

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2020/1597
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Responsible Officer:	Anne-Marie Young
Land to be developed (Address):	Lot 25 DP 7002, 67 Pacific Parade DEE WHY NSW 2099
Proposed Development:	Demolition works and construction of a boarding house development
Zoning:	Warringah LEP2011 - Land zoned R3 Medium Density Residential
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	NBLPP
Land and Environment Court Action:	Yes
Owner:	BL2093 Pty Ltd
Applicant:	Benson McCormack Architects Pty Ltd

Application Lodged:	19/12/2020
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Other
Notified:	15/01/2021 to 29/01/2021
Advertised:	15/01/2021
Submissions Received:	53
Clause 4.6 Variation:	Nil
Recommendation:	Refusal

Estimated Cost of Works:	\$ 4,506,088.00
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EXECUTIVE SUMMARY

The application seeks consent for demolition of the existing detached cottage and the construction of a three storey 26 room boarding house with basement parking for 13 vehicles using car stackers.

The application is the subject of a Class 1 appeal against the deemed refusal of the application and the matter is set down for hearing on the 4 and 6 August 2021.

The application was referred to the Design and Sustainability Advisory Panel (DSAP) who concluded that the proposal represents an over-development of the site with impacts on the streetscape and insufficient setbacks and landscaping which result in amenity issues for occupiers and neighbours.

Amended plans were received following the S34 Conciliation Conference which generally address issues raised by Council's Waste Officer, Transport Engineer and Landscape Officer. Issues remain outstanding with respect of side setbacks, wall heights, building envelope breaches, impacts on the streetscape and neighbouring amenity including acoustic and visual privacy and overshadowing. In addition, concern is raised about the 100% reliance of car stackers for the boarding house and insufficient information has been submitted to address operational and management concerns. The geotechnical report is inconclusive to confirm that the proposed earthworks will not impact on neighbouring properties, soil stability or drainage.

The public exhibition of the application resulted in fifty-one (51) submissions which raised concerns with the density of the development, traffic and parking, amenity impacts in terms of impacts on visual and acoustic privacy, overshadowing, security and safety issues and substandard accommodation being provided. The amended plans have been notified to all those that made a submission on the original application and fourteen (14) additional submissions have been received at the time of writing this report.

On balance, the assessment of the proposed development on this site against the applicable planning controls and related legislation reveals that there are significant breaches with the controls. The application is not in the public interest and is therefore recommended for refusal.

PROPOSED DEVELOPMENT IN DETAIL

The development application seeks consent for the demolition of the existing dwelling and construction of a part three (3), part four (4) storey twenty-six (26) bedroom boarding house development, excavation to a depth of 9.9m and construction of three levels basement for thirteen (13) parking spaces (12 using car stackers) and associated landscaping. In detail, the proposed development provides:

Basement Level AHD +27.20

- Basement to accommodate car stacker pits, plant and pump room, lift pit and stair.

Lower Ground Level AND +30.00

- Car stacker with parking for 12 vehicles, one disabled parking space and parking for 5 motor bikes;
- Stair and lift core;
- Bin store located in the north-east corner built into the rock outcrop with a podium garden above;
- Forecourt / pedestrian entrance and lobby;
- Driveway to Pacific Parade with traffic signal;
- Planter and fire hydrant located in the north-west corner.

Upper Ground Floor AHD +33.00

- Three (3) boarding rooms to the front of the site (east);
- A manager's room with private open space and two (2) adjoining boarding room (west facing)

located in the centre of the site;

- Plant, bulk storage room and laundry room to the rear, and
- Circulation core located to the east including lobby, stair and lift core.

Level 1 AHD +35.90

- Three (3) boarding rooms to the centre (west);
- Three (3) boarding rooms to the front (north);
- Three (3) boarding rooms to the rear (south) each with a 7.5sqm area of private open space, and
- Circulation core located to the east including lobby, stair and lift core.

Level 2 AHD +38.80

- Three (3) boarding rooms to the centre (west);
- Three (3) boarding rooms to the front (north);
- Three (3) boarding rooms to the rear (south), and
- Circulation core located to the east including lobby, stair and lift core.

Level 3 AHD +41.7

- Three (3) boarding rooms to the rear (south);
- Common room (59.1sqm) with adjoining area of common open space (28.8sqm) to the front (north) with planter and non-trafficable terrace, and
- Circulation core located to the east including lobby, stair and lift core.

Roof +44.90 (max height)

- Eight (8) photovoltaic panels;
- A/C vent and lift overrun (+45.43) to the east.

External and materials

- One protected tree to be removed in addition to all exempt trees;
- The rock outcrop to the street frontage will be partially retained;
- Landscape work includes: Ground level - a planter bed adjacent to the north-west entrance, landscape strip to the east, south and part of western boundary. Upper ground level – a 28sqm central garden area adjacent to part of the western boundary and a podium level planer bed above the bin store, 7.5sqm private open space to 3 x rear level 1 rooms and 11sqm private

open space to managers room.

- Materials – Aluminium dark roof cladding and blinds, light colour off form concrete and light beige colour brick veneer, sandstone cladding, aluminium frames and frameless glass balustrade.

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 - Zone R3 Medium Density Residential
Warringah Local Environmental Plan 2011 - 6.2 Earthworks
Warringah Development Control Plan - A.5 Objectives
Warringah Development Control Plan - B1 Wall Heights
Warringah Development Control Plan - B2 Number of Storeys
Warringah Development Control Plan - B3 Side Boundary Envelope
Warringah Development Control Plan - B5 Side Boundary Setbacks
Warringah Development Control Plan - B7 Front Boundary Setbacks
Warringah Development Control Plan - B9 Rear Boundary Setbacks
Warringah Development Control Plan - C2 Traffic, Access and Safety
Warringah Development Control Plan - C3 Parking Facilities
Warringah Development Control Plan - D1 Landscaped Open Space and Bushland Setting
Warringah Development Control Plan - D3 Noise
Warringah Development Control Plan - D6 Access to Sunlight
Warringah Development Control Plan - D8 Privacy
Warringah Development Control Plan - D9 Building Bulk
Warringah Development Control Plan - D20 Safety and Security
Warringah Development Control Plan - D22 Conservation of Energy and Water
Warringah Development Control Plan - E10 Landslip Risk

SITE DESCRIPTION

Property Description:	Lot 25 DP 7002 , 67 Pacific Parade DEE WHY NSW 2099
Detailed Site Description:	<p>The site comprises one (1) allotment and is legally identified as Lot 25 in DP 7002. The site is located on the southern side of Pacific Parade 36m to the west of the intersection with The Crescent it is regular in shape with a frontage of 15.3m, a depth of 45.8m and a surveyed site area of 695.6sqm.</p> <p>The site is located within the R3 (Medium Density Residential) zone from the WLEP 2011 and accommodates a single storey brick and sandstone / tiled roof cottage and associated deck and retaining walls situated in the rear (south) of the site with vehicular access to Pacific Parade provided in the north-west corner.</p> <p>Large to medium trees are scattered throughout the site and a rock outcrop is present to the frontage at the north-east corner. The topography of the site slopes from the front (north) to the rear (south) with a level difference of approximately 9m, there is also a crossfall across the site is a westerly direction.</p> <p>Surrounding development</p> <p>Surrounding development to the north, east and west is characterised by predominantly three (3) to four (4) storey brick residential flat buildings of older stock (1960s, 1970s, 1980s and 1990s). More recent three (3) and four (4) storey residential flat developments are interspersed within the surrounding area including No. 65 Pacific Parade to the immediate west and 1-5 The Crescent to the immediate east. With the exception of No. 65 Pacific Parade to the immediate west, all buildings are set back from the street in a landscape setting of mixed quality. A pocket park, The Crescent Reserve, is located directly to the (south) rear of the site at 7 The Crescent. Dee Why Beach is located approximately 800m to the east, Pittwater Road is located approximately 500m to the west and Dee Why shopping centre 400m to the north.</p>

Map:



SITE HISTORY

Pre-lodgement meeting

On 4 August 2000, Council participated in a pre-lodgement meeting (PLM) in relation to the development of the site as a boarding house. The proposal discussed in the PLM sought demolition of the existing dwelling and construction of a part three (3) / part four (4) storey thirty (30) room boarding house including a managers residents, communal living areas, two (2) levels to basement car parking for thirteen (13) cars and landscape works.

Design and Sustainability Advisory Panel.

On 25 March 2021, the development application was presented to the Council's Design and Sustainability Advisory Panel for review. While the full suite of commentary is provided further in this report, the DSAP concluded:

The Panel does not support the proposal in the current form and considers it to be an overdevelopment of the site. A reduction in boarding house rooms and scale of the project is recommended to improve the amenity within the site and reduce the impacts on the adjoining residential flat buildings. The project has a number of other adverse impacts such as the streetscape treatment and façade compositions and these aspects should be considerably improved with the redesign of the project.

Class 1 Appeal 2021/0003433

On 16 January 2021, Class 1 proceedings were commenced in the Land and Environment Court appealing the Council's deemed refusal of the development application.

The court matter is set down for hearing on 4 and 6 August 2021.

On 4 May 2021, amended plans were submitted which included the following amendments:

- A reduction in the amount of excavation and change to car stackers to support 12 cars, plus one

- separate disabled parking space and modifications to the entrance driveway;
- Deletion of the ground level common open space from the rear and an increase in the size of the roof top common open space;
- Deletion of the double height common room from the rear and relocation of the common rooms to level 3;
- A reduction in one boarding space at ground level (central block) and a change in the location of the bulk waste storage area and plant;
- The deletion of the upper loft level to units (301, 302 and 303) located to the rear (south);
- Relocate laundry facilities, and
- Areas of private open space added to the rear of the 3 ground floor units (L07, L08 and L09).
- An increase in the size of the landscape planter to north-west boundary and the addition of 1m deep soil planting to top of bin store.
- Modification to the external open space at roof level, including an increase in the set back from the frontage and the addition of 1.65m high balustrades with obscure glazing to the eastern and western edge of the planters.

On 10 May 2021, all persons that made a submission to the original proposal were notified of the amended plans. The assessment report is based on the amended plans

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

Section 4.15 Matters for Consideration'	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on “Environmental Planning Instruments” in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	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 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)(iia) – 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. Should the consent be granted this matter can be addressed via a condition of 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</p>

Section 4.15 Matters for Consideration'	Comments
	<p>clause is not relevant to this 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. Should the consent be granted this matter can be been addressed via a condition of 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 clause is not relevant to this application.</p> <p><u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This clause is not relevant to this application.</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 of 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 clause is not relevant to this application.</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	<p>(i) Environmental Impact The environmental impacts of the proposed development on the natural and built environment are addressed under the Warringah Development Control Plan section in this report.</p> <p>(ii) Social Impact The proposed development will have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) Economic Impact The proposed development will 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 unsuitable for the proposed development as it represents over development of the narrow lot given the inconsistencies with the built form controls and its excessive excavation. The bulk and scale of the development is out of character with the area and will result in unreasonable amenity impacts to neighbouring residents in terms of overshadowing and acoustic and visual privacy impacts,
Section 4.15 (1) (d) – any	See discussion on “Notification & Submissions Received” in this

Section 4.15 Matters for Consideration'	Comments
submissions made in accordance with the EPA Act or EPA Regs	report.
Section 4.15 (1) (e) – the public interest	This assessment has found the proposal to be contrary to the relevant requirement(s) of the SEPP (ARH), the WLEP and the WDCP and will result in a development which will create an undesirable precedent such that it would undermine the desired future character of the area and be contrary to the expectations of the community. In this regard, the development, as proposed, is not considered to be 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 15/01/2021 to 29/01/2021 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 process council is in receipt of 53 submission/s from:

Name:	Address:
Mr Denis Charles Smith Mrs Lynne Kenning Smith	11 Knightsbridge Avenue BELROSE NSW 2085
Dymphna Micheline O'Donoghue	6 / 29 - 31 Richmond Avenue DEE WHY NSW 2099
Mr Brett Graeme Buffett Rayner	6 / 6 The Crescent DEE WHY NSW 2099
Peter Douglas Smyth	Address Unknown
Carolyn Eileen Smyth	19 / 6 The Crescent DEE WHY NSW 2099
Mr Jeremy Peter Ford	6 / 55 Pacific Parade DEE WHY NSW 2099
Mr Desmond John Mullen	17 / 64 Pacific Parade DEE WHY NSW 2099
Mr Bryce Niall Anderson	11 / 44 Pacific Parade DEE WHY NSW 2099
Mr Simone Medri	1 / 1 Denison Street MANLY NSW 2095
Derek Turner	Address Unknown
Mr Darren Edward Wardle	1 / 56 Pacific Parade DEE WHY NSW 2099
Mr David Biro	19 / 57 Delmar Parade DEE WHY NSW 2099
Alistair Grice	Address Unknown
Mrs Diana Wenban	18 / 6 The Crescent DEE WHY NSW 2099
Miss Nicole Crkvencic	11 / 64 Pacific Parade DEE WHY NSW 2099

