

NORTHERN BEACHES COUNCIL SUPPLEMENTRY ASSESSMENT REPORT

Panel Reference	PPSSNH-304
DA Number	DA2022/0145
LGA	Northern Beaches Council
Proposed Development	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
Street Address	Lot CP SP 32072, 812 Pittwater Road and Lot CP SP 32071, 4 Delmar Parade DEE WHY
Applicant/Owner	Landmark Group Australia Pty Ltd and The Owners Of Strata Plan 32071
Date of DA lodgment	15/03/2022
Number of Submissions	3
Recommendation	The Panel consider the supplementary information provided by the applicant in response to the Panel's deferral.
Regional Development Criteria (Schedule 7 of the SEPP (State and Regional Development) 2011	State Environmental Planning Policy (Planning Systems) 2021 (Schedule 6 (2))
List of all relevant s4.15(1)(a) matters	<ul style="list-style-type: none"> • Environmental Planning and Assessment Act 1979 • Environmental Planning and Assessment Regulation 2021 • State Environmental Planning Policy No. 65 - Design Quality of Residential Apartment Development • State Environmental Planning Policy Resilience and Hazards 2021 • State Environmental Planning Policy (Building Sustainability Index: BASIX) • State Environmental Planning Policy – Transport and Infrastructure 2021 • Warringah Local Environmental Plan 2011 (WLEP 2011) • Warringah Development Control Plan 2011 (WDCP 2011)
List all documents submitted with this report for the Panel's consideration	<ol style="list-style-type: none"> a. Attachment 1 – Sutherland and Associates Planning Shadow Diagrams and Planners Letter (31 May 2023) b. Attachment 2 – Visual Impact Assessment c. Attachment 3 – Heritage Impact Statement d. Attachment 4 – GFA Plan for 4 Delmar and GFA Plan for 812 Pittwater Road e. Attachment 5 – Applicants Legal Advice regarding clause 6.7 of the WLEP 2011) f. Attachment 6 - Stony Range Flora Reserve Final Management Strategy Plan 1994 g. Attachment 7 - Flora and Fauna Assessment Report for Stony Range Flora Reserve h. Attachment 8 – Sutherland and Associates Planning Letter Shadow Impacts (14 June 2023) i. Attachment 9 – Potential GFA calculations by Applicant j. Attachment 10 – Submission by Stony Range Botanic Gardens Committee
Clause 4.6 requests	1. Clause 4.4 of WLEP 2011 – Floor Space Ratio

	<ol style="list-style-type: none"> 2. Clause 6.7 of WLEP 2011 – Residential Flat Buildings in Zone B4 Mixed Use 3. Clause 7.6A of WLEP 2011 – Podium Heights 4. Clause 7.12(2)(c) of WLEP 2011 – Provisions promoting retail activity
Summary of key submissions	<ul style="list-style-type: none"> • Clause 4.4 Floor Space Ratio variation request • Clause 6.7 Residential flat buildings in Zone B4 Mixed Use variation • Clause 7.6A Podium Heights variation request • Clause 7.12 Provisions Promoting Retail Activity variation • Site Isolation / amalgamation and future development potential • Flooding and management of stormwater infrastructure • Design excellence • Housing supply • Impacts on heritage conservation area
Report prepared by	Steve Findlay – Manager Development Assessment
Report date	23 June 2023

Summary of s4.15 matters

Have all recommendations in relation to relevant s4.15 matters been summarised in the Executive Summary of the assessment report? **Yes**

Legislative clauses requiring consent authority satisfaction

Have relevant clauses in all applicable environmental planning instruments where the consent authority must be satisfied about a particular matter been listed, and relevant recommendations summarized, in the Executive Summary of the assessment report? **Yes**

e.g. Clause 7 of SEPP 55 - Remediation of Land, Clause 4.6(4) of the relevant LEP

Clause 4.6 Exceptions to development standards

If a written request for a contravention to a development standard (clause 4.6 of the LEP) has been received, has it been attached to the assessment report? **Yes**

Special Infrastructure Contributions

Does the DA require Special Infrastructure Contributions conditions (S7.24)? **Not Applicable**

Note: Certain DAs in the Western Sydney Growth Areas Special Contributions Area may require specific Special Infrastructure Contributions (SIC) conditions

Conditions

Have draft conditions been provided to the applicant for comment? **No changes proposed to previous condition set**

Note: in order to reduce delays in determinations, the Panel prefer that draft conditions, notwithstanding Council's recommendation, be provided to the applicant to enable any comments to be considered as part of the assessment report

PURPOSE OF THIS REPORT

This Supplementary Assessment Report provides the Sydney North Planning Panel (SNPP) with the information requested by the Panel at its meeting on 11 May 2023.

RELEVANT BACKGROUND

The Development Application was reported to the SNPP on 11 May 2023 with a recommendation for approval.

