

NORTHERN BEACHES COUNCIL ASSESSMENT REPORT

Panel Reference	PPSSNH-199
DA Number	MOD2021/0041
LGA	Northern Beaches Council
Proposed Development	Modification of Development Consent DA2018/1574 granted for construction of a mixed development comprising three residential flat buildings, commercial use of a heritage listed building, car parking, infrastructure and landscaping
Street Address	Lot 11 DP 577062, 23 Fisher Road, Dee Why
Applicant/Owner	Salvation Army (NSW) Property Trust Hamptons By Rose Pty Ltd
Date of DA lodgement	14 March 2021
Number of Submissions	Two (2) submissions
Recommendation	Refusal
Regional Development Criteria (Schedule 7 of the SEPP (State and Regional Development) 2011	Section 4.55(2) Modification of the Development Consent granted by the Sydney North Planning Panel (SNPP) which has a variation to a Development Standard exceeding 10%
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 2000 • State Environmental Planning Policy No. 55 - Remediation of Land • State Environmental Planning Policy (Building Sustainability Index: BASIX) • State Environmental Planning Policy - Infrastructure 2011 • State Environmental Planning Policy No 65 - Design Quality of Residential Apartment Development (SEPP 65) • Warringah Local Environmental Plan 2011 (WLEP 2011) • Warringah Development Control Plan 2011 (WDCP)
List all documents submitted with this report for the Panel's consideration	<ul style="list-style-type: none"> • Attachment 1 – Architectural Plans (as amended) • Attachment 2 – Applicant's Clause 4.6 • Attachment 3 – DASP Minutes, dated 22 April 2021 • Attachment 4 – SNPP reviews decision and statement of reasons, dated 18 June 2019
Clause 4.6 requests	Yes
Summary of key submissions	<ul style="list-style-type: none"> • Building Height/View Loss • Traffic Impact
Report prepared by	Lashta Haidari - Principal Planner
Report date	18 August 2021

Summary of s4.15 matters

Yes

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

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?

Not
Applicable

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

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

Executive Summary

The proposal involves modifications to Development Consent DA2018/1574, granted by the Sydney North Planning Panel, for the construction of a mixed development comprising three residential flat buildings, commercial use of a heritage listed building, car parking, infrastructure and landscaping.

The original Development Application was approved by the SNPP based on amended plans demonstrating a reduction in the overall height, bulk and scale of the buildings. Such amendments were deemed necessary by Council and the SNPP to ensure an appropriate visual impact, response to the character of the area, and where possible, the maintenance of views across the site. The visual impact of the development was a significant consideration in the assessment and determination of the original Development Application.

The site is subject to 13m maximum building height. The development approved under DA2018/1574, with a maximum height of 15.9m, was supported despite non-compliance with the maximum building height development standard. The area of non-compliance was comparably minor and resulted from irregular spot levels in a limited area of the site. As most of the development was maintained at, or below the building height plane, a request made pursuant to clause 4.6 was supported.

The proposed modifications seek to incorporate an additional level atop each of the three approved buildings, to accommodate 21 additional apartments and to increase the density on the site from 126 to 147 apartments. To incorporate the additional levels, the application seeks to both excavate further into the site and to increase the overall height of each of the buildings, resulting in a maximum height of 15.35m. Whilst the overall maximum building height is less than that originally approved, the proposed modifications seek to lift each of the three buildings above

the height plane, such that the total area/volume of non-compliance is far more significant than the original consent.

The proposed intensity of the modified development can be largely attributed to an amendment to Dee Why Town Centre controls of WLEP 2011, which now prescribe a 1.45:1 maximum FSR to the subject site. At the time that DA2018/1574 was determined, there was no FSR prescribed for the subject site. The modification proposes a FSR 1.43:1 and is compliant with the 1.45:1 FSR prescribed.

However, while the FSR was adopted for the site, WLEP 2011 was also amended to prevent the application of clause 4.6 in relation to building height across Dee Why Town Centre. The amended LEP had an obvious intent to ensure that the maximum FSR would not be realised at the expense of non-compliance with the maximum building height prescribed for each respective site. Whilst it is appreciated that clause 4.6 is not relevant in relation to modification applications, the modification application appears to be overly reliant upon those amendments to WLEP that are beneficial to the subject site, being the nominated maximum FSR, with inadequate consideration of the amended instrument.

The proposed modifications, inclusive of the considerable height breach, are inappropriate and cannot be supported for the following reasons:

- The modified development cannot be said to be substantially or materially the same as that determined by SNPP, as the proposed impact compared to the original scheme is substantial, particularly as it relates to the visual impact.
- The height breach will impact upon views from surrounding residences and add to the bulk and scale of the approved buildings
- The proposed additional excavation will encroach into deep soil area between Building B and C and remove two additional existing established trees on site

Accordingly, it is recommended that the SNPP refuse the application for the reasons detailed within the 'Recommendation' section of this report.

PROPOSED DEVELOPMENT IN DETAIL

The applicant seeks to modify DA2018/1574 in the following manner:

- a) Amended plans to reflect the following changes:
 - Internal reconfigurations, adjustment to levels and construction of an additional level on Buildings A, B and C to accommodate an additional 21 residential apartments (resulting in total of 147 units).
 - Removal of rooftop garden on Building A.
 - Modification to balcony design and installation of new frames within balcony areas
 - Increase to the basement size and internal reconfigurations to accommodate 34 additional car spaces and adjustment of basement levels in Buildings A, B and C.
 - Removal of two (2) trees (Nos. 58A and 61A) to accommodate basement level excavation proposed.
 - Modification to the lobby design of Buildings B and C; and
 - Amendment to Condition 1 and 1A to reflect proposed modifications in the approved drawings and supporting documentation.
- b) Amendments to the following conditions of consent:
 - Deletion of **Condition 20** as it was made redundant through the provision of the agreed upon Schedule of Colours and Finishes which is included in Condition 1A.

- Amendment to **Condition 21** to reference the BASIX Certificate included under Condition 1A.
- Amendments to **Condition 22** by the deletion of **Condition 22(i)** and **22(k)**. With respect to Condition 22(i), an additional condition (Condition 97) was imposed which addresses the intent of Condition 22(i) to restrict the hanging of washing and the storing of items in a terrace or on a balcony if it can be seen from the street or common property.
- Amendment to **Condition 22(k)** by way of additional condition (Condition 98) is to be imposed which addresses the intent of Condition 22(k) to restrict direct access from the pedestrian exit to Civic Drive; and
- Amendment to **Condition 88(a)** 'Parking' to update the increased number of parking spaces within Basement Level 1.

ASSESSMENT INTRODUCTION

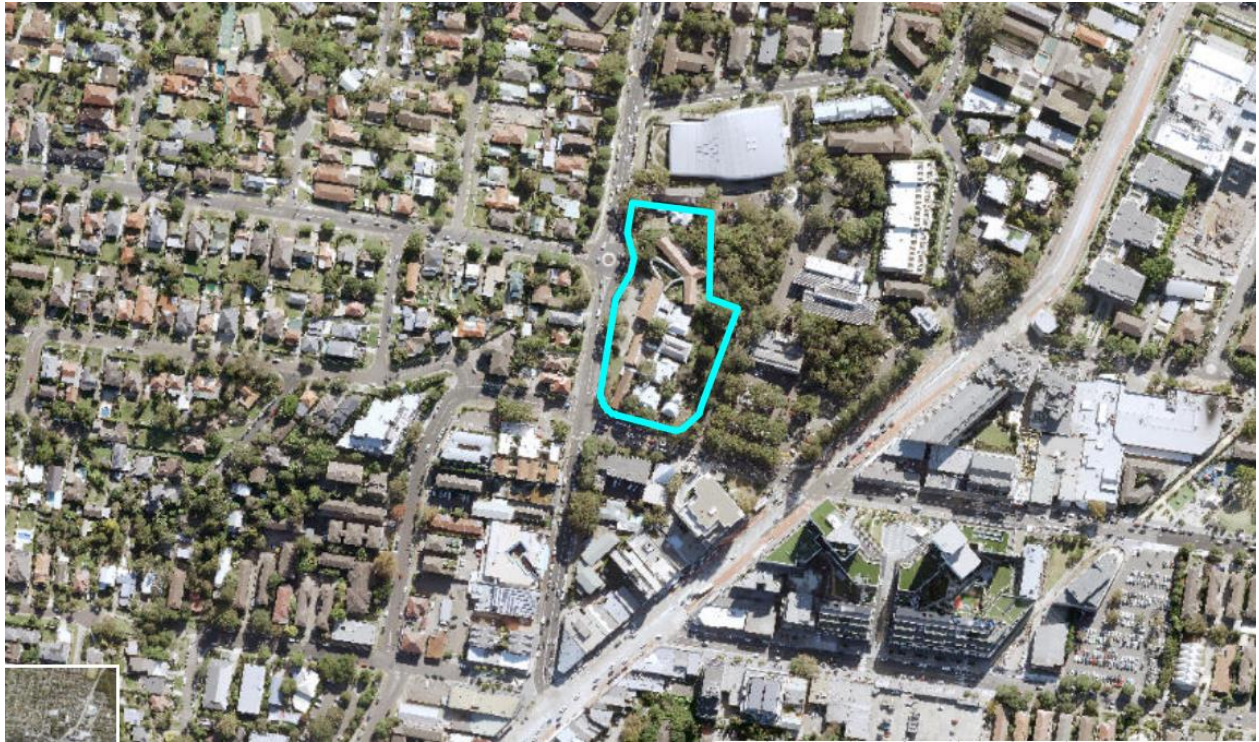
The application has been assessed in accordance with the requirements of the Environmental Planning and Assessment Act 1979 and the Associated Regulations. In this regard:

- An assessment report and recommendation has been prepared (the subject of this report) taking into account all relevant provisions of the Environmental Planning and Assessment Act 1979, and the associated regulations.
- A site inspection was conducted, and consideration has been given to the impacts of the development upon all lands whether nearby, adjoining or at a distance.
- Consideration was given to all documentation provided (up to the time of determination) by the applicant, persons who have made submissions regarding the application and any advice provided by relevant Council / Government / Authority Officers on the proposal.

SITE DESCRIPTION

The subject site consists of a single allotment known as Part Lot 11 in DP 577062, No. 23 Fisher Road, Dee Why. The site is located on the corners of Fisher Road, St. David Avenue and Civic Drive. The site is zone B4 mixed use and irregular in shape and has an area of 1.062ha.

The site accommodates a vacant aged care facility which was previously owned and operated by the Salvation Army. The facility accommodates a variety of single and part double storey buildings situated around the site, all constructed over time (1890s, 1950s and 1980s). A two-storey building is in the extreme northern part of the site. Amongst those buildings, a heritage listed building (the 'Pacific Lodge') is located within the eastern side of the site together with a 'cultural heritage garden'.