Name:	Address:
Mr Tom Michael Andrews	7 / 1 - 5 The Crescent DEE WHY NSW 2099
Ms Helen Joy Arnold	8 Hendy Avenue COLLAROY NSW 2097
Mrs Frances Makeham	4 / 48 Pacific Parade DEE WHY NSW 2099
Ms Alison Sarah Boschen	477 / 16 Oaks Avenue DEE WHY NSW 2099
Mr Jean-Jacques Nicholls	4 / 47 Pacific Parade DEE WHY NSW 2099
Ms Sharon Ann Young	6 Dimitrios Close SKYE NSW 3977
Mrs Sheila Gordon Dickson	39 Norfolk Avenue COLLAROY NSW 2097
Gregory Philip O'Leary	10 / 48 Pacific Parade DEE WHY NSW 2099
David Mason	Address Unknown
Daphne Florence Rae	6 / 56 Pacific Parade DEE WHY NSW 2099
Mr Gordon Denby Coad	15 / 39 - 41 Pacific Parade DEE WHY NSW 2099
Sean Southwell	Address Unknown
Malcolm Allen Graham	5 / 1 - 5 The Crescent DEE WHY NSW 2099
Clare Irene Holder	5 / 65 Pacific Parade DEE WHY NSW 2099
Mrs Narelle Edith Kirby	4 / 65 Pacific Parade DEE WHY NSW 2099
Mr Owen John Mullen	7 / 38 The Crescent DEE WHY NSW 2099
Mr Steven John Newall	17 / 68 Pacific Parade DEE WHY NSW 2099
Miss Holly De Jong	6 / 1 - 5 The Crescent DEE WHY NSW 2099
Mrs Sharon Ellison Boin	9 Herbert Avenue NEWPORT NSW 2106
Mr Marc Francis Boin	9 Herbert Avenue NEWPORT NSW 2106
Sharon Anne Phillips	10 / 64 Pacific Parade DEE WHY NSW 2099
Mr Gregory John Jennings	1 - 5 The Crescent DEE WHY NSW 2099
Phillip Perrone	27 Epping Drive FRENCHS FOREST NSW 2086
Simone Marie McDonald	31 / 1 - 3 Sturdee Parade DEE WHY NSW 2099
Robyn Lesley McDonald	3 / 64 Pacific Parade DEE WHY NSW 2099
Miss Seok Kwan Tan	11 / 1 - 5 The Crescent DEE WHY NSW 2099
Diane Christensen	12 / 6 The Crescent DEE WHY NSW 2099
Ms Faya Mirvakili	15 / 1 - 5 The Crescent DEE WHY NSW 2099
Mary Elizabeth Keech	'The Strand' 402/21 Head Street FORSTER NSW 2428
Michelle Damasio	3 / 44 Pacific Parade DEE WHY NSW 2099
Nicholas Swerdlow	7 / 63 Pacific Parade DEE WHY NSW 2099
Eduardo Federico Fritz	3 / 65 Pacific Parade DEE WHY NSW 2099
Ms Megan June Taslaman	1 / 63 Pacific Parade DEE WHY NSW 2099
Adnan Taslaman	1 / 63 Pacific Parade DEE WHY NSW 2099
Mr Charles Bertram Yates Mrs Mary-Rose Blanche Yates	3 Coolawin Road AVALON BEACH NSW 2107
Edward Bailey	25 / 63 Pacific Parade DEE WHY NSW 2099
Mrs Jaclynn Nicole-Reinhard Kidd	4 / 82 Pacific Parade DEE WHY NSW 2099
Mr Tymon Shay Kidd	4 / 82 Pacific Parade DEE WHY NSW 2099

The following issues were raised in the submissions and each have been addressed below:

- **Non-compliance with controls**
- **Out of character**
- **Insufficient landscaping**
- **Poor internal amenity**
- **Traffic and parking issues**
- **Impacts on neighbouring amenity (overshadowing, visual and acoustic privacy issues)**
- **Insufficient information (acoustic assessment, plan of management and traffic)**
- **Excavation, geotechnical and construction impacts**
- **Distance to bus stops is non-compliant**
- **Precedent**
- **Devaluation of properties;**
- **Environmental impacts**
- **Reflection and glare from roof panels**
- **Stormwater issues**
- **Safety and issues with anti-social behaviour**
- **BCA and construction issues.**
- **Would result in short stay accommodation**

The matters raised within the submissions are addressed as follows:

- **Non-compliance with SEPP (HSD) (rooms are too large), SEPP 65 (poor internal amenity including cross ventilation) and WDCP built form controls (setbacks, building envelope).**

Comment:

The proposal, as amended, remains to be inconsistent with a number of planning provisions, including clause 30A of the SEPP (HSD) which requires the development to be compatible with the character with the local area. It is however noted that the room sizes have been amended to comply with the maximum 25sqm. SEPP 65 does not apply to boarding houses, notwithstanding this the internal amenity of some of the proposed boarding rooms is limited in terms of access to natural day light due to obscure glazing to side windows and the orientation of the development which results in central rooms having only one window. The proposal is also inconsistent with a number of WDCP built form controls including side setbacks, envelope and wall height controls. Refer to discussion within the WDCP section of this report.

- **Out of character with the surrounding residential area in terms of density for the lot size, height, front and eastern façade treatment.**

Comment:

The proposal is assessed as being out of character with the surrounding residential area in terms of the treatment of the front facade, insufficient side setbacks. Given the size and narrow width of the lot it is agreed that the density of the development, with excessive excavation, equates to over-development of the lot.

- **Insufficient landscaping.**

Comment:

The amended plan increases the amount of landscaping available within the front setback, however, the proposal remains to be inconsistent with the minimum 50% landscape open space requirement.

- **Poor internal amenity, insufficient outdoor and internal common areas, generally inadequate cross ventilation and reliance of A/C;**

Comment:

As noted above, concern has been raised with the obscure glazing to the side windows of some units which will limit access to natural daylight. The proposal, as amended, provides a common room at level 3, insufficient information has been provided to confirm that the room will have compliant solar access.

- **Insufficient parking / impact on street parking, no visitor parking, driveway design reduces on street parking. Impact on traffic and pedestrian safety especially given its location at the crest of a hill and near an intersection. The traffic report is inadequate. The proposal does not comply with the minimum 0.5 spaces per apartment as required in the Affordable Housing SEPP.**

Comment

The proposal is inconsistent with the parking provision being short one space. Council's Transport Engineer has no objections to the amended proposal subject to condition. However, concern has been raised regarding the 100% reliance on car stackers for the boarding house and the management and operation of the system.

- **Impacts on neighbouring amenity in terms of:**

- **Overshadowing impacts.**

- **Visual and acoustic privacy - the planter beds on the side of the common open space are not sufficient to protect privacy and the acoustic assessment is insufficient as it fails to assess impacts from all affected neighbouring balconies. The Plan of Management is insufficient and the reliance of an on site 24 hour manager is not practical to manage the common roof top open space.**

- **Noise from plant and waste collection.**

- **Loss of outlook and access to cooling winds.**

Comment

Overshadowing - The amended proposal reduces the extent of shadow to neighbouring properties, however, insufficient information has been submitted to confirm that the proposal complies with the solar access provisions of the WDCP. Refer to discussion under Clause D6 of this report.

Visual and acoustic privacy - It is agreed the proposal has the potential to impact on the visual and acoustic privacy of the neighbouring units. An updated acoustic report has not been submitted to assess the revised plan or the impacts of the proposal from all the relevant sensitive noise receivers. It is agreed that the reliance on planter beds is not a reliable method of ensure visual privacy will be maintained. However, it is noted that the amended plans include 1.65m high obscure glazed balustrades along the east and west edge of the planter beds which will help reduce overlooking impacts to some degree.

An internal area of plant is proposed within the rear of the building and an A/C outlet vent located at level 3 on the eastern edge of the roof. Should the application be approved conditions can be imposed to ensure noise from plant will be managed to protect neighbouring amenity. It is not expected that noise from waste collection will result in unreasonable acoustic amenity impacts. Again, should the application be supported conditions can be imposed to manage this

concern.

Loss of outlook - While there are no significant views affected by the proposal the sheer bulk and scale of the development and insufficient side setbacks / building separation will result in an overbearing built form which will impact on outlook from neighbouring properties.

- **Excessive excavation raises potential structural and geotechnical concerns due to basement level side setback. Construction impacts - drilling/demolition on adjoining sites.**

Comment

Although the extent of excavation has been reduced it remains to be substantial with a maximum depth of 9.8m set back 2m from the side boundaries. Issues regarding impacts from the excavation and construction are therefore valid and the geotechnical report is inconclusive in its assessment.

- **Access to public transport - The distance from bus stops is not compliant - 159 bus to Manly runs from the two closest bus stops to the proposed development site in Pacific Parade. This service has been discontinued.**

Comment

The amended traffic report references the following bus services, route 177 and 177X which are immediately adjacent to the subject site and comply with the requirements of SEPP (AHD). A search of the Transport NSW confirms that Pacific Parade is a bus transport route.

- **Environmental impacts - Tree removal and pollution from units;**

Comment

Council's Landscape Officer has no objections to the tree removal subject to conditions. Council's Waste Officer has no objections to the proposal, as amended, subject to conditions including replacement planting.

- **The solar panels on the roof will cause reflection to neighbours.**

Comment

Should the application be approved conditions can be included to ensure that there are no unreasonable impacts as a result of reflection from the solar panels.

- **Insufficient stormwater system and infrastructure to support development.**

Comment

Council's Development Engineer has no objections to the proposal in terms of impacts on stormwater drainage subject to conditions.

- **Safety and security issues. Issues with respect to anti-social behaviour, noise and nuisance. Inadequate accommodation could lead to mental health issues.**

Comment

There is no evidence to suggest that the proposal represents a safety and security issue to neighbours. Issues in respect of the noise and nuisance are discussed above.

- **Devalue property values**

Comment

Impact on property value is not a material planning consideration.

- **Approval will set a precedence in the area.**

Comment

Agreed approval of the application could set an unwanted precedent for other similar developments in the area.

On 10 May 2021, letters were sent to all those that made a submission on the original DA notifying them that amended plans have been received and allowing seven (7) days to make a further submission. However, it became clear that the letters were not received until Friday 14 May 2021. Accordingly, an extension of time until Friday 21 May was allowed to make additional submissions. At the time of writing this report a total of fourteen (14) additional submission were received that reiterated the issues above and raised the following additional issues:

- **The car stacking system is unsuitable and raises new concerns about its use and management. The stackers would require a building manager to be available to operate the stacker 24/7. This is particularly relevant given that average occupant would stay for four (4) months. Concern is also raised in respect of waiting vehicles queue while waiting to use the stacker and road safety.**

Comment:

It is agreed that there are significant issues relating to the operation and management of the car stacker particularly in view of the boarding house providing short to medium term accommodation. Insufficient information has been submitted to fully address these concerns. Refer to discussion under Clause C3 of this report.

- **The landscaping is still inadequate and non-compliant.**

Comment:

Agreed the proposal remains to be inconsistent with the landscape open space requirements.

- **The amended proposal is still over-development.**

Comment:

Agreed the amended proposal continues to represent overdevelopment and is inconsistent with the built form controls.

- **The location of the only area of common open space on the roof is unacceptable.**

Comment:

While an amended Plan of Management (POM) has not been submitted for the revised scheme it is noted that the original proposal and POM restricted access to the roof top open space to between five (5) and nine (9) residents after 6pm. With a total of fifty-two (52) residents occupying the development it is agreed that the proposal does not meet the requirements of the SEPP in terms of providing outdoor common space for all residents.

- **The proposal does not include an amended acoustic report, as such, it is not possible to properly consider the impacts which is fundamental to the application. An amended acoustic report will determine how many / few residents can use the roof top deck which is now the only communal area for the premise. The management of the roof space is still a crucial issue and the reliance on public complaints procedure in the Plan of Management confirms concerns regarding management of the roof deck and acoustic issues.**

Comment

It is agreed that insufficient information has been submitted to properly assess the amended scheme and confirm that there will not be unreasonable acoustic impacts on neighbouring amenity.

