

APPLICATION FOR MODIFICATION ASSESSMENT REPORT

Application Number:	Mod2022/0122
----------------------------	--------------

Responsible Officer:	Adam Susko
Land to be developed (Address):	Lot 11 DP 577062, 23 Fisher Road DEE WHY NSW 2099
Proposed Development:	Modification of Development Consent DA2018/1574 granted for construction of a mixed development comprising three residential flat buildings, commercial use of a heritage listed building, car parking, infrastructure and landscaping
Zoning:	Warringah LEP2011 - Land zoned B4 Mixed Use
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Land and Environment Court Action:	No
Owner:	Salvation Army (Nsw) Property Trust Hamptons By Rose Pty Ltd
Applicant:	The Trustee for the Northern Beaches Trust

Application Lodged:	01/04/2022
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Refer to Development Application
Notified:	08/04/2022 to 22/04/2022
Advertised:	Not Advertised
Submissions Received:	0
Clause 4.6 Variation:	Nil
Recommendation:	Approval

PROPOSED DEVELOPMENT IN DETAIL

This Section 4.55(1A) Modification Application seeks consent to modify the approved Development Consent No. DA2018/1574 in the following ways:

1. Change of Description

The application seeks to modify the description of approved development from:

Construction of a mixed use development comprising three residential flat buildings, commercial use of a heritage listed building, car parking, infrastructure and landscaping.

To:

*Construction of a mixed use development comprising three residential flat buildings, commercial use of a heritage listed building, car parking, infrastructure, landscaping **and strata subdivision**.*

The Applicant contends that Council erroneously deleted the words 'strata subdivision' from the Development Consent.

2. Alterations and Additions to the Approved Building

The application seeks to amend elements of the apartment design to accord with future Construction Certificate design details. Elements include the addition of external structure columns and plant design for mechanical services.

Internal and external modifications are proposed to improve occupant amenity.

The changes sought are detailed on the architectural plans and in the submitted Statement of Environmental Effects.

Herein, these works are described as the **modifications**.

ASSESSMENT INTRODUCTION

The application has been assessed in accordance with the requirements of the Environmental Planning and Assessment Act 1979 and the associated Regulations. In this regard:

- An assessment report and recommendation has been prepared (the subject of this report) taking into account all relevant provisions of the Environmental Planning and Assessment Act 1979, and the associated regulations;
- A site inspection was conducted and consideration has been given to the impacts of the development upon the subject site and adjoining, surrounding and nearby properties;
- Notification to adjoining and surrounding properties, advertisement (where required) and referral to relevant internal and external bodies in accordance with the Act, Regulations and relevant Development Control Plan;
- A review and consideration of all submissions made by the public and community interest groups in relation to the application;
- A review and consideration of all documentation provided with the application (up to the time of determination);
- A review and consideration of all referral comments provided by the relevant Council Officers, State Government Authorities/Agencies and Federal Government Authorities/Agencies on the proposal.

SUMMARY OF ASSESSMENT ISSUES

Warringah Local Environmental Plan 2011 - 4.3 Height of buildings
Warringah Development Control Plan - C1 Subdivision
Warringah Development Control Plan - D7 Views

SITE DESCRIPTION

Property Description:	Lot 11 DP 577062 , 23 Fisher Road DEE WHY NSW 2099
Detailed Site Description:	The site is irregularly shaped, with frontages to Fisher Road to the west and St David Avenue to the south, and a total area of 10,060m ² . The site currently contains a number of

one and two storey buildings, which were previously used for aged care and community services operated by the Salvation Army. One of the buildings 'Pacific Lodge', located centrally on the site, is identified as an item of local heritage significance under the provisions of WLEP 2011.

The site undulates, with varying ground levels ranging from RL 28m AHD to RL 43m AHD, and areas of significant rock outcrops and canopy trees interspersed across the site. Vehicular access to the site is gained by two separate driveways on Fisher Road, one on either side of the Fisher Road/McIntosh Road roundabout. The primary pedestrian access point is located centrally on the Fisher Road frontage, with an unregulated pedestrian access way connecting the site to Civic Road to the east; an internal private road on the adjoining land owned by Northern Beaches Council containing Council Chambers, Dee Why Library and an at-grade public carpark.

Fisher Road is a four lane regional road. The Fisher Road street frontage curves around the Fisher Road/McIntosh Road roundabout. The properties on the western side of Fisher Road are zoned R2 Low Density Residential and are characterised by single storey dwellings. The property immediately to the north of the site on Fisher Road contains a residential flat building, with the Northern Beaches PCYC building and residential flat buildings further north along Fisher Road.

