



2 Delmar Parade, Dee Why

Section 4.55 Planning Statement

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2 DELMAR PARADE, DEE WHY

Demolition works and construction of a Mixed Use Development, comprising retail shops and shop top housing

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Prepared under instructions from
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1.0 INTRODUCTION

This submission has been prepared as supporting documentation for an application made pursuant to Section 4.55(2) of the *Environmental Planning and Assessment Act 1979* to modify the consent for Development Application DA2017/1183 for Demolition works and construction of a Mixed Use Development, comprising retail shops and shop top housing at 2 Delmar Parade, Dee Why.

The application seeks approval for a range of refinements to the development to achieve a significant improvement to the apartment layouts and residential amenity, a rationalised basement and ground floor layout with better streetscape interface, and a significant improvement to the architectural merit of the design. The amended proposal retains the same number of apartments as those which were originally approved and also adheres to the heights and majority of the setbacks established by the approved development.

The proposed modifications are detailed on amended architectural plans prepared by Rothelowman Architects. The application is also accompanied by the following:

- SEPP 65 Design Verification Statement and SEPP 65 Report – Rothelowman Architects
- Landscape Package - Paul Scrivener Landscape Architect
- BASIX Certificate – Senica
- BCA Report – Aramini & Leedham Consulting Pty Ltd
- Access Report – Access Building Solutions
- Section J Report – Senica
- Traffic and Parking Report – TTPP
- Concept Stormwater Design – S&G Consultants
- Acoustic Report - Wilkinson Murray
- Waste Management Plan - Senica

This Statement has been prepared pursuant to Section 4.55(2) of the *Environmental Planning and Assessment Act 1979*. The Statement provides an assessment of the amended proposal having regard to the relevant legislative context, social economic and environmental impacts, potential amenity impacts of the development on the surrounding locality and the measures proposed within the application to mitigate such impacts.

The Statement details the amended proposal's consistency with the approved Concept Plan as well as compliance against applicable environmental planning instruments and development control plans including:

- State Environmental Planning Policy No. 65 Design Quality of Residential Flat Development
- State Environmental Planning Policy (Building and Sustainability Index: BASIX) 2004
- Warringah Local Environmental Plan 2011
- Warringah Development Control Plan 2011

Having regard to the applicable legislative framework, the proposed amendments to the approved development are such that the development retains the same fundamental characteristics and is therefore substantially the same development. The amended development remains consistent with the aims and objectives of the relevant environmental planning instruments and development control plan whilst improving compatibility with the emerging character of the locality.

The proposed modifications do not result in any adverse impact and achieve a more appropriate housing response to the market demand for quality apartment layouts and accordingly approval is warranted.

2.0 SITE DESCRIPTION AND LOCATION

2.1 Site Description

The site is located within the suburb of Dee Why, which is located within the Northern Beaches Local Government Area. The site is located at the southern entry into the Dee Why town centre and along with its neighbours forms an important gateway function for the town centre.



Figure 1:

Site (Source: Six Maps, Department of Lands 2020)

The site comprises a single allotment and is legally described as Lot 1 in DP 710661 and is known as No. 2 Delmar Parade, Dee Why. The site is located on the south-eastern corner of the intersection of Delmar Parade and Pittwater Road. The site is irregular in shape with frontages of 29.01 metres to Delmar Parade, a corner splay of 6.19 metres, and a frontage of 40.98 metres to Pittwater Road. The site has an eastern boundary of 60.325 metres and a staggered southern boundary of 18 metres for the eastern portion and 34.085 metres for the western portion. The site has a total area of 2,060 square metres.

The land slopes from the south-eastern corner down approximately 2.5 metres to the north-western corner. The site currently contains a 2 storey commercial building aligned to each street frontage with a minor landscaped setback which contains steps and pathways leading to the entrances into the building. The eastern side of the site is occupied by a hard stand car park and undercroft car parking which is accessed from a double width vehicular crossing from Delmar Parade. Vegetation currently on the site comprising a row of trees along the eastern boundary of the site and also around the perimeter of the parking area at the southern end of the site. The existing building has a nil side boundary setback along the western end of the southern boundary.



Photograph 1:

The site as viewed from Pittwater Road facing south-east



Photograph 2:

The site as viewed from Delmar Parade facing south-west



Photograph 3:

The vehicular entrance to the site from Delmar Parade with the hardstand car parking to the east and undercroft parking



Photograph 4:

Southern boundary demarcated by tree line as viewed from the adjacent site



Photograph 5:

Eastern boundary of site demarcated by line of trees as viewed from the adjacent site



Photograph 6:

The rear of the existing building as viewed facing north-west

2.2 Surrounding Development

The context of the site is undergoing substantial transformation from low scale office and industrial based uses to high density mixed use and residential development as envisaged for the Dee Why Town Centre. The site to the north at 822 Pittwater Road across Delmar Parade contains a recently completed 7 to 8 storey mixed use building which has a 3 to 4 storey podium and a tower element above which is setback from Pittwater Road, but with no setback above the podium from Delmar Parade.

Opposite the site to the north-west across Pittwater Road is a petrol station at 625 Pittwater Road, and a recently completed 7 storey mixed use development at 5 Mooramba Road, Dee Why which has a 4 storey podium and 3 storey component above.

Immediately adjacent to the south is the site known as 816 Pittwater Road which contains an Avis vehicle rental business comprising hard stand parking areas and single storey building. The subject site also shares the remainder of its southern boundary with 812 Pittwater Road which is a campus style commercial and industrial development with hardstand car parking immediately adjoining the subject site. A similar style development also immediately adjoins the site along its eastern boundary at 4 Delmar Parade.



Photograph 7:

822 Pittwater Road to the north of the site

Photograph 8:

The petrol station opposite the site across Pittwater Road





Photograph 9:

Recently completed development diagonally opposite the site to the north-west across Pittwater Road

Photograph 10:

The Avis site immediately adjacent to the south



Photograph 11:

Existing development to the south at 812 Pittwater Road



Photograph 12:

4 Delmar Parade
adjacent to the east

3.0 BACKGROUND

3.1 Development Application DA2017/1183

On 12 September 2019, the Sydney North Planning Panel granted consent to development application DA2017/1183 which provided for Demolition works and construction of a Mixed Use Development, comprising retail shops and shop top housing at 2 Delmar Parade, Dee Why.

