney Growth Areas Special Contributions Area may require specific Special Infrastructure Contributions (SIC) conditions</i></p>	<p>Not Applicable</p>
<p>Conditions</p> <p>Have draft conditions been provided to the applicant for comment?</p> <p><i>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</i></p>	<p>Yes</p>

PURPOSE OF THIS REPORT

The purpose of this Supplementary Report is to provide the Sydney North Planning Panel (SNPP) with an assessment of revised plans and further information in accordance with the resolution of the SNPP at its meeting on 27 January 2021.

This report does not revisit any matters previously addressed in the original Assessment Report prepared by Council and considered by the SNPP.

RELEVANT BACKGROUND

The Development Application was considered at the SNPP on 27 January 2021. In the Assessment Report forwarded to the Panel, Council made a recommendation for refusal of the application for the following reasons:

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

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

Particulars:

- a) The development form is not characteristic and imposes unnecessary impact on the surrounding built form, and is therefore inconsistent with Clause 30A of the SEPP (ARH) 2009.
- b) The development does not provide sufficient information to demonstrate compliance with regards to Clause 29(2) (C) – Solar access.

2. Warringah LEP 2011

The proposed development is not consistent with the requirement of Part 7 – Town Centre Controls.

Particulars:

- a) The development does not provide sufficient information to demonstrate compliance with regards to Clause 7.4 (i) and (ii) relating to Stormwater Management.
- b) The proposed development is found to inconsistent with the requirement of Clause 7.13 relating to Traffic Management.

3. Non-compliance with Warringah DCP 2011

The proposed development does not comply with the following provisions of WDCP 2011.

Particulars:

- a) Clause 1.2 Aims of The Plan
- b) Clause 2.3 Zone Objectives
- c) B3 Side Boundary Envelope
- d) B5 Side Boundary Setback
- e) C2. Traffic, Access and Safety
- f) C9. Waste Management
- g) D1 Landscaped Open Space and Bushland Setting
- h) D6 Access to Sunlight
- i) D9 Building Bulk
- j) D14 Site Facilities

The panel at its meeting held on 27 January 2021 resolved to defer the application and concurred with Council that there are a number of options for amendments to the proposed development to address concerns raised in the Assessment Report, so the proposal is designed in a manner that is consistent with the applicable planning controls and more sympathetic to adjoining sites.

The Panel requested that Council and the Applicant meet to discuss changes to the proposal and work together to resolve outstanding differences.

ADDITIONAL INFORMATION PROVIDED BY THE APPLICANT

Since the SNPP deferment, the applicant has submitted a number of amended plans and a number of meetings were held with the applicant in attempt to resolve the outstanding issues. The latest set of amended plans and information was submitted on 22 April 2021, which included:

- Number of boarding rooms reduced from 80 to 70 (+1 manager room).
- Amendments to the Fisher Road and Francis Street Facades.
- Carparking has been reduced to 36 spaces (including 8 disabled spaces), 14 motorcycle spaces and 14 bicycle spaces
- Increased setbacks to Francis Street front and side setbacks.
- Other amendments as detailed within the schedule of changes prepared by the architect.

NOTIFICATION & SUBMISSIONS RECEIVED

The amended plans has been publicly exhibited from 15 April 2021 to 29 April 2021 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 process council is in receipt of 45 submissions, which included:

- 23 in support
- 22 objecting to the proposal

The issues raised in the submissions include the following:

1. Construction Impacts

Concern was raised regarding the impacts of noise, dust, damage to adjoining properties, traffic and parking due to prolonged demolition, excavation and construction on the adjoining residents and business premises particularly the medical practices located at 30 Fisher Road. The submissions questioned what recourse was to be offered to those negatively affected by the construction.

Comment:

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

Therefore, this issue should not be given determining weight.

2. Impacts upon Neighbouring Residential and Business premises Amenity

The submissions raised concern that the proposal would adversely impact on the amenity of the adjoining and surrounding properties in the form of overshadowing, noise, fumes and odour, ventilation and cross breeze, privacy and outlook.

- Overshadowing - particular concern was overshadowing to private open space and solar panels of no. 7 Francis Street, reduced sunlight to internal premises of no. 7 Francis Street and no. 30 Fisher Road.
- Noise – increased noise as a result of location of outdoor areas, rooftop access, air-conditioning units and increase traffic.

- Privacy – location of glass walkway between buildings and location of windows will provide direct and close views of the bedrooms of the adjoining residential premises.

Comment:

These concerns have been addressed in detail within this report. In summary it is agreed that the amenity impact in relation to privacy and solar access is unreasonable and this is included as reason for refusal.

The issue associated with acoustics and fumes could be addressed by way of conditions, should the application be worthy of approval.

3. Traffic Congestion

A number of submissions received raised concern that the traffic produced by the development will exacerbate the already congested local road network. Additionally the traffic report was undertaken during the height of a Covid 19 lockdown and was not a true reflection of normal traffic conditions.

Comment:

The submissions suggest that the development will have an adverse impact upon traffic congestion and safety and that the development does not provide sufficient on-site car parking to avoid a further loss of on-street parking.