The matter was considered by the SNPP on 11 May 2023. The SNPP deferred consideration of the application as follows:

'The Panel considered Council's Assessment Report and met with the Council and Applicant to discuss the report. Given several issues remain unresolved, the Panel decided to defer further consideration of the application until the following information is provided:

Matter 1	<i>Visual impact of the development from vantage points within the adjoining Stony Range Flora Reserve (the Reserve)</i>
Matter 2	<i>Diagrams of overshadowing of the Reserve by the development</i>
Matter 3	<i>Consideration of the Reserve's Plan of Management insofar as relevant to the proposed development</i>
Matter 4	<i>Confirmation that consultation with Crown Lands (if the owner of the Reserve) and the Reserve's Volunteer Advisory Committee has occurred</i>
Matter 5	<i>Clarification that there is a Savings Provision, which permits the development despite SEPP (Land Use Zones) (N0.5) 2022</i>
Matter 6	<i>Clarification that C6.7 is a development standard consistent with Canterbury Bankstown Council v Dib 2022 NSWLEC 79</i>
Matter 7	<i>Clarification of the existing Non-Residential GFA on the site</i>
Matter 8	<i>Advice from Council on Future Strategic Planning for the precinct, in particular, whether the demand for non-residential floorspace identified in relevant strategic planning polices and employment lands will be met, without this site and whether any change to the Mixed Use zoning is proposed</i>

*(*Matter column added for ease of reference and addressing issues throughout this report)*

The Panel requests Council then provide a Supplementary Assessment Report by 31 May. The Panel will then reconvene at 8am Wednesday 7th June to further consider the proposal.'

ADDITIONAL INFORMATION PROVIDED BY THE APPLICANT

Initial Information submitted as per the Panels matters prior to 31 May 2023	<ol style="list-style-type: none"> 1. Legal Advice prepared by Mills Oakley , dated 16 May 2023 addressing Clause 6.7 of WLEP 2022 and whether it is a development standard or a prohibition and the associated savings provisions. (Response to Matters 5 and 6). 2. Shadow diagrams prepared by Rothelowman Architects and letter prepared by Sutherland and Associates Planning, addressing shadow impacts on Stony Range Reserve, both dated 22 May 2023. (Response to Matter 2). 3. Visual Impact Images (Visual Impact Assessment) by Urbaine, dated May 2023. (Response to Matter 3). 4. Supplementary Heritage Impact Statement, prepared by Urbis, dated 25 May 2023. (Response to Matter 1). 5. Gross Floor Area calculations and letter addressing the existing non-residential floor area. (Response to Matter 7).
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<p>Information submitted on 15 June 2023 in response to issues raised by Council after review of the Initial Information</p>	<ol style="list-style-type: none"> 6. Flora and Fauna Assessment Report, Stoney Range Regional Botanic Garden as impacted by the proposed development of 4 Delmar Parade and 812 Pittwater Road, Dee Why, prepared by Aquila Ecological Surveys, dated June 2023. (Additional Response to Matter 2) 7. Further supporting justification in the form of a letter from Sutherland and Associates Planning, addressing shadow impacts on Stony Range Reserve, Council's Biodiversity Officer feedback and Landscape and Parks Officer feedback. (Additional Response to Matter 2). 8. Gross Floor Area calculations addressing question from Council as to what quantum of commercial floorspace would be delivered if the proposed development was to satisfy the provisions of Clause 7.12(2) (c) of the WLEP 2011 concerning two levels of employment generating floorspace. (Additional Response to Matters 7 and 8).
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ADDITIONAL INFORMATION PROVIDED BY COUNCIL

<p>Information provided to the Panel by Council</p>	<ol style="list-style-type: none"> 1. Review and assessment of Shadow Diagrams, Flora and Fauna Assessment and Planners letters, including referral to Landscape and Parks, and Biodiversity teams. 2. Review and assessment of Visual Impact Assessment, including referral to Landscape and Parks, Heritage and Property teams. 3. Referral comments from Heritage Officer regarding the Supplementary Heritage Impact Statement. 4. Review of Plan of Management relating to Stony Range Flora Reserve and referral comments from the Landscape and Parks Team. 5. Referral comments from Strategic Planning Team on Future Strategic Planning for the Dee Why Town Centre precinct.
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DEFERRAL MATTERS

Matter 1 - Visual impact of the development from vantage points within the adjoining Stony Range Flora Reserve (the Reserve)