The approved development has a 4 storey podium with two 3 storey elements above and provides for 2 basement levels and ground level parking for 108 cars, 5 commercial tenancies at ground floor facing Pittwater Road, and 71 residential apartments above.

The approved development includes a variation to the 21 metre Building Height control which applies to the site under the Warringah Local Environmental Plan 2011 with a maximum height of 23.78 metres to the highest point of the building and relied upon Clause 4.6 to vary the development standard.



Figure 2:

3D image of approved development

4.0 PROPOSED MODIFICATIONS

4.1 Overview

Landmark Group is an Australian property development company with more than 20 years of experience and a strong reputation for delivering quality apartments. Landmark Group acquires prime development sites within Sydney's growth and transport corridors and as a builder/developer aims to deliver projects in a timely fashion and ensure a high quality outcome is achieved. This is especially important as Landmark Group typically retain a portion of their completed projects and so have a keen interest in ensuring the long term durability and quality of their projects.

Landmark Group have recently acquired the subject site and intends to develop the property and retain a portion of this project. Landmark Group has reviewed the approved development and has identified that there are a range of areas where the proposal can be improved, as follows:

- The approved apartment layouts can be optimised with the following primary improvements:
 - removing the single aspect south facing units in the centre of the site and ensuring that every apartment has an outlook over each adjacent street;
 - rationalising the internal layouts of apartments to remove in-board bedrooms which rely on borrowed light and ventilation;
 - increasing the number of through-apartments to increase natural cross ventilation and to provide a "front door" vestibule area for the apartments;
 - reconfiguring apartment layouts to orient bedrooms away from Pittwater Road (noise source/acoustic privacy);
 - increasing the private open space for apartments on the podium; and
 - resolution of the current poor outlook for east facing apartments at Level 1 which currently look over the driveway below.
- Significant increase to the quantum of larger apartments to cater for families, noting that the approved development has 88% studios and 1 bedroom apartments.
- Increasing the expanse of deep soil provided to enable replacement tree planting and improved common open space locations.
- Rationalised and more efficient basement layout.
- Reduced extent of blank/solid wall along the street frontage.
- Reduced height of roof slab.
- Rationalisation of ground floor layout to achieve viable commercial tenancy layouts, more efficient circulation, improved lobby experience, continuous and uninterrupted active streetscape to Pittwater Road.
- Improved architectural expression with a more cohesive and much higher quality façade outcome which properly addresses and respects the corner aspect of the site.

4.2 Proposed Amendments

The application seeks approval for various amendments to the proposal, as follows:

Level	Changes
Changes common to each level	<ul style="list-style-type: none">• Rationalisation of building core to improve pedestrian legibility.• Various reconfigurations of all apartments within predominantly the same perimeter arrangement.• Lowering overall building height

Level	Changes
Basement levels	<ul style="list-style-type: none"> Rationalisation of basement layout improving potential for deep soil. Reconfiguration of central arrangement as a result of relocation of cores and firestairs Increase from 48 to 53 parking spaces on Basement 2.
Ground floor plan	<ul style="list-style-type: none"> The deep soil zone at the southern end of the site has been substantially increased in size by relocating two car parking spaces. Loading, waste, substation and pump room retained in same location, however, layout has been rationalised. Basement ramp down has relocated further to the south. The commercial tenancies has been consolidated into three tenancies with the central retail lobby removed, a greater setback provided and with the fire stair removed from the southern end, a continuous and activated streetscape has been achieved. Driveway along eastern boundary has been covered with a concrete 'lid'. Minor reduction in floor to floor height from 4.5m to 4.3m
Levels 1	<ul style="list-style-type: none"> Removal of community room and other structures to create a larger and uninterrupted central communal courtyard which is open on all sides and achieves an expansive space and outlook for adjacent apartments. Introduction of a new communal open space along the eastern side of the site above the 'lid' to the driveway below. ADG compliant setback to eastern boundary.
Levels 2-3	<ul style="list-style-type: none"> Removal of single aspect south facing unit in the centre of the floorplate to create a void to the communal open space below on Level 1.
Level 4	<ul style="list-style-type: none"> Conversion of podium communal open space surrounding apartments into private open space attached to the relevant adjacent apartment. Consolidation of three building envelopes into a single and cohesive perimeter envelope. Proposed setback of 3 metre on south western boundary and improved articulation to blank wall condition along the southern façade. Replacement of central landscape garden with a void to the communal open space on Level 1.
Levels 5-6	<ul style="list-style-type: none"> Consolidation of three building envelopes into a single and cohesive perimeter envelope. Proposed setback of 3 metres and articulated blank wall condition along the southern façade.
Facades	<ul style="list-style-type: none"> The language and materials for the facades are proposed to be amended to reflect the revised floor planning and to achieve an improved and more cohesive and distinct architectural expression for the building. Improved residential address. A façade which properly address the junction between Delmar Parade

Level	Changes
	and Pittwater Road. <ul style="list-style-type: none"> Improved articulation to “blank wall” facades (e.g. expressed slab edges, glazing, textured paint etc).

The proposed amendments are detailed on the architectural plans prepared by Rothelowman architects.



Figure 3:

CGI of amended proposal as viewed from Pittwater Road



Figure 4:

CGI of amended proposal as viewed from Delmar Parade

4.3 Numerical Overview

The elements of the approved development which are proposed to be amended are detailed in the below table with a comparison between the approved development and subject Section 4.55 proposal:

Element	Approved	Amended Proposal
Site Area	2,060 square metres	2,060 square metres
Gross Floor Area	5,837.6 square metres	6,155 square metres
FSR	2.83:1	2.99:1
Height	Roof RL 51.20 Lift overrun RL 52.00	Roof RL 51.00 Lift overrun RL 52.00
Apartments	71	71
Apartment mix	18 x studio (25%) 45 x 1 bed (63%) 8 x 2 bed (12%) 0 x 3 bed (0%)	30 x 1 bed (42%) 36 x 2 bed (51%) 5 x 3 bed (7%)
Car parking	109	110
Solar access	(67 of 71) 94%	(71 of 71) 100%
Cross ventilation	(49 of 71) 69%	(66 of 71) 93%
Adaptable apartments	Nil	7 (10%)
Communal open space	591.7 square metres or 28.7%	577 square metres or 28%
Deep Soil	25 square metres or 1.2%	108 square metres or 5.2%

4.4 Amendments to Conditions

The following conditions are proposed to be amended or deleted as a consequence of the proposed modifications to the approved development:

Condition	Deleted/Modified	Reason
<p>2. Amendments to the approved plans</p> <p>The following amendments are to be made to the approved plans:</p> <p>a) Units 45, 46 and 47 are to have exclusive use of the open terrace area immediately in front of those units which form part of the Level 4 podium facing Pittwater Road. In this regard, those areas are to form an extension of the private open space areas for the units. The remainder of the landscaped and paved terrace areas on this part of Level 4 are to be for communal use. Suitable screens are to be erected to ensure that the private spaces are separate to the</p>	Deleted	Condition No. 2 is no longer relevant as the amendments to the design have resolved this issue.