With respect to the loss of on-street parking and traffic congestion, the SEPP dictates the transportation requirements of the development which rely upon the availability of public transport as opposed to private transport. The development is located within the required proximity to regular bus routes in accordance with Clause 27 of the SEPP.

Therefore, given the compliance of the proposal with the provisions of the SEPP, the application cannot be refused for this reason.

Council's Traffic Engineer has reviewed the application and does not raise any objection to the proposal subject to a condition.

This issue does not substantiate a sufficient reason to refuse the application.

4. Parking

The submissions raised concern that the proposal was not providing sufficient parking for the number of rooms and uses. Additionally the submission raised concern about the location of the loading zone and access for trucks and ambulances.

Comment:

The parking requirement for the development is stipulated under the provision of SEPP. An assessment of car parking provision, having regard to SEPP and location of the site has been undertaken.

In summary, the amount of car parking is sufficient for the development, as addressed in the traffic referral section of this report.

Accordingly, this issue does not warrant the refusal of the application.

5. Use of premises

The submissions asked what assurances would be made that the proposal would be used for its intended use and not for 'church camps and internal functions'. Submission raised concern that the proposal had a commercial focus instead of social housing.

Comment:

Unlike backpacker accommodation, a hotel/motel or bed and breakfast accommodation which each provide temporary or short-term accommodation, the WLEP 2011 requires, by definition, that a boarding house provides residents with a principal place of residence for a minimum of three months.

This minimum period of residence means that persons residing in such establishments to form an association to the local area. The issue of occupancy and who may accommodate the boarding house is not a matter for consideration under Section 4.15 of the EP&A Act 1979.

The use of the church within the site is as per the existing situation, which is permissible within the zone.

These issues do not substantiate a sufficient reason to refuse the application.

6. Safety and Security

The submission raised concerns with how social issues such as increased disturbances and illegal behaviour due to the size and type of the development being a boarding house would be managed.

Comment:

The application has been assessed against the provisions of Crime Prevention through Environmental Design (CPTED) where it was considered that the development is consistent with the four principles of:

1. Surveillance;
2. Access control;
3. Territorial reinforcement; and
4. Space management.

The application satisfies the objectives and requirements of this particular clause. This issue does not substantiate a sufficient reason to refuse the application.

7. Submissions in support of the development

The submissions raised concern that those submissions received in support of the proposal did not live in the vicinity of the development and were not immediately impacted by it.

Comment:

This matter is not a relevant consideration under the provisions of Section 4.15 of the EP&A Act 1979.

This issue does not substantiate a sufficient reason to refuse the application.

8. Lack of community consultation and engagement

The submissions raised concern that the application had not provided sufficient consultation or engagement with the community. Particular concern is raised with a group meeting organised by the applicant for the adjoining neighbours to discuss any issues or concerns they have with the proposal. The applicant only gave the neighbours 18 hours' notice of the meeting and it is considered that this was not a sufficient amount of time for people to be made aware of the meeting.

Comment:

The applicant's consultation or engagement with the community is not a relevant matter for Council to consider as part of the assessment process.

The application (as amended) was notified to all surrounding properties in accordance with the requirements of Council's Community Participation Plan.

This issue does not substantiate a sufficient reason to refuse the application.

9. Density

Concern was raised that 'dense housing of special needs people will impact the social integrity of the area and promote discord. A community that is well balanced with people from diverse socioeconomic backgrounds will achieve a safer, more inclusive society'.

Concern has been raised that the proposal is an overdevelopment of the site.

Comment:

The SEPP and the WLEP 2011 both permit boarding houses within the R3 Medium Density Residential zone and B4 Mixed use zone and it is worth noting that, despite this permissibility, neither instrument limits the number of residents a boarding house may accommodate and therefore, does not place a restriction upon density.

The various development standards and built form controls are used to regulate the scale of the built form and therefore the ultimate density of boarding house development.

For the reasons provided within this report, the proposed density is not found acceptable and this issue warrants the refusal of the application.

INTERNAL REFERRALS

Internal Referral Body	Recommendation/ Comments
<p>Landscape Officer</p>	<p>Supported (subject to conditions)</p> <p>The application is the construction of a mixed-use development consisting of two buildings, containing a cafe, church, conference centre, and boarding house.</p> <p>The application is assessed by Landscape Referral against the following policies and controls: Warringah Development Control Plan 2011, including but not limited to the following clauses:</p> <ul style="list-style-type: none"> • Warringah Local Environment Plan 2011 • Warringah Development Control Plan, clauses D1 Landscaped Open Space and Bushland Setting, and G1 Dee Why Town Centre part 11 Landscaping • State Environmental Planning Policy (Affordable Rental Housing) 2009 <p>A Landscape Plan is provided with the application indicating: landscape treatments within deep soil areas along the side boundaries at the Francis Street end of the development site; planters on structure to the ground level, first, second, and fourth floors; rooftop common open space; and vertical green walls to the building facade. The existing site does not contain any prescribed (protected) trees and removal of existing vegetation is Exempt under WDCP 2011.</p> <p>Landscape Referral raise no objections to the proposal, subject to amended landscape plans adjusting planter depths to an appropriate depth to support the proposed tree planting, and inclusion of small trees along the side boundaries within the deep soil zones.</p>
<p>NECC (Development Engineering)</p>	<p>Supported (subject to deferred commencement condition)</p> <p>No objection subject to conditions.</p>
<p>Strategic and Place Planning (Urban Design)</p>	<p>Not Supported</p> <p>An amended proposal was resubmitted on April 2021 which has addressed the Urban Design issues identified in the Pre-Lodgment Meeting.</p> <p>The proposal was referred to the Design and Sustainability Advisory Panel (DSAP) on 24 June 2021. The Panel acknowledged that the amended proposal has undertaken substantive changes to address previous Panel and Council comments, however, the panel finds that fundamental questions remain about the DA documentation, landscape and building design quality, gross floor area justifications, buildability and code compliance to the extent that the Panel has no confidence that an acceptable proposal can be delivered.</p>

