

4 Delmar Parade and 812 Pittwater Road, Dee Why

Response to Submissions DA2022/0145

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4 DELMAR PARADE AND 812 PITTWATER ROAD,
DEE WHY

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

July 2023

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1.0 INTRODUCTION

On 11 May 2023, the Sydney North Planning Panel considered a report prepared by the Northern Beaches Council in relation to development application D2022/0145 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 applicant, Landmark Group, worked closely with Council over a 15 month period with various refinements made to the proposal.

The assessment report has recommended APPROVAL.

The Sydney North Planning Panel elected to defer determination of the application, subject to the following information being provided:

- Visual impact of the development from vantage points within the adjoining Stony Range Flora Reserve (the Reserve)
- Diagrams of overshadowing of the Reserve by the development
- Consideration of the Reserve's Plan of Management insofar as relevant to the proposed development
- Confirmation that consultation with Crown Lands (if the owner of the Reserve) and the Reserve's Volunteer Advisory Committee has occurred
- Clarification that there is a Savings Provision, which permits the development despite SEPP (Land Use Zones) (N0.5) 2022 Matter 6 Clarification that C6.7 is a development standard consistent with Canterbury Bankstown Council v Dib 2022 NSWLEC 79
- Clarification of the existing Non-Residential GFA on the site
- Advice from Council on Future Strategic Planning for the precinct, in particular, whether the demand for non-residential floorspace identified in relevant strategic planning policies and employment lands will be met, without this site and whether any change to the Mixed Use zoning is proposed

In response, Landmark Group provided the following information:

- Legal Advice prepared by Mills Oakley, dated 16 May 2023 addressing Clause 6.7 of WLEP 2022 and whether it is a development standard or a prohibition and the associated savings provisions.
- Shadow diagrams prepared by Rothelowman Architects and two letters prepared by Sutherland and Associates Planning, addressing shadow impacts on Stony Range Reserve.
- Visual Impact Images (Visual Impact Assessment) by Urbaine, dated May 2023.
- Supplementary Heritage Impact Statement, prepared by Urbis, dated 25 May 2023.
- Gross Floor Area calculations and letter addressing the existing non-residential floor area.
- Flora and Fauna Assessment Report, Stoney Range Regional Botanic Garden as impacted by the proposed development of 4 Delmar Parade and 812 Pittwater Road, Dee Why, prepared by Aquila Ecological Surveys, dated June 2023.


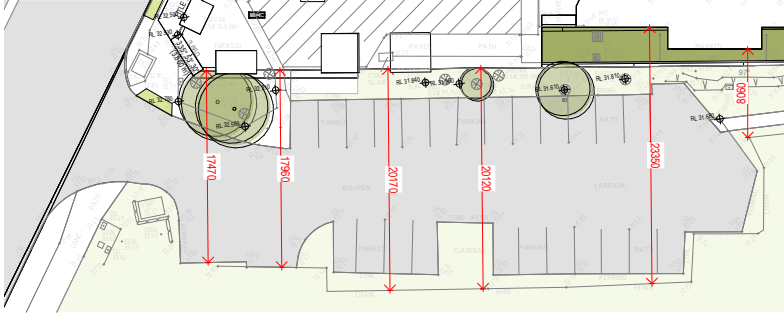
The Council notified the Stoney Range Reserve's Volunteer Advisory Committee as requested by the Sydney North Planning Panel, even though this is not a statutory requirement. In response, the Committee has submitted an objection to the proposal dated 23 June 2023.

However, it is apparent that the Committee has also taken it upon itself to extend the notification to its member base. As a result, 37 objections have now also been submitted to Council. All of which are not unique in nature and repeat the same concepts. **Notwithstanding, as of 6 July 2023, Council has also received over 50 submissions of support for this project.**

The report below provides a response to the submissions.