The site is surrounded by a mix of development although low density residential is evident immediately adjacent to the west, the 2 storey police station and church building to the south, the Civic Centre, Dee Why Library building and open car parks to the east and a 3-storey residential flat building and open car park to the north. A pocket of remnant bushland is located immediately to the north-east of the site on the elevated rock platform facing Civic Drive (and the Civic Centre). The high-density Dee Why Town Centre is located approximately 110m to the east (downhill and across Pittwater Road).

RELEVANT BACKGROUND

Development Consent (DA/2018/1574), which was granted by Sydney North Planning Panel on 18 June 2019 for:

'Construction of a mixed development comprising three residential flat building, commercial use of a heritage listed building, car parking, infrastructure and landscaping'

Since the original approval was issued, a modification to the original consent has been granted for minor design changes. The modification relates to MOD2020/0097 which was approved by the *Northern Beaches Council* on the 15 April 2020.

MODIFICATION APPLICATION HISTORY

The current application was lodged with Council on 4 March 2021.

The assessment of the proposal found that the application could not be supported as the proposal was found to be inconsistent with Section 4.55(2) of the Environmental Planning and Assessment Act, 1979 (EPA Act, 1979), in that the proposal is not considered substantially the same development for which consent was originally granted by the Panel.

An opportunity was presented to the applicant to withdraw the application by letter dated 7 June 2021. The applicant advised Council that the application would not be withdrawn and requested that it proceed to determination.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

The application has been assessed in accordance with the requirements of the Environmental Planning and Assessment Act 1979 and the associated Regulations. In this regard:

- An assessment report and recommendation has been prepared and is attached taking into all relevant provisions of the Environmental Planning and Assessment Act 1979 and associated regulations.
- A site inspection was conducted, and consideration has been given to the impacts of the development upon all lands whether nearby, adjoining or at a distance.
- Consideration was given to all documentation provided (up to the time of determination) by the applicant, persons who have made submissions regarding the application and any advice given by relevant Council / Government / Authority Officers on the proposal.

In this regard, the consideration of the application adopts the previous assessment detailed in the Assessment Report for DA2018/1574, in full, with amendments detailed and assessed as follows:

The relevant matters for consideration under Section 4.55(2) of the Environmental Planning and Assessment Act, 1979, are:

Section 4.55 (2) - Other Modifications	Comments
A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to and in accordance with the regulations, modify the consent if:	
a) it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which consent was originally granted and before that consent as originally granted was modified (if at all), and	<p>Consideration of whether a development to which the consent, as modified, relates is substantially the same development as the development for which consent was originally granted, is dealt with by Justice Bignold in the following test in <i>Moto Projects (No 2) Pty Ltd v North Sydney Council (1999) 106 LGERA 289</i>, where His Honours states:</p> <p>[54] <i>The relevant satisfaction required by s96 (2) (a) to be found to exist in order that the modification power be available involves an ultimate finding of fact based upon the primary facts found. I must be satisfied that the modified development is substantially the same as the originally approved development.</i></p> <p>[55] <i>The requisite factual finding obviously requires a comparison between the development, as currently approved, and the development as proposed to be modified. The result of the comparison must be a finding that the modified development is “essentially or materially” the same as the (currently) approved development.</i></p> <p>[56] <i>The comparative task does not merely involve a comparison of the physical features or components of the development as currently approved and modified where that comparative exercise is undertaken in some type of sterile vacuum. Rather, the comparison involves an appreciation, qualitative, as well as quantitative, of the developments being compared in their proper contexts (including the circumstances in which the development consent was granted).</i></p> <p>In answering the above threshold question as to whether the proposal represents “substantially the same” development, it is appropriate to consider the Land and Environment Court’s (LEC) list of matters who have held the following:</p>

Section 4.55 (2) - Other Modifications	Comments
	<ul style="list-style-type: none"> • <i>It is a question of fact, and not a question of law.</i> • <i>The amended development must be essentially the same, as the former.</i> • <i>The amended development must be materially the same, as the former.</i> • <i>The amended development must be of the same essence, as the former.</i> • <i>The amended cannot result in a development that is radically different; and</i> • <i>The question is answered by analysing the qualitative and quantitative elements.</i> <p>The amended development cannot be said to be substantially or materially the same as that considered by SNPP under Development Application because it is not of the same essence as the former, in the critical area of additional yield (21 additional units and 34 additional car parking spaces), additional building height and for the following key reasons:</p> <ul style="list-style-type: none"> • Whilst the proposal continues to provide the same uses on the site, the additional levels will result in a substantial variation from the maximum allowable height (quantitative appreciation) and would be significantly incongruent with the existing and desired future character of the area (qualitative appreciation). • The height breach will have adverse impacts on the surrounding residence and add to bulk and scale of the approved buildings. • The proposed additional excavation will encroach into deep soil area between Building B and C and remove two additional existing established trees on site. • The additional building height has changed to the extent that the modified proposal reads as different visual outcome when viewed from the street and adjoining heritage building. The amended architectural style coupled with the increased height is not considered substantially the same. <p>Therefore, the development as proposed to be modified is not considered 'substantially the same development' as that for which consent was originally granted, therefore the proposal does not satisfy this test.</p>
<p>b) it has consulted with the relevant Minister, public authority, or approval body (within the meaning of Division 5) in respect of a condition imposed as a requirement of a concurrence to the consent or in accordance with the general terms of an approval proposed to be granted by the approval body and that Minister, authority or body has not, within 21 days after being consulted, objected to the modification of that consent, and</p>	<p>Development Application DA2018/1574 did not require concurrence from the relevant Minister, public authority, or approval body.</p>
<p>c) it has notified the application in accordance with:</p> <ol style="list-style-type: none"> i. the regulations, if the regulations so require, or 	<p>The application has been publicly exhibited in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000, and Northern Beaches Community Participation Plan.</p>

Section 4.55 (2) - Other Modifications	Comments
ii. a development control plan, if the consent authority is a council that has made a development control plan under section 72 that requires the notification or advertising of applications for modification of a development consent, and	
d) it has considered any submissions made concerning the proposed modification within any period prescribed by the regulations or provided by the development control plan.	See discussion on “Notification & Submissions Received” in this report.

Section 4.15 Assessment

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

The relevant matters for consideration under Section 4.15 of the Environmental Planning and Assessment Act, 1979, are:

Section 4.15 'Matters for Consideration'	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on “Environmental Planning Instruments” In this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	Draft State Environmental Planning Policy (Remediation of Land) seeks to replace the existing SEPP No. 55 (Remediation of Land). Public consultation on the draft policy was completed on 13 April 2018. This matter was addressed in the assessment of DA2018/1574 where it was concluded that the site is suitable for the development subject to conditions.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Warringah Development Control Plan applies to this Proposal.
Section 4.15 (1) (a)(iiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	All relevant provisions of the EP&A Regulation 2000 have been taken into consideration during the assessment of the development application and this modification application.
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	<u>Environmental Impact</u> The environmental impacts of the proposed development on the natural and built environment are addressed under the Warringah Development Control Plan section in this report. <u>Social Impact</u> The proposed development will not have a detrimental social impact in the locality considering the nature and character of the already approved development. <u>Economic Impact</u> The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.
Section 4.15 (1) (c) – the suitability of the site for the development	The proposed modification does not alter the suitability of the site.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on “Notification & Submissions Received” in this report.
Section 4.15 (1) (e) – the public interest	This assessment has found the proposal to be contrary to the relevant requirements of Section 4.55 (2) of the EPA Act 1979

Section 4.15 'Matters for Consideration'	Comments
	<p>and will result in a development which will create an undesirable precedent in relation to the additional building height and additional impact as result of the proposed excavation.</p> <p>In this regard, the development, as proposed, is not considered to be in the public interest.</p>

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited from 17/03/2021 to 31/03/2021 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000 and the Community Participation Plan.

As a result of the public exhibition process council is in receipt of 2 submission/s from:

Name:	Address:
Mr Peter Colin McNaught	3 Hogarth Avenue, Dee Why
Mr Allen Frank Lawton	46 Fisher Road, Dee Why

The matters raised within the submissions are addressed as follows:

- **Non-compliance with height control**

The submissions raised concerns that the height of the proposal is unreasonable and would result in additional impact on views from the surrounding residential properties and streetscape.

Comment:

This matter has been addressed later in this report (refer to the section 'Detailed Assessment of the Variation to Clause 4.3 – Height of Buildings Development Standard' under Warringah Local Environmental Plan 2011).

The development is assessed against the height of buildings development Standard under the WLEP 2011 and has been appropriately considered in relation to the requirements of Clause 4.6 of the WLEP 2011, wherein it was found that the development is inconsistent with the objectives of the Development Standard.

This issue constitutes a reason for the refusal of the application.

- **Traffic related impact**

The concern raised with the regards to the additional traffic generated by the additional apartments proposed as part of this application.

Comment:

The Traffic and Parking Assessment Report submitted with the application advises that the proposed parking and traffic generation for the development is acceptable and that the new traffic volumes would not substantially increase congestion on the surrounding road network.

Council's Traffic Engineer has reviewed the application and has raised no objection subject to conditions.

REFERRALS

Internal Referral Body	Comments Received
Building Assessment - Fire and Disability upgrades	Supported (subject to conditions) The application has been investigated with respect to aspects relevant to the Building Certification and Fire Safety Department. There are no objections to approval of the development.
Environmental Health (Industrial)	Supported No objection to the proposed modification and no new conditions required.
Landscape officer	Refusal The modification includes amendments to approved floor and ridge levels, extended basement car parking and reconfigured communal open spaces. Concern is raised from a visual impact perspective that the increase in building height and infilling of previously approved spaces between buildings at the upper levels increase the visual impacts of the development and results in the further loss of views and vistas to the ocean and coastline from approaches to the west of the site, particularly McIntosh Avenue. Consideration of the visual impacts was a significant component of the previous assessment and the visual impacts of the proposed amendments is not supported with regard to the loss of views and impacts on the visual landscape. Additional excavation and extension of basement parking results in further disturbance to natural features of the site and additional tree removal and increases the above slab planting areas. It is unclear if the minimum 1m height for soft landscape can be achieved over the slab areas, or even what soil level can be achieved over the slab areas. The proposed amendments also include new internal path configuration and changes to the common open space areas. No amended landscape plan was submitted with the application indicating changes required to the approved landscape plans. Concern is raised regarding the amended internal circulation configuration, which has moved away from a scheme which was designed to work with the levels of the site and site features to one that is more direct, resulting in further amendments to the internal common open spaces. The proposed landscape treatments, including tree planting, are important components of the development. The amendments created by the modification need to be illustrated for assessment purposes. An amended landscape plan is required to enable assessment of the impacts of the modification to the currently approved plans and quality of landscape outcomes. At this stage, the proposal is not supported regarding landscape issues.
Development Engineering	Supported The proposed building modifications do not affect the existing stormwater drainage/on site detention requirements as imposed in the conditions for the previous development consent
Natural Environment Unit (Biodiversity)	Supported Council's Natural Environment Unit - Biodiversity referral team has no objections to the proposed modification subject to the conditions provided for the previous DA consent (DA2018/1574), unless amended by these biodiversity-related conditions of consent. Two additional prescribed trees, one <i>Eucalyptus haemastoma</i> (#58a) and one <i>Melaleuca quinquinervia</i> (#61a) are required for removal to accommodate basement level excavation. Tree 58a has been determined to have only a Low retention value, and Tree 61a a Medium retention value, despite this both are locally native and an important foraging resource for mobile fauna, as identified in the flora and fauna assessment (Kingfisher 2018). Approval of the Mod is recommended subject to both trees being replaced, in addition to the existing obligation to replace 59 locally native trees for the previous DA2018/1574.