St David Avenue is a four lane local road. The length of the St David Avenue Street frontage features a significant rock embankment and canopy trees, up to 4m above the level of the adjacent footpath. The properties on the southern side of St David Avenue are zoned B4 Mixed Use, and contain a police station, a church and shoptop housing development

The site is located within Area 10 – Civic Centre of the Dee Why Mixed Use Area, as mapped by WDCP 2011. The site is located approximately 100m from Pittwater Road and the Dee Why Town Centre, and approximately 1km from Dee Why Beach.

Map:



SITE HISTORY

- Development Application 2018/1574**
 Construction of a mixed development comprising three residential flat buildings, commercial use of a heritage listed building, car parking, infrastructure and landscaping.

Approved by the Sydney North Planning Panel on 18 June 2019.

- Modification Application 2020/0097**
 Sought to amend DA2018/1574 by providing additional car parking spaces, revisions to the internal subfloor layout, modifications to materials and finishes throughout, and modification to Conditions 1A, 20, 21, 22, 77, 88, 97 and 98.

Approved under delegated authority on 15 April 2020.

- Modification Application 2021/0041**
 Sought to add an additional level on top of each flat building to provide for an additional 21 apartments.

Refused by the Sydney North Planning Panel on 5 August 2021.

The Panel found that the height was unacceptable, that the proposal was not appropriately described as "substantially the same" and that the additional height would adversely impact the heritage item on site.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

The relevant matters for consideration under the Environmental Planning and Assessment Act, 1979, are:

The application has been assessed in accordance with the requirements of the Environmental Planning

and Assessment Act 1979 and the associated Regulations. In this regard:

- An assessment report and recommendation has been prepared and is attached taking into all relevant provisions of the Environmental Planning and Assessment Act 1979 and associated regulations;
- A site inspection was conducted and consideration has been given to the impacts of the development upon all lands whether nearby, adjoining or at a distance;
- Consideration was given to all documentation provided (up to the time of determination) by the applicant, persons who have made submissions regarding the application and any advice given by relevant Council / Government / Authority Officers on the proposal;

In this regard, the consideration of the application adopts the previous assessment detailed in the Assessment Report for DA2018/1574, in full, with amendments detailed and assessed as follows:

The relevant matters for consideration under Section 4.55(1A) of the Environmental Planning and Assessment Act, 1979, are:

Section 4.55(1A) - Other Modifications	Comments
<p>A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to and in accordance with the regulations, modify the consent if:</p>	
<p>(a) it is satisfied that the proposed modification is of minimal environmental impact, and</p>	<p>Yes</p> <p>The modification, as proposed in this application, is considered to be of minimal environmental impact for the following reasons:</p> <ul style="list-style-type: none"> • The physical changes to the building do not result in any additional excavation or tree removal on the site. • The works are not found to result in any additional impact to the heritage item on the site.
<p>(b) it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which consent was originally granted and before that consent as originally granted was modified (if at all), and</p>	<p>The development, as proposed, has been found to be such that Council is satisfied that the proposed works are substantially the same as those already approved under DA2018/1574 for the following reasons:</p> <p><u>Subdivision</u></p> <p>This report details later on that the parent development consent inadvertently deleted reference to 'subdivision' from the approved description of development. The applicant has advised that because there is a heritage item on the site subdivision cannot occur via a Complying Development Certificate.</p> <p>The subdivision aspect of the proposal has no discernible impact, and it can readily be anticipated that the building was always meant to be strata subdivided.</p> <p>For these reasons, and those detailed more comprehensively later in this report, Council is</p>

Section 4.55(1A) - Other Modifications	Comments
	<p>satisfied that the subdivision aspect is substantially the same development.</p> <p><u>Works</u> The physical works sought to the building are, commensurate to the overall scale of the project, reasonably minor, and could appropriately be described as refinements of the architecture to improve constructability and usability.</p> <p>The extent of changes proposed is not of such a magnitude that would be tantamount to an unfavourable conclusion being reached when assessed against cl.4.55(1a)(b).</p>
<p>(c) it has notified the application in accordance with:</p> <p>(i) the regulations, if the regulations so require,</p> <p>or</p> <p>(ii) a development control plan, if the consent authority is a council that has made a development control plan under section 72 that requires the notification or advertising of applications for modification of a development consent, and</p>	<p>The application has been publicly exhibited in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000, and the Northern Beaches Community Participation Plan.</p>
<p>(d) it has considered any submissions made concerning the proposed modification within any period prescribed by the regulations or provided by the development control plan, as the case may be.</p>	<p>No submissions were received in relation to this application.</p>