<p>Applicant</p>	<p>In summary, the Applicant makes the following summary comments on the visual impacts of the proposed development on the adjoining Reserve:</p> <p style="text-align: center;"><i>As you will see from the VIA, the range is very dense with foliage and the site is mostly imperceptible from the reserve. The VIA includes a variety of existing and proposed shots from some key vantage points as well as a series of photos taken from deeper into the range to validate just how densely planted the reserve is.</i></p> <p>The Heritage Impact Statement draws the following conclusions:</p> <p style="text-align: center;"><i>Views to the proposed development would be negligible due to the density of foliage within the Reserve and would not detract from the overall heritage significance of the Reserve.</i></p>
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	<p><i>Whilst it is acknowledged that the proposed redevelopment of the site is larger in scale, form and height than the existing two-storey warehouse structures, the existing warehouse and industrial complex located on the subject site provides no contribution to the heritage significance of the Reserve.</i></p> <p><i>The proposed development will provide an enhanced setting comparatively and aims to activate the site via the provision of the north south axis through the site which will enable a visual connection through the site to the Reserve, resulting in a positive heritage outcome.</i></p>
<p>Council Assessment Officer</p>	<p>The Visual Impact Assessment (VIA) by Urbaine contains a photographic analysis from 12 locations, 11 from within the Flora Reserve and 1 from outside the Reserve (western side of Pittwater Road).</p> <p>The Heritage Impact Statement by Urbis contains commentary which relates to Council's Heritage Referral comments in the original Assessment Report and factoring in the VIA carried out by Urbaine.</p> <p>The design of the proposal has not changed and therefore comments raised in the primary assessment report by Landscape and Heritage officers are relevant. In relation to the original referral comments made by the Parks and Landscape Team as contained in the Assessment Report, the concerns raised were not considered substantive enough to warrant amendments to be made to the proposal, nor refusal of the application.</p> <p>It is acknowledged that the original Assessment Report did not contain a detailed assessment of the visual impact of the development when viewed from the Stony Range Reserve. The adequacy of the proposed setbacks and landscape buffers to the Reserve however were raised with the applicant on a number of occasions, including in the pre-lodgement meetings, Design and Sustainability Panel review and their subsequent recommendations, and other progress meetings subsequent to lodgement.</p> <p>It is important to note that there are no side or rear setback or side boundary envelope controls applying to the site under the WDCP 2011. The suitability and appropriateness of the development as it adjoins the RE1 Public Recreation zone and the heritage conservation area of the Stony Range Flora Reserve, is left to how the development o satisfies the suite of other planning, heritage and related controls.</p> <p>It is noted that the existing building on the site is on a variable southern side setback with the public carpark and Reserve of between nil to 2.5m for the building fronting Pittwater Road and 6.0m for the remainder of the building extending to the east.</p> <p>In order to adequately reduce the visual impact to satisfy the abovementioned issues raised by the heritage and landscape/parks officers, it would be necessary to revise the built form of the proposal to increase the setbacks of the development to the southern boundary. As part of the current assessment, there has not been any analysis done as to what degree of additional setback for the whole or part of the building or stepping back of the upper levels of the buildings, either wholly or in part, to satisfy the visual impact concerns.</p>

Matter 2 - Diagrams of Overshadowing of the Reserve by the development

<p>Applicant</p>	<p>The first covering letter from Sutherland and Associates Planning (22 May 2023) states in the conclusion that:</p> <p><i>the shadow diagrams demonstrate that the proposal does not result in any 'unreasonable overshadowing' of Stony Range Reserve and the proposal meets the Access to Sunlight objective of the Warringah Development Control Plan 2011 to ensure that reasonable access to sunlight is maintained.</i></p> <p>The second covering letter from Sutherland and Associates Planning (14 June 2023) states the following key responses:</p> <p><i>In this instance, the proposal is completely compliant with the height control and accordingly, results in a level of shadow precisely as anticipated by the height control.</i></p> <p><i>The extent of shadow resulting from the proposal can only be described as minor and does not have any significant adverse impact on the functionality and amenity of the Reserve.</i></p> <p><i>This submission is supported by a Flora and Fauna assessment prepared by Aquila Ecological Surveys which demonstrates that the extent of shadow will not result in any meaningful adverse impact to the ecological values of the adjacent public open space.</i></p> <p><i>Whilst some of the amenities at the northern edge of the Reserve will be affected by shadow in the middle of winter, they remain unaffected for the vast majority of the year (i.e. 9 out of 12 months). Furthermore, there are multiple opportunities within the remainder of the Reserve which will enjoy sunlight throughout the entire day in mid winter. Therefore, the year round use of the park is not significantly impacted by the proposal, and certainly not to any extent which could reasonably warrant refusal of the application.</i></p>
<p>Council Landscape and Parks</p>	<p>The Shadow Diagrams prepared by Rothelowman and commentary prepared by Sutherland and Associates Planning are noted.</p> <p>Concern is raised regarding the building design as it adjoins Stony Range Botanical Reserve and Heritage Conservation Area. The proposal, from a park management perspective, does not appear to provide adequate spatial or landscape transition to the reserve, as it proposes relatively high built form close to the boundary, with the subsequent shadow impacts as discussed below.</p> <p>The affected area currently receives dappled sun/shade, with sun penetrating to the ground throughout the year.. It is noted that there are paths, picnic areas and play areas in the areas affected by shadow from the development. The winter amenity of the public space containing elements referred to above will be impacted by the proposed development to the extent indicated on the shadow diagrams.</p> <p>The nature of the site topography and considered reserve design locates public recreation assets on the lower, flat area of the reserve. These areas provide for use of the reserve independent of its Botanical attributes (i.e., somewhere to have a BBQ together) as well as logical locations for meeting prior to commencement or relaxation following completion of walks through the wide range of ecological communities and plant associations that are integral to the reserve's significance.</p> <p>Whilst the area affected by shadow only represents a small portion of the Reserve as a whole, a more considered design approach to the interface with the reserve in terms of heights and/or setbacks would provide for an outcome which maintains the integrity of</p>