<p>Natural Environment Unit (Water Management)</p>	<p>Supported The DA in 2018 was not reviewed by the catchment team to ensure adequate implementation of Water Sensitive Urban Design. The water treatment method only addresses the water quality aspects of WSUD and does not reduce the quantity of water discharged from the site, apart from a very minimal 10,000L water tank. The removal of the rooftop garden removes another opportunity to reduce runoff through water use and evaporation. It is however, only a small space of landscaping in the overall site.</p> <p>The modifications are accepted, but conditions have been added to address the most significant needs that were neglected in the original DA, namely legal requirements for the ongoing management of the Jellyfish device (stormwater treatment) and pit baskets.</p>
<p>Property Management and Commercial</p>	<p>Supported No objection to the proposed modification.</p>
<p>Strategic and Place Planning (Urban Design)</p>	<p>Refusal The proposed modifications seek internal reconfigurations, adjustment to levels and construction of an additional level on Building A, B and C to accommodate an additional 21 residential apartments (resulting in total of 147 units). In addition, 34 new car spaces and adjustment of basement levels are also proposed under Buildings A, B and C. The proposal cannot be supported for the following reasons:</p> <ol style="list-style-type: none"> 1. The maximum building height of 13m will be breached further (WLEP2011). The proposed works result in a maximum height of RL+57.38m (ridge of Building A), resulting in a maximum 2.35m over the 13m height control (18% variation). Building B and C exceed the height control (at their maximum ridge line) by 1.60m to 1.95m. 2. Proposed increase of bulk and scale of the buildings will result in view loss for the surrounding residences located on higher ground. The modified built form will extend above the tree canopy and the height control by 2.35m. The proposed impact compared to the previous and earliest approved Stage 1 DA2011/1274 dated August 2011 will be substantial as proposed and the view corridors proposed previously will be affected. 3. Floor to floor height recommended in Apartment Design Guide of 3.1m (to allow for 2.7m floor to ceiling height) has been reduced to 3m i.e., Amenities to apartments have been compromised to gain an extra storey for all the building blocks. 4. Increased excavation to the basement size because of internal reconfigurations to accommodate 34 additional car spaces and adjustment of basement levels in Buildings A, B and C will reduce deep soil area for landscaping. The proposed additional excavation will encroach into deep soil area between Building B and C and remove two additional existing established trees on site.
<p>Strategic and Place Planning (Heritage Officer)</p>	<p>Refusal This application is a modification of Consent 2018/1574, which was issued on 18 June 2019. A previous amendment to this consent was issued on 15 April 2020 (Mod2020/0097).</p> <p>This amendment proposes various amendments to the building design, however the main change from a heritage point of view, involves the construction of an additional level on Buildings A, B and C to accommodate an additional 21 apartments. This in turn increases the height of the development, particularly the height of Building A, which is located to the north of the heritage building, "Pacific Lodge". This has the effect of increasing the scale of the development within the visual curtilage of the heritage item and will also potentially increase overshadowing of the heritage building and its garden curtilage.</p> <p>It is noted that the Heritage Impact Statement lodged with this application (Tropman & Tropman Architects - August 2018) is the same one which was lodged with the original Development Application in 2018.</p>

	<p>Given that this modification changes the bulk and scale of the development in the immediate vicinity of heritage listed "Pacific Lodge", a new or amended Heritage Impact Statement is required which specifically assesses the impact of the proposed new height of the development on the heritage item on site. Also, given that Building A is located immediately to the west of the proposed State significant Dee Why Civic Precinct, the Statement of Heritage Impact should also assess the impact of the increased height on this proposed State heritage precinct immediately adjoining to the east.</p> <p>As such, this application provides insufficient information in relation to the impact of these proposed modifications on the heritage significance of "Pacific Lodge" and also the significance of the proposed State significant Dee Why Civic Precinct.</p> <p>Therefore, this modification cannot be supported until such time as the additional heritage impact statement has been received.</p>
Traffic	<p>Supported</p> <p>The proposed modification is for increasing the number of apartments from 126 to 147. The proposal includes 35 additional parking spaces allocated to the residential and visitor spaces.</p> <p>Reviewing the proposed modification, there are adequate parking spaces provided for the proposed additional apartments and the tandem spaces will be allocated to the same unit. The projected additional traffic generation will have minimal impact on the road network. No changes are proposed on the access arrangements.</p> <p>Given the above, the proposal is supported on traffic grounds.</p>
Waste	<p>Supported</p> <p>No objection subject to compliance with conditions of the original consent</p>

External Referral Body	Comments
Ausgrid	The proposal was referred to Ausgrid. No response has been received within the 21-day period and it is therefore assumed that no objections are raised, and no additional conditions are recommended.

ENVIRONMENTAL PLANNING INSTRUMENTS (EPIS)*

All Environmental Planning Instruments (SEPPs, REPs and LEPs), Development Controls Plans and Council Policies have been considered in the merit assessment of this application.

In this regard, whilst all provisions of each Environmental Planning Instruments (SEPPs, REPs and LEPs), Development Controls Plans and Council Policies have been considered in the assessment, many provisions contained within the document are not relevant or are enacting, definitions and operational provisions, which the proposal is considered acceptable against the applicable planning controls.

As such, an assessment is provided against the controls relevant to the merit consideration of the application hereunder.

STATE ENVIRONMENTAL PLANNING POLICIES (SEPPS)

SEPP (State and Regional Development) 2011

This policy sets out the functions of regional panels in determining applications for regional development. Clause 20 of the SEPP requires the Sydney North Planning Panel to be the determining authority for development included in Schedule 7 of State Environmental Planning

Policy (State and Regional Development) 2011. This includes applications for development over \$30 million in value.

Development Application DA2018/1574 was determined by SNPP as the development is categorised as general development with a CIV more than \$30 million. The current proposal modification application is made under Section 4.55(2) and is being referred to the SNPP for determination under Section 123BA (2) of the Environmental Planning and Assessment Regulation 2000 and the Instructions on Functions Exercisable by Council. As the proposed modification seeks a departure over 10% from prescribed development standards for building height.

SEPP (Building Sustainability Index: BASIX) 2004

Amended BASIX certificate was submitted with the application. A condition was included in the original Notice of Determination requiring compliance with BASIX commitments of the original Certificate (which was referenced in Condition 1) Condition 1 is therefore required amended to include reference to the updated BASIX Certificate, should the application be worthy of approval.

SEPP (Infrastructure) 2007

Clause 45

Clause 45 of the SEPP Infrastructure requires the consent authority to consider any DA (or an application for modification of consent) for any development carried out

- *Within or immediately adjacent to an easement for electricity purposes (whether or not the electricity infrastructure exists).*
- *Immediately adjacent to an electricity substation; or*
- *Within 5 metres of an overhead power line.*

The amended application was referred to Ausgrid and no reply was received. However, it should be noted that the proposed modification is not seeking to alter the conditions as it relates to Ausgrid requirement imposed in the original consent.

SEPP No. 55 – Remediation of Land

Clause 7(1) (a) of the SEPP requires the Consent Authority to consider whether land is contaminated.

As noted in the *Preliminary Heritage Assessment* which supported DA2011/1274, the site has been under continual occupation for residential/aged care purposes since 1890-92 with redevelopments occurring in the 1950s and 1980s. In this respect it was considered that there was a possibility that the site may contain residual building materials which have resulted from any prior demolition/construction works.

That application included a *Stage 1 Environmental Site Assessment* dated 8 July 2011 as prepared by Coffey Environments Australia Pty Ltd and the recommendations made in the Assessment are included as part of the conditions imposed under DA2011/1274. A general condition (Condition 56) was also included in the Notice of Determination for DA2018/1574.

In this regard, the site is suitable for the development, as modified.

That application was also referred to Council's Environmental Health Officer who raised no objection to the proposal subject to conditions. Accordingly, based on the information submitted,

it was considered that the requirements of SEPP had been satisfied and the land was suitable for the development subject to conditions.

SEPP 65 - Design Quality of Residential Apartment Development

The SEPP requires an assessment and consideration of any application for residential flat development against the 9 Design Quality Principles and the matters contained within the associated "Apartment Design Guide".

Clause 28 of SEPP requires that in determining a development application for consent to carry out development to which SEPP 65 applies, a consent authority is to take into consideration (in addition to any other matters that are required to be, or may be, taken into consideration):

- a. The advice (if any) obtained from the design review panel, and
- b. The design quality of the development when evaluated in accordance with the design quality principles, and
- c. The ADG.

DESIGN REVIEW PANEL

The application was reported to the Design and Sustainability Advisory Panel (DSAP) on 22 April 2021, the panel did not support the proposed amended application on the following grounds:

- While the proposal does exceed the minimum deep soil requirements of the SEPP, the reduction of deep soil area is still a negative. Noted that this is on the rocky site with minimal soil.
- Removal of two additional existing trees – Euc (low) & Mel (med)
- Removal of rock face
- The modification to the landform affecting the context of the heritage item.

The Panel has reviewed the revised landscape scheme (Context Landscape design report and drawings), in the opinion of the Panel the design provides an appropriate setting for the heritage item but considers the retention of the original landform in the MOD2020/0097 scheme preferable

Principle 1: Context and Neighbourhood Character

Good design responds and contributes to its context. Context is the key natural and built features of an area, their relationship and the character they create when combined. It also includes social, economic, health and environmental conditions.

