

14 June 2023

Steven Findlay  
Northern Beaches Council  
PO Box 82  
MANLY NSW 1655

Dear Steven

[Development Application DA2022/0145– 4 Delmar Parade and 812 Pittwater Road, Dee Why](#)

We refer to Development Application DA2022/0145 which seeks consent for demolition works and construction of a mixed-use development comprising a residential flat building and shop top housing, basement parking, lot consolidation and torrens title subdivision at 4 Delmar Parade and 812 Pittwater Road, Dee Why.

The Sydney North Planning Panel considered Council's assessment report and recommendation for approval at the meeting held on 11 May 2023 and deferred determination of the application subject to the provision of additional information. One of the requested items of additional information was:

*Diagrams of overshadowing of the Reserve (i.e. Stony Range Reserve) by the development*

Rothelowman Architects have prepared the requested shadow diagrams on Drawings TP05.07 to TP05.14 Rev A dated 22.05.23, and subsequently Drawings TP05.03 to TP05.06 Rev C dated 05.06.23 which accompany this letter.

The drawings illustrate hourly shadows from 9am until 3pm at the winter solstice, the equinox and also the summer solstice. The subsequent Rev C drawings are the winter solstice shadows and include a percentage of overshadowing to Stony Range Reserve.

The drawings demonstrate that:

- at the winter solstice, there is a minor amount of shadow to the very northern edge of Stony Range Reserve, which is:
  - 8.4% of the Stony Range Reserve at 9am
  - 6% of the Stony Range Reserve at 10am
  - 4.7% of the Stony Range Reserve at 11am
  - 4.3% of the Stony Range Reserve at 12 noon
  - 4.4% of the Stony Range Reserve at 1pm
  - 5.1% of the Stony Range Reserve at 2pm
  - 6.8% of the Stony Range Reserve at 3pm
- at the equinox solstice, there is a very minor amount of shadow to the very northern edge of Stony Range Reserve
- at the summer solstice, there is zero overshadowing of Stony Range Reserve

Council have reviewed these shadow diagrams and have provided feedback, which is addressed below.

| Council feedback                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   | Response                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Biodiversity Team</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |
| <p><i>Warringah Development Control Plan 2011</i></p> <p>The E5 Native Vegetation WDCP control Objectives are as follows (emphasis added):-</p> <ul style="list-style-type: none"> <li>• <i>To preserve and enhance the area’s amenity, whilst protecting human life and property.</i></li> <li>• <i>To improve air quality, prevent soil erosion, assist in improving water quality, carbon sequestration, storm water retention, energy conservation and noise reduction.</i></li> <li>• <i>To provide natural habitat for local wildlife, maintain natural shade profiles and provide psychological &amp; social benefits.</i></li> <li>• <i>Promote the retention of native vegetation in parcels of a size, condition and configuration which will as far as possible enable local plant and animal communities to survive in the long term.</i></li> <li>• <i>To maintain the amount, local occurrence and diversity of native vegetation in the area.</i></li> </ul> <p>With reference to the above DCP objectives, the proposal does not maintain natural shade profiles.</p> <p>The shadow diagrams indicate that the southern portion of the reserve will be subject to overshadowing to varying degrees during the autumn, winter and spring seasons. While the development proposal will not directly modify native vegetation within the Reserve, native vegetation in the shaded area will be indirectly impacted.</p> <p>The proposal is inconsistent the WDCP Clause E5 objective regarding maintaining natural shade profiles.</p> <p>The Flora and Fauna Assessment has not addressed the impacts of shading over native vegetation in the Stony Range Flora Reserve.</p> <p>It is noted that the potential impacts of shading relate to reserve amenity as well as impacts upon areas of native vegetation.</p> | <p>Part E5 of the WDCP specifically only applies “to land identified <u>on</u> DCP Map Native Vegetation”. This Part is intended to guide development <u>on</u> land mapped as Native Vegetation, and includes Requirements such as the need for a Flora and Fauna Assessment to support proposed works <u>on</u> land containing mapped as Native Vegetation.</p> <p><b>Part E5 does not apply to land <u>adjacent</u> to land mapped Native Vegetation</b>, and accordingly the objective to “maintain natural shade profiles” only applies to development on land mapped Native Vegetation.</p> <p>If such a control (i.e.to maintain only natural shade profiles) did apply to land <i>adjacent</i> to land mapped Native Vegetation, it would quite literally prevent the erection of <u>any</u> building that results in <u>any</u> shadow over adjacent Native Vegetation land.</p> <p>Instead, Part D Control D6 of the WDCP, which applies to “<u>all</u> land to which the Warringah LEP applies”, is the relevant provision in relation to overshadowing of public land.</p> <p>This part of the DCP specifically contemplates that there may be <i>some</i> overshadowing of public land and provides the following Requirement in such circumstances:</p> <p style="text-align: center;"><i>1. Development should avoid unreasonable overshadowing any public open space.</i></p> <p>The control does not define what an “unreasonable” amount of overshadowing is to public open space.</p> <p>However, the consideration of what constitutes a reasonable amount of overshadowing must concern itself with the following relevant aspects:</p> <ul style="list-style-type: none"> <li>• <b>Whether or not the proposal is compliant with the height control?</b> Similar to the view impact assessment principle established <i>Tenacity Consulting vs Warringah Council</i>, a development that complies with all planning controls would be considered more reasonable than one that breaches them. In this instance, the proposal is completely compliant with the height control and accordingly, results in a level of shadow precisely as anticipated by the height control.</li> <li>• <b>Whether the amount of shadow significantly adversely affects the amenity and functionality of the public open space.</b> The shadow diagrams</li> </ul> |