2.0 SUBMISSIONS

A summary of the issues raised by the Stoney Range Regional Botanic Garden as well as the 37 public submissions and a response is provided below:

Issue	Response
<p>Scale</p> <p>The development would impact on the environmental and heritage value of the garden with a building of 8 storeys looming over its northern border therefore degrading the overall ascetics of Stony Range and its entrance.</p>	<p>The proposed development is not 8 storeys.</p> <p>The proposed building adjacent to Pittwater Road is 7 storeys, whilst the remainder of the development presents as 5 storeys to Stony Range Reserve.</p> <p>The proposed development is <u>entirely</u> compliant with the 24 metre height control which applies at the western edge of the site adjacent to Pittwater Road, and also the 16 metre height control for the remainder of the site.</p> <p>This is illustrated in the southern elevation drawing SK03.01 prepared by Rothelowman with excerpt below.</p>  <p>The conclusion in Council's assessment report states the following in relation to the height and scale of the proposal:</p> <p><i>The height, scale, proportions, massing, setbacks and envelopes of the buildings are generally consistent with the built form and character outcomes envisaged by the planning controls.</i></p> <p>Accordingly, the proposed height of the development and its relationship with Stony Range Reserve is precisely as anticipated by the height controls which apply to the site.</p> <p>In addition, the highest element of the proposal, being 7 storeys, is not immediately adjacent to the Reserve and in fact adjoins a hard stand public car park which separates the building from the fenced area of the reserve by approximately 20 metres.</p> <p>This is a very significant distance, noting that there is no requirement in the DCP for any setback whatsoever from the edge of the Reserve.</p> 

Issue	Response
	<p>The 20 metre separation distance is effectively the equivalent of another site between the subject site and the Reserve and is an incredibly generous distance within the context of the site, which significantly ameliorates the impact of the proposal from the Reserve.</p> <p>It should also be noted that the height controls of the site are driven by the council's masterplan, of which the proposed development site, being the very end of the Dee Why Town Centre, acts as an important bookend height element within the overall urban form.</p>
Heritage	
<p>The development would impact on the environmental and heritage value of the garden with a building of 8 storeys looming over its northern border therefore degrading the overall ascetics of Stony Range and its entrance.</p>	<p>The development will not adversely impact upon the heritage values of the Reserve. A Heritage Impact Statement prepared by Urbis and dated 25 May 2023 has been provided to Council and provides the following in relation to heritage impacts:</p> <ul style="list-style-type: none"> • <i>The visual context of the subject site is predominantly urban in character and includes large-scale commercial, retail, medium density residential and mixed-use buildings. The area is currently undergoing substantial transformation from low scale office premises and light-industrial buildings to mixed-use development that includes commercial and residential.</i> • <i>The proposed development is in accordance with Northern Beaches Council planning controls. The subject site, including the part of the site that borders the Reserve is zoned as MU1: Mixed Use and has a Building Height planning control of 24 metres towards Pittwater Road and 16 metres to the rear.</i> • <i>Urbaine Design Group was engaged to prepare a Visual Impact Assessment (VIA) that included eleven different vantage points within the Reserve looking towards the proposed development. Urbis have reviewed the VIA prepared by Urbaine Design Group (dated May 2023). Views to the proposed development would be negligible due to the density of foliage within the Reserve and would not detract from the overall heritage significance of the Reserve. As above, the proposed bulk, scale and massing of the proposal is not inconsistent with that of which would reasonably have been anticipated by the planning controls.</i> • <i>Existing views from the public domain along Pittwater Road towards the Reserve are predominantly restricted to close views towards the Reserve to the south of the subject site. These views will not be impacted by the proposal.</i> • <i>Existing views towards the Reserve from the public domain in the wider landscape are predominantly obscured by existing built form, including the extant buildings at the subject site.</i> • <i>Whilst it is acknowledged that the proposed redevelopment of the site is larger in scale, form and height than the existing two-storey warehouse structures, the existing warehouse and industrial complex located on the subject site provides no contribution to the heritage significance of the Reserve. The proposed development will provide an enhanced setting</i>

