
From: Dale Branch
Sent: 11/04/2023 8:35:19 PM
To: Council Northernbeaches Mailbox
Cc: Steve Branch; Janelle Branch
Subject: TRIMMED: Supplementary Submission in relation to DA2022 / 0145
Attachments: 816 Pittwater Road_Supplementary Submission.pdf;

Dear Council,

Please find the attached supplementary submission in relation to DA2022/0145.

Please attention this email to Ray Brownlee as addressed, and Adam Susko who is understood to be the assessing officer for this application.

I would also like to request that a planning officer contact me to provide any relevant information relating to the date which this application is expected to be heard at the Sydney North Planning Panel.

If any further information is required, please do not hesitate to contact me at the following:

Dale Branch



11 April 2023

Mr Ray Brownlee
Chief Executive Officer
Northern Beaches Council
PO Box 82
MANLY NSW 1655

Attn: Planning Assessment Officer

RE: Supplementary Submission – DA2022/0145 – 4 Delmar Parade and 812 Pittwater Road, Dee Why

This supplementary submission has been prepared in relation to DA2022/0145 (the application) at 4 Delmar Parade and 812 Pittwater Road, Dee Why (the site). It has been prepared on behalf of the owners of the adjacent lot to the north and west of the site at 816 Pittwater Road (see **Figure 1**). DA2022/0145, as amended since lodgement, seeks approval for demolition works and the construction of a mixed-use development comprising a five and seven storey residential building above two common basement levels (the Proposal).

This submission has been prepared for the consideration of Council, as well as the **Sydney Planning Panel** to consider prior to any determination. An earlier submission to the DA was provided to Council in July 2022 - and is provided attachment (**Attachment A**). This submission reiterates the concerns that remain with the Development Application as revised by the applicant, and in context of the feedback from Council and other internal referrals.

In preparing this supplementary submission, we have reviewed additional information provided via Council's DA tracker (including revised plans, reports and Council's internal referrals). We have also received a copy of the Request for Information issue by Council to the applicant in July 2022. The plans set considered as part of this submission is from the Council's DA tracker dated 03 April 2023 (Revision D dated 3.3.23).

Whilst minor amendments have been made to the scheme, they appear to relate primarily to the relocation of communal open space at lower level/podium that would be overshadowed by existing and future building and placing this at the roof top. Despite requests of Council and the original submission, there does not appear to have been any other substantive changes to the proposed which improve the scheme with respect to its impacts, specifically to 816 Pittwater Road. Fundamentally, the proposal continues to rely on borrowed amenity across its northern boundary, in turn burdening the future development potential to 816 Pittwater Road.

The amended application has been reviewed and we continue to raise our strong objection to the application for the following reasons – noting that many of these remain unchanged from that submitted with the DA despite requests from Council.

- The Proposal continues to demonstrate a lack of appropriate response to the site's constraints and is overdevelopment, proven by the requirement for three separate variations to built form development standards (Clause 4.6).
- The Proposal relies on 816 Pittwater Road remaining undeveloped for achieving fundamental amenity requirements of residential flat development, as demonstrated in the documentation submitted with the DA. This approach is fundamentally flawed and cannot be supported.
- The Proposal does not comply with the required building separation under the ADG and relies on 816 Pittwater Road remaining undeveloped to achieve compliance with ADG solar access provisions.
- Setbacks from the shared boundary (north of 812 Pittwater Road) for proposed residential apartment building do not achieve SEPP 65 compliance. The dwellings that directly face the boundary are required to be set back a minimum of 9m or reorientated to face east rather than north. Instead, the proposal relies on a future design of 816 Pittwater Road in order to maintain amenity to both the proposal and future dwellings. This burden is unreasonable and inappropriate.

- A superior urban outcome would be achieved by amalgamating the site with 816 Pittwater Road which has not been further explored by the applicant in a meaningful way, despite the specific request of Council in their RFI dates July 2022.
- The Proposal remains largely the same format as submitted originally and is inconsistent with Council's desired character for Dee Why Town Centre as a vibrant mixed-use centre. Most significantly, the Proposal remains inconsistent with the objectives for development within Dee Why Town Centre provided in Clause 7.3 of the *Warringah Local Environmental Plan 2011* (Warringah LEP). Accordingly, development consent **must not** be granted per Clause 7.4 of the Warringah LEP.

The amended DA is accompanied by three separate clause 4.6 variations to built form (FSR, podium heights and residential flat buildings in the B4 Mixed Use Zone) and land use development standards, an indication that the scheme as submitted is an overdevelopment of the site. The variations are required, in part, as a result of the site configuration and the applicant's decision not to amalgamate.

It is noted that the SNPP raised concerns with the suitability and appropriateness of a development which sought to breach multiple development standards. Council have also raised the same concerns, in particular the proposed variation to Clause 6.7 (residential flat buildings in the B4 Mixed use zone and associated non-residential development). Upon review of the revised plans (as of 03.4.23), whilst some minor changes have been made, this appears to remain largely non-compliant. The result is that residential is provided on the ground floor that, when 816 is redeveloped in line with the expectation of Council, will eliminate much of the amenity to these units. Proposing a development in this form given the context and planning controls and shifting the burden and design response to an adjoining development, is unreasonable and should not be supported by Council or the Panel.

Because of these reasons, the application, as revised, remains unacceptable and should be refused. Whilst amalgamation of site would provide a better outcome, it is important to note that 816 Pittwater Road is entirely capable of development, provided the adjoining site (particularly Building B on 812 Pittwater Road) is designed to comply with requisite planning controls. As stated in the original submission, 816 Pittwater Road should not be relied upon by the proposal to achieve ADG and solar compliance.

The applicant has made the choice not to amalgamate the sites, and has not (as far as we are aware) provided any further response or justification as to why amalgamation has not occurred (as requested by Council in their RFI of July 2022). The burdening of 816 Pittwater Road and its future development potential as a result of any development is unreasonable. The resulting non-compliances and continued clause 4.6 variations in the DA are matters that have been chased by the applicant and continue to demonstrate a request for over development of their site with no basis for justification. These issues could be resolved by a reduction in proposed development responsive to the constraints of the site or amalgamation.

The applicant should be required by Council to reconsider amalgamation with 816 Pittwater Road or revise their design, so it does not inhibit that site's economic and orderly development.

1.0 Background

The owners of 816 Pittwater Road had previously negotiated an option for the applicant to purchase their site to be included in the development. However, after agreeing on a price, executing a term sheet and proceeding to contracts, they renegotiated on a number of material items, and the transaction fell through.

The amalgamation of the site and 816 Pittwater Road would resolve the issues presented in the introduction by:

- Enabling the orderly and economic development of both sites; and
- Providing the Proposal with larger frontage to Pittwater Road, thus enabling the development to comply with the maximum permitted FSR, and the Warringah LEP objectives for the Dee Why Town Centre.

This has been reiterated by Council with further information requested to satisfy the requirement of the DCP. Council have specifically request further action and evidence that the option has been explored to all reasonable extents, which does not appear to have been done.

Nevertheless, in the event where an amalgamation is not achieved, the Proposal should be redesigned so it does not inhibit the economic and orderly development of 816 Pittwater Road as a standalone development site.



Figure 1 Site Location Diagram showing the site of the DA in yellow.

Source: Nearmap

2.0 Design, Site Analysis and Non-Compliances

2.1 Solar access

The ADG requires that living rooms and private open spaces of at least 70% of apartments in a building receive a minimum of 2 hours of direct sunlight between 9 am and 3 pm at mid-winter. As commented in the SEPP 65 Statement that accompanies the application, the Proposal suggests that exactly 70% of proposed apartments receive the required two hours of solar access to living room windows and private open space. Of these compliant apartments, it is understood that approximately seven north-facing apartments per level in building B rely on 816 Pittwater Road remaining undeveloped to achieve compliance (see **Figure 2**). No detailed breakdown, or diagrams have been provided with the application to confirm the validity of the suggested compliance.

Contrary to the accepted approach to planning in areas undergoing transition, LEC planning principles and case law, the Proposal gives no regard to the existing or likely future development of 816 Pittwater Road when considering amenity of the Proposal. Council and the Regional Planning Panel cannot knowingly support a DA that relies on the vacancy of an adjoin site, within a key centre of the LGA on a major roadway, to support a case of compliance and good planning outcomes.

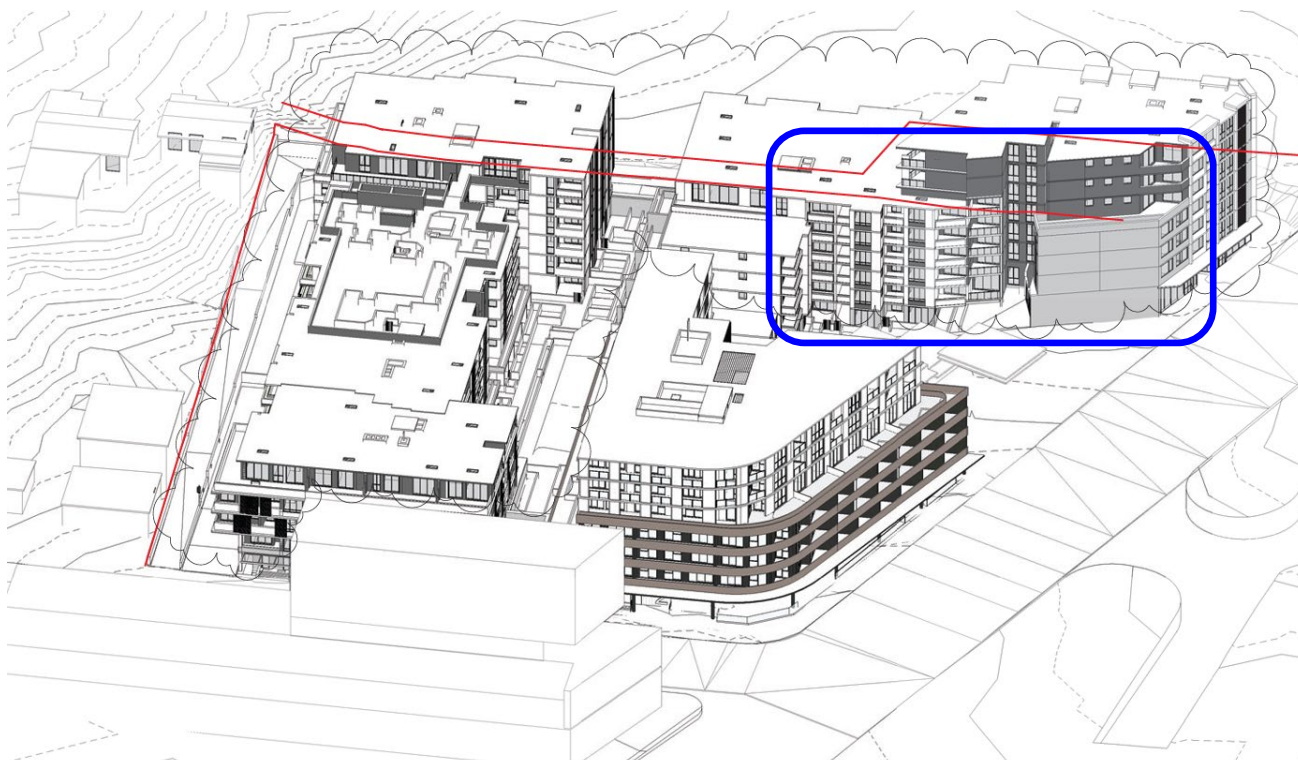


Figure 2 North-facing Apartments in Building B (Plan TP05.01 D – 12:00pm shadow analysis) – annotation added in blue
Source: Rothelowman (Dated 27.3.23 on Council DA Tracker “Plans-Master Set – Amended”)

Consequently, any development of 816 Pittwater Road would result in the Proposal no longer achieving compliance with the ADG on the measure of solar access, aside from privacy. This is evident in **Figure 3**, which provides an outline of the allowable built form at 816 Pittwater Road (24m height and 3.2:1 FSR).

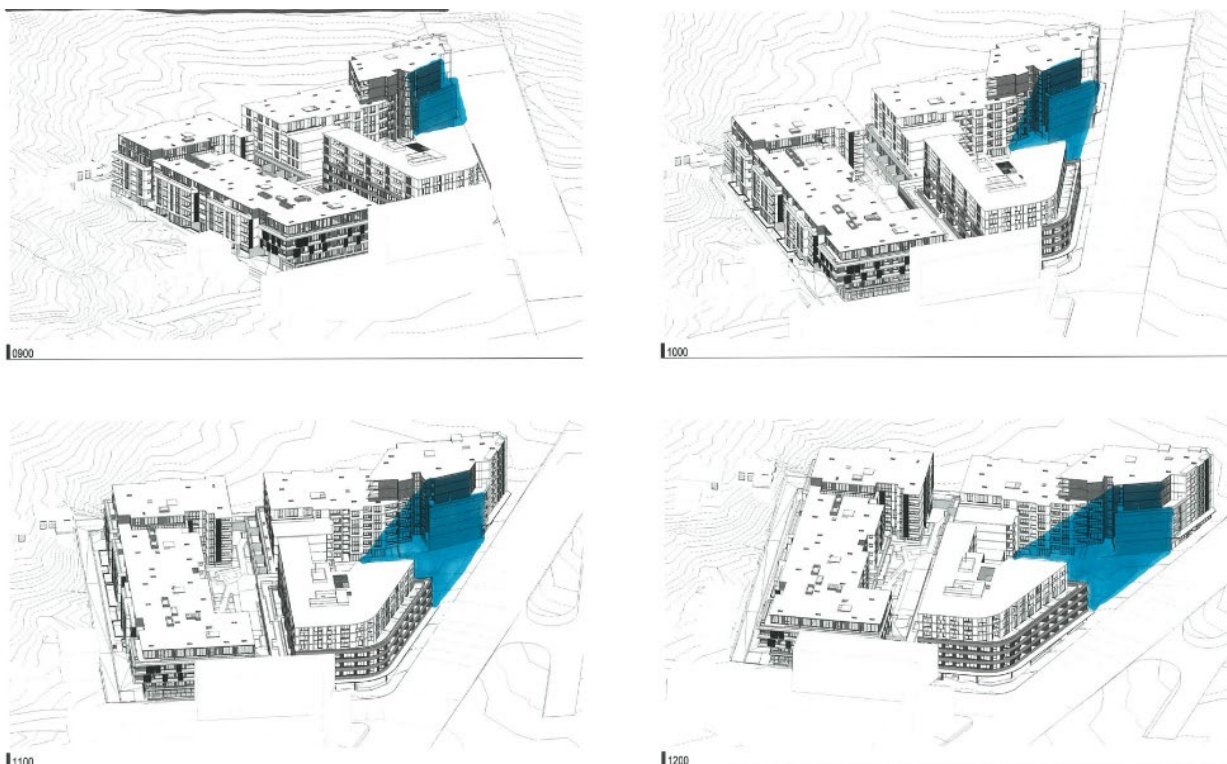


Figure 3 Solar Access to Building B with 816 Pittwater Road Developed to its Planning Controls

Source: Base image: Rothelowman with markup in blue showing the

As mentioned above, the Proposal’s impact on the developability of 816 Pittwater Road is a relevant consideration as well as the impact of a future development on the site. As established in *The Benevolent Society v Waverley Council* [2010] NSWLEC 1082 (previously the *Parsonage v Ku-ring-gai* planning principle), “in areas undergoing change, the impact on what is likely to be built on adjoining sites should be considered when assessing the adequacy of solar access”. It is apparent that this has not been given any regard.

As with the proposed building separation and provision of suitable setbacks to enable areas in transition, the impacts of overshadowing to the Proposal have not been appropriately considered and set up a substandard planning outcome for both No 812 and the future development of 816 Pittwater Road.

Furthermore, in *Project Venture Developments v Pittwater Council* [2005] NSWLEC 191, Senior Commissioner Rosseth established that a proposal’s impact on the development potential of surrounding sites is a relevant consideration when assessing a project’s compatibility with its surrounds. The case provides guidance when considering the compatibility of a proposal with its local area.

In order to test whether a proposal is compatible with its context, the case law suggests that two questions should be asked.

- Are the proposal’s physical impacts on surrounding development acceptable? The physical impacts include constraints on the development potential of surrounding sites.
- Is the proposal’s appearance in harmony with the buildings around it and the character of the street?

The answer to both questions for the Proposal is no. The impacts of the current proposal on the development potential of 816 is unacceptable. Whilst the appearance of the Proposal from Pittwater Road may be considered in harmony with 2 Delmar Parade, the interface of the development No 816 is not in harmony and sets up a substandard development when future development at No 816 does occur in the future.

2.2 ADG Site separation

The ADG requires a minimum 6m separation between residential buildings to side boundaries for up to four storeys and 9m for levels 5 to 8 (assuming between non-habitable rooms). Furthermore, the minimum separation between residential buildings is 12m between habitable rooms and balconies for up to four storeys and 18m for levels 5 to 8. As shown in the below extract, the Proposal provides a 3.3m and 6m setback (with windows and balconies) between habitable north-facing balconies of levels 5 to 7 and the shared boundary with 816 Pittwater Road.

