

15 Jubilee Avenue, Warriewood

# Statement of Environmental Effects

# Statement of Environmental Effects

## 15 JUBILEE AVENUE, WARRIEWOOD

### Construction of a mixed-use development

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Prepared under instructions from  
**15 Jubilee Pty Ltd**

by

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## 1.0 INTRODUCTION

This Statement of Environmental Effects has been prepared in support of a Development Application made under Part 4 of the Environmental Planning and Assessment Act 1979 for a mixed-use development at 15 Jubilee Avenue, Warriewood comprising self-storage units and light industrial units.

The proposed development is detailed on architectural plans prepared by SBA Architects. The application is also accompanied by the following:

- Survey Plan - Land Surveys
- Landscape Plan - A Total Concept Landscape Architects (ATC)
- Accessibility Report - Building Control Group
- BCA Assessment Report - Building Control Group
- Traffic and Parking Assessment Report - Varga Traffic Planning
- Waste Management Plan - SLR
- Operational Noise Emission Assessment - Acoustic Dynamics
- Detailed Site Investigation - EI Australia
- Geotechnical Investigation - EI Australia
- Arboricultural Impact Assessment Report - Rain Tree Consulting
- Stormwater Drainage Plans & Erosion and Sediment Control Plan - Lindsay Dynan
- Water Management Report - Lindsay Dynan
- Flood Risk Management & Evacuation Strategy Report - Lindsay Dynan
- Cost Summary Report - Mitchell Brandtman

This Statement has been prepared pursuant to section 4.12 of the Environmental Planning and Assessment Act 1979 and clause 50 of the Environmental Planning and Assessment Regulation 2000. The Statement provides an assessment of the development proposal having regard to the relevant legislative context, the social, economic and environmental impacts of the development, the 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 proposed development's compliance against applicable environmental planning instruments and development control plans including:

- State Environmental Planning Policy No.55 – Remediation of Land
- State Environmental Planning Policy No. 65- Advertising and Signage
- Pittwater Local Environmental Plan 2014
- Pittwater 21 Development Control Plan

The Statement demonstrates the proposed development is consistent with the aims and objectives of the relevant environmental planning instruments and development control plan. The Statement also demonstrates the proposal is compatible with the character of the locality and minimises any potential impacts on the amenity of the adjoining properties.

## 2.0 SITE DESCRIPTION AND LOCATION

### 2.1 Site Description

The site is legally described as Lot 202 DP 1019363 and is known as 15 Jubilee Avenue, Warriewood. The site is a mid-block allotment located on the southern side of Jubilee Avenue between Ponderosa Parade to the west and Warriewood Road to the east. An aerial view of the site and surrounds is provided at Figure 1.

The site is identified as being within the Warriewood Valley Release Area pursuant to the Pittwater Local Environmental Plan 2014 (PLEP).



Figure 1:

Aerial View of the site (Source: Six Maps, Department of Lands 2021)

The site is rectangular in shape and has an area of 4,554 square metres. The site has a 100.61 metre frontage to Jubilee Avenue, a western side boundary length of 45.27 metres and an eastern side boundary length of 45.265 metres.

The site is currently vacant except for two metal shipping containers with adjoining decks located on the eastern side of the site.

The site is burdened by three easements including:

- A 4-metre-wide easement for sewerage purposes that extends at a slight angle from the northern boundary to the southern boundary. The sewerage easement is approximately 22.36 metres from the western boundary at the northern boundary and 32.5 metres from the western boundary at the southern boundary.
- A 1-metre-wide easement to drain water that extends along the southern boundary; and
- A 3-metre-wide easement to drain water that extends along the western boundary.

The trees on the site are identified in the Arboricultural Impact Assessment Report prepared by Rain Tree Consulting. The majority of trees are located to the west of the sewerage easement. A 15-metre-high Swamp Mahogany tree is located in the road reserve of the site and two other Swamp Mahogany trees are located on the front boundary.

The site has a fall of approximately 6 metres from the eastern boundary to the western boundary.

Vehicular access to the site is currently provided via a driveway located to the east of the sewerage easement. A concrete footpath in the road reserve extends the length of the street frontage of the site.

The adjoining property to the west is known as 5 Ponderosa Parade, Warriewood. 5 Ponderosa Parade is improved by a three-storey industrial building. This building is setback approximately 6 metres from the northern boundary and approximately 5.3 metres from the eastern boundary.

185 Warriewood Road adjoins the eastern boundary of the site. This property is improved by two residential dwellings, separated by a large paddock. The dwelling on the western side of this property is known as 19 Jubilee Avenue.

The rear (southern) boundary of the site adjoins 4 and 6 Apollo Avenue and part of 10 Apollo Avenue. These properties are improved by industrial buildings. The buildings at 4 and 6 Apollo Avenue have a nil setback to the common boundary.

### Photograph 1:

15 Jubilee Avenue viewed from the northern side of Jubilee Avenue (looking south-east)



### Photograph 2:

Eastern side of the site showing the shipping containers on the site and the rear elevation of 6 Apollo Avenue adjoining the rear boundary

### Photograph 3:

View of the site showing the rear elevation of 4 and 6 Apollo Avenue (looking south-west)





Photograph 4:

View towards the western side of the site

Photograph 5:

Existing vehicular access to 15 Jubilee Avenue



Photograph 6:

View of the site showing the street trees on the western side of the sewerage easement



### Photograph 7:

5 Ponderosa Parade



### Photograph 8:

Open stormwater channel along the western boundary

### Photograph 9:

Dwelling on the lot to the east known as 19 Jubilee Avenue





Photograph 10:

Development to the east of the site at 185 Warriewood Road

Photograph 11:

Development opposite the site



Photograph 12:

Development opposite the site

## 3.0 DEVELOPMENT PROPOSAL

### 3.1 Background

There have been two recent development applications for development on the subject site. These applications are summarised in the following table.

DA Number	Description of Proposed Works	Status
DA2019/0268	Use of land as an ancillary recreation area for the warehouse and distribution centre	Approved (27 August 2019)
DA/2020/1039	Use of premises as a transport depot (Bus Depot)	Withdrawn (11 November 2020)

A pre-lodgement meeting was held with Council on 17 March 2020 for the proposed development of the site for a mixed-use development comprising storage unit and warehouse units. The matters raised by Council have been taken into consideration and the scheme has been refined accordingly. The supporting documentation requested by Council accompanies the application.

### 3.2 Proposed Development

The development application seeks consent for excavation works, tree removal and the construction of a mixed-use development for 59 self-storage units and 24 light industrial units.

The proposed building consists of two levels. The existing vehicular crossing will be modified to provide access to the ground floor. A new vehicular crossing, setback 3 metres from the eastern boundary, provides vehicular access to level 1.

The building is setback 6 metres from the northern boundary, consistent with the setback of the development at 5 Ponderosa Parade.

A 3-metre setback is proposed to the eastern boundary. A pedestrian ramp from the street to level 1 is proposed within the 3-metre setback. The building is setback 3 metres from the western boundary.

The building is setback 1 metre from the southern boundary on the ground floor level. Level 1 is built to the southern boundary. Access will be provided to the area within the ground floor setback to allow for rubbish removal. The area will be fenced for the safety and security of the users of the building.

A removable bridge is proposed over the sewerage easement to allow for the maintenance of the easement.

#### Self-storage units

The majority of the ground floor will be used for self-storage premises. The self-storage premises are located on the eastern side of the sewerage easement.

59 self-storage units are proposed that vary in size from 22 square metres to 83 square metres. The storage units are arranged around a one-way circulation space that includes sufficient space for vehicles to pass, should a vehicle be stopped for loading/unloading.

The self-storage units will be accessible 24 hours a day, 7 days a week.

### Light industrial units

Five (5) light industrial units are located on the ground floor, with two units located on the northern side of the site and three on the southern side of the site. The ground floor industrial units include an ancillary mezzanine office space. Ten (10) car parking spaces are proposed for the light industrial units on the ground floor.

19 industrial units are located on level 1. Each unit has a mezzanine office space. The industrial units and associated car parking spaces are arranged on the northern and southern sides of a central driveway. 30 car parking spaces are located on Level 1.

The hours of operation for the industrial units will be 7am to 6pm Monday to Saturday.



Figure 2:

Photomontage of the proposed development

### Signage

Two building identification signs are proposed on the northern elevation. The signs assist with way finding by identifying the address of the building and the driveway to each level of the building.

### Landscaping and Tree removal

A Landscape Plan prepared by ATC accompanies the application. The plan proposes dense planting within the front setback that includes a range of trees, shrubs and groundcovers. The Landscape Plan shows Lillypilly trees along the majority of the eastern boundary which will reach a mature height of 6 metres to soften and screen views of the building from the adjoining residential property.

The application involves the removal of the existing trees on the site as identified on Drawing DA100 prepared by SBA Architects. The proposed tree removal is addressed in the Arboricultural Impact Assessment Report (AIAR) prepared by Rain Tree Consulting. The AIAR provides an assessment of 27 tree or groups. Of these

trees, one tree is within the road reserve, two are partly located on the boundary and 8 trees are exempt trees. Two trees are located within the neighbouring properties.

The three Swamp Mahogany trees within the road reserve are to be retained. Tree 9 is a significant local native tree within the road reserve and Trees 8 and 10 are located on the northern boundary and are partly within the road reserve.

## 4.0 STATUTORY PLANNING FRAMEWORK

### 4.1 Environmental Planning and Assessment Act 1979

In accordance with Section 4.15 of the Environmental Planning and Assessment Act 1979 (EP&A Act) in determining a development application a consent authority is to take into consideration the relevant matters listed in Section 4.15. Section 4.2 of this report addresses the relevant provisions of the applicable environmental planning instruments as required by section 4.15(1)(a)(i). Section 4.3 of this report addresses the relevant provisions of the applicable development control plan as required by section 4.15(1)(a)(iii). The remaining provisions of section 4.15(1) are addressed further in section 5 of this Statement.

### 4.2 Environmental Planning Instruments

#### 4.2.1 State Environmental Planning Policy No.55 – Remediation of Land

State Environmental Planning Policy No. 55 - Remediation of Land applies to all land and aims to provide for a State-wide planning approach to the remediation of contaminated land.

Clause 7 of SEPP 55 requires the consent authority to consider whether land is contaminated prior to granting consent to carrying out of any development on that land and if the land is contaminated, it is satisfied that the land is suitable in its current state or will be suitable after remediation for the purpose for which the development is proposed to be carried out.

A Detailed Site Investigation (DSI) has been undertaken by EI Australia. The DSI notes that the site appears to have been used as farmland until the 1970s with both livestock and market (greenhouse) gardening taking place. From the 1970s onwards, the site was mainly used for residential purposes (two houses) or was vacant.

An inspection of the site undertaken by EI Australia found no visual evidence of gross contamination and no suspicious odour was detected. There was also no evidence that an underground storage tank was present on the site.

The DSI concludes that the potential for site contamination is low and the soils and groundwater are considered suitable for the proposed development in accordance with SEPP 55.

#### 4.2.2 State Environmental Planning Policy No. 64 - Advertising and Signage

State Environmental Planning Policy No. 64 – Advertising and Signage (SEPP 64) aims to ensure that signage is compatible with the desired amenity and visual character of an area, provides effective communication in suitable locations and is of high-quality design and finish.