- **The common roof top area will be used as a smoking area causing impacts on the health of neighbouring residents using their balconies.**

Comment

Given that there is no alternative open space provided for the 52 residents of the boarding

house it is agreed that the roof top common open space could be used as a smoking area.

REFERRALS

Internal Referral Body	Comments
Building Assessment - Fire and Disability upgrades	<p>Supported with conditions</p> <p>The application has been investigated with respects to aspects relevant to the Building Certification and Fire Safety Department. There are no objections to approval of the development subject to inclusion of the attached conditions of approval and consideration of the notes below.</p> <p>Note: The proposed development may not comply with some requirements of the BCA and the Premises Standards. Issues such as this however may be determined at Construction Certificate stage.</p>
Environmental Health (Industrial)	<p>Not supported</p> <p><i>New Information - Additional Review 14.05.2021</i></p> <p>Amended plans of the proposed boarding house have been provided. The applicant has not provided any information if the updated plans will impact on the findings/recommendations within the acoustic report by Day Design Pty Ltd dated 9 December 2020 (Reference 7066-1.2R).</p> <p>An updated acoustic assessment by a suitably qualified and experienced acoustic consultant is required in accordance with NSW EPA Noise Policy for Industry in order to determine any acoustic impacts of the changes including but not limited to an assessment of the following changes:</p> <ul style="list-style-type: none">• The inclusion of 3 rooms with open private space on the ground floor; and• The increase in size of the common room and outdoor common space on level 3. <p>Additionally, concerns have also been raised that no modelling was conducted on the potential acoustic impacts that may be felt by 9/65 Pacific Parade, Dee Why that is located on level 3. The assessment had only taken into account modelling for receptors located up to level 2 at 65 Pacific Parade. From a review of the elevations it appears that the residential units located on Level 3 of 65 Pacific Parade would be considered as impacted residences warranting an assessment of the potential impacts of the proposed development.</p>

Internal Referral Body	Comments
	<p>The updated acoustic assessment is to also include an assessment of the potential impacts on residences located on Level 3 of 65 Pacific Parade. In particular, any noise impacts from the Level 3 outdoor common space.</p> <p>It is also noted that Day Design conducted attend noise monitoring at the rear location of 67 Pacific Parade at first floor level to establish the noise level difference with varying height and established a 2dB increase between ground floor and first floor. However, Environmental Health recommends that an acoustic consultant reviews and determines if monitoring is needed from an elevation equivalent to Level 3 65 Pacific Parade. This is in order to determine if there is any major difference with varying height from Level 1 to Level 3.</p> <p>Recommendation</p> <p>REFUSAL</p>
Landscape Officer	<p>Supported with conditions</p> <p>The development application is for the demolition of existing structures and the construction of a part three, part four storey boarding house development, basement parking and associated landscaping.</p> <p>The application is assessed by Landscape Referral against State Environmental Planning Policy (Affordable Rental Housing) 2009, Division 3 Boarding Houses, and in particular clause 29 - Standards that cannot be used to refuse consent (2) (b) landscaped area, Warringah Local Environmental Plan 2011 and Warringah Development Control Plan 2011, including but not limited to the following clauses:</p> <ul style="list-style-type: none"> • D1 Landscaped Open Space and Bushland Setting • E1 Preservation of Trees or Bushland Vegetation • E6 Retaining Unique Environmental Features <p>The existing site contains natural rock outcrops at the frontage and rear that is retained in parts not impacted by development. Existing vegetation on the site is predominately Exempt Species by either species type or by height and therefore not protected by Council's DCP controls. One prescribed species (Bottlebrush), protected under the DCP and therefore requiring Council consent for removal is located within the frontage. All trees and vegetation within adjoining properties are to be protected.</p> <p>Amended Plans have been provided in response to Landscape Referral's initial response, and landscape amendments increase the landscaped area to the frontage including: increase to landscape strip adjacent to north western boundary by an additional 1 metre to provide adequate area for planting; and increase soil depth above garbage bin storage to 1 metre depth to provide adequate soil volume to support small tree planting and other planting.</p>

Internal Referral Body	Comments
	<p><i>Landscape Referral's initial response:</i></p> <p><i>A Landscape Plan and an Arboricultural Impact Assessment are provided with the application. The proposal includes deep soil areas of 6125mm to the rear setback, 2000mm to the side southern boundary, and 2000mm to the side northern boundary (in part only). Within the front setback deep soil planting is not provided apart from the southern side boundary area containing 2000m x 7095mm in area, and an insignificant garden area at the northern front corner. The front setback contains built elements including a driveway, pavement forecourt, and bin storage with a podium garden over, that excludes planting of any prominent size to be established within the front setback.</i></p> <p><i>Within the front setback, the landscape proposal fails to provide adequate landscape area treatment under the SEPP (ARH) clause 29 intent, as well as under DCP clause D1, where the landscape proposal within the site is not compatible with the landscape treatment of front setbacks of adjoining residential unit developments in Pacific Parade. It is noted that the adjoining residential flat building property at No. 65 does not provide landscape planting within the frontage, however on balance when the remainder of Pacific Parade is considered, the front setback areas typically contain tree planting and other vegetation to soften the built form, and this is not achieved by the proposed development.</i></p> <p><i>Landscaped Area under WLEP is defined as: a part of a site used for growing plants, grasses and trees, but does not include any building, structure or hard paved area. The landscape plans indicate areas of landscaped area on slab that do not provide the required minimum soil depth of 1 metre to be included as landscaped open space.</i></p> <p><i>The inadequate provision of Landscaped Area deep soil within the front setback is not compatible with the streetscape in which the building is located, to be able to satisfy the provision of State Environmental Planning Policy (Affordable Rental Housing) 2009, Division 3 Boarding Houses, and in particular clause 29 - Standards that cannot be used to refuse consent (2) (b) landscaped area.</i></p>
NECC (Bushland and Biodiversity)	<p>Supported with conditions</p> <p>Councils biodiversity referrals team have assessed the development application for compliance against the following relevant provisions:</p> <ul style="list-style-type: none"> • Warringah DCP Clause E2 Prescribed Vegetation • Warringah DCP Clause E6 Retaining Unique Environmental Features <p>The proposed development seeks to clear the majority of vegetation from within the lot, most of which is considered exempt due to size,</p>

Internal Referral Body	Comments
	<p>species or location. Only one (1) prescribed tree (<i>Callistemon viminalis</i>) is proposed for removal. As such, the development is considered to be situated and designed to minimise the impact on prescribed vegetation, including remnant canopy trees, understorey vegetation, and ground cover species in accordance with WDCP cl. E2. To compensate for the removal of the <i>Callistemon viminalis</i>, replacement planting at a minimum ratio of 1:1 is required with a suitably native equivalent selected from the Native Plant Species Guide - Curl Curl Ward, which is available on Councils website.</p> <p>The development is considered to have been designed to address any distinctive environmental features of the site and on adjoining nearby land, and respond to these features through location of structures, outlook, design and materials in accordance with WDCP cl. E6, through the redesign to include the retention of the natural rock outcrop.</p>
NECC (Development Engineering)	<p>Supported (subject to conditions) The amended plan has been send to Council on 4/5/2021.</p> <p>The internal and external driveways have been extended in the amended plan to address the pervious comment. However, the extended driveway crossing will be encroached over Council's existing stormwater pit. The applicant proposed to build over the stormwater pit which is not acceptable to Council.</p> <p>The applicant shall relocate the stormwater pit at least 1 m away from the new layback in order to protecting Council's stormwater pit. A condition has been placed to ask the applicant to lodge an Infrastructure work on Council roadway application to relocate the Council pit.</p> <p>As such, Development Engineering has no objection to the application subject to the following condition of consent.</p>
Parks, reserves, beaches, foreshore	<p>Supported with conditions The proposed development can be supported with conditions. No access to the construction site will be permitted from the adjacent reserve as there is adequate site access from Pacific Pde. A dilapidation report on the adjacent reserve is required to submitted to Council prior to commencement of work.</p>
Strategic and Place Planning (Urban Design)	<p>Not supported</p> <p>The applicant has submitted amended documents dated 29 April 2021. The proposal has not responded to all the issues identified in the Section 34 conference, Design and Sustainability Advisory Panel and Pre-Lodgement Meeting comments:</p> <p>1. The proposed boarding house is a big increase in unit density and such, amenities to surrounding neighbours should be protected as if a residential flat building is going to be proposed. <i>Response:</i> The latest amended proposal does not comply with all the</p>

Internal Referral Body	Comments
	<p>built form controls and as such the amenities to the neighbouring residences and boarding rooms facing the west boundary are affected.</p> <p>2. Proposal should comply fully with the front building setback of 6.5m and side setback of 4.5m, 2m at basement levels and building envelope of 5m at 45 degree. Amenities such as sunlight and privacy to neighbouring residences should not be compromised. <i>Response:</i> The proposal has not complied with the side setbacks, side boundary envelope controls and basement setback. Amenities to neighbouring residences have been compromised.</p> <p>3. No building sections are provided. Building height should comply with the 11m control but concern is raised with the deep excavation of the two basement carpark levels, two levels of communal rooms and three level of boarding units at the rear of the site. Basement carpark should not protrude above natural ground by more than one metre. Communal rooms proposed at the rear in subterranean conditions could be redesigned to face a central courtyard to be located in the middle of the building. <i>Response:</i> The extent of the revised basement excavation is about 3 storeys for the car stacker area and is still a concern on a narrow site. Structure such as contiguous bore piles to the basement walls have not been indicated on drawings and will encroach into the 2m setback. The common areas are relocated to the roof area which should receive adequate solar access.</p> <p>4. Middle units facing the west boundary have overlooking issues, a suggestion will be to re-orientate to the north by creating central courtyard to look into. <i>Response:</i> Middle units are still facing the western boundary and not receiving adequate solar access.</p> <p>5. Building articulations could be improved with bigger gaps to preserve existing trees and by creating a central courtyard for middle units to face into. <i>Response:</i> These suggestions have not been explored.</p> <p>6. Landscape requirement of 50% site should be provided for adequate landscape buffer to soften the impact of the increase in density of living units. <i>Response:</i> Inadequate landscape (41.5%) has been proposed.</p> <p>7. The roof terrace should address the street primarily and to be setback from building edges and have landscape planters to minimise overlooking and noise nuisance issues to next door neighbours. <i>Response:</i> The proposed common open space terrace can be supported. The common room area proposed breaches the side boundary building envelope.</p> <p>8. Generally, 30 units is an overdevelopment of the site with the side boundaries and building envelope breaches. The façade treatment</p>

Internal Referral Body	Comments
	<p>consisting of mainly repetitive window boxes void of balconies could be softened with a more residential look with green walls and a variety of material finishes.</p> <p><i>Response:</i> The 26 rooms boarding house is still an over-development with excessive building control breaches. Facade articulations and finishes treatment could be improved and refine further.</p>
Traffic Engineer	<p>Supported with conditions</p> <p>The proposed development has been assessed and the car park design is deemed to generally comply with the intent of the standard, with initial concerns addressed include the end of aisle turning movement.</p> <p>The access control system configuration of the access driveway has addressed the concerns related to queuing in Pacific Parade. The operation management plan for the use of car stackers in the development can be conditioned and achieves the parking numbers required under the SEPP.</p> <p>The proposed changes can be supported on traffic and transport grounds subject to conditions.</p>
Waste Officer	<p>Supported with conditions</p> <p>Waste Management Updated Assessment (Amended master plans received 4 May 2021). Proposal is approved with conditions</p>

External Referral Body	Comments
Ausgrid: (SEPP Infra.)	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 will be included as a condition of consent.
NSW Police – Crime Prevention Office (Local Command matters)	A referral response was received from the NSW Police offering no objections subject to conditions.

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 55 - Remediation of Land

Clause 7 (1) (a) of SEPP 55 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 Clause 7 (1) (b) and (c) of SEPP 55 and the land is considered to be suitable for the residential land use.

SEPP (Affordable Rental Housing) 2009

State Environmental Planning Policy (Affordable Rental Housing) 2009 (SEPP ARH) aims to provide new affordable rental housing and retain and mitigate any loss of existing affordable rental housing by providing a consistent planning regime. Specifically, SEPP ARH provides for new affordable rental housing by offering incentives such as expanded zoning permissibility, floor space ratio bonuses and non-discretionary development standards.

Division 3: Boarding houses

Clause 25: Definition

For the purposes of this Division, the Standard Instrument defines a 'boarding house' as a building that:

*"(a) is wholly or partly let in lodgings, and
(b) provides lodgers with a principal place of residence for 3 months or more, and
(c) may have shared facilities, such as a communal living room, bathroom, kitchen or laundry, and
(d) has rooms, some or all of which may have private kitchen and bathroom facilities, that accommodate one or more lodgers,*

but does not include backpackers' accommodation, a group home, hotel or motel accommodation, seniors housing or a serviced apartment".

