

4 Delmar Parade and 812 Pittwater Road, Dee Why

Section 4.55 Planning Statement

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4 DELMAR PARADE AND 812 PITTWATER ROAD, DEE WHY

Modifications to approved development for a mixed use development comprising three commercial tenancies and 219 apartments over 2 basements levels, lot consolidation and subdivision

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Prepared under instructions from
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1.0	INTRODUCTION	4
2.0	SITE DESCRIPTION AND LOCATION	5
2.1	Locality Description	5
2.2	Site Description	6
2.3	Surrounding Development	7
3.0	BACKGROUND	8
3.1	Development Application DA2022/0145	8
3.2	S4.55 amendment to DA2022/0145	8
4.0	PROPOSED MODIFICATIONS	9
4.1	Amendments to basement design	9
4.2	Amendments to Conditions	9
4.2.1	Condition No. 1	9
4.2.2	Condition No. 20	9
4.2.3	Condition No. 30	12
5.0	STATUTORY PLANNING FRAMEWORK	13
5.1	Environmental Planning & Assessment Act 1979	13
5.1.1	Section 4.55	13
5.2	Environmental Planning Instruments	14
5.2.1	State Environmental Planning Policy (Transport and Infrastructure) 2021	14
5.2.2	Warringah Local Environmental Plan 2011	14
5.3	Warringah Development Control Plan 2011	14
6.0	CONCLUSION	16

1.0 INTRODUCTION

This submission has been prepared as supporting documentation for an application made pursuant to Section 4.55(2) of the *Environmental Planning and Assessment Act 1979* to modify the consent for Development Application DA2022/0145 for Demolition works and construction of a mixed-use development comprising a residential flat building and shop top housing, basement parking, lot consolidation and torrens title subdivision at 4 Delmar Parade and 812 Pittwater Road, Dee Why.

The application seeks approval for:

- one additional basement level, however, with no change to the approved number of car parking spaces
- amendment of Condition No. 20
- deletion of Condition No. 30

The proposed modifications are accompanied by the following:

Document	Consultant
Amended architectural plans	Rothelowman Architects
Traffic and Parking Assessment	TTPP

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

The Statement details the proposed amendments against applicable environmental planning instruments and development control plans including:

- Warringah Local Environmental Plan 2011
- Warringah Development Control Plan 2011

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

2.0 SITE DESCRIPTION AND LOCATION

2.1 Locality Description

The site is located within the suburb of Dee Why and is within Northern Beaches Local Government Area.

The site is located at the southern entry into the Dee Why town centre and along with its neighbours forms an important gateway function for the town centre, referred to as the 'Delmar Precinct'. The precinct comprises four allotments zoned B4 Mixed Use bounded by Delmar Parade to the north, Pittwater Road to the west, Stony Range Botanic Garden to the south and low density residential context to the east.

The Delmar Precinct is undergoing transformation and conversion from a predominantly commercial and semi-industrial pocket into a vibrant mixed use precinct. Construction was completed in 2023 for a 7 storey mixed use development at 2 Delmar Parade on the corner of Delmar Parade and Pittwater Road, also by Landmark Group which is the proponent for the subject application. The subject proposal represents the balance of the Delmar Precinct with the exception of the AVIS site at 816 Pittwater Road.

The site is not identified as a heritage item nor is it located in a heritage conservation area in Schedule 5 of the WLEP 2011. The location of the site is illustrated in Figure 1 below.