SEPP 64 applies to all signage that can be displayed with or without development consent and is visible from any public place or public reserve.

The proposal includes two, flush mounted building identification signs on the northern elevation (Drawing DA700). The signs assist in wayfinding by identifying the site address and the driveway to each level. The signs are a type of 'building identification sign' pursuant to clause 4 of SEPP 64. Accordingly, Part 3 of the SEPP does not apply to the proposed signs and there is no requirement for referral to the RMS for the proposed signs.

Pursuant to clause 8 of SEPP 64, a consent authority must not grant development consent to an application to display signage unless the consent authority is satisfied that the signage is consistent with the objectives of the SEPP and that the signage satisfies the assessment criteria specified in Schedule 1 of the SEPP. An assessment of the proposed pylon sign against the assessment criteria specified in Schedule 1 of the SEPP is provided below.

#### Character of the area

The site is located within the B7 Business Park zone and the adjoining land to the east and the south is zoned IN2 Light Industrial. Despite the zoning of the adjoining land the property to the east is currently improved by residential dwellings.

The size and location of the proposed building identification signs is appropriate to the scale of the building and the size of the façade to which it relates. The signs will be directly associated with the proposed development and will serve to allow for the quick and easy identification of the building and to assist with public wayfinding. The signs will not be illuminated and are flush mounted signs and will therefore have no impact on the adjoining residential property. For these reasons the proposed signs are appropriate to the existing character of the area.

#### Special areas

The proposed flush mounted wall signs are not in close proximity to any special areas. The wall signs are flush mounted and not illuminated and will not therefore not impact on the dwelling on the adjoining property to the east.

#### Views and vistas

The proposed sign is to be placed on the wall of the building and will have no impact upon views or vistas in the vicinity of the site.

#### Streetscape, setting and landscape

The proposed building identification signage is considered an acceptable addition to the site, setting and landscaping.

#### Site and building

The proposed signs are to be affixed to the building and integrated with the architecture of the building.

#### Associated devices and logos with advertising and advertising structures

The proposed signs are to be affixed to the building facade and will be engineered appropriately for structural stability and safety.

#### Illumination

The signs will not be illuminated other than by general lighting of the building.

#### Safety

The proposed signs will assist in public safety by clearly identifying the site. This will assist in smooth traffic flow into the site from the surrounding streets. The proposed signs will not reduce the safety for

vehicles, pedestrians or bicyclists and does not obscure views along the road, footpath or to any public area or safety zone.

#### 4.2.3 Pittwater Local Environmental Plan 2014

##### Zoning and Permissibility

The site is located within the B7 Business Park zone pursuant to the Pittwater Local Environmental Plan 2014 (PLEP). An extract of the Land Zoning Map is included as Figure 3.

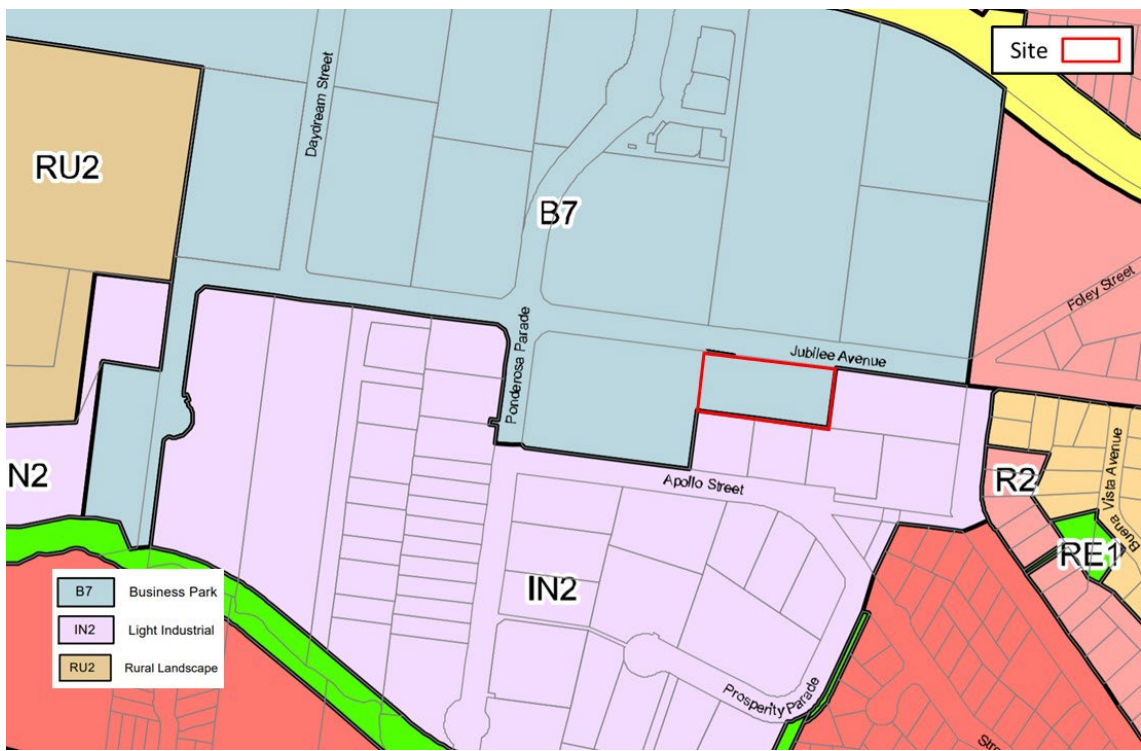


Figure 3:

Extract from the PLEP Land Zoning Map

Storage premises and light industries are permitted with consent in the B7 zone and are defined as follows:

**self-storage units** means premises that consist of individual enclosed compartments for storing goods or materials (other than hazardous or offensive goods or materials).

Self-storage units are a type of storage premises.

**light industry** means a building or place used to carry out an industrial activity that does not interfere with the amenity of the neighbourhood by reason of noise, vibration, smell, fumes, smoke, vapour, steam, soot, ash, dust, wastewater, waste products, grit or oil, or otherwise, and includes any of the following—



- (a) high technology industry,
- (b) home industry,
- (c) artisan food and drink industry.

Clause 2.3(2) of the PLEP provides that the consent authority must have regard to the objectives for development in a zone when determining a development application in respect of land within the zone.

The objectives of the B7 Business Park zone are:

- To provide a range of office and light industrial uses.
- To encourage employment opportunities.
- To enable other land uses that provide facilities or services to meet the day to day needs of workers in the area.
- To provide healthy, attractive, functional and safe business areas.

The development includes light industrial premises, each with an ancillary office space and storage premises. The proposed uses are permitted with consent in the zone and will generate employment opportunities.

The development will provide a positive contribution to the streetscape of Jubilee Avenue in the building adopts a similar scale and form as other commercial/industrial buildings in the surrounding area. The building has also been designed to minimise the visual and acoustic impacts on the adjoining residential dwelling and the development does not result in any non-complying impacts on the solar access available to the residential dwelling.

The layout of the uses and the arrangement of the units within the building is simple and efficient to maximise the functionality of the space for future users of the building.

The development has been designed to provide safe pedestrian and vehicular access to the site as detailed in the accompanying Traffic and Parking Impact Assessment.

The retention of existing street trees and the provision of landscaping in the setbacks of the building will positively contribute to the streetscape.

The design of the development has been based on a thorough analysis of the site and surrounding area. The scale, setbacks, quantum of landscaping, internal layout and materials and finishes of the development are compatible with or responsive to the particular features of the adjoining sites and surrounding development.

In this regard the development is consistent with the objectives of the B7 zone.

#### Height

In accordance with clause 4.3(2) 'Height of Buildings' of the PLEP 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 11 metres as shown in Figure 4.

Subclause 2(b) provides that despite subclause (2) development on land:

- (a) at or below the flood planning level or identified as "Coastal Erosion/Wave Inundation" on the [Coastal Risk Planning Map](#), and

(b) that has a maximum building height of 11 metres shown for that land on the [Height of Buildings Map](#),

may exceed a height of 11 metres, but not be more than 10.5 metres above the flood planning level.

Pursuant to clause 7.3(5) flood planning level means the level of a 1:100 ARI (average recurrent interval) flood event plus 0.5 metres freeboard, or other freeboard determined by an adopted floodplain risk management plan.

The Flood Risk Management & Excavation Strategy Report prepared by Lindsay Dynan concludes the FPL for the site is RL18.4.

Drawing DA700 prepared by SBA Architects shows the 11-metre height line (measured from existing ground level) depicted by a green dashed line and the 10.5 metre height line (measured from the FPL of RL18.4) depicted by a pink dashed line. Drawing 700 clearly identifies the exceedance of the building with the standard.

The 10.5 metre height above the FPL only exceeds the 11-metre height limit on the western side of the building as shown on Drawing 700 prepared by SBA Architects. As such the 11-metre height limit is the relevant height limit for the majority of the building and the 10.5 metre height limit is relevant where it sits above the 11-metre height (when the pink height line shown on the plans is higher than the green height line).

The eastern side of the building sits comfortably below the 11-metre maximum height permitted. On the northern side of the building the building complies with the 11-metre height limit from the eastern side of the building almost to the point of the sewer easement. From this point the extent of exceedance gradually increases to 0.9 metres above the 11-metre height limit on the western side of the building.

On the southern side of the building the variation with the 11-metre height limit starts at around 30.5 metres from the eastern side of the building and gradually increases to 1.81 metres on the western side of the building.

As the 10.5 metre height above the FPL is higher than the 11-metre height on the western elevation, the extent of variation to the height standard is based on the 10.5 metre height limit above the FPL. The plans prepared by SBA Architects indicate the variation is 0.747 metres above the 10.5 metre height limit on the northern side of the western elevation and 1 metre above the 10.5 metre height limit the southern side of the western elevation (being a maximum 9.5% variation to the height standard).

Clause 4.6(2) of the PLEP provides that development consent may be granted for development even though the development would contravene a development standard imposed by the PLEP, or any other environmental planning instrument.

However, clause 4.6(3) states that development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:

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

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

A request for an exception to the height of buildings development standard, prepared on behalf of the applicant, is included as Annexure A.