Condition	Deleted/Modified	Reason
<p>communal spaces and privacy is afforded to the individual apartments.</p> <p>Details demonstrating compliance are to be submitted to the Certifying Authority prior to the issue of the construction certificate.</p>		
<p>6 (k) General Requirements</p> <p>(k) Requirements for new swimming pools/spas or existing swimming pools/spas affected by building works</p>	Deleted	There are no swimming pools in the development.
<p>15. Stormwater Disposal</p> <p>Plans indicating all details relevant to the collection and disposal of stormwater from the site, buildings, paved areas and where appropriate adjacent catchments, shall be submitted prior to the issue of the Construction Certificate. The plans must indicate the provision of a rainwater tank in accordance with the BASIX certificate.</p> <p>Details demonstrating compliance are to be submitted to the Certifying Authority prior to the issue of the Construction Certificate.</p>	Modified	The amended development does not rely on the need for a rainwater tank in the BASIX Certificate.
<p>26. Treatment of Southern (front) Elevation</p> <p>The external wall south of Units 9, 22 and 36, and the ground level fire passage beneath are to be treated with a suitable design, colours and textures, generally in the form of horizontal and vertical banding (or similar).</p> <p>The treatment is to be designed in a manner consistent with the building and is not to present as a blank facade from any public or private domain. The final design is to be approved by Council's Manager Development Assessment and is to be incorporated into the architectural plans prior to the release of the Construction Certificate.</p>	Deleted	The amended design has resolved this issue.
<p>28. Construction Traffic Management Plan</p> <p>(dot point 10).</p> <p>The proposed manner in which adjoining property owners will be kept advised of the timeframes for completion of each phase of development/construction process. It must also specify that a minimum Fourteen (14) Five (5) days notification must be provided to adjoining property owners prior to the implementation of any temporary traffic control measure .</p>	Modified	A 14 day notice period is excessive as it significantly impacts flexibility for the construction program for the site and does not adequately allow for unforeseen circumstances such as weather, delivery issues etc. It is considered that

Condition	Deleted/Modified	Reason
		a 5 day period as requested is more than sufficient notice for the implementation of temporary traffic measures.

5.0 STATUTORY PLANNING FRAMEWORK

5.1 Environmental Planning & Assessment Act 1979

5.1.1 Section 4.55

Section 4.55(2) of the Environmental Planning and Assessment Act 1979 empowers Council to modify a development consent, as follows:

A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to and in accordance with the regulations, modify the consent if:

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

(b) it has consulted with the relevant Minister, public authority or approval body (within the meaning of Division 5) in respect of a condition imposed as a requirement of a concurrence to the consent or in accordance with the general terms of an approval proposed to be granted by the approval body and that Minister, authority or body has not, within 21 days after being consulted, objected to the modification of that consent, and

(c) it has notified the application in accordance with:

(i) the regulations, if the regulations so require, or

(ii) a development control plan, if the consent authority is a council that has made a development control plan that requires the notification or advertising of applications for modification of a development consent, and

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

In the consideration of the issue of whether or not the amended proposal is 'substantially the same development', the Land & Environment Court case of *Moto Projects (No 2) Pty Ltd v North Sydney Council* [1999] 106 LGERA 298 establishes a number of tests which are of assistance.

Furthermore, we are also reminded in *Moto Projects (No 2) Pty Ltd v North Sydney Council* [1999] 106 LGERA 298 that it is the consent that is to be modified. The approved development consent is for the following purpose:

"Demolition works and construction of a Mixed Use Development, comprising retail shops and shop top housing"

In the circumstance of the subject development consent, the amendments do not change or remove the quantum and general arrangement of the previously approved commercial and residential uses, and do not affect the correct characterisation of the amended proposal as being *substantially* the same as that which has

already been approved due to the generic overall description of the development as a “mixed use development comprising retail shops and shop top housing”.

Also of relevance to the issue of whether or not the amended proposal is ‘substantially the same development’, is that the Land & Environment Court consistently describes the Section 4.55 modification provision (previously Section 96) as “beneficial and facultative” and it is intended to assist the modification process rather than to act as an impediment to it and “It is to be construed and applied in a way that is favourable to those who seek to benefit from the provision” (*North Sydney Council v Michael Standley & Associates Pty Limited* [1998]).

An examination of the amended proposal against the tests which can be established by the various relevant caselaw and also largely informed by the Land & Environment Court case of Moto Projects (No 2) Pty Ltd v North Sydney Council [1999] 106 LGERA 298, is provided below:

Test 1: Is the proposal a modification of the original proposal, in that it does not radically transform the original proposal?

The modification to the approved development represents a refinement and improvement and is not a radical transformation because it does not alter the fundamental nature of the approved development. Whilst some components are proposed to be changed more than other components, collectively the amended development is conceptually the same as that which has previously been approved. The proposed amendment remains for the demolition of existing structures and the construction of a 7 storey mixed use buildings with a 4 storey podium and 3 storey component above; the general site and building layout remains the same; the collection of residential and non-residential uses remain the same, the exact number of residential apartments remains the same, there is little change to the non-residential quantum, and the vehicle access and egress and internal circulation is essentially the same. The proposed internal reconfigurations and other rationalisations do not render the approved development radically transformed when considered within the context of the overall approval for the site.

Test 2: Is the proposed development essentially or materially the same development as the development for which consent was originally granted?