Section 4.15 Assessment

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

The relevant matters for consideration under Section 4.15 of the Environmental Planning and Assessment Act, 1979, are:

Section 4.15 'Matters for Consideration'	Comments
<p>Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument</p>	<p>See discussion on “Environmental Planning Instruments” in this report.</p>
<p>Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning</p>	<p>Draft State Environmental Planning Policy (Remediation of Land) seeks to replace the existing SEPP No. 55 (Remediation of Land). Public consultation on the draft policy was completed on 13 April</p>

Section 4.15 'Matters for Consideration'	Comments
instrument	2018. The subject site has been used for residential purposes for an extended period of time. The proposed development retains the residential use of the site, and is not considered a contamination risk.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Warringah Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	<p><u>Division 8A</u> of the EP&A Regulation 2000 requires the consent authority to consider Prescribed conditions of development consent. These matters have been addressed via a condition in the original consent.</p> <p><u>Clause 50(1A)</u> of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This documentation was submitted with the original application.</p> <p><u>Clauses 54 and 109</u> of the EP&A Regulation 2000 allow Council to request additional information. No additional information was requested in this case.</p> <p><u>Clause 92</u> of the EP&A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition in the original consent.</p> <p><u>Clauses 93 and/or 94</u> of the EP&A Regulation 2000 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This matter has been addressed via a condition in the original consent.</p> <p><u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition in the original consent.</p> <p><u>Clause 143A</u> of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer prior to the issue of a Construction Certificate. This matter has been addressed via a condition in the original consent.</p>
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	(i) Environmental Impact The environmental impacts of the proposed development on the natural and built environment are addressed under the Warringah/Manly/Pittwater 21 Development Control Plan section in this report.

Section 4.15 'Matters for Consideration'	Comments
	<p>(ii) Social Impact The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) Economic Impact The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.</p>
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on “Notification & Submissions Received” in this report.
Section 4.15 (1) (e) – the public interest	No matters have arisen in this assessment that would justify the refusal of the application in the public interest.

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited from 08/04/2022 to 22/04/2022 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000 and the Community Participation Plan.

As a result of the public exhibition of the application Council received no submissions.

REFERRALS

Internal Referral Body	Comments			
Building Assessment - Fire and Disability upgrades	<p>Supported, without conditions The application has been investigated with respect to aspects relevant to the Building Certification and Fire Safety Department. There are no objections to approval of the development.</p> <p>Note: The proposed development may not comply with some requirements of the BCA. Issues such as these however may be determined at Construction Certificate stage.</p>			
Strategic and Place Planning (Heritage Officer)	<p>Supported, without conditions</p> <table border="1"> <thead> <tr> <th>HERITAGE COMMENTS</th> </tr> </thead> <tbody> <tr> <td>Discussion of reason for referral</td> </tr> <tr> <td>This application has been referred as the site contains a listed local heritage item and is also within the vicinity of a number of local</td> </tr> </tbody> </table>	HERITAGE COMMENTS	Discussion of reason for referral	This application has been referred as the site contains a listed local heritage item and is also within the vicinity of a number of local
HERITAGE COMMENTS				
Discussion of reason for referral				
This application has been referred as the site contains a listed local heritage item and is also within the vicinity of a number of local				

Internal Referral Body	Comments		
	<p>heritage items and a proposed State heritage precinct. The site contains the building known as "Pacific Lodge" which is listed in Schedule 5 of Warringah Local Environmental Plan 2011 as Item I43 - Pacific Lodge (Salvation Army), 15-23 Fisher Road, Dee Why.</p> <p>Local heritage items in the vicinity include Item I42 Dee Why Fire Station - 38 Fisher Road; Item I50 Dee Why Public Library and Item I137 Civic Centre Landscaping. The site is also adjacent to a proposed State heritage precinct - Dee Why Civic Precinct, which is with the Minister for Heritage for gazettal.</p>		
	<p>Details of heritage items affected</p>		
	<p>Details of the heritage item on site, as contained within the Warringah Heritage Inventory, are: Item I43 - Pacific Lodge (Salvation Army), 15-23 Fisher Road, Dee Why <u>Statement of Significance</u> A rare example of a Victorian Filigree residence and one of the oldest structures in the area. Historically important for its association with Elizabeth Jenkins & the continued occupation & use of the building by the Salvation Army since the 1890's. <u>Physical Description</u> Substantial elevated single storey building of rendered masonry. Corrugated iron hipped roof with tall rendered chimneys. Verandah on 3 sides with cast iron balustrade, columns & valence. Balustrade panels specially made with the letters "SAHR". Sympathetic refurbishment works have been undertaken. Restored verandah includes original cast iron balustrade panels. Adapted for use as administration offices for "Pacific Lodge".</p>		
	<p>Other relevant heritage listings</p>		
	<p>Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005</p>	<p>No</p>	<p>Comment if applicable</p>
	<p>Australian Heritage Register</p>	<p>No</p>	
	<p>NSW State Heritage Register</p>	<p>No</p>	
	<p>National Trust of Aust (NSW) Register</p>	<p>No</p>	
	<p>RAIA Register of 20th Century Buildings of Significance</p>	<p>No</p>	
	<p>Other</p>	<p>No</p>	