Responding to context involves identifying the desirable elements of an area's existing or future character. Well-designed buildings respond to and enhance the qualities and identity of the area including the adjacent sites, streetscape and neighbourhood. Consideration of local context is important for all sites, including sites in established areas, those undergoing change or identified for change.

Comment

The site is located within the Dee Why Town Centre as defined by the Warringah Local Environmental Plan 2011.

Contextually, the site features as a gateway into and out of the Dee Why Hub, being in proximity of Dee Why Library and Civic centre.

The maximum building height of 13m will be breached further (WLEP2011). The proposed works result in a maximum height of RL+57.38m (ridge of Building A), resulting in a maximum 2.35m over the 13m height control (18% variation). Building B and C exceed the height control (at their maximum ridge line) by 1.60m to 1.95m

The applicant is seeking the additional height to realise the site's FSR potential, it should be noted that FSR control was only introduced as part of Dee Why Town Centre controls, which come into effect after the application was approved for the site and establishes a maximum threshold.

Therefore, the non-compliance with the height of buildings development standard, which ultimately determines the contextual fit of the development with the surrounding locality, cannot be supported.

Accordingly, the modified proposal is found to inconsistent with this principle.

Principle 2: Built Form and Scale

Good design achieves a scale, bulk and height appropriate to the existing or desired future character of the street and surrounding buildings.

Good design also achieves an appropriate built form for a site and the building's purpose in terms of building alignments, proportions, building type, articulation and the manipulation of building elements.

Appropriate built form defines the public domain, contributes to the character of streetscapes and parks, including their views and vistas, and provides internal amenity and outlook.

Comment

The proposed modifications seek internal reconfigurations, adjustment to levels and construction of an additional level on Building A, B and C to accommodate an additional 21 residential apartments (resulting in total of 147 units). In addition, 34 new car spaces and adjustment of basement levels are also proposed under Buildings A, B and C.

As result of the modified scheme, the maximum building height of 13m will be breached further, which will increase the bulk and scale of the development. Therefore, the height and bulk of the development is not consistent with the controls applicable to the site and the development will result in a built form and scale that does not meet the requirements of the current controls for the site, and it is inconsistent with the scale of existing developments within the locality.

Accordingly, it is considered that the modified proposal does not satisfies this principle.

Principle 3: Density

Good design achieves a high level of amenity for residents and each apartment, resulting in a density appropriate to the site and its context.

Appropriate densities are consistent with the area's existing or projected population. Appropriate densities can be sustained by existing or proposed infrastructure, public transport, access to jobs, community facilities and the environment.

Comment

The maximum permissible FSR on site is 1.45:1 (15,399m²) under the WLEP2011. DA2018/1574 approved a maximum FSR of 1.26:1 (13,400m²). The proposed modification seeks an additional GFA of 1,790m² and results in a total overall FSR of 1.43:1 (15,190m²).

Although, the proposal complies for the FSR control for the site, the appropriate density is determined by how the development responds to the Design Quality Principles of SEPP 65, and the relevant controls contained within the WLEP 2011 and the WDCP 2011.

This assessment has found that the development, as proposed, does not achieve a satisfactory level of compliance and consistency with these controls the overall height of the buildings.

In this regard, the proposed number of units and the density is excessive for this site.

The proposed development is found to inconsistent with this principle.

Principle 4: Sustainability

Good design combines positive environmental, social and economic outcomes. Good sustainable design includes use of natural cross ventilation and sunlight for the amenity and liveability of residents and passive thermal design for ventilation, heating and cooling reducing reliance on technology and operation costs. Other elements include recycling and reuse of materials and waste, use of sustainable materials, and deep soil zones for groundwater recharge and vegetation.

Comment

The proposed works include demolition of all structures currently on the site and excavation works to accommodate the new development.

The applicant has submitted an updated Waste Management Plan which, in conjunction with the Construction Management Plan required by the approved DA2018/1574 detail the disposal and recycling of demolition and excavation materials.

In addition, an updated BASIX certificate for the residential component of the development has been submitted with the application. The certificate confirms that the development can achieve the water and energy targets and has obtained a pass for thermal comfort.

Accordingly, it is considered that the modified proposal satisfies this principle.

Principle 5: Landscape

Good design recognises that together landscape and buildings operate as an integrated and sustainable system, resulting in attractive developments with good amenity. A positive image and contextual fit of well-designed developments is achieved by contributing to the landscape character of the streetscape and neighbourhood.

Good landscape design enhances the development's environmental performance by retaining positive natural features which contribute to the local context, coordinating water and soil management, solar access, micro-climate, tree canopy, habitat values, and preserving green networks. Good landscape design optimises usability, privacy and opportunities for social interaction, equitable access, respect for neighbours' amenity, provides for practical establishment and long term management.

Comment

The Landscaping component of the proposal has been reviewed by Council's Landscape Officer, who concludes that the additional excavation and extension of basement parking results in further disturbance to natural features of the site and additional tree removal and increases the above slab planting areas.

Accordingly, it is considered that the modified proposal does not satisfies this principle.

Principle 6: Amenity

Good design positively influences internal and external amenity for residents and neighbours. Achieving good amenity contributes to positive living environments and resident wellbeing.

Good amenity combines appropriate room dimensions and shapes, access to sunlight, natural ventilation, outlook, visual and acoustic privacy, storage, indoor and outdoor space, efficient layouts and service areas, and ease of access for all age groups and degrees of mobility.

Comment

The modified development provides a high level of amenity both internally and externally.

Given the challenge of the irregular shape of the site and location of the additional units within top levels, the modified design provides for appropriate room dimensions and shapes, access to sunlight, natural ventilation, outlook, visual and acoustic privacy, storage, indoor and outdoor space, efficient layouts and service areas, and ease of access for all age groups and degrees of mobility.

Accordingly, it is considered that the modified proposal satisfies this principle.

Principle 7: Safety

Good design optimises safety and security, within the development and the public domain. It provides for quality public and private spaces that are clearly defined and fit for the intended purpose.

Opportunities to maximise passive surveillance of public and communal areas promote safety. A positive relationship between public and private spaces is achieved through clearly defined secure access points and well lit and visible areas that are easily maintained and appropriate to the location and purpose.

Comment

The modified design satisfies the principles of CPTED and includes a positive relationship between public and private spaces is achieved through clearly defined secure access points and well-lit and visible areas that are easily maintained and appropriate to the location and purpose.

Accordingly, it is considered that the modified proposal satisfies this principle.

Principle 8: Housing Diversity and Social Interaction

Good design achieves a mix of apartment sizes, providing housing choice for different demographics, living needs and household budgets.

Well-designed apartment developments respond to social context by providing housing and facilities to suit the existing and future social mix. Good design involves practical and flexible features, including different types of communal spaces for a broad range of people, providing opportunities for social interaction amongst residents.

Comment

The provision of a mix of apartment sizes in this location is considered reasonable due to the site's proximity to major bus interchanges, commercial facilities, and opportunities within the DYTC and being within walking distance to the beach and public amenities and facilities and the future Dee Why Town Centre redevelopment.

Accordingly, it is considered that the modified proposal satisfies this principle.

Principle 9: Aesthetics

Good design achieves a built form that has good proportions and a balanced composition of elements, reflecting the internal layout and structure. Good design uses a variety of materials, colours and textures.

The visual appearance of well-designed apartment development responds to the existing or future local context, particularly desirable elements and repetitions of the streetscape.

Comment

The modifications proposed do not alter the general aesthetics of the building, as compared to that which was originally approved

Accordingly, it is considered that the modified proposal satisfies this principle.

Apartment Design Guide

SEPP 65 also requires consideration of the ADG prepared by NSW Department of Planning and Environment in 2015. The ADG includes development controls and best practice benchmarks for achieving the design principles of SEPP 65.

The following table sets out the modified proposal compliance with the ADG:

Criteria / Guideline	Comments										
Part 3 Siting the Development											
Site Analysis Does the development relate well to its context and is it sited appropriately?	Not Consistent A context plan is provided to accompany the application. The modified building form does not reflect the current character as anticipated by the SEPP for the site.										
Orientation Does the development respond to the streetscape and site and optimise solar access within the development and to neighbouring properties?	Not Consistent The additional building height will be visible form street.										
Public Domain Interface Does the development transition well between the private and public domain without compromising safety and security? Is the amenity of the public domain retained and enhanced?	Consistent The development has been found to be consistent with requirement of this Clause in that it provides an appropriate public domain interface.										
Communal and Public Open Space Appropriate communal open space is to be provided as follows: <ol style="list-style-type: none"> Communal open space has a minimum area equal to 25% of the site. Developments achieve a minimum of 50% direct sunlight to the principal usable parts of the communal open space for a minimum of 2 hours between 9 am and 3pm on 21 June (mid-winter). 	Consistent The site has 4,702m ² (44.3%), which is considered satisfactory.										
Deep Soil Zones Deep soil zones are to meet the following minimum requirements: <table border="1" data-bbox="236 1778 863 2007"> <thead> <tr> <th>Site area</th> <th>Minimum dimensions</th> <th>Deep soil zone (% of site area)</th> </tr> </thead> <tbody> <tr> <td>Less than 6</td> <td>-</td> <td rowspan="3">7%</td> </tr> <tr> <td>650m² – 1,500m²</td> <td>3m</td> </tr> <tr> <td>Greater than 1,500m²</td> <td>6m</td> </tr> </tbody> </table>	Site area	Minimum dimensions	Deep soil zone (% of site area)	Less than 6	-	7%	650m ² – 1,500m ²	3m	Greater than 1,500m ²	6m	Consistent The proposed development provides approximately 27.3% of site area for deep soil zones (2,899 m ²)
Site area	Minimum dimensions	Deep soil zone (% of site area)									
Less than 6	-	7%									
650m ² – 1,500m ²	3m										
Greater than 1,500m ²	6m										