In considering whether the proposed modified development is materially or essentially the same, it is necessary to undertake both a quantitative and qualitative assessment of the differences. The comparative task needs to assess not only the physical features of the changes, but also the environmental impacts of the changes.

Quantitative Assessment

The table below provides a quantitative comparison of the features of the approved development for the site and the proposed amendments.

On an assessment of the quantitative components of the consent which are approved, the application as proposed to be amended is essentially and materially the same development and therefore substantially the same development.

Element	Approved	Amended Proposal
Site Area	2,060 square metres	2,060 square metres
Gross Floor Area	5,837.6 square metres	6,155 square metres
FSR	2.83:1	2.99:1

Element	Approved	Amended Proposal
Height	Roof RL 51.20 Lift overrun RL 52.00	Roof RL 51.00 Lift overrun RL 52.00
Storey	<ul style="list-style-type: none"> 2 basement levels 4 level podium 3 level component above 	<ul style="list-style-type: none"> 2 basement levels 4 level podium 3 level component above
Apartments	71	71
Car parking	109	109
Solar access	(67 of 71) 94%	(71 of 71) 100%
Cross ventilation	(49 of 71) 69%	(66 of 71) 93%
Adaptable apartments	Nil	7 (10%)
Communal open space	591.7 square metres or 28.7%	577 square metres or 28%
Deep Soil	25 square metres or 1.2%	108 square metres or 5.2%

Qualitative Assessment

The site layout, arrangement of uses and building configuration across the site is essentially the same as that which has been approved. In particular:

- The amended proposal continues to comprise a recessed 3 storey element above a 4 storey podium and 2 basement levels.
- The commercial component is located in the same position on the ground floor and continues to address and activate the street interfaces.
- The same number of residential apartments are retained and are still positioned in a perimeter edge arrangement such that they face both streets and the eastern boundary. The top three levels continue to be recessed with the same street setback above the podium.
- The amended proposal maintains the same overall configuration of the site, quantum of residential units and mix of uses, building location, and a similar size and form. Whilst the architectural expression has been rationalised, this does not represent a radical departure from the approved development and represents a reasonable design progression which achieves an improvement when compared to the approved development.
- A tabulated comparison of the indicative uses in the approval and the amended application is provided below which demonstrates that the amended proposal retains the same indicative uses:

Approved Uses	Amended Uses
Residential	Residential
Café	Cafe
Commercial	Commercial

Qualitatively, the amended proposed is considered to be essentially and materially the same as the approved development for the site when considered holistically as it retains predominantly the same:

- Purpose for a mixed use development comprising commercial and residential uses;
- Site arrangement including location of uses;
- Range of indicative uses and activities; and
- Vehicle access arrangements, internal circulation and exit arrangements, and car parking location.

Test 3: Is the way in which the development is to be carried out essentially or materially the same?

There is no change to the way in which the development is to be carried out.

Test 4: Does the proposed modification affect an aspect of the development that was important, material or essential to the development when it was originally approved?

Development consent is approved for a mixed use development of the site. The proposal as amended retains all of the same indicative uses, features and facilities of the approved development.

The physical arrangement of open space, buildings and vehicular access and internal circulation necessary to facilitate the development all remain essentially the same and whilst the open space provision has been reconfigured this is to achieve an improved outcome.

There is no aspect of the approved development which was important, material or essential to the development when it was approved which is proposed to be removed or substantially altered. Accordingly, the proposed amendments to the approved development do not affect an aspect of the development that was considered an essential or critically important component of the overall development as originally approved.

In conclusion, having regard to the guidance provided by the relevant case law and having undertaken a detailed comparison of the quantitative and qualitative elements of the development, the proposed Section 4.55(2) modification application to the approved Development Consent DA2017/1183 has been demonstrated to satisfy the "substantially the same development test" pursuant to Section 4.55(2)(a).

5.2 Environmental Planning and Assessment Regulation 2000

Clause 115 of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation) sets out the information which must be provided with an application for a modification of a development consent under section 4.55(2) of the Act.

In accordance with Clause 115(3) of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation) if an application for the modification of a development consent under section 4.55(2) of the Act relates to a residential apartment development for which the development was required to be accompanied by a design verification from a qualified designer under clause 50(1A), the application must be accompanied by a design verification from a qualified designer. In accordance with clause 115(3A) the statement must:

- (a) verify that he or she designed, or directed the design of, the modification of the development and, if applicable, the development for which the development consent was granted, and
- (b) provide an explanation of how:
 - (i) the design quality principles are addressed in the development, and
 - (ii) in terms of the Apartment Design Guide, the objectives of that guide have been achieved in the development, and

(c) verify that the modifications do not diminish or detract from the design quality, or compromise the design intent, of the development for which the development consent was granted.

The required design verification statement accompanies the Section 4.55 application.

Clauses 115(6) and 115(7) of the EP&A Regulation relate to the requirements for a BASIX certificate for modifications to a development consent under section 4.55(2) of the Act and require an update BASIX Certificate. An amended BASIX Certificate accompanies this application.

5.3 Environmental Planning Instruments

In accordance with Section 4.55(3) of the Environmental Planning and Assessment Act 1979 in determining an application for modification of a consent under this section, the consent authority must take into consideration such of the matters referred to in section 4.15(1) as are of relevance to the development the subject of the application.

The provisions of relevant environmental planning instruments and development control plans are relevant matters for consideration under Section 4.15(1) and are addressed below.

5.3.1 State Environmental Planning Policy No. 65 – Design Quality of Residential Flat Development

SEPP 65 applies to development for the purpose of a new residential flat building, shop top housing or mixed use development, the substantial redevelopment/refurbishment of one of these buildings or the conversion of an existing building into one of these types of buildings provided the building is at least 3 or more storeys and the building contains at least 4 or more dwellings. The development meets the definition of a residential flat building and as such the provisions of SEPP 65 are applicable to the proposed development.

SEPP 65 aims to improve the design quality of residential flat developments, provide sustainable housing in social and environmental terms that is a long-term asset to the community and delivers better built form outcomes. In order to satisfy these aims and improve the design quality of residential apartment buildings in the State, the plan sets design principles in relation to context and neighbourhood character, built form and scale, density, sustainability, landscape, amenity, safety, housing diversity and social interaction, and aesthetics.