Internal Referral Body	Comments
	<p style="text-align: center;">Consideration of Application</p> <p>This application is to modify Consent 2018/1574 which approved a mixed, but largely residential multi-storey development, including the retention of the heritage listed building on-site, with a defined heritage curtilage. A previous modification has also been approved (Mod2020/0097).</p> <p>This current modification seeks approval for a number of changes to the apartment buildings and the inclusion of strata subdivision in the description of the development. Changes to the apartments affect Buildings A, B and C and include structural columns added to balconies, addition of air conditioning units on balconies and internal layout changes. These layout changes have resulted in minor changes to the external walls of units in Building A, however this does not result in an increased building footprint. The addition of roof plant on Buildings A, B and C is also proposed for mechanical services. This plant is located next to lift overruns on each building and will not be visible from the heritage building.</p> <p>These changes do not further encroach on the defined curtilage of the heritage building and will not have an adverse impact upon views from or to this heritage item. In relation to strata subdivision, this was always envisaged for this site and there are no objections from a heritage point of view.</p> <p>Therefore, no objections are raised on heritage grounds and no conditions required.</p> <p><u>Consider against the provisions of CL5.10 of WLEP 2011:</u> Is a Conservation Management Plan (CMP) Required? Yes Has a CMP been provided? Provided with original DA Is a Heritage Impact Statement required? Yes Has a Heritage Impact Statement been provided? Amended Heritage Statement provided.</p> <p style="text-align: center;">Further Comments</p> <p>COMPLETED BY: Janine Formica, Heritage Planner DATE: 29 April 2022</p>
Strategic and Place Planning (Urban Design)	<p>Supported, without conditions</p> <p>The application seeks consent to modify Development Consent (DA/2018/1574), previously approved under Sydney North Planning Panel in June 2019. The modification application seeks approval for the following changes to the approved development conditions and administrative changes as follows;</p> <ol style="list-style-type: none"> 1. Amending the approval description to include strata subdivision; 2. Minor amendments to various apartments for to accord with future construction certificate design.

Internal Referral Body	Comments
	Urban Design raise no objection to the proposed modifications.

External Referral Body	Comments
Ausgrid: (SEPP Infra.)	<p><i>Supported, with conditions (in parent assessment)</i></p> <p>The proposal was referred to Ausgrid who provided a response stating that the proposal is acceptable subject to compliance with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice. These recommendations are addressed in the advice of the parent Notice of Determination.</p>

ENVIRONMENTAL PLANNING INSTRUMENTS (EPIS)*

All, Environmental Planning Instruments (SEPPs, REPs and LEPs), Development Controls Plans and Council Policies have been considered in the merit assessment of this application.

In this regard, whilst all provisions of each Environmental Planning Instruments (SEPPs, REPs and LEPs), Development Controls Plans and Council Policies have been considered in the assessment, many provisions contained within the document are not relevant or are enacting, definitions and operational provisions which the proposal is considered to be acceptable against.

As such, an assessment is provided against the controls relevant to the merit consideration of the application hereunder.

State Environmental Planning Policies (SEPPs) and State Regional Environmental Plans (SREPs)

SEPP 65 - Design Quality of Residential Apartment Development

Clause 4 of State Environmental Planning Policy No. 65 – Design Quality for Residential Apartment Development (SEPP 65) stipulates that:

(1) This Policy applies to development for the purpose of a residential flat building, shop top housing or mixed use development with a residential accommodation component if:

(a) the development consists of any of the following:

- (i) the erection of a new building,
- (ii) the substantial redevelopment or the substantial refurbishment of an existing building,
- (iii) the conversion of an existing building, and

(b) the building concerned is at least 3 or more storeys (not including levels below ground level (existing) or levels that are less than 1.2 metres above ground level (existing) that provide for car parking), and

(c) the building concerned contains at least 4 or more dwellings.

Clause 4 does not differentiate between Development Applications and Modification Applications. The Design Quality Principles and an assessment against the provisions of the Apartment Design Guide (ADG) have been completed in the parent assessment report. However, as this proposal seeks to amend portions of the approved flat buildings, SEPP 65 is applicable to the proposal.