<p>Greater than 1,500m² with significant existing tree cover</p>	<p>6m</p>													
<p>Visual Privacy Minimum required separation distances from buildings to the side and rear boundaries are as follows:</p>			<p>Not Consistent The proposed development has a non-compliance with the building separation requirements between buildings A and B. The balcony separations below are less than the requirements:</p> <ul style="list-style-type: none"> • Between B205 with A203 and A204 (10.8m and 11.4m) • Between B206 and A210 (11.4m) • Between B404 and A403 (11.4m) • Between B504 and A 504, A506, A509 (11.4m, 12m, 14m) 											
<table border="1"> <thead> <tr> <th>Building height</th> <th>Habitable rooms and balconies</th> <th>Non-habitable rooms</th> </tr> </thead> <tbody> <tr> <td>Up to 12m (4 storeys)</td> <td>6m</td> <td>3m</td> </tr> <tr> <td>Up to 25m (5-8 storeys)</td> <td>9m</td> <td>4.5m</td> </tr> <tr> <td>Over 25m (9+ storeys)</td> <td>12m</td> <td>6m</td> </tr> </tbody> </table>				Building height	Habitable rooms and balconies	Non-habitable rooms	Up to 12m (4 storeys)	6m	3m	Up to 25m (5-8 storeys)	9m	4.5m	Over 25m (9+ storeys)	12m
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<p>Note: Separation distances between buildings on the same site should combine required building separations depending on the type of rooms.</p> <p>Gallery access circulation should be treated as habitable space when measuring privacy separation distances between neighbouring properties.</p>														
<p>Pedestrian Access and entries Do the building entries and pedestrian access connect to and addresses the public domain and are they accessible and easy to identify?</p> <p>Large sites are to provide pedestrian links for access to streets and connection to destinations.</p>			<p>Consistent The development provides level pedestrian access to all floor levels from the basement car parking area.</p>											
<p>Vehicle Access Are the vehicle access points designed and located to achieve safety, minimise conflicts between pedestrians and vehicles and create high quality streetscapes?</p>			<p>Consistent The proposed vehicular access has been assessed by Council's Traffic Engineer who has raised no objections to the proposal in terms of the location of the vehicular access.</p>											
<p>Bicycle and Car Parking For development in the following locations:</p> <ul style="list-style-type: none"> • On sites that are within 80m of a railway station or light rail stop in the Sydney Metropolitan Area; or • On land zoned, and sites within 400m of land zoned, B3 Commercial Core, B4 Mixed Use or equivalent in a nominated regional centre. <p>The minimum car parking requirement for residents and visitors is set out in the Guide to Traffic Generating Developments, or the car parking requirement prescribed by the relevant council, whichever is less.</p> <p>The car parking needs for a development must be provided off street.</p> <p>Parking and facilities are provided for other modes of transport.</p> <p>Visual and environmental impacts are minimised.</p>			<p>Consistent An assessment of car parking provision, having regard to WDCP 2011 and location of the site has been undertaken.</p> <p>In summary, the amount of car parking is sufficient for the development, as addressed elsewhere in this report.</p>											
<p>Part 4 Designing the Building</p>														

Amenity													
<p>Solar and Daylight Access To optimise the number of apartments receiving sunlight to habitable rooms, primary windows, and private open space:</p> <ul style="list-style-type: none"> Living rooms and private open spaces of at least 70% of apartments in a building are to receive a minimum of 2 hours direct sunlight between 9 am and 3 pm at mid-winter. A maximum of 15% of apartments in a building receive no direct sunlight between 9 am and 3 pm at mid-winter. 	<p>Not Consistent 104 of 147 apartments (70.7%) receive a minimum of 2hr of solar access to the living rooms and private open space in mid-winter.</p> <p>A total of 21 apartments (14.3%) do not receive any direct sunlight in mid-winter.</p>												
<p>Natural Ventilation The number of apartments with natural cross ventilation is maximised to create a comfortable indoor environment for residents by:</p> <ul style="list-style-type: none"> At least 60% of apartments are naturally cross ventilated in the first nine storeys of the building. Apartments at 10 storeys or greater are deemed to be cross ventilated only if any enclosure of the balconies at these levels allows adequate natural ventilation and cannot be fully enclosed. Overall depth of a cross-over or cross-through apartment must not exceed 18m, measured glass line to glass line. 	<p>Consistent 90 of 147 of apartments (61.2%) are cross-ventilated.</p>												
<p>Ceiling Heights Measured from finished floor level to finished ceiling level, minimum ceiling heights are:</p> <table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th colspan="2" style="background-color: #d3d3d3;">Minimum ceiling height</th> </tr> </thead> <tbody> <tr> <td style="width: 20%;">Habitable rooms</td> <td>2.7m</td> </tr> <tr> <td>Non-habitable</td> <td>2.4m</td> </tr> <tr> <td>For two storey apartments</td> <td>2.7m for main living area floor, 2.4m for second floor, where its area does not exceed 50% of the apartment area.</td> </tr> <tr> <td>Attic spaces</td> <td>2.7m for main living area floor, 2.4m for second floor, where its area does not exceed 50% of the apartment area.</td> </tr> <tr> <td>If located in mixed used areas</td> <td>2.7m for main living area floor, 2.4m for second floor, where its area does not exceed 50% of the apartment area.</td> </tr> </tbody> </table>	Minimum ceiling height		Habitable rooms	2.7m	Non-habitable	2.4m	For two storey apartments	2.7m for main living area floor, 2.4m for second floor, where its area does not exceed 50% of the apartment area.	Attic spaces	2.7m for main living area floor, 2.4m for second floor, where its area does not exceed 50% of the apartment area.	If located in mixed used areas	2.7m for main living area floor, 2.4m for second floor, where its area does not exceed 50% of the apartment area.	<p>Consistent The floor to ceiling heights of the apartments within the development meet the minimum 2.7m as required by the ADG.</p>
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<p>Apartment Size and Layout Apartments are required to have the following minimum internal areas:</p> <table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="width: 30%;">Apartment type</th> <th>Minimum internal area</th> </tr> </thead> <tbody> <tr> <td>Studio</td> <td>35m²</td> </tr> <tr> <td>1 bedroom</td> <td>50m²</td> </tr> <tr> <td>2 bedrooms</td> <td>70m²</td> </tr> <tr> <td>3 bedrooms</td> <td>90m²</td> </tr> </tbody> </table> <p>The minimum internal areas include only one bathroom. Additional bathrooms increase the minimum internal area by 5m² each.</p> <p>A fourth bedroom and further additional bedrooms increase</p>	Apartment type	Minimum internal area	Studio	35m ²	1 bedroom	50m ²	2 bedrooms	70m ²	3 bedrooms	90m ²	<p>Consistent The minimum size of all bedroom is consistent with the requirement of this Clause.</p>		
Apartment type	Minimum internal area												
Studio	35m ²												
1 bedroom	50m ²												
2 bedrooms	70m ²												
3 bedrooms	90m ²												

<p>the minimum internal area by 12m² each.</p> <p>Every habitable room must have a window in an external wall with a total minimum glass area of not less than 10% of the floor area of the room. Daylight and air may not be borrowed from other rooms.</p> <p>Habitable room depths are limited to a maximum of 2.5 x the ceiling height.</p> <p>In open plan layouts (where the living, dining and kitchen are combined) the maximum habitable room depth is 8m from a window.</p> <p>Master bedrooms have a minimum area of 10m² and other bedrooms 9m² (excluding wardrobe space). Bedrooms have a minimum dimension of 3m (excluding wardrobe space).</p> <p>Living rooms or combined living/dining rooms have a minimum width of:</p> <ul style="list-style-type: none"> • 3.6m for studio and 1-bedroom apartments. • 4m for 2- and 3-bedroom apartments <p>The width of cross-over or cross-through apartments are at least 4m internally to avoid deep narrow apartment layouts.</p>																
<p>Private Open Space and Balconies All apartments are required to have primary balconies as follows:</p> <table border="1" data-bbox="231 958 868 1173"> <thead> <tr> <th>Dwelling Type</th> <th>Minimum Area</th> <th>Minimum Depth</th> </tr> </thead> <tbody> <tr> <td>Studio apartments</td> <td>4m²</td> <td>-</td> </tr> <tr> <td>1-bedroom apartments</td> <td>8m²</td> <td>2m</td> </tr> <tr> <td>2-bedroom apartments</td> <td>10m²</td> <td>2m</td> </tr> <tr> <td>3+ bedroom apartments</td> <td>12m²</td> <td>2.4m</td> </tr> </tbody> </table> <p>For apartments at ground level or on a podium or similar structure, a private open space is provided instead of a balcony. It must have a minimum area of 15m² and a minimum depth of 3m.</p>	Dwelling Type	Minimum Area	Minimum Depth	Studio apartments	4m ²	-	1-bedroom apartments	8m ²	2m	2-bedroom apartments	10m ²	2m	3+ bedroom apartments	12m ²	2.4m	<p>Consistent The private open space requirements are met for all new apartments.</p>
Dwelling Type	Minimum Area	Minimum Depth														
Studio apartments	4m ²	-														
1-bedroom apartments	8m ²	2m														
2-bedroom apartments	10m ²	2m														
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<p>Common Circulation and Spaces The maximum number of apartments off a circulation core on a single level is eight.</p> <p>For buildings of 10 storeys and over, the maximum number of apartments sharing a single lift is 40.</p>	<p>Not Consistent The maximum number of apartments off a circulation core on a single level is less than 8 in all buildings, except for Building A (Level 3) has 9 apartments from a core.</p>															
<p>Storage In addition to storage in kitchens, bathrooms and bedrooms, the following storage is provided:</p> <table border="1" data-bbox="231 1630 868 1823"> <thead> <tr> <th>Dwelling Type</th> <th>Storage size volume</th> </tr> </thead> <tbody> <tr> <td>Studio apartments</td> <td>4m²</td> </tr> <tr> <td>1-bedroom apartments</td> <td>6m²</td> </tr> <tr> <td>2-bedroom apartments</td> <td>8m²</td> </tr> <tr> <td>3+ bedroom apartments</td> <td>10m²</td> </tr> </tbody> </table> <p>At least 50% of the required storage is to be located within the apartment.</p>	Dwelling Type	Storage size volume	Studio apartments	4m ²	1-bedroom apartments	6m ²	2-bedroom apartments	8m ²	3+ bedroom apartments	10m ²	<p>Consistent (subject to condition) The proposed building includes resident storage areas for all units within the building and as well as within the basement levels.</p> <p>A condition of consent could be recommended, if the application was recommended for approval to ensure the proposed storage areas are allocated in accordance with the size requirements of the ADG for the respective units.</p>					
Dwelling Type	Storage size volume															
Studio apartments	4m ²															
1-bedroom apartments	6m ²															
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<p>Acoustic Privacy Noise sources such as garage doors, driveways, service areas, plant rooms, building services, mechanical equipment,</p>	<p>Consistent (subject to condition) The nature of the proposed use is unlikely to generate significant noise emissions associated with</p>															