Internal Referral Body	Recommendation/ Comments
	As such, the applicant should consider incorporating the recommendations in the DSAP report.
Traffic Engineer	<p>Supported (subject to conditions)</p> <p>The amendments include the reduction of the boarding rooms from 80 to 70. The Boarding house is registered under Community Housing Provider requiring 0.2 parking spaces per room as per the SEPP requirements.</p> <p>The proposal includes the provision of total 37 parking spaces including 6 parking spaces for people with disabilities which is acceptable. The allocation of parking spaces are proposed as follows:</p> <ul style="list-style-type: none"> - 15 spaces to Boarding house including 1 managers spaces - 2 spaces to the café - 15 spaces to the church - 4 spaces to the staff - 2 disabled spaces to general use <p>The above parking proposal includes the provision of an additional 4 parking spaces as a replacement for the on-street parking loss resulted from the proposed development.</p> <p>The proposal also includes 10 motorcycle and 14 bicycle parking spaces.</p> <p>The deliveries will be undertaken wholly within the site within the proposed loading bay accommodating small rigid trucks.</p> <p>The internal ramps ways are considered acceptable subject to provision of appropriate Give-Way priority and provision of convex mirrors which is conditioned.</p> <p>The proposed vehicular access arrangement is considered acceptable subject to obtaining the Traffic Committee approval for the installation of parking restriction. This is conditioned.</p> <p>In the view of the above, the proposal can be supported subject to conditions.</p>

ASSESSMENT OF ADDITIONAL INFORMATION

Northern Beaches Design and Sustainability Advisory Panel (DSAP)

The amended plans were reported to Northern Beaches Design and Sustainability Advisory Panel (DSAP). The Panel at its meeting held on 24 June 2021 concluded that the development in its current form cannot be supported in that whilst the Panel acknowledges that the amended proposal has undertaken substantive changes to address previous Panel and Council comments, fundamental questions remain about the DA documentation, landscape and building design quality, gross floor area justifications, buildability and code compliance to the extent that the Panel has no confidence that an acceptable proposal can be delivered.

The panel concluded that a complete redesign and substantial reduction in the floor area is required. Any breaching of the height /setback controls would need to be supported by an analysis of the benefits compared to a complying scheme. A copy of the panel’s minutes is attached to this report.

State Environmental Planning Policy (Affordable Rental Housing) 2009

The assessment of the amended plans, does not materially alter the design of the development such that it deviates from the original assessment and conclusions made by Council, with the exception of the following Clauses:

Clause 29: Standards that cannot be used to refuse consent

Standard	Requirement	Amended Proposal	Compliant/Comment
<p>(1) Density and Scale</p> <p>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:</p>	<p>(a) The existing maximum floor space ratio for any form of residential accommodation permitted on the land.</p> <ul style="list-style-type: none"> • WLEP 2011 requires FSR of 2.4:1 for B4 zone. 	<p>The proposed development has a total GFA of 3,312.84m² which equates to a FSR of 2.38:1.</p> <p>A portion of the site is subject to a FSR of 2.4:1. The proposed benefits from a bonus FSR of 0.5:1 increasing the maximum allowable FSR to 2.9:1</p>	<p>Non- Compliant</p> <p>3181.48sqm of GFA or 2.27:1 FSR. *Note – GFA is calculated by the applicant across the total development site being 1398.68sqm.</p> <p>However, when calculated as individual lots, 28 Fisher Road exceeds the allowable FSR of 2:9:1 by an approximate 220m².</p>
<p>2) A consent authority must not refuse consent to development to which this Division applies on any of the following grounds:</p>			
<p>(a) Building Height</p>	<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 16m (13+3) as per Dee Why Town Centre Masterplan</p> <p>11m within R3 Medium Density Zone</p>	<p>The proposed development has a maximum building height of 11m on the western portion (R3 zone) and 16m on the eastern portion of the site (B4 zone).</p>	<p>Non-compliant</p> <p>The proposed development is compliant with the 11m height limit for the western portion of the site. The majority of the proposed building is compliant with the 16m height limit for the eastern portion, with the exception of the screening to the roof terrace which is up to 16.3m and fire stair on roof terrace which is up to 16.3m and fire stair on roof.</p>
<p>(b) Landscaped Area</p>	<p>If the landscape treatment of the front setback area is compatible with the streetscape in which the building is located</p>	<p>This Clause is specifically applicable to the portion of the site fronting Francis Street, which include predominantly older style (60's and 70's) residential flat buildings. The overall character in terms of landscaping is low fence lines with a variety of landscape treatments and evenly distributed</p>	<p>Yes</p>