	<p>this unique reserve.</p> <p>Relevant WLEP clauses considered (bold and italics added to emphasise).</p> <p>4.3 Height of Buildings</p> <p>(1) The objectives of this clause are as follows:</p> <p>(a) to ensure that buildings are compatible with the height and scale of surrounding and nearby development,</p> <p><i>(b) to minimise visual impact, disruption of views, loss of privacy and loss of solar access,</i></p> <p><i>(c) to minimise any adverse impact of development on the scenic quality of Warringah’s coastal and bush environments,</i></p> <p><i>(d) to manage the visual impact of development when viewed from public places such as parks and reserves, roads and community facilities.</i></p> <p>(2) The height of a <u>building</u> on any land is not to exceed the maximum height shown for the land on the Height of Buildings Map.</p> <p>(2A) If the Height of Buildings Map specifies, in relation to any land shown on that map, a Reduced Level for any <u>building</u> on that land, any such <u>building</u> is not to exceed the specified Reduced Level.</p> <p>5.10 Heritage Conservation</p> <p>(1) Objectives</p> <p>The objectives of this clause are as follows: (bold and italics added to emphasise)</p> <p><i>(a) to conserve the environmental heritage of Warringah,</i></p> <p><i>(b) to conserve the heritage significance of heritage items and heritage conservation areas, including associated fabric, settings and views,</i></p> <p><i>(4) Effect of proposed development on heritage significance</i> <i>The consent authority must, before granting consent under this clause in respect of a <u>heritage item</u> or <u>heritage conservation area</u>, consider the effect of the proposed development on the heritage significance of the item or area concerned. This subclause applies regardless of whether a <u>heritage management document</u> is prepared under subclause (5) or a heritage conservation management plan is submitted under subclause (6).</i></p>
<p>Council Biodiversity Officer</p>	<p><i>Preface to Comments - The DA was not originally referred to the Biodiversity Team when under assessment. However, based on the issues raised by the SNPP at the determination meeting, it was evident that their comments were required in relation to the impacts on the ecological values of the Reserve.</i></p> <p>In response to Council feedback to the applicant regarding the potential for shade impacts upon native vegetation in Stoney Range Reserve, the applicant has provided an additional Flora and Fauna Assessment (Aquila Ecological Surveys, dated June 2023).</p> <p>Further planning related comments (Sutherland and Associates Planning, dated 14 June 2023) have also been provided regarding the assessment of shading and the application of WDCP 2011 Clause E5 Native Vegetation.</p> <p><i>Application of WDCP Clause E5 – Native Vegetation</i></p> <p>The additional planning comments (Sutherland and Associates Planning, dated 14 June 2023) note that <i>Part E5 – Native Vegetation</i> of the WDCP only applies “to land identified on DCP Map Native Vegetation”. The primary assessment report does not address Part E5 as it was considered not to be applicable. Stony Range Reserve is identified on WDCP 2011 map as ‘Native Vegetation’ and although the development is not located on the same parcel of land as the mapped vegetation it does overshadow the vegetation.</p> <p><i>Additional - Flora and Fauna Assessment (Aquila Ecological Surveys, June 2023)</i></p> <p>Much of the reserve area that is subject to winter shading is over an area represented by planted local and non local native vegetation and established native trees. A small</p>