Issue	Response
	<p><i>comparatively and aims to activate the site via the provision of the north south axis through the site which will enable a visual connection through the site to the Reserve, resulting in a positive heritage outcome.</i></p> <ul style="list-style-type: none"> <i>Rothelowman Architects have prepared shadow diagrams (dated 11 May 2023) that provide further evidence regarding potential overshadowing of the proposed development and accompany this submission. Potential overshadowing would be negligible and would not detract from the significance of the Reserve.</i>
Shadow	
<p>The proposal should not result in any shadow impact to the Stony Range Reserve.</p>	<p>The proposed development is entirely compliant with the height control.</p> <p>Any expectation that the redevelopment of the subject site cannot cause <u>any</u> shadow to the Reserve is disproportionate to the impact that this would have on what is a compliant proposal.</p> <p>As stated earlier in this report, the highest element of the proposal being the 7 storey component facing Pittwater Road is separated from the edge of the Reserve by a distance of 20 metres. This is a very generous separation, noting that there is no DCP requirement for any setback from the Reserve.</p> <p>Supporting this response are shadow diagrams prepared by Rothelowman architects labelled “3D solar fan” and these demonstrate the parts of the development that would need to be removed in order to not cause any shadow impact to Stony Range Reserve. The drawing illustrates that an incredibly large proportion of the development would need to be removed which would essentially sterilise the site from redevelopment as envisaged by the planning controls which apply to the land.</p> <p>Zero shadow of the Reserve is not a realistic or reasonable expectation.</p> <p>Part D Control D6 of the WDCP provides the relevant control in relation to overshadowing of public land and specifically contemplates that there may be <i>some</i> overshadowing of public land and provides the following Requirement in such circumstances:</p> <p style="padding-left: 40px;"><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"> Whether or not the proposal is compliant with the height control? 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. Whether the amount of shadow significantly adversely affects the amenity and functionality of the public open space. The shadow diagrams

Issue	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"> • Whether the amount of shadow results in an unacceptable ecological impact? 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. <p>It is noted that the Council assessment also supports the above position as explained in detail on page 88:</p> <p><i>The proposal does overshadow parts of the reserve, as evident in the submitted shadow diagrams, however that extent of overshadowing is consistent with what is envisaged for this site given the planning controls and allowable building heights. To that extent, the authors of the WLEP 2011 must have had cognisance of the level of overshadowing that a building to the maximum height across the subject site would have on the reserve, and it is therefore considered that the impact is not 'unreasonable' and is entirely anticipated.</i></p> <p><i>There is no metric to determine what an acceptable level of overshadowing is. It should be noted that there is a footpath running down the southern edge of the site, which forms part of the road reserve between the Stony Range Reserve and the subject site, measuring 7.5m in width. To the southern edge of the site (where the overshadowing impacts are the greatest), there is also an at-grade bitumen carpark measuring approximately 13m in width. <u>Therefore, the western half of the site, as it presents to the southern boundary, there is a 21m separation between the boundary and the reserve, and to the eastern half, there is a 7.5m separation.</u></i></p> <p><i>The three-dimensional shadow diagrams by the project architects, Rothelowman, include a red outline to the south of the building, and that depicts the aforementioned car park and road reserve. The diagrams show that, in mid-winter, the northern edge of the Stony Range Reserve will be overshadowed by the development. In its totality, the extent of the Reserve overshadowed is reasonably minor. It is noted that the shadow</i></p>

Issue	Response
	<p><i>diagrams are depicting the winter solstice, when the overshadowing would be at its worst.</i></p> <p><i>In the absence of any metric to use, and noting that the height of the building and rear setback is compliant with the planning controls, the impacts to sunlight on the reserve in mid-winter are considered acceptable and reasonable.</i></p>
<p>In autumn and winter, the picnic area would be affected by the shadow of the proposed heightened development leading to fewer visitors and events at this time. Stony Range, as a Regional Botanic Garden, is more than just 'public open space' and as such should be granted the status that it deserves.</p>	<p>It is acknowledged that one of the picnic areas within Stony Range Reserve will be affected by shadow in the winter. However, this is considered acceptable for the following reasons:</p> <ul style="list-style-type: none"> • This picnic area is already heavily overshadowed by surrounding vegetation and is not in full sunlight in mid winter. In addition, this picnic area is located at the very northern edge of the Stony Range Reserve and is inherently vulnerable from any shadow from any redevelopment of the subject site. Nonetheless, the worst case shadow occurs only for several months in the middle of winter, with the proposal resulting in virtually no shadow to this picnic area for the 9 or 10 months outside of mid winter. • In mid winter when this picnic area is in shadow, the overwhelming majority of the Reserve is 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 proposed development is entirely compliant with the height control and setback requirements. The shadow which occurs to the northern picnic area is entirely as anticipated by the height control on the site, and the retention of solar access in mid winter to this one particular picnic area would require the removal of such a significant proportion of the proposed development that it would not longer be viable. Such a drastic reduction to the proposal would be disproportionate to the impact noting that (a) the proposal is height compliant (b) the shadow only occurs for several months in the middle of winter (c) the picnic area is already in shadow from surrounding vegetation, and (d) the overwhelming majority of the Reserve remains free from shadow even in mid winter with ample opportunity for visitors to enjoy sunlight in mid winter.
Ecological Impact	
<p>The excess height of the development would also impact the growth of the vegetation on the northern side with the lack of sunlight in autumn and winter.</p> <p>Concerns about impact to wildlife</p>	<p>The Flora and Fauna Assessment Report prepared by Aquila Ecological Surveys, dated June 2023 demonstrates that the proposal will not result in any adverse ecological impacts to the flora or fauna within the Reserve.</p> <p>The report assesses that 'In relation to likely impacts on fauna movement, existing buildings on the site already compromise ingress and egress of birds and bats north of the reserve. The proposed development site offers little function as a wildlife corridor as apart from a few plantings it contains buildings and hard surfaces and adjoins the shopping centre to the north, Pittwater Road to the west and a residential area to the east. The flora reserve represents more of a stepping stone for fauna movement and that function is unlikely to be compromised by the development.'</p>