In this Division 'communal living room' means *"a room within a boarding house or on site that is available to all lodgers for recreational purposes, such as a lounge room, dining room, recreation room or games room".*

Clause 26: Land to which this Division applies

Requirement	Comment
This Division applies to land within any of the following land use zones or within a land use zone that is equivalent to any of those zones:	
(a) Zone R1 General Residential, or (b) Zone R2 Low Density Residential, or (c) Zone R3 Medium Density Residential, or (d) Zone R4 High Density Residential, or (e) Zone B1 Neighbourhood Centre, or (f) Zone B2 Local Centre, or	Consistent The site is located within the R3 Medium Density Residential zone and, as such, the proposed use is permissible with consent under WLEP 2011.

(g) Zone B4 Mixed Use.	
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Clause 27: Development to which this Division applies

(1) This Division applies to development, on land to which this Division applies, for the purposes of boarding houses.

Requirement	Comment
<p>(2) Despite subclause (1), this Division does not apply to development on land within Zone R2 Low Density Residential or within a land use zone that is equivalent to that zone in the Sydney region unless the land is within an accessible area.</p> <p>Note: Accessible area means land that is within:</p> <p>(c) 400m walking distance of a bus stop used by a regular bus service (within the meaning of the Passenger Transport Act 1990) that has at least one bus per hour servicing the bus stop between 06.00 and 21.00 each day from Monday to Friday (both days inclusive) and between 08.00 and 18.00 on each Saturday and Sunday.</p>	<p>Consistent</p> <p>The site is located within the R3 Medium Density Residential zone and is situated not more than 400m walking distance of a bus stop used by a regular bus service (within the meaning of the Passenger Transport Act 1990) that has at least one bus per hour servicing the bus stop between 06.00 and 21.00 each day from Monday to Friday (both days inclusive) and between 08.00 and 18.00 on each Saturday and Sunday.</p>
<p>(3) Despite subclause (1), this Division does not apply to development on land within Zone R2 Low Density Residential or within a land use zone that is equivalent to that zone that is not in the Sydney region unless all or part of the development is within 400 metres walking distance of land within Zone B2 Local Centre or Zone B4 Mixed Use or within a land use zone that is equivalent to any of those zones.</p>	Not applicable.

Clause 28: Development may be carried out with consent

Requirement	Comment
Development to which this Division applies may be carried out with consent.	The development constitutes the construction of a boarding house, as defined by the Standard Instrument. Therefore, the development may be considered under this Division of the SEPP as development which may be carried out with consent.

Clause 29: Standards that cannot be used to refuse consent

Standard	Requirement	Proposed	Compliant/Comment
<p>(1) Density and scale</p> <p>A consent authority must not refuse consent to development to which</p>	<p>(a) the existing maximum floor space ratio for any form of residential</p>	<p>Floor space ratios are not applied in WLEP 2011 or WDCP</p>	Not applicable

this Division applies on the grounds of density or scale if the density and scale of the buildings when expressed as a floor space ratio are not more than:	accommodation permitted on the land, or		
	(b) if the development is on land within a zone in which no residential accommodation is permitted - the existing maximum floor space ratio for any form of development permitted on the land, or	Floor space ratios are not applied in WLEP 2011 or WDCP	Not applicable
	(c) if the development is on land within a zone in which residential flat buildings are permitted and the land does not contain a heritage item that is identified in an environmental planning instrument or an interim heritage order or on the State Heritage Register - the existing maximum floor space ratio for any form of residential accommodation permitted on the land, plus: (i) 0.5:1, if the existing maximum floor space ratio is 2.5:1 or less, or (ii) 20% of the existing maximum floor space ratio, if the existing maximum floor space ratio is greater than 2.5:1.	R3 Medium Density Residential zone	Not applicable
(2) A consent authority must not refuse consent to development to which this Division applies on any of the following grounds:			
(a) building height	if the building height of all proposed buildings is not more than the maximum building height permitted under another environmental planning instrument for any building on the land,	Permissible height 11m Proposed height 10.9m	Compliant
(b) landscaped area	if the landscape treatment of the front	The amended proposal increases the amount of	Consistent to the frontage.

	<p>setback area is compatible with the streetscape in which the building is located,</p>	<p>landscaping within the front setback and Council's Landscape Officer has no objections to the treatment of the frontage.</p> <p>It is noted that a waiting bay is provided within the front setback in lieu of extra deep soil zones to help address road safety issues which is assessed as acceptable given the location of the site at the crest of a hill and close to an intersection.</p> <p>The side setbacks are inconsistent with the predominate character of the area which consists of residential building set back approximately 3m from the side boundaries in landscape settings.</p>	
(c) solar access	<p>where the development provides for one or more communal living rooms, if at least one of those rooms receives a minimum of 3 hours direct sunlight between 9am and 3pm in mid-winter,</p>	<p>The proposal has been amended to allow for one 59sqm common room on level 3.</p> <p>No details have been provided to confirm that the room meets the solar access requirements of the SEPP.</p>	<p>Insufficient information submitted to assess compliance.</p>
(d) private open space	<p>if at least the following private open space areas are provided (other than the front setback area):</p> <p>(i) one area of at least 20m² with a minimum dimension of 3.0m is provided for the use of the lodgers,</p> <p>(ii) if accommodation is</p>	<p>The proposal has been amended to provide a 28.8sqm area of open space at roof level. While the size and dimensions of the open space complies with the numerical requirements of the SEPP concern is expressed regarding access to the space for all residents. It is noted that the POM / acoustic</p>	<p>Insufficient information submitted to assess compliance.</p>

	provided on site for a boarding house manager—one area of at least 8.0m ² with a minimum dimension of 2.5m is provided adjacent to that accommodation,	report for the original proposal restricted access to the space to between five (5) and nine (9) residents between 6pm and 10pm. Insufficient information has been submitted with the amended scheme to confirm that the space is accessible to all residents.	
(e) parking	<p>if:</p> <p>(i) in the case of development carried out by or on behalf of a social housing provider in an accessible area—at least 0.2 parking spaces are provided for each boarding room, and</p> <p>(ii) in the case of development carried out by or on behalf of a social housing provider not in an accessible area—at least 0.4 parking spaces are provided for each boarding room, and</p> <p>(iia) in the case of development not carried out by or on behalf of a social housing provider—at least 0.5 parking spaces are provided for each boarding room, and</p> <p>(iii) in the case of any development—not more than 1 parking space is provided for each person employed in connection with the development and who is resident on site,</p>	<p>The SEPP requires a total of fourteen (14) car parking spaces (12.5 rounded up to 13 plus one (1) space for the on-site manager. The proposal provides a total of thirteen (13) spaces twelve (12) of which rely on the car stacker.</p> <p>The proposal falls short of the numerical car parking requirement by one (1) space. Given the context of the site, where street parking availability cannot be relied on, the non-compliance is not supported.</p> <p>Further, issues have been raised regarding the operation and management of the car stackers for a boarding house.</p>	Non-compliant.
(f) accommodation	if each boarding room	All boarding rooms	Compliant

size	has a gross floor area (excluding any area used for the purposes of private kitchen or bathroom facilities) of at least: (i) 12 square metres in the case of a boarding room intended to be used by a single lodger, or (ii) 16 square metres in any other case.	provide a compliant GFA	
	(3) A boarding house may have private kitchen or bathroom facilities in each boarding room but is not required to have those facilities in any boarding room.	All boarding rooms have private kitchens and bathrooms	Consistent
	(4) A consent authority may consent to development to which this Division applies whether or not the development complies with the standards set out in subclause (1) or (2).	Not relevant	Consistent

Clause 30: Standards for boarding houses

Standard requirement	Proposed	Compliant/Comment
(1) A consent authority must not consent to development to which this Division applies unless it is satisfied of each of the following:		
(a) if a boarding house has 5 or more boarding rooms, at least one communal living room will be provided,	A communal room is located on level 3	Compliant
(b) no boarding room will have a gross floor area (excluding any area used for the purposes of private kitchen or bathroom facilities) of more than 25m ² ,	The amended proposal reduces all rooms to areas of less than 25sqm	Compliant
(c) no boarding room will be occupied by more than 2 adult lodgers,	Can comply by way of condition	Can Comply
(d) adequate bathroom and	Each boarding room has a	Consistent

kitchen facilities will be available within the boarding house for the use of each lodger,	private kitchen and bathroom	
(e) if the boarding house has capacity to accommodate 20 or more lodgers, a boarding room or on site dwelling will be provided for a boarding house manager,	A managers room is provided at ground level	Consistent
(g) if the boarding house is on land zoned primarily for commercial purposes, no part of the ground floor of the boarding house that fronts a street will be used for residential purposes unless another environmental planning instrument permits such a use,	The site is zoned R3 Residential	Not relevant
(h) at least one parking space will be provided for a bicycle, and one will be provided for a motorcycle, for every 5 boarding rooms.	Complies	Compliant
(2) Subclause (1) does not apply to development for the purposes of minor alterations or additions to an existing boarding house.	N/A	N/A

Clause 30AA: Boarding houses in Zone R2 Low Density Residential

A consent authority must not grant development consent to a boarding house on land within Zone R2 Low Density Residential or within a land use zone that is equivalent to that zone unless it is satisfied that the boarding house has no more than 12 boarding rooms.

Comment:

The site is located with a R3 Medium density zone therefore this clause does not apply.

Clause 30A: Character of the local area

The matter of assessing the character compatibility of development has been examined by the Land and Environment Court in *GPC No 5 (Wombarra) Pty Ltd v Wollongong City Council (2003)* NSWLEC 268 and *Project Venture Developments v Pittwater Council (2005)* NSWLEC 191 where Senior Commissioner Roseth set out Planning Principles to better evaluate how a development should respond to the character of its environment. The following provides an assessment against the Planning Principles established in those two cases.

In the case of *GPC No 5 (Wombarra) Pty Ltd v Wollongong City Council (2003)* NSWLEC 268 Senior Commissioner Roseth developed the following Planning Principles:

- *The first principle is that buildings in a development do not have to be single-storey to be compatible with the streetscape even where most existing buildings are single storey. The principle does not apply to conservation areas where single storey dwellings are likely to be the*

major reason for conservation.

Comment:

The surrounding area is characterised primarily by three and four storey brick residential flat buildings to the immediate north, west and south which are set back from the street frontage. The majority of the existing buildings are older apartment blocks dating from the 1960s, 1970s and 1980s. There is a consistent theme of the brick buildings being set back from the street frontages and side boundaries some with extensive landscaping including canopy trees.

More recent three (3) and four (4) storey residential flat developments are interspersed within the surrounding area including No. 65 Pacific Parade to the immediate west and 1-5 The Crescent to the immediate east. With the exception of No. 65 Pacific Parade, all buildings are set back from the street and side boundaries in a landscape setting. It is also noted that the facades of more recent developments are articulated with features such as light weight glazed balconies to reduce the visual bulk from the streetscape.

Amended Plans have been provided which increase the landscaped area to the frontage to the satisfaction of Council's Landscape Officer. Despite the improvement to the treatment of the front setback the amended proposal retains a 2m setback of the majority of the development to the east and west boundary which is inconsistent with the 4.5m setback required in the WDCP. As such, the side setback is inconsistent with the DCP control and the predominate pattern of development in the surrounding area and results in a bulk and scale which is incompatible with the streetscape and inconsistent with the first principle.

- *The second principle is that where the size of a development is much greater than the other buildings in the street, it should be visually broken up so that it does not appear as one building. Sections of a building, or separate buildings should be separated by generous breaks and landscaping.*

Comment:

As a result of the full height lobby and entrance to the basement the proposed development reads as a four storey structure from the streetscape. The finishes and treatment of the front elevation does not assist in reducing the visual dominance of the building or relate to the treatment of neighbouring residential developments which have a light weight balconies to the front facade. As such, the proposal is inconsistent with the built form of the streetscape/character of the local area.

In this regard, the development is considered to be incompatible with the scale of surrounding development and inconsistent with the second principle.

- *The third principle is that where a site has existing characteristics that assist in reducing the visual dominance of development, these characteristics should be preserved. Topography that makes development appear smaller should not be modified. It is preferable to preserve existing vegetation around a site's edges to destroying it and planting new vegetation.*

Comment:

The amended proposal retains more of the existing rock outcrop and additional landscaping is provided to the frontage in the form of a larger planted bed to the north west corner and 1m deep soil above the

bin store to allow for planting. As noted above, the majority of the development is setback 2m from the side boundaries which reduces the area available for planting along the side boundaries which would help reduce the visual dominance of the development as observed from adjoining properties.