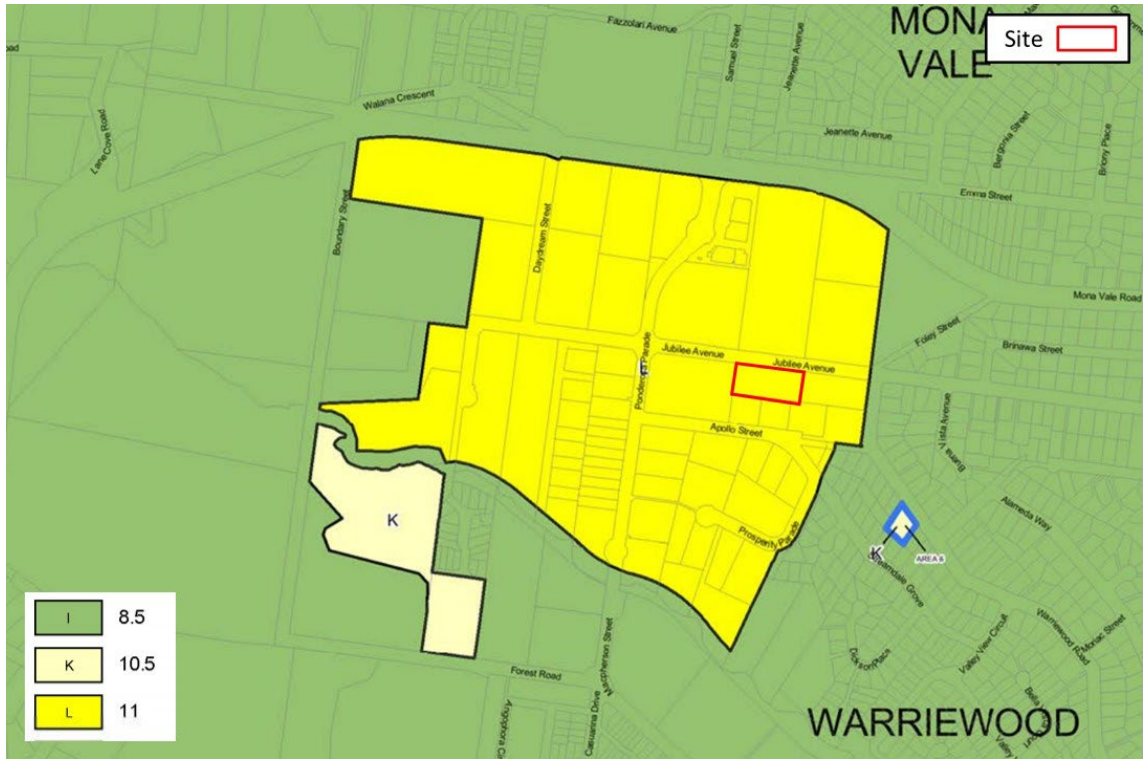


Figure 4:

Extract from the PLEP Height of Buildings Map

### Floor Space Ratio

In accordance with clause 4.4(2) of the PLEP the maximum floor space ratio for a building on any land is not to exceed the floor space ratio shown for the land on the Floor Space Ratio Map. The maximum floor space ratio shown for the site is 1:1 as shown in Figure 5. The proposed development has an FSR of 0.88:1 as summarised on Drawing DA100.

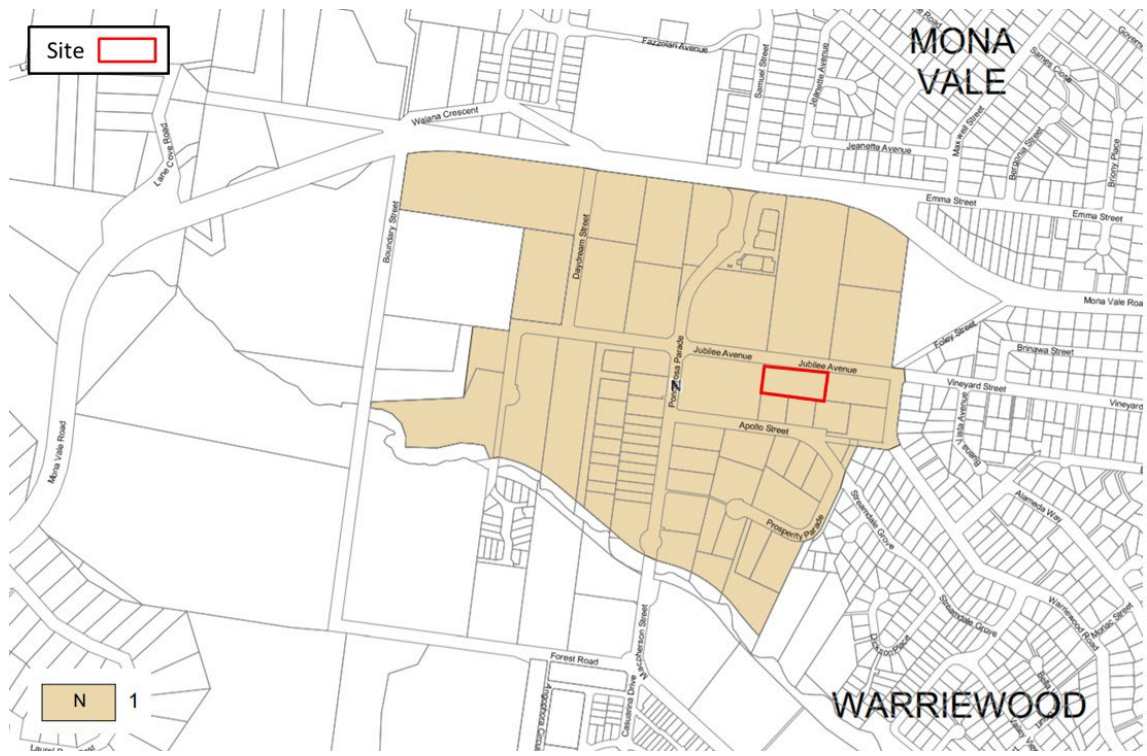


Figure 5:

Extract from the PLEP FSR Map

#### Heritage conservation

The site is not identified as a heritage item pursuant to Schedule 5 of the PLEP nor is the site within a heritage conservation area. The site is also not in the vicinity of any heritage items.

#### Warriewood Valley Release Area

Clause 6.1 of PLEP applies to land in the Warriewood Valley Release Area.

The site is identified as being within Sector 105 of the Warriewood Valley Release Area on the PLEP Urban Release Area Map as shown in Figure 6 below.

The site is not identified as land in a buffer area or sector or at an address mentioned in Column 1 of the table in subclause (3).

Pursuant to subclause (4) development consent must not be granted for development on land to which this clause applies unless the consent authority is satisfied that the proposed development will not have any significant adverse impact on any of the following:

- (a) opportunities for rehabilitation of aquatic and riparian vegetation, habitats and ecosystems within creek line corridors,
- (b) the water quality and flows within creek line corridors,

(c) the stability of the bed, shore, and banks of any watercourse within creek line corridors.

Pursuant to subclause (5) in clause 6.1:

**buffer area** means land identified as "buffer area" on the Urban Release Area Map.

**creek line corridor** means land identified as "creek line corridor" on the Urban Release Area Map.

**sector** means land identified as "sector" on the Urban Release Area Map.

**Warriewood Valley Release Area** means the land identified as Warriewood Valley Release Area on the Urban Release Area Map.

The site is not identified as being within a buffer area nor is it in or adjacent to the creek line corridor.

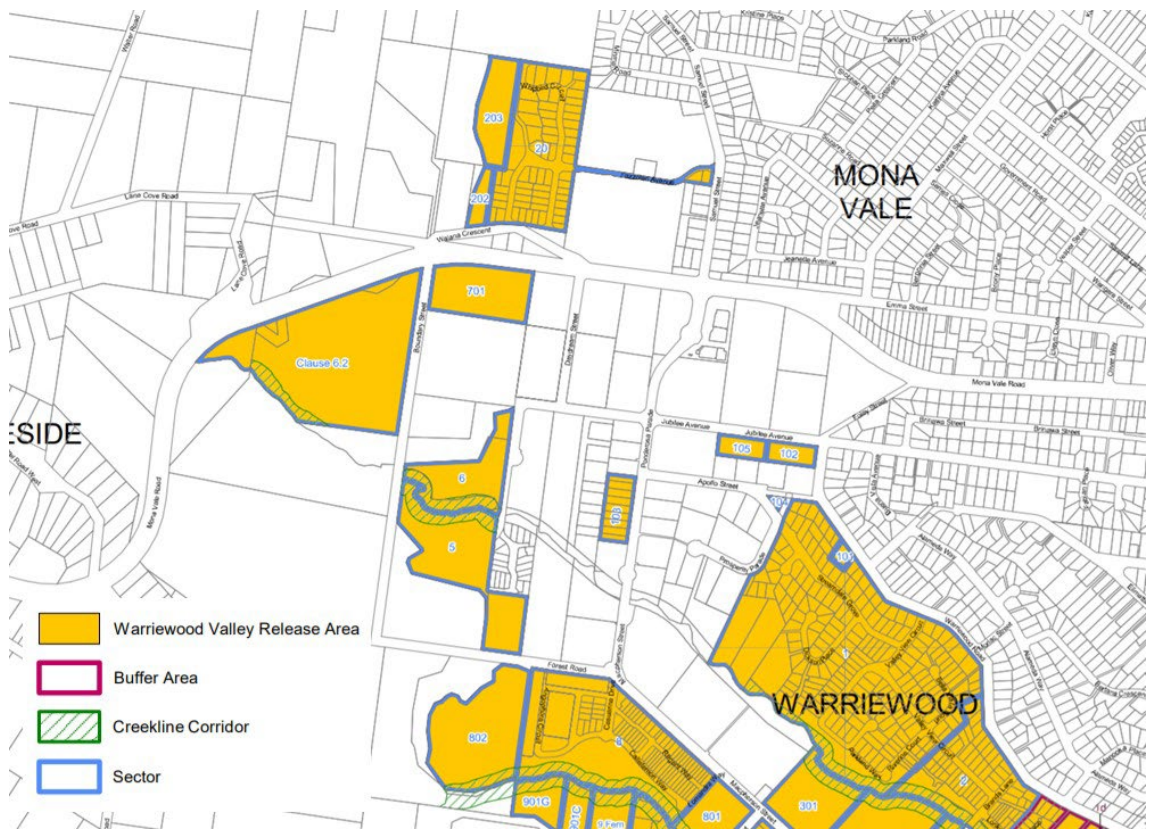


Figure 6:

Extract from the PLEP Urban Release Area Map

### Acid Sulfate Soils

Clause 7.1 of the PLEP relates to acid sulfate soils. The objective of the clause is to ensure that development does not disturb, expose or drain acid sulfate soils and cause environmental damage. The site is identified as Class 5 land on the Acid Sulfate Soils Map (refer to Figure 7 below).

The Detailed Site Investigation prepared by EI Australia includes an Acid Sulfate Soil Assessment. The report concludes that Acid Sulfate Soils are not of concern and do not require management during future soil disturbance.