active communal open spaces, and circulation areas should be located at least 3m away from bedrooms	the occupation of the development, except for air conditioning systems. A suitable condition could be imposed if the application was worthy of approval in relation to A/C systems.																																			
Noise and Pollution Siting, layout, and design of the building is to minimise the impacts of external noise and pollution and mitigate noise transmission.	Consistent The noise and pollution impact of the development is satisfactory.																																			
Configuration																																				
Apartment Mix Ensure the development provides a range of apartment types and sizes that is appropriate in supporting the needs of the community now and into the future and in the suitable locations within the building.	Consistent The apartment mix is satisfactory.																																			
Facades Ensure that building facades provide visual interest along the street and neighbouring buildings while respecting the character of the local area.	Consistent The development is respectful of the surrounding character; therefore, the facade treatment is appropriate to enhance the streetscape and character of the area.																																			
Roof Design Ensure the roof design responds to the street and adjacent buildings and incorporates sustainability features. Test whether the roof space can be maximised for residential accommodation and open space.	Consistent The roof design of the development responds to the adjacent building and is satisfactory.																																			
Landscape Design Was a landscape plan submitted and does it respond well to the existing site conditions and context.	Not Consistent Landscape plans have been submitted with the application, providing detailed plans for the landscape treatment, and found to be unsatisfactory based on the Landscape referral comments.																																			
Planting on Structure When planting on structures the following are recommended as minimum standards for a range of plant sizes: <table border="1" data-bbox="229 1173 866 1850"> <thead> <tr> <th>Plant type</th> <th>Definition</th> <th>Soil Volume</th> <th>Soil Depth</th> <th>Soil Area</th> </tr> </thead> <tbody> <tr> <td>Large Trees</td> <td>12-18m high, up to 16m crown spread at maturity</td> <td>150m³</td> <td>1,200mm</td> <td>10m x 10m or equivalent</td> </tr> <tr> <td>Medium Trees</td> <td>8-12m high, up to 8m crown spread at maturity</td> <td>35m³</td> <td>1,000mm</td> <td>6m x 6m or equivalent</td> </tr> <tr> <td>Small trees</td> <td>6-8m high, up to 4m crown spread at maturity</td> <td>9m³</td> <td>800mm</td> <td>3.5m x 3.5m or equivalent</td> </tr> <tr> <td>Shrubs</td> <td></td> <td></td> <td>500-600mm</td> <td></td> </tr> <tr> <td>Ground Cover</td> <td></td> <td></td> <td>300-450mm</td> <td></td> </tr> <tr> <td>Turf</td> <td></td> <td></td> <td>200mm</td> <td></td> </tr> </tbody> </table>	Plant type	Definition	Soil Volume	Soil Depth	Soil Area	Large Trees	12-18m high, up to 16m crown spread at maturity	150m ³	1,200mm	10m x 10m or equivalent	Medium Trees	8-12m high, up to 8m crown spread at maturity	35m ³	1,000mm	6m x 6m or equivalent	Small trees	6-8m high, up to 4m crown spread at maturity	9m ³	800mm	3.5m x 3.5m or equivalent	Shrubs			500-600mm		Ground Cover			300-450mm		Turf			200mm		Not Consistent Refer to Principle 5 above and Landscape referral comments.
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Turf			200mm																																	
Awning and Signage Locate awnings along streets with high pedestrian activity, active frontages and over building entries. Awnings are to complement the building design and contribute to the identity	Not Applicable The application does not propose any awning or signage and as such, this clause is not considered in the assessment of this application.																																			

of the development. Signage must respond to the existing streetscape character and context.	
Performance	
Energy Efficiency Have the requirements in the BASIX certificate been shown in the submitted plans?	Consistent A BASIX certificate report has been prepared for the development. The BASIX certificate confirms that required targets for water, thermal comfort and energy efficiency will be met.
Water Management and Conservation Has water management taken into account all the water measures including water infiltration, potable water, rainwater, wastewater, stormwater, and groundwater?	Consistent Water management and conservation through the means of retention of stormwater for reuse has been assessed as compliant and further, compliance with the supplied BASIX Certificate can be conditioned, if the application was recommended for approval.
Waste Management Supply waste management plans as part of the development application demonstrating safe and convenient collection and storage of waste and recycling.	Consistent Subject to condition
Building Maintenance Incorporates a design and material selection that ensures the longevity and sustainability of the building.	Consistent The application includes a Schedule of Materials and Finishes which ensures the longevity and sustainability of the building.

STATE REGIONAL ENVIRONMENTAL PLANS

There are no SREPs applicable to the site.

LOCAL ENVIRONMENTAL PLANS

WARRINGAH LOCAL ENVIRONMENT PLAN 2011

The Warringah Local Environmental Plan 2011 is applicable to the development.

Is the development permissible with consent?	Yes
After consideration of the merits of the proposal, is the development consistent with:	
Aims of the LEP?	No
Zone objectives of the LEP?	No

Principal Development Standards

Relevant Development Standard	Requirement	Approved	Modification	Compliance
Clause 4.3 Height of Buildings	13m	Up to 15.9m	Building A – 15.35m Building B – 14.6m Building C – 14.95m	No (refer to discussion below)
Floor Space Ratio	1:45:1	1.26:1 (13,400m ²)	1:43:1 (15,190m ²)	Yes

Compliance Assessment Summary

Relevant Clauses	Compliance with Requirements
Part 1 Preliminary	
1.2 Aims of the Plan	Yes
Part 2 Permitted or prohibited development	
2.1 Land Use Zones	Yes
2.7 Demolition requires consent	Yes
Part 4 Principal development standards	
4.3 Height of buildings	No
4.6 Exceptions to development standards	No
Part 5 Miscellaneous Provisions	
5.9 Preservation of trees or vegetation	Yes
5.10 Heritage conservation	No (Refer to Heritage referral comments above)
Part 6 Additional Local Provisions	
6.2 Earthworks	Yes
6.3 Flood planning	Yes
6.4 Development on sloping land	Yes

The following is a detailed discussion of the issues identified in the compliance table in relation to the Warringah LEP 2011.

4.6 Exceptions to development standards

The application has not been submitted as a new development application for the additional levels to an (approved but not yet constructed) development. Such an approach is not available to the applicant as WLEP 2011 (Clause 4.6 (8A) provides an exclusion to prevent variations to building heights on any site within Dee Why Town Centre (including the subject site). It should be noted that Clause 4.6 (8A) come into effect at the same time as introduction of the bonus floor space ratio control for the site.

Whilst a written request is not required for section 4.55 applications, the matters that must be considered under clause 4.6 are considered relevant to assist in forming a merit assessment of the proposal. This is also the consistent approach taken by the Land & Environment Court in considering appeals involving section 4.55 applications.

The applicant has also submitted a Clause 4.6 variation request, therefore an assessment of the modified scheme against the requirement of Clause 4.6 is provided as follows:

The site is subject to 13m maximum building height.

The approved development was subject to Clause 4.6 in relation to building height, which was calculated at 2.9m above the 13m height standard (22.3% exceedance). However, no full levels were outside of the height plane as demonstrated in the diagram below:

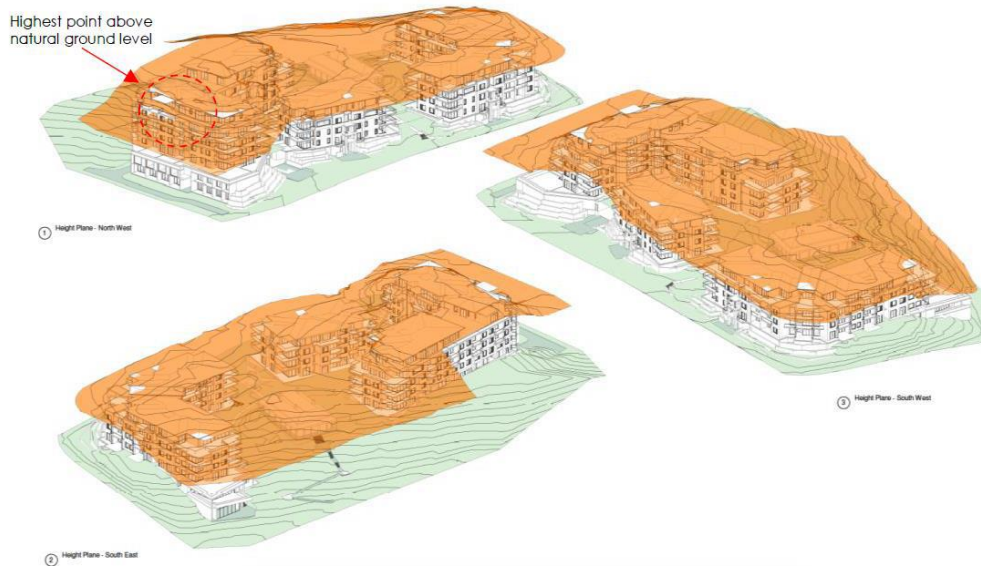


Figure 2 - Approved Development – 13m height plane overlay

The proposed modifications will result in a maximum height of RL+57.38m (ridge of Building A), resulting in a maximum 2.35m over the 13m height control (or 18% variation). Building B and C exceed the height control (at their maximum ridge line) by 1.60m to 1.95m.

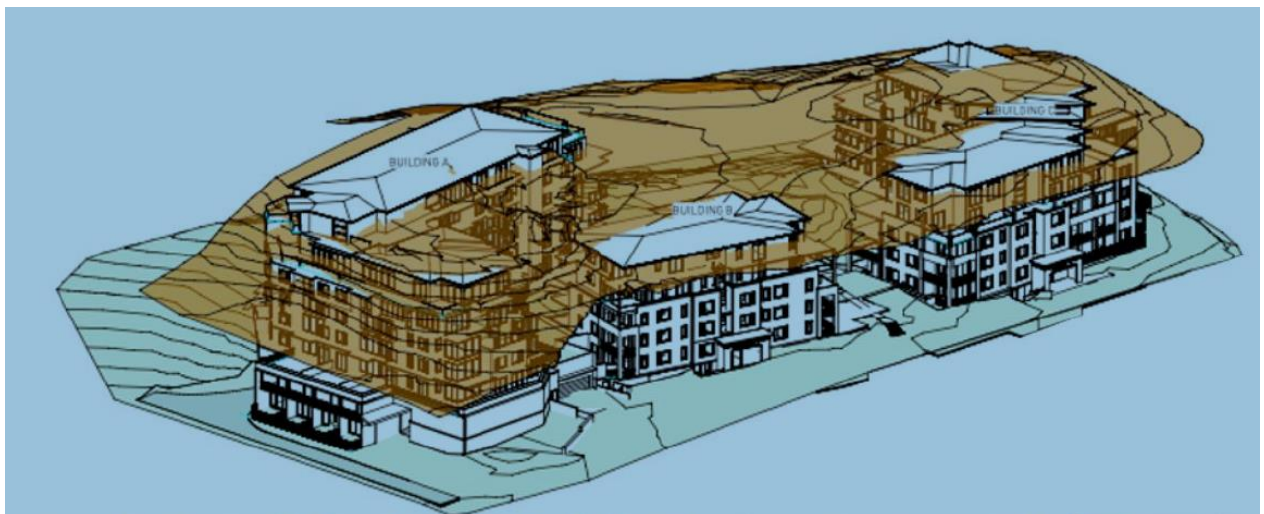


Figure 3: Modified Development Height Plant Diagram.