In this regard, it is considered that effective methods have not been employed in the design of the development to reduce its visual dominance and is inconsistent (in part) with the third principle.

- *The fourth principle is that a development should aim to reflect the materials and building forms of other buildings in the street. This is not to say that new materials and forms can never be introduced only that their introduction should be done with care and sensitivity.*

Comment:

The materials are generally acceptable, however, the front (northern) facade lacks articulation to ensure that it is consistent with the light-weight materials (glass balustrades) to balconies evident on the other recent residential flat buildings in the surrounding area.

In this regard, the development is considered to be inconsistent (in part) with the fourth principle.

The above principles were further developed in *Project Venture Developments v Pittwater Council* (2005) NSWLEC 191 to include the following:

Are the proposal's physical impacts on surrounding development acceptable? The physical impacts include constraints on the development potential of surrounding sites.

Comment:

The physical impacts of the development on surrounding properties are assessed as consisting of constraints on the development potential of surrounding sites, privacy, overshadowing and noise.

Constraints on the development potential of surrounding sites

The sites to the immediate west and east have been re-developed over the last ten years and the site to the immediate south is a pocket park. As such, the proposal will not create a constraint on the development potential of surrounding sites.

Privacy

Windows in the western elevation are positioned 2m from the east and west boundary. Obscure glazing is proposed to these side windows, however, this is not considered to be an acceptable privacy device as it reduces the internal amenity of the boarding room in terms of access to sunlight. Windows in the proposed central block are positioned 3.6m from the western boundary / 5.6m from the windows in the neighbouring residential apartment block at No. 65 Pacific Parade. There is no privacy treatment to these windows. A search of Council records suggest that the affected eastern windows to No. 65 Pacific Parade are windows to a bedroom (a privacy screen has been installed to the level 3 bedroom window but not the level 2 window) and the entrance lobby to the rear units. Refer to discussion under Clause D8 (Privacy).

Overshadowing

Shadow diagrams have been submitted which illustrate that additional shadow will be cast on the adjoining sites to the south and east. The additional shadow impacts on 1-5 The Crescent from 1pm -

3pm on 21 June. Refer to discussion under Clause D6 (Access to Sunlight).

Noise

Significant concern has been raised from the owners and occupier of the adjoining residential flat buildings to the immediate east and west in terms of acoustic impacts as a result of the location of the roof top common private open space to the front of the site and its proximity to existing balconies. Insufficient information has been submitted to address this issue. Refer to comments from Council's Environmental Health Officer and discussion under Clause D3 (Noise).

Conclusion to character assessment

The above character assessment has found that, in the context of the Land and Environment Court Planning Principles, the proposal is incompatible with the character of the local area and surrounding wider locality.

This matter warrants the refusal of the Development Application.

Design and Sustainability Advisory Panel (DSAP)

The application was referred to DSAP on 25 March 2021 for review, the notes from which are attached to this report.

The amended proposal has somewhat responded to the following concerns raised:

- Insufficient landscaping to the streetscape to soften the proposal.
- The complicated car park which requires two ramps on the street to be redesigned to reduce impacts.
- The double storey common room to the rear should be relocated.

However, the amended proposal has not appropriately responded to the following concerns / recommendations:

- Provide compliant 4.5m side setbacks.
- Orientate the units to face into the site so they do not borrow the amenity from the adjoining sites;
- Use the side setbacks to provide deep soil planting which will provide a landscaped setting to the building and provide privacy and outlook to both the adjoining and subject sites.
- Redesigning the front façade to provide more visual interest and a contextually appropriate response to the site.
- The west facing units should be designed out of the project with units facing either the street or into the site with adequate separation distances provided.

Conclusion

The proposed development is not supported.

SEPP (Building Sustainability Index: BASIX) 2004

A BASIX certificate has been submitted with the application (see Certificate No. 114211M dated 29

April 2021).

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

Commitment	Required Target	Proposed
Water	40	40
Thermal Comfort	Pass	Concession Target Pass
Energy	35	35

Should the application be supported a condition can be included requiring compliance with the commitments indicated in the BASIX Certificate.

SEPP (Infrastructure) 2007

Ausgrid

Clause 45 of the SEPP 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 will be included as a condition of consent.

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?	No
zone objectives of the LEP?	No

Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings:	11m	10.8m	N/A	Yes

Compliance Assessment

Clause	Compliance with Requirements
2.7 Demolition requires consent	Yes
4.3 Height of buildings	Yes
6.2 Earthworks	No
6.4 Development on sloping land	No

Detailed Assessment

Zone R3 Medium Density Residential

The proposed development is inconsistent with the following objectives of Zone R3 Medium Density Residential of the Warringah Local Environmental Plan 2011. Objective 4 which requires low density residential environments to be characterised by landscaped settings that are in harmony with the natural environment of Warringah. Objective 5 which requires medium density residential environments are of a high visual quality in their presentation to public streets and spaces.

6.2 Earthworks

The proposal, as amended, requires excavation to a maximum depth of 9.9m with excavation occurring generally 2m from the side boundaries. The application is supported with a geotechnical survey which makes a number of recommendations including conditions relating to dilapidation surveys, vibration, retaining walls, anchoring, sub-soil drainage measures and water management. The report concludes

"that given the nature of the site conditions and proposed depth of excavation, we recommend that one more deep borehole should be carried out at the rear of the site to a depth of about 10-12m including rock coring to confirm the recommendation provided and the subsurface profile across the whole site is consistent with the current investigation."

In summary, no details have been given on the recommended additional testing, therefore, the geotechnical report is inconclusive and insufficient information has been submitted to confirm that the earthworks will not impact on the amenity of adjoining properties, drainage patterns and soil stability subject to compliance with the recommendations of the report. In accordance with Clause 6.2 (3) the consent authority can therefore not grant development consent for the earthworks.

Warringah Development Control Plan

Built Form Controls

Built Form Control	Requirement	Proposed	% Variation*	Complies
B1 Wall height	7.2m	10.4m	44.4%	No
B2 Number of storeys	3	Part 3 / 4 (The front elevation reads as a four storey development)	33.33%	No
B3 Side Boundary Envelope	East 5m	The following elements breach the envelope: Lift over-run, upper portion of central core and upper portion of the rear units	Refer to details	No
	West 5m	The western top corner of the front unit, the upper portion of the rear units, the walls associated with the external roof	Refer to details	No

		top common open space and the upper portion of the central common room		
B5 Side Boundary Setbacks	East 4.5m	2m on all levels	55.56%	No
	West 4.5m	Basement - 7.3m Lower Ground Level - between 0.8m, 2m and 3.5m Upper level - between 2m, 2.2m and 4m Level 1 and 2 - between 2m and 4m Level 3 - between 2m and 4.3m	N/A up to 82.23% up to 55.5% on all levels	Yes No No
B7 Front Boundary Setbacks	6.5m	Lower Ground Level -1.7m to bin store (*Note: the DCP allows bin stores within the frontage) All other levels 6.5m	N/A N/A	Yes Yes
B9 Rear Boundary Setbacks	6m	With the exception of the walls enclosing the ground floor area of private open space associated with the units in the southern (rear) block.	N/A	Assessed as acceptable
D1 Landscaped Open Space (LOS) and Bushland Setting	50%	272.8sqm 39.21% (including the rock outcrop and the areas of private open space)	10.79%	No

***Note:** The percentage variation is calculated on the *overall* numerical variation (ie: for LOS - Divide the proposed area by the numerical requirement then multiply the proposed area by 100 to equal X, then 100 minus X will equal the percentage variation. Example: $38/40 \times 100 = 95$ then $100 - 95 = 5\%$ variation)

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A.5 Objectives	No	No
B1 Wall Heights	No	No
B2 Number of Storeys	No	No
B3 Side Boundary Envelope	No	No
B5 Side Boundary Setbacks	No	No
B7 Front Boundary Setbacks	No	No
B9 Rear Boundary Setbacks	No	Yes
C2 Traffic, Access and Safety	Yes	Yes
C3 Parking Facilities	No	No
C3(A) Bicycle Parking and End of Trip Facilities	Yes	Yes
C4 Stormwater	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
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
D1 Landscaped Open Space and Bushland Setting	No	No
D3 Noise	No	No
D6 Access to Sunlight	No	No
D7 Views	Yes	Yes
D8 Privacy	No	No
D9 Building Bulk	No	No
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	No	No
D21 Provision and Location of Utility Services	Yes	Yes
D22 Conservation of Energy and Water	No	No
E1 Preservation of Trees or Bushland Vegetation	Yes	Yes
E2 Prescribed Vegetation	Yes	Yes
E6 Retaining unique environmental features	Yes	Yes
E7 Development on land adjoining public open space	Yes	Yes
E10 Landslip Risk	Yes	Yes

Detailed Assessment

A.5 Objectives

The proposed development is inconsistent with the objectives at cl.A.5 (Objectives) of WDCP as it does not:

- i. Respond to the characteristics of the site and the qualities of the surrounding neighbourhood, or
- ii. Create a unified landscape, contribute to the street and create an attractive design outcome.

B1 Wall Heights

Description of non-compliance

B1 requires *wall heights not to exceed 7.2 metres from ground level (existing) to the underside of the ceiling on the uppermost floor of the building (excluding habitable areas wholly located within a roof space)*.

The proposed wall height of 10.4m exceeds the minimum requirement by 44.4%

Merit consideration:

With regard to the consideration for a variation, the development is considered against the underlying Objectives of the Control as follows:

- *To minimise the visual impact of development when viewed from adjoining properties, streets, waterways and land zoned for public recreation purposes.*

Comment:

The breach of the wall height contributes to the excessive mass and bulk of the development which appears to be visually dominate when viewed from adjoining properties.

- *To ensure development is generally beneath the existing tree canopy level .*

Comment:

Due to the topography of the site the building sits above the tree canopy of some existing trees.

- *To provide a reasonable sharing of views to and from public and private properties.*

Comment:

The proposal will not have unreasonable impacts on view sharing to and from private properties. Notwithstanding this the bulk and massing of the development will have an adverse impact on the adjoining properties in relation to outlook.

- *To minimise the impact of development on adjoining or nearby properties.*

Comment:

Due to insufficient setback and non-compliance with the built form controls, including wall height the proposal has the potential to result in unreasonable impacts on the amenity of adjoining properties. The proposal will increase the amount of shadow falling on the site to the immediate east, No. 1-5 The Crescent and insufficient information has been submitted to confirm that the proposal will meet the solar access requirements of clause D6. Due to insufficient setbacks the proposal has the potential to impact on the visual and acoustic privacy of adjoining properties.

- *To ensure that development responds to site topography and to discourage excavation of the natural landform.*

Comment:

The proposal does not respond to the site topography and will result in excessive excavation to a depth of 9.9m which is between 0.8m and 2m from the side boundaries.

- *To provide sufficient scope for innovative roof pitch and variation in roof design.*

Comment:

The proposed roof is flat which is similar to the roof design of more recent residential developments in the surrounding area.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the aims and objectives of WLEP 2011, WDCP and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is not supported, in this particular circumstance.

B2 Number of Storeys

Description of non-compliance

The control requires that the number of storeys does not exceed three (3) storeys. The development presents a four (4) storey frontage to Pacific Parade which is in-consistent with the control.

Merit consideration:

With regard to the consideration for a variation, the development is considered against the underlying Objectives of the Control as follows:

- *To ensure development does not visually dominate its surrounds.*

Comment:

Due to insufficient side setbacks the four storey presentation of the development is visually dominant and out of character with the surrounds.

- *To minimise the visual impact of development when viewed from adjoining properties, streets, waterways and land zoned for public recreation purposes.*

Comment:

Due to insufficient side setbacks the four storey presentation of the development when viewed from adjoining properties and the public street is visually dominate.

- *To provide equitable sharing of views to and from public and private properties.*

Comment:

The proposal will not have unreasonable impacts on view sharing to and from private properties. Notwithstanding this the bulk and massing of the development will have an adverse impact on the adjoining properties in relation to outlook.

- *To ensure a reasonable level of amenity is provided and maintained to adjoining and nearby properties.*

Comment:

The proposal will increase the amount of shadow falling on the site to the immediate east No. 1-

5 The Crescent. Insufficient information has been submitted to confirm that the proposal will meet the solar access requirements of clause D6. Due to insufficient setbacks the proposal has the potential to impact on the visual and acoustic privacy of adjoining properties.

- *To provide sufficient scope for innovative roof pitch and variation in roof design.*

Comment:

The proposed roof is flat which is similar to the roof design of more recent residential developments in the surrounding area.