		<p>canopy trees.</p> <p>Council's Landscape officer has raised no objection to the amended Landscape treatment along the Francis Street frontage.</p>	
(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.	Common areas are allocated throughout the building with the majority allowing northern sun access	Yes
(e) parking	<p>If: in the case of development not carried out by or on behalf of a social housing provider—at least 0.2 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>	The development proposes 70 boarding rooms plus 1 manager's residence, generating a parking requirement of –14 spaces (at 0.2 car spaces per room as the proposed development is being carried out on behalf social housing provider) for lodgers and 1 space for the operational manager. The proposal provides 16 car spaces which exceeds the requirement.	Yes
(f) accommodation size	<p>if each boarding room has a gross floor area (excluding any area used for the purposes of private kitchen or bathroom facilities) of at least:</p> <p>(i) 12 square metres in the case of a boarding room intended to be used by a single lodger, or</p> <p>(ii) 16 square metres in any other case.</p>	All rooms are more than 12 for single and 16m ² for double.	<p>Yes</p> <p>(subject to conditions)</p>
	(3) A boarding house may have private kitchen or bathroom facilities in each boarding room but is not required to have those	All rooms have a private kitchen and bathroom facilities.	Yes

	facilities in any boarding room.		
	(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).	The development complies with the standards	Yes

Clause 30: Standard for Boarding Houses

Standard requirement	Amended Proposal	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 house for the use of each lodger,	All rooms are provided with a bathroom and kitchenette facilities.	Yes
(e) if the boarding house has capacity to accommodate 20 or more lodgers, a boarding room or on site dwelling will be provided for a boarding house manager,	A manager's residents is provided on the ground floor of the development.	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.	A total of 14 motorcycle and 14 bicycle spaces are required for the proposed development. The development includes 10 motorcycle and 14 bicycle parking spaces within the two levels of basement parking.	No The proposal involving 4 motorcycle parking spaces short of the requirement, which does not comply with the standards for boarding houses in the SEPP and a variation of the development standard, has not been sought by

		the applicant pursuant to Clause 4.6 of Warringah LEP 2011.
(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 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:

As stated in the original assessment report that the typology is permissible within the two zones, 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.

However, as noted in the DASP minutes the amended proposal’s impacts on the amenity of the adjoining development at No. 7 and 11 Francis Street, which includes additional overshadowing to 7 Francis Street, and the reduction of a reasonable landscaped buffer to

the adjoining sites is still a significant concern.

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 previously and acknowledged by the DASP panel, the overall built form as amended is not harmonious with the adjoining development. 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*). As discussed previously, the proposed development will prejudice the development of the adjoining sites.

Given the above, it is considered that the proposal does not satisfy the character test and the development results in a built form which provides poor occupant amenity and an unresolved interface to adjoining residential development to the north and south.

WARRINGAH LOCAL ENVIRONMENTAL PLAN 2011

Standard	Permitted	Previous Proposal Deferred by SNPP	Amended Proposal	Variation
4.3 – Height of Buildings	The maximum building height of the B4 zone is 16m (13+3) as per Dee Why Town Centre Masterplan 11m within R3 Medium Density Zone	Compliant The proposed development has a maximum building height of 11m on the western portion and 16m on the eastern portion of the site.	Non-compliant The proposed development is compliant with the 11m height limit for the western portion of the site. The majority of the proposed building is compliant with the 16m height limit for the eastern portion, with the exception of the screening to the roof terrace which is up to 16.3m and fire stair on roof.	1.8% (refer to discussion below_

4.4 – Floor Space Ratio	2.4:1 for B4 zone The SEPP (ARH) 2009 provides for an additional 0.5:1 additional FSR under Clause 29. Therefore, the proposed development has a maximum FSR control of 2.9:1.	The proposed development has a total GFA of 3,312.84m ² which equates to a FSR of 2.38:1.	Non- Compliant 3181.48sqm of GFA or 2.27:1 FSR. *Note – GFA is calculated by the applicant across the total development site being 1398.68sqm. However, when calculated as individual lots, 28 Fisher Road exceeds the allowable FSR of 2:9:1 by an approximate 220m ² . Applicant has not provided a Clause 4.6 for the FSR variation.	31%
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Clause 4.3 Height of Buildings

Clause 4.3 provides a maximum building height of the B4 zone is 16m (13+3) as per Dee Why Town Centre Masterplan and 11m within R3 Medium Density Zone.

The proposal is compliant with the 11m height limit for the western portion of the site. The majority of the proposed building is also compliant with the 16m height limit for the eastern portion, with the exception of the screening to the roof terrace which is up to 16.3m and fire stair on roof.

