

## APPLICATION FOR MODIFICATION ASSESSMENT REPORT

<b>Application Number:</b>	Mod2024/0083
<b>Responsible Officer:</b>	Adam Croft
<b>Land to be developed (Address):</b>	Lot CP SP 32072, 812 Pittwater Road DEE WHY NSW 2099 Lot CP SP 32071, 4 Delmar Parade DEE WHY NSW 2099
<b>Proposed Development:</b>	Modification of Development Consent DA2022/0145 granted for Demolition works and construction of a mixed-use development comprising a residential flat building and shop top housing, basement parking, lot consolidation and torrens title subdivision.
<b>Zoning:</b>	Warringah LEP2011 - Land zoned MU1 Mixed Use
<b>Development Permissible:</b>	Yes
<b>Existing Use Rights:</b>	No
<b>Consent Authority:</b>	Northern Beaches Council
<b>Land and Environment Court Action:</b>	No
<b>Owner:</b>	The Owners Of Strata Plan 32071
<b>Applicant:</b>	Landmark Group Australia Pty Ltd

<b>Application Lodged:</b>	21/03/2024
<b>Integrated Development:</b>	No
<b>Designated Development:</b>	No
<b>State Reporting Category:</b>	Refer to Development Application
<b>Notified:</b>	01/04/2024 to 29/04/2024
<b>Advertised:</b>	01/04/2024
<b>Submissions Received:</b>	7
<b>Clause 4.6 Variation:</b>	Nil
<b>Recommendation:</b>	Approval

### PROPOSED DEVELOPMENT IN DETAIL

The proposed Section 4.55(2) application seeks to modify Development Consent DA2022/0145 for the construction of a mixed use development, which was granted by the SNPP on 17 July 2023.

Specifically, the proposed modifications are as follows:

- Reconfiguration of basement levels 1 and 2, including the provision of a 9m setback to the northern extent of both levels (previously nil);
- Introduction of a new basement level 3;

- Amendment of Condition 20 to permit truck movements to and from the site between 8am-9:30am and 4:30pm-6pm; and
- Deletion of Condition 30 which requires that the basement levels are permanently tanked.

No change is proposed to vehicular access, car parking provision, site layout or the above ground built form/appearance of the approved development.

#### Amended Plans

The applicant submitted amended plans on 20 June 2024. The purpose of the amended plans is to clearly depict that no modification of the above-ground commercial and residential component of the development is proposed. No changes to the proposed modification are sought by the amended plans.

#### Submissions and Determination

The modification application is made under Section 4.55(2) of the EP&A Act, but does not meet any of the criteria for determination by the Sydney North Planning Panel as listed in the Sydney District & Regional Planning Panels Operational Procedures.

Council's exhibition of the modification application attracted seven submissions, five of which solely related to the maintenance of pedestrian access via the public pathway leading to Tango Avenue to the south-west of the site. The Northern Beaches Community Participation Plan, at page 16, requires that *"All submissions must be made in writing to Council and must reasonably and relevantly relate to the subject of the application, proposal or project."*

Given that the concerns raised in relation to the public pathway are not relevant to the subject of the application, which is unaffected by the proposed modification, those five submissions will not be counted towards the number of submissions for the purposes of the determination level for this application.

As such, the remaining two submissions relevant to the subject modification do not trigger the requirements for determination by Council's Development Determination Panel.

#### **ASSESSMENT INTRODUCTION**

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

- An assessment report and recommendation has been prepared (the subject of this report) taking into account all relevant provisions of the Environmental Planning and Assessment Act 1979, and the associated regulations;
- A site inspection was conducted and consideration has been given to the impacts of the development upon the subject site and adjoining, surrounding and nearby properties;
- Notification to adjoining and surrounding properties, advertisement (where required) and referral to relevant internal and external bodies in accordance with the Act, Regulations and relevant Development Control Plan;
- A review and consideration of all submissions made by the public and community interest groups in relation to the application;
- A review and consideration of all documentation provided with the application (up to the time of determination);

- A review and consideration of all referral comments provided by the relevant Council Officers, State Government Authorities/Agencies and Federal Government Authorities/Agencies on the proposal.