Clause 4.6 (4) (a) (i) (Justification) Assessment

Clause 4.6 (4)(a)(i) requires the consent authority to be satisfied that the applicant’s written request, seeking to justify the contravention of the development standard, has adequately addressed the matters required to be demonstrated by cl 4.6(3). There are two separate matters for consideration contained within cl 4.6(3) and these are addressed as follows:

(a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and

Comment:

The Applicant’s written request (attached to this report as an attachment) has not demonstrated that the objectives of the development standard are achieved.

In this regard, the Applicant's written request has not adequately demonstrated that compliance with the development standard is unreasonable or unnecessary in the circumstances of this case as required by cl 4.6(3)(a).

(b) that there are sufficient environmental planning grounds to justify contravening the development standard.

Comment:

In the matter of *Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118*, Preston CJ provides the following guidance (para 23) to inform the consent authority's finding that the applicant's written request has adequately demonstrated that there are sufficient environmental planning grounds to justify contravening the development standard:

'As to the second matter required by cl 4.6(3) (b), the grounds relied on by the applicant in the written request under cl 4.6 must be "environmental planning grounds" by their nature: see *Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90* at [26]. The adjectival phrase "environmental planning" is not defined but would refer to grounds that relate to the subject matter, scope and purpose of the EPA Act, including the objects in s 1.3 of the EPA Act.'

The applicant's written request argues, in part:

- *The proposed variation to the height control is can be attributed to the provision of an additional 21 residential apartments to better realise the site's FSR potential, and to the undulating topography on site. The proposed exceedance in height is modest and maintains compliance with the maximum permissible Floor Space Ratio of 1.45:1 with the modified scheme resulting in a total FSR of 1.43:1.*
- *The increased building height will enable the construction of an additional 21 apartments which will provide additional housing in close proximity to both the town centre and public transport.*
- *Under the WLEP2011, the maximum building height is measured from the existing ground level (existing) to the highest point of the building. The portions of the buildings that do not comply with the height control are largely isolated to the roof form and where there is a significant drop in the ground level below.*
- *All exceeding areas are setback from the site boundaries.*
- *The building generally follows the slope of the land and is broken down with setbacks and level changes. However, the site's significant level changes mean that the proposed future buildings and roof forms breach the height control areas.*
- *The contravention of the height standard assists in contributing to the local economic and housing market for the Northern Beaches Council, a matter that is of state and regional planning significance due to the impacts of Covid19; and*
- *There is no additional public benefit in maintaining the standard in the circumstances of the case as explained below.*

The applicant's report relies on the fact that there is an FSR provision for the site as part of Dee Why Town Centre as a basis for exceeding building height. However, the applicant has not acknowledged that Clause 4.6 (Building Height) was also turned off at the same time as the FSR provision were introduced for the site.

In addition, the applicant's report states that that compliance is unreasonable or unnecessary because the objectives of the development standard are achieved notwithstanding non-compliance with the standard. However, the applicant's clause 4.6 request fails to demonstrate:

- How the additional height is consistent with the Design excellence provision for the Dee Why Dee Why Town Centre (Clause 7.5 of WLEP 2011)
- How the building is compatible with the height and scale of surrounding development when the impacts on the adjoining residential development along McIntosh Road will be severe.
- How the modified built form is acceptable when the extent of the height breach extend above the tree canopy.
- How the proposal allows for reasonable sharing of views when the views available from properties along McIntosh road have not been recognised or addressed by the proposal, given the view corridors proposed previously will be affected.

Therefore, the applicant's written request has not adequately demonstrated that there are sufficient environmental planning grounds to justify contravening the development standard as required by cl 4.6 (3)(b).

For the above reasons, the the height breach is significant and cannot be supported.

Part 7 Dee Why Town Centre

Part 7 contains local provisions that relate to the Dee Why Town Centre, as the site is located within Dee Why Town Centre. The specific controls relating to the proposed development have been considered and the assessment has concluded that the proposed modified is not consistent with the requirement of Clause 7.5 of WLEP 2011 which relates to Design Excellence provisions.

WARRINGAH DEVELOPMENT CONTROL PLAN 2011

The relevant matters to be considered under the WDCP 2011 for the proposal are outlined below:

Compliance Assessment Summary

Clause	Compliance with Requirements	Consistency Aims/Objectives
Part A Introduction		
A.5 Objectives	Yes	Yes
Part B Built Form Controls		
B4 Site Coverage	N/A	N/A
B5 Side Boundary	N/A	N/A
B7 Front Boundary Setback	N/A	N/A
B10 Merit Assessment of Rear Setback	N/A	N/A
Part C Siting Factors		
C1 Subdivision	N/A	N/A
C2 Traffic, Access, and Safety	Yes	Yes
C3 Parking Facilities	Yes	Yes
C3(A) Bicycle Parking and End of Trip Facilities	Yes	Yes
C4 Stormwater	Yes	Yes
C5 Erosion and Sedimentation	Yes	Yes
C6 Building over or adjacent to Constructed Council Drainage Easements	Yes	Yes
C7 Excavation and Landfill	Yes	Yes
C8 Demolition and Construction	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
C9 Waste Management	Yes	Yes
Part D Design		
D3 Noise	Yes	Yes
D6 Access to Sunlight	Yes	Yes
D7 Views	No	No
D8 Privacy	Yes	Yes
D9 Building Bulk	No	No
D10 Building Colours and Materials	Yes	Yes
D11 Roofs	Yes	Yes
D12 Glare and Reflection	Yes	Yes
D14 Site Facilities	Yes	Yes
D18 Accessibility	Yes	Yes
D20 Safety and Security	Yes	Yes
D21 Provision and Location of Utility Services	Yes	Yes
D22 Conservation of Energy and Water	Yes	Yes
Part E The Natural Environment		
E1 Private Property Tree Management	Yes	Yes
E10 Landslip Risk	Yes	Yes

Clause D9 Building Bulk

As discussed above with regards to the building height control in WLEP 2011, the proposed building height results in a bulk and scale of development that is excessive, having a negative impact on residential development and the character of the area. It is considered that the proposal does not satisfy the requirement of Clause D9 of WDCP 2011 that “building height and scale needs to relate to topography and site conditions” and this issue has been given determining weight as a reason for refusal of the development application.

Clause D7 Views


As the proposal results in a significant breach in the height of the development, the applicant was not requested to erect height poles to accurately determine the impact on views.

However, it is clear the proposed modified scheme will infill the section of the approved development which previously was a view corridor for the residential development overlooking the subject site along McIntosh Road and surrounds. The infilling of this site to that height will obstruct views which overlook the site.

Part G1 Dee Why Town Centre

The site is located within Dee Why Town Centre within B4 Mixed use zone under the WDCP 2011.

Note: Clause A.6 of the WDCP 2011 stipulates that, in the event of any inconsistency between Part G and Parts C, D and E, the requirements of Part G will prevail. The following table provides an assessment of the development against the controls of Part G1 as it specifically relates to the modified scheme:

Requirement	Comment	Compliance
<p>3. Desired Character for the Dee Why Town Centre</p> <p>The vision for Dee Why Town Centre identified in the 2013 Masterplan is as follows:</p> <p><i>“Dee Why will be home to a thriving cosmopolitan community who cherish their past, celebrate its unique and engaging vibe and embrace its bold commitment to urban sustainability. It will be a place of both energy and refuge, a city at the beach, with a distinctive modern urban identity.”</i></p> <p>The North District Plan 2018 identifies Dee Why Town Centre as a mixed-use area that offers a vibrant local night-time economy. It outlines actions that are interpreted as objectives within this section of the DCP.</p> <p>The desired character for the Dee Why Town Centre is further defined by objectives within this Development Control Plan.</p>	<p>The proposed modified is found to be inconsistent with Desired Character statement for Dee Why Town Centre as the modified scheme is inconsistent with the objective of the WDCP 2011 given additional building height and its associated impact.</p>	<p>No</p>
<p>4. Streetscape and Public Domain</p> <p>This section details design requirements for places accessible to the public, being either on public land or as part publicly accessible areas of a private development. This includes building frontages addressing the street, awnings over footpaths, pedestrian access ways and open spaces.</p> <p>It also includes requirements for the provision of new public infrastructure on Key Sites shown in Figure 2, including:</p> <ul style="list-style-type: none"> - Key Site E – New Shared Pathway and Pedestrian Accessway  <p>Figure 6- Key Sites Map indicating public domain upgrades.</p>	<p>The proposed development is acceptable with regards to the requirement of this Clause.</p> <p>The site is not identified as the key sites.</p>	<p>Yes</p>
<p>5. Design and Architectural Diversity</p> <p>1. New developments must be designed to avoid the use of blank walls fronting streets and the public domain. In circumstances where blank walls are unavoidable, they are to be designed in a manner that is consistent with the overall</p>	<p>As advised with SEPP 65 section of this report, the proposed development is found to be unacceptable in terms of its design regarding the additional levels.</p>	<p>No</p>

Requirement	Comment	Compliance
<p>building form that contributes to the public domain and create visual interest.</p> <p>2. Corner sites must:</p> <p>a. Adequately address both street frontages.</p> <p>b. Combine architectural features, materials, and landscape design to define corners</p>		
<p>6. Site Amalgamation</p> <p>Development should not result in the isolation of land adjacent to the development site, preventing the reasonable development of that land.</p> <p>2. Development that would result in an isolated lot must be supported by documentary evidence to demonstrate that a genuine and reasonable attempt has been made to purchase an isolated lot adjacent to the development site, based on a fair market value. This is to include at least one recent independent valuation by a licensed valuer and a written offer to cover reasonable expenses likely to be incurred by the owner of the isolated lot during the sale of the property.</p> <p>3. Where amalgamation of an isolated lot adjacent to the development site is not feasible, applicants will be required to:</p> <p>a. Demonstrate that an orderly and economic use and development of the separate sites can be achieved.</p> <p>b. Provide a building envelope for the adjacent isolated lot, indicating height, setbacks, resultant site coverage (building and basement), sufficient to understand the relationship between the application and the adjacent isolated lot.</p> <p>c. Detail the likely impacts of development on the adjacent isolated lot in terms of solar access, visual privacy, building separation, streetscape, and vehicular access.</p>	<p>No isolation issue has been found with the development.</p>	<p>Yes</p>
<p>7. Traffic and Parking</p> <p>1. Site amalgamation is encouraged to enable integrated car parking and service provision using shared driveways where possible.</p> <p>2. New developments are to be accompanied by a service delivery and loading dock plan.</p> <p>3. Car parking and vehicle access points shall incorporate the following design elements:</p> <p>a. Recessed car park entries from the main building facade alignment.</p>	<p>The site does not include site amalgamation.</p>	<p>N/A</p>