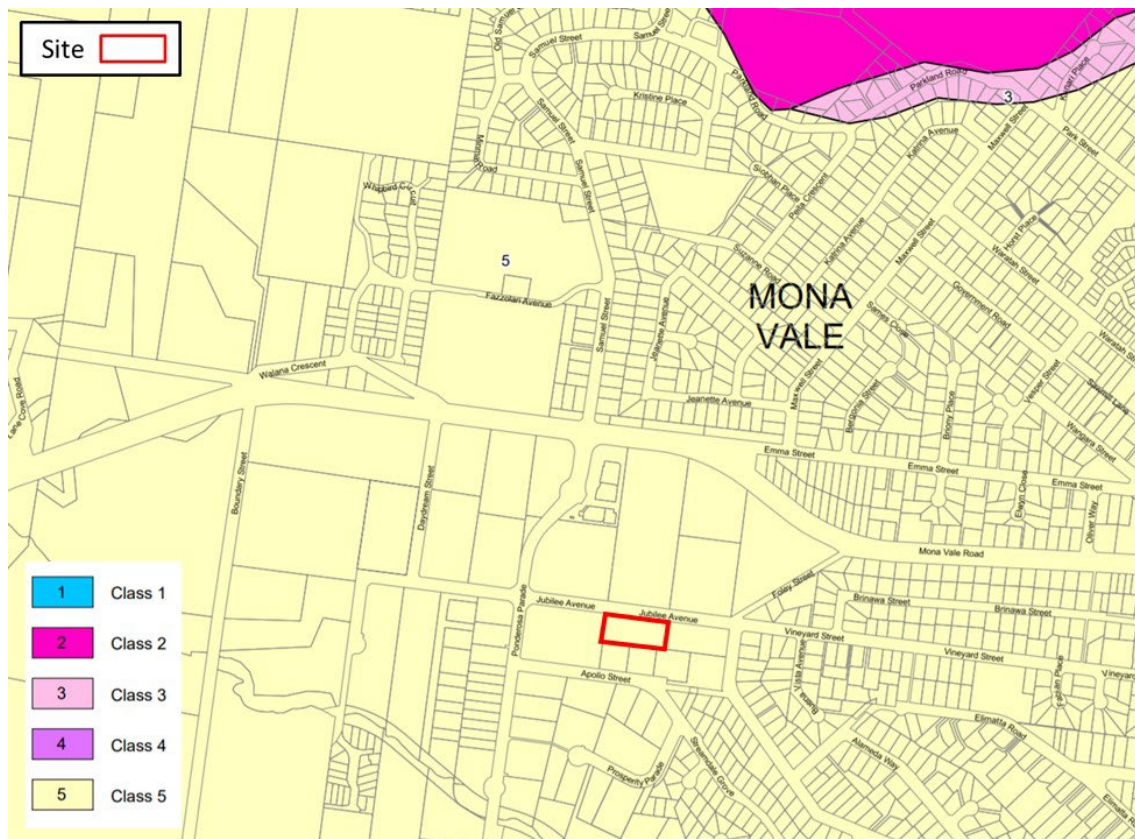


Figure 7:

Extract from the PLEP Acid Sulfate Soil Map

### Earthworks

The proposal includes excavation works up to 3 metres below existing ground level within the eastern portion of the site. Locally deeper excavations may be required for footings and service trenches.

Clause 7.2 of PLEP requires the consent authority to take into consideration a number of matters in deciding whether the grant development consent for earthworks.

The matters for consideration are addressed in the DA documentation as follows:

- The Geotechnical Investigation prepared by EI Australia addresses the likely impact on drainage patterns and soil stability in the locality and provides recommendations related to excavation

methodologies and monitoring requirements, excavation support requirements, foundation options and groundwater considerations.

- The DSI examines provides recommendations to ensure the quality of fill imported to the site (if required for landscaping purposes) meets the relevant EPA guidelines and ensures the soil to be excavated is disposed off in accordance with the element EPA guidelines.
- This Statement of Environmental Effects addresses the effect of the proposed earthworks and the amenity of the adjoining properties.
- This Statement of Environmental Effects addresses the proximity of the site to heritage items and notes that the site is not in the vicinity of any heritage items and is not located within a conservation area. Accordingly, the proposed works will not result in any adverse heritage impacts.
- The proposed development is not in close proximity to any environmentally sensitive area or waterway and as such the proposed earthworks will not result in any adverse environmental impacts.
- There is a low likelihood of relics being disturbed during excavation works however it is standard practice for a condition of consent to be applied that sets out the reporting requirements if a relic is discovered.

#### Flood Planning

Clause 7.6 of PLEP applies to land at or below the flood planning level.

Pursuant to subclause (3) development consent must not be granted to development on land to which this clause applies unless the consent authority is satisfied that the development—

- (a) is compatible with the flood hazard of the land, and
- (b) will not significantly adversely affect flood behaviour resulting in detrimental increases in the potential flood affectation of other development or properties, and
- (c) incorporates appropriate measures to manage risk to life from flood, and
- (d) will not significantly adversely affect the environment or cause avoidable erosion, siltation, destruction of riparian vegetation or a reduction in the stability of river banks or watercourses, and
- (e) is not likely to result in unsustainable social and economic costs to the community as a consequence of flooding.

A Flood Risk management and Evacuation Strategy Report prepared by Lindsay Dynan accompanies the application that addresses the requirements of clause 7.6.

#### Essential services

In accordance with clause 7.10 development consent must not be granted to development unless the consent authority is satisfied that any of the following services that are essential for the development are available or that adequate arrangements have been made to make them available when required—

- (a) the supply of water,
- (b) the supply of electricity,

- (c) the disposal and management of sewage,
- (d) stormwater drainage or on-site conservation,
- (e) suitable vehicular access.

The Survey Plan demonstrates that the required water, electricity and sewerage infrastructure is available to the site.

A stormwater plan has been prepared to demonstrate that adequate stormwater management will be provided.

Two vehicular access points to the site are proposed. The Traffic and Parking Assessment Report addresses the adequacy of the vehicular access arrangements.

#### 4.3 Pittwater 21 Development Control Plan

Pittwater 21 Development Control Plan (P21DCP) contains development controls for the design and construction of buildings and the development of land in the former Pittwater local government area. This Section of the Statement of Environmental Effects addresses the proposal's consistency with the relevant provisions of the DCP.

##### 4.3.1 Locality Statement

The subject site is located within the Warriewood Valley Land Release locality as identified on the Pittwater 21 Locality Map and the Warriewood Valley Release Area Locality Map. The Desired Character of the locality is described in Part A4.16 of the DCP.

Warriewood Valley is situated at the base of the escarpment, known as Ingleside Chase Reserve, between Mona Vale and Warriewood (see map). It comprises of land known as "Stage 1 Release" and land identified as the Warriewood Valley Release Area.

The Warriewood Valley Release Area, first identified in 1997 as a Release Area, comprises of 110 hectares including 32.68 hectares of industrial/commercial land and associated community facilities and infrastructure. Two recent reviews have been undertaken, firstly the Warriewood Valley Strategic Review 2012 and secondly the Warriewood Valley Strategic Review Addendum Report 2014. The Release Area now includes land within 400m of the Warriewood Sewerage Treatment Plant (known as Buffer Areas 1, 2 and 3) encompassing an area of approximately 190 hectares.

Warriewood Valley Release Area is primarily a residential area expected to provide a total of 2,451 new dwellings (this figure includes the dwellings approved under the former Part 3A legislation but does not include development in Stage 1 Release considered to be completed in 1997.). When completed, it is anticipated to accommodate 6,618 residents (based on an average household occupancy of 2.7 persons per household).



Warriewood Valley Release Area continues to be developed as a desirable urban community in accordance with the adopted planning strategy for the area, and will include a mix of low to medium density housing, industrial/commercial development, open space and community services. The creekline corridors, roads and open space areas form the backbone of the new community, complemented with innovative water management systems, the natural environment, pedestrian/cycle path network, public transport, and recreation facilities.

Stage 1 Release, has a residential component and a business/industrial component. The residential area is characterised by two storey residential attached dwellings with the area fully developed. The industrial/business area is defined by up to three storey large complexes that generally contain smaller units. The majority of the business/industrial zoned land has been developed with some smaller parcels still to be developed in the northern industrial area.

The Warriewood Valley locality is characterised by a mix of residential, retail, commercial, industrial, recreational, and educational land uses.

Warriewood Valley is affected by various hazards and contains heavily vegetated areas, threatened species, or areas of natural environmental significance, which are identified on various maps within the Pittwater LEP 2014.

A number of identified heritage items are located in Warriewood Valley.

The proposed industrial use of the land is consistent with the zoning of the site and the intended mix of uses in the release area.

The site is affected by flooding and the design includes appropriate measures to minimise the potential impact of flooding as detailed in the accompanying Flood Risk Management and Evacuation Strategy Report prepared by Lindsay Dynan.

There are no known threatened species on the site and the site is not identified as having natural environmental significance on the PLEP maps.

The site is not identified as a heritage item nor is it located in the vicinity of any heritage items.

#### **4.3.2 General Controls**

Section B of P21 DCP sets out general controls that apply to development to which the DCP applies. It should be noted that many provisions in Part B do not apply to land in the Warriewood Valley land release area. The relevant provisions of Section B are addressed below.

### Density

In accordance with Part B2.4 of the DCP the re-subdivision or individual grounds of factory or office units subsequent to development consent may be carried out by any method of subdivision including strata subdivision. Parking spaces, loading bays and space for any other purpose forming a part of a sole occupancy unit are to be allocated to the unit.

### Contaminated Land and Potentially Contaminated Land

The potential for previous contamination of the site has been assessed in the Detailed Site Investigation prepared by EI Australia. The DSI concludes that the potential for site contamination is low and that the soil and groundwater are suitable for the proposed development. Based on the findings of the DSI Council can be satisfied that the site is suitable in its current state for the proposed use.

### Flood Prone Land

A Flood Risk management and Evacuation Strategy Report prepared by Lindsay Dynan accompanies the application that addresses the relevant requirements of Part B of P21 DCP.

### Preservation of Trees and Bushland Vegetation

The proposed development requires the removal of trees on the site as shown on Drawing 100 and identified in the Arboricultural Impact Assessment.

### Site Works Management

A Geotechnical Investigation prepared by EI Australia addresses the proposed excavation works.

A Waste Management Plan prepared by SLR details how demolition and construction waste will be managed. The report also provides a waste management plan for the operation of the building.

An Erosion and Sediment Control Plan has been prepared by Lindsay Dynan which details the measures that will be implemented on the site to prevent the migration of sediment off the site and into any waterway, drainage systems and public reserves.

Site fencing will be provided during construction and demolition works to ensure public safety.

#### 4.3.3 Development Type Controls

Part C3 Design Criteria for Industrial Development of P21 DCP applies to a range of types of development including light industries and storage premises. It should be noted that many provisions in Part C3 do not apply to land in the Warriewood Valley land release area.

The following table summarises the proposed development's compliance with the applicable general controls for industrial development found in Section C3 of P21DCP.

Control	Comment
C3.1 Landscaping	This control does not apply to B7 zoned land in the Warriewood Valley Locality.
C3.2 Safety and Security	This control does not apply to B7 zoned land in the Warriewood Valley Locality.