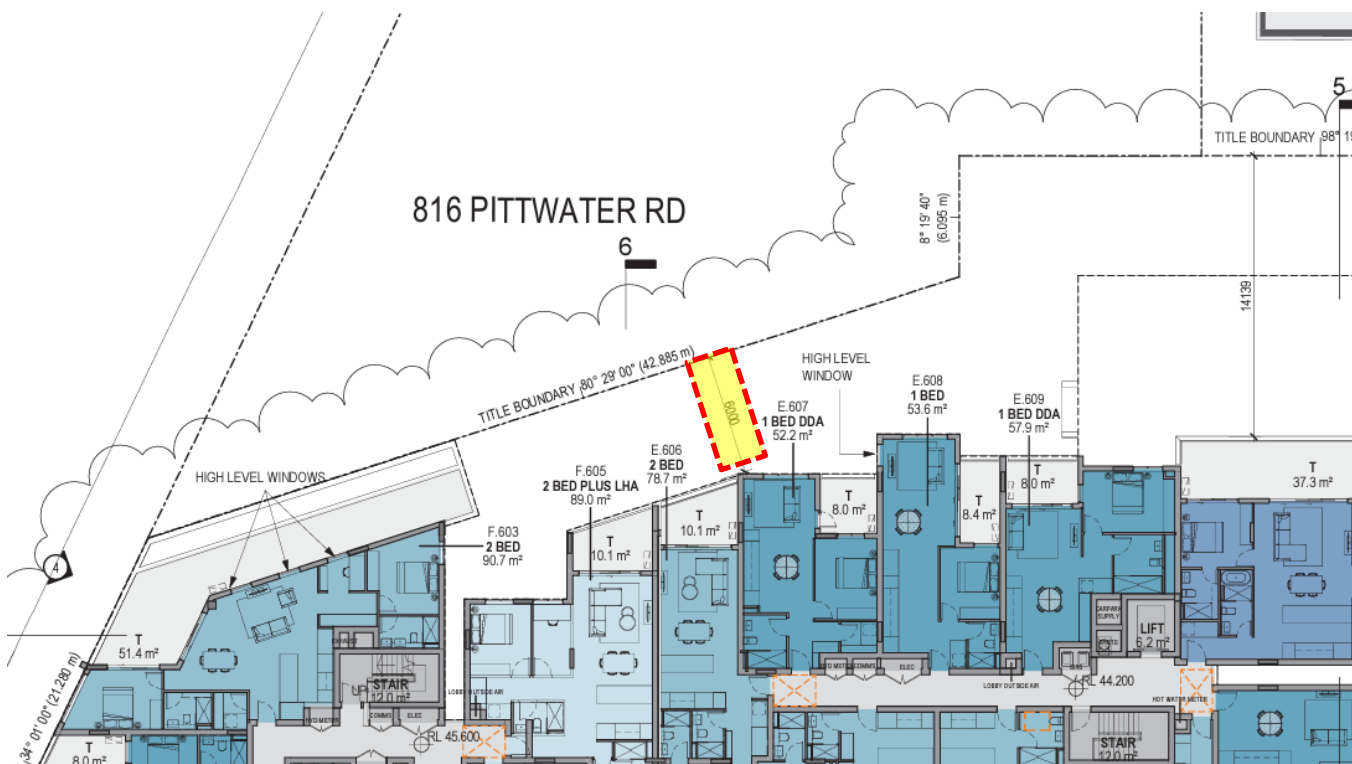


Figure 4 Proposed Building Separation – Level 5 of Building B

Source: Rothelowman (from master set uploaded to Council 27.3.23)

In order to comply with the ADG, the north-facing dwellings in Building B would need to be set back by a minimum of **9m** or reorientated to face east (parallel with the northern boundary alignment) rather than north to achieve compliance with the ADG and provide for the orderly and economic development of 816 Pittwater Road. Without doing so, a poor planning outcome would be foreshadowed, placing an unreasonable burden on any future redevelopment of 816 Pittwater Road to provide excessive and onerous building setbacks to achieve required building separation distances. As shown in **Figure 5** below, approximately three apartment units would be lost on each level for a residential flat building developed at 816 Pittwater Road due to these onerous building setbacks.

Whilst an argument could be made that future development would not necessarily require full adherence to separation requirements being offset or perpendicular to one and other, perpetuating a scenario that requires this issue and others (privacy, acoustics, overshadowing) to be dealt with offsite at no 816 Pittwater Road is a substandard and poor planning outcome. This is further exacerbated by the Proposal seeking to vary development standards, including a 33% exceedance on 812 Pittwater Road (**noting that this has increase from 29% as submitted with the original DA**) – an indicator overdevelopment and lack of response to site constraints (including required setbacks).

In accordance with the aims of the ADG for building separation, application should *“ensure that new development is scaled to support the desired future character with appropriate massing and spaces between buildings”*. Where areas are in transition from low density or other uses to increased density, half of the separation distance should be applied in the form of a setbacks to allow for the other half of the separation requirement as the sites transition to be equitably accommodated on the adjoining site. Whilst the ADG acknowledges that separation compliance may not occur until both sides are developed, it does not propose that when a site is transitioning to a new scale it should reduce the setback and separation to unreasonably burden the future adjoining development.

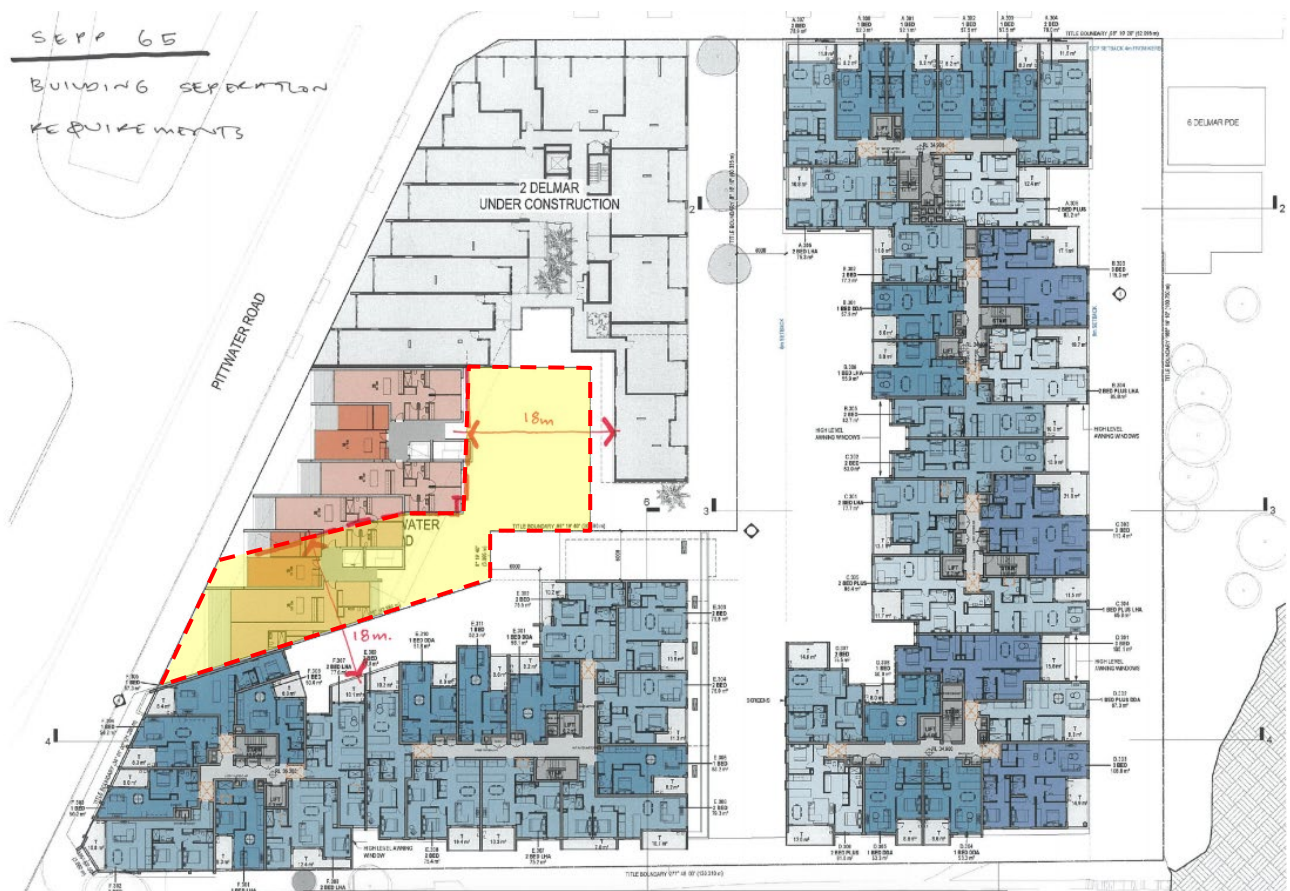


Figure 5 Undevelopable Portions (Highlighted Yellow) of 816 Pittwater Road due the Proposal’s ADG Building Separation Non-compliances

Source: Base image: Rothelowman, markup of compliant separation in yellow. Indicative layout required to respond to proposed development shown on 816 Pittwater Road.

Again, this inhibits the orderly and economic use and development of 816 Pittwater Road. Compounded by the approval of the previous DA at No 2 Delmar Pde, the theoretical building envelope of 816 Pittwater Road would be unreasonably and unnecessarily curtailed, as a direct result of a poor design outcome and lack of response to site constraints (including likely future development) in the current DA.

If the proposed development was approved in its current format, the consequences would be

- Building B’s eventual significant non-compliance with the solar access provisions of the ADG when 816 Pittwater Road is developed, and
- An eventual non-compliance with the building separation provisions of the ADG between Building B and 816 Pittwater Road, or
- The prevention of the orderly and economic development of 816 Pittwater Road within the intended planning controls.

Both outcomes are unacceptable.

2.3 Design Excellence

The Proposal in its current format fails to demonstrate design excellence, reliant solely on an outcome that appears to presume no future development on No 816 Pittwater Road.

Despite the commentary provided in the Statement of Environmental Effects, the Proposal does not demonstrate design excellence withing the Dee Why Town Centre for the following reasons.

- The Proposal's massing and meditation give little to no regard for the anticipated built form of development at 816 Pittwater Road, and by association, the area's character.
- The Proposal does not demonstrate a high standard of architectural design by proposing an inappropriate and poor response to the circumstances and constraints of the site, particularly at the northern interface of 816 Pittwater Road.
- The proposed development maximises solar access only through the inappropriate suggestion to obtain compliance over 816 Pittwater Road with no regard to the future development as intended.
- The proposed communal spaces and private open spaces on the northern elevation of 816 Pittwater Road are not exemplary or innovative and will be overshadowed entirely by the future development of 816 Pittwater Road.

3.0 Inconsistency with Dee Why Town Centre's Desired Character

The Proposal is significantly inconsistent with the Council's desired character for Dee Why Town Centre as a vibrant mixed-use centre as articulated by the Northern Beaches Local Strategic Planning Statement (LSPS), Part 7 of the Warringah LEP and Part G1 of the Warringah DCP. **Table 1** further below demonstrates the Proposal's many non-compliances with the principles, controls and clauses of these strategic and statutory documents that guide the Town Centre's vision.

Most significantly, the Proposal is inconsistent with the objectives for development within Dee Why Town Centre provided in Clause 7.3 of the Warringah LEP. Specifically, the Proposal:

- Does not balance its provision of housing with a mix of retail, business, employment, civic, cultural and recreational uses as required by Clause 7.3(b)
- Does not provide two levels of non-residential development (including the ground floor) to accommodate additional employment opportunities as required by Clause 7.3(j). Instead, it only proposes three smaller commercial tenancies across its two ground levels. with most of these floors proposed for residential apartments. Evidently, this contravenes the numerical standard set by Clause 7.3(j).

Clause 7.4 of the LEP stipulates the following regarding development that is inconsistent with the objectives in Clause 7.3:

(1) *Development consent **must not be** granted to development on land in the Dee Why Town Centre unless the consent authority is satisfied that the development—*

(a) *is consistent with the objectives of this Part that are relevant to that development.* [emphasis added]

Accordingly, as the Proposal is inconsistent with the objectives of Part 7 of the Warringah LEP (Clauses 7.3(b) and (j)), development consent **must not** be granted. While the Proponent submitted a Clause 4.6 variation request for the Proposal's non-compliance with Clauses 4.2, 6.7 and 7.6A(2) of the Warringah LEP.

The reasons for the Proposal's failure to provide two levels of employment-generating floorspace are indicated in the Statement of Environmental Effects that accompanied the application. It suggests that providing commercial floor space on the ground floor is unviable as the site is supposedly disconnected from the commercial core of the Dee Why Town Centre and has a limited frontage to Pittwater Road and Delmar Parade.

"...the subject site is at the periphery of the centre and is largely disconnected from the commercial core of the centre. As a result, commercial floor space on the ground floor of the internal areas of the development is not commercially viable and only commercial tenancies with a street frontage will have a chance of succeeding in this location at the edge of the centre." (SEE, pg. 26)

While the site is on the edge of the Dee Why Town Centre, the Town Centre’s commercial and retail uses extend to the site. Indeed, the under-construction mixed-use development at 2 Delmar Parade, which adjoins the site, contains only commercial and retail floorspace on its ground floor.

Table 1 Non-Compliances the Dee Why Town Centre Intended Character

Principles / Clause / Control	Compliance
Northern Beaches LSPS - Principles for the Dee Why Town Centre	
Support Dee Why as a mixed centre for business, community, civic and residential uses	Non-compliance The Proposal fails to provide a mix of business, community and civic uses that support Dee Why as a major centre.
Provide at least two levels of non-residential uses for employment.	Non-compliance The Proposal only provides three smaller commercial tenancies across its two ground levels, with most of these floors proposed for residential apartments.
Warringah LEP - Zone B4 Mixed Use Objective	
1 Objectives of zone • To integrate suitable business, office, residential, retail and other development in accessible locations so as to maximise public transport patronage and encourage walking and cycling.	Non-compliance Despite the site being well-served by public transport, the Proposal fails to provide a mix of business, office and retail uses that would benefit from and contribute to public transport patronage.
• To promote a land use pattern that is characterised by shops, restaurants and business premises on the ground floor and housing and offices on the upper floors of buildings.	Non-compliance The Proposal only provides three smaller commercial tenancies across its two ground levels, with most of these floors proposed for residential apartments. This is inconsistent with the land use pattern
Warringah LEP - Part 7: Dee Why Town Centre	
7.3 Objectives for development within Dee Why Town Centre	
The objectives of this Part are as follows –	
(b) to ensure a balance between the provision of high quality housing with a mix of retail, business, employment, civic, cultural and recreational facilities,	Non-compliance The Proposal fails to balance the provision of housing with a mix of retail, business, employment, civic, cultural and recreational uses.
(j) to accommodate additional employment opportunities, service functions and space for business, consistent with the role of Dee Why as a major centre, by providing at least 2 levels (including the ground floor) of development for non-residential purposes,	Non-compliance The Proposal only provides three smaller commercial tenancies across its two ground levels, with most of these floors proposed for residential apartments.
Warringah DCP - Part G1 : Dee Why Town Centre	
5. Design and Architectural Diversity Requirements – Tower Setbacks 1. Development is to maintain minimum tower setbacks from the kerb as outlined in Figure 5. (9m)	Non-compliance The tower setback from the Pittwater Street kerb for ‘Building B’ appears to be significantly less than the required 9m.

4.0 Development Potential of 816 Pittwater Road

The Site at 816 Pittwater Road is capable of being developed to achieve the anticipated built and density of the site in Council's endorsed planning controls. However, as outlined in this submission, the proposed development will inhibit the orderly and economic use and development of 816 Pittwater Road, 'taking' its amenity from 816 Pittwater Road and unreasonably transferring a burden on any future development of 816 Pittwater Road as set out below:

- The Proposal relies on 816 Pittwater Road remaining underdeveloped to achieve compliance with the solar access provisions of the ADG for approximately seven dwellings per level in Building B. If 816 Pittwater Road were developed, the Proposal would no longer achieve compliance with the ADG. This severely limits the ability for 816 Pittwater Road to be developed to its allowable built form.
- Building B of the proposal does not comply with the ADG 6m setback criteria for levels 1 to 4 and 9m setback criteria for levels 5 to 7 to the shared boundary between the site and 816 Pittwater Road. This places an unreasonable burden on any future redevelopment of 816 Pittwater Road to provide excessive and onerous building setbacks to achieve required building separation distances. As described, approximately three apartment units would be lost on each level of a residential flat building developed at 816 Pittwater Road due to onerous building setbacks.

The SEE suggests that the issue of isolation has been suitably addressed because vehicle access alternative from Pittwater Road were considered and inspired in the DA for 2 Delmar Parade. The SEE infers that because of this point alone, with no commentary on any other impacts, 816 Pittwater Road can "*independently and reasonably developed and therefore is not an isolated site*". This methodology is erroneous and misleading. The Proposal provides no analysis of the likely future development of 816 Pittwater Road, other than what appears to be broad scale massing in the Urban Design Report.

Complaint setbacks and portion of separation in accordance with the ADG are required in the proposal to ensure that appropriate development can occur on 816 Pittwater Road, and not required the onus to be transferred to address separation at a later stage.

If the current proposal was to be supported, 816 Pittwater Road would likely remain significantly underutilised as an isolated AVIS car hire shop that detracts from the intended character of Dee Why as a mixed-use major centre. As described in **Section 5.0**, the applicant should be instructed to either consider amalgamation with 816 Pittwater Road or revise their design, so it does not inhibit the economic and orderly development of 816 Pittwater Road as a standalone development site. Both options would result in a better urban outcome than the development of 816 Pittwater Road resulting in significant solar access and building separation ADG non-compliances.