Herein this section of the report will only assess the relevant design guidance that is changing from the original proposal to this modification.

Development Control	Criteria / Guideline	Comments												
Part 3 Siting the Development														
Visual Privacy	<p>Minimum required separation distances from buildings to the side and rear boundaries are as follows:</p> <table border="1" data-bbox="472 779 1031 1137"> <thead> <tr> <th>Building height</th> <th>Habitable rooms and balconies</th> <th>Non-habitable rooms</th> </tr> </thead> <tbody> <tr> <td>Up to 12m (4 storeys)</td> <td>6m</td> <td>3m</td> </tr> <tr> <td>Up to 25m (5-8 storeys)</td> <td>9m</td> <td>4.5m</td> </tr> <tr> <td>Over 25m (9+ storeys)</td> <td>12m</td> <td>6m</td> </tr> </tbody> </table> <p><i>Note: Separation distances between buildings on the same site should combine required building separations depending on the type of rooms.</i></p> <p><i>Gallery access circulation should be treated as habitable space when measuring privacy separation distances between neighbouring properties.</i></p>	Building height	Habitable rooms and balconies	Non-habitable rooms	Up to 12m (4 storeys)	6m	3m	Up to 25m (5-8 storeys)	9m	4.5m	Over 25m (9+ storeys)	12m	6m	<p>Does not comply (satisfactory on merit)</p> <p>The parent development scheme sought several variations to the 3F Visual Privacy guidance in that several buildings were closer together than the guidance expects. Those variations were considered to be acceptable and it was concluded that the objective of the control (visual privacy) was achieved.</p> <p>This proposal results in a minor change to the approved separation at Level 5 whereby balconies facing each other are 12.0m apart where 18m is required. The applicant contends that the balconies are generous in their proportions and that compliance could be achieved by reducing their scale, but that such a change would not be tantamount to a superior amenity or provision of privacy.</p> <p>The 12.0m space between the balconies is landscaped.</p> <p>In this instance it is considered that a 12.0m separation infilled by landscaping provides an acceptable degree of visual privacy, and a variation to the guidance can therefore be accepted in this instance.</p>
Building height	Habitable rooms and balconies	Non-habitable rooms												
Up to 12m (4 storeys)	6m	3m												
Up to 25m (5-8 storeys)	9m	4.5m												
Over 25m (9+ storeys)	12m	6m												

Part 4 Designing the Building

Amenity

<p>Apartment Size and Layout</p>	<p>In open plan layouts (where the living, dining and kitchen are combined) the maximum habitable room depth is 8m from a window.</p>	<p>Does not comply (satisfactory on merit) The application includes modifications to the internal layout of the building including some variations to the approved balconies and fenestrations.</p> <p>In doing so, the depths of eight (8) apartments have increased to be a maximum of 9.2 to 10.5m from a window. The subject apartments maintain an appropriate level of amenity, and the change is not significant commensurate to the approved development.</p> <p>The modification results in 6% of the units having a depth greater than guidance which is considered to be a minor and acceptable variation.</p>															
<p>Private Open Space and Balconies</p>	<p>All apartments are required to have primary balconies as follows:</p> <table border="1" data-bbox="469 1384 1032 1753"> <thead> <tr> <th>Dwelling Type</th> <th>Minimum Area</th> <th>Minimum Depth</th> </tr> </thead> <tbody> <tr> <td>Studio apartments</td> <td>4m²</td> <td>-</td> </tr> <tr> <td>1 bedroom apartments</td> <td>8m²</td> <td>2m</td> </tr> <tr> <td>2 bedroom apartments</td> <td>10m²</td> <td>2m</td> </tr> <tr> <td>3+ bedroom apartments</td> <td>12m²</td> <td>2.4m</td> </tr> </tbody> </table> <p>The minimum balcony depth to be counted as contributing to the balcony area is 1m</p>	Dwelling Type	Minimum Area	Minimum Depth	Studio apartments	4m ²	-	1 bedroom apartments	8m ²	2m	2 bedroom apartments	10m ²	2m	3+ bedroom apartments	12m ²	2.4m	<p>Does not comply (satisfactory on merit) Building A of the development include seven (7) two (2) bedroom units which have private open spaces of 9m² therefore being deficient by 1m².</p> <p>The shortfall proposed is not significant nor impeding on the amenity of future occupants. It is considered that the shortfall in private open space is offset by the considerable communal open space provided, and the sites proximity to other outdoor recreational opportunities.</p>
Dwelling Type	Minimum Area	Minimum Depth															
Studio apartments	4m ²	-															
1 bedroom apartments	8m ²	2m															
2 bedroom apartments	10m ²	2m															
3+ bedroom apartments	12m ²	2.4m															