Issue	Response
	<p>Regarding the flora component of the objections, the report comprehensively addresses the impact of the additional shading from the development on flora within the reserve and concludes that 'It was found that the impacts are likely to be negligible and seasonal in nature. There is unlikely to be any appreciable long-term impact on the composition of native vegetation within the reserve.'</p> <p>This is also supported by council's ecology referral as per the supplementary SNPP assessment report, which states:</p> <p style="text-align: center;"><i>Council's biodiversity team concur with the broad conclusions provided in the Flora and Fauna Assessment (Aquila Ecological Surveys, June 2023)</i></p>
Car parking	
<p>This large development would also impact on the small Stony Range parking area, firstly by the contractors parking during the building process (which has happened previously), and subsequently by visitors to the complex as well as the residents with their extra cars, leaving limited spaces for visitors and volunteers.</p> <p>There is no parking within the Range as the entrance roadway has to be kept open for tenants to the cottage behind the Corkery building.</p> <p>Approximately 75% of the car park is gazetted within the boundary of Stony Range and as such should be kept for the use of Stony Range visitors and volunteers. This should be properly enforced, especially during any construction stage.</p> <p>There is need for proper access and parking</p>	<p>The proposal will not result in an adverse impact to the Stony Range parking area.</p> <p>The proposed development complies with the required carparking under the Warringah DCP including providing the required visitor car parking for both residents and the retail component and therefore the proposal will not increase demand on the public car park.</p> <p>The proposal does not seek to use the car park as a construction work zone and a condition of consent requires the developer to provide construction worker parking as part of the Construction Traffic Management Plan. As it is a public carpark, there are no restrictions on who can use the carpark and the timing of such use is subject to the parking restriction signage in the carpark.</p>

Issue	Response
<p>planning for Stony Range by the Council as the current situation is not satisfactory, especially if there is to be continuous development in the area.</p>	
Traffic	
<p>Concern regarding additional traffic resulting from proposal</p>	<p>The Traffic Impact Assessment prepared by TTPP which accompanies the application provides an analysis of the existing traffic conditions, an assessment of the traffic generation currently associated with the site and that which will be generated by the proposal as well as the performance of the local road network. The traffic assessment concludes that the proposed development would not result in any unreasonable impact to the performance of the surrounding road network. The assessment finds that the redevelopment of the site as proposed would not have a discernible effect on the operations of the surrounding road network.</p> <p>Council has referred this proposal externally to Transport for NSW who have responded in the SNPP assessment report as:</p> <p style="text-align: center;"><i>"TfNSW has reviewed the amended plans and addendum traffic study and has no requirements as the proposed development will not have a significant impact on the classified road network."</i></p>
Water Management	
<p>Concern regarding stormwater management and potential adverse impacts to the Stony Range Reserve</p>	<p>The proposed development has a tanked basement and there will be no need for pumping any water from the basement. Any concerns in regards to waterlogging at the bottom of the slope is unwarranted due to the surface drainage in landscaped areas of our site, which will serve to maintain the inground water levels of the upstream reserve area. Accordingly, the proposal will not be affecting the water table aside from a short period during construction of the basement. This is also confirmed in the detailed dewatering management plan that will be submitted to WaterNSW.</p> <p>Council has also reviewed this and responded in the Supplementary memo as - This issue has been the subject of a preliminary review. It is considered that upstream surface and groundwater would not be affected by the development. It is noted that no changes to the upslope areas are proposed. Drainage to the basement walls would also avoid waterlogging at the bottom of the slope, diverting water away. Therefore, based on a preliminary review, no adverse impacts on trees in the Reserve are anticipated because of groundwater changes from the basement excavation.</p> <p>In relation to concerns around stormwater impact to the Reserve, extensive flood modelling has been undertaken as part of the development proposal process in accordance with Council's stringent guidelines and the requirements of Council's engineers. This analysis proves that upstream overland flows are not significantly impacted by the proposed development. The proposed</p>