5.0 Proposed Alternative

As demonstrated throughout this letter, the Proposal in its current form is unacceptable as:

- a. It is inconsistent with the Council's desired character for Dee Why Town Centre, as demonstrated by its many non-compliances with the Northern Beaches LSPS, Part 7 of the Warringah LEP and Part G1 of the Warringah DCP; and
- b. It will inhibit the orderly and economic use and development of 816 Pittwater Road.

The solution to the above issues is either the amalgamation of the site and 816 Pittwater Road **or** the Applicant revises their Proposal to provide a 9m building setback to the shared site boundary and account for solar impacts associated with the development of 816 Pittwater to its development potential. This may involve reorientating apartments in Building B.

Concerning amalgamation, Commissioner Tour in *Karavellas v Sutherland Shire Council* [2004] NSWLEC 251 provides the following general questions when dealing with the amalgamation of sites or when a site is isolated through redevelopment:

- *Firstly, is amalgamation of the sites feasible*
- *Second, can orderly and economic use and development of the separate sites be achieved if amalgamation is not feasible.*

Regarding the second question, this submission clearly demonstrates that the Proposal will inhibit the orderly and economic use and development of 816 Pittwater Road due to solar access and building separation. Development at 816 Pittwater Road that is consistent with the site's planning controls (24m height and 3.2:1 FSR) will become unachievable, as demonstrated in **Figures 3 and 5** which would require setbacks as per ADG on 812 Pittwater Road to maintain compliance.

In addition to enabling the economic and ordered development of 816 Pittwater Road, amalgamation would also deliver the following benefits in the public interest:

- The Proposal's distribution of built form and massing could be extended into 816 Pittwater Road to resolve the Proposal's significant non-compliance with the maximum permitted FSR 3.2:1 along Pittwater Road. The Proposal's current variance from the development standard (+1.12:1 or 28.6%) is only being sought to maximise the building envelope fronting Pittwater Road.
- The development site would benefit from a substantially increased Pittwater Street frontage (20m to 65m) that would enable the proponent to deliver commercially viable floor that is consistent with Dee Why Town Centre's desired character. It would also enable the development to meet the following objectives of the B4 mixed use zone:
 - *To promote building design that creates active building fronts, contributes to the life of streets and public spaces and creates environments that are appropriate to human scale as well as being comfortable, interesting and safe.*
 - *To promote a land use pattern that is characterised by shops, restaurants and business premises on the ground floor and housing and offices on the upper floors of buildings.*
- Building height could be rearranged from Building B to 816 Pittwater Road to further reduce overshadowing impacts on the Heritage Conservation Area to the site's south without a reduction in yield. It is noted from the referral provided to the DA, Council's heritage department currently does not support the application due to impacts on the Heritage Conservation Area.
- A larger site area would provide additional space to rearrange the Proposal, enabling a dedicated waste truck access point and a larger waste room and bulky goods room. This would also address the concerns raised by Council's waste team.

Site amalgamation is also consistent with the objectives of the B4 mixed use land use zone and 'Part D8 - 6. Site Amalgamation' of the Warringah DCP.

Feedback of Council and Response

As mentioned throughout the RFI letter of Council, the issues raised during the referral, notification, advertising and assessment of this application are fundamental and demonstrably impact the support and likely recommendation for the application. Based on the outcome of the SNPP, DSAP, referrals and planning assessment, Council communicated to the application that the proposal requires a significant redesign to address and overcome the issues raised.

As part of the internal referrals process, Council's specifically realised a number of concerns in the following areas. Many of these maintained their concerns despite updated plans being provided by the applicant in December 2022.

From a review of the latest plans from 03.4.23, other than what appear to be minor and technical/procedural revisions of the proposal (such as update to clause 4.6 variation, technical details (like stormwater and landscape plans)), the applicant has not demonstrated a response to many of the concerns of Council and their experts. We cannot see how this can be considered acceptable to Council to continue, or be recommended for approval to the Sydney Planning Panel.

6.0 Conclusion

The planning principles in *The Benevolent Society v Waverley Council* [2010] NSWLEC 1082 and *Project Venture Developments v Pittwater Council* [2005] NSWLEC 191, establish that the Proposal's impact on the developability of 816 Pittwater is a relevant consideration when assessing the application. When considering both of the planning principles and case law, the objectives and controls in the LEP (including the 3 x clause 4.6 variation) and inadequate and unaddressed non-compliances with the ADG and DCP, the proposal in its current form cannot be supported by Council.

This submission clearly demonstrates that the Proposal will inhibit the orderly and economic use and development of 816 Pittwater Road, consistent with its planning controls (24m height and 3.2:1 FSR) for the following two reasons.

1. The Proposal relies on 816 Pittwater Road remaining underdeveloped to achieve compliance with the solar access provisions of the ADG for approximately seven dwellings per level in Building B. If 816 Pittwater Road were developed, the Proposal would no longer achieve compliance with the ADG.
2. Building B does not comply with the ADG 6m setback criteria for levels 1 to 4 and 9m setback criteria for levels 5 to 7 to the shared boundary between the site and 816 Pittwater Road. This places an unreasonable burden on any future redevelopment of 816 Pittwater Road to provide excessive and onerous building setbacks to achieve required building separation distances.

The Proposal is inconsistent with the objectives for development within Dee Why Town Centre provided in Clause 7.3 of the *Warringah Local Environmental Plan 2011* (Warringah LEP). Accordingly, development consent **must not** be granted per Clause 7.4 of the Warringah LEP.

In order to resolve the above issues, the application must be revised to provide adequate separation (9m setbacks) on the site to comply with the ADG. The setbacks of Building B must also be revised to account for the solar impacts associated with the development of 816 Pittwater to its development potential as anticipated by the combined development controls. This may involve reorientating apartments in Building B.

We also reiterate significant concerns to what appear to be very minor and inconsequential amendments have been made to the DA from submission to the plan set being considered for determination. The changes that have been made appear to be resolving matters of internal amenity concerns that were inherently erroneous from the outset, and do not go in any way to addressing the concerns of the original submission (or those subsequent matters raised by Council and the internal referrals). We cannot see how, on this basis, the Council could be in a position to recommend approval of the DA, nor the Sydney Planning Panel determine to approve the DA.

We trust this supplementary submission, will be considered and any response or additional information be provided to us so it can be reviewed, and any further comments made. Should you have any questions, please don't hesitate to contact the author of this letter.

Yours sincerely,

Dale Branch
For and On Behalf of Moresfine Pty Ltd
& Fineoak Pty Ltd The Landowner of
816 Pittwater Road

Annexure 1 – Initial Submission

20 April 2022

Mr Ray Brownlee
Chief Executive Officer
Northern Beaches Council
PO Box 82
MANLY NSW 1655

Attn: Planning Assessment Officer

RE: Submission – DA2022/0145 – 4 Delmar Parade and 812 Pittwater Road, Dee Why

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We have reviewed the documentation accompanying the development application and raise our strong objection to the application for the following reasons.

- The Proposal demonstrates a lack of appropriate response to the site's constraints and is overdevelopment, proven by the requirement for three separate variations to built form development standards (Clause 4.6).
- The Proposal relies on 816 Pittwater Road remaining undeveloped to achieve fundamental amenity requirements of residential flat development, as demonstrated in the documentation submitted with the DA. This approach is fundamentally flawed and cannot be supported.
- The Proposal does not comply with the required building separation under the ADG and relies on 816 Pittwater Road remaining undeveloped to achieve compliance with ADG solar access provisions.
- Setbacks from the shared boundary (north of 812 Pittwater Road) for proposed residential apartment building do not achieve SEPP 65 compliance. The dwellings that directly face the boundary are required to be set back a minimum of 9m or reorientated to face east rather than north. The proposal would need to be significantly redesigned to achieve compliance in this regard, separate from solar access compliance.
- A superior urban outcome would be achieved by amalgamating the site with 816 Pittwater Road.
- The Proposal is inconsistent with Council's desired character for Dee Why Town Centre as a vibrant mixed-use centre. Most significantly, the Proposal is inconsistent with the objectives for development within Dee Why Town Centre provided in Clause 7.3 of the *Warringah Local Environmental Plan 2011* (Warringah LEP). Accordingly, development consent **must not** be granted per Clause 7.4 of the Warringah LEP.

The DA is accompanied by three separate clause 4.6 variations to built form (both FSR and podium height) and land use development standards, an indication that the scheme as submitted, is an overdevelopment of the site. The variations are required, in part, as a result of the site configuration and the applicant's decision not to amalgamate.

Because of these reasons, the application is unacceptable in its current form. We recommend that the development application be refused. Whilst amalgamation of site would provide a better outcome, it is important to note that 816 Pittwater Road is entirely capable of development, provided the adjoining site (particularly Building B on 812 Pittwater Road) is designed to comply with requisite planning controls. 816 Pittwater Road should not be relied upon by the proposal to achieve ADG and solar compliance.

The applicant has made the choice not to amalgamate the sites, and the burdening of 816 Pittwater Road is unreasonable. The resulting non compliances and clause 4.6 variations in the DA are issues that have been caused by the applicant, which represent an over development of their site with no basis for justification. These issues can be resolved by a reduction in proposed development responsive to the constraints of the site, or amalgamation.

The applicant should be required by Council to reconsider amalgamation with 816 Pittwater Road or revise their design, so it does not inhibit that site's economic and orderly development.

1.0 Background

Over the last 24 or so months, the owners of 816 Pittwater Road have negotiated an option for the applicant to purchase their site to be included in the development. However, after agreeing on a price, executing a term sheet and proceeding to contracts, they renegotiated on a number of items, and the transaction fell through.

Principally, the renegotiations put forward by the applicant resulted in a call option which significantly shifted the risk onto the landowner in a way which departed significantly from the term sheet which had previously been agreed.

The landowner is still open to an amalgamation of the sites, subject to an equitable arrangement being reached.

The amalgamation of the site and 816 Pittwater Road would resolve the issues presented in the introduction by:

- Enabling the orderly and economic development of both sites; and
- Providing the Proposal with larger frontage to Pittwater Road, thus enabling the development to comply with the maximum permitted FSR, and the Warringah LEP objectives for the Dee Why Town Centre.

Nevertheless, in the event that amalgamation is not achieved, the Proposal should be redesigned so it does not inhibit the economic and orderly development of 816 Pittwater Road as a standalone development site.



Figure 1 Site Location Diagram showing the site of the DA in yellow.

Source: Nearnmap

2.0 Design, Site Analysis and Non-Compliances

2.1 Solar access

The ADG requires that living rooms and private open spaces of at least 70% of apartments in a building receive a minimum of 2 hours of direct sunlight between 9 am and 3 pm at mid-winter. As commented in the SEPP 65 Statement that accompanies the application, the Proposal suggests that exactly 70% of proposed apartments receive the required two hours of solar access to living room windows and private open space. Of these compliant apartments, it is understood that approximately seven north-facing apartments per level in building B rely on 816 Pittwater Road remaining undeveloped to achieve compliance (see **Figure 2**). No detailed breakdown, or diagrams have been provided with the application to confirm the validity of the suggested compliance.

Contrary to the accepted approach to planning in areas undergoing transition, LEC planning principles and case law; the Proposal gives no regard to the existing or likely future development of 816 Pittwater Road when considering amenity of the proposed development. Council and the Regional Planning Panel cannot knowingly support a DA that relies on the vacancy of an adjoining site, within a key centre of the LGA on a major roadway, to support a case of compliance and good planning outcomes.

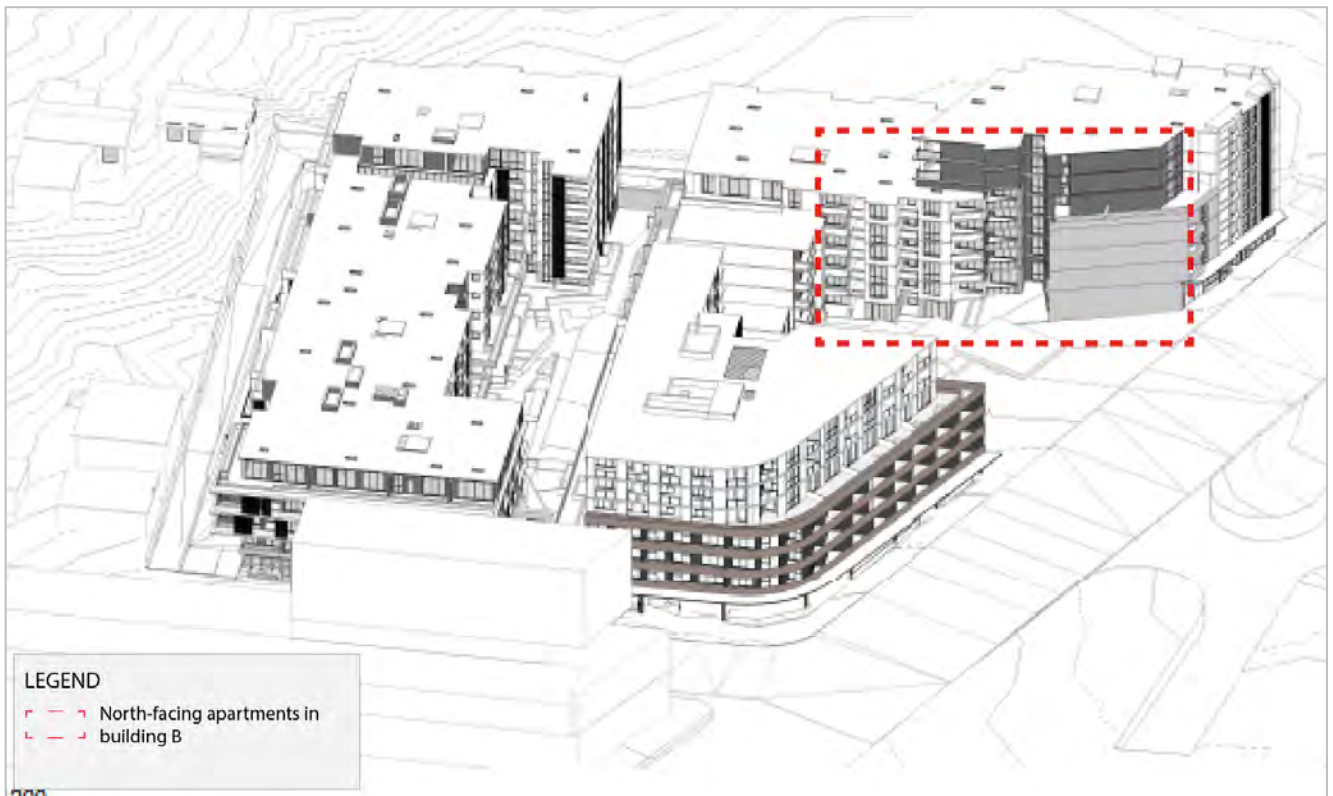


Figure 2 North-facing Apartments in Building B

Source: Rothelowman

Consequently, any development of 816 Pittwater Road would result in the Proposal no longer achieving compliance with the ADG on the measure of solar access, aside from privacy. This is evident in **Figure 3**, which provides an outline of the allowable built form at 816 Pittwater Road (24m height and 3.2:1 FSR).

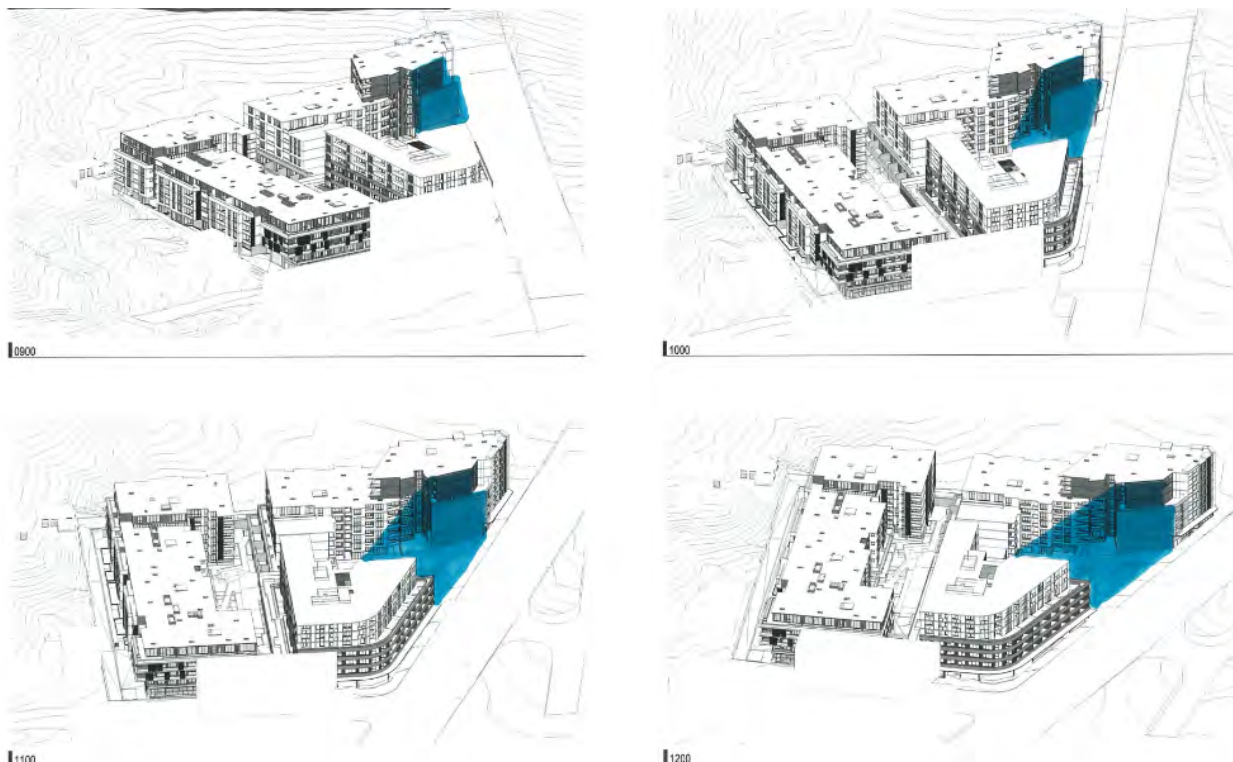


Figure 3 Solar Access to Building B with 816 Pittwater Road Developed to its Planning Controls

Source: Base image: Rothelowman with markup in blue showing the

As mentioned above, the Proposal's impact on the developability of 816 Pittwater Road is a relevant consideration as well as the impact of a future development on the site. As established in *The Benevolent Society v Waverley Council* [2010] NSWLEC 1082 (previously the *Parsonage v Ku-ring-gai* planning principle), "in areas undergoing change, the impact on what is likely to be built on adjoining sites should be considered when assessing the adequacy of solar access". It is apparent that this has not been given any regard.