STANDARDS THAT CANNOT BE USED TO REFUSE DEVELOPMENT CONSENT

Clause 30 of SEPP 65 Standards that cannot be used as grounds to refuse development consent or modification of development consent states that:

(1) If an application for the modification of a development consent or a development application for the carrying out of development to which this Policy applies satisfies the following design criteria, the consent authority must not refuse the application because of those matters:

- (a) if the car parking for the building will be equal to, or greater than, the recommended minimum amount of car parking specified in Part 3J of the Apartment Design Guide,
- (b) if the internal area for each apartment will be equal to, or greater than, the recommended minimum internal area for the relevant apartment type specified in Part 4D of the Apartment Design Guide,
- (c) if the ceiling heights for the building will be equal to, or greater than, the recommended minimum ceiling heights specified in Part 4C of the Apartment Design Guide.

Note. The Building Code of Australia specifies minimum ceiling heights for residential flat buildings.

Comment:

The modification application is not recommended to be refused on any of the above grounds.

(2) Development consent must not be granted if, in the opinion of the consent authority, the development or modification does not demonstrate that adequate regard has been given to:

- (a) the design quality principles, and
- (b) the objectives specified in the Apartment Design Guide for the relevant design criteria.

(3) To remove doubt:

- (a) subclause (1) does not prevent a consent authority from refusing an application in relation to a matter not specified in subclause (1), including on the basis of subclause (2), and
- (b) the design criteria specified in subclause (1) are standards to which clause 79C (2) of the Act applies.

Note. The provisions of this clause do not impose any limitations on the grounds on which a consent authority may grant or modify development consent.

Comment:

Council is satisfied that the proposed development is generally consistent with the approved development, and that adequate regard to the design quality principles and objectives of the ADG has been given.

SEPP (Building Sustainability Index: BASIX) 2004

A BASIX certificate has been submitted with the application (see Certificate No. 944202M_04 dated 18 February 2022).

The BASIX Certificate indicates that the development will achieve the following:

Commitment	Required Target	Proposed
------------	-----------------	----------

Water	40	40
Thermal Comfort	Pass	Pass
Energy	35	35

A condition has been included in the recommendation of this report requiring compliance with the commitments indicated in the BASIX Certificate.

SEPP (Transport and Infrastructure) 2021

Ausgrid

Section 2.48 of Chapter 2 requires the Consent Authority to consider any development application (or an application for modification of consent) for any development carried out:

- within or immediately adjacent to an easement for electricity purposes (whether or not the electricity infrastructure exists).
- immediately adjacent to an electricity substation.
- within 5.0m of an overhead power line.
- includes installation of a swimming pool any part of which is: within 30m of a structure supporting an overhead electricity transmission line and/or within 5.0m of an overhead electricity power line.

Comment:

The proposal was referred to Ausgrid who provided a response stating that the proposal is acceptable subject to compliance with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice. These recommendations are addressed in the advice of the parent Notice of Determination.

SEPP (Resilience and Hazards) 2021

Chapter 4 – Remediation of Land

Sub-section 4.6 (1)(a) of Chapter 4 requires the Consent Authority to consider whether land is contaminated. Council records indicate that the subject site has been used for residential purposes for a significant period of time with no prior land uses. In this regard it is considered that the site poses no risk of contamination and therefore, no further consideration is required under sub-section 4.6 (1)(b) and (c) of this Chapter and the land is considered to be suitable for the residential land use.

Warringah Local Environmental Plan 2011

Is the development permissible?	Yes
After consideration of the merits of the proposal, is the development consistent with:	
aims of the LEP?	Yes
zone objectives of the LEP?	Yes

Principal Development Standards

Development Standard	Requirement	Approved	Proposed	% Variation	Complies
Height of Buildings:	13.0m	15.9m	No change	No change	No change

Compliance Assessment

Clause	Compliance with Requirements
4.3 Height of buildings	Yes
5.3 Development near zone boundaries	Yes
5.10 Heritage conservation	Yes
6.2 Earthworks	Yes
6.4 Development on sloping land	Yes
6.7 Residential flat buildings in Zone B4 Mixed Use	Yes
Part 7 Dee Why Town Centre	Yes
7.3 Objectives for development within Dee Why Town Centre	Yes
7.4 Development must be consistent with objectives for development and design excellence	Yes
7.5 Design excellence within Dee Why Town Centre	Yes
7.10 Allowance for external ancillary plant and roof access	Yes
7.13 Mobility, traffic management and parking	Yes

Detailed Assessment

4.3 Height of buildings

Whilst the proposal increases portions of the building height, in terms of roof plant infrastructure, the overall calculable 'Height of Buildings' is not subject to change as a part of this application.