## SUMMARY OF ASSESSMENT ISSUES

Warringah Development Control Plan - C2 Traffic, Access and Safety  
 Warringah Development Control Plan - C4 Stormwater  
 Warringah Development Control Plan - D2 Private Open Space  
 Warringah Development Control Plan - D6 Access to Sunlight  
 Warringah Development Control Plan - D7 Views  
 Warringah Development Control Plan - D8 Privacy  
 Warringah Development Control Plan - D9 Building Bulk  
 Warringah Development Control Plan - E10 Landslip Risk

## SITE DESCRIPTION

<b>Property Description:</b>	<p>Lot CP SP 32072 , 812 Pittwater Road DEE WHY NSW 2099          Lot CP SP 32071 , 4 Delmar Parade DEE WHY NSW 2099</p>
<b>Detailed Site Description:</b>	<p>The subject site comprises of two allotments legally identified as SP 32071 and SP32072 and known as 4 Delmar Parade and 812 Pittwater Road, Dee Why.</p> <p>The site fall within the mapped Dee Why Town Centre and is zoned B4 Mixed Use pursuant to the WLEP 2011. The site is the southernmost lot within the town centre.</p> <p>The site is irregular in shape with two street frontages, intersected by existing development to the northwest. The site has a 52m wide northern frontage to Delmar Parade and a 20m westerly frontage to Pittwater Road. The site has a north-south depth of 100m and an east-west depth of 130m. Overall the site has an area of 7,790m<sup>2</sup>.</p> <p>The site is currently vacant with the approved development under construction.</p> <p>Topographically the site falls from south to north by approximately 4.5m via a gradual slope, although much of this has been levelled already.</p> <p>Developments surrounding the site vary significantly.</p> <p>To the east land is zoned R2 Low Density Residential and accommodates a battle-axe subdivided allotment with two detached dwelling houses in landscaped settings.</p> <p>To the north is a shop-top housing development known as 822 Pittwater Road which presents as a sheer 9 storey high development with no setback to the southern boundary.</p>

To the north-west there are two sites, one being 2 Delmar Parade which comprises of a recently completed 7 storey shop top housing development. The other is 816 Pittwater Road, commonly known as the Avis site. The Avis site accommodates a small single storey building and at-grade car parking which currently operates as a car hire business.

South of the site is the Stony Range Flora Reserve which is a locally listed heritage Conservation Area.

The wider surrounding area consists of residential properties to the east and west, and the town centre to the north running centrally along the Pittwater Road corridor. In the past decade the town centre has seen significant development to both the road, public lands and buildings.

Map:



## SITE HISTORY

A review of aerial photography reveals that the site has accommodated buildings as early as 1943, and appears to have been used for commercial/industrial purposes from the mid 1960's. The buildings on the site prior to the commencement of the subject development were constructed in around 1985 and had not materially changed since that time. A search of Council's records has revealed the following relevant history:

**PLM2020/0226** - Construction of a mixed use development (September 2020).

**DA2022/0145** - Demolition works and construction of a mixed-use development comprising a residential flat building and shop top housing, basement parking, lot consolidation and torrens title subdivision - Approved by the Sydney North Planning Panel (SNPP) on 17 July 2023.

**Mod2023/0567 (LEC 2023/461575)** - Modification of Development Consent No. DA2022/0145 granted

for Demolition works and construction of a mixed-use development comprising a residential flat building and shop top housing, basement parking, lot consolidation and torrens title subdivision.

- This application is the first modification submitted in relation to DA2022/0145 and was lodged on 27 October 2023.
- On 20 December 2023, the applicant commenced Class 1 appeal proceedings against Council's deemed refusal of the application.
- The LEC appeal was listed for a Section 34 Conciliation Conference which was held on 12 June 2024.
- Modification Application No. Mod2023/0567 remains undetermined at the time of writing.

**Mod2024/0083** (Subject Application) - Modification of Development Consent No. DA2022/0145 granted for Demolition works and construction of a mixed-use development comprising a residential flat building and shop top housing, basement parking, lot consolidation and torrens title subdivision - Lodged 21 march 2024.

**ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)**

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

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 DA2022/0145, 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	The consent authority can be satisfied that the development to which the consent as modified relates is substantially the same as the development for which the consent was originally granted under DA2022/0145 for the following reasons:



<b>Section 4.55 (2) - Other Modifications</b>	<b>Comments</b>
<p>consent was originally granted and before that consent as originally granted was modified (if at all), and</p>	<ul style="list-style-type: none"> <li>• The proposed changes are limited to the depth, dimensions and configuration of basement car parking levels, including an additional basement level.</li> <li>• There are no proposed changes to the approved vehicular access or car parking numbers.</li> <li>• There are no proposed changes to the approved site layout, density, land uses or the above-ground built form and appearance of the development.</li> </ul>
<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>General Terms of Approval have been provided by WaterNSW in relation to the modified development.</p>
<p>(c) it has notified the application in accordance with:</p> <p>(i) the regulations, if the regulations so require,</p> <p>or</p> <p>(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</p>	<p>The application has been publicly exhibited in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2021, and the Northern Beaches Community Participation Plan.</p>
<p>(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, as the case may be.</p>	<p>See discussion on “Notification &amp; Submissions Received” in this report.</p>

## Section 4.15 Assessment

In accordance with Section 4.55 (3) of the Environmental Planning and Assessment Act 1979, in determining an modification application made under Section 4.55 (2) 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	There are no current draft environmental planning instruments.
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 2021 (EP&A Regulation 2021)	<p><u>Part 4, Division 2</u> of the EP&amp;A Regulation 2021 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent.</p> <p><u>Clauses 36 and 94</u> of the EP&amp;A Regulation 2021 allow Council to request additional information. Additional information was requested in the form of amended plans that demonstrate no change is proposed to the above-ground component of the approved development, further geotechnical and hydrogeological assessment and a design verification certificate.</p> <p><u>Clause 61</u> of the EP&amp;A Regulation 2021 requires the consent authority to consider AS 2601 - 2001: The Demolition of Structures. This matter has been addressed via a condition of consent.</p> <p><u>Clauses 62 and/or 64</u> of the EP&amp;A Regulation 2021 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This matter has been addressed via a condition of consent.</p> <p><u>Clause 69</u> of the EP&amp;A Regulation 2021 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a</p>

Section 4.15 'Matters for Consideration'	Comments
	<p>condition of consent.</p> <p><u>Clause 69</u> of the EP&amp;A Regulation 2021 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.</p> <p><u>Clause 102</u> of the EP&amp;A Regulation 2021 requires the submission of a design verification certificate from the building designer in relation to the modification application. This documentation has been submitted.</p>
<p>Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality</p>	<p>(i) <b>Environmental Impact</b> The environmental impacts of the proposed development on the natural and built environment are addressed under the Warringah Development Control Plan section in this report.</p> <p>(ii) <b>Social Impact</b> The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) <b>Economic Impact</b> The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.</p>
<p>Section 4.15 (1) (c) – the suitability of the site for the development</p>	<p>The site is considered suitable for the proposed development.</p>
<p>Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs</p>	<p>See discussion on “Notification &amp; Submissions Received” in this report.</p>
<p>Section 4.15 (1) (e) – the public interest</p>	<p>No matters have arisen in this assessment that would justify the refusal of the application in the public interest.</p>

## EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

## BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

## NOTIFICATION & SUBMISSIONS RECEIVED

The subject application has been publicly exhibited from 01/04/2024 to 29/04/2024 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2021 and the Community Participation Plan.

As a result of the public exhibition process council is in receipt of 7 submission/s from:



Name:	Address:
Stony Range Regional Botanic Garden Community Committee	29 Romford Road FRENCHS FOREST NSW 2086
Mr Raymond Ivor Purnell	609 / 2 Delmar Parade DEE WHY NSW 2099
Ms Elana Christine Allen	38 Tango Avenue DEE WHY NSW 2099
Mr Kenneth Charles Davis	58 Tango Avenue DEE WHY NSW 2099
Siping Weng	46 Tango Avenue DEE WHY NSW 2099
Caroline Thomson	6 Wattle Avenue FAIRLIGHT NSW 2094
Mrs Nicole Naunton	32 Tango Avenue DEE WHY NSW 2099

The issues raised in the submissions are addressed as follows:

- **Use of Stony Range Reserve car park**

The submissions raised concerns that the proposed amendment of Condition 20 will impact the use of the Stony Range car park. The submission suggested an alternate amendment of Condition 20 to include the requirement that *"To assist the operation of Stony Range Regional Botanic Garden, truck movements will be restricted on Tuesdays from 8.00am to 1.00pm."*

Comment:

The current Construction Traffic Management Plan (CTMP) approved by Council on 1 May 2024 prohibits site access through the Stony Range car parking area on Tuesdays between 7am and 1pm, after 1:00pm on Saturdays and during approved events in the adjoining gardens. Condition 20 is amended to restrict access to the site through the Stony Range car park on Tuesdays between 7am and 1pm, consistent with the conditions of the current CTMP and the intent of the submission.

- **Natural environment impacts**

The submissions raised concerns that the proposed development would cause adverse drainage and overshadowing impacts to Stony Range Reserve and exacerbate flooding impacts.

Comment:

The proposed modification includes the reconfiguration of the approved basement levels and the inclusion of a third (partial) basement level. The new basement level maintains the setback of the approved levels and only extends for part of the length of the interface with the public carpark and the reserve. The proposal will not cause any additional overshadowing of Stony Range Reserve. The proposal was referred to a number of Council's Natural Environment and Climate Change sections, including Development Engineering, Water Management, Flooding and Bushland and Biodiversity. On assessment, no objections were raised by these referral sections in relation to the proposed changes.

- **Various concerns**

The submissions raised various concerns relating to ongoing traffic impacts, illegal dumping of goods and rubbish and noise from surrounding residents resulting from the overdevelopment of Delmar Parade. Concerns were also raised regarding an increase in the size of the approved development and impacts upon public transport and infrastructure.

Comment:

The subject modification relates only to the basement levels of the development and does not involve any increase in scale, density or trip generation. As such, these matters are not relevant to the subject application.

- **Public path & stair**

The submissions raised concerns regarding public access from Tango Avenue to the Dee Why Town Centre. A request was also made for the provision of a new right of way connecting Tango Avenue to Delmar Parade.

Comment:

A public path and stair exists adjacent to the southern boundary of the subject site, connecting Tango Avenue to Pittwater Road. Concern is raised that the development seeks to demolish or remove access to this path and stair. The submissions also suggest that prior to the commencement of building work on the site, numerous residents utilised the car park on the subject site to walk between Tango Avenue and Delmar Parade. There is no record of a previous or current legal right of access through the subject site between the public path and Delmar Parade. Further, the subject modification relates only to the basement levels of the proposed development and does not involve any works on public land. As such, the five submissions in relation to these matters are noted, but are not relevant to the subject application.

## REFERRALS

Internal Referral Body	Comments
Building Assessment - Fire and Disability upgrades	<p><b>Supported without conditions.</b></p> <p>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.</p> <p><i><u>Note:</u> The BCA Compliance Statement submitted with the application identifies egress travel distances within the basement 03 level as requiring a Performance Solution. Issues such as these may be determined at Construction Certificate stage.</i></p>

Internal Referral Body	Comments
Environmental Health (Contaminated Lands)	<p><b>Supported without conditions.</b></p> <p><b>General Comments</b></p> <p>This application is seeking consent for modifications to approved development for a mixed use development comprising three commercial tenancies and 219 apartments over 2 basement levels, lot consolidation and subdivision.</p> <p>Part of the modifications include an additional part basement level 3. A Detailed Site Investigation prepared by Geosyntec Consultants dated 4 May 2022, reference 21325 Final R1 DSI has been submitted as part of this application.</p> <p>The reported conducted groundwater and soil sampling and determined the site is suitable for the proposed high-density residential land use, associated landscaping and bowling greens, noting that recommendations are undertaken.</p> <p>Original conditions for land contamination under DA2022/0145 remain applicable and no additional conditions are required.</p> <p>Environmental Health recommends approval.</p>
Landscape Officer	<p><b>Supported without conditions.</b></p> <p>The plans and reports indicate that no additional landscape features are impacted by the proposed works.</p> <p>No objections are raised with regard to landscape issues.</p>
NECC (Bushland and Biodiversity)	<p><b>Supported without conditions.</b></p> <p>The comments in this referral relate to the following applicable controls and provisions:</p> <ul style="list-style-type: none"> <li>• WDCP Clause E2 Prescribed Vegetation</li> <li>• WDCP Clause E6 Retaining unique environmental features</li> </ul> <p>The proposed modifications would take place in previously disturbed areas of the site and are unlikely to impact upon native flora and fauna.</p> <p>The development is designed, sited and will be managed to avoid any significant adverse environmental impact.</p>
NECC (Development Engineering)	<p><b>Supported without conditions.</b></p> <p><b>Updated Comments 13/6/2024</b></p> <p>I have reviewed the supporting hydrogeological letter from Morrow</p>