As with the proposed building separation and provision of suitable setbacks to enable areas in transition, the impacts of overshadowing to the Proposal have not been appropriately considered and set up a substandard planning outcome for both No 812 and the future development of 816 Pittwater Road.

Furthermore, in *Project Venture Developments v Pittwater Council* [2005] NSWLEC 191, Senior Commissioner Rosseth established that a proposal's impact on the development potential of surrounding sites is a relevant consideration when assessing a project's compatibility with its surrounds. The case provides guidance when considering the compatibility of a proposal with its local area.

In order to test whether a proposal is compatible with its context, the case law suggests that two questions should be asked.

- Are the proposal's physical impacts on surrounding development acceptable? The physical impacts include constraints on the development potential of surrounding sites.
- Is the proposal's appearance in harmony with the buildings around it and the character of the street?

The answer to both questions for the Proposal is no. The impacts of the current proposal on the development potential of 816 is unacceptable. Whilst the appearance of the Proposal from Pittwater Road may be considered in harmony with 2 Delmar Parade, the interface of the development No 816 is not in harmony and sets up a substandard development when future development at No 816 does occur in the future.

2.2 ADG Site separation

The ADG requires a minimum 6m separation between residential buildings to side boundaries for up to four storeys and 9m for levels 5 to 8 (assuming between non-habitable rooms). Furthermore, the minimum separation between residential buildings is 12m between habitable rooms and balconies for up to four storeys and 18m for levels 5 to 8. As shown in the below extract, the Proposal provides a 3.3m and 6m setback (with windows and balconies) between habitable north-facing balconies of levels 5 to 7 and the shared boundary with 816 Pittwater Road.

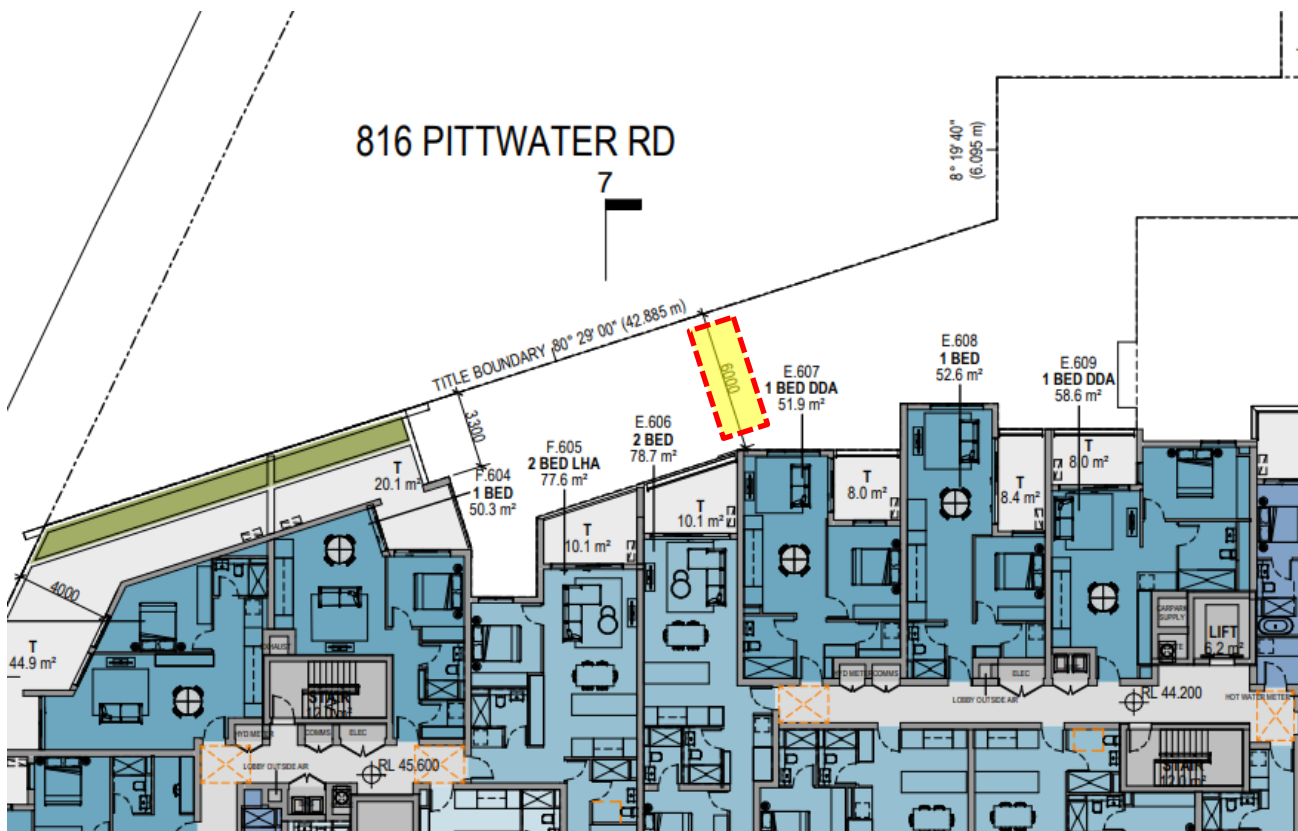


Figure 4 Proposed Building Separation – Level 5 of Building B

Source: Rothelowman

In order to comply with the ADG, the north-facing dwellings in Building B would need to be set back by a minimum of 9m or reorientated to face east (parallel with the northern boundary alignment) rather than north to achieve compliance with the ADG and provide for the orderly and economic development of 816 Pittwater Road. Without doing so, a poor planning outcome would be foreshadowed, placing an unreasonable burden on any future redevelopment of 816 Pittwater Road to provide excessive and onerous building setbacks to achieve required building separation distances. As shown in **Figure 5** below, approximately three apartment units would be lost on each level for a residential flat building developed at 816 Pittwater Road due to these onerous building setbacks.

Whilst an argument could be made that future development would not necessarily require full adherence to separation requirements being offset or perpendicular to one and other, perpetuating a scenario that requires this issue and others (privacy, acoustics, overshadowing) to be dealt with offsite at no 816 Pittwater Road is a substandard and poor planning outcome. This is further exacerbated by the Proposal seeking to vary development standards, including a 29% exceedance on 812 Pittwater Road – an indicator overdevelopment and lack of response to site constraints (including required setbacks).

In accordance with the aims of the ADG for building separation, application should “ensure that new development is scaled to support the desired future character with appropriate massing and spaces between buildings”. Where areas are in transition from low density or other uses to increased density, half of the separation distance should be applied in the form of a setbacks to allow for the other half of the separation requirement as the sites transition to be equitably accommodated on the adjoining site. Whilst the ADG acknowledges that separation compliance may not occur until both sides are developed, it does not propose that when a site is transitioning to a new scale it should reduce the setback and separation to unreasonably burden the future adjoining development.

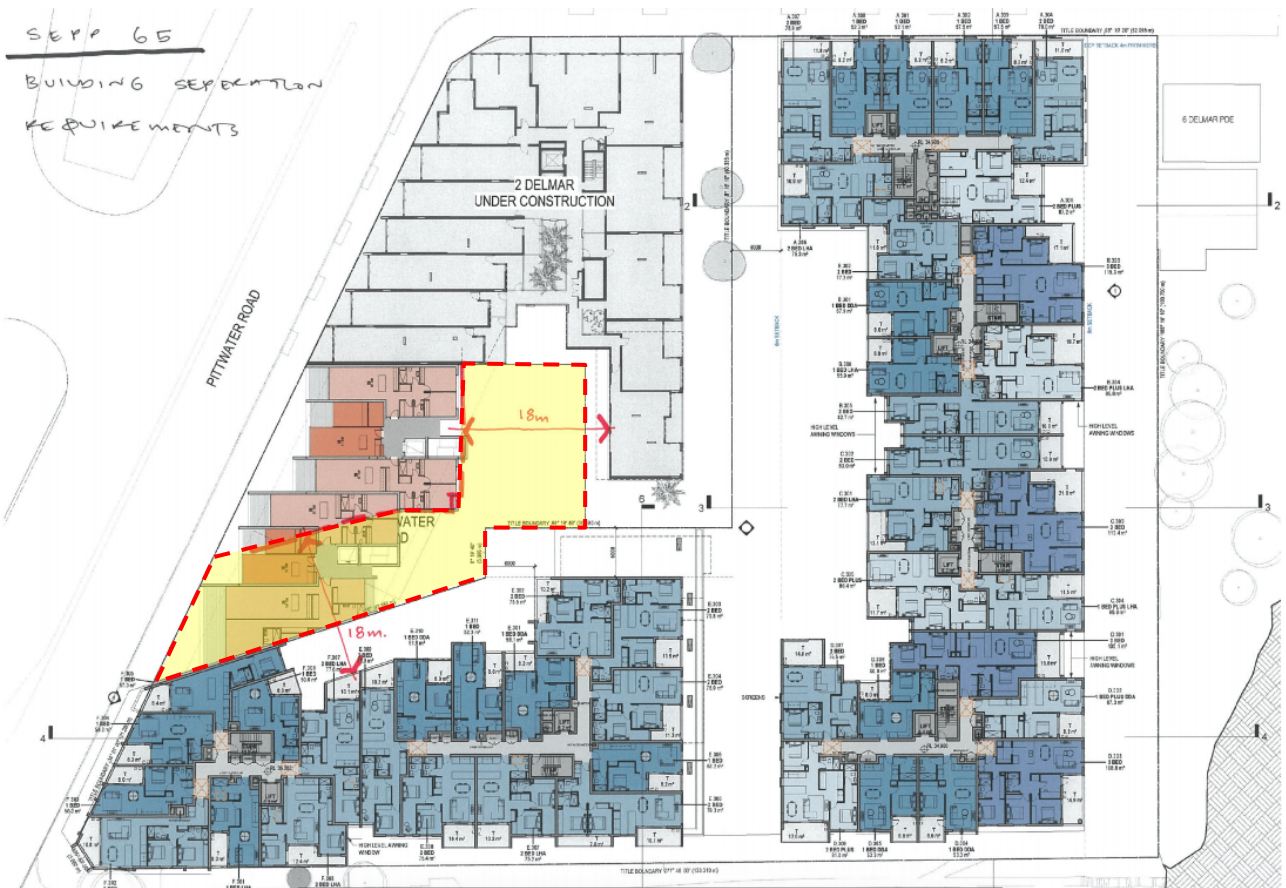


Figure 5 Undevelopable Portions (Highlighted Yellow) of 816 Pittwater Road due the Proposal’s ADG Building Separation Non-compliances

Source: Base image: Rothelowman, markup of compliant separation in yellow. Indicative layout required to respond to proposed development shown on 816 Pittwater Road.

Again, this inhibits the orderly and economic use and development of 816 Pittwater Road. Compounded by the approval of the previous DA at No 2 Delmar Pde, the theoretical building envelope of 816 Pittwater Road would be unreasonably and unnecessarily curtailed, as a direct result of a poor design outcome and lack of response to site constraints (including likely future development) in the current DA.

If the proposed development was approved in its current format, the consequences would be

- Building B’s eventual significant non-compliance with the solar access provisions of the ADG when 816 Pittwater Road is developed, and
- An eventual non-compliance with the building separation provisions of the ADG between Building B and 816 Pittwater Road, or
- The prevention of the orderly and economic development of 816 Pittwater Road within the intended planning controls.

Both outcomes are unacceptable.

2.3 Design Excellence

The Proposal in its current format fails to demonstrate design excellence, reliant solely on an outcome that appears to presume no future development on No 816 Pittwater Road.

Despite the commentary provided in the Statement of Environmental Effects, the Proposal does not demonstrate design excellence within the Dee Why Town Centre for the following reasons.

- The Proposal's massing and meditation give little to no regard for the anticipated built form of development at 816 Pittwater Road, and by association, the area's character.
- The Proposal does not demonstrate a high standard of architectural design by proposing an inappropriate and poor response to the circumstances and constraints of the site, particularly at the northern interface of 816 Pittwater Road.
- The proposed development maximises solar access only through the inappropriate suggestion to obtain compliance over 816 Pittwater Road with no regard to the future development as intended.
- The proposed communal spaces and private open spaces on the northern elevation of 816 Pittwater Road are not exemplary or innovative and will be overshadowed entirely by the future development of 816 Pittwater Road.

3.0 Inconsistency with Dee Why Town Centre's Desired Character

The Proposal is significantly inconsistent with the Council's desired character for Dee Why Town Centre as a vibrant mixed-use centre as articulated by the Northern Beaches Local Strategic Planning Statement (LSPS), Part 7 of the Warringah LEP and Part G1 of the Warringah DCP. **Table 1** further below demonstrates the Proposal's many non-compliances with the principles, controls and clauses of these strategic and statutory documents that guide the Town Centre's vision.

Most significantly, the Proposal is inconsistent with the objectives for development within Dee Why Town Centre provided in Clause 7.3 of the Warringah LEP. Specifically, the Proposal:

- Does not balance its provision of housing with a mix of retail, business, employment, civic, cultural and recreational uses as required by Clause 7.3(b)
- Does not provide two levels of non-residential development (including the ground floor) to accommodate additional employment opportunities as required by Clause 7.3(j). Instead, it only proposes three smaller commercial tenancies across its two ground levels. with most of these floors proposed for residential apartments. Evidently, this contravenes the numerical standard set by Clause 7.3(j).

Clause 7.4 of the LEP stipulates the following regarding development that is inconsistent with the objectives in Clause 7.3:

(1) *Development consent **must not be** granted to development on land in the Dee Why Town Centre unless the consent authority is satisfied that the development—*

(a) *is consistent with the objectives of this Part that are relevant to that development. [emphasis added]*

Accordingly, as the Proposal is inconsistent with the objectives of Part 7 of the Warringah LEP (Clauses 7.3(b) and (j)), development consent **must not** be granted. While the Proponent submitted a Clause 4.6 variation request for the Proposal's non-compliance with Clauses 4.2, 6.7 and 7.6A(2) of the Warringah LEP.

The reasons for the Proposal's failure to provide two levels of employment-generating floorspace are indicated in the Statement of Environmental Effects that accompanied the application. It suggests that providing commercial floor space on the ground floor is unviable as the site is supposedly disconnected from the commercial core of the Dee Why Town Centre and has a limited frontage to Pittwater Road and Delmar Parade.

"...the subject site is at the periphery of the centre and is largely disconnected from the commercial core of the centre. As a result, commercial floor space on the ground floor of the internal areas of the development is not commercially viable and only commercial tenancies with a street frontage will have a chance of succeeding in this location at the edge of the centre." (SEE, pg. 26)

While the site is on the edge of the Dee Why Town Centre, the Town Centre's commercial and retail uses extend to the site. Indeed, the under-construction mixed-use development at 2 Delmar Parade, which adjoins the site, contains only commercial and retail floorspace on its ground floor.

Table 1 Non-Compliances the Dee Why Town Centre Intended Character

Principles / Clause / Control	Compliance
Northern Beaches LSPS - Principles for the Dee Why Town Centre	
Support Dee Why as a mixed centre for business, community, civic and residential uses	Non-compliance The Proposal fails to provide a mix of business, community and civic uses that support Dee Why as a major centre.
Provide at least two levels of non-residential uses for employment.	Non-compliance The Proposal only provides three smaller commercial tenancies across its two ground levels, with most of these floors proposed for residential apartments.
Warringah LEP - Zone B4 Mixed Use Objective	
1 Objectives of zone • To integrate suitable business, office, residential, retail and other development in accessible locations so as to maximise public transport patronage and encourage walking and cycling.	Non-compliance Despite the site being well-served by public transport, the Proposal fails to provide a mix of business, office and retail uses that would benefit from and contribute to public transport patronage.
• To promote a land use pattern that is characterised by shops, restaurants and business premises on the ground floor and housing and offices on the upper floors of buildings.	Non-compliance The Proposal only provides three smaller commercial tenancies across its two ground levels, with most of these floors proposed for residential apartments. This is inconsistent with the land use pattern
Warringah LEP - Part 7: Dee Why Town Centre	
7.3 Objectives for development within Dee Why Town Centre	
The objectives of this Part are as follows –	
(b) to ensure a balance between the provision of high quality housing with a mix of retail, business, employment, civic, cultural and recreational facilities,	Non-compliance The Proposal fails to balance the provision of housing with a mix of retail, business, employment, civic, cultural and recreational uses.
(j) to accommodate additional employment opportunities, service functions and space for business, consistent with the role of Dee Why as a major centre, by providing at least 2 levels (including the ground floor) of development for non-residential purposes,	Non-compliance The Proposal only provides three smaller commercial tenancies across its two ground levels, with most of these floors proposed for residential apartments.
Warringah DCP - Part G1 : Dee Why Town Centre	
5. Design and Architectural Diversity <i>Requirements – Tower Setbacks</i> 1. Development is to maintain minimum tower setbacks from the kerb as outlined in Figure 5. (9m)	Non-compliance The tower setback from the Pittwater Street kerb for 'Building B' appears to be significantly less than the required 9m.