It is acknowledged that the extent of non-compliance is minor, however as part of the site is located within the Dee Why Town Centre, there is no power to grant or consider Clause 4.6 for the non-compliance in relation to building height pursuant to Clause 4.6(8) of WLEP 2011, which essentially prohibits granting consent to any form non-compliance.

Clause 4.4 – Floor Space Ratio

Clause 4.4 provides a floor space ratio for the site of 2:4:1. The proposal benefits from a bonus FSR of 0.5:1 increasing the maximum allowable FSR to 2.9:1.

The applicant has indicated 3181.48sqm of GFA or 2.27:1 FSR, as this is calculated by the applicant across the total development site being 1398.68m². However, when calculated as individual lots, 28 Fisher Road exceeds the allowable FSR of 2:9:1 by approximately 220m², therefore does not comply with the Floor Space Ratio standard.

As Council has not received a written request from the applicant that seeks to justify the contravention of the floor space ratio development standard, the consent authority does not have the authority to grant development consent for development.

Part 7 Dee Why Town Centre

Part 7 contains local provisions that relate to the Dee Why Town Centre, a portion of the site fronting Fisher Road is located within Dee Why Town Centre. The specific controls relating to Fisher Road component of the development have been considered in the original assessment and the assessment of the amended plans, which do not materially alter the design of the development such that it deviates from the original assessment and conclusions made by Council in this regard.

WARRINGAH DEVELOPMENT CONTROL PLAN 2011 (WDCP 2011)

Part B: Built Form Controls for R3 Zoning					
Control	Requirement	Previous Proposal Deferred by SNPP	Amended Proposal	% Variation	Complies
B2. Number of Storeys	3 storey	4 storey	4 storey	33%	No
B3 – side Boundary Envelope	5m (north)	Outside Envelope 13.8 % - 32.5%	Outside Envelope	18% - 36%	No
	5m (south)	Outside Envelope 26.7% - 50%	Outside Envelope	18%-20%	No
B5. Side Boundary Setbacks	4.5m (North)	Basement – Nil	Basement – Nil	100%	No
	4.5m (south)	Above ground development–varied setback 3m - 4m	Ground - 2.1m to 4.5m	44%	
			1 st and 2 nd Floor– 3.5m to 4.5m	22%	
			3 rd Floor - 3.5m to 5.08m	22%	
B7. Front Boundary Setbacks	6.5m	6m	6.5m	N/A	Yes
D1- Landscaped Open space	40% for site of 695.6m ² (278.24m ²)	31.4% (218.6m ²) *Including areas minimum 2m dimension as per DCP	11.6% (81sqm) *Including areas minimum 2m dimension as per DCP	71%	No

B2. Number of Storeys

The application seeks consent for a four storey development, inconsistent with the three storey control prescribed by this control. The applicant justifies this non-compliance by advising that a DCP control cannot derogate from the provisions of the LEP (11m height limit).

Whilst it is acknowledged that Council has approved four storey development along Francis Street, the application cannot rely upon precedence alone, and must demonstrate consistency with the objectives of the number of storeys control. Furthermore, whilst four storey elements may be supported at certain parts of the site (such as towards the rear of the site), 4 storeys may not be appropriate across the site as a whole.

The proposed four storey development is not supported in this instance, as consistency with the objectives of the control is not achieved, as follows:

- *To ensure development does not visually dominate its surrounds.*

Comment:

Due to insufficient side setbacks the four storey presentation of the development is visually dominate and out of character with the surrounds.

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

Comment:

The application does not address the visual impact of the four storey development as viewed from the adjoining development to the north and south.

- *To provide equitable sharing of views to and from public and private properties.*

Comment:

The proposal will not have unreasonable impacts on view sharing to and from private properties. Notwithstanding this the bulk and massing of the development will have an adverse impact on the adjoining properties in relation to outlook.

- *To ensure a reasonable level of amenity is provided and maintained to adjoining and nearby properties.*

Comment:

The proposal will increase the amount of shadow falling on the site to the immediate south. Due to insufficient building separation the proposal has the potential to impact on the visual privacy of adjoining properties, particularly with regard to open corridor linking the two buildings.

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

Comment:

The design of the roof does not impact upon the design of the fourth floor or non-compliance with the three storey height control.

- *To complement the height of buildings control in the LEP with a number of storeys control.*

Comment:

The proposal is consistent with the height of buildings development standard but is inconsistent the three storey height limit.