Internal Referral Body	Comments
	<p>Geotechnical, and I am satisfied that they have addressed my previous concerns re the permanent pumping of groundwater and the additional basement level of the development in accordance with the principles set down in the Sydney Coastal Councils Groundwater Management manual.</p> <p>No objections to the modification.</p> <p><b>Updated Comments 13/5/24</b></p> <p>The recently submitted geotechnical and hydro geological reports as prepared by Morrow have not addressed the previous requested development engineering required further information ie The Impacts of the extended basement construction on the existing groundwater regime and whether the requirement for the permanent tanking of the basement can be removed.</p> <p>An amended geotechnical report is required to address Sydney Coastal Councils Group ground water management handbook Section 5.6 requirements :</p> <p><i>The use of sump and pump systems should only be considered where minor or intermittent seepages are encountered and it is impractical to divert these flows around the structure. Sump and pump systems should only be considered suitable for use in the sandstone areas of the SCCG region, where intermittent (non-continuous) pumping may be sufficient to manage the seepage volumes encountered. They are not suitable for the coastal sand bed areas due to the permeability of these aquifers and the need for generally continuous or semi-continuous operation of any pumps for the life of the development (hence becoming unsustainable development as defined by DNR). Even in the sandstone areas, circumstances may preclude the use of sump and pump systems, particularly where valleys or depressions focus significant quantities or flows of perched groundwater toward a site.</i></p> <p>The modification is not supported.</p> <p><b>Previous comments</b></p> <p>The proposed modification has been reviewed and cannot be supported as the Hydrogeology report (prepared by Morrow) , does not address the requirements of the Sydney Coastal Councils Group ground water management handbook (2006) in regard to impacts of the basement construction on the existing of the water table within the site.</p> <p>Section 5.6 of the manual (construction and development) states :</p> <p><i>The use of sump and pump systems should only be considered where minor or intermittent seepages are encountered and it is impractical to divert these flows around the structure. Sump and pump systems should only be considered suitable for use in the sandstone areas of the SCCG region, where intermittent (non-continuous) pumping may be sufficient to manage the seepage</i></p>