- *To complement the height of buildings control in the LEP with a number of storeys control.*

Comment:

The proposal complies with the 11m maximum height limit prescribed in the WLEP.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the aims and objectives of WLEP 2011, WDCP and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

B3 Side Boundary Envelope

Description of non-compliance

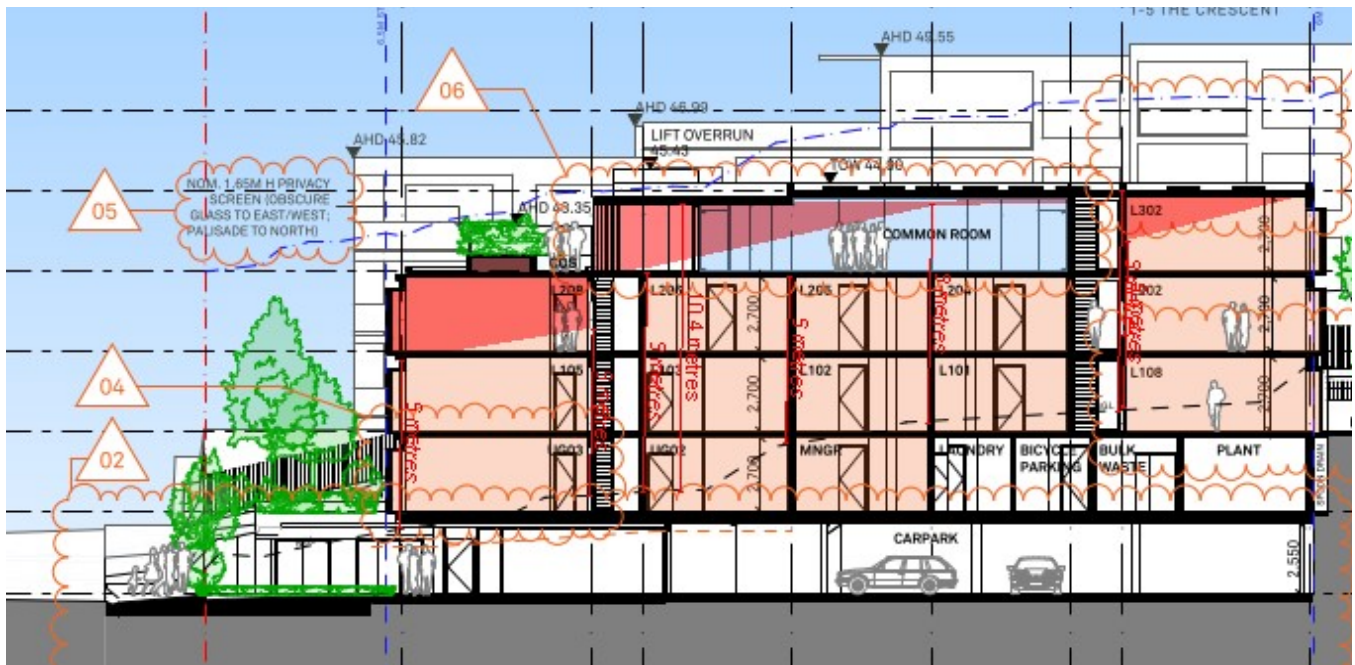
Western elevation

There are three (3) areas of envelope breach as detailed below:

Area 1 - (3m - 2.4m in height x 7.6m in length) which relates to unit L208 and the roof top planter.

Area 2 - (2.9m - 0m in height x 12m in length) which relates to the roof top common room.

Area 3 - (1.9m - 0m in height x 5.7m in length) which relates to unit L302



Section BB showing the side envelope breach (source Benson McCormack)

Eastern elevation

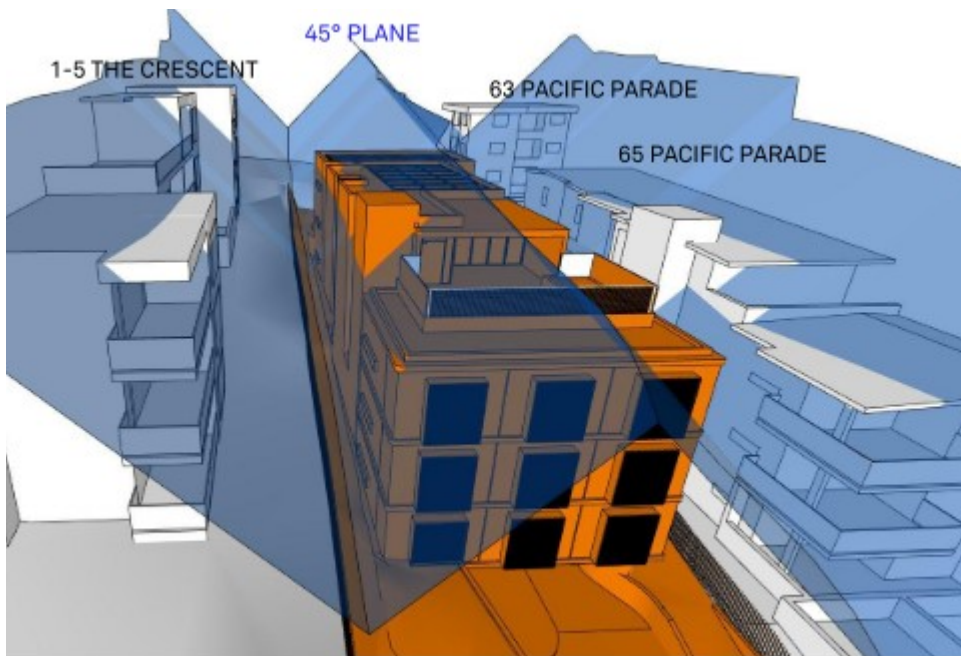
There are two (2) areas of envelope breach as detailed below:

Area 1 - (3.9m - 0m in height x 23m in length) which relates to the lift shaft, the top of the central service core and the top of unit L301

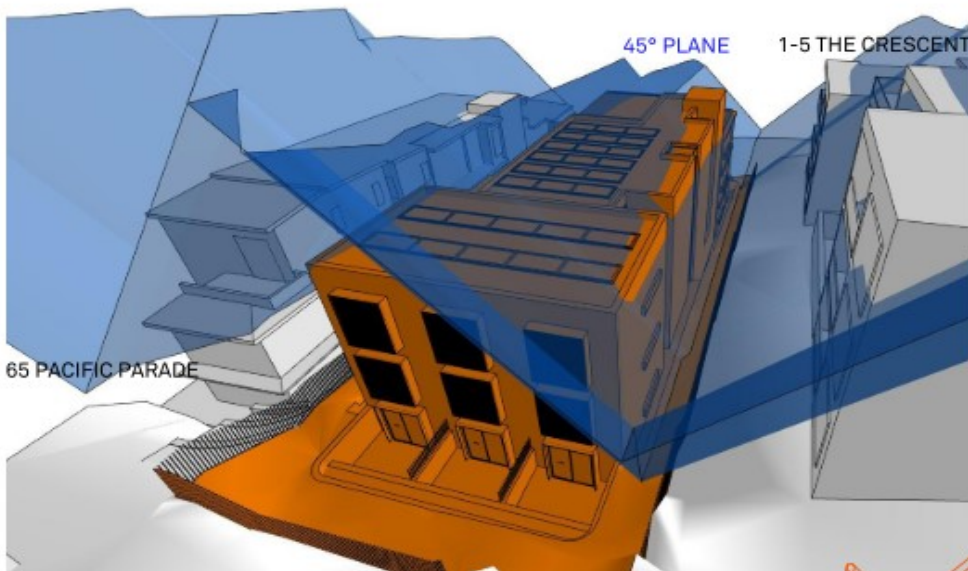
Area 2 - (1m - 0m in height - 6m in length) which relates to the top of unit L209



Section AA showing the side envelope breach (source Benson McCormack)



3D image of 45 degree plane showing envelope breach (source B McCormack)



3D image of 45 degree plane showing envelope breach (source B McCormack)

Merit consideration

With regard to the consideration for a variation, the development is considered against the underlying Objectives of the Control as follows:

- *To ensure that development does not become visually dominant by virtue of its height and bulk.*

Comment:

Due to insufficient side set backs the height, bulk and scale of the development is visually dominate particularly as viewed from the neighbouring properties to the immediate east and west.

- *To ensure adequate light, solar access and privacy by providing spatial separation between buildings.*

Comment:

Due to insufficient set backs and inadequate spatial separation between building, in particular No. 65 Pacific Parade to the immediate west, the proposal will result in unreasonable impacts on privacy. The development borrows amenity from the neighbouring site and screening devices are employed as a method to protect visual and acoustic privacy to the blocks to the front (east) and rear (south). It is noted that there is no screening provided to the windows in the central block which are located 3.6m from the western boundary.

- *To ensure that development responds to the topography of the site.*

Comment:

The proposal does not adequately respond to the topography of the site.

Having regard to the above assessment, it is concluded that the proposed development is inconsistent with the relevant objectives of WLEP 2011 / WDCP and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is not supported, in this particular circumstance.

B5 Side Boundary Setbacks

Description of non-compliance

The control requires a 4.5m setback to the east and west side boundaries. The proposal provides a 2m set back on all upper floor levels to the eastern boundary (0.8m, 2m and 3.5m at basement level). A set back of between 2m and 4m is proposed to the western boundary on all levels.

Merit consideration

With regard to the consideration for a variation, the development is considered against the underlying Objectives of the Control as follows:

- *To provide opportunities for deep soil landscape areas.*

Comment:

The side setbacks are insufficient. A compliant 4.5m side setbacks will allow for greater opportunities for deep soil areas to provide sufficient landscaping to reduce the visual dominance of the development from adjoining properties. Greater side setbacks will also ensure that the development is consistent with the predominate character of the surrounding area which includes residential developments which are sufficiently set backs from the side boundaries to provide deep soil areas to sustain screen planting.

- *To ensure that development does not become visually dominant.*

Comment:

As noted above, the insufficient side setbacks results in a development that is visually dominant from the adjoining properties to the east and west. The side setback is also inconsistent with the predominate side setback of existing developments in the surrounding area resulting in a development that is also visually dominate in the streetscape.

- *To ensure that the scale and bulk of buildings is minimised.*

Comment:

The insufficient side setback adds to the excessive scale and bulk of the building.

- *To provide adequate separation between buildings to ensure a reasonable level of privacy, amenity and solar access is maintained.*

Comment:

The insufficient side setbacks results in inadequate separation between buildings to ensure that a reasonable level of privacy, amenity and solar access is maintained.

- *To provide reasonable sharing of views to and from public and private properties.*

Comment:

As noted above, while there are no views impacts by the proposal the insufficient side setbacks combine with the excessive bulk and scale of the development will impact on the outlook from the adjoining properties.

Having regard to the above assessment, it is concluded that the proposed development is inconsistent with the relevant objectives of WLEP 2011 / WDCP and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is not supported, in this particular circumstance.

B7 Front Boundary Setbacks

The control requires a 6.5m setback from the road frontage. *The front boundary setback area is to be landscaped and generally free of any structures, basements, carparking or site facilities other than driveways, letter boxes, garbage storage areas and fences.*

The proposal generally complies with the control with only the bin store, driveway and waiting bay, fire hydrant and planter bed being located within the 6.5m frontage. In order to ensure road safety the waiting bay is deemed to be preferred over a deep soil area given the location of the site at the crest of a hill and close to an intersection.

B9 Rear Boundary Setbacks

The control requires a 6m rear setback. With the exception of the walls separating the areas of private open space to units L201, L202 and L203 and the bay windows to the rear of the southern block the proposal complies with the rear set back control.

C2 Traffic, Access and Safety

Clause C2 requires:

Vehicular Access

- 1. Applicants shall demonstrate that the location of vehicular and pedestrian access meets the objectives.*
- 2. Vehicle access is to be obtained from minor streets and lanes where available and practical.*
- 3. There will be no direct vehicle access to properties in the B7 zone from Mona Vale Road or Forest Way.*
- 4. Vehicle crossing approvals on public roads are to be in accordance with Council's Vehicle Crossing Policy (Special Crossings) LAP-PL413 and Vehicle Access to Roadside Development LAP-PL 315.*
- 5. Vehicle crossing construction and design is to be in accordance with Council's Minor works specification.*

The amended vehicular access generally addresses the issues raised by Council's Transport Officer. The proposal has been amended to change the parking from conventional basement car parking to car stackers (for 12 car parking spaces). While Council's Transport Engineer has no objections to stackers, subject to conditions, concern is raised regarding the operation and management of car stackers for the boarding house given the short term nature of the accommodation. Issues have been raised in submissions regarding impacts of queuing on the public street and traffic, pedestrian and road safety issues and with respect of a loss of kerb side parking. Insufficient information has been submitted to address these concerns, as such, the proposal is inconsistent with the following objectives of Clause C2.