Control	Comment
C3.3 View Sharing	<p>Pursuant to clause C3.3 building lines and height are to be sympathetic to the topography of the site and to maintain a reasonable sharing of views available from surrounding and nearby properties and those available to the public from nearby public domain areas.</p> <p>The development will not result in any unreasonable impacts on the views or outlook of the surrounding properties.</p>
C3.4 Accessibility	This control does not apply to B7 zoned land in the Warriewood Valley Locality.
C3.5	This section has been repealed.
C3.6 External Storage Areas	This control does not apply to B7 zoned land in the Warriewood Valley Locality.
C3.7 Pollution Control	<p>Part 3.7 of the DCP requires:</p> <ul style="list-style-type: none"> <li>Industrial premises must be designed, constructed, maintained and operated in a proper and efficient manner to prevent air, water, land or noise pollution.</li> <li>Development and business operation must comply with the Protection of the Environment Operations Act, 1997, and any relevant legislation.</li> <li>Development and business operation must comply with the Environment Protection Authority's NSW Industrial Noise Policy, January 2000</li> </ul> <p>An Operational Noise Emission Assessment has been prepared by Acoustic Dynamics that addresses the relevant provisions of the Protection of the Environment Operation Act and the Noise Policy for Industry (which replaced the NSW Industrial Noise Policy).</p> <p>The Noise Emission Assessment concludes the development will comply with the relevant standards subject to a 2.4-metre-high acoustic barrier being provided along the eastern edge of the development which meets the specifications outlined in the report. The report also recommends a management plan been prepared to minimise the impacts and the acoustic amenity of the surrounding area.</p>
C3.8 Building Facades	This control does not apply to B7 zoned land in the Warriewood Valley Locality.
C3.9 Energy and Water Conservation	This control does not apply to B7 zoned land in the Warriewood Valley Locality.
C3.10 Waste and Recycling Facilities	All development that is, or includes, demolition and/or construction, must comply with the appropriate sections of the Waste Management Guidelines and all relevant Development Applications must be accompanied by a Waste Management Plan. A Waste Management Plan has been prepared by SLR for the site preparation and

Control	Comment
	construction phase of the development.
C3.12 Signage	Not applicable. This control applies to land zoned IN2 light industrial.
C3.13 Industrial development adjoining residential land	This control does not apply to B7 zoned land in the Warriewood Valley Locality.
C3.14 Car/Vehicle/Boat Wash Bays	A designated wash bay has not been provided given the type of uses proposed are unlikely to generate a requirement for an onsite wash bay.
C3.15 Undergrounding of Utility Services	This control does not apply to B7 zoned land in the Warriewood Valley Locality.
C3.16	Repealed
C3.17	Repealed
C3.18 Public Road Reserve – Landscaping and Infrastructure	This control does not apply to B7 zoned land in the Warriewood Valley Locality.
C3.19 Food Premises Design Standards	Not applicable.
C3.20 Plant, equipment boxes and lift over-run	This control does not apply to B7 zoned land in the Warriewood Valley Locality.

#### 4.3.4 Design Criteria for Warriewood Valley Release Area

Part C6 of the P21DCP contains criteria for development of land in the Warriewood Land Release Area.

Control	Comment
C6.1 Integrated Water Cycle Management	<p>The DCP requires a Water Management Report to be submitted with the application. The Water Management Report is to be prepared by appropriately qualified professionals and certified by an experienced and qualified engineer specialising in hydraulics. It is to be in accordance with Council's Warriewood Valley Urban Land Release Water Management Specification (February 2001 as amended) and relevant legislation taking into account the Narrabeen Lagoon Flood Study (September 2013 as amended) and the Pittwater Overland Flow Flood Study (2013 as amended).</p> <p>A Water Management Report prepared by Lindsay Dynan accompanies the application.</p>
C6.2 Natural Environment and Landscaping Principles	A Landscape Plan prepared by ATC details the proposed planting in the setbacks of the proposed development. The landscaping will enhance the streetscape by providing visual interest and softening views of the building from the public domain. The proposed landscaping along the eastern boundary will assist in reducing the visual bulk and scale of the

Control	Comment
	development as viewed from the adjoining dwelling.
C6.3 Ecologically Sustainable Development, Safety and Social Inclusion	<p>Development is designed to incorporate the following CPTED principles as follows.</p> <p><u>Natural Surveillance</u></p> <p>The development will increase natural surveillance of the street through the increased activity on the site and the provision of windows overlooking the public domain.</p> <p><u>Access Control</u></p> <p>Two clear entry points are provided to the site. The building identification signs assist people to identify the entrances to the buildings for both vehicles and pedestrians.</p> <p>Sliding gates are proposed to both the ground and first floor levels to prevent after hours access. A gate can be provided on the ground floor level to prevent access to the rear setback area other than for maintenance.</p> <p><u>Territorial Reinforcement</u></p> <p>The landscaping along the front boundary clearly demarcates the public and private domain.</p> <p><u>Space Management</u></p> <p>The building manager will be responsible for ensure the building and common spaces within the development are well maintained.</p> <p><u>Universal Design and Adaptive Reuse</u></p> <p>In accordance with PartC6.3 of the DCP developments and the public domain must comply with Australian Standard AS1428-2009:1 Design for access and mobility – General requirements for access – New building work. The Accessibility Report prepared by Building Control Group addresses the proposal's compliance with AS1428 and confirms the proposal complies with the relevant provisions.</p>
C6.4 The Road System and Pedestrian and Cyclist network	<p>The Traffic and Parking Assessment Report prepared by Varga Traffic Planning addresses the impact of the development on the local road network and the adequacy of the driveway locations and design.</p> <p>The Traffic Report concludes that the projected increase in traffic activity as a consequence of the development proposal is minimal and will not have any unacceptable traffic implications in terms of road network capacity.</p>
C6.5 Utilities, Services and Infrastructure Provision	The required utilities such as electricity, water and sewer are readily available to the site.
C6.6 Interface to Warriewood Wetlands or non-residential and commercial/industrial	The subject site is zoned B7 Business Park and the adjoining land to the east and the south is zoned IN2 Light Industrial. The proposed storage premises and light industrial uses are permissible in the zone and appropriate having regard to the zoning of the surrounding sites.

Control	Comment
development	<p>Despite the IN2 zoning of the adjoining land to the east, the site is currently improved by two residential dwellings, the closest being 19 Jubilee Avenue.</p> <p>To mitigate the potential visual and acoustic impacts on the nearby residential dwellings the design incorporates the following features:</p> <ul style="list-style-type: none"> <li>• The proposed development is setback 3 metres from the eastern boundary (with the exception of a pedestrian ramp that provides access to Level 1). The Landscape Plan prepared by ATC indicates Lilly Pilly trees will be planted along the majority of the eastern boundary to soften and screen views of the building from the adjoining property.</li> <li>• A 2.4 metre high acoustic barrier will be provided along the eastern side of the car park area and part of the pedestrian ramp to minimise potential acoustic impacts from Level 1 on the residential dwelling at 19 Jubilee Avenue.</li> <li>• The development sits comfortably below the 11-metre height limit on the eastern side of the building which assists in minimising the visual impact and shadow impact of the building on the adjoining dwelling. The shadow diagrams prepared by SBA Architects (Drawing 101) show that the development will not shadow the adjoining dwelling at any time between 9am and 3pm on 21 June and the majority of the open space of the adjoining dwelling will receive over 3 hours of solar access on 21 June.</li> </ul>
C6.7 Landscape Area	The landscaped area proposed is appropriate having regard to the zoning of the land and the uses proposed.
C6.8 Residential Development Subdivision Principles	Not applicable.
C6.9 Residential Land Subdivision Approval Requirements	Not applicable.
6.10 Additional Specifications for development of Buffer Area 1a to 1M	Not applicable.
6.11 Additional Specifications for development of Section 901A to 901H	Not applicable.
C6.12 Warriewood Valley Release Area Focal Neighbourhood Centre	Not applicable.

#### 4.3.5 Locality Specific Controls

The subject site is located in the Warriewood Valley Locality. The development's performance against the relevant locality specific controls is discussed below.

Control	Comment
D16.1 Character as View from a Public Place	<p>The façade of the building is articulated through the considered use of colours and materials, the inclusion of windows and the break in the façade to accommodate the sewerage easement. The proposed signage also contributes to the visual interest of the façade.</p> <p>The proposed vehicular entrances are identifiable but are not the dominant site feature when the building is viewed from the street.</p>
D16.2 Dual Occupancy Specific Controls	Not applicable.
D16.3 Secondary Dwellings	Not applicable.
D16.4 Water management for individual allotments	Not applicable.
D16.5 landscaped area for newly created individual allotments	The site is not a newly created allotment.
D16.6 Front Building Lines	<p>Pursuant to clause D1.8 of the PDCP the minimum front building line is 6.5 metres. A 6-metre front building setback is proposed.</p> <p>An objective of the front building line control is to achieve a consistent building form alignment in the streetscape, which is spacious and attractive and enhanced by tree planting with the front setback.</p> <p>The proposed setback is consistent with the 6-metre setback of the adjoining commercial/industrial building to the west. The front setback will be enhanced by a layered landscape design which consists of trees, shrubs and groundcovers that integrates with existing vegetation where possible.</p>
D16.7 Side and Rear Building Line	<p>A complying 3 metre setback is proposed to the western boundary.</p> <p>A 3-metre setback is proposed to the eastern boundary. A pedestrian ramp to Level 1 is proposed in the 3-metre setback to the eastern boundary.</p> <p>The proposed setback to the eastern boundary is appropriate in that:</p> <ul style="list-style-type: none"> <li>The eastern side of the building sits well below the 11-metre height limit, being around 3-4 metres below the maximum height on the northern elevation. In this regard the scale of the northern elevation has been minimised.</li> <li>Acoustic screening is proposed to minimise the acoustic impact of the development on the adjoining property.</li> <li>The landscape plan shows Lilly Pilly trees within the side setback that</li> </ul>

Control	Comment
	<p>are capable of reaching a height of 6 metres. The proposed hedge will soften and screen views of the building from the adjoining property.</p> <ul style="list-style-type: none"> <li>The proposed setback does not result in a non-complying impact on the solar access to the dwelling on the adjoining property to the east.</li> </ul> <p>A 1 metre setback is proposed to the rear boundary at the ground floor level to accommodate the existing stormwater easement and a nil setback to the rear boundary is proposed for Level 1. The rear setback is reasonable and appropriate having regard to the nil setback to the southern boundary of the site for the buildings at 4 and 6 Apollo Avenue. The ground floor setback will be secured to protect the safety and security of visitors to the building yet allow for the maintenance of the easement.</p>
D16.8 Spatial Separation	Not applicable.
D16.9 Solar access	The shadow diagrams prepared by SBA Architects (Drawing DA101) show that the development will not shadow the adjoining dwelling at any time between 9am and 3pm on 21 June and the majority of the open space of the adjoining dwelling will receive over 3 hours of solar access on 21 June.
D16.10 private and communal open space areas	Not applicable.
D16.11 Form of construction including retaining walls, terracing and undercroft areas	The Flood Risk Management Report requires the finished levels to be suspended above the flood extent and indicates a retaining wall is to be provided along the sewerage easement. The proposed works minimise disturbance to the natural landform on the western side of the sewerage easement and will not result in an adverse impact on the character of the locality.
D16.12 Fences	No front fence is proposed. A fence will be provided to restrict access to the ground floor rear setback area. The fence will not be visible from the public domain.
D16.13 Building colours and materials	The proposed external colours and materials are consistent with the colours and materials of other non-residential developments in the vicinity of the site.
D16.4 Pets and companion animals	Not applicable.



## 5.0 SECTION 4.15 CONSIDERATIONS

The following matters are to be taken into consideration when assessing an application pursuant to section 4.15 of the Environmental Planning and Assessment Act 1979. Guidelines to help identify the issues to be considered have been prepared by the Department of Urban Affairs and Planning (now the Department of Planning, Industry and Environment) and are included below.

### 5.1 The provisions of any planning instrument, draft environmental planning instrument, development control plan or regulations

The proposal is permissible pursuant to the PLEP and is generally in conformity with the general and specific development type controls contained within the Pittwater 21 Development Control Plan as detailed in section 4 of this Statement.