	<p>portion of the shaded area includes relatively intact native vegetation which is located in eastern extent of the area subject to (mostly winter) shading. Much of the native vegetation in this area is already partially shaded as a result of the dense tree canopy. These observations are supported by the additional Flora and Fauna Assessment (Aquila Ecological Surveys, June 2023).</p> <p>The flora and fauna assessment also notes that for the shade effected months (winter) some shade tolerant species that are present (e.g. ferns), may proliferate at the expense of other less shade tolerant species. It is acknowledged that the shading would not be during the peak growing season so changes may be subtle. Whilst some uncertainty in such assessments is inherent, Council’s biodiversity team concur with the broad conclusions provided in the Flora and Fauna Assessment (Aquila Ecological Surveys, June 2023).</p> <p>Conclusion</p> <p>The objectives of WDCP 2011 Clause E5 – Native Vegetation does not directly apply to the proposal. It appears unlikely that the magnitude of seasonal shading (mostly during winter) would result in impacts to biodiversity such that the application be recommended for refusal on biodiversity grounds. The potential impacts of the shading appear more relevant to reserve amenity and heritage values of Stoney Range as a botanical garden.</p>
<p>Council Assessment Officer</p>	<p>An additional site inspection was carried out to verify the use and condition of the Reserve on its northern edge which will be subject to winter shadowing.</p> <p>The following photos (Figures 1 to 5) show the north-western boundary of the Reserve interfaces with the public carpark, and the northern and north-eastern boundaries interface with a public pathway between the Reserve and the subject site.</p> <p>Observations show that sections of the Reserve in the north-western corner are occupied by the Main Entry point to the Reserve, a pocket of rainforest type vegetation, a children’s play area, a cleared barbeque and seating area, and a waste vegetation storage compound.</p> <p>The quality of vegetation in this part of the Reserve is more fragmented and partly disturbed and is characterized partly by a cleared and mown grassed area (with BBQ and seating) and a chip-bark/mulch covered children’s play) areas amongst the trees.</p> <p>Therefore, the shadows cast over the Reserve in mid-winter affects mainly the amenity of users of these functional areas of the Reserve, however the assessments and concerns raised by the Landscape/Parks Section is noted.</p>



Figure 1 – Panorama of entry to public carpark looking east, showing subject site on the left and the entry to the Stony Range Reserve on the right (taken from just inside the carpark off Pittwater Road)



Figure 2 – Panorama of northern boundary of Stony Range (taken from 812 Pittwater Road part of development site, note roof over barbeque area and public pathway extending to the east down the side of the Reserve)



Figure 3 – Panorama of northern boundary of Stony Range (taken from the BBQ area inside the Reserve, looking north toward development site)



Figure 4 – Children’s Plan Area amongst the trees just inside the northern boundary of the Reserve (taken from public carpark)



Figure 5 – Vegetation compound on edge of the northern boundary of the Reserve (taken from public carpark, noting that the barbeque area is to the left and the children’s play area is to the right)

Matter 3 - Consideration of the Reserve’s Plan of Management insofar as relevant to the proposed development

<p>Council Assessment Officer</p>	<p>The Reserve is subject to the <i>Stony Range Flora Reserve Management Strategy Plan 1994</i> (see Attachment). This document does not contain specific measures or actions pertaining to future development on adjoining properties and impacts on the reserve.</p> <p>The only reference in the document as it relates to the northern area of the Reserve is as follows:</p> <p style="text-align: center;">5.34 Boundary Impacts</p> <p style="text-align: center;"><i>Weed invasion from adjoining properties is occurring in the <u>north-eastern</u>, south and south-western boundaries.</i></p>
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Solutions – heavy planting and creation of buffer zones may be necessary in heavily infested areas using weedmat or similar treatments

Consistent with the comments of Council's Biodiversity Officer, the shading upon the adjoining reserve created by the development may increase the prevalence of weeds in the reserve.

Matter 4 - Confirmation that consultation with Crown Lands (if the owner of the Reserve) and the Reserve's Volunteer Advisory Committee has occurred.

Council Assessment Officer

Council is the Crown Land Manager (CLM) for Stony Range Reserve and this role is ongoing. As the CLM, Council has authority to manage the land in accordance with the reserve purpose and any applicable Plan of Management.



Figure 6 – Information Board at Entry to the Stony Range Reserve (provides the public with details of Council's management and Volunteers maintenance)

The notification of the DA to the adjoining owner, which is vested in Council, occurred through a referral to Council's Parks & Recreation Team who are the asset managers for the Reserve and Council's Property Team who are responsible for managing the land on behalf of the Crown.

Referral of the DA to these teams occurred as part of the original assessment and in response to the Panel's deferral, and the following is noted:

Council's Property Team - No formal comments were made in relation to the DA.

The Property Team was informed of the SNPP's deferral and request for additional information, and they were provided with a copy of the applicants VIA, HIS and Shadow Diagrams/Planners Letter. The Property Team have advised that they raise no issues with the proposal.

Council's Parks & Recreation Team – The team reviewed the DA and provided comments.

The Parks and Recreation Team consulted with the Stony Range Botanic Gardens

	Committee in response to the Panels request for confirmation of such consultation. The Committee are an informal volunteer group who attend to the upkeep of the Reserve. The Committee has made a submission to the DA, which is attached to this report.
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Matter 5 - Clarification that there is a Savings Provision, which permits the development despite SEPP (Land Use Zones) (No.5) 2022

Applicant	The applicant obtained legal advice from Mills Oakley in relation to this matter. The advice concludes: <p style="text-align: center;"><i>“We also conclude that cl.6.7 of the LEP can still be relied on (and varied), notwithstanding its repeal following an amendment to the LEP on 26 April 2023. This is because the relevant amending instrument, known as the Standard Instrument (Local Environmental Plans) Order 2006 (LEP Order), contains a savings provision at cl.5 of Schedule 1, Part 2, which saves and continues to permit until 26 April 2025 “Development that is permitted with development consent on land in a former zone under a local environmental plan, as in force immediately before 26 April 2023””.</i></p>
Council Assessment Officer	The applicant’s legal advice aligns with Council’s position as stated in the Council Assessment Report reported to the SNPP on 11 May 2023.