4.0 Development Potential of 816 Pittwater Road

The Site at 816 Pittwater Road is capable of being developed to achieve the anticipated built form and density of the site in Council's endorsed planning controls. However, as outlined in this submission, the proposed development will inhibit the orderly and economic use and development of 816 Pittwater Road, 'taking' its amenity from 816 Pittwater Road and unreasonably transferring a burden on any future development of 816 Pittwater Road as set out below:

- The Proposal relies on 816 Pittwater Road remaining underdeveloped to achieve compliance with the solar access provisions of the ADG for approximately seven dwellings per level in Building B. If 816 Pittwater Road were developed, the Proposal would no longer achieve compliance with the ADG. This severely limits the ability for 816 Pittwater Road to be developed to its allowable built form.
- Building B of the proposal does not comply with the ADG 6m setback criteria for levels 1 to 4 and 9m setback criteria for levels 5 to 7 to the shared boundary between the site and 816 Pittwater Road. This places an unreasonable burden on any future redevelopment of 816 Pittwater Road to provide excessive and onerous building setbacks to achieve required building separation distances. As described, approximately three apartment units would be lost on each level of a residential flat building developed at 816 Pittwater Road due to onerous building setbacks.

The SEE suggests that the issue of isolation has been suitably addressed because vehicle access alternative from Pittwater Road were considered and inspired in the DA for 2 Delmar Parade. The SEE infers that because of this point alone, with no commentary on any other impacts, 816 Pittwater Road can "*independently and reasonably developed and therefore is not an isolated site*". This methodology is erroneous and misleading. The Proposal provides no analysis of the likely future development of 816 Pittwater Road, other than what appears to be broad scale massing in the Urban Design Report.

Complaint setbacks and portion of separation in accordance with the ADG are required in the proposal to ensure that appropriate development can occur on 816 Pittwater Road, and not required the onus to be transferred to address separation at a later stage.

If the current proposal was to be supported, 816 Pittwater Road would likely remain significantly underutilised as an isolated AVIS car hire shop that detracts from the intended character of Dee Why as a mixed-use major centre. As described in **Section 5.0**, the applicant should be instructed to either consider amalgamation with 816 Pittwater Road or revise their design, so it does not inhibit the economic and orderly development of 816 Pittwater Road as a standalone development site. Both options would result in a better urban outcome than 816 Pittwater Road remaining as an AVIS car hire shop or its development resulting in significant solar access and building separation ADG non-compliances.

5.0 Proposed Alternative

As demonstrated throughout this letter, the Proposal in its current form is unacceptable as:

- a. It is inconsistent with the Council's desired character for Dee Why Town Centre, as demonstrated by its many non-compliances with the Northern Beaches LSPS, Part 7 of the Warringah LEP and Part G1 of the Warringah DCP; and
- b. It will inhibit the orderly and economic use and development of 816 Pittwater Road.

The solution to the above issues is either the amalgamation of the site and 816 Pittwater Road **or** the Applicant revises their Proposal to provide a 9m building setback to the shared site boundary and account for solar impacts associated with the development of 816 Pittwater to its development potential. This may involve reorientating apartments in Building B.

Concerning amalgamation, Commissioner Tour in *Karavellas v Sutherland Shire Council* [2004] NSWLEC 251 provides the following general questions when dealing with the amalgamation of sites or when a site is isolated through redevelopment:

- *Firstly, is amalgamation of the sites feasible*

- *Second, can orderly and economic use and development of the separate sites be achieved if amalgamation is not feasible.*

Regarding the second question, this submission clearly demonstrates that the Proposal will inhibit the orderly and economic use and development of 816 Pittwater Road due to solar access and building separation. Development at 816 Pittwater Road that is consistent with the site's planning controls (24m height and 3.2:1 FSR) will become unachievable, as demonstrated in **Figures 3 and 5** which would require setbacks as per ADG on 812 Pittwater Road to maintain compliance.

In addition to enabling the economic and ordered development of 816 Pittwater Road, amalgamation would also deliver the following benefits in the public interest:

- The Proposal's distribution of built form and massing could be extended into 816 Pittwater Road to resolve the Proposal's significant non-compliance with the maximum permitted FSR 3.2:1 along Pittwater Road. The Proposal's current variance from the development standard (+1.12:1 or 28.6%) is only being sought to maximise the building envelope fronting Pittwater Road.
- The development site would benefit from a substantially increased Pittwater Street frontage (20m to 65m) that would enable the proponent to deliver commercially viable floor that is consistent with Dee Why Town Centre's desired character. It would also enable the development to meet the following objectives of the B4 mixed use zone:
 - *To promote building design that creates active building fronts, contributes to the life of streets and public spaces and creates environments that are appropriate to human scale as well as being comfortable, interesting and safe.*
 - *To promote a land use pattern that is characterised by shops, restaurants and business premises on the ground floor and housing and offices on the upper floors of buildings.*
- Building height could be rearranged from Building B to 816 Pittwater Road to further reduce overshadowing impacts on the Heritage Conservation Area to the site's south without a reduction in yield. It is noted from the referral provided to the DA, Council's heritage department currently does not support the application due to impacts on the Heritage Conservation Area.
- A larger site area would provide additional space to rearrange the Proposal, enabling a dedicated waste truck access point and a larger waste room and bulky goods room. This would also address the concerns raised by Council's waste team.

Site amalgamation is also consistent with the objectives of the B4 mixed use land use zone and 'Part D8 - 6. Site Amalgamation' of the Warringah DCP.

6.0 Conclusion

The planning principles in *The Benevolent Society v Waverley Council* [2010] NSWLEC 1082 and *Project Venture Developments v Pittwater Council* [2005] NSWLEC 191, establish that the Proposal's impact on the developability of 816 Pittwater is a relevant consideration when assessing the application. When considering both of the planning principles and case law, the objectives and controls in the LEP (including the 3 x clause 4.6 variation) and inadequate and unaddressed non-compliances with the ADG and DCP, the proposal in its current form cannot be supported by Council.

This submission clearly demonstrates that the Proposal will inhibit the orderly and economic use and development of 816 Pittwater Road, consistent with its planning controls (24m height and 3.2:1 FSR) for the following two reasons.

1. The Proposal relies on 816 Pittwater Road remaining underdeveloped to achieve compliance with the solar access provisions of the ADG for approximately seven dwellings per level in Building B. If 816 Pittwater Road were developed, the Proposal would no longer achieve compliance with the ADG.
2. Building B does not comply with the ADG 6m setback criteria for levels 1 to 4 and 9m setback criteria for levels 5 to 7 to the shared boundary between the site and 816 Pittwater Road. This places an unreasonable burden on any future redevelopment of 816 Pittwater Road to provide excessive and onerous building setbacks to achieve required building separation distances.

The Proposal is inconsistent with the objectives for development within Dee Why Town Centre provided in Clause 7.3 of the *Warringah Local Environmental Plan 2011* (Warringah LEP). Accordingly, development consent **must not** be granted per Clause 7.4 of the Warringah LEP.

In order to resolve the above issues, the application must be revised to provide adequate separation (9m setbacks) on the site to comply with the ADG. The setbacks of Building B must also be revised to account for the solar impacts associated with the development of 816 Pittwater to its development potential as anticipated by the combined development controls. This may involve reorientating apartments in Building B.

We trust this submission will be considered and any response or additional information be provided to us so it can be reviewed, and any further comments made. Should you have any questions, please don't hesitate to contact the author of this letter.

Yours sincerely,
Dale Branch
For and On Behalf of Fineoak Pty Ltd
The Landowner of 816 Pittwater Road

BUILDING ENVELOPE

DELMAR GARAGE

2 DELMAR
UNDER CONSTRUCTION

PITTWATER ROAD

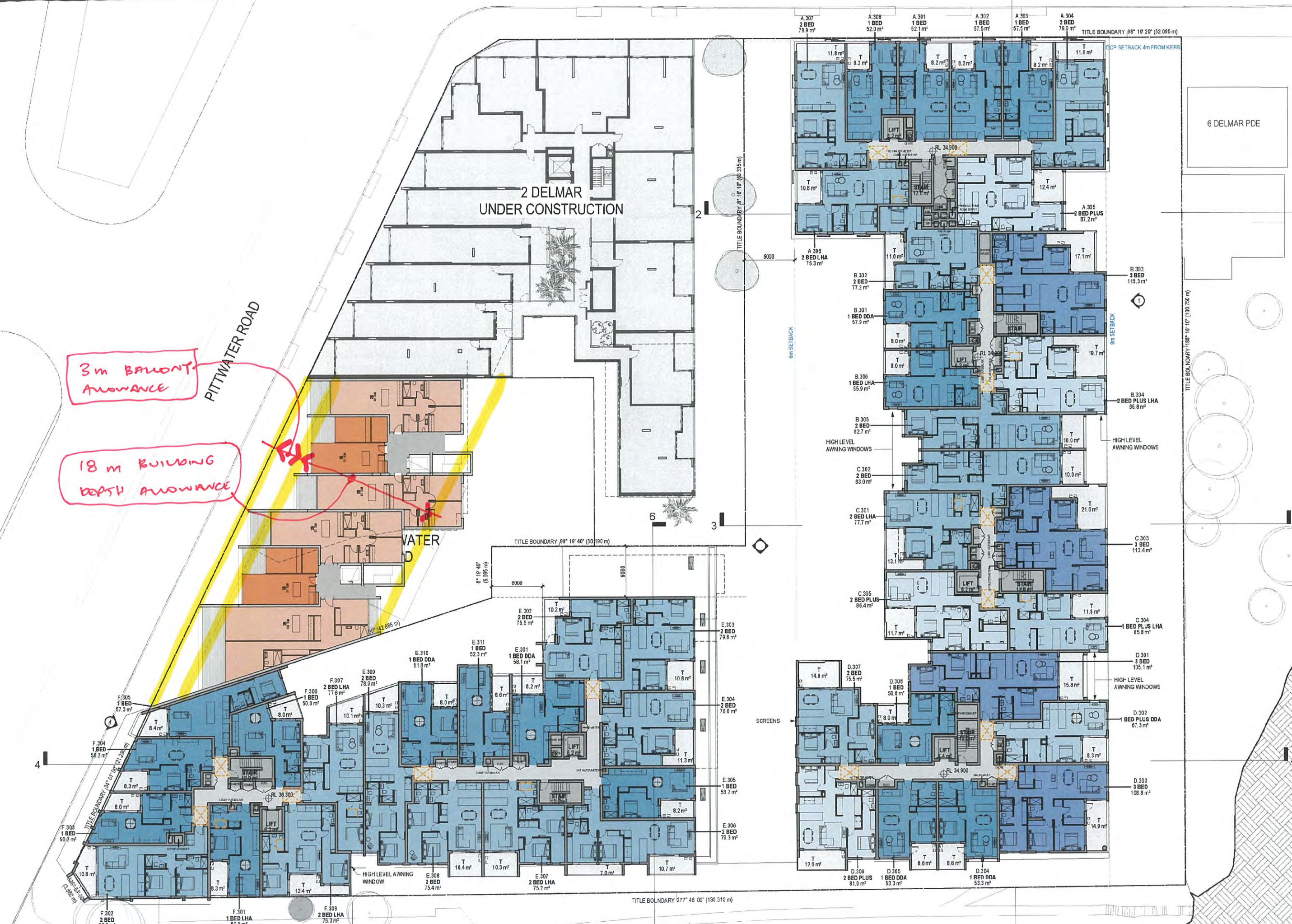
6 DELMAR PDE

3m BALCONY
ALLOWANCE

18m BUILDING
DEPTH ALLOWANCE

FLY

WATER



TITLE BOUNDARY 277° 46' 00" (130.510 m)

TITLE BOUNDARY 108° 16' 10" (100.750 m)

TITLE BOUNDARY 88° 19' 20" (52.095 m)

TITLE BOUNDARY 98° 19' 40" (30.190 m)

TITLE BOUNDARY 147° 01' 10" (21.260 m)

TITLE BOUNDARY 138° 52' 30" (23.880 m)

SOLAR ORIENTATION

GOOD ACCESS TO LIGHT WITHOUT RELYING ON INFORMAL KANAL

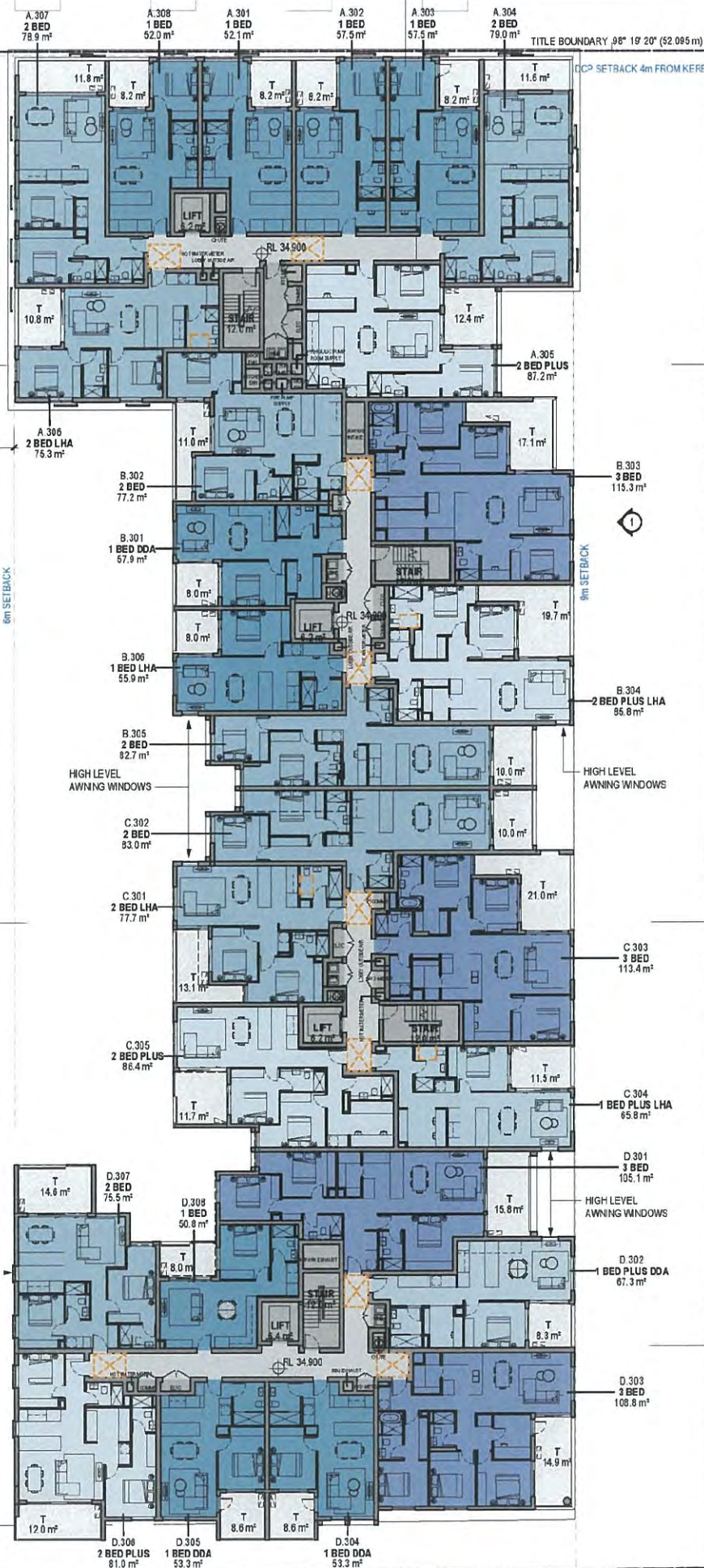
PITWATER ROAD

2 DELMAR UNDER CONSTRUCTION

PITWATER ROAD

TITLE BOUNDARY 98° 19' 40" (30190 m)

TITLE BOUNDARY 277° 46' 00" (130310 m)



6 DELMAR PDE

TITLE BOUNDARY 188° 16' 10" (100756 m)

TITLE BOUNDARY 98° 19' 40" (30190 m)

TITLE BOUNDARY 277° 46' 00" (130310 m)

TITLE BOUNDARY 98° 19' 40" (30190 m)

TITLE BOUNDARY 277° 46' 00" (130310 m)