Issue	Response
	<p>stormwater design accommodates all overland flow paths around and through the development. The Council assessment report provides the following in relation to this matter on page 19:</p> <p style="text-align: center;"><i>Overland flow issues have now been generally satisfied with the flood modelling demonstrating the existing overland flow regime flows have been closely maintained</i></p> <p>Further to this, it should be noted that the proposed development involves extensive stormwater works both within the site and external to the site in order to upgrade council's existing drainage system.</p>

3.0 CONCLUSION

This report and the accompanying documentation provides a detailed response to the issues raised by the Stoney Range Regional Botanic Garden as well as the late 37 public submissions.

The proposal is precisely as anticipated by the relevant planning controls, and in particular the height control. The proposal is supported by the Council assessment report, and the subsequent material provided including Visual Impact Assessment, Heritage Impact Assessment, Flora and Fauna assessment, and detailed shadow diagrams demonstrate that the proposal does not result in an unacceptable impact to Stoney Range Reserve.

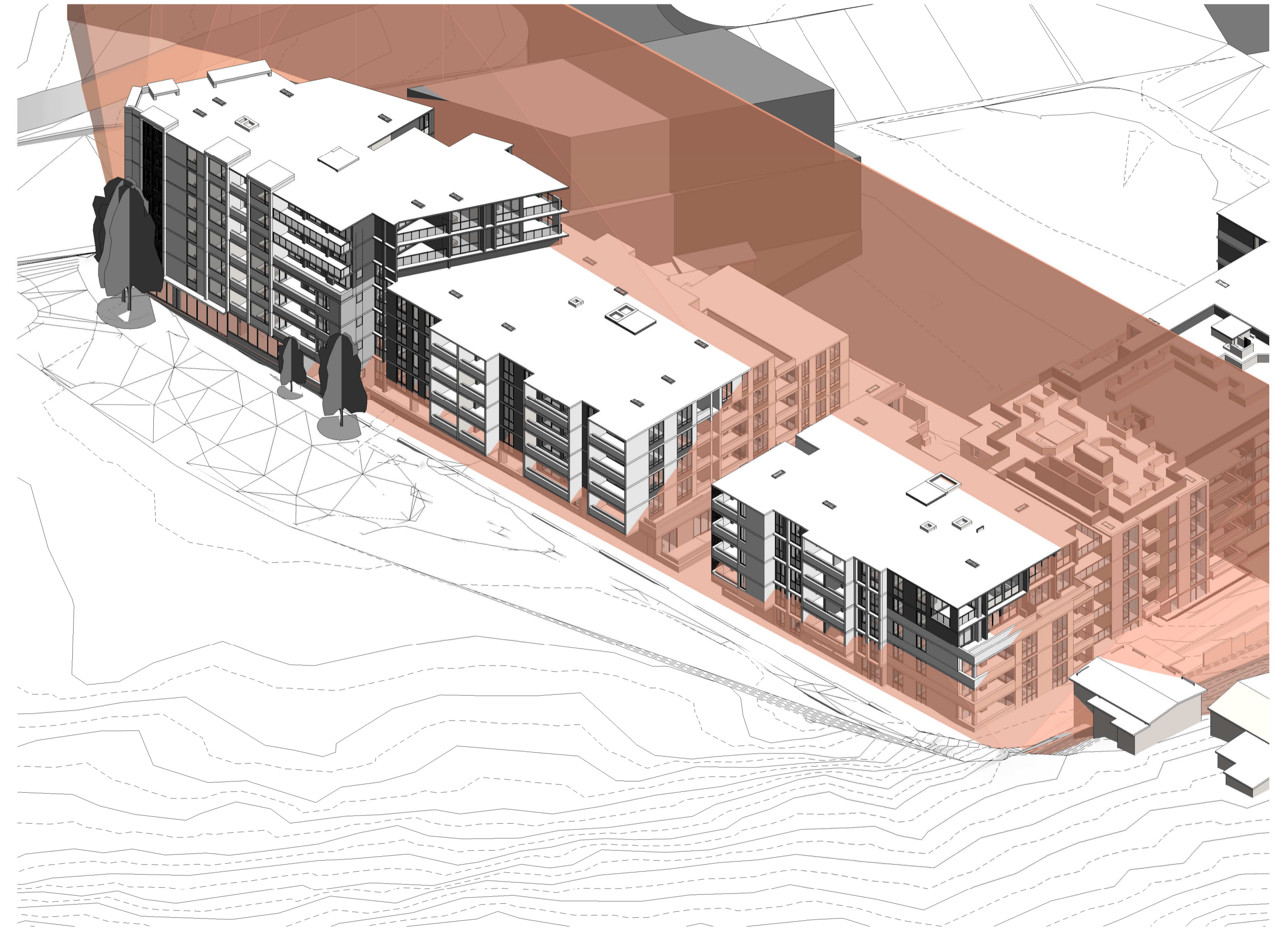
The proposal is compliant with all of the relevant planning controls and approval is warranted, and the conclusion of Council's assessment report is commended to the Sydney North Planning Panel:

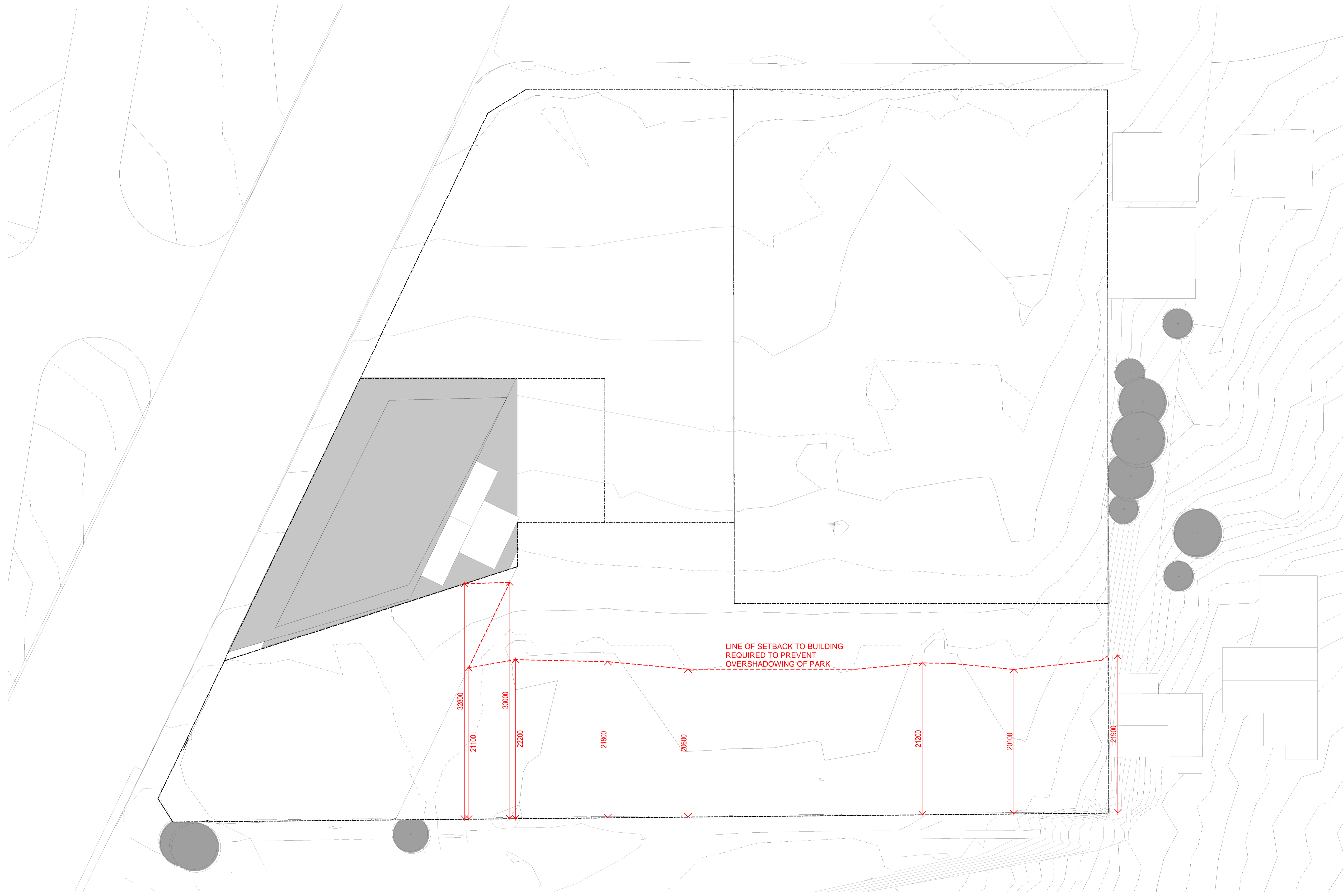
The application has demonstrated that the subject site is capable of being developed generally in accordance with the planning controls, achieve good planning outcomes and does not prejudice the redevelopment of the adjoining Avis Site.

