

10th October 2019

The General Manager
Northern Beaches Council
PO Box 82
Manly NSW 1655

Attention: Mr Daniel Milliken – Principal Planner

Dear Mr Milliken,

**Development Application DA2019/0239
Supplementary Statement of Environmental Effects
Amended plans and associated clause 4.6 variation request – Height of
buildings
Construction of a mixed use development
638 Pittwater Road, Brookvale**

Reference is made to our meeting of 10th September 2019 and Council's correspondence of 19th September 2019 pertaining to the above matter. This supplementary statement has been prepared in response to the issues raised and is to be read in conjunction with the following documentation:

- Amended architectural plans A01 to AD11 dated 4/10/19, A12 dated 4/2/19, A13 to A14 dated 4/10/19, A15 and A16 dated 4/2/19, A17 dated 4/10/19 and A18 dated 24/9/19 prepared by Barry Rush & Associates;
- Amended Photomontage;
- Architect summary of amendments;
- Supplementary Architect Design Statement;
- Traffic Impact Assessment prepared by APEX Engineers dated September 2019;
- SureSearch Underground Services report and unwatermarked stormwater drainage plans prepared by Alpha Engineering and Development; and
- Updated clause 4.6 variation in support of the proposed height of buildings breach (Attachment 1).

The amended plans provide for the following changes:

1	Building Height	Floor levels have been adjusted to improve compliance with the 11m height limit Refer to Roof Plan (A08,) which shows the area of non-compliance.
2	Building Articulation	External Colour Schedule (A18) added to show proposed wall types and finishes. A variety of finishes are proposed to provide interest and give definition to the building modules. Refer to Elevations, External Colour Schedule and revised Photomontage.
3	Light Disk	Proposed for the Pittwater Road and Orchard Road to define the corner of the building and main entry.
4	Car Park	The residential car spaces have been separated from the commercial and visitor car parking spaces by providing a security boom gate to stop commercial vehicles using residential car spaces. See revised traffic report by Apex and basement plans (A02, A03, A04)
5	Podium Voids	Additional voids have been introduced at the podium level to provide light and ventilation to the corridor below to improve the amenity of Soho Units 2,4 and 6. Refer to drawings A05 & A06 and Section AA on A11.
6	Awnings	Awnings have been set back 1.5m from kerb line to allow for future street trees as shown on landscape plan and Photomontage.

The following section of this submission will detail the response to the various issues raised.

1. Clause 4.3 Height of Buildings

Response: As discussed and agreed the overall building height has been reduced by a lowering the floor levels as nominated. Plan DA08 has been amended to accurately depict the extent of building height breach based on available survey information. This plan demonstrates that the non-compliance is limited to the south western corner of the development where it adjoins Pittwater Road with the maximum non-compliance measured to the roof slab being 440mm and 2.44 metres measured to the top of the architectural roof feature (light disk).

The acceptability of this building height breach is demonstrated in the updated clause 4.6 variation request at Attachment 1.

2. Parking Facilities

Response: As discussed and agreed the residential car spaces have been separated from the commercial and visitor car parking spaces by providing a security boom gate to stop commercial vehicles using residential car spaces.

3. Traffic, Parking and Safety

Response: We note that the development of the site does not isolate No. 640 Pittwater road with the adjoining site able to be consolidated with No. 644 Pittwater Road with vehicular access available from Charlton Lane. Our clients have satisfied the planning principles in the matters of *Melissa Grech v Auburn Council* [2004] NSWLEC 40 and *Cornerstone Property Group Pty Ltd v Warringah Council* [2004] NSWLEC 189 as detailed within the original SoEE.

Notwithstanding, and on a without prejudice basis, the proposed development nominates possible future vehicular access through proposed Basement Level 1 should the owner of No. 640 Pittwater Road seek to negotiate a ROW for vehicular access through the subject site from Orchard Road.

That said, we note that the RMS has refuse concurrence until such time as a subdivision plan showing a ROW over the subject site in favour of No. 638 Pittwater Road has been provided. We confirm that such a ROW does not form a component of the development application for the reasons outlined above with the requirement for such ROW both unreasonable and unnecessary given the alternate consolidation and vehicular access arrangements available to facilitate the future development of No. 638 Pittwater Road. We strongly oppose this requirement.