CROSS VENTILATION

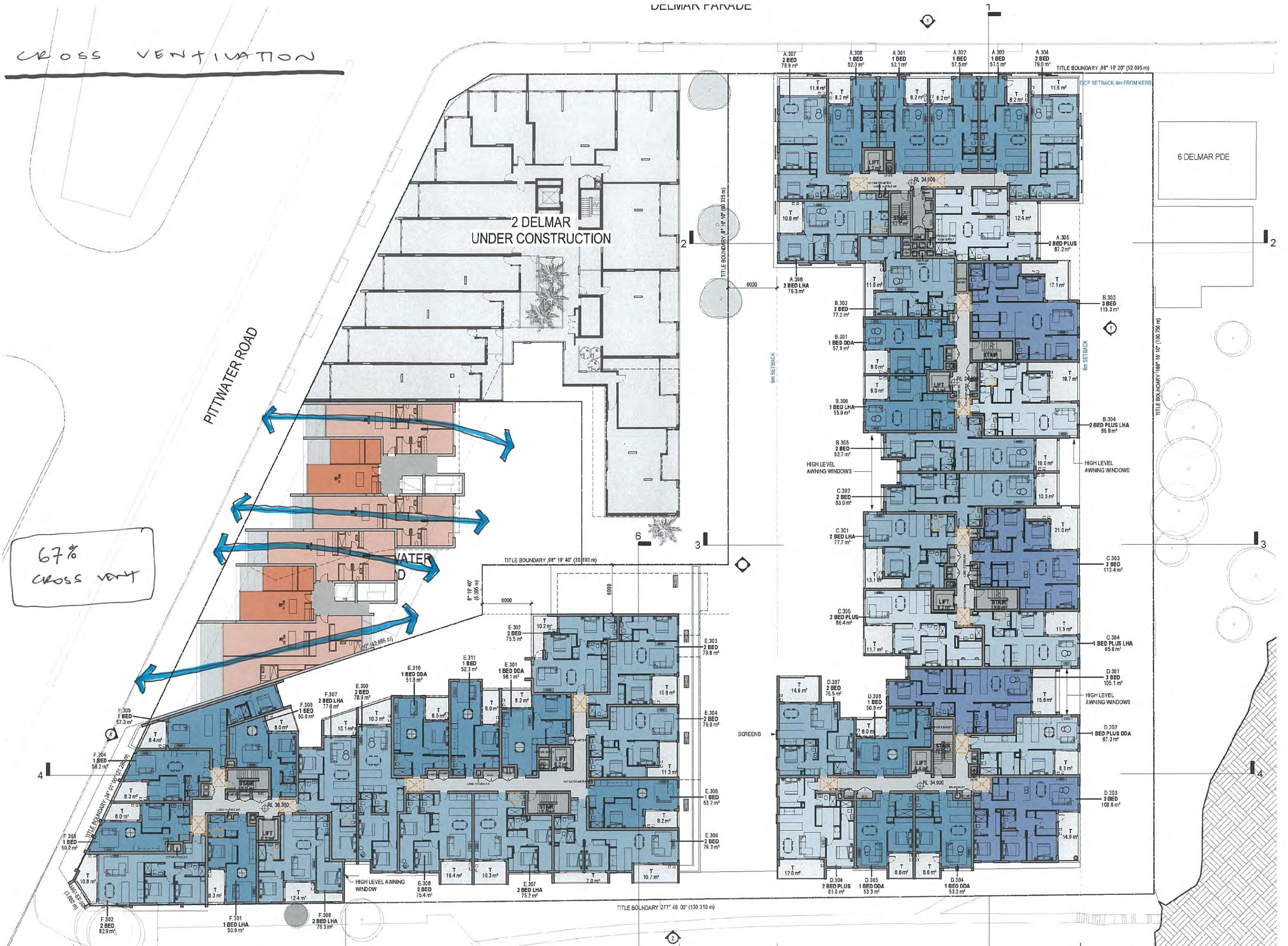
2 DELMAR UNDER CONSTRUCTION

PITTWATER ROAD

67% cross vent

WATER

6 DELMAR PDE

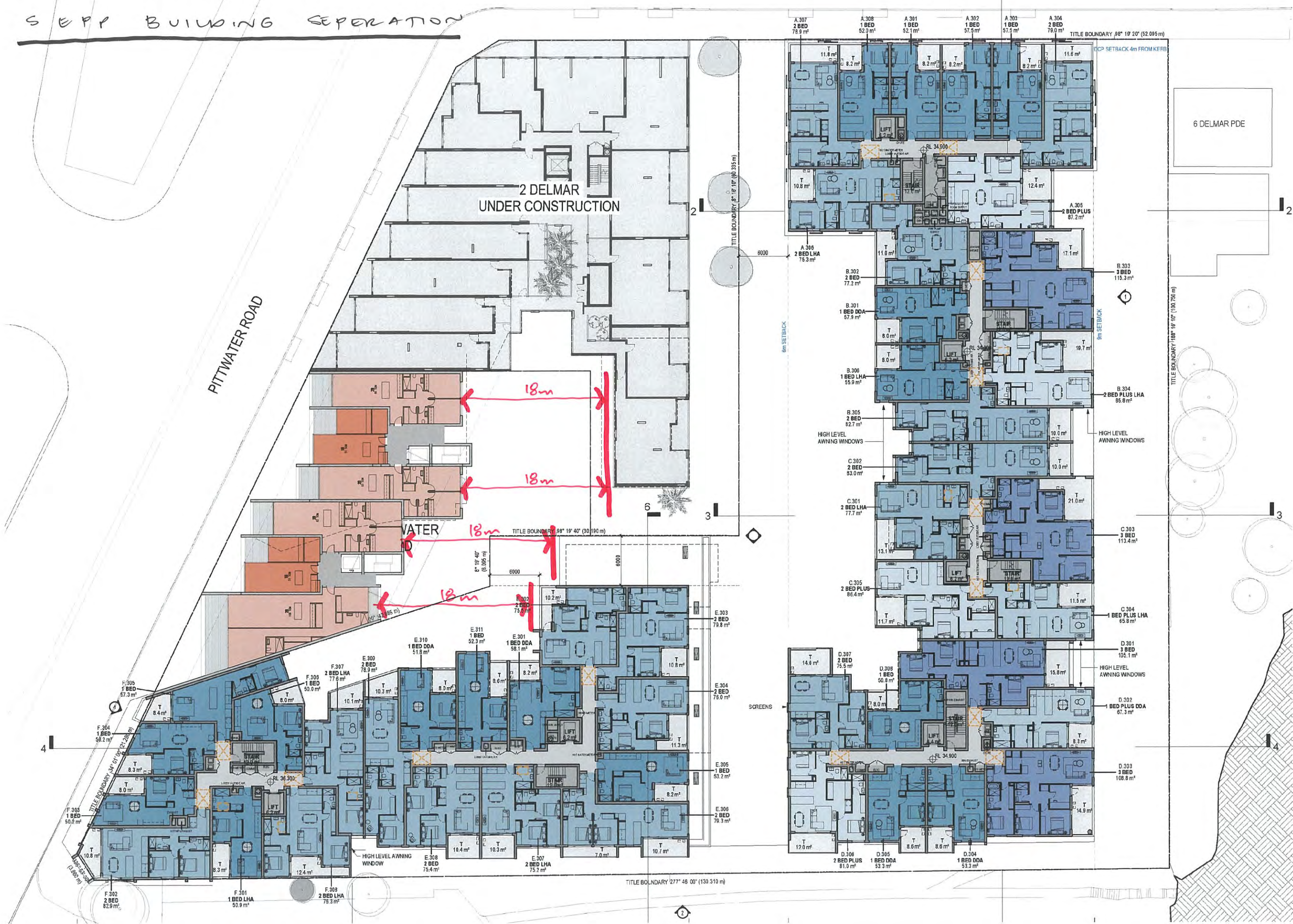


SEPP BUILDING SEPERATION

2 DELMAR UNDER CONSTRUCTION

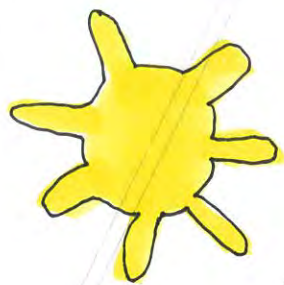
PITTWATER ROAD

6 DELMAR PDE



ADJOINING NEIGHBOUR

SOUND RELIANCE ACROSS
SIDE BOUNDARY

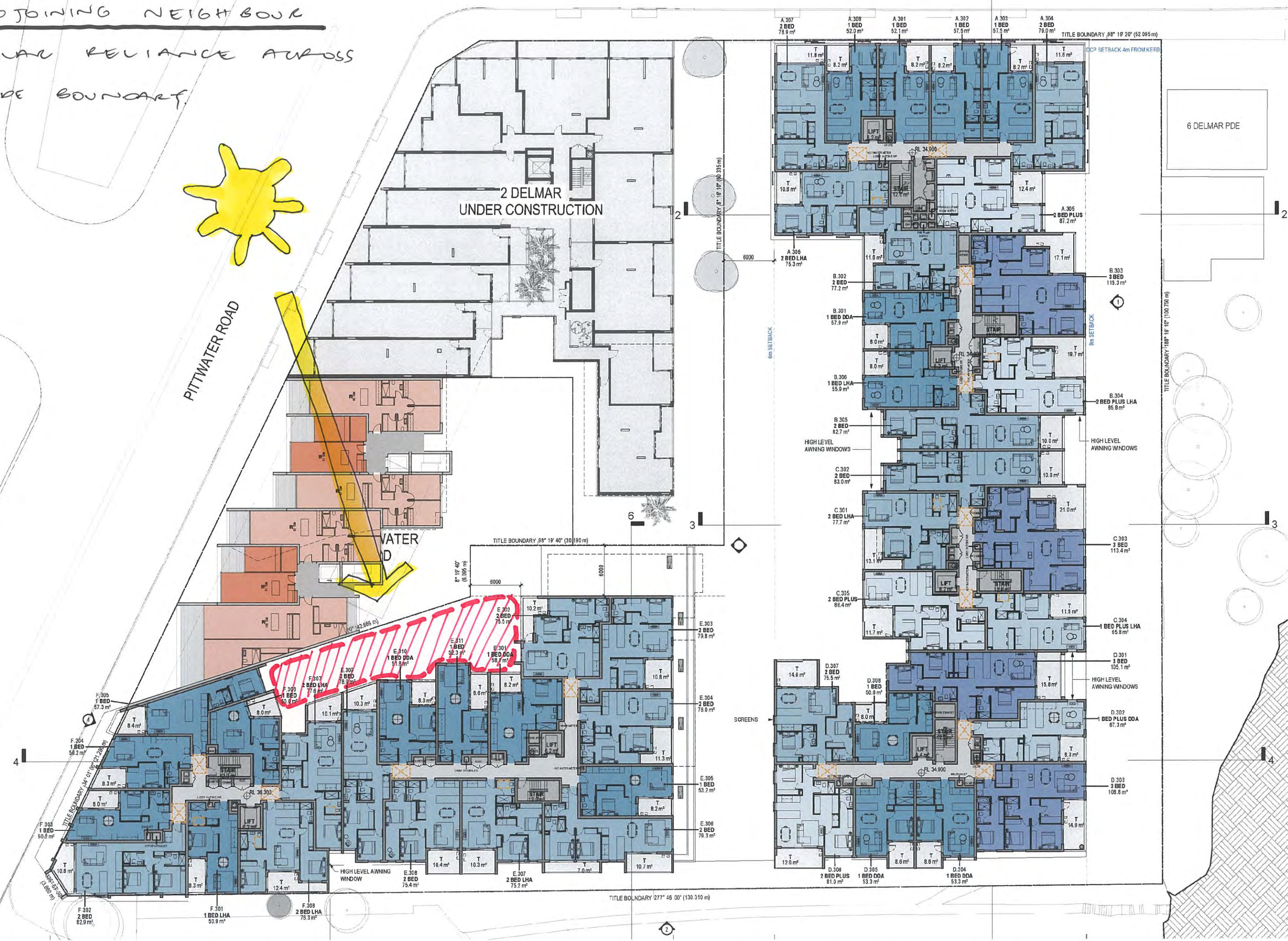


PITTWATER ROAD

2 DELMAR
UNDER CONSTRUCTION

WATER
DRAIN

6 DELMAR PDE



TITLE BOUNDARY 277° 46' 00" (130 310 m)

TITLE BOUNDARY 88° 19' 20" (52 095 m)

TITLE BOUNDARY 89° 19' 40" (30 190 m)

TITLE BOUNDARY 24° 01' 20" (21 288 m)

TITLE BOUNDARY 34° 01' 20" (21 288 m)

TITLE BOUNDARY 188° 16' 10" (100 758 m)

TITLE BOUNDARY 81° 16' 10" (90 335 m)

TITLE BOUNDARY 81° 16' 10" (90 335 m)

TITLE BOUNDARY 81° 16' 10" (90 335 m)

TITLE BOUNDARY 81° 16' 10" (90 335 m)

6m SETBACK

4m SETBACK

SCREENS

HIGH LEVEL AWNING WINDOWS

HIGH LEVEL AWNING WINDOWS

HIGH LEVEL AWNING WINDOWS

HIGH LEVEL AWNING WINDOW

- A.307 2 BED 78.9 m²
- A.308 1 BED 52.0 m²
- A.301 1 BED 52.1 m²
- A.302 1 BED 57.9 m²
- A.302 1 BED 57.9 m²
- A.304 2 BED 79.0 m²
- A.305 2 BED PLUS 87.2 m²
- B.302 2 BED 77.2 m²
- B.301 1 BED DOA 57.9 m²
- B.306 1 BED LHA 55.9 m²
- B.305 2 BED 82.7 m²
- C.302 2 BED 83.0 m²
- C.301 2 BED LHA 77.7 m²
- C.305 2 BED PLUS 86.4 m²
- D.307 2 BED 75.5 m²
- D.308 1 BED 50.0 m²
- D.305 1 BED DOA 53.3 m²
- D.304 1 BED DOA 53.3 m²
- E.303 2 BED 79.8 m²
- E.304 2 BED 75.0 m²
- E.305 1 BED 53.2 m²
- E.306 2 BED 79.3 m²
- F.305 1 BED 57.3 m²
- F.304 1 BED 58.2 m²
- F.303 1 BED 50.2 m²
- F.302 2 BED 82.9 m²
- F.301 1 BED LHA 50.9 m²
- F.309 2 BED LHA 75.3 m²
- E.302 2 BED 75.5 m²
- E.310 1 BED DOA 51.8 m²
- E.311 1 BED 52.3 m²
- E.301 1 BED DOA 58.7 m²
- E.307 2 BED 78.9 m²
- E.309 2 BED 78.9 m²
- E.308 2 BED 75.4 m²
- E.307 2 BED LHA 75.2 m²
- D.302 1 BED PLUS DOA 67.3 m²
- D.303 3 BED 106.8 m²
- D.301 3 BED 105.1 m²
- C.304 1 BED PLUS LHA 65.8 m²
- C.303 3 BED 113.4 m²
- B.304 2 BED PLUS LHA 95.8 m²
- B.303 3 BED 115.3 m²

SEPP 65

BUILDING SEPARATION REQUIREMENTS

2 DELMAR UNDER CONSTRUCTION

PITTWATER ROAD

6 DELMAR PDE

18m

18m

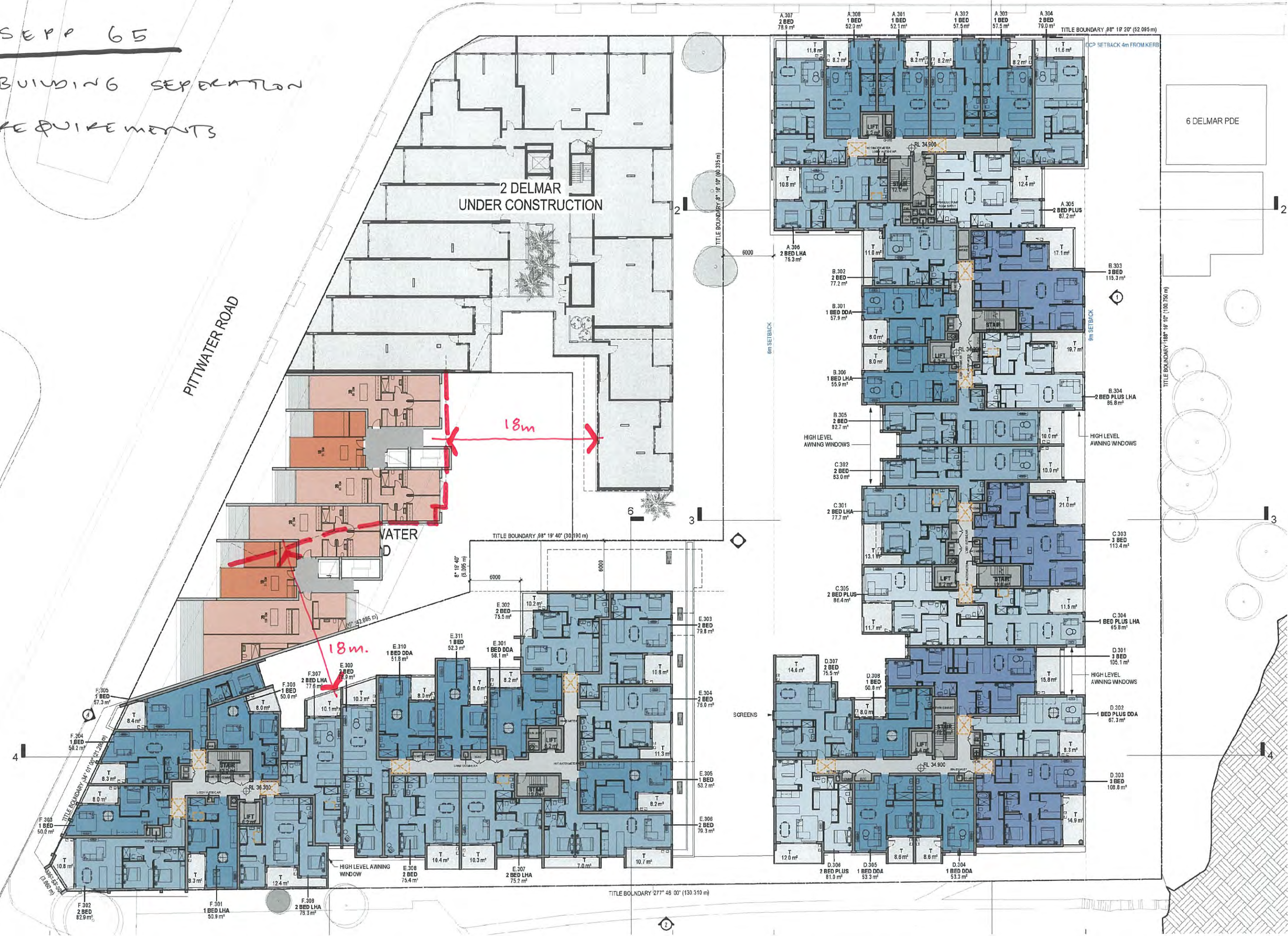
WATER

TITLE BOUNDARY 99° 19' 40" (30190 m)