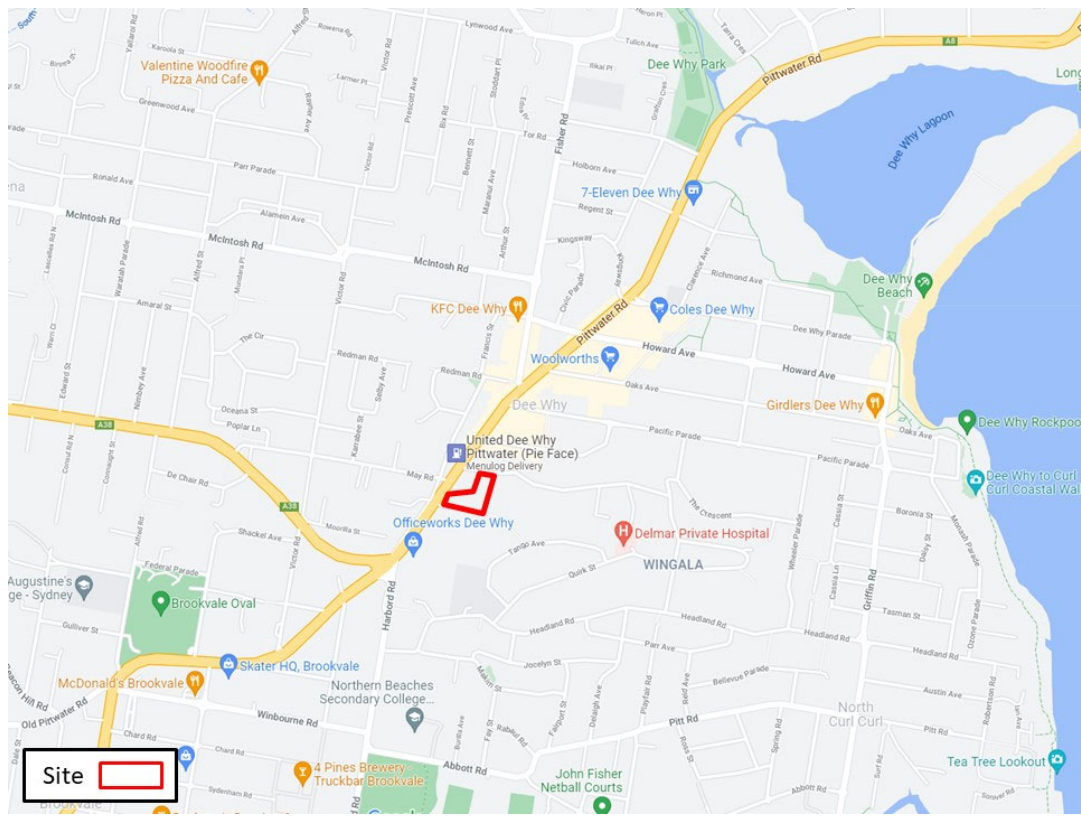


Figure 1:

Site Location: (Source: Google Maps 2021)

2.2 Site Description

The site comprises 2 allotments and is legally described as SP 32071 and SP32072 known as 4 Delmar Parade and 812 Pittwater Road, Dee Why.

The site is irregular in shape with a frontage of approximately 52 metres to Delmar Parade and a frontage of approximately 20 metres to Pittwater Road and is a crudely L-shaped site which wraps around 2 Delmar Parade and 816 Pittwater Road to the west. The site has a depth of 100.75 metres from north to south and a length of approximately 130 metres from east to west and shares its southern boundary with an adjacent parcel of land which is road reserve. The site has an area of 7,790 square metres.

The highest point of the site is at the south-eastern corner and there is a fall of approximately 4.5 metres from the rear of the site to the front of the site at Delmar Parade which is the equivalent of slightly more than one storey. The site is relatively level east to west with only a minor fall to Pittwater Road. The site currently contains three 2 storey commercial buildings, with one aligned Delmar Parade, another aligned to Pittwater Road, and a third building located at the southern end of the site. The areas around the building comprise extensive hardstand car parking with some very limited vegetation. The site is currently served by two driveways along the Delmar Parade frontage of the site.

An aerial view of the site and surrounds is included as Figure 2.



Figure 2:

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

2.3 Surrounding Development

The context of the site is undergoing substantial transformation from low scale office and industrial based uses to high density mixed use and residential development as envisaged for the Dee Why Town Centre.

The neighbouring sites within the Delmar Precinct include 2 Delmar Parade on the corner of Pittwater Road and Delmar Parade, and the AVIS site at 816 Pittwater Road. Construction is well progressed for a 7 storey mixed use development at 2 Delmar Parade, also by Landmark Group which is the proponent for the subject application. That building has a 4 storey podium and 3 storey upper component.

The AVIS site contains a vehicle rental business comprising hard stand parking areas and single storey building. This site is likely to be redeveloped as an integrated component within the overall Delmar Precinct and enjoys a legal right to use the car park entrance to 2 Delmar Parade which will service the future development of that site.

Immediately adjacent to the south of the site is a road reserve which contains a car park at the western end, and becomes a pedestrian link to Tango Avenue for the remainder of the frontage to the subject site. To the south of the road reserve is the 3.3 hectare Stoney Range Botanic Garden which is a regenerated bushland reserve which contains walking tracks, a nursery BBQ area and other facilities.