4. Building Bulk

Response: As discussed at our recent meeting the floor to ceiling heights of the ground floor retail/ business tenancy have been provided to enable the provision of a mezzanine level for future ancillary office, cool room and storage areas. The bulk of the structure has been minimised through the lowering of the overall building form with the updated schedule of finishes and montage more accurately detailing the facade treatments and materiality of the building form. The montage demonstrates that the development will contribute to the design quality of the Brookvale town centre and will not be perceived as inappropriate or jarring in a streetscape context.

5. Missing Documentation

Response: This submission is accompanied by the Second Floor Plan and an updated Traffic Impact Assessment prepared by APEX Engineers dated September 2019.

6. Roads and Maritime Services

Response: We rely on our response in relation to issue 3.

7. Council Stormwater Assets

Response: Council assets were located prior to the lodgement of the application as detailed on the accompanying SureSearch Underground Services report and unwatermarked stormwater drainage plans prepared by Alpha Engineering and Development. Alpha Engineering has confirmed that the Council stormwater pipe is located outside the property boundary.

8. Stormwater

Response: We refer to the accompanying DRAINS model and unwatermarked stormwater drainage plans prepared by Alpha Engineering and Development and the

9. Carparking, Access and Manoeuvrability

Response: In response to this concern the application is accompanied by an updated Traffic Impact Assessment prepared by APEX Engineers dated September 2019 and a driveway ramp section at plan A17.

10. Urban Design

Having regard to the issues raised we provide the following responses:

- The overall building height has been reduced with greater detailing provided in relation to the light disk by way of updated plans and a montage.
- No change has been made to the basement commercial area noting that it would be appropriately used, subject to Council approval, for such uses as a gymnasium, self-storage or ancillary retail/ business storage.
- The bulk of the structure has been minimised through the lowering of the overall building form with the updated schedule of finishes and montage more accurately detailing the facade treatments and materiality of the building form. A variety of finishes are proposed to provide interest and give definition to the building modules.

- Additional voids have been introduced at the podium level to provide light and ventilation to the corridor below to improve the amenity of Soho Units 2,4 and 6. Refer to drawings A05 & A06 and Section AA on A11.
- Awnings have been set back 1.5m from kerb line to allow for future street trees as shown on landscape plan and Photomontage.

Having given due consideration to the matters pursuant to Section 4.15(1) of the Environmental Planning and assessment Act, 1979 as amended, it is considered that there are no matters which would prevent Council from granting consent to this proposal in this instance.

Please not hesitate to contact me to discuss any aspect of this submission.

Yours faithfully

Boston Blyth Fleming Town Planners



Greg Boston

B Urb & Reg Plan (UNE) MPIA

B Env Hlth (UWS)

Director

Attachments

1. Updated clause 4.6 variation request – Height of Buildings

Clause 4.6 variation request – Height of buildings

Pursuant to the height of buildings map, the site has a maximum building height limit of 11 metres.

The objectives of this control are as follows:

- (a) *to ensure that buildings are compatible with the height and scale of surrounding and nearby development,*
- (b) *to minimise visual impact, disruption of views, loss of privacy and loss of solar access,*
- (c) *to minimise any adverse impact of development on the scenic quality of Warringah’s coastal and bush environments,*
- (d) *to manage the visual impact of development when viewed from public places such as parks and reserves, roads and community facilities.*

Building height is defined as follows:

building height (or height of building) means the vertical distance between ground level (existing) and the highest point of the building, including plant and lift overruns, but excluding communication devices, antennae, satellite dishes, masts, flagpoles, chimneys, flues and the like

The proposed development has a maximum roof parapet height of 11.44 metres measured at the south western corner of the development with the architectural corner roof feature “light disk” extending to a maximum height of 13.44 metres. The lift overruns breach the height control by between 160mm and 800mm.

The extent of non-compliance can be summarised as a maximum of 440mm (4%) to the roof parapet, a maximum of 800mm (7.2%) to the lift overruns and maximum of 2.44 metres (22.18 %) to the architectural corner roof feature. The non-compliant building elements are depicted on plan A08 an extract of which is at Figure 1 over page.