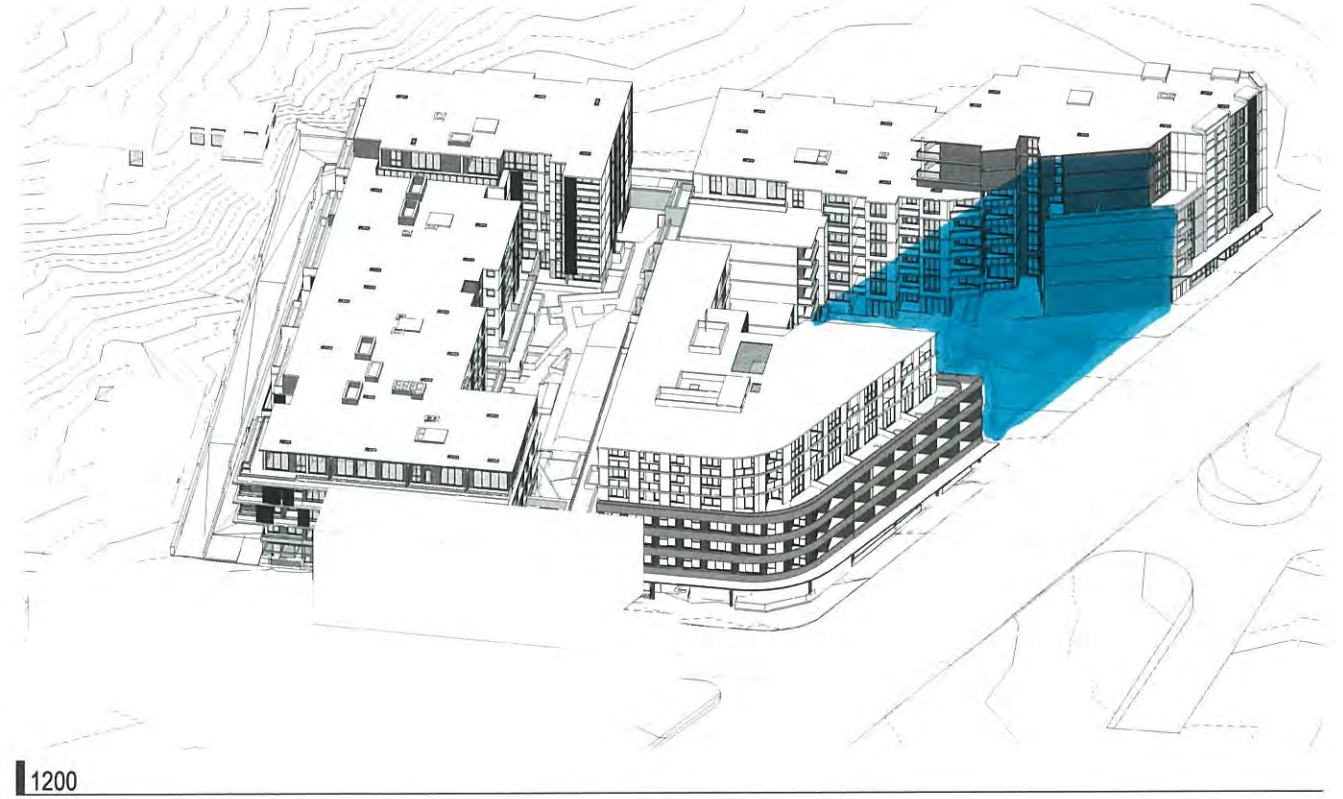
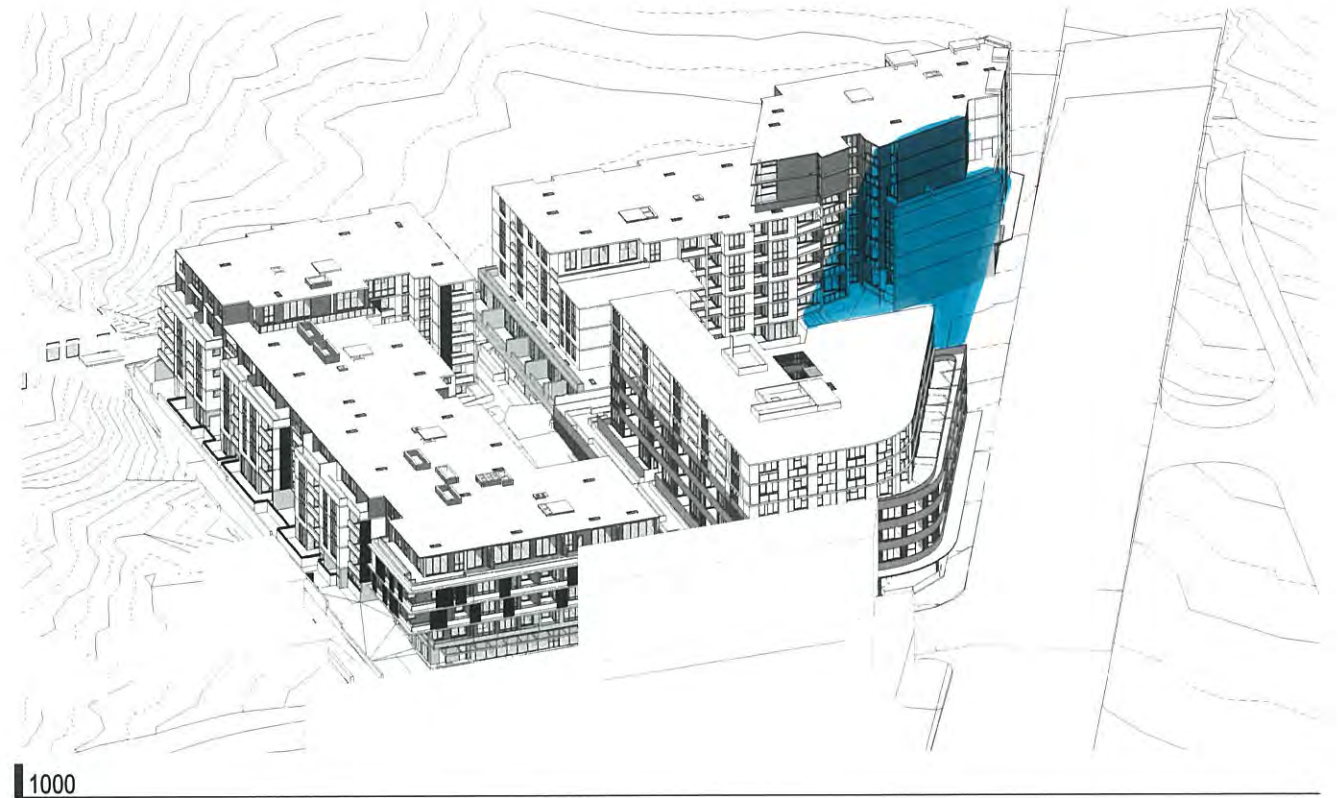
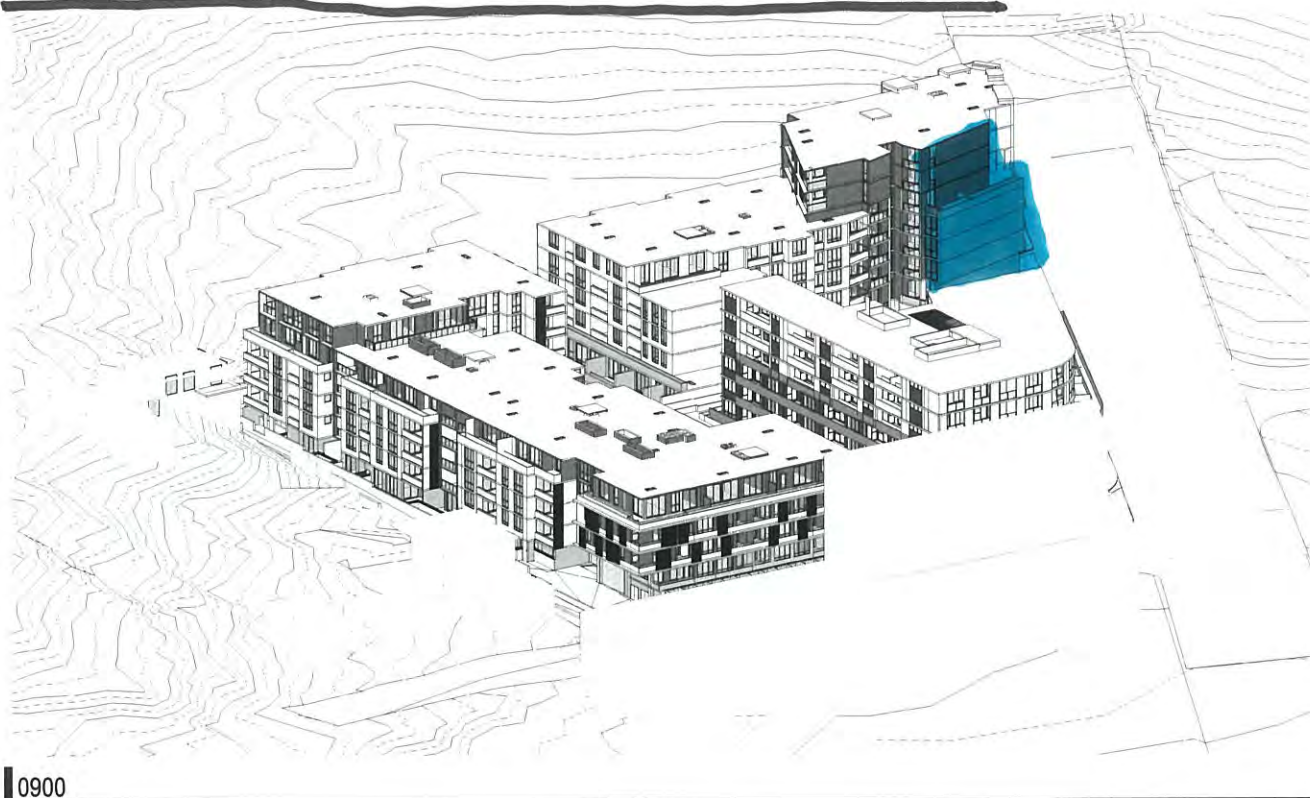
TITLE BOUNDARY 277° 48' 00" (130310 m)

TITLE BOUNDARY 86° 19' 20" (52095 m)

TITLE BOUNDARY 188° 16' 10" (100756 m)



ASSUMED INFILL BUILDING.



DA SUBMISSION

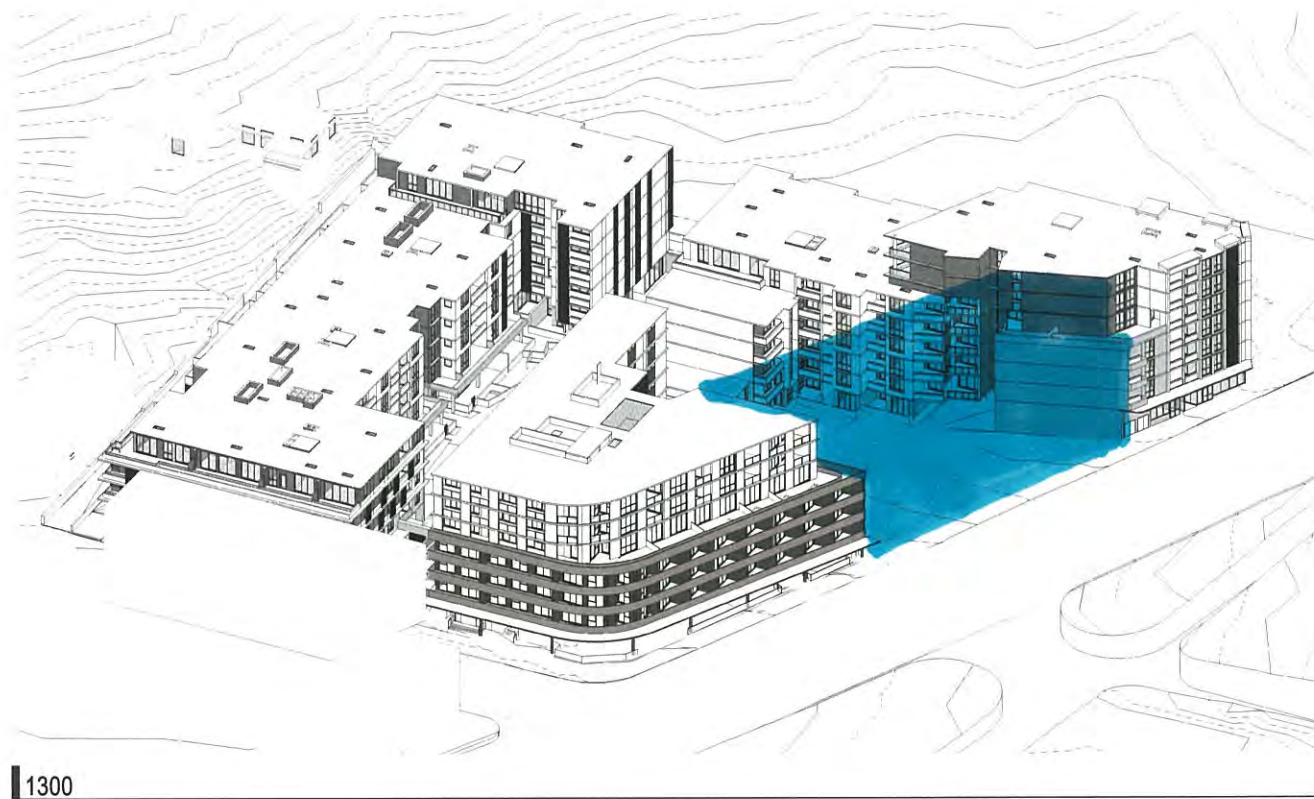
Revisions / A 14.12.2021 DEVELOPMENT APPLICATION JC

Client / **Dee Why 3 Pty Ltd & Dee Why 4 Pty Ltd** Project / **4 Delmar Pde & 812 Pittwater Rd, Dee Why**