Requirement	Comment	Compliance
<p>b. Avoidance of large voids in the facade by providing security doors or decorative grills to car park entry.</p> <p>c. Returning the facade finishes into the car park entry recess for the extent visible from the street.</p> <p>d. Concealing all services, pipes, and ducts.</p>		
<p>1. Car Share</p> <p>1. For properties with more than 25 dwellings, one (1) car share space must be provided per 25 dwellings with each car share space replacing one (1) regular car parking space.</p> <p>2. Where the proposed number of car share spaces exceed the above minimum, Council may consider reduced private parking, where suitable evidence and justification is provided to Council of the benefits to the road network.</p>	<p>No car share is proposed as part of the development as the proposal provides adequate parking.</p>	<p>Yes</p>
<p>2. Sustainability</p> <p>New development with a cost of works equal to or greater than \$5 Million must achieve a minimum 4 Star, Green Star – Design and As Built rating in the Green Building Council of Australia rating system.</p> <p>2. Compliance with another rating tool may be considered by Council, so long as it can be demonstrated this tool:</p> <p>a. Is a holistic third party certifying green building rating system covering at least energy, indoor environmental quality, water, transport and waste:</p> <p>b. Awards ratings following a review by impartial third-party certifying bodies that meet the 'Principles for Inspiring Confidence' outlined in the international standard ISO/IEC 17021.</p>	<p>The proposed development has been designed to meet BCA energy efficiency requirements through the deemed-to-satisfy or Alternative Solutions Approach provisions of the BCA. The National Construction Code (NCC) BCA section J sets minimum energy performance requirements of all new development and covers building fabric and glazing thermal performance, air-conditioning, ventilation, lighting, power, and hot water.</p>	<p>Yes</p>
<p>3. Water Sensitive Urban Design</p> <p>A water sensitive urban design (WSUD) Strategy shall be prepared for all new buildings. The Strategy shall demonstrate compliance with WSUD objectives of this DCP and with Council's Water Management Policy (PL 850). The Strategy must be prepared by a Civil Engineer, who has membership to the Institution of Engineers Australia (NPER-3). The Strategy shall include the following:</p> <p>a. Proposed development – Describe the proposed development at the site, including site boundaries and proposed land uses.</p> <p>b. Catchment analysis plan – Clearly showing the surface type (roof, road, landscape, forest etc.) and the total areas. This must be consistent with</p>	<p>This requirement can be imposed as condition of consent, should the application for worthy of approval.</p>	<p>Yes (subject to condition)</p>

Requirement	Comment	Compliance
<p>the land use nodes within the Model for Urban Stormwater Improvement Conceptualisation (MUSIC) Model.</p> <p>c. Stormwater quality requirements – Demonstrate how Stormwater Quality Requirements of the Water Management Policy will be met, including the location, size and configuration of stormwater treatment measures proposed for the development.</p> <p>d. MUSIC model - Prepared in accordance with the draft NSW MUSIC Modelling Guidelines unless alternative modelling parameters are justified based on local studies. Details of the modelling of those elements, parameters and assumptions used. All MUSIC data files must be provided to Council. Two models are required to be submitted – the existing site, and the proposed development. The modelling should demonstrate a neutral or beneficial effect over the existing scenario.</p> <p>e. Integration with the urban design – Identify how the treatment measures will integrate with the development layout and the surrounding area. Proprietary devices in isolation to WSUD features are unlikely to be approved.</p>		
<p>11 Landscaping</p> <p>1. Where possible, existing trees should be retained, particularly where they are adjacent to the public domain.</p> <p>2. A minimum of 20% of the site area is to be provided as landscaped area, which may be located on balconies, ground, podium and roof top levels or green walls of buildings.</p> <p>3. Facades at the street level may incorporate planting on structures to enhance views from the public domain.</p> <p>4. Where green walls are provided, they must be via a cladding structure with growing medium to facilitate extensive plant growth.</p>	Refer to Landscape referral comments above	No

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

The proposal, as amended, will not result in any impact on threatened species, populations or ecological communities or their habitats.

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN (CPTED)

The proposal, as amended, is consistent with the principles of CPTED.

POLICY CONTROLS

Northern Beaches Section 7.12 Contributions Plan 2019

DA2018/1574 was approved on 24 June 2019. The Northern Beaches Council Contributions Plan 2018 applied to this land and development at the time of determination. Condition 9 of the development consent required the payment of a monetary contribution pursuant to the Northern Beaches Council Contributions Plan 2018.

The Dee Why Town Centre Contributions Plan came into force on 13 July 2019. This contributions plan applies to the development site. Part 6.1 of the Dee Why Contributions Plan stipulates:

This Plan however does not affect development consents applying to land in the Town Centre containing requirements for development to make contributions under Northern Beaches Council Section 94A Plan (or its predecessor Plans)

The modification application must be considered against the contributions plan in force at the time of the original determination, being the Northern Beaches Council Contributions Plan 2018.

The subject application seeks to modify DA2018/1574 to allow an additional 21 apartments. These additional apartments are proposed to be accommodated through significant increases in excavation. The modification application will significantly increase the cost of development which is used to determine the applicable development contribution. No information has been provided with the application for Council to accurately calculate modified cost of works which inform the applicable development contribution in accordance with the Northern Beaches Council Contributions Plan 2018.

The application is not supported, and this issue has been included as reason for refusal.

CONCLUSION

The proposal has been assessed in accordance with Section 4.55(2) and the heads of consideration listed in Section 4.15 of the Environmental Planning & Assessment Act 1979 (as amended).

The site has been inspected and the application assessed having regard to all documentation submitted by the applicant and the provisions of:

- Environmental Planning and Assessment Act 1979
- Environmental Planning and Assessment Regulation 2000
- All relevant and draft Environmental Planning Instruments
- Warringah Local Environment Plan 2011
- Warringah Development Control Plan 2011
- Codes and Policies of Council

In accordance with Part 3 of Schedule 2 of the EP&A Act, the Application is referred to the Sydney North Planning Panel for determination.

The section 4.55(2) application before the Panel seeks to modify Development Consent No. DA2018/1574 as described in this report. The proposed modifications have been assessed as resulting in a development that is not substantially the same development as that originally approved by the SNPP.

The proposed modifications seek internal reconfigurations, adjustment to levels and construction of an additional level on Building A, B and C to accommodate an additional 21 residential apartments (resulting in total of 147 units). In addition, 34 new car spaces and adjustment of basement levels are also proposed under Buildings A, B and C.

The modification seeks to increase the building height to a maximum height of RL+57.38m (ridge of Building A), resulting in a maximum 2.35m over the 13m height control (18% variation). Building B and C exceed the height control (at their maximum ridge line) by 1.60m to 1.95m. (Note: the current approved building already exceeds the maximum height but the volume of building exceeding the height is substantially less).

The proposal (if lodged as a development application instead of an s4.55 application) would not satisfy the required provisions for the variation of a development standard against clause 4.6 of WLEP 2011. Whilst this may not be legally required, it remains an appropriate test to determine whether the additional height to the approved development should be approved.

The assessment of this modification has also found that the proposal is contrary to certain provisions of SEPP 65, specifically in relation to building height, bulk and scale, and landscaping.

The proposal will not result in any adverse amenity or other impacts upon nearby and adjoining development.

The application was the subject of two objections and the matters raised in those submissions have been addressed in this report and in part, warrant the refusal of the application.

Accordingly, it is recommended that modification application be refused for the reasons detailed below.

RECOMMENDATION (REFUSAL)

That the Sydney North Planning Panel, as the consent authority, refuse to grant consent to Modification Application No. Mod2021/0041 for Modification of Development Consent No. DA2018/1574 granted for the construction of a mixed development comprising three residential flat buildings, commercial use of a heritage listed building, car parking, infrastructure and landscaping on land at Lot 11 DP 577062, 23 Fisher Road, Dee Why, for the following reasons:

REASONS FOR REFUSAL

Having regard to section 4.15(1) of the Environmental Planning and Assessment Act 1979 the development application is refused for the following reasons:

1. The proposal does not satisfy the requirements of section 4.55 (2) (a) of the Environmental Planning and Assessment Act 1979, as the development the subject of the application is not substantially the same development as the development for which consent was originally granted.
2. The proposed development does not satisfy section 4.15 (1)(a)(i) of the Environmental Planning and Assessment Act 1979, as it is contrary to the following environmental planning instruments:
 - a) *State Environmental Planning Policy No. 65 – Design Quality of Residential Flat Development* (SEPP 65) as the development fails to satisfy the following design quality principles specified by Schedule 1 of SEPP 65:

- (i) *Principle 1 – Context and neighbourhood* in that the proposed development does not achieve the desired urban form and built form quality envisaged for the area.
 - (ii) *Principle 2 - Built form and scale* as the proposed development is out of scale with the desired future character for the area. The scale, bulk and height of the proposed development exceed that envisaged for the site.
 - (iii) *Principle 5: Landscape* as the additional excavation and extension of basement parking results in further disturbance to natural features of the site and additional tree removal and increases the above slab planting areas
- b) Warringah Local Environmental Plan (WLEP) 2011 as the development fails the following provisions:
- (i) Clause 4.3(1) and (2) as the proposal will further exceed the maximum building height which will result in unreasonable amenity impacts and be incompatible with the character of the locality.
 - (ii) Clause 5.10 in the proposal has not provided sufficient information to demonstrate compliance with the requirement of this Clause (i.e. an amended Heritage Impact Statement has not been provided to address the additional building height).
 - (iii) Clause 7.5 as the proposal does not exhibit design excellence in that it results in unreasonable amenity impacts upon surrounding sites, provides unacceptable bulk and results in environmental impacts.
3. The proposal does not satisfy section 4.15 (1)(a)(iii) of the Environmental Planning and Assessment Act 1979, as the proposed development is contrary to Warringah Development Control Plan 2011, in respect to the following provisions:
- (i) Clause 1.2 Aims of The Plan
 - (ii) Clause D7 Views
 - (iii) Clause D9 Building Bulk
 - (iv) Part G1 Dee Why Town Centre – Clauses 3, 5 and 11
4. The proposal is not considered to be in the public interest for the reasons outlined above contrary to Section 4.15 (1)(e) of the Environmental Planning and Assessment Act, 1979.
5. Insufficient information has been provided with application for Council to accurately calculate the applicable Contributions in accordance with Northern Beaches Section 7.12 Contributions Plan 2019