The site to the north at 822 Pittwater Road across Delmar Parade contains a recently completed 9 storey mixed use building which has a 3 to 4 storey podium and a tower element above which is setback from Pittwater Road, but with no setback above the podium from Delmar Parade.

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

Immediately adjacent to the east is 6 Delmar Parade which contains an existing dwelling, and 8 Delmar Parade which is a battleaxe allotment to the rear which also contains a dwelling.

3.0 BACKGROUND

3.1 Development Application DA2022/0145

On 14 July 2023, the Sydney North Planning Panel granted consent to development application DA2022/0145 which provided for demolition works and construction of a mixed-use development comprising a residential flat building and shop top housing, basement parking, lot consolidation and torrens title subdivision at 4 Delmar Parade and 812 Pittwater Road, Dee Why.



Figure 3:

3D image of approved development as viewed from Delmar Parade

3.2 S4.55 amendment to DA2022/0145

Council is currently assessing a Section 4.55 modification application to DA2022/0145 for a range of refinements to the development to achieve an incremental improvement to the apartment layouts and residential amenity, a rationalised basement internal configuration, and design progression of the architectural expression of the development including a softening of the corners with curved balconies. The amended proposal also introduces a roof top communal open space area to the Pittwater Road building.

4.0 PROPOSED MODIFICATIONS

4.1 Amendments to basement design

The application seeks approval for the following amendments to the basements for the development:

- Reduction of the northern extent of approved basement levels 1 and 2 with the introduction of a setback from Delmar Parade which is required to facilitate construction of the basement; and
- Introduction of additional part basement level 3.

The construction methodology for the site involves piling to a depth of approximately 12-18 metres to reach rock, around the perimeter of the basements and so it is more efficient to slightly reduce the extent of basement levels 1 and 2 and to introduce a part level 3 basement.

There is no change to the previously approved car parking provision on the site.

The revised car parking layout remains compliant with Australian Standard design requirements, namely AS2890.1:2004, AS2890.2:2002, AS2890.3:2015 and AS2890.6:2009 as confirmed by TTPA in their review letter which supports this application.

4.2 Amendments to Conditions

The following conditions are proposed to be amended:

4.2.1 Condition No. 1

The proposed amendments seek consent for changes Condition No. 1 to reflect the updated basement plans.

4.2.2 Condition No. 20

Condition No. 20 refers to the requirement for the submission of a Construction Traffic Management Plan, prepared by an RMS accredited person, and submitted to and approved by the Northern Beaches Council Traffic Team prior to issue of any Construction Certificate.

However, the condition also expressly restricts truck movements during the major commuter peak times being 8.00-9.30am and 4.30-6.00pm, and requires that truck movements must be agreed with Council's Traffic Engineer prior to submission of the CTMP.

This restriction was not imposed upon the recently completed construction of the adjacent site at 2 Delmar Parade which was also undertaken by Landmark Group. There were no significant or adverse issues in relation to the management of trucks during the construction of that project which would warrant to imposition of the suggested restriction of truck movement.

Whilst Landmark Group are willing to work with Council's Traffic Engineer to arrive at a mutually agreeable truck management arrangement, the imposition of a blanket restriction of truck movements is onerous and unworkable. In particular, the following is noted:

- The AM period is of critical importance to the construction on site and it is impractical for construction vehicles to be able to access the site from 7.00am Monday to Friday, only to have to stop 1 hour later, and only being able to commence again at 9.30am. The restriction on AM site access for construction vehicles therefore effectively prevents site access until 9.30am for the duration of the construction. This late time is not suitable for many construction activities

including concrete pours in particular which must start as early as possible to ensure cooler and satisfactory conditions for concrete pouring.

- The restriction on access for trucks will result in a substantial increase to the construction program which means that the ordinary and unavoidable general disturbance associated with the construction on the site would be unnecessarily substantially extended with a direct adverse impact to the neighbouring sites, including the new residents at 2 Delmar Parade. It is clearly better for a more efficient construction process to be able to proceed in order to compress the construction program as much as possible.
- The restriction on access is an unnecessary economic burden for the project which merely exacerbates the difficulty in feasibly developing the site to provide additional and much needed housing supply, in the face of significantly increased construction costs.