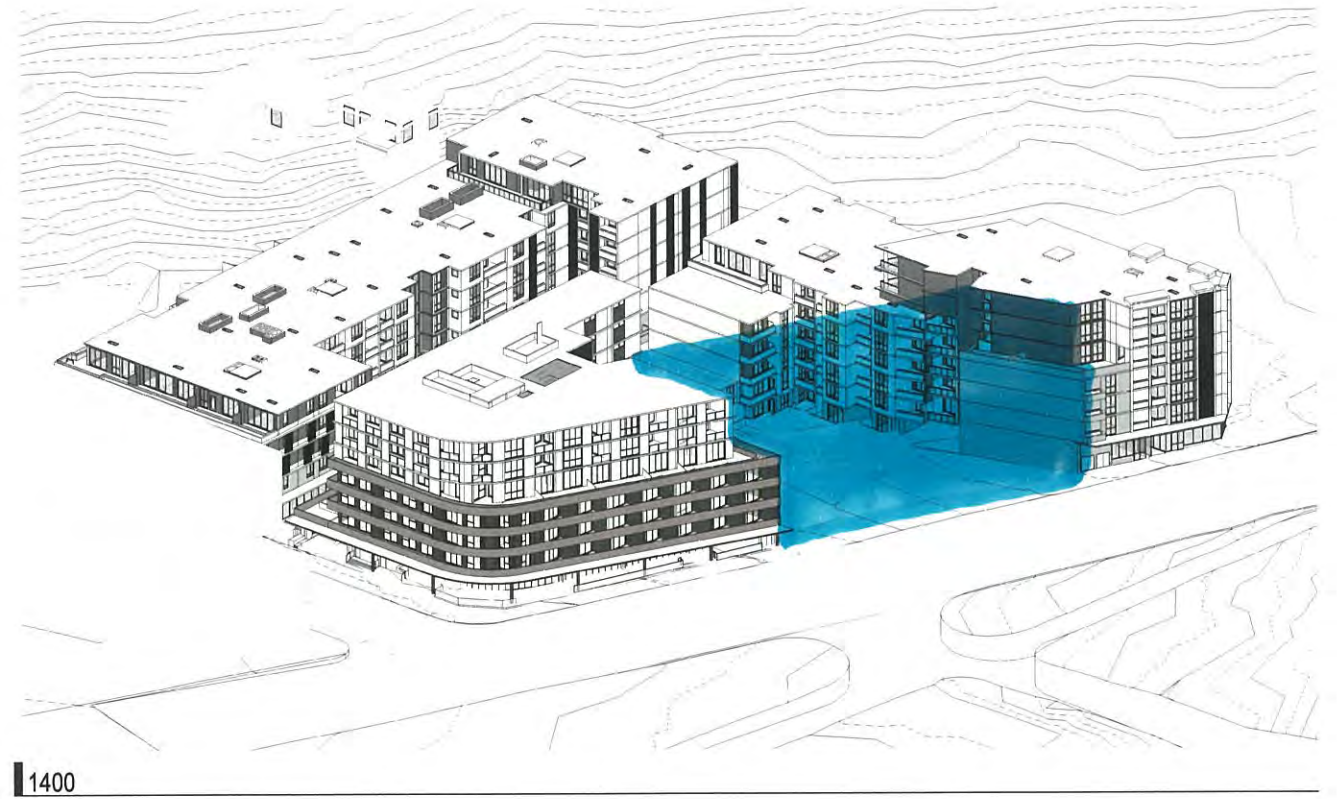
Drawing / **SHADOW ANALYSIS - POV** Project No / **221054** Date / **14.12.2021** Author / **JC** Scale: @ A1

Drawing No. / **TP05.01 A**

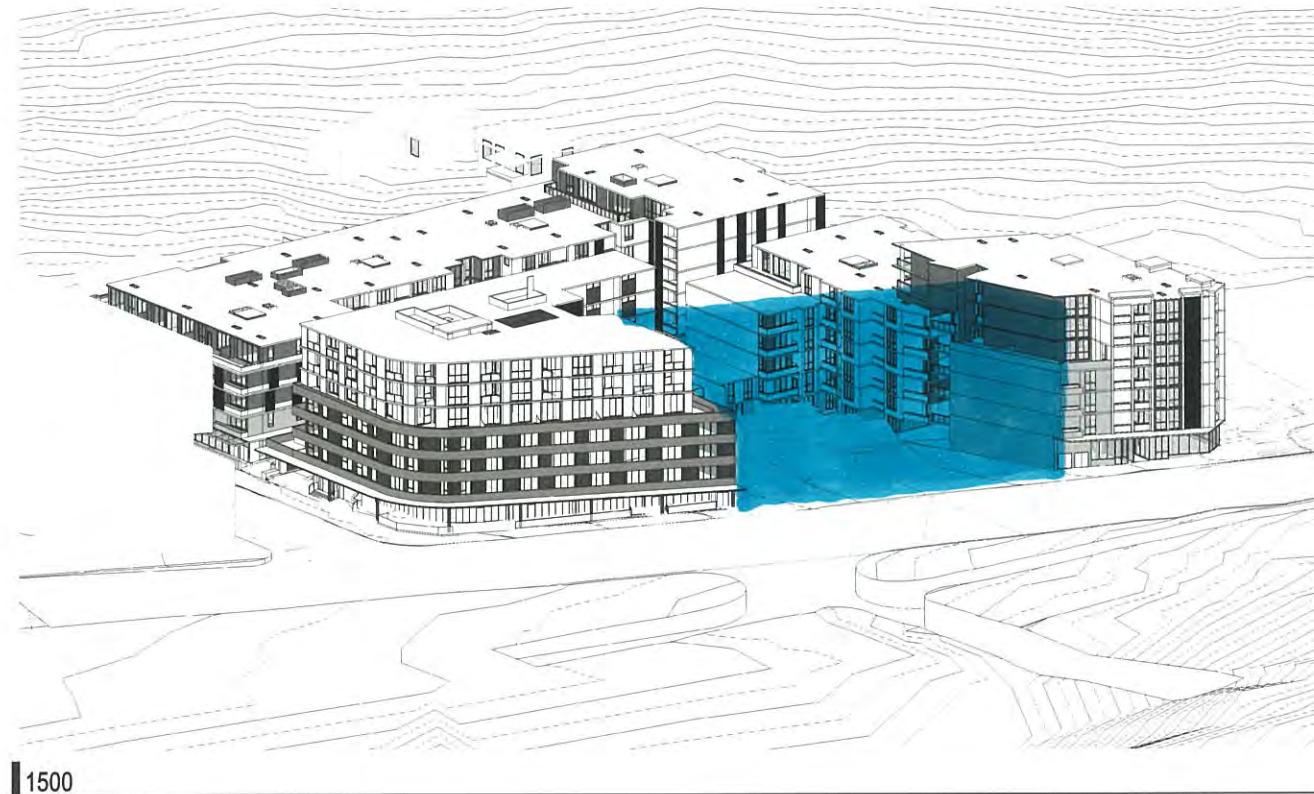
rothelowman



1300



1400



1500

DA SUBMISSION

Revisions / A 14.12.2021 DEVELOPMENT APPLICATION JC

Client / **Dee Why 3 Pty Ltd & Dee Why 4 Pty Ltd** Project / **4 Delmar Pde & 812 Pittwater Rd, Dee Why**

Drawing / **SHADOW ANALYSIS - POV** Project No / **221054** Date / **14.12.2021** Author / **JC** Scale: @ A1/

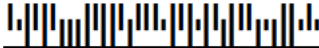
Drawing No. / **TP05.02 A**

rothelowman

Annexure 2 - Council RFI



7 July 2022



Attention : [REDACTED]

Dear [REDACTED],

Development Application No: DA2022/0145 for Demolition works and construction of a mixed-use development comprising a residential flat building and shop top housing, basement parking, lot consolidation and torrens title subdivision at 4 Delmar Parade and 812 Pittwater Road, Dee Why

I refer to your development application which is currently under assessment by Council.

The assessment of your application has revealed a number of issues that prevent Council from being able to support the proposal in its current form.

Please note that this summary of issues is not a complete list of matters, as several referral bodies have not yet provided their comments on the application. However, these matters represent the fundamental planning and design considerations. We are endeavoring to obtain the outstanding comments and will convey them in due course.

Status of the Application

The application is currently in the assessment phase, after having been referred, notified and advertised.

The notification resulted in two (2) submissions, both of which raised objections to the proposal.

The application was reported to the Sydney North Planning Panel (SNPP) for a First Briefing on 11 May 2022. The Panel noted the following key concerns with the proposal (as itemised in the Briefing Minutes):

- Residential units on the ground floor level
- Overlooking both inwards of the site, onto neighbouring properties and onto the adjoining botanical garden.
- Podium height variation.
- Number of Clause 4.6 variations.
- Amount of retail/commercial, open space, extent of excavation works, tree removal and extent of site coverage.

The above concerns are brought to your attention as key issues that have been raised by the SNPP who are the consent authority for this application.



Warringah Local Environmental Plan 2011 (WLEP2011)

B4 Mixed Use Zone

The site falls within the B4 Mixed Use zone under WLEP2011. Importantly, Clause 6.7 of WLEP 2011 prohibits development for the purposes of **residential flat buildings** within the Dee Why Town Centre Area.

Concern is raised regarding the small amount of commercial floor space proposed and whether the development is consistent with the objectives of the B4 Mixed Use zone.

In this regard, the development proposes a total gross floor area (GFA) of 19,006m², of which only **2.3%** is dedicated to commercial/retail uses. The remainder of the buildings comprise residential apartments.

The B4 zone objectives are reproduced below:

- *To provide a mixture of compatible land uses.*
- *To integrate suitable business, office, residential, retail and other development in accessible locations so as to maximise public transport patronage and encourage walking and cycling.*
- *To reinforce the role of Dee Why as the major centre in the sub-region by the treatment of public spaces, the scale and intensity of development, the focus of civic activity and the arrangement of land uses.*
- *To promote building design that creates active building fronts, contributes to the life of streets and public spaces and creates environments that are appropriate to human scale as well as being comfortable, interesting and safe.*
- *To promote a land use pattern that is characterised by shops, restaurants and business premises on the ground floor and housing and offices on the upper floors of buildings.*
- *To encourage site amalgamations to facilitate new development and to facilitate the provision of car parking below ground.*

It is noted that the locational circumstances of the site have been presented as a reason for the lack of commercial floorspace provided within the proposed development. In this regard, the SEE argues that there are inherent commercial difficulties in securing tenants in this location of the Dee Why commercial area. However, the current commercial viability issues should not result in a development that is inconsistent with the zone objectives, in a manner that would preclude the ability for commercial development opportunities in the future.

Based on the 2.3% provision of commercial floorspace, Council is not satisfied that such a provision is sufficient and meets the zone objectives.

Clause 4.6 Variation Requests and Commercial GFA

The application seeks three (3) variation requests pursuant to Clause 4.6 of the WLEP 2011, including:



- *Clause 4.4 - Floor Space Ratio*
- *Clause 6.7 - Residential Flat Buildings in Zone B4 Mixed Use*
- *Clause 7.6A - Podium heights*

It is noted that the SNPP raised concerns with the suitability and appropriateness of a development which sought to breach multiple development standards.

Principally, Council raises significant concerns with the proposed variation to Clause 6.7 in conjunction with the aforementioned B4 Mixed Use zone objectives.

The existing commercial buildings on the subject site comprise approximately 2,150sqm of commercially lettable area, including medical suites, offices and a café.

The proposal provides less than one quarter of this area as commercial floor space, and instead provides for 31 ground floor level residential apartments. This shortfall in commercial area presents a strategic risk to the viability and sustainability of the Dee Why Town Centre commercial area and is contrary to the objectives of the Town Centre, specifically with reference to Clause 7.3 (i) and (j) of WLEP 2011, which reads:

- (i) to establish ground floor levels that are occupied by retail uses that—*
 - (i) are highly active, accessible to the street and create a lively ambience, and*
 - (ii) provide a mix of retail shops, cafes and restaurants at the edges of street, pedestrian areas and open spaces, and*
 - (iii) are at the same level as the footpaths and provide opportunities for a generous promenade and distinctive street tree planting for shade and shelter,*
 - (j) to accommodate additional employment opportunities, service functions and space for business, consistent with the role of Dee Why as a major centre, by providing at least 2 levels (including the ground floor) of development for non-residential purposes,*

Further, Clause 7.12 (2)(c) of WLEP 2011 requires that:

- (2) Development consent must not be granted to development in the Dee Why Town Centre unless the consent authority is satisfied that—*
 - (c) buildings will have at least two floor levels (including the ground floor level) of employment generating space, and*

This requirement is a development standard and a Clause 4.6 Variation Request has not been made in respect to this variation.

The application states that, if a variation is not permitted, the redevelopment of the site is not be feasible, as ground floor commercial tenancies across the entire site will not be able to be leased on commercially viable terms. As a potential solution, Council may consider the concentration of the required commercial floorspace in locations other than on the ground floor level (e.g. multi-level office/commercial components). However, at present, the quantity and arrangement of commercial floorspace is deficient, unsatisfactory and is not supported.



The proposal must incorporate a significantly greater quantum of commercial floor space in order to satisfy the planning controls and strategic concerns.

Warringah Development Control Plan 2011 (WDCP2011)

G1 (6) Site Amalgamation

The proposal seeks to amalgamate two lots to create a large consolidated site, which is encouraged under the WDCP 2011 and is hence supported. The amalgamation of these two sites, in combination with the current development at 2 Delmar Parade, will leave No. 816 Pittwater Road, Dee Why (known as the “**Avis Site**”) landlocked by surrounding approvals. It is noted that vehicular access to this site is secured via a Right of Way through the approved development (under construction) at 2 Delmar Parade, and that a conceptual architectural scheme has been provided for the Avis Site as a part of demonstrating that this site can be developed in its own right.

However, the documentation with the current application does not provide any evidence as to genuine attempts to amalgamate with the Avis Site. Therefore, it is considered that the application addresses requirement (3) of cl.G1(6) of the WDCP 2011, but has not adequately addressed requirements (1) and (2) of the WDCP 2011.

In this regard, further information is required to satisfy the requirements of the DCP.

It is noted in a submission received on behalf of the owners of the Avis Site that “*the landowner is still open to an amalgamation of the sites...*”. As this issue is still a “live-issue”, it needs further action and evidence that the option has been explored to all reasonable extents.

Eastern Interface with the R2 Zone

The eastern edge of the site adjoins the R2 Low Density Residential zone and immediately abuts a battle-axe subdivision with two detached dwelling houses.

The building adjacent to this boundary has a continuous length of nearly **95m** and is a uniform and monotonous five (5) storeys in height. It is considered that the scale and proportions of this elevation would be overwhelming to these low density neighbouring properties.

It is considered that this elevation requires significant redesign to create significant ‘visual breaks’ in the building (rather than just minor “in and out” indentations) and variations in the building height and scale.

The introduction of façade plantings, planter boxes and other architectural and design measures to the outer edges of the building and its façade will also contribute to softening the visual bulk and scale of the building and reducing the actual and perceived loss of privacy associated with 100 apartments facing east directly towards the adjoining dwelling houses.

Southern Interface with Flora Reserve

The southern edge of the development abuts the Stony Range Botanical Reserve, which is a locally listed heritage conservation area of ecological significance.



Council's Heritage Officer has raised concern regarding the height, setback, scale and materials of the proposal when viewed from the reserve, and about the extent of overshadowing of the reserve.

Similar to the comments on the eastern interface, it is considered that a greater building and landscape setback with a more modulated and biophilic design for the southern interface would respond better to the context of the site and have a lesser impact on this important natural asset and public space.

SEPP 65 Design Quality of Residential Apartment Development

Apartment Design Guide (ADG)

3E Deep Soil Zones

Part 3E of the ADG requires that a minimum 7% of the total site area be provided as deep soil landscaping, which equates to 545sqm. Deep soil zones exclude areas that accommodate or are used for services, basement car parks, driveways, or areas that are beneath a roof/building. The control requires that the spaces have a minimum dimension of 6.0m.

Drawing TP06.03A indicates that 12% of the site area is deep soil, which is provided within the southern and eastern side setbacks. The submitted stormwater concept plan (SW202 Rev. C) indicates that a 900mm-1200mm diameter stormwater pipe runs for the full length of the southern and eastern boundaries.

The proposed stormwater pipe in conjunction with the narrow spaces that would remain on either side of the pipe, preclude these areas (as indicated on TP06.03A) from being included in the calculation of the deep soil zone for the site.

Therefore, Council finds that the site has no identifiable deep soil zones and there is presently no opportunity for significant tree plantings, which is particularly concerning where such landscaping would serve a beneficial purpose, such as the eastern setback area to the R2 zone.

The outcome proposed is not supported. On a site of this size, Council would anticipate a greater-than-minimum ratio of deep soil plantings in addition to other landscaping integrated with the built form, both at ground level and in an aerial manner.

Internal Amenity of Apartments

The significant efforts by the Project Architect to create well-proportioned and appointed residential apartments is acknowledged. Council raises concern regarding the internal amenity of common circulation cores, and the provision of "snorkel-like" windows to many bedrooms within the development. It is also noted that achieving the ADG criteria in this development, heavily relies on the upper floors of the building for cross ventilation and solar access.

There are genuine concerns that the site is being overdeveloped, and that an overall reduction in the building floor plates, massing and yield would result in residential apartments of satisfactory amenity, and achieve a higher degree of compliance with the ADG design criteria.



Comments from Council's Design and Sustainability Advisory Panel (DSAP) should be read in conjunction with the issues raised in this letter.

Interdepartmental Referral Issues

Issues have been raised by a number of Council's Referral bodies which are attached as appendixes. Specifically, issues have been raised by:

- Design and Sustainability Advisory Panel (DSAP)
- Environmental Health (Contaminated Lands)
- Landscape Officer
- Stormwater and Floodplain Engineering
- Parks, Reserves, Beaches and Foreshores
- Heritage
- Traffic Engineering
- Waste Officer

Discussion on Current Situation and Pathway Forward

As mentioned throughout this letter, the issues raised during the referral, notification, advertising and assessment of this application are fundamental and demonstrably impact the support and likely recommendation for the application.

Based on the outcome of the SNPP, DSAP, referrals and planning assessment, the proposal requires a significant redesign to address and overcome the issues raised.

As also mentioned in the introduction to this letter, not all referrals have been completed and there may be additional issues to address. However, Council decided that it was important at this stage to communicate the major planning and related issues now, so that decisions can be made as to how this application should be progressed, based on the severity and magnitude of the matters discussed above.

Importantly, owing to the significant history of engagement with Council and the importance of this large site within the Dee Why Town Centre, Council would like to arrange a meeting to take place in the next two weeks, with you and your team prior to the preparation of a revised scheme and to discuss the issues raised and to find a pathway forwards.

Can you please contact the assessment officer Adam Susko (Principal Planner) on 1300 434 434 to arrange the meeting.

Yours faithfully



Steve Findlay
Manager, Development Assessment