Matter 6 - Clarification that C6.7 is a development standard consistent with Canterbury Bankstown Council v Dib 2022 NSWLEC 79

Applicant	The applicant obtained legal advice from Mills Oakley in relation to this matter. The advice concludes <i>“that Clause 6.7 of the WLEP 2011 is a development standard and not an outright prohibition, which remains an applicable approach to the current DA”</i> . <p>At the core of the argument is the following:</p> <p style="text-align: center;"><i>“Consistent with the Standard Instrument—Principal Local Environmental Plan (Standard Instrument), cl.4.6(2) of the LEP provides “this clause does not apply to a development standard that is expressly excluded from the operation of this clause.” As at the date the DA was lodged, cl.6.7 was one such clause expressly excluded from the operation of cl.4.6 pursuant to cl.4.6(8)(d) “to the extent that it applies to land identified on the Key Sites Map as Site F or Site G”. It follows, as a matter of the LEPs construction, that cl.6.7 is expressly a development standard, and is one which can be varied via a cl.4.6 written request because the Site is not identified on the Key Sites Map as Site F or Site G.”</i></p> <p>The advice provides commentary against the basis of the Dib caselaw and concludes as follows:</p> <p style="text-align: center;"><i>“Against that background, it is our view cl 6.7 of the LEP is clearly “intended to control an aspect of [development] that... is otherwise... permissible ” and not a zoning provision that provides an exception to a general prohibited use.”</i></p> <p>And,</p>
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	<i>“As we have stated above, cl 6.7 was expressly listed and labelled (in terms) in the LEP as a ‘development standard’ when regard is had to a proper construction of cl.4.6(2) and (8)(d) and it is clear that the intended effect of this provision is to specify the circumstances in which a consent authority can and cannot grant consent to an otherwise permissible use.”</i>
Council Assessment Officer	The applicant’s legal advice aligns with Council’s position as stated in the Council Assessment Report reported to the SNPP on 11 May 2023.

Matter 7 - Clarification of the existing Non-Residential GFA on the site

Applicant	<p>Existing non-residential GFA</p> <p>Information on the Strata Plan has been used to provide the attached adjusted assessment with strata plans marked up (see attachment):</p> <table border="1" data-bbox="467 835 1208 1373"> <tr> <th colspan="2">4 DELMAR PARADE</th> </tr> <tr> <td>Ground Floor Level</td> <td>965m²</td> </tr> <tr> <td>First Floor Level</td> <td>770 m²</td> </tr> <tr> <td>SUB-TOTAL</td> <td>1,735 m²</td> </tr> <tr> <th colspan="2">812 - 818 PITTWATER ROAD</th> </tr> <tr> <td>Ground Floor Level</td> <td>1,362m²</td> </tr> <tr> <td>First Floor Level</td> <td>924m²</td> </tr> <tr> <td>SUB-TOTAL</td> <td>2,286m²</td> </tr> <tr> <td>TOTAL</td> <td>4,021m²</td> </tr> </table> <p>The following is also noted:</p> <ol style="list-style-type: none"> Only a small portion has access to a street frontage. A significant portion of floor space remains vacant. A large portion is occupied by light industrial type uses. 	4 DELMAR PARADE		Ground Floor Level	965m ²	First Floor Level	770 m ²	SUB-TOTAL	1,735 m²	812 - 818 PITTWATER ROAD		Ground Floor Level	1,362m ²	First Floor Level	924m ²	SUB-TOTAL	2,286m²	TOTAL	4,021m²
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TOTAL	4,021m²																		
Council Assessment Officer	<p>Council generally concurs with the calculated existing non-residential floorspace presented by applicant. The makeup of the existing tenants include:-</p> <ul style="list-style-type: none"> • Medical/ Health - X-Ray, Dental; Consultant Psychologists; Pedorthic Clinic; Orthopaedics; Eye Clinic; Skin Cancer and Cosmetic Clinic; Natural Health and Healing, Dee Why Physio, Weight loss clinic • Light industrial/ showrooms – timber floors (showroom), Signage, Illumination, Energy Solutions, Camper Fit outs • Education - Maths and English tuition • Professional – Accountants 																		

Matter 8 - Advice from Council on Future Strategic Planning for the precinct, in particular, whether the demand for non-residential floorspace identified in relevant strategic planning polices and employment lands will be met, without this site and whether any change to the Mixed-Use zoning is proposed.