Internal Referral Body	Comments			
	<p><i>volumes encountered. They are not suitable for the coastal sand bed areas due to the permeability of these aquifers and the need for generally continuous or semi-continuous operation of any pumps for the life of the development (hence becoming unsustainable development as defined by DNR). Even in the sandstone areas, circumstances may preclude the use of sump and pump systems, particularly where valleys or depressions focus significant quantities or flows of perched groundwater toward a site.</i></p> <p>An amended geotechnical report is required to address the above Sydney Coastal Councils Group ground water management handbook requirements.</p>			
NECC (Flooding)	<p><b>Supported without conditions.</b></p> <p>The proposal is for modifications to DA2022/0145 and include a reduction of the approved basement levels 1 and 2, the introduction of an additional a basement level and amendments to non flood related conditions of consent.</p> <p>The proposed modifications will not have any impact in relation to flooding matters.</p> <p>There are no flood related objections subject to the retention of the flood related conditions of consent from DA2022/0145.</p>			
NECC (Water Management)	<p><b>Supported without conditions.</b></p> <p>The proposal is for modifications to DA2022/0145 and include a reduction of the approved basement levels 1 and 2, the introduction of an additional a basement level and amendments.</p> <p>The proposed modification has no impact on the approved water quality management system. On assessment the modification is acceptable.</p>			
Parks, reserves, beaches, foreshore	<p><b>Supported without conditions.</b></p> <p>The application is for modification to development consent DA2022/0415, as described in reports and as illustrated on plans, for one additional basement level and amendment to condition 20 and deletion of condition 30.</p> <p>Parks Reserves and Foreshores Referral raise no concerns.</p>			
Strategic and Place Planning (Heritage Officer)	<p><b>Supported without conditions.</b></p> <table border="1" data-bbox="529 1928 1439 2116"> <thead> <tr> <th data-bbox="529 1928 1439 1966">HERITAGE COMMENTS</th> </tr> </thead> <tbody> <tr> <td data-bbox="529 1966 1439 2004">Discussion of reason for referral</td> </tr> <tr> <td data-bbox="529 2004 1439 2116">The proposal has been referred to Heritage as the subject site is located within close proximity to a Heritage Conservation Area:</td> </tr> </tbody> </table>	HERITAGE COMMENTS	Discussion of reason for referral	The proposal has been referred to Heritage as the subject site is located within close proximity to a Heritage Conservation Area:
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Internal Referral Body	Comments	
	<b>C6 - Stony Range Flora Reserve - 802 Pittwater Road, Dee Why</b>	
	<b>Details of heritage items affected</b>	
	Details of the conservation area as contained within the Warringah Heritage Inventory are:	
	<p><b>C6 - Stony Range Flora Reserve</b>  <u>Statement of significance</u></p>	
	<p>The Stony Range Flora and Fauna Reserve has a high degree of local significance for growing a wide range of native flora, mostly endemic to the Sydney Region, and for contributing to community awareness of them. It is a skillfully and aesthetically designed, laid out and planted cultural landscape which has a combination of scientific, research and educational functions which are much valued by the community, both local and regional.</p>	
	<p><u>Physical description</u></p> <p>The Reserve currently includes 3.6425 hectares of fenced bushland over an area of Hawkesbury sandstone soil formation and contains a caretaker's cottage, meeting hall, shade houses, nursery compound and garage. Stone and gravel serpentine paths lead through the site which rises approximately 30 metres from its low to high points. When the Reserve was first notified in 1957, the area along the main creek was badly infested with exotics, lantana and privet, and these were eradicated over several years. Since that time the area has been developed as a rainforest, planted with Cedar, Coachwood, Flame Tree, Hoop Pine, Lilly Pilly, ferns and palms. A specific area of rainforest was planted in 1988 with Proteaceae specimens donated by the Sydney Royal Botanic Gardens. A total of three small watercourses intersect the Reserve. In 1977 the upper part of the Reserve was deliberately burnt, which resulted in impressive regenerative results. In 1986 a section of the Reserve was planted with all 86 species of Proteaceae which grow in the Sydney region. Subsequently, other specialist planting areas have been established in the Reserve. A picnic area was developed on the northern edge of the lower section of the Reserve in 2001, added to the site from a portion of the carpark on its northern side. It contains tables and two free electric barbecue plates. One small section of woodland vegetation in the upper area could be classified as being in its natural state and this is reputedly maintained in this condition. Prior to development most of the larger trees had been cut down and a serious fire in 1936 also caused major ecological changes to the vegetation.</p>	
	<b>Other relevant heritage listings</b>	
SEPP (Biodiversity and Conservation) 2021	No	
Australian Heritage Register	No	

Internal Referral Body	Comments		
	NSW State Heritage Register	No	
	National Trust of Aust (NSW) Register	No	
	RAIA Register of 20th Century Buildings of Significance	No	
	Other	No	
<b>Consideration of Application</b>			
<p>The proposal seeks consent to modify the consent for Development Application DA2022/0145 for Demolition works and construction of a mixed-use development comprising a residential flat building and shop top housing, basement parking, lot consolidation and torrens title subdivision. The proposed modifications are mainly confined to the basement area of the development.</p> <p>Given the proposed modifications are mainly within the approved envelope with no change to the approved mass and scale, it is considered that the proposal will not have an additional impact upon the significance of the HCA.</p> <p>Therefore, no objections are raised on heritage grounds and no conditions required.</p> <p><u>Consider against the provisions of CL5.10 of WLEP 2011.</u>  Is a Conservation Management Plan (CMP) Required? No  Has a CMP been provided? No  Is a Heritage Impact Statement required? No  Has a Heritage Impact Statement been provided? No</p>			
Strategic and Place Planning (Urban Design)	<p><b>Supported without conditions.</b></p> <p>This advice is provided as an internal referral from the Urban Design Unit to the Development Assessment Officer for consideration and coordination with the overall assessment.</p> <p>The application seeks consent to the following modifications to the basement area of the development:</p> <ul style="list-style-type: none"> <li>• introduction of a setback from Delmar Parade boundary to facilitate the construction of the basements.</li> <li>• Introduction of additional part basement level 3 by reducing the extent of basement levels 1 and 2 as the basement construction involves deep piling to depths of 12-18m to reach rock.</li> <li>• There is no change to the previously approved car parking provisions on the site.</li> </ul>		