Warringah Development Control Plan

Built Form Controls

Standard	Permitted	Approved	Proposed	Complies
<u>B2 Number of Storeys</u> Building A Building B Building C	3 storeys 3 storeys 3 storeys	4 storeys 4 storeys 4 storeys	No change No change No change	No change No change No change
<u>B3 Side Boundary Envelope</u> Building A only	5.0m x 45°	>5.0m x 45°	No change	No change
<u>B5 Side Boundary Setbacks</u> North (Building A) East (Building A)	4.5m 4.5m	15.0m to 21.2m 4.5m	No change No	No change No change

			change	
B7 Front Boundary Setbacks Primary (St David Avenue) Secondary (Fisher Road & Civic Drive)	Nil Nil to 4.5m	5.1m to 8.1m 2.8m to 10.0m	No change No change	No change No change
D1 Landscaped Open Space and Bushland Setting	40% (4,246m ²)	41.3% (4,376.9m ²)	No change	No change

Compliance Assessment

Clause	Compliance with Requirements	Consistency with Aims/Objectives
A.5 Objectives	Yes	Yes
C1 Subdivision	Yes	Yes
C2 Traffic, Access and Safety	Yes	Yes
C3 Parking Facilities	Yes	Yes
C4 Stormwater	Yes	Yes
C6 Building over or adjacent to Constructed Council Drainage Easements	Yes	Yes
C7 Excavation and Landfill	Yes	Yes
C8 Demolition and Construction	Yes	Yes
C9 Waste Management	Yes	Yes
D2 Private Open Space	Yes	Yes
D3 Noise	Yes	Yes
D6 Access to Sunlight	Yes	Yes
D7 Views	Yes	Yes
D8 Privacy	Yes	Yes
D9 Building Bulk	Yes	Yes
D10 Building Colours and Materials	Yes	Yes
D11 Roofs	Yes	Yes
D12 Glare and Reflection	Yes	Yes
D14 Site Facilities	Yes	Yes
D20 Safety and Security	Yes	Yes
D21 Provision and Location of Utility Services	Yes	Yes
D22 Conservation of Energy and Water	Yes	Yes
E1 Preservation of Trees or Bushland Vegetation	Yes	Yes
E2 Prescribed Vegetation	Yes	Yes
E6 Retaining unique environmental features	Yes	Yes
E10 Landslip Risk	Yes	Yes

Detailed Assessment

C1 Subdivision

Background

The Applicant contends that during the course of the assessment of the parent consent (DA2018/1574), Council inadvertently deleted reference to 'strata subdivision' from the final description of the "Proposed Development".

At the time of DA lodgement, the Applicant proposed the following description of works:

DA2018/1574

1.3 DESCRIPTION OF WORK				
Please describe briefly everything that you want approved by the Council, including signs, hours of operation				
Demolition of all existing structures except Pacific Lodge building. Construction of mixed use				
residential apartments, commercial space, basement car parking, landscaping and all associated				
Land subdivision to create separate lot for Pacific Lodge building. Strata subdivision of 130 apa				
Use of Pacific Lodge building as a single residence.				
Number of new dwellings	131	Number of existing dwellings	2	Number of d

The application was notified as: *Demolition works, construction of a mixed development comprising residential apartments, commercial premises, residential use of a heritage listed building and carparking, landscaping and **subdivision**.*

The description above is understood to encompass both the Torrens Title subdivision of the Pacific Lodge building, and the strata subdivision of the apartments.

During the course of the assessment, Council advised that it did not support the Torrens Title subdivision or residential use of the Pacific Lodge building. On that basis the Applicant removed these elements from the proposal.

It is considered that upon receipt of these amendments, the description of proposed development on Council's system was modified in a manner which removed the Torrens Title aspect, but also inadvertently removed the strata subdivision.

The revised description of Proposed Development in the final Assessment Report read: *Construction of a mixed use development comprising three residential flat buildings, commercial use of a heritage listed building, car parking, infrastructure and landscaping.*

The Recommendation from that same report recommended that the SNPP grant development consent to the above description, but also included **and subdivision** at the end.

In the final Notice of Determination issued, the description of Proposed Development unfortunately did not include the word "subdivision".