<p>Council Strategic and Place Planning Officer</p>	<p>Strategic Planning guidance for employment floorspace provision on this site consistently highlights the need for ground and first floor employment uses. No changes to the Mixed Use (MU1) zone are proposed.</p> <p>The Dee Why Town Centre Masterplan (2013) identified the need to accommodate 1,500 additional jobs in the precinct with the provision of ground and first floor employment floorspace across the precinct the core mechanism for delivering required employment growth. This was further supported by the 2019 Employment Study which identifies sufficient retail floorspace to meet community needs to 2031 however identifies an action to ensure no net loss of commercial floorspace in Dee Why and to require new developments to provide first floor commercial space as part of mixed-use development. Dee Why is undergoing substantial demographic change with growth in higher income households likely to see growing demand for a broader range of goods and services in the centre.</p> <p>Approximately 7,666m² of non-residential floorspace could be delivered on this site if the ground and first floor levels were devoted to retail and commercial uses noting the site has a total area of 7,800m².</p> <p>The Greater Cities Commission has identified job growth targets for Brookvale-Dee Why of between 3,000 and 6,000 additional jobs from 2016 to 2036. The 2019 Northern Beaches Employment Study re-iterated the need to deliver ground and first floor commercial floorspace in Dee Why to meet community needs to 2036.</p> <p>A failure to provide a sufficient quantum of commercial floorspace in the precinct will impact the achievement of these targets and the 30-minute city objectives.</p> <p>Relevant source documents:</p> <p>Greater Cities Commission – North District Plan - https://greatercities.au/north-district-plan/productivity/jobs-and-skills-city/growing-investment-business-opportunities-and</p> <p>Towards 2040 Local Strategic Planning Statements - https://www.northernbeaches.nsw.gov.au/council/publications/strategic-framework/local-strategic-planning-statement-lsps</p> <p>Dee Why Town Centre Master Plan - https://www.northernbeaches.nsw.gov.au/council/current-works-and-projects/major-projects/dee-why-town-centre</p> <p>Demographic Data - https://profile.id.com.au/northern-beaches/about?WebID=250</p> <p>No change to the Mixed Use zoning is proposed.</p> <p>Recent state government changes to the zoning from B4 zone to MU1 zone support a broader range of permitted employment uses than were previously permitted under the B4 Zone This includes light industrial, high technology industry, local distribution premises and vehicle repair stations which reflect the existing mix of uses on the site.</p>
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CONCLUSION

This Supplementary Assessment Report presents an overview of the matters which were the subject of the deferral of the Development Application at the Sydney North Planning Panel meeting on 11 May 2023.

Based on an initial review of the information submitted by the Applicant in May 2023, Council identified issues which required the submission of further information, including a Flora and Fauna Assessment for the Stony Range Flora Reserve and additional shadow diagrams and analysis. Despite the initial timetable set by the Panel, it was reasonable that the applicant was given an opportunity to provide this information.

It is noted that there have been no material amendments made to the application since the matter was first reported to the Panel. Whilst the additional information has been made available on the Council website, except for the applicant’s legal advice, no formal re-notification was required by the Panel and renotification is not required by the Northern Beaches Community Participation Plan.

Whilst the general planning assessment in the original Assessment Report remains unchanged, the provision of additional shadow diagrams has resulted in Council’s heritage and landscape, teams identifying concerns with the impacts on the amenity of picnic areas within the adjoining reserve.

The additional information on strategic policy relating to commercial floorspace has been presented whilst the original assessment report has addressed the issue of ground floor residential through the written Clause 4.6 request.

In the event that the Panel are minded to approve the application, it is considered that any determination it makes include within the description of the development a referral to “*stratum subdivision*” as opposed to “*torrens title subdivision*”. Recommended Condition No. 1 in the draft set of conditions is updated below to include the stratum subdivision plan.

The matter is referred back to the SNPP for further consideration of the application, based on the applicant’s additional information and Council’s assessment of the issues raised by the Panel, for determination.

RECOMMENDATION

- a) That the Panel consider the additional information provided by the Applicant and Council, in its determination of DA2022/0145.
- b) That the Panel consider the issues and concerns raised in the referral comments as detailed in this report, in addition to those of the Assessment Report.
- c) That the description of the development be updated to refer to stratum subdivision and Condition 1 of the draft conditions be amended below.