B3 Side Boundary Envelope

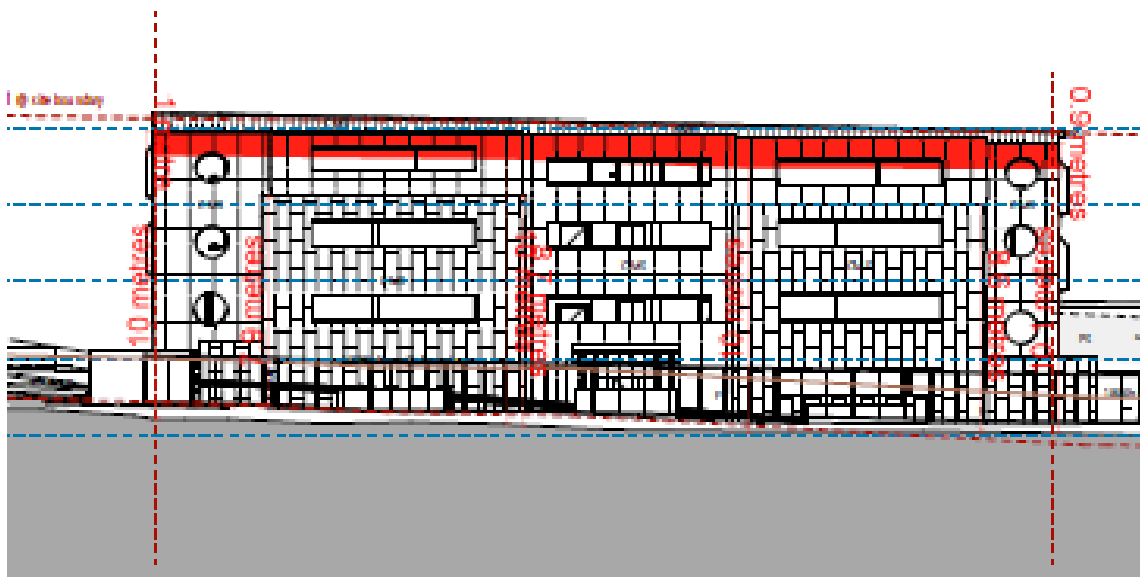
Description of non-compliance

The portion of the development located within the R3 zone results in a non-compliance with the side boundary envelope control, calculated as:

B3 – side Boundary Envelope	5m (north)	Outside Envelope	18% - 36%	No
	5m (south)	Outside Envelope	18%-20%	No



Amended North Elevation showing the side envelope breach in red



Amended south Elevation showing the side envelope breach in red

The extent of the non-compliance as it relates to the southern elevation is improved compared to the original scheme. Despite the amendments, the amended scheme is found to be inconsistent with the objectives of control for the following reasons:

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

Comment:

Due to insufficient side setbacks the height, bulk and scale of the development is visually dominate particularly as viewed from the neighbouring properties to the immediate north and south.

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

Comment:

Due to inadequate spatial separation between buildings, in particular No. 7 Francis Street to the immediate south, the proposal will result in unreasonable impacts on solar access and privacy.

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

Comment:

The proposal does not adequately respond to the topography of the site.

B5 Side Boundary Setbacks

Description of non-compliance

The amended proposal seeks variations with the side boundary setback requirements of WDCP. The proposed basement includes a nil setback for the basement length along both boundaries.

Above ground, the development continues the non-compliance alongside both setbacks. The ground level of the proposed development on both sides are used for private space for individual uses, access paths, and fire egress paths etc.

While the controls incorporate special provisions within the R3 Medium Density Residential Zone for basement parking to encroach up to 2.0m from the boundary and private open space up to 3.5m from the boundary, the proposed development seeks 100% encroachment of these areas which is not supported. The control and the special provisions state:

On land within the R3 Medium Density Residential zone, above and below ground structures and private open space, basement car parking, vehicle access ramps, balconies, terraces, and the like shall not encroach the side setback.

Variations will be considered for existing narrow width allotments, where compliance is unreasonable in the context of surrounding medium density development for basement car parking and private open space.

Basement car parking may extend:

- *Up to 2 metres from the side boundary, and*
- *No more than 1 metre above ground level (existing)*
-

Private open space may extend:

- *Up to 3.5 metres from a side boundary*

The amended proposal is not supported in this instance, as consistency with the objectives of the control is not achieved, as follows:

- *To provide opportunities for deep soil landscape areas*

Comment:

There is insufficient area within the setback to support planting that is commensurate with the building height, as this area has been identified as private open spaces, access paths, and fire egress paths. The area shown for deep soil planting is unlikely to contain any useful planting that would serve to offset the bulk and scale of the building.

- *To ensure that development does not become visually dominant*

Comment:

As noted above, the insufficient side setbacks results in a development that is visually dominant from the adjoining properties to the north and south. The side setback is also inconsistent with the predominate side setback of existing developments in the surrounding area resulting in a development that is also visually dominate in the streetscape.

- *To ensure that the scale and bulk of buildings is minimised.*

Comment:

The insufficient side setback adds to the excessive scale and bulk of the building.

- *To provide adequate separation between buildings to ensure a reasonable level of privacy, amenity and solar access is maintained.*

Comment:

The insufficient side setbacks results in inadequate separation between buildings to ensure that a reasonable level of privacy, amenity and solar access is maintained.