| Council feedback                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              | Response                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               | <p>demonstrate that the proposed development will result in zero overshadowing of the Stony Range Reserve in summer, and only a particularly minor amount of shadow to the northern edge of the Stony Range Reserve throughout the equinox and to the winter solstice. In fact, at the winter solstice, the amount of overshadowing varies between 4.3% to 8.4% of the total Stony Range Reserve area which leaves the overwhelming majority of the Reserve as completely unaffected by shadow from the proposal. The vast majority of the Reserve will enjoy year round sunlight including seating areas and walking paths, and the planned improvements to the Reserve as illustrated in the masterplan for the Reserve on Council's website. The extent of shadow resulting from the proposal can only be described as minor and does not have any significant adverse impact on the functionality and amenity of the Reserve.</p> <ul style="list-style-type: none"> <li>• <b>Whether the amount of shadow results in an unacceptable ecological impact?</b> This submission is supported by a Flora and Fauna assessment prepared by Aquila Ecological Surveys which demonstrates that the extent of shadow will not result in any meaningful adverse impact to the ecological values of the adjacent public open space.</li> </ul> <p>Having regard to the above discussion and the shadow diagrams and Flora and Fauna assessment that accompanies this submission, the proposal does not result in any 'unreasonable overshadowing' of Stony Range Reserve and the proposal meets the Access to Sunlight objective of the Warringah Development Control Plan 2011 to ensure that reasonable access to sunlight is maintained.</p> |
| <p><i>Stony Range Management Strategy Plan (1994)</i></p> <p>The Stony Range Management Strategy Plan (1994) states that the "primary role of the Reserve is for display of native plants from all over Australia, in addition to the local flora".</p> <p>The Plan lists three main management objectives for the 3.64 hectare Reserve, including the "Conservation of the endemic plant communities and the display of Australian Flora for public enjoyment and education."</p> <p>Remnant native vegetation is present within the reserve. Much of the reserve area subject to winter shading is over an area represented by planted local and non local native vegetation and remnant native trees. A portion of the shaded area includes relatively</p> | <p>This submission is supported by a Flora and Fauna assessment prepared by Aquila Ecological Surveys which demonstrates that the extent of shadow will not result in any meaningful adverse impact to the ecological values of the Stony Range Reserve.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |

| Council feedback                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     | Response                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p>intact native vegetation which is located in the eastern extent of the area subject to (mostly winter) shading.</p> <p>It is acknowledged that much of the native vegetation in this area is already partially shaded as a result of the dense tree canopy.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |
| <b>Landscape and Parks Team</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |
| <p>At the Winter (22 June) solstice, the shadows extend into the reserve at their deepest. The depth of shadow ranges from approximately 40m to 14m into the reserve across its northern boundary during the winter solstice.</p> <p>It is important to note that the understorey plants in the affected area currently receive dappled sun/shade, with sun penetrating to the ground. It is also noted that there are paths, picnic areas and play areas in the areas affected by shadow, based on the scaled measurements.</p> <p>Whilst this area only represents a small portion of the Reserve as a whole, the dappled light is considered to be important to the ground cover and understorey species during those 6 months in this, the lowest part of the site.</p> <p>The heritage criteria in the Heritage Inventory does refer to a range of microclimates throughout the site and its value as a scientific, research and educational resource.</p> <p>From a landscape perspective, it is considered that development should not impact on the delicate understorey areas, entrance to the reserve, and its public facilities.</p> <p>Concern is raised with regard to the ongoing impact of shadows in this particular microclimate, and therefore on the integrity of the HCA.</p> <p>It would be preferable for the solstice shadows (mid-winter) to be restricted to the extent indicated on the equinox plans (autumn/spring).</p> | <p>The suggested restriction to the amount of shadow in winter, to that which is indicated as occurring at the equinox (autumn/spring), would require a profound change to the proposal which is not feasible nor reasonable. Such a restriction would sterilise the redevelopment of the site as anticipated by the planning controls which govern the site.</p> <p>Furthermore, such a restriction is disproportionate to the actual impact of the proposed shadow, which remains very minor in the context of the overall Reserve.</p> <p>Finally, this submission is supported by a Flora and Fauna assessment prepared by Aquila Ecological Surveys which demonstrates that the extent of shadow will not result in any meaningful adverse impact to the ecological values of the Stoney Range Reserve.</p> |
| <b>General Comments</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |
| <ul style="list-style-type: none"> <li>The referrals really want to know the extent of change to the growing conditions comparing the existing conditions with the proposed conditions. Not sufficient information submitted to date.</li> <li>What species would be adversely impacted by additional shading. There is no mapping of species or vegetation communities, which would greatly assist the assessment.</li> </ul>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       | <p>The WDCP objective which refers to maintaining nature shade profiles relates only to development proposed on land mapped Native Vegetation. It does not relate to adjacent land because, taken literally, it would mean that there can be no overshadowing from buildings on adjacent land.</p> <p>Instead, Part D Control D6 of the WDCP contemplates some overshadowing, provided that it is not “unreasonable”. The discussion above and</p>                                                                                                                                                                                                                                                                                                                                                               |

| Council feedback                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  | Response                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <ul style="list-style-type: none"> <li>To what extent does the existing tree canopy result in shading (winter) of the area to be overshadowed by the development? And, how does that relate to the WDCP requirement to maintain natural shade profiles, so shading from natural features, not from manmade features such as the proposed development?</li> <li>There are public amenities within the Reserve near the northern boundary including a BBQ area/picnic area and children's play area. How will these areas be impacted in terms of "all year round" use?</li> <li>Main concern of Biodiversity Officer is the impacts of overshadowing of the "native bushland" to the east of the BBQ/Picnic area.</li> <li>Main concern of the Landscape/Parks Officer are the impacts on the replanted areas and native bushland areas, plus impacts on public amenity/users of the affected areas of the Reserve (public interest).</li> <li>There is a general expectation that the impact on what is a "Botanical Reserve", which is zoned and dedicated for "Public Recreation" should be avoided.</li> </ul> | <p>supporting documentation demonstrates that the proposed shadow is not "unreasonable". On the contrary, the proposed shadow is entirely reasonable noting that the proposed development is height compliant, the vast majority of the Reserve is unaffected by shadow, and there are no unacceptable ecological impacts.</p> <p>Whilst some of the amenities at the northern edge of the Reserve will be affected by shadow in the middle of winter, they remain unaffected for the vast majority of the year (i.e. 9 out of 12 months). Furthermore, there are multiple opportunities within the remainder of the Reserve which will enjoy sunlight throughout the entire day in mid winter. Therefore, the year round use of the park is not significantly impacted by the proposal, and certainly not to any extent which could reasonably warrant refusal of the application.</p> <p>The avoidance of any shadow to the Reserve is an ideal which is disproportionate to the impact of the proposal and the severe and unviable impact that this would have upon a proposal which is compliant with the height control and in fact below the maximum FSR control.</p> |

Should you have any questions concerning the above, please contact Aaron Sutherland on 0410 452 371, or alternatively at [aaron@sutherlandplanning.com.au](mailto:aaron@sutherlandplanning.com.au)

Yours faithfully



Aaron Sutherland

**Sutherland & Associates Planning Pty Ltd**