- *To minimise traffic hazards.*
- *To minimise vehicles queuing on public roads.*
- *To minimise traffic, pedestrian and cyclist conflict.*
- *To minimise the loss of "on street" kerbside parking.*

Having regard to the above assessment, it is concluded that the proposed development is inconsistent with the relevant objectives of WLEP 2011 / WDCP and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is not supported, in this particular circumstance.

C3 Parking Facilities

Merit consideration

Requirement 3 of clause C3 states:

Car parking, other than for individual dwellings, shall avoid the use of mechanical car stacking space.

As discussed above, Council's Transport Officer has confirmed that subject to conditions, including an operational management plan for the car stackers, that the amended design addresses issues relating to access and road and pedestrian safety issues. Refer to Transport comments within this report.

Despite this, it is noted that the use car stackers for a boarding house is inconsistent to the part 3 of

clause C3 which states car stackers should only be considered for individual dwellings. The twelve (12) car parking spaces associated with the boarding house rely 100% on car stackers. Insufficient information has been submitted to justify an exception to Clause C3 and address issues in relation to the management and operation of the car stacker for the boarding house use. The issues raised in the submission relating to potential road safety and traffic issues with the use of car stackers for a boarding house, including queuing on the public street, are valid.

The development is considered against the underlying Objectives of the Control as follows:

- *To provide adequate off street carparking.*

Comment:

The car parking rates are specified in the SEPP (ARH) which requires 0.5 spaces per boarding room and one (1) car parking space for the boarding house manager. The proposal provides 26 rooms therefore a provision on 12.5 spaces is required. When this is rounded up it equals thirteen (13) space, plus one space for the one site manager (total of fourteen 14 spaces). The proposal provides a total of thirteen (13) spaces including one (1) accessible space. The proposal is therefore inconsistent with the parking provision being deficient by one (1) space and inconsistent with the objective of the control.

In addition, the 100% reliance on car stackers for the proposed boarding house is contrary to the requirements of the control and raises significant issues with regards to its operation and management, refer above.

- *To site and design parking facilities (including garages) to have minimal visual impact on the street frontage or other public place.*

Comment:

The parking is at basement level and will not impact on the street frontage. Issues relating to the visual dominance of the driveway on the streetscape have generally been addressed with additional landscaping and the amended entrance design.

- *To ensure that parking facilities (including garages) are designed so as not to dominate the street frontage or other public spaces.*

Comment:

As noted above, the parking is below ground and issues relating to the visual impact of the driveway have generally been addressed in the amended design.

Having regard to the above assessment, it is concluded that the proposed development is inconsistent with the relevant objectives of WLEP 2011 / WDCP and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is not supported, in this particular circumstance.

D1 Landscaped Open Space and Bushland Setting

Clause D1 requires 50% landscape open space. The development provides for 272.8sqm 39.21% (including the rock outcrop and the areas of private open space).

Merit consideration

With regard to the consideration for a 10.7% variation, the development is considered against the underlying Objectives of the Control as follows:

- *To enable planting to maintain and enhance the streetscape.*

Comment:

The proposal has been amended to improve the front set back with additional landscaping, including 1m deep soil planting above the bin store area.

- *To conserve and enhance indigenous vegetation, topographical features and habitat for wildlife.*

Comment:

The amended proposal retains more of the rock outcrop to the frontage. There are no issues raised from Council's Landscape Officer or Bushland and Biodiversity Officer subject to conditions.

- *To provide for landscaped open space with dimensions that are sufficient to enable the establishment of low lying shrubs, medium high shrubs and canopy trees of a size and density to mitigate the height, bulk and scale of the building.*

Comment:

A compliant 4.5m side set back would allow for additional deep soil zones to allow for the establishment of landscaping that will help mitigate the density, bulk and scale of the building.

- *To enhance privacy between buildings.*

Comment:

The 2m side setback restricts the available space for sufficient planting to help mitigate privacy between buildings.

- *To accommodate appropriate outdoor recreational opportunities that meet the needs of the occupants.*

Comment:

With the exception of private open space to four (4) units there are no areas of ground level outdoor recreational space. The development relies on the outdoor space at roof level which can only be used by a fraction of the residents after 6.00pm.

- *To provide space for service functions, including clothes drying.*

Comment:

The proposal does not nominate any external communal areas for service functions such as clothes drying and relies on the internal common laundry room and private laundries within each room.

- *To facilitate water management, including on-site detention and infiltration of stormwater.*

Comment:

Due to insufficient landscape open space being retained there are reduced options for water infiltration.

Having regard to the above assessment, it is concluded that the proposed development is inconsistent with the relevant objectives of WLEP 2011 / WDCP and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is not supported, in this particular circumstance.

D3 Noise

Clause D3 requires:

- 1. Noise from combined operation of all mechanical plant and equipment must not generate noise levels that exceed the ambient background noise by more than 5dB(A) when measured in accordance with the NSW Industrial Noise Policy at the receiving boundary of residential and other noise sensitive land uses.*
- 2. Development near existing noise generating activities, such as industry and roads, is to be designed to mitigate the effect of that noise.*
- 3. Waste collection and delivery vehicles are not to operate in the vicinity of residential uses between 10pm and 6am.*
- 4. Where possible, locate noise sensitive rooms such as bedrooms and private open space away from noise sources. For example, locate kitchens or service areas closer to busy road frontages and bedrooms away from road frontages.*
- 5. Where possible, locate noise sources away from the bedroom areas of adjoining dwellings/properties to minimise impact.*

Significant concern was raised in the submissions received in response to the original proposal in regards to the location of the external common areas of open space proposed to the rear of the building at ground level and towards the front of the roof. In addition, valid issues were raised in terms of the quality of the acoustic assessment given that no modelling was conducted on the potential acoustic impacts that may be felt by 9/65 Pacific Parade, Dee Why that is located on level 3.

The amended proposal re-locates all of the common open space to the roof level (the eastern (front) edge of the building). In addition, areas of private open space are proposed to the rear of the three (3) southern ground floor units.

The 28.8sqm roof top open space is located 5.2m to the western boundary and 4.4m to the eastern boundary. A solid wall is proposed along part of the western edge of the space in addition to 1.65m high glass balustrade with obscure glazing to the eastern and western edge of the area. A planter bed is proposed around the periphery and a non-trafficable roof below. While the amended proposal attempts to improve the visual privacy issues between the occupants of the boarding house and the neighbouring properties there has been no amendment to the acoustic report.

An updated acoustic assessment by a suitably qualified and experienced acoustic consultant is required in accordance with NSW EPA Noise Policy for Industry in order to determine any acoustic impacts of the changes including but not limited to an assessment the changes detailed above.

The amended application is not supported with a revised acoustic report or a sufficient Plan of Management. The amended Plan of Management (POM) has not address issues with respect of how the roof top open space will be used. It is noted that the original POM recommended that the roof top

common open space be used by a maximum of five (5) to nine (9) people between the hours of 6.00pm and 10.00pm. This represents 9.6% - 17.3% of the occupants of the boarding house. Valid concern has been raised in submissions in respect of the management of this space and the fact that the design fails the SEPP requirements in providing external space for all resident

In summary, insufficient information has been submitted to ensure that the proposal meets the objectives of the noise control which requires *"that noise emission does not unreasonably diminish the amenity of the area or result in noise intrusion which would be unreasonable for occupants, users or visitors."* As such, the potential acoustic impacts of the proposal cannot be assessed and Council's Health Officers do not support the application.

D6 Access to Sunlight

Clause D6 requires

- 1. Development should avoid unreasonable overshadowing any public open space.*
- 2. At least 50% of the required area of private open space of each dwelling and at least 50% of the required area of private open space of adjoining dwellings are to receive a minimum of 3 hours of sunlight between 9am and 3pm on June 21.*

The proposal has been amended to delete the upper loft level to the units to the rear (south) which will help reduce shadow impacts. Despite this the amended shadow diagrams in plan show that the development continues to cast additional shadow on the adjoining site to the east, 1-5 The Crescent from 1pm - 3pm. It is noted that this portion of No. 1-5 The Crescent is already cast in shadow between 9am and 10am. The diagrams do not show the shadow in elevation to confirm whether 3 hours of sunlight will be retained between 9am and 3pm to at least 50% the private open space (west facing balconies) to the apartments in No. 1-5 The Crescent.

In addition, insufficient information has been submitted to confirm that 50% of the private open space associated with the managers room and boarding rooms L07, L08 and L09 will have access to sunlight for 3 hours between 9am and 3pm on June 21. It is noted that the diagrams in plans suggest that the private open space, located within the western boundary, will be impacted by shadow cast by the subject development and the neighbouring site at No. 65 Pacific Parade.

Merit consideration

With regard to the consideration for a variation, the development is considered against the underlying Objectives of the Control as follows:

- *To ensure that reasonable access to sunlight is maintained.*

Comment:

As discussed above, the shadow diagrams confirm that the private open space to the manager's room is cast in shadow contrary to the control. Insufficient information has been submitted to confirm the minimum solar access will be retained to the west facing balconies to No. 1-5 The Crescent.

- *To encourage innovative design solutions to improve the urban environment.*

Comment:

The design could be improved by reducing the bulk and scale and increasing the set backs to address the provisions relating to access to sunlight.

- *To maximise the penetration of mid winter sunlight to windows, living rooms, and high use indoor and outdoor areas.*

Comment:

Insufficient information has been submitted to confirm that the proposal will maximise sun penetration to windows, living rooms and the ground level outdoor areas, especially to the west facing units.

- *To promote passive solar design and the use of solar energy.*

Comment:

Solar panels are proposed at roof level.

- *To minimise the need for artificial lighting.*

Comment:

Due to the orientation of the development and the design it is expected that there will be reliance on artificial lighting. Access to sunlight for the majority of boarding rooms will be limited to one window in the frontage. This will include all boarding rooms located within the centre of each block and the boarding rooms on either side which have obscure glazing to the windows in the side elevation.

Having regard to the above assessment, it is concluded that the proposed development is inconsistent with the relevant objectives of WLEP 2011 / WDCP and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is not supported, in this particular circumstance.

D8 Privacy

Clause D8 requires:

- 1. Building layout should be designed to optimise privacy for occupants of the development and occupants of adjoining properties.*
- 2. Orientate living areas, habitable rooms and windows to private open space areas or to the street to limit overlooking.*
- 3. The effective location of doors, windows and balconies to avoid overlooking is preferred to the use of screening devices, high sills or obscured glass.*
- 4. The windows of one dwelling are to be located so they do not provide direct or close views (ie from less than 9 metres away) into the windows of other dwellings.*
- 5. Planter boxes, louvre screens, pergolas, balcony design and the like are to be used to screen a minimum of 50% of the principal private open space of a lower apartment from overlooking from an upper apartment.*

Bedroom windows to the front (northern) and rear (southern) block are positioned 1.9m to the western and eastern boundary. In order to address privacy issues obscure glazing is proposed in the side windows in the front and rear blocks.

Living room windows are proposed to the middle block on all three levels which are positioned 3.6m from the boundary with clear glazing (no privacy treatment).

As noted above, the proposal has been amended to relocate all of the common open space to the front of the roof level. The area equates to a 28.8sqm area, it is set back 5.2m from the western boundary and 4.4m from the eastern boundary with a planter bed provided around the periphery of the space to the front and side. A full height solid wall is proposed along part of the western edge of the open space and a 1.65m high balustrade with obscure glazing is proposed along the eastern and western edge of the planter bed. While the amended proposal helps reduce concerns relating to visual privacy to neighbouring residents issues regarding the use of the space and acoustic privacy remain outstanding. Refer to discussion under Clause D3 (Noise).

Merit consideration

The development is considered against the underlying Objectives of the Control as follows:

- *To ensure the siting and design of buildings provides a high level of visual and acoustic privacy for occupants and neighbours.*

Comment:

Due to insufficient side setbacks the siting and design with windows between 1.9m and 3.6m from side boundaries fails to provide a high level of visual and acoustic privacy for occupants and neighbours. The obscure glazing to some of the side windows is not considered to be an appropriate means of protecting privacy as it will reduce the internal amenity of the proposed units in terms of access to natural light and cross ventilation. The effective location of windows with appropriate building separation is preferred to avoid overlooking is preferred to such screening devices (refer to requirement 3 of the control as detailed above).