Clause 4.6(4) states consent must not be granted for development that contravenes a development standard unless:

- (a) *the consent authority is satisfied that:*
 - (i) *the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and*
 - (ii) *the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and*
- (b) *the concurrence of the Director-General has been obtained.*

Clause 4.6(5) states that in deciding whether to grant concurrence, the Director-General must consider:

- (a) *whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and*
- (b) *the public benefit of maintaining the development standard, and*
- (c) *any other matters required to be taken into consideration by the Director-General before granting concurrence.*

Clause 4.6 Claim for Variation

Zone and Zone Objectives

The Warringah Local Environmental Plan (LEP) 2011 applies to the subject site and this development proposal. The subject site is located within the B5 Business Development zone. The stated objectives of the zone are as follows:

- *To enable a mix of business and warehouse uses, and bulky goods premises that require a large floor area, in locations that are close to, and that support the viability of, centres.*
- *To provide for the location of vehicle sales or hire premises.*
- *To create a pedestrian environment that is safe, active and interesting by incorporating street level retailing and business uses.*

A range of uses are permissible in the zone with site specific additional permissible uses detailed in Clause 5 of Schedule 1 of WLEP 2011 namely:

5 Use of certain land in the vicinity of Pittwater Road and Roger Street, Brookvale

- (1) *This clause applies to land in the vicinity of Pittwater Road and Roger Street, Brookvale, shown as “Area 5” on the [Additional Permitted Uses Map](#).*
- (2) *Development for the following purposes is permitted with consent:*
 - (a) *office premises,*
 - (b) *retail premises,*
 - (c) *shop top housing.*

Shop top housing is defined as follows:

shop top housing means one or more dwellings located above ground floor retail premises or business premises.

In this regard, all residential dwellings are located above the level of the permissible ground floor retail and business floor space below. This can also be said for the work/ live SoHo style apartments whereby internal connection between the 2 separately defined and permissible uses enables such floor space to be purchased or leased by the same owner/ occupier.

Importantly, these 2 uses can function entirely independently with the ground level retail/ business use accessed from the either the ground level courtyard from Orchard Road or directly from the Charlton Lane frontage. We note that the residential component is separately accessed from the residential floor plate and corridor above. The uses are entirely independent and separately defined apart from the internal staircase connection.

As such, we have formed the considered opinion that the proposed development is appropriately defined as shop top housing in accordance with the judgement in the matter of *Hrsto v Canterbury City Council* (No. 20 [2014] NSWLEWC 121).

Finally, pursuant to clause 5(3) of Schedule 1 WLEP 2011 consent must not be granted under this clause to development for the purposes of shop top housing unless the consent authority is satisfied that the development will not have a significant adverse impact on any adjoining land in Zone IN1 General Industrial.

Given the spatial separation afforded by Charlton Lane and the maintenance of the established Brush Box plantings along the boundary/ zone interface we have formed the considered opinion that the shop top housing development proposed will not have a significant adverse visual or physical impact on land within such zone by virtue of overshadowing, privacy or view loss or visual amenity.

Further, the proposed shop top housing development will not have a significant adverse impact on either existing uses or other permissible uses in the zone as reflected by the immediate relationship of the R2 Low Density Residential zone to the IN1 General Industrial zone along Wattle Street to the south of the site a built form and land use relationship considered compatible by the policy makers.

In any event the acoustic attenuation measures required for the residential apartments pursuant to the provisions of SEPP (Infrastructure) 2007 will ensure that no acoustic conflict will occur between such land uses. Such acoustic measures can be dealt with by way of an appropriately worded condition of consent requiring an acoustic report to be prepared as a component of the Construction Certificate documentation.

Accordingly, Council can be satisfied that the proposed shop top housing satisfies the clause 5(3) Schedule 1 WLEP 2011 considerations and accordingly is permissible with consent in the zone.

We have also formed the considered opinion that the proposal is consistent with the zone objectives by:

- *Providing large floor plate retail/ business tenancies in a location that is close to, and that support the viability of, the Brookvale Centre (first dot point objective); and*
- *Creating a pedestrian environment that is safe, active and interesting by incorporating street level retailing and business uses. (third dot point objective).*

The second dot point objective is not relevant to the permissible land use proposed.

Building Height Objectives

Having regard to the objectives of the height standard as previously identified strict compliance has been found to be both unreasonable and unnecessary for the following reasons:

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

Comment: The 11 metre height standard anticipates a 3 storey building form with the breaching elements limited to small areas of roof parapet, lift overruns and the architectural roof feature proposed at the Pittwater Road/ Orchard Road intersection. The non-compliance can be directly attributed to the desire to provide 4.75 metre ground floor ceiling heights to accommodate a range of permissible commercial uses with a mezzanine at ground floor level and the provision of an architectural roof feature to reinforce the visual importance of the site as the southern gateway to the Brookvale Business precinct. The building heights proposed are compatible with the heights established by development along Pittwater Road and those anticipate by the 11 metre/ 3 storey height standard.