1. Approved Plans and Supporting Documentation

The development must be carried out in compliance with the endorsed stamped plans and documentation listed below, except as amended by any other condition of consent:

- a) Approved Plans

Architectural Plans - Endorsed with Council's stamp		
Drawing No.	Dated	Prepared By
TP00.02 C - Demolition Plan	3 March 2023	Rothelowman
TP00.04 D - Site Plan	3 March 2023	Rothelowman
TP00.07 D - Bulk Excavation Diagram	3 March 2023	Rothelowman
TP01.01 E - Basement 2	3 March 2023	Rothelowman
TP01.02 E - Basement 1	3 March 2023	Rothelowman
TP01.03 G - Ground	29 March 2023	Rothelowman
TP01.04 E - Level 1	3 March 2023	Rothelowman
TP01.05 E - Level 2	3 March 2023	Rothelowman
TP01.06 D - Level 3	3 March 2023	Rothelowman
TP01.07 D - Level 4	3 March 2023	Rothelowman
TP01.08 D - Level 5	3 March 2023	Rothelowman

TP01.09 D - Level 6	3 March 2023	Rothelowman
TP01.10 D - Level 7	3 March 2023	Rothelowman
TP01.11 D - Level 8	3 March 2023	Rothelowman
TP02.05 E - Site Elevations	29 March 2023	Rothelowman
TP02.06 E - Site Elevations	29 March 2023	Rothelowman
TP03.01 D - Sections	3 March 2023	Rothelowman
TP03.02 D - Sections 2	3 March 2023	Rothelowman
TP06.01 D - GFA Plans	3 March 2023	Rothelowman
TP06.03 D - Deep Soil	3 March 2023	Rothelowman
TP06.04 D - Communal / Landscape Plan	3 March 2023	Rothelowman
TP06.21 D - Storage Schedule	3 March 2023	Rothelowman
TP06.31 D - Adaptable Plans	3 March 2023	Rothelowman
TP06.32 D - Adaptable Plans	3 March 2023	Rothelowman
TP06.33 D - Adaptable Plans & LHA Schedule	3 March 2023	Rothelowman
PLAN OF SUBDIVISION OF THE LAND IN S.P.32071 & S.P.32072	undated	Norton Survey Partners Pty Ltd

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By

Arborist Report (ref: 2021-1061)	December 2021	Dr Treegood
BASIX Certificate no. 1250181M_03	24 March 2023	Senica Consultancy Group
Building Code of Australia Design Compliance Report (ref: MSA2246_BCA_DA_01)	25 November 2021	Matt Shuter + Associates
Crime Risk Assessment and Security Management Plan	December 2021	Sutherland & Associates Planning
DA Noise Assessment	25 November 2021	Acoustic Dynamics
Detailed Site Investigation (ref: 21325 Final R1 DSI)	4 May 2022	Geosyntec Consultants
Dewatering Management Plan (ref: 21181RP01 v1)	7 June 2022	Reditus Consulting
Heritage Impact Statement (ref: P0035218 v02)	26 November 2021	Urbis
Geotechnical Investigation (ref: 6561-G1)	25 November 2021	AssetGeoEnviro
Flood Study Report (ref: 20210067-R01 rev. D)	23 March 2023	S&G Consultants Pty Ltd
NatHERS Certificate no. #HR-6DIV8O-03	24 November 2022	Senica Consultancy Group
NCC Part J Energy Efficiency Report (ref: PJ21/11115 vD)	5 December 2022	Senica Consultancy Group
Preliminary Site Investigation (ref: 21181RP01 v2)	1 December 2021	Reditus Consulting
Statement of Compliance - Access for People with a Disability (ref: 220076)	3 December 2021	Accessible Building Solutions
Traffic Reponse to RFIS (ref: 21205)	6 March 2023	The Transport Planning Partnership
Water Sensitive Urban Design Strategy Report (ref: 20210067-R02 rev. E)	2 December 2022	S&G Consultants Pty Ltd

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

c) The development is to be undertaken generally in accordance with the following:

Landscape Plans		
Drawing No.	Dated	Prepared By

LDA-100 E - Existing Tree Plan	6 March 2023	Ground Ink
LDA-101 E - Landscape Master Plan	6 March 2023	Ground Ink
LDA-102 E - Landscape Plan 1	6 March 2023	Ground Ink
LDA-103 E - Landscape Plan 2	6 March 2023	Ground Ink
LDA-104 E - Landscape Plan 3	6 March 2023	Ground Ink
LDA-105 E - Level 5 Landscape Plan	6 March 2023	Ground Ink

LDA-201 E - Landscape Sections	6 March 2023	Ground Ink
LDA-301 E - Level 1 Indicative Tree Plan	6 March 2023	Ground Ink
LDA-302 E - Level 1 Indicative Planting Plan	6 March 2023	Ground Ink
LDA-303 E - Level 1 Indicative Plant Palette	6 March 2023	Ground Ink
LDA-304 E - Level 5 Indicative Planting Plan & Palette	6 March 2023	Ground Ink
LDA-401 E - Landscape Details	6 March 2023	Ground Ink

Waste Management Plan		
Report Title	Dated	Prepared By
Site Waste Management Plan (SW21/09721)	3 March 2023	Senica Consultancy Group

In the event of any inconsistency between conditions of this consent and the drawings/documents referred to above, the conditions of this consent will prevail.

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