In light of the above, the blanket restriction on truck movements in the condition is unreasonable and needs to be deleted, as follows:

20. Construction Traffic Management Plan

As a result of the site constraints, limited vehicle access and parking, a Construction Traffic Management Plan (CTMP) and report shall be prepared by an RMS accredited person and submitted to and approved by the Northern Beaches Council Traffic Team prior to issue of any Construction Certificate.

~~*Due to heavy traffic congestion throughout the town centre, truck movements will be restricted during the major commuter peak times being 8.00-9.30am and 4.30-6.00pm. Truck movements must be agreed with Council's Traffic Engineer prior to submission of the CTMP.*~~

The CTMP must address following:

; *The proposed phases of construction works on the site, and the expected duration of each construction phase*

; *The proposed order in which works on the site will be undertaken, and the method statements on how various stages of construction will be undertaken*

; *Make provision for all construction materials to be stored on site, at all times*

; *The proposed areas within the site to be used for the storage of excavated materials, construction materials and waste containers during the construction period*

; *The proposed method of access to and egress from the site for construction vehicles, including access routes and truck routes through the Council area and the location and type of temporary vehicular crossing for the purpose of minimising traffic congestion and noise in the area, with no access across public parks or reserves being allowed*

; *The proposed method of loading and unloading excavation and construction machinery, excavation and building materials, formwork and the erection of any part of the structure within the site. Wherever possible mobile cranes should be located wholly within the site*

; *Make provision for parking onsite. All Staff and Contractors are to use the basement parking once available*

; Temporary truck standing/ queuing locations in a public roadway/ domain in the vicinity of the site are not permitted unless approved by Council prior

; Include a Traffic Control Plan prepared by a person with suitable RMS accreditation for any activities involving the management of vehicle and pedestrian safety

; The proposed manner in which adjoining property owners will be kept advised of the timeframes for completion of each phase of development/construction process. It must also specify that a minimum Fourteen (14) days notification must be provided to adjoining property owners prior to the implementation of any temporary traffic control measure

; Include a site plan showing the location of any site sheds, location of requested Work Zones, anticipated use of cranes and concrete pumps, structures proposed on the footpath areas (hoardings, scaffolding or shoring) and any tree protection zones around Council street trees

; Take into consideration the combined construction activities of other development in the surrounding area. To this end, the consultant preparing the CTMP must engage and consult with developers undertaking major development works within a 250m radius of the subject site to ensure that appropriate measures are in place to prevent the combined impact of construction activities, such as (but not limited to) concrete pours, crane lifts and dump truck routes. These communications must be documented and submitted to Council prior to work commencing on site

; The proposed method/device to remove loose material from all vehicles and/or machinery before entering the road reserve, any run-off from the washing down of vehicles shall be directed to the sediment control system within the site

; Specify that the roadway (including footpath) must be kept in a serviceable condition for the duration of construction. At the direction of Council, undertake remedial treatments such as patching at no cost to Council

; The proposed method of support to any excavation adjacent to adjoining properties, or the road reserve. The proposed method of support is to be designed and certified by an appropriately qualified and practising Structural Engineer, or equivalent

; Proposed protection for Council and adjoining properties

; The location and operation of any on site crane

The CTMP shall be prepared in accordance with relevant sections of Australian Standard 1742 – “Manual of Uniform Traffic Control Devices”, RMS’ Manual – “Traffic Control at Work Sites”.

All fees and charges associated with the review of this plan is to be in accordance with Council’s Schedule of Fees and Charges and are to be paid at the time that the Construction Traffic Management Plan is submitted.

Reason: To ensure public safety and minimise any impacts to the adjoining pedestrian and vehicular traffic systems.

4.2.3 Condition No. 30

Condition No. 30 requires that the basement is permanently tanked.

It is proposed to delete this condition.

A dewatering management plan has been undertaken to analyse the seepage and verify the feasibility of a drained basement design for the development. Based on the groundwater observations and results of the GTA, water inflow into the basement during construction and per year during operation will be less than 3ML a year and is therefore manageable using a drained basement system design. The drawdown as a result of dewatering will have negligible, if any, adverse impact on neighbouring properties.

In fact, WaterNSW has previously issued drained basement GTAs on 3 April 2023 (IDAS1143662). This shows that they are in support of a drained basement for this project.

On this basis, there are no reasonable grounds for the project to require a tanked basement and so Condition 30 should be deleted.