Internal Referral Body	Comments
	<p>Urban Design raises no objection to the proposed development.</p> <p><b>Please note:</b> Regarding any view impacts and any impacts on solar amenity and overshadowing these matters will be dealt with under the evaluation of Council Planning Officer. Any impacts of non-compliances regarding heritage will be dealt with under the evaluation of Council Heritage Officer, and any Landscape non-compliances will be dealt with under the evaluation of Council Landscape Officer.</p>
Strategic and Place Planning (Development Contributions)	<p><b>Supported without conditions.</b></p> <p>This modification application is not seeking a change to condition 7 of the Development consent in regard to payment of development contributions under the Dee Why Town Centre 7.11 Contributions Plan.</p> <p>In regard to development contributions and the application of the adopted Dee Why Town Centre 7.11 Contributions Plan, condition 7 on the development consent remains and this modification does not required further assessment against the adopted Contributions Plan</p>
Traffic Engineer	<p><b>Supported without conditions.</b></p> <p>The Modification seeks a change to condition 20 such that the restriction upon truck movements in the AM and PM peak times be lifted. The lifting of this restriction is not opposed noting that truck movements must still be agreed with Council's Traffic Engineer and subject to separate approval via the CTMP approval process.</p> <p>It is also noted that condition No.1 is to be amended and this is also unopposed noting that the development yield and parking numbers remain unchanged.</p> <p>There are no traffic implications related to the proposed amendment to condition 30 which is also unopposed in traffic terms.</p>
Waste Officer	<p><b>Supported without conditions.</b></p> <p>Waste management Assessment</p> <p>Existing waste conditions of consent applied to DA2022/0145 to be retained unchanged for Mod2024/0083.</p>

External Referral Body	Comments
Ausgrid - SEPP (Transport and Infrastructure) 2021, s2.48	<p><b>Supported with conditions.</b></p> <p>The proposal was referred to Ausgrid who provided a response</p>

External Referral Body	Comments
	stating that the proposal is acceptable subject to compliance with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice. These recommendations will be included as a condition of consent.
Roads and Maritime Service - SEPP (Transport and Infrastructure) 2021, s2.122 - Traffic generating development	<p><b>Supported with conditions.</b></p> <p>The modification application was referred to TfNSW under Clause 109 of the <i>EP&amp;A Regulation 2021</i>, with the following response provided:</p> <p><i>"Reference is made to Council's referral dated 28 March 2024, regarding abovementioned Modification Application (Mod) which was referred to Transport for NSW (TfNSW) for comment in accordance with clause 109 of the Environmental Planning and Assessment Regulations 2021.</i></p> <p><i>TfNSW has reviewed the submitted Mod DA and recommends that the following requirements are included in any modified Development Consent"</i></p> <p>The requirements listed in the TfNSW referral response are incorporated into the recommended conditions of consent.</p>
Nominated Integrated Development - WaterNSW - Water Management Act 2000, s89 - Water use approval to use water for a particular purpose at a particular location	<p><b>Supported with conditions.</b></p> <p>The modification application was referred to Water NSW under the <i>Water Management Act 2000</i>, with the following response provided:</p> <p><i>"Please find attached the WaterNSW General Terms of Approval (GTA) for part of the proposed development requiring a Water Supply Work approval under the Water Management Act 2000 (WM Act), as detailed in the subject application."</i></p> <p>The requirements of the GTAs are incorporated into the recommended conditions of consent.</p>

### ENVIRONMENTAL PLANNING INSTRUMENTS (EPIs)\*