This assessment report and its recommendation is the culmination of over three years of consultation and ongoing discussions between Council and the applicant on this strategically significant site within the Town Centre.

On balance, the assessment concludes with the recommendation that the SNPP, as the consent authority should APPROVE the application, subject to special and standard conditions.

ARCHITECTURAL STUDY TO DETERMINE THE IMPACT OF NO OVERSHADOWING ONTO THE SITE OF STONEY RANCE RESERVE AT WINTER SOLSTICE





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Revisions / A 29.06.2023 COUNCIL ISSUE

JC

Client / **Dee Why 3 Pty Ltd & Dee Why 4 Pty Ltd**

Project / **4 Delmar Pde & 812 Pittwater Rd, Dee Why**

Drawing / **OVERSHADOWING SETBACK SITE PLAN**

Project No. / **221054**

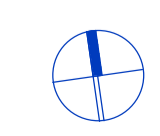
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Author / **JC**

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Drawing No. / **SK02.05 A**

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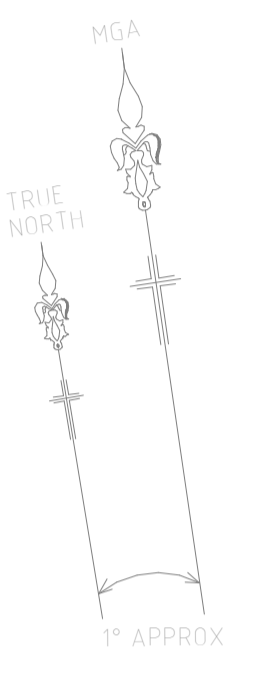
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TREE SCHEDULE

NO.	DESCRIPTION	SIZE
1	SHEDAR	1.8 x 2.5 (M)
2	SHEDAR	1.8 x 2.5 (M)
3	SHEDAR	1.8 x 2.5 (M)
4	SHEDAR	1.8 x 2.5 (M)
5	SHEDAR	1.8 x 2.5 (M)
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7	SHEDAR	1.8 x 2.5 (M)
8	SHEDAR	1.8 x 2.5 (M)
9	SHEDAR	1.8 x 2.5 (M)
10	SHEDAR	1.8 x 2.5 (M)
11	SHEDAR	1.8 x 2.5 (M)
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17	SHEDAR	1.8 x 2.5 (M)
18	SHEDAR	1.8 x 2.5 (M)
19	SHEDAR	1.8 x 2.5 (M)
20	SHEDAR	1.8 x 2.5 (M)



Revisions / A 06.07.2023 COUNCIL ISSUE JC

Client / **Dee Why 3 Pty Ltd & Dee Why 4 Pty Ltd** Project / **4 Delmar Pde & 812 Pittwater Rd, Dee Why**

Drawing / **SITE PLAN**

Project No / **221054** Date / **06.07.2023** Author / **JC** Scale: @ A1 / **1 : 250**

Drawing No. / **SK02.50 A**

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