5.0 STATUTORY PLANNING FRAMEWORK

5.1 Environmental Planning & Assessment Act 1979

5.1.1 Section 4.55

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

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

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

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

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

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

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

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

The amended proposal retains the fundamental components of the approved layout and spatial characteristics of the development. Conceptually, the proposal remains the same and the amended proposal also retains the same envelope to the approved development, noting that the additional basement level is below ground and not perceptible. To the casual observer, the amended proposal would appear identical to the approved development.

Quantitatively, the proposed amendments do not alter any metrics of the approved development, with no change to the previously approved car parking provision.

In accordance with section 4.55(2), the proposal is appropriately categorised as being “substantially the same”.

5.2 Environmental Planning Instruments

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

The provisions of relevant environmental planning instruments and development control plans are relevant matters for consideration under Section 4.55(2) and are addressed below.

5.2.1 State Environmental Planning Policy (Transport and Infrastructure) 2021

The amended proposal remains satisfactory with respect of the relevant clauses of State Environmental Planning Policy (Transport and Infrastructure) 2021 as it maintains the approved vehicular access from Delmar Parade.

Furthermore, there is no changes proposed to the previously approved number of car parking spaces and resulting traffic generation.

5.2.2 Warringah Local Environmental Plan 2011

Zoning and Permissibility

The site is located within the MU1 Mixed Use zone pursuant to the Warringah Local Environmental Plan 2011 (WLEP).

The proposed amendments retain all approved elements of the approved development. The amended proposal will remain permissible and consistent with the objectives of the zones which apply to the site.

Remaining Provisions

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

5.3 Warringah Development Control Plan 2011

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

Part C Site Factors

Control	Response	Compliance
C2. Traffic, Access and Safety	The amended proposal is accompanied by a Traffic and parking report prepared by TTPA which confirms that the revised basement layout and design remains satisfactory in relation to the relevant Australian Standards.	Yes
C3. Parking Facilities	The amended proposal is accompanied by a Traffic and parking report by TTPP. The proposed	Yes

Control	Response	Compliance
	<p>amendments do not result in any change to the car parking provision for the development.</p> <p>The approved vehicular access and egress arrangement is maintained at the site's Delmar Parade frontage.</p>	

Part G Special Area Controls

The subject site is within the area of Part G Special Area Controls and to which the specific provisions of Part G1 applies. The DCP provisions for the Dee Why Town Centre are addressed below:

Control	Response	Compliance
Traffic and Parking		
2. New developments are to be accompanied by a service delivery and loading dock plan.	The amended proposed development retains a loading dock as approved.	Yes
<p>3. Car parking and vehicle access points shall incorporate the following design elements:</p> <p>a. Recessed car park entries from the main building facade alignment;</p> <p>b. Avoidance of large voids in the facade by providing security doors or decorative grills to car park entry;</p> <p>c. Returning the facade finishes into the car park entry recess for the extent visible from the street;</p> <p>d. Concealing all services, pipes and ducts.</p>	The amended proposed retains the single vehicular entry and exit point on the eastern side of the Delmar Parade as approved.	Yes
<p>4. Parking should be:</p> <p>a. Provided underground;</p> <p>b. Designed and located to optimise deep soil planting.</p>	All amended car parking remains underground in three basement levels.	Yes

6.0 CONCLUSION

This submission has been prepared as supporting documentation for an application made pursuant to Section 4.55(2) of the *Environmental Planning and Assessment Act 1979* to modify the consent for Development Application DA2022/0145 for Demolition works and construction of a mixed-use development comprising a residential flat building and shop top housing, basement parking, lot consolidation and torrens title subdivision at 4 Delmar Parade and 812 Pittwater Road, Dee Why.

The application seeks approval for:

- one additional basement level, however, with no change to the approved number of car parking spaces
- amendment of Condition No. 20
- deletion of Condition No. 30

The amended proposal retains the fundamental components of the approved layout and spatial characteristics of the development and does not result in any change in impact to the surrounding properties.

As detailed in this submission the proposed modifications may be made by the consent authority in accordance with Section 4.55(1a) of the *Environmental Planning and Assessment Act 1979* as the proposed amendments are of minimal environmental impact, do not radically transform the proposal or alter the overarching fundamental characteristics of the original approval, and so the amended proposal is appropriately categorised as being “substantially the same” as the approved development.

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