The building and design are entirely appropriate for this prominent corner site as it reinforces the building as a strong, robust and defining element within the street block. In this regard, we have formed the considered opinion that the height, bulk and scale of the development are entirely consistent with the height and scale of surrounding and nearby development and that anticipated by the standard.

Consistent with the conclusions reached by Senior Commissioner Roseth in the matter of *Project Venture Developments v Pittwater Council* (2005) NSW LEC 191 we have formed the considered opinion that most observers would not find the proposed development by virtue of its height offensive, jarring or unsympathetic in a streetscape and urban context. In this regard, it can be reasonably concluded that the development is compatible with surrounding and nearby development and accordingly this objective is satisfied.

(b) to minimise visual impact, disruption of views, loss of privacy and loss of solar access,

Comment: Having undertaken a detailed site and context analysis and identified available view lines over the site we have formed the considered opinion that the height of the development, and in particular the non-compliant height components, will not give rise to any visual, view, privacy or solar access impacts with appropriate spatial separation maintained to adjoining properties. This objective is satisfied.

(c) to minimise any adverse impact of development on the scenic quality of Warringah's coastal and bush environments,

Comment: The non-compliant building height will not be readily discernible as viewed to or from Warringah's coastal or bush environments. This objective is satisfied.

(d) to manage the visual impact of development when viewed from public places such as parks and reserves, roads and community facilities.

Comment: The non-compliant building height elements will not be visually prominent as viewed from the street or any public area and will certainly not compromise the amenity of these public places.

Consistent with the conclusions reached by Senior Commissioner Roseth in the matter of *Project Venture Developments v Pittwater Council* (2005) NSW LEC 191 we have formed the considered opinion that most observers would not find the proposed development, in particular the non-compliant portions of the building, offensive, jarring or unsympathetic in a streetscape context.

We have also formed the considered opinion that the proposal will maintain appropriate amenity in terms of solar access and privacy and will not give rise to any adverse public or private view affectation. In this regard, the development satisfies the objectives of the height of buildings standard and accordingly strict compliance is unreasonable and unnecessary under the circumstances.

In our opinion, there are sufficient environmental planning grounds to justify the variation including the desire to provide 4.75 metre ground floor ceiling heights to provide greater flexibility in terms of future commercial uses (consistent with the zone objectives), the slight fall across the surface of the land and the desire for single level floor plates and the appropriateness of an architectural roof feature to reinforce the visual importance of the site as the southern gateway to the Brookvale Business precinct. The building heights proposed are compatible with the heights established by development along Pittwater Road and those anticipate by the 11 metre/ 3 storey height standard.

Further, the architectural roof feature and future proofing of the building represent a skilful response to the prominent corner location of the site and the future proofing of the development having regard to the informally exhibited Brookvale Structure Plan. Such outcomes also promote/ facilitate the orderly and economic use and development of the land consistent with objectives 1.3(c) and (g) of the Act.

In accordance with Clause 4.6(5) the contravention of the development standard does not raise any matter of significance for State or Regional environmental planning with the public benefit maintained by Council's adoption of an application specific merit based assessment as it relates to building height within the 11 metre height precinct in which the site is located.

Conclusions

Having regard to the clause 4.6 variation provisions we have formed the considered opinion:

- a) that the site specific and contextually responsive development is consistent with the zone objectives, and
- b) that the site specific and contextually responsive development is consistent with the objectives of the building height standard, and
- c) that there are sufficient environmental planning grounds to justify contravening the development standard, and
- d) that having regard to (a), (b) and (c) above that compliance with the building height development standard is unreasonable or unnecessary in the circumstances of the case, and
- e) that given the design quality of the development, and the developments ability to comply with the zone and building height standard objectives that approval would not be antipathetic to the public interest, and

- f) that contravention of the development standard does not raise any matter of significance for State or regional environmental planning.

As such we have formed the highly considered opinion that there is no statutory or environmental planning impediment to the granting of a height of buildings variation in this instance.