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

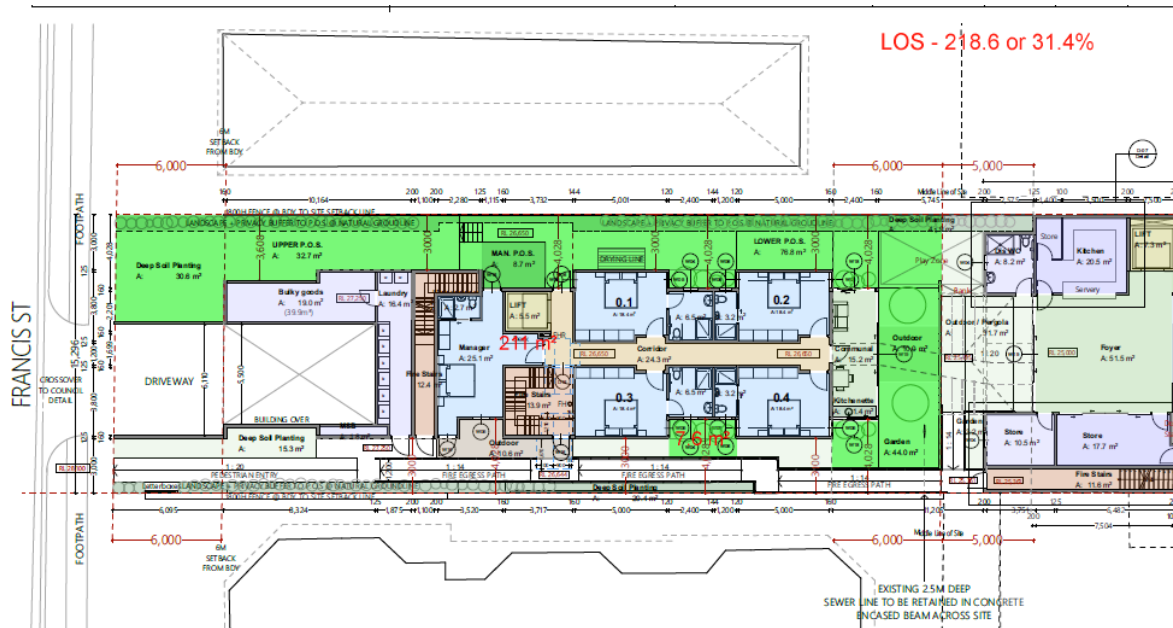
Comment:

As noted above, while there are no views impacts by the proposal the insufficient side setbacks combine with the excessive bulk and scale of the development will impact on the outlook from the adjoining properties.

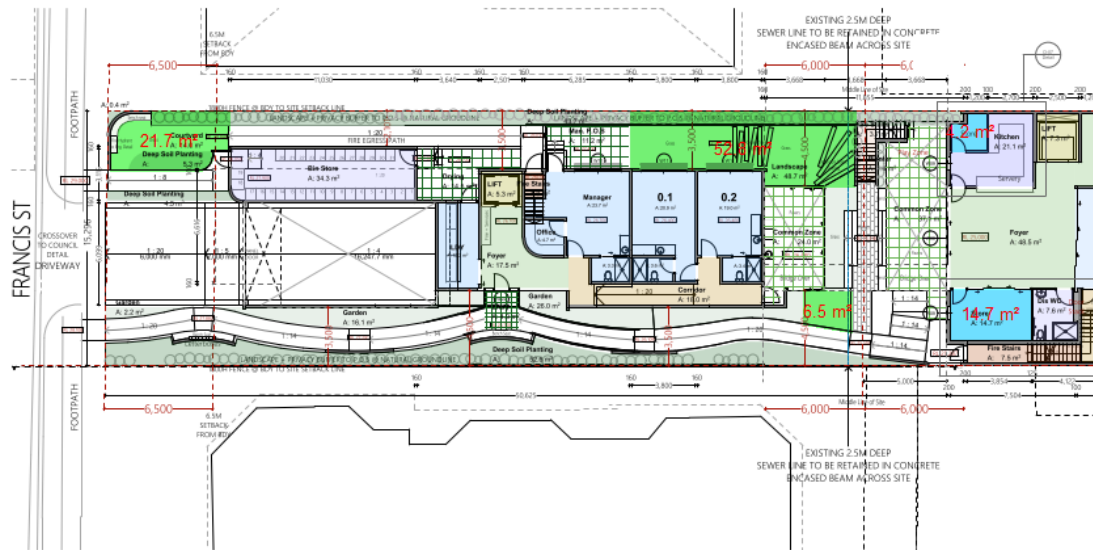
D1 Landscaped Open Space

Description of non-compliance

D1- Landscaped Open space	40% for site of 695.6m ² (278.24m ²)	Original scheme 31.4% (218.6m ²) *Including areas minimum 2m dimension as per DCP	Amended scheme 11.6% (81sqm) *Including areas minimum 2m dimension as per DCP	71%	No
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Original working plans LOS



Updated plans LOS Calculation

The landscaped area for the R3 site is required to be 40% of 696.6m² (278.24m²), as demonstrated in the diagram above, the amended plans results in a significant reduction landscape open space for the development.

The shortfall in the landscape open space is found to be inconsistent with the objectives of the control for the following reasons:

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

Comment:

The proposal has been amended to improve the front set back with additional landscaping, including 1m deep soil planting above the bin store area. Although this is improved the overall reduction in terms of landscape open space is worse for the scheme overall.

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

Comment:

There are no issues raised from Council's Landscape Officer subject to conditions.

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

Comment:

A compliant 4.5m side set back would allow for additional deep soil zones to allow for the establishment of landscaping that will help mitigate the density, bulk and scale of the building.