The windows in the central block do not have any privacy treatment and windows to L101, L201 and L203 are positioned approximately 6.4m to a window to the entrance lobby / kitchen and 7m at an oblique angle to a bedroom window within No. 65 Pacific Parade. Only one bedroom window on the eastern elevation of No. 65 Pacific Parade (level 2) has a privacy screen attached.

The location of the common open space 5.2m from the western boundary and 4.4m from the eastern boundary cannot be supported as insufficient information has been submitted to by way of an amended acoustic report to consider the acoustic impacts on the existing balconies to the units within No. 65 Pacific Parade. It is noted that the original acoustic report did not make an assessment of impacts to the top floor balcony to unit 9, No. 65 Pacific Parade and the Plan of Management restricts access to the roof terrace to between five (5) and nine (9) residents after 6pm.

- *To encourage innovative design solutions to improve the urban environment.*

Comment:

Due to the over-development of the site the design will not improve the urban environment and is inconsistent with the objectives relating to acoustic and visual privacy.

- *To provide personal and property security for occupants and visitors.*

Comment:

The Plan of Management is incomplete and therefore there is insufficient information to satisfy this objective.

Having regard to the above assessment, it is concluded that the proposed development is inconsistent with the relevant objectives of WLEP 2011 / WDCP and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is not supported, in this particular circumstance.

D9 Building Bulk

Clause D9 requires

- 1. Side and rear setbacks are to be progressively increased as wall height increases.*
- 2. Large areas of continuous wall planes are to be avoided by varying building setbacks and using appropriate techniques to provide visual relief.*
- 3. On sloping land, the height and bulk of development (particularly on the downhill side) is to be minimised, and the need for cut and fill reduced by designs which minimise the building footprint and allow the building mass to step down the slope. In particular:*
The amount of fill is not to exceed one metre in depth.
Fill is not to spread beyond the footprint of the building.
Excavation of the landform is to be minimised.
- 4. Building height and scale needs to relate to topography and site conditions.*
- 5. Orientate development to address the street.*
- 6. Use colour, materials and surface treatment to reduce building bulk.*
- 7. Landscape plantings are to be provided to reduce the visual bulk of new building and works.*
- 8. Articulate walls to reduce building mass.*

The proposal is inconsistent with the requirements of clause D9 which require excavation to be minimised. The proposal also fails to reduce the bulk and massing by stepping down the slope, it lacks articulation and sufficient side set backs to allow for landscaping to reduce the visual bulk.

Merit consideration

The development is considered against the underlying Objectives of the Control as follows:

- *To encourage good design and innovative architecture to improve the urban environment.*

Comment:

The proposal is assessed as over-development and fails to respond to the context or improve the urban environment.

- *To minimise the visual impact of development when viewed from adjoining properties, streets, waterways and land zoned for public recreation purposes.*

Comment:

There is no increased in the side setbacks as the wall height increases and the proposal results in large areas of continuous wall planes with little visual relief or articulation especially along the eastern elevation. The bulk and scale of the development is excessive and the building presents as a three storey development to the street with minimal articulation or reference to the light weight treatment of the surrounding residential flat buildings.

Having regard to the above assessment, it is concluded that the proposed development is inconsistent with the relevant objectives of WLEP 2011 / WDCP and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is not supported, in this particular circumstance.

D20 Safety and Security

Merit consideration

A Plan of Management (POM) has been received which is incomplete and does not provide sufficient details for the management of the boarding house with particular reference to managing acoustic impacts associated with the roof top common open space. Concern has been raised from neighbours in respect of security and safety issues. These issues are generally unfounded and the proposal allows for casual surveillance.

the development is considered against the underlying Objectives of the Control as follows:

- *To ensure that development maintains and enhances the security and safety of the community.*

Comment:

While there is no specific safety and security issue with the regard to the boarding house, the POM is incomplete and insufficient to ensure the boarding house is managed appropriately to address amenity issues with neighbouring properties and road safety issues with regard to the use of the car stacker.

Having regard to the above assessment, it is concluded that the proposed development is inconsistent with the relevant objectives of WLEP 2011 / WDCP and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is not supported, in this particular circumstance.

D22 Conservation of Energy and Water

Clause D22 requires

- 1. The orientation, layout and landscaping of sites is to make the best use of natural ventilation, daylight and solar energy.*
- 2. Site layout and structures are to allow for reasonable solar access for the purposes of water heating and electricity generation and maintain reasonable solar access to adjoining properties.*
- 3. Buildings are to be designed to minimize energy and water consumption.*
- 4. Landscape design is to assist in the conservation of energy and water.*
- 5. Reuse of stormwater for on-site irrigation and domestic use is to be encouraged, subject to*

consideration of public health risks.

6. All development must comply with Council's Water Management Policy.

Comment

The front (northern) and rear (southern) units have obscure glazing to the side windows which will have the effect of compromising the internal amenity of the units with respect to access to daylight. The orientation and layout of the development means that the central boarding rooms to all three (3) block, nine (9) units in total, rely on access to daylight and natural ventilation via one window. The western and southern ground level areas of private open space will be cast in shadow.

The proposal is inconsistent with clause D1 which requires 50% of the site to be landscaped open space which will have the effect of limiting the option for on natural site irrigation.

E10 Landslip Risk

The proposal requires excavation to a maximum depth of 9.9m with excavation occurring generally 2m from the side boundaries and 0.8m, in part, to the west. As discussed under Clause 6.2 (Earthworks) of the WLEP insufficient geotechnical information has been submitted to ensure that the earthworks will not impact on the amenity or stability of adjoining properties, drainage patterns and soils stability and the consent authority cannot therefore grant consent to the development.

Merit consideration:

Insufficient geotechnical testing has been carried out to ensure that the underlying Objectives of the Control are met. Refer to discussion under Clause 6.2 of the WLEP. The objectives are as follows:

- *To ensure development is geotechnically stable.*
- *To ensure good engineering practice.*
- *To ensure there is no adverse impact on existing subsurface flow conditions.*
- *To ensure there is no adverse impact resulting from stormwater discharge.*

Having regard to the above assessment, it is concluded that the proposed development is inconsistent with the relevant objectives of WLEP 2011 / WDCP and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is not supported, in this particular circumstance.

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.

POLICY CONTROLS

Northern Beaches Section 7.12 Contributions Plan 2019

The proposal is subject to the application of Northern Beaches Section 7.12 Contributions Plan 2019.

A monetary contribution of \$45,061 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$4,506,088.

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, in this regard the application is not considered to be acceptable and is recommended for refusal.

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

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

In summary, a detailed assessment has been required for the following specific issues:

Character of the area

Due to insufficient side setbacks and articulation the development is not compatible with the surrounding landscape or built form character contrary to the provisions of the SEPP (ARH).

Bulk, scale and massing

The proposal represents over-development of the site and is inconsistent with the built form controls of the WDCP. The bulk, scale and massing insufficient side setbacks and landscape open space and excessive excavation fails to respond appropriately the context of the site.

Amenity

The proposal provides an inadequate level of amenity for future residents in terms of solar access, cross ventilation, access to natural light and acoustic and visual privacy. Insufficient information has been submitted to confirm that the roof top common open space can be accessed by all residents after

6pm.

The proposal will have unreasonable amenity impacts on neighbouring residents in terms of solar access and visual privacy. Insufficient information has been submitted to confirm that the proposal will not result in unreasonable impacts on acoustic privacy.

Traffic and Road Safety

Insufficient information has been submitted to address management and operational issues with regards to 100% reliance on car stackers for the boarding house use.

Excavation

The geotechnical assessment is incomplete and inconclusive and the excessive excavation close to the boundaries can not be supported.

It is considered that the proposed development does not satisfy the appropriate controls and that all processes and assessments have been satisfactorily addressed.

RECOMMENDATION

THAT the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council , as the consent authority REFUSE Development Consent to Development Application No DA2020/1597 for the Demolition works and construction of a boarding house development on land at Lot 25 DP 7002,67 Pacific Parade, DEE WHY, for the reasons outlined as follows:

1. Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the aims and requirements of SEPP (Affordable Rental Housing) (ARH) 2009, in terms of the following:
 - Insufficient information has been submitted to satisfy Clause 29(c) which required a minimum solar access to the common living room.
 - Insufficient information has been submitted to satisfy Clause 29(d) which requires at least 20sqm of private open space to be used by lodgers. Insufficient information has been submitted to confirm that the common open space at roof level will be available to all lodgers as required under the SEPP (ARH).
 - The proposal is inconsistent with Clause 29(e)(iia) which required a total of fourteen (14) car parking spaces. Thirteen (13) car parking spaces have been provided, twelve (12) of which rely on car stackers.
 - The proposal is inconsistent with Clause 30A (Character of the local area) as the development does not provide sufficient side set backs or articulated facades.
2. Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the Clause 1.2 Aims of The Plan of the Warringah Local Environmental Plan 2011.
3. Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the following objectives of Zone R3 Medium Density Residential of the Warringah Local Environmental Plan 2011. Objective 4 which requires low density residential environments to be characterised by landscaped settings that are in harmony with the natural environment of Warringah. Objective 5 which requires medium density residential environments are of a high visual quality in their presentation to public streets and spaces.
4. Pursuant to Clause 6.2 (3) (Earthworks) and Clause 6.4 (Development on sloping land) of the Warringah LEP the consent authority cannot grant development consent for the earthworks as insufficient information has been submitted to confirm that the earthworks will not impact on adjoining properties, drainage patterns and soil stability.

In addition, the proposal is inconsistent with Clause E22 Landslip Risk of the WDCP as insufficient information has been provided to ensure the development is geotechnical stable and will not impact on subsurface water flow and stormwater discharge.

5. The proposed development is inconsistent with the objectives at cl.A.5 (Objectives) of WDCP as it does not:
 - i. Respond to the characteristics of the site and the qualities of the surrounding neighbourhood,
 - or

ii. Create a unified landscape, contribute to the street and create an attractive design outcome.

6. The proposal represents over development and is inconsistent with the requirements and objectives of the following Clauses of the Warringah DCP 2011:

- **Clause B1 Wall Heights.** The breach of the wall height contributes to visual impacts associated with the excessive bulk and mass of the development when viewed from adjoining properties. The excessive wall height also contributes to unreasonable amenity impacts on neighbouring properties in terms of solar access.
- **Clause B2 Number of Storeys.** The four storey development presents a building which is visually dominate in the streetscape and as viewed from neighbouring properties. The front facade lacks sufficient articulation to reduce the visual bulk of the four storey frontage and is inconsistent with the predominate character of other residential developments in the area.
- **Clause B3 Side Boundary Envelope.** Due to insufficient side setbacks the proposal breaches the side building envelope and is visually dominant by virtue of bulk and scale which is out of character with the area.
- **Clause B5 Side Boundary Setbacks.** The development is set back 2m from the east and west side boundaries which reduces opportunities for deep soil landscape areas to the side that would allow for planting to reduce the bulk and scale of the development and provide for external amenity for future residents. Due to insufficient side setbacks the proposal will result in unreasonable level of amenity to future residents in terms of privacy and solar access.
- **Clause C3 Parking Facilities** The proposal does not meet the numerical car parking requirements specified in the SEPP (ARH). Insufficient information has been submitted to address issues in relation to the operation and management of the car stackers.
- **Clause D1 Landscaped Open Space and Bushland Setting.** The proposal fails to provide space on site to enable sufficient planting to mitigate the bulk and scale of the building along the side boundaries. There is no outdoor recreational opportunities provided at ground level. The development relies on the roof top common open space, however, access to the space will be restricted and not available to all residents. The amenity for the future residents in terms of access to open space is therefore assessed as inadequate.
- **Clause D3 Noise** The proposal has the potential to result in unreasonable acoustic impacts to surrounding neighbours. Insufficient information in the form of a revised Acoustic Report and Plan of Management have been submitted to assess impacts.
- **Clause D6 Access to Sunlight.** The proposal will result in unreasonable impacts upon the amenity of the surrounding neighbours and poor amenity for future occupants in terms of access to sunlight.
- **Clause D8 Privacy.** The siting of the development will have unreasonable impacts on the visual and acoustic privacy for occupants and neighbours.
- **Clause D9 Building Bulk.** The proposed development will result in overdevelopment due to its excessive bulk and scale and non-compliance with the built form controls including side setbacks, wall heights and side boundary envelope.

- **Clause D22 Conservation of Energy and Water.** There is inadequate planning to address cross ventilation and solar access to the majority of rooms given that the side windows have obscure glazing and rooms in the centre of each block have only one window.

7. Pursuant to Section 4.15 (1) (e) of the Environmental Planning and Assessment Act 1979 the proposal is not in the public interest.