SEPP 65 requires any development application for residential flat development to be assessed against the 9 principles contained in Schedule 1 of the SEPP and the matters contained in the Apartment Design Guide (ADG).

The proposed modifications achieve a significant improvement to the amenity of the development and therefore improves the consistency of the development with the principles within Schedule 1 of the SEPP and the matters contained in the ADG as discussed below:

- The internal and external areas of all revised apartments exceed the minimum required by the ADG.
- The proposed amendments result in an improvement to the total percentage of apartments which receive 2 hours solar access between 9am and 3pm from 94% to 100%.

- The proposed amendments achieve a substantial improvement to the total percentage of apartments which receive natural cross ventilation from 69% to 93%.
- Whilst the proposed amendments results in a minor reduction to the quantum of common open space, the new area is 28% and therefore still meets the minimum requirement of 25%, and in addition the design, location and configuration of the common open space achieves a significant improvement when compared to the approved development.
- The proposed amendments significantly increase deep soil from 1.2% to 5.2%.
- The proposed amendments are all predominantly contained within the approved floor plates. The setback from the eastern boundary remains largely the same as approved (removing elements encroaching into the setback) and the revised apartment layouts adopt the same approach of having only highlight windows to this boundary for the top 3 floors due to the 6 metre setback in lieu of a 9 metre setback which would generally be required by the ADG. A 3 metre setback from the southern boundary for the front part of the building is proposed with screened secondary windows to ensure an equivalent outcome to a blank wall condition is achieved and so the setback achieves the objective of 3F-1 of the ADG notwithstanding the reduced distance. Finally, a 3 metre western side boundary setback is proposed for the rear 'wing' of the building with consideration given to aesthetically improving the treatment of this façade with only highlight windows to ensure a satisfactory privacy outcome is achieved.
- The proposed amendments achieve an improvement in relation to Principle 8 of SEPP 65 in relation to housing diversity as a result of a significant increase to the quantum of larger apartments to cater for families, noting that the approved development has 88% studios and 1 bedroom apartments and the amended proposal has only 42% 1 bedroom apartments.

The proposed amendments also achieve a significant improvement to the aesthetics of the development with a vastly improved architectural expression and the use of robust and high quality material selection.

The amended proposal remains satisfactory and indeed achieves a range of improvements with respect of the 9 design principles in the SEPP and the matters contained in the ADG.

Clause 30 Standards that cannot be used as grounds to refuse development consent

Pursuant to clause 30 of SEPP 65 if an application for the modification of a development consent to which the Policy applies the consent authority must not refuse the application because of those matters.

Car parking	Design Criteria	Proposal
(a) if the car parking for the building will be equal to, or greater than, the recommended minimum amount of car parking specified in Part 3J of the Apartment Design Guide.	For development within 800 metres of a railway station or light rail stop the minimum car parking requirement for residents and visitors is set out in the Guide to Traffic Generating Developments, or the car parking requirement prescribed by the relevant Council, whichever is less.	The provision of car parking complies with these rates
(b) if the internal area for each apartment will be equal to, or greater than, the recommended	Apartments are required to have the following minimum internal areas: Studio – 35 sqm	Each apartment complies with the minimum internal area requirement.

Car parking	Design Criteria	Proposal
minimum internal area for the relevant apartment type specified in Part 4D of the Apartment Design Guide,	1 bedroom – 50sqm 2 bedroom – 70sqm 3 bedroom – 90sqm The minimum internal areas include only one bedroom. Additional bathrooms increase the minimum internal area by 5sqm each. Every habitable room must have a window in an external wall with a total minimum glass area of not less than 10% of the floor area of the room. Daylight and air may not be borrowed from other rooms.	
(c) if the ceiling heights for the building will be equal to, or greater than, the recommended minimum ceiling heights specified in Part 4C of the Apartment Design Guide.	Minimum ceiling height: Habitable rooms: 2.7m Non-habitable rooms: 2.4 metres	No change is proposed to the approved ceiling height.

5.3.2 State Environmental Planning Policy (Infrastructure) 2007

The site has a frontage to a classified road, Pittwater Road.

The amended proposal remains satisfactory with respect of Clauses 45, 102 and 106 of State Environmental Planning Policy (Infrastructure) 2007 as it maintains the approved vehicular access from Delmar Parade, the same density of development and resulting traffic generation, and acoustic attenuation commitments.

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

State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 applies to the development and aims to encourage sustainable residential development.

An amended BASIX certificate accompanies the development application and demonstrates that the amended proposal achieves compliance with the BASIX water, energy and thermal efficiency targets.

5.3.4 Warringah Local Environmental Plan 2011

Zoning and Permissibility

The site is located within the B4 Mixed Use zone pursuant to the Warringah Local Environmental Plan 2011 (WLEP). An extract of the Land Zoning Map is included as Figure 5.

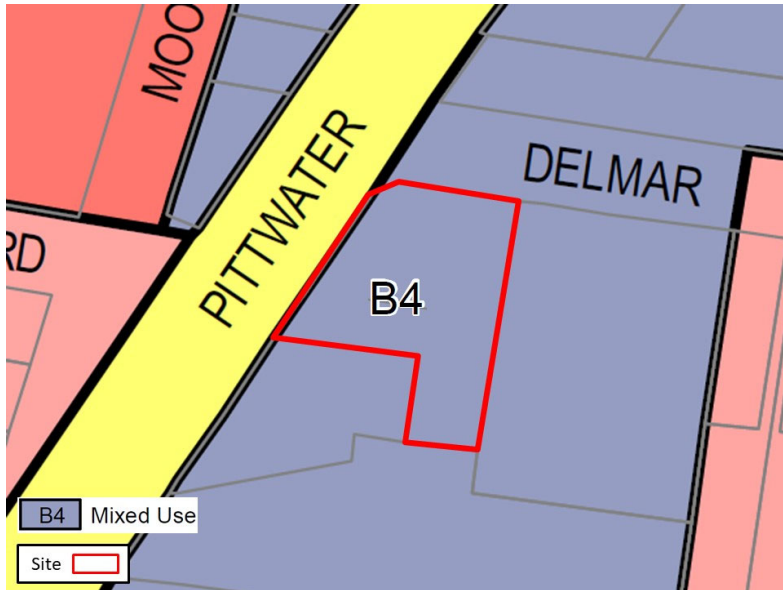


Figure 5:

Extract from WLEP
2011 Zoning map

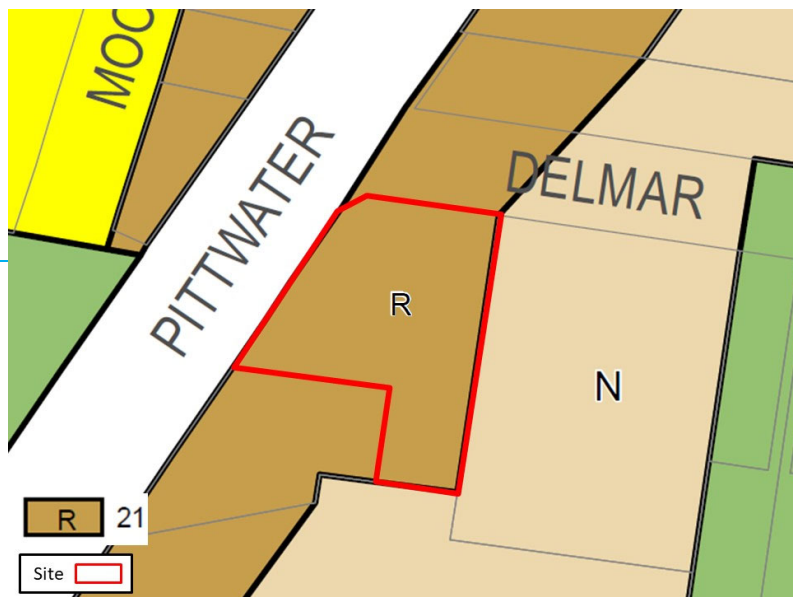
Pursuant to the Land Use Table of the WLEP residential flat buildings, commercial buildings and shop-top housing are permitted with consent in the B4 zone. The amended proposal remains a shop-top housing development. The proposed amendment is therefore permissible in the zone with consent and remains consistent with the zone objectives.

Height

In accordance with clause 4.3 'Height of Buildings' of the WLEP the height of a building on any land is not to exceed the maximum height shown for the land on the 'Height of Buildings Map'. The maximum height shown for the site is 21 metres as shown in Figure 6.

Figure 6:

Extract from WLEP
2011 Height of
Buildings Map



The approved development relied on a Clause 4.6 variation to vary the height development standard with a maximum height of 23.7m above the existing ground level to the roof level (RL 51.20) which

represents a variation of 2.7m or 12.85% to the building height standard, and 23.73m (RL52.00) for the lift overrun equating to a 13% variation to the standard.

The proposed modification actually results in a reduction to the roof height of 200mm to RL 52.00, whilst the lift overrun maintains the same height as that which was previously approved of RL 52.00.

The approved variation to the height control was considered by the Panel to have demonstrated sufficient environmental planning grounds such that the strict compliance was considered to be unreasonable and unnecessary. As the proposed amendment reduces the height of the roof and maintains the approved height for the lift overrun, it is considered that the basis for the approved height variations remain valid for the proposed modification to the approved development.

Floor Space Ratio

There is no floor space ratio limitation under the WLEP.

Remaining Provisions

The proposed amendments to the approved development do not give rise to any further consideration against the remaining provisions of the WLEP beyond those which were considered in the assessment of the original development application.

5.3.5 Dee Why Town Centre Planning Proposal

Council adopted a Masterplan for the Dee Why town centre in August 2013, which has informed a revised suite of local statutory planning controls (revised LEP and DCP) to deliver the Masterplan's objectives. The revised Dee Why Town Centre Planning Proposal was exhibited in October and November 2018. At the time of writing, the WLEP is yet to be amended to incorporate the revised controls, and so they have the status of draft controls.

The revised controls of relevance to the subject site include a 3 metre increase to the current 21 metre height control for the site with a 24 metre height control proposed, as well as the introduction of a 3.2:1 FSR.

The approved development was height compliant with the draft 24 metre height control. The proposed amendments to the approved development reduce the roof height and maintain the lift overrun height which therefore both remain compliant with the draft 24 metre height control.

The Gross Floor Area of the amendment proposal increases in comparison to the approved development, however, it results in a Floor Space Ratio of 2.99:1 which remains well below the draft FSR control of 3.2:1. Therefore, the proposed increase to the Gross Floor Area of the development is acceptable and it is also noted that there is no increase to the density of the development, noting that the amended proposal maintains the same number of apartments as that which was approved.

5.3.6 Warringah Development Control Plan 2011

The following discussion outlines the amended proposal's compliance with the relevant provisions of the Warringah Development Control Plan 2011.

Part C Site Factors (as relevant to the amendments)

Control	Response	Compliance
C2. Traffic, Access and Safety	The amended proposal is accompanied by a Traffic and parking report prepared by TTPA which confirms that the revised basement layout and design remains satisfactory in relation to the relevant Australian Standards. Furthermore, the proposal results in only a marginal change in traffic generation associated with the slightly larger commercial component, however this does not result in any meaningful change in traffic volume or impact associated with the development.	Yes
C3. Parking Facilities	The amended proposal is accompanied by a Traffic and parking report by TTPA. The amended proposal provides off-street parking for a total of 109 cars over 2 basement levels and at ground floor level, which complies with the minimum required parking provision. The approved vehicular access and egress arrangement is maintained at the site's Delmar Parade frontage.	Yes
C3A Bicycle Facilities Objectives 1 space per dwelling 1 space per 12 dwellings for visitors	The amended proposal is required to provide 80 bicycle parking spaces including 74 spaces for employees and residents and 6 spaces for residential visitors. The amended proposal provides 84 bicycle spaces and is compliant.	Yes
C4. Stormwater	A new stormwater concept plan prepared by S&G Consultants accompanies the amended proposal and satisfies this control.	Yes
C9. Waste Management	A new waste management plan prepared by Senica in support of the amended proposal accompanies this application and demonstrates compliance with the DCP requirements.	Yes

Part D Design (as relevant to the amendments)