Assessment

It can only be assumed that the total removal of reference to 'subdivision' in the description was done erroneously and removing the strata subdivision was not intentional. The apartments in the approved buildings were always to be strata subdivided. Given the presence of a heritage item on the site, a CDC for strata subdivision cannot be issued, and thus the only way is via a Development Consent.

On the balance of probabilities, it is concluded that the removal of the term 'subdivision' was an error on Council's behalf, and this report therefore recommends that the description of Proposed Development be modified to include ***strata subdivision***.

The modification is of no impact to the environment, neighbouring properties or the finished product as approved on site.

D7 Views

It is acknowledged that a number of properties to the west have district and water views atop of the subject development site. Concerns of view loss were not raised in the exhibition period of the parent development application, and similarly no concerns have been raised during this assessment.

It is considered that the changes to the building roof form and ancillary infrastructure will not give rise to any unreasonable view loss above and beyond that of the already approved development.

Upon completion of the building, and maturity of vegetation, the changes sought under this application would be non-discernible and generally screened by vegetation.

Therefore, the proposed modifications are acceptable from a view sharing perspective.

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

The proposal will not significantly affect threatened species, populations or ecological communities, or their habitats.

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

The proposal is consistent with the principles of Crime Prevention Through Environmental Design.

CONCLUSION

The site has been inspected and the application assessed having regard to all documentation submitted by the applicant and the provisions of:

- Environmental Planning and Assessment Act 1979;
- Environmental Planning and Assessment Regulation 2000;
- All relevant and draft Environmental Planning Instruments;
- Warringah Local Environment Plan;
- Warringah Development Control Plan; and
- Codes and Policies of Council.

This assessment has taken into consideration the submitted plans, Statement of Environmental Effects, all other documentation supporting the application and public submissions, and does not result in any unreasonable impacts on surrounding, adjoining, adjacent and nearby properties subject to the conditions contained within the recommendation.

In consideration of the proposal and the merit consideration of the development, the proposal is considered to be:

- Consistent with the objectives of the DCP
- Consistent with the zone objectives of the LEP
- Consistent with the aims of the LEP
- Consistent with the objectives of the relevant EPIs
- Consistent with the objects of the Environmental Planning and Assessment Act 1979

It is considered that the proposed development satisfies the appropriate controls and that all processes and assessments have been satisfactorily addressed.

RECOMMENDATION

THAT Council as the consent authority grant approval to Modification Application No. Mod2022/0122 for Modification of Development Consent DA2018/1574 granted for construction of a mixed development comprising three residential flat buildings, commercial use of a heritage listed building, car parking, infrastructure and landscaping on land at Lot 11 DP 577062,23 Fisher Road, DEE WHY, subject to the conditions printed below:

A. Modify description of Proposed Development on Notice of Determination to read as follows:

Construction of a mixed development comprising three residential flat buildings, commercial use of a heritage listed building, car parking, infrastructure, landscaping and strata subdivision.

B. Add Condition No.1A - Modification of Consent - Approved Plans and supporting Documentation to read as follows:

The development must be carried out in compliance (except as amended by any other condition of consent) with the following:

a) Modification Approved Plans

Architectural Plans - Endorsed with Council's stamp		
Drawing No.	Dated	Prepared By
A2.03 - Level 1 Plan - Rev. D	19 February 2022	Rose Architectural Design
A2.04 - Level 2 Plan - Rev. D	19 February 2022	Rose Architectural Design
A2.05 - Level 3 Plan - Rev. D	19 February 2022	Rose Architectural Design
A2.06 - Level 4 Plan - Rev. D	19 February 2022	Rose Architectural Design
A2.07 - Level 5 Plan - Rev. D	19 February 2022	Rose Architectural Design
A2.08 - Roof Plan - Rev. D	19 February 2022	Rose Architectural Design
A3.02 - West Elevation (Fisher Road) & South Elevation (St David Avenue) no trees - Rev. D	19 February 2022	Rose Architectural Design
A3.04 - East Elevation (Civic Parade) & North Elevation no trees - Rev. D	19 February 2022	Rose Architectural Design

A3.05 - Section A-A & Section B-B - Rev. D	19 February 2022	Rose Architectural Design
A3.06 - Section C-C & D-D - Rev. D	19 February 2022	Rose Architectural Design

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
BASIX Certificate No. 944202M_04	18 February 2022	Rose Management Services Pty Ltd

b) Any plans and / or documentation submitted to satisfy the Conditions of this consent.

Reason: To ensure the work is carried out in accordance with the determination of Council and approved plans.

In signing this report, I declare that I do not have a Conflict of Interest.

Signed



Adam Susko, Principal Planner

The application is determined on 08/06/2022, under the delegated authority of:



Steven Findlay, Manager Development Assessments