A clause 4.6 request has been prepared in support of a minor variation to the height of buildings standard for the western side of the building. The clause 4.6 request demonstrates that in this instance it would be unnecessary in the circumstances to require compliance with the standard and that there are sufficient environmental planning grounds to justify contravening the standard.

### 5.2 The likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality

#### Context and Setting

What is the relationship to the region and local context in terms of:

the scenic qualities and features of the landscape?

the character and amenity of the locality and streetscape?

the scale, bulk, height, mass, form, character, density and design of development in the locality?

the previous and existing land uses and activities in the locality?

A detailed site analysis was undertaken to inform the massing, scale, footprint and design of the proposed development. The built form, setbacks and setting of the development are consistent with the character and amenity of the locality. This Statement details the proposal's consistency with the character and amenity of the locality and streetscape.

What are the potential impacts on adjacent properties in terms of:

relationship and compatibility of adjacent land uses?

sunlight access (overshadowing)?

visual and acoustic privacy?

views and vistas?

edge conditions such as boundary treatments and fencing?

The proposal will not result in view loss, unreasonable solar access impacts or unreasonable acoustic or visual privacy impacts as detailed in this Statement.

The topography of the surrounding land does not afford surrounding properties scenic views over the subject site. As such the development will not impact on any significant views or vistas.

#### **Access, transport and traffic**

Would the development provide accessibility and transport management measures for vehicles, pedestrians, bicycles and the disabled within the development and locality, and what impacts would occur on:

travel demand?

dependency on motor vehicles?

traffic generation and the capacity of the local and arterial road network?

public transport availability and use (including freight rail where relevant)?

conflicts within and between transport modes?

traffic management schemes?

vehicular parking spaces?

The proposed development provides appropriately for car parking and will not result in any adverse impact on the capacity of the local road network as detailed in the Traffic Impact Assessment prepared by Varga Traffic Planning.

#### **Public domain**

The proposed development will not result in any impacts on the public domain.

#### **Utilities**

All required utilities and services can be provided to the development.

#### **Flora and fauna**

An Arboricultural Assessment and Development Impact Report prepared by Raintree Consulting forms part of the application documentation. The Assessment addresses the impact of the proposed development on the existing trees on the site and within the road reserve.

#### **Waste collection**

Normal non-residential waste collection arrangements apply to this development. A Recycling and Waste Management Plan prepared by SLR accompanies the application which details how construction waste will be managed. The Plan also addresses the waste generated by the ongoing use of the premises and details arrangements for waste storage and collection. The ability for waste servicing vehicles to enter and leave the site in a forward direction and manoeuvre on site is addressed in the Traffic and Parking Assessment Report prepared by Varga Traffic Planning.

### Natural hazards

A Flood Risk Management & Evacuation Strategy Report prepared by Lindsay Dynan addresses the flood hazard that affects the site.

### Economic impact in the locality

The proposed development will provide temporary employment through the construction of the development. The industrial units will generate ongoing employment.

### Site design and internal design

Is the development design sensitive to environmental conditions and site attributes including:

size, shape and design of allotments?

the proportion of site covered by buildings?

the position of buildings?

the size (bulk, height, mass), form, appearance and design of buildings?

the amount, location, design, use and management of private and communal open space?

landscaping?

The proposal has been carefully designed to minimise the impact of the development on the natural landform and vegetation. The existing street trees will be retained. Whilst the development does require the removal of a number of trees within the building footprint the landscape plan allows for the provision of an appropriate number of compensatory trees and shrubs so that the landscaped character of the development is maintained.

How would the development affect the health and safety of the occupants in terms of:

lighting, ventilation and insulation?

building fire risk - prevention and suppression/

building materials and finishes?

a common wall structure and design?

access and facilities for the disabled?

likely compliance with the Building Code of Australia?

The BCA Assessment Report prepared by Building Control Group details the proposal's compliance with the provisions of the Building Code of Australia noting that compliance with the BCA is a prescribed condition of consent in accordance with clause 98 of the Environmental Planning and Assessment Regulation 2000. The report confirms that the proposal will not require any significant design changes (that would require an application under Section 4.55 of the EP&A Act) to satisfy the requirements of the BCA.

There will be no detrimental effects on the occupants through the building design which will achieve the relevant standards pertaining to health and safety.

### **Construction**

What would be the impacts of construction activities in terms of:  
the environmental planning issues listed above?  
site safety?

The development will be carried out in accordance with the provisions of the Protection of the Environment Operations Act 1997. Normal site safety measures and procedures will ensure that no site safety or environmental impacts will arise during construction.

### 5.3 The suitability of the site for the development

Does the proposal fit in the locality?

- are the constraints posed by adjacent developments prohibitive?
- would development lead to unmanageable transport demands and are there adequate transport facilities in the area?
- are utilities and services available to the site adequate for the development?

The adjacent development does not impose any insurmountable development constraints. There will be no excessive levels of transport demand created.

Are the site attributes conducive to development?

The site does not have any physical or engineering constraints which would prevent the proposed development from occurring.

### 5.4 Any submissions received in accordance with this Act or the regulations

It is envisaged that any submissions made in relation to the proposed development will be appropriately assessed by Council.

### 5.5 The public interest

The built form has been informed by a thorough site analysis and as such the development responds to the characteristics of the site and the local area. The two-level scale of the development, setbacks of the building and the distribution of the built form maintains the general scale, form and pattern of development in the zone.

The minor variation to the height of buildings standard will not result in any adverse impact on the character of the locality.

For these reasons the approval of the development is considered to be in the public interest.

## 6.0 CONCLUSION

The relevant matters for consideration under section 4.15 of the Environmental Planning and Assessment Act 1979 have been addressed in this report and the proposed development has been found to be consistent with the objectives of all relevant planning provisions.

A clause 4.6 request has been prepared in support of a minor variation to the height of buildings development standard for the western side of the building.

The proposal is generally consistent with the general, development specific and locality specific outcomes and controls of the P21DCP.

The scale of the development, setbacks of the building, landscaping proposed within the setbacks and the careful internal layout of the development minimises visual, privacy and solar access impacts on the surrounding development.

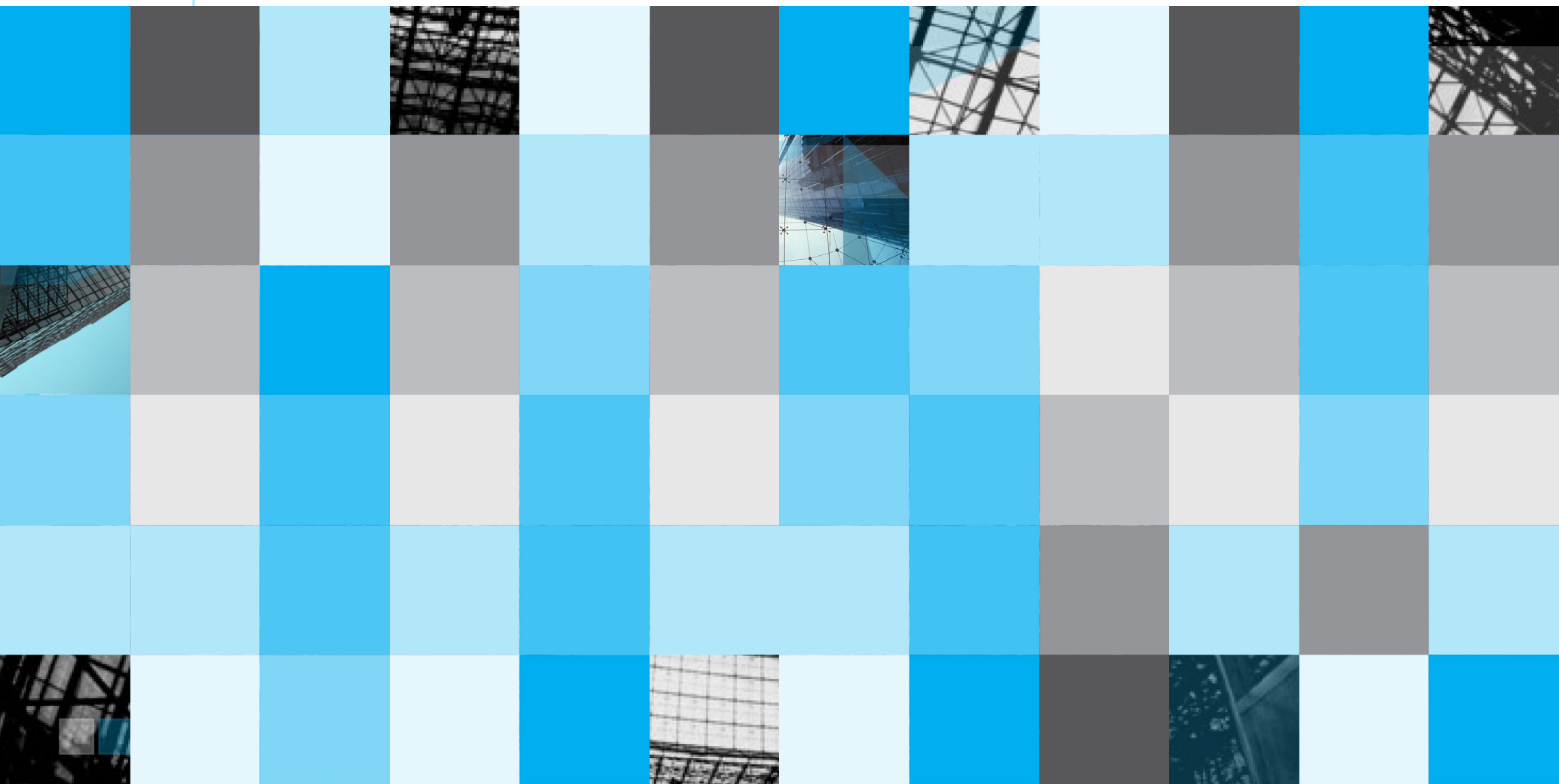
For reasons outlined in this Statement of Environmental Effects the proposed development at 15 Jubilee Avenue, Warriewood should be granted consent.

# APPENDIX A

## CLAUSE 4.6 REQUEST – BUILDING HEIGHT

A

Sutherland & Associates Planning



15 Jubilee Avenue, Warriewood

# Clause 4.6 Request – Height of Buildings

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## REQUEST FOR AN EXCEPTION TO THE HEIGHT OF BUILDINGS DEVELOPMENT STANDARD

### 1.1 Introduction

This request for an exception to a development standard is submitted in respect of the height of buildings development standard contained within Clause 4.3 of the Pittwater Local Environmental Plan 2014 (PLEP).

The request relates to an application for excavation works and the construction of a mixed-use development comprising self-storage units and light industrial premises at 15 Jubilee Avenue, Warriewood.

### 1.2 Clause 4.6 Exceptions to development standards

Clause 4.6(2) of the PLEP provides that development consent may be granted for development even though the development would contravene a development standard imposed by the PLEP, or any other environmental planning instrument.

However, clause 4.6(3) states that development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:

- (a) that compliance with the development standard is unreasonable or unnecessary in the circumstance of the case, and
- (b) there are sufficient environmental planning grounds to justify contravening the development standard.

In accordance with clause 4.6(3) the applicant requests that the height of buildings development standard be varied.

### 1.3 Development Standard to be varied

In accordance with clause 4.3 'Height of Buildings' 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 11 metres as shown in Figure 1.

Building height (or height of building) is defined in the Dictionary of the PLEP as:

- (a) in relation to the height of a building in metres—the vertical distance from ground level (existing) to the highest point of the building, or
  - (b) in relation to the RL of a building—the vertical distance from the Australian Height Datum to the highest point of the building,
- including plant and lift overruns, but excluding communication devices, antennae, satellite dishes, masts, flagpoles, chimneys, flues and the like.

Subclause 2(b) provides that despite subclause (2) development on land:

- (a) at or below the flood planning level or identified as "Coastal Erosion/Wave Inundation" on the Coastal Risk Planning Map, and

(b) that has a maximum building height of 11 metres shown for that land on the [Height of Buildings Map](#),

may exceed a height of 11 metres, but not be more than 10.5 metres above the flood planning level.

(emphasis added in underline).

Pursuant to clause 4.3(2G) in this clause

**flood planning level** means the level of a 1:100 ARI (average recurrent interval) flood event plus 0.5 metres freeboard, or other freeboard determined by an adopted floodplain risk management plan.

**floodplain risk management plan** has the same meaning as it has in the *Floodplain Development Manual* (ISBN 0 7347 5476 0), published in 2005 by the NSW Government.

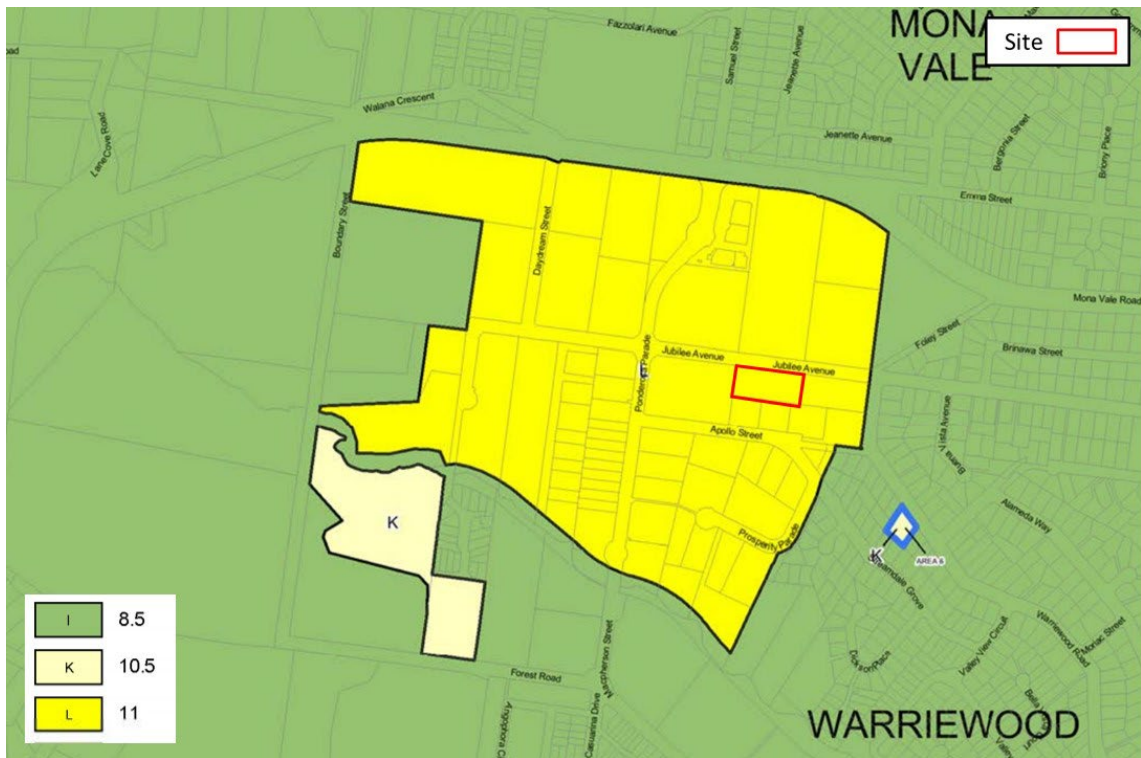


Figure 1:

Extract from the PLEP Height of Buildings Map

Floodplain risk management plan is defined in the Floodplain Development Manual as:

A management plan developed in accordance with the principles and guidelines in this manual. Usually includes both written and diagrammatic information describing how particular areas of flood prone land are to be used and management to achieve defined objectives.

The Flood Risk Management & Excavation Strategy Report prepared by Lindsay Dynan relies on several documents including the NSW Floodplain Development Manual 2005 (page 9).

The Flood Risk Management Report (FRMR) indicates that the flood hazard occurs on the western side of the site with high hazard flows within the existing open channel along the western boundary. The FRMR prepared by Lindsay Dynan concludes the FPL for the site is RL18.4.

The 10.5 metre height limit above the FPL applied to the FPL of RL18.4 is generally below the 11-metre height limit except for the western side of the building where the 10.5 metre height limit sits between 1-2 metres above the 11 metre height limit.

#### 1.4 Extent of Variation to the Development Standard

As noted above an 11-metre height limit applies to the site under clause 4.3 of the PLEP. The 11-metre height limit may be varied to allow a height of 10.5 metres above the FPL of RL18.4.

Drawing DA700 prepared by SBA Architects shows the 11-metre height line (measured from existing ground level) depicted by a green dashed line and the 10.5 metre height line (measured from the FPL of RL18.4) depicted by a pink dashed line. Drawing 700 clearly identifies the exceedance of the building with the standard. Extracts of Drawing 700 are included below.

The 10.5 metre height above the FPL only exceeds the 11-metre height limit on the western side of the building as shown on Drawing 700 prepared by SBA Architects. As such the 11-metre height limit is the relevant height limit for the majority of the building and the 10.5 metre height limit is relevant where it sits above the 11-metre height (when the pink height line shown on the plans is higher than the green height line).

The eastern side of the building sits comfortably below the 11-metre maximum height permitted. On the northern side of the building the building complies with the 11-metre height limit from the eastern side of the building almost to the point of the sewer easement. From this point the extent of exceedance gradually increases to 0.9 metres above the 11-metre height limit on the western side of the building.

On the southern side of the building the variation with the 11-metre height limit starts at around 30.5 metres from the eastern side of the building and gradually increases to 1.810 metres on the western side of the building.

As the 10.5 metre height above the FPL is higher than the 11-metre height on the western elevation, the extent of variation to the height standard is based on the 10.5 metre height limit above the FPL. The plans prepared by SBA Architects indicate the variation is 0.747 metres above the 10.5 metre height limit on the northern side of the western elevation and 1 metre above the 10.5 metre height limit the southern side of the western elevation (being a maximum 9.5% variation to the height standard).

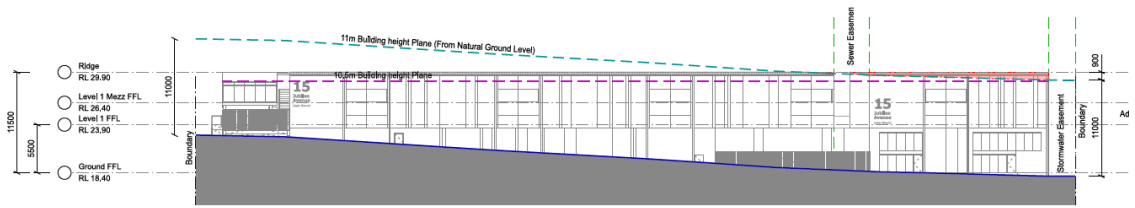


Figure 2:

Height Analysis Diagram – North Elevation (Source: Drawing 700 SBA Architects)

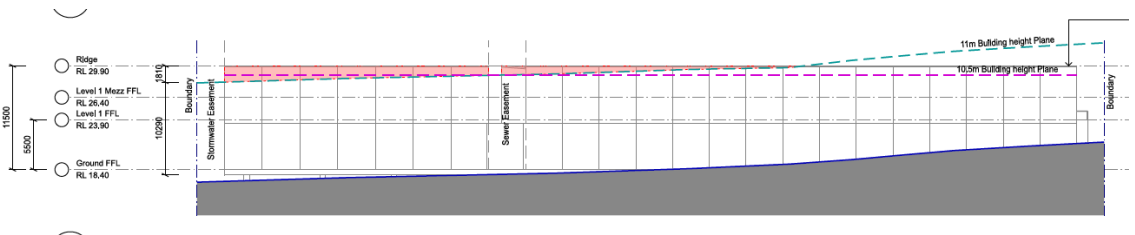


Figure 3:

Height Analysis Diagram – South Elevation (Source: Drawing 700 SBA Architects)

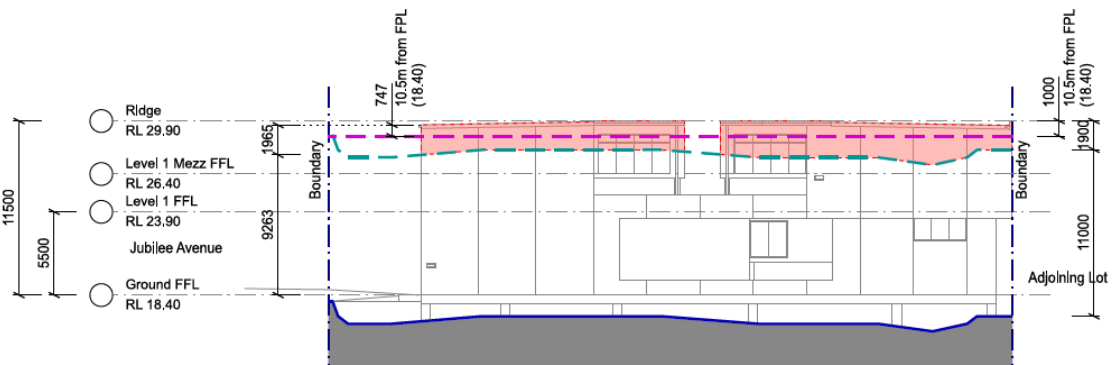


Figure 4:

Height Analysis Diagram –West Elevation (Source: Drawing 700 SBA Architects)

1.5 Clause 4.6(3)(a) Is compliance with the development standard unreasonable or unnecessary in the circumstances of the case?

Historically the most commonly invoked way to establish that a development standard was unreasonable or unnecessary was satisfaction of the first test of the five set out in *Wehbe v Pittwater Council* [2007] NSWLEC 827 which requires that the objectives of the standard are achieved notwithstanding the non-compliance with the standard.

This was re-affirmed in the matter of *Randwick City Council v Mical Holdings Pty Ltd* [2016] NSWLEC 7 [34] the Chief Judge held that “establishing that the development would not cause environmental harm and is

consistent with the objectives of the development standards is an established means of demonstrating that compliance with the development standard is unreasonable or unnecessary”.

Whilst it is only necessary to address the first method of the five-part test described in *Wehbe v Pittwater Council*. [2007] NSWLEC 827, which alone is sufficient to satisfy the ‘unreasonable and unnecessary’ requirement, all five tests are addressed below followed by a concluding position which demonstrates that compliance with the development standard is unreasonable and unnecessary in the circumstances of the case:

**1. the objectives of the standard are achieved notwithstanding non-compliance with the standard;**

The specific objectives of the building height development standard, as specified in clause 4.3 of the PLEP are identified below. A comment on the proposal’s consistency with each objective is also provided.

- (a) to ensure that any building, by virtue of its height and scale, is consistent with the desired character of the locality,

The desired future character statement for the Warriewood Valley Locality in Part A4.16 of the Pittwater 21 Development Control Plan indicates that the industrial/business area is defined by up to three storey large complexes that contain smaller units. The proposed development consists of two levels. The industrial units each have a small mezzanine area.

In this regard the development does not result in any inconsistency with the height or scale of buildings described in the relevant locality statement.

- (b) to ensure that buildings are compatible with the height and scale of surrounding and nearby development,

The eastern boundary of the site adjoins a property zoned IN2 Light Industrial. An 11-metre height limit applies to the site. Despite the zoning of the adjoining land, and the height permitted, the site is currently improved by two, single storey dwellings, one of which is setback approximately 5 metres from the eastern boundary of the subject site.

The eastern side of the proposed building has a height that is approximately 3-4 metres below the maximum 11 metre height limit. The building therefore provides an appropriate transition in height to the adjoining residential dwellings to the east.

The non-compliance with the height limit occurs on the western side of the building. The ridge of the building has a maximum height of RL of 29.90. This height is generally consistent with the height of the adjoining building to the west which has a height of around RL28.2.

The height of the proposed building relates to the varied scale of the development to the east and the west despite the variation to the height of buildings standard on the western side of the building.

- (c) to minimise any overshadowing of neighbouring properties,

The shadow diagrams prepared by SBA Architects demonstrate the proposed development will not result in any non-complying impacts on the adjoining properties.

The non-compliance with the height of buildings standard is greatest on the western side of the building. The properties to the south and west are improved by industrial buildings. As such the non-complying part of the building does not result in any unreasonable shadow impacts.

(d) to allow for the reasonable sharing of views,

The variation to the height of buildings standard will not impact on any scenic views having regard to the heights of the surrounding buildings and the topography of the site and surrounds.

(e) to encourage buildings that are designed to respond sensitively to the natural topography,

The proposed development does not require an unreasonable or excessive amount of excavation or fill. The variation to the height of buildings standard is not a result of the building failing to respond appropriately to the gradual fall of the site from the east to the west.

(f) to minimise the adverse visual impact of development on the natural environment, heritage conservation areas and heritage items.

The proposed development will not result in any unreasonable impacts on the natural environment noting that the building has been designed so that flood storage is not reduced and the building is designed to minimise the potential impacts from flooding.

The site is not located within a heritage conservation area nor it is in the visual catchment of any heritage items.

**2. the underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary;**

The objectives and purpose of the height control is relevant to the proposed development. The proposed development is consistent with those objectives as detailed above.

**3. the underlying object of purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable;**

The objective of the height control is to achieve an appropriate height on the site which is compatible with the context of the site and preserves the amenity of adjacent properties and does not adversely impact on the natural environment or built and cultural heritage. The proposed development the proposal successfully achieves these objectives.

**4. the development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable;**

The standard has not been abandoned or destroyed by Council's actions.

**5. the zoning of the particular land is unreasonable or inappropriate so that a development standard appropriate for that zoning is also unreasonable and unnecessary as it applies to the land and compliance with the standard would be unreasonable or unnecessary. That is, the particular parcel of land should not have been included in the particular zone.**

The proposed zoning of the land is reasonable and appropriate.

Strict compliance with the building height control is unreasonable and unnecessary under the circumstances for the following reasons:

- The proposed development consistent with the PLEP objectives for building height as detailed above.
- The proposed development is consistent with the objectives of the B7 Business Park zone as detailed below.
- The proposed building height responds to the heights of the surrounding development and provides an appropriate height transition as detailed above.
- The proposed height non-compliance does not result in any unreasonable impacts on the amenity of the surrounding properties.

#### 1.6 Clause 4.6(3)(b) Are there are sufficient environmental planning grounds to justify contravening the development standard?

The Land & Environment Court matter of Initial Action Pty Ltd v Woollahra Council [2018] NSWLEC 2018, provides assistance in relation to the consideration of sufficient environmental planning grounds whereby Preston J observed that:

- in order for there to be 'sufficient' environmental planning grounds to justify a written request under clause 4.6, the focus must be on the aspect or element of the development that contravenes the development standard and the environmental planning grounds advanced in the written request must justify contravening the development standard, not simply promote the benefits of carrying out the development as a whole; and
- there is no basis in Clause 4.6 to establish a test that the non-compliant development should have a neutral or beneficial effect relative to a compliant development.

Section 1.6 of this clause 4.6 request details the proposal's consistency with the objectives of the standard. This discussion addresses key environmental planning grounds being the proposed development's consistency with the desired future character of the locality (in terms of the height and scale of the building) (which relates to objects (c) and (g) of the EP& Act), the impact of the development on the amenity of the adjoining properties (object (g) of the Act) and the impact of the development on the natural environment (object (e) of the Act).

In addition to these environmental planning grounds allowing the variation to the standard ensures that adequate ceiling heights can be provided to the tenancies on the western side of the building. The ceiling heights proposed will allow for the flexible of use of these tenancies. Requiring strict compliance with the standard in this instance would reduce the usability of the tenancies on the western side of the building without delivering a noticeable improvement to the streetscape or any necessary improvement to the amenity of the adjoining properties.

The proposed variation to the height of buildings standard is not associated with any inconsistencies with the objects of the Act. The absence of any inconsistencies with the objects of the Act demonstrates that the proposed development as a whole is an acceptable outcome on the site, despite the variation to one aspect of the development. The proposal's consistency with the objects of the Act (other than those detailed above) is as follows:

- The development provides an employment generating use on land that has been zoned for such a use. As such the development is consistent with object (c) of the EP&A Act which seeks to promote the orderly and economic use and development of land and object (a) of the act which promotes the social and economic welfare of the community.
- The required services and utilities are available to the site (object c of the EP&A Act).
- The site has not been identified as having built or cultural heritage significance and as such the development is compatible with object (f) of the EP&A Act.
- The pattern and form of the development is compatible with the character of the local area as detailed in the Statement of Environmental Effects that accompanies the application. The development is therefore consistent with object (g) of the EP&A Act despite the variation proposed.
- The development has been designed to retain existing trees where reasonable and appropriate and provide replacement plantings. Consideration has been given to the vulnerability, position and condition of the existing trees in the design of the development. The development will not impact on any threatened species, ecological communities and their habitats. In this regard the development is consistent with object (e) of the EP&A Act which seeks to protect the environment including the conservation of threatened and other species of native animals and plants, ecological communities and their habitats.
- The floor levels of the building are consistent with the Flood Planning Level of the site to protect the health and safety of occupants (object (h) of the EP&A Act).
- The development has been designed so that flood storage is not reduced and to ensure that the development does not result in any increased flood risk to other properties (object g and h).

**1.7 Clause 4.6(4)(a)(i) consent authority satisfied that this written request has adequately addressed the matters required to be demonstrated by Clause 4.6(3)**

Clause 4.6(4)(a)(i) states that development consent must not be granted for development that contravenes a development standard unless the consent authority is satisfied that the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3).

These matters are comprehensively addressed above in this written request with reference to the five-part test described in *Wehbe v Pittwater Council* [2007] NSWLEC 827 for consideration of whether compliance with a development standard is unreasonable or unnecessary in the circumstances of the case. In addition, the establishment of environmental planning grounds is provided, with reference to the matters specific to the proposal and site, sufficient to justify contravening the development standard.

**1.8 Clause 4.6(4)(a)(ii) consent authority satisfied that the proposal is in the public interest because it is consistent with the zone and development standard objectives**

Clause 4.6(4)(a)(ii) states that development consent must not be granted for development that contravenes a development standard unless the consent authority is satisfied that the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out.

Whilst the objectives of the development standard have already been addressed previously in this written request, for the purpose of completeness, these objectives are again considered below in specific reference to Clause 4.6(4)(a)(ii)



### Objective of the Development Standard

The proposal's consistency with the objectives of the development standard have been addressed in detail in this clause 4.6 request.

### Objective of the Zone

Clause 4.6(4) also requires consideration of the relevant zone objectives. The site is located within the B7 Business Park zone and the objectives of the zone are:

- To provide a range of office and light industrial uses.
- To encourage employment opportunities.
- To enable other land uses that provide facilities or services to meet the day to day needs of workers in the area.
- To provide healthy, attractive, functional and safe business areas.

The development includes light industrial premises, each with an ancillary office space and storage premises. The proposed uses are permitted with consent in the zone and will generate employment opportunities.

The development will provide a positive contribution to the streetscape of Jubilee Avenue in the building adopts a similar scale and form as other commercial/industrial buildings in the surrounding area. The building has also been designed to minimise the visual and acoustic impacts on the adjoining residential dwelling and the development does not result in any non-complying impacts on the solar access available to the residential dwelling.

The layout of the uses and the arrangement of the units within the building is simple and efficient to maximise the functionality of the space for future users of the building.

The development has been designed to provide safe pedestrian and vehicular access to the site as detailed in the accompanying Traffic and Parking Impact Assessment.

The retention of existing street trees and the provision of landscaping in the setbacks of the building will positively contribute to the streetscape.

The design of the development has been based on a thorough analysis of the site and surrounding area. The scale, setbacks, quantum of landscaping, internal layout and materials and finishes of the development are compatible with or responsive to the particular features of the adjoining sites and surrounding development.

In this regard the development is consistent with the objectives of the B7 zone.

### 1.9 Clause 4.6(5) Secretary Considerations

The matters for consideration under Clause 4.6(5) are addressed below:

- (5) In deciding whether to grant concurrence, the Secretary must consider:
  - (a) whether contravention of the development standard raises any matter of significance for State or regional environmental planning,

The contravention of the standard does not raise any matters of significance for state or regional environmental planning. The development does not impact upon or have implications for any state policies in the locality or impacts which would be considered to be of state or regional significance.

(5) In deciding whether to grant concurrence, the Secretary must consider:

(b) the public benefit of maintaining the development standard,

This Clause 4.6 request has demonstrated there are significant environmental planning benefits associated with the contravention of the standard. There is no material impact or benefit associated with strict adherence to the development standard and in my view, there is no compelling reason or public benefit derived from maintenance of the standard.

#### 1.10 Objectives of Clause 4.6

The specific objectives of Clause 4.6 are:

(a) to provide an appropriate degree of flexibility in applying certain development standards to particular development,

(b) to achieve better outcomes for and from development by allowing flexibility in particular circumstances.

The development application and clause 4.6 request demonstrate that it is appropriate in this circumstance to provide flexibility in the application of the height of buildings development standard because it will allow for a form of development which is consistent with scale of developments in the vicinity of the site and will deliver a built form that is responsive to the character of development in the street. The development also does not result in any unreasonable impacts on the amenity of the surrounding properties.

#### 1.11 Conclusion

The proposed variation to the height of buildings development standard contained within clause 4.3 of the PLEP has been found to be reasonable and appropriate in the circumstances of the case. In addition there are sufficient environmental planning grounds to justify the variation. In this regard it is reasonable and appropriate to vary the height of buildings development standard to the extent proposed.