Control	Response	Compliance
D2. Private Open Space	Clause 6A of SEPP 65 provides that a DCP cannot be inconsistent with the Apartment Design Guide in relation to the provision of private open space. The Apartment Design Guide requires a minimum of 8 square metres for a 1 bedroom apartment, 10 square metres for a 2 bedroom apartment and 12 square metres for a 3 bedroom apartment. The amended proposal provides private open space which is compliant with the Apartment Design	Yes

Control	Response	Compliance
	Guide for all apartments and predominantly well in excess of the minimum requirements.	
D3. Noise	The approved development was supported by an acoustic report prepared by Acoustic Logic which found that the approved development was satisfactory in relation to noise subject to the implementation of the recommendations of the assessment during construction. Given that the acoustic report was dated 15 December 2017, an updated acoustic report prepared by Wilkinson Murray accompanies this modification application which provides current noise measurements. The assessment confirms that the modifications remain acceptable in relation to noise.	Yes
D6 Access to sunlight	Clause 6A of SEPP 65 provides that a DCP cannot be inconsistent with the Apartment Design Guide in relation to the required solar access. The Apartment Design Guide only requires a minimum of 2 hours solar access rather than the 3 hours suggested by the DCP. In this regard, the proposed amendments result in an improvement to the total percentage of apartments which receive 2 hours solar access between 9am and 3pm from 94% to 100% The amended shadow diagrams indicate that there is no meaningful difference to the shadowing effects between the approved and modified development, which retains complaint levels of solar access for all adjoining properties.	Yes
D7. Views	The amended proposal retains essentially the same envelope as the approved development, albeit with a slightly reduced roof height, and does not result in any meaningful change in relation to views beyond the impacts associated with the approved development.	Yes
D8. Privacy	The proposed amendments are all predominantly contained within the approved floor plates. The setback from the eastern boundary remains largely the same as approved (removing elements encroaching into the setback) and the revised apartment layouts adopt the same approach of having only highlight windows to this boundary for the top 3 floors due to the 6 metre setback in lieu of a 9 metre setback which would generally be required by the ADG. A 3 metre setback from the southern boundary for the front part of the building	Yes

Control	Response	Compliance
	<p>is proposed with screened secondary windows to ensure an equivalent outcome to a blank wall condition is achieved and so the setback achieves the objective of 3F-1 of the ADG notwithstanding the reduced distance. Finally, a 3 metre western side boundary setback is proposed for the rear 'wing' of the building with consideration given to aesthetically improving the treatment of this façade with only highlight windows to ensure a satisfactory privacy outcome is achieved.</p> <p>The amended building layout has therefore been designed to optimise privacy for occupants of the development and occupants of adjoining properties.</p>	
D9. Bulk	<p>The approved development is considered to represent an unsophisticated attempt at reducing the bulk of the building simply by introducing a gap in between the two building elements above the podium. However, this only serves to result in the appearance of an unresolved and uncomfortable form with blank walls on either side of the gap to the corner and accordingly the proposal lacks a cohesive outcome. A building on the site should in fact hold and address the corner rather than introduce a negative space to the corner.</p> <p>The amended proposal resolves these issues by providing a more restrained, deliberate and cohesive language for the podium which forms a more compelling 'base' for the building, and a simple, elegant and unified architectural expression for the three storey element above the podium which properly wraps around the corner of the site. The amended proposal achieves a significant improvement with a robust architectural expression which properly holds and addresses the corner and a horizontal emphasis to the building which reduces the apparent scale of the development.</p> <p>The height, setback and footprint of the amended proposal will not give rise to any difference when compared to the approved development in relation to heritage, overshadowing, privacy, view or visual bulk consequences.</p>	Yes
D10. Building Colours and Materials	<p>The amended architectural package includes a schedule of materials and finishes. The amended materials provided a more robust and higher quality outcome when compared with the approved</p>	Yes

Control	Response	Compliance
	development.	
D12. Glare and reflection	Colours and materials shown on the elevation plans by Rothelwman architects are acceptable and comply with the objectives of D12. The amendments to the proposal have reduced the glazing when compared to the approved development which will serve to reduce visual glare from sun reflection.	Yes
D14. Site facilities	The amended plans detail waste management areas, letterbox, communal bulky storage, plant areas and individual storage spaces. The location of these facilities has been rationalised and improved when compared with the approved development.	Yes
D18. Access	The proposed amendments are accompanied by a new BCA report and an Access report which addresses the particular requirements of the DDA, BCA and the relevant Australian Standards relating to accessibility. The proposed development provides adaptable apartments and accessible car spaces in accordance with the applicable statutory controls.	Yes
D20. Safety & security	The proposed amendments achieve improvements in relation to safety and security as a result of improved streetscape activation at ground level, and the introduction of a communal open space area along the eastern side of the building as well as a line of security around the driveway and car park component of the development.	Yes
D21 Provision and Location of Utility Services	The amended proposal remains satisfactory in relation to the provision and location of utility services.	Yes
D22. Conservation of energy and water	The amended proposal is accompanied by a new BASIX report and also a Section J report.	Yes

Part E The Natural Environment (as relevant to the amendments)

Control	Response	Compliance
E1. Private Property Tree Management	The proposed amendments do not result in any changes in relation to tree removal.	Yes
E10. Landslip Risk	A geotechnical report was provided in support of the approved development which demonstrated that the site conditions can support the proposed development.	Yes

Part G Special Area Controls (as relevant to the amendments)

The subject site is within the area of Part G Special Area Controls and to which the specific provisions of Part G1 Area 7 applies. The DCP provisions for Area 7 Pittwater Road are addressed below:

Control	Response	Compliance
1. Entry to the area will be marked by a building at the southern corner of the intersection of Dee Why Parade and Pittwater Road. The scale and architectural treatment of this building will distinguish it from other buildings and define the edge of the town centre	N/A	Yes
2. Buildings are to define the streets and public spaces and create environments that are appropriate to the human scale as well as comfortable, interesting and safe. In particular, future development is to ensure that a 4 storey podium adjoins the sidewalk and establishes a coherent parapet line along Pittwater Road. Above the parapet line additional storeys will be set back to maintain solar access to the sidewalks and ensure that the scale of buildings does not dominate public spaces. Building facades are to be articulated in such a way that they are broken into smaller elements with strong vertical proportions and spaces created between buildings at the upper levels to add interest to the skyline, reduce the mass of the building and facilitate the sharing of views and sunlight.	<p>The proposed amendment to the approved development maintains the approved scale of the development with a 4 storey podium and setback upper component. The amended proposal achieves an improved outcome in relation to streetscape activation and an adjacent public domain which will be comfortable, interesting and safe.</p> <p>Due to the location of the site on a street corner and the relatively small size of the site, it is considered to be significantly more important for the upper levels to hold the street corner, rather than to create a negative space with a gap directly at the corner. This is contrary to the standard urban design principle to emphasise and accentuate street corners. The amended proposal provides a very strong delineation between the podium and levels above with a robust architectural expression for the ground floor with solid brick banding at each level, and a recessive and light weight language above. The amended proposal achieves a much more distinctive character which will contribute positively to the emerging character of the Dee Why town centre.</p>	Yes
3. The overall height of buildings is to	The proposed amendments result in	Yes

Control	Response	Compliance
be such that long distance views of Long Reef Headland, the top of the escarpment to the west of Pittwater Road and the Norfolk Island Pines next to Dee Why Beach are preserved.	minor reduction in height compared to the approved development which will assist in a very minor reduction to view impacts resulting from the development.	
4. Site amalgamation will be encouraged to facilitate new development and enable all cars parking to be provided below ground or behind buildings using shared driveways where possible	This issue is not relevant to the proposed modifications.	N/A
5. Building layout and access are to be in accordance with the Build to Lines and Central Courts map. Shared laneways are to be established to ensure there is no vehicle access directly from Pittwater Road. The spaces behind buildings combine to form central courts with vehicle access limited to a restricted number of places.	The amended proposal maintains the shared vehicle arrangement with the adjacent Avis site as previously approved.	Yes
6. Buildings are not to exceed 6 storeys north of the intersections of Fisher Road and Pacific Parade with Pittwater Road, and are not to exceed 5 storeys south of these intersections	The amended proposal maintains the same number of storeys as approved and so this control is not relevant to the proposed modification.	N/A
7. The maximum area of the floor plate of the upper floors of buildings is to be in accordance with the Build To Lines and Central Courts map as follows: <ul style="list-style-type: none"> • above the topmost storey (including plant and equipment rooms, lofts etc.): 30% of the area of the ground floor plate; • topmost storey: 50% of the area of the ground floor plate; and • second topmost storey: 70% of the area of the ground floor plate 	The amended proposal has a similar floor plate for the upper levels as approved.	Yes
8. Minimum floor to ceiling heights have been established. The minimum floor to ceiling height	The amended proposal has reduced the floor to ceiling height for the ground floor however still maintains compliance with the minimum 3.6	Yes

Control	Response	Compliance
<p>are as follows:</p> <ul style="list-style-type: none"> • ground floor storey: 3.6 metres; • upper storeys: 2.7 metres 	<p>metre floor to ceiling height. The upper level floor to ceiling heights remain 2.7 metres.</p>	
<p>9. Build-to lines have been established to ensure future development defines the streets and public spaces. For the first 4 storeys of buildings, build-to lines have been set at:</p> <ul style="list-style-type: none"> • 5 metres from the kerb for the first 4 storeys; and • 9 metres from the kerb for storeys above the fourth storey, except: • At the southern end of the intersection of Sturdee Parade and Pittwater Road as indicated on the Build to Lines and Central Courts map as follows, where the build-to line is the front property boundary for the first four storeys and 5 metres from the kerb for storeys above the fourth storey. 	<p>The amended proposal maintains the approved build to lines.</p>	<p>Yes</p>
<p>10. Car parking facilities must be provided below ground or behind buildings in shared parking areas. Ground level parking must be provided with trees that will have mature canopy coverage of 70% over the area.</p>	<p>Car parking is provided generally as already approved with some sleeved ground level parking and two basement parking levels.</p>	<p>Yes</p>

6.0 CONCLUSION

This submission has been prepared as supporting documentation for an application made pursuant to Section 4.55(2) of the *Environmental Planning and Assessment Act 1979* to modify the consent for Development Application DA2017/1183 for Demolition works and construction of a Mixed Use Development, comprising retail shops and shop top housing at 2 Delmar Parade, Dee Why.

The application seeks approval for a range of refinements to the development to achieve a significant improvement to the apartment layouts and residential amenity, a rationalised basement and ground floor layout with better streetscape interface, and a significant improvement to the architectural merit of the design. The amended proposal retains the same number of apartments as those which were originally approved and also adheres to the heights and majority of the setbacks established by the approved development.

The amended proposal retains the fundamental components of the approved layout and spatial characteristics of the development, retains compliance with the amenity provisions of the Apartment Design Guide, and does not result in any adverse traffic or other impacts.

As detailed in this submission the proposed modifications may be made by the consent authority in accordance with Section 4.55(2) of the Environmental Planning and Assessment Act 1979 as the proposed amendments do not radically transform the proposal or alter the overarching fundamental characteristics of the original approval, and so the amended proposal is appropriately categorised as being “substantially the same” as the approved development.

The proposed amendments remain consistent with the aims and objectives of the relevant environmental planning instruments and development control plan and will not result in any adverse impacts on the amenity of the locality. Accordingly, the proposed amendments are considered acceptable and warrant approval as they achieve a significant improvement to the approved development.

APPENDIX A

AMENDED ARCHITECTURAL PLANS

A

Rothelowman Architects

APPENDIX B

DESIGN REPORT AND SEPP 65 DESIGN VERIFICATION STATEMENT

B

Rothelowman Architects

APPENDIX C

BASIX CERTIFICATE

C

Senica

APPENDIX D

LANDSCAPE PACKAGE

D

Paul Scrivener Landscape Architect

APPENDIX E

BCA REPORT

E

Aramini & Leedham Consulting Pty Ltd

APPENDIX F

ACCESS REPORT

F

ACCESS BUILDING SOLUTIONS

APPENDIX G

SECTION J REPORT

G

Senica

APPENDIX H

TRAFFIC AND PARKING REPORT

H

TTPP

APPENDIX I

CONCEPT STORMWATER PLAN

S&G Consultants

APPENDIX J

ACOUSTIC REPORT

J

Wilkinson Murray

APPENDIX K

WASTE MANAGEMENT PLAN

K

Senica