- *To enhance privacy between buildings.*

Comment:

The side setbacks restricts the available space for sufficient planting to help mitigate privacy between buildings.

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

Comment:

With the exception of private open space for the manager's unit there are no areas of ground level outdoor recreational space. The development relies on the outdoor space at roof level which can only be used by a fraction of the residents after 6.00pm.

The pedestrian access paths are narrow with little amenity provided apart from seating benches.

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

Comment:

The proposal provides for external clothes drying and relies on the internal common laundry room and private laundries within each room.

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

Comment:

Due to insufficient landscape open space being retained there are reduced options for water infiltration.

D6 – Solar Access

Clause D6 requires:

1. *Development should avoid unreasonable overshadowing any public open space.*
2. *At least 50% of the required area of private open space of each dwelling and at least 50% of the required area of private open space of adjoining dwellings are to receive a minimum of 3 hours of sunlight between 9am and 3pm on June 21.*

The proposal has been amended to provide a greater southern setback which will help reduce shadow impacts. Despite this the amended shadow diagrams in plan show that the development continues to cast additional shadow on the adjoining site to the south, No.7 Francis Street. Therefore, the development results in non-compliance with the requirement of this Clause. Whilst some level of additional overshadowing impact is anticipated due to the relatively undeveloped nature of the existing site, concern is raised where there are additional impacts as a result of non-compliance with Council's built form controls. In this respect, it is noted that the impacts are directly attributable to non-compliance with the number of story, building envelope and side setback development controls that are applicable to this part of the site.

As such, the proposed development is considered to be inconsistent with the requirements of this Clause, which seek to ensure that reasonable access to sunlight is maintained to adjoining properties.

CONCLUSION

The revised plans and additional information have been considered against the relevant matters for consideration under Section 4.15 of the Environmental Planning & Assessment Act 1979.

This assessment has also taken into consideration the public submissions and referral responses.

It should be acknowledged that the applicant has made considerable effort in attempt to overcome the concerns raised by Council, however despite the reduction in the overall built form, the proposal is still found to be inconsistent with character provisions embodied within SEPP (Affordable Rental Housing) 2009 and built form controls applicable to the site under WLEP 2011 and WDCP 2011.

The amendments to the proposed development do not overcome Council's concerns in relation to the overall built form, and the amenity of future residents will be significantly impacted by the design as detailed within the DSAP minutes. The amendments to the proposal and new documentation resolved some previous referral issues, such as stormwater related matters, traffic and parking impact, and waste collection.

The critical concerns raised by Council and DSAP relate to the fact that the configuration of the site split across two different zonings presents a challenge in itself and creates problematic relationships to the neighbouring properties. This challenge, along with the sites other attributes, necessitates a highly skillful design in order to overcome such constraints. From the list of constraints generated by the site, the capacity to support the proposed built form without generating undesirable amenity impacts is of high relevance.

Accordingly, the revised proposal cannot be supported as the proposal fails to satisfy the fundamental planning controls applying to this site.

Importantly, the applicant has not submitted Clause 4.6 variation requests to vary the Development Standards relating to clause 30 (1)(h) SEPP (Affordable Rental Housing) 2009, and the Floor Space Ratio standard under WLEP 2011 which applies to a portion of the site.

The conclusions and recommendations made in the original assessment report remain unchanged.

Based on the assessment contained in this report, it is recommended that the Sydney North Planning Panel (SNPP) refuse the application for the reasons (as amended) 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. DA2020/1167 for demolition works and construction of a mixed use development to accommodate a cafe, church, conference centre, boarding house and two level basement car park at art Lot 28 DP 7413, 9 Francis Street and 28 Fisher 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:

- a) The development form is not characteristic or compatible with the surrounding built and imposes unnecessary impact on the surrounding built form, and is therefore inconsistent with Clause 30A of the SEPP (ARH) 2009.
- b) The development does not provide sufficient landscape area within the boundaries of the site commensurate with the bulk and scale of the proposed built form.
- c) The deficiency in motorcycle parking does not comply with clause 30 (1) (h) Development Standard of the SEPP (Affordable Rental Housing) 2009, and the contravention of the development standard is not justified under Clause 4.6.

2. Warringah LEP 2011

The development is not consistent with the requirement of Part 7 – Town Centre Controls.

Particulars:

- a) The development does not comply with the requirement of Clause 4.3 Height of Buildings. The contravention of the development standard cannot be varied pursuant to Clause 4.6(8).
- b) The development does not comply with requirement of Clause 4.4 Floor Space Ratio, and the contravention of the development standard is not justified under clause 4.6.

3. Non-compliance with Warringah DCP 2011

The proposed development does not comply with the following provisions of WDCP 2011.

Particulars:

- a) Clause 1.2 Aims of The Plan
- b) Clause 2.3 Zone Objectives
- c) B3 Side Boundary Envelope
- d) B5 Side Boundary Setback
- e) D1 Landscaped Open Space and Bushland Setting
- f) D8 Privacy
- g) D6 Access to Sunlight
- h) D9 Building Bulk
- i) D14 Site Facilities

4. Public Interest

The proposal is not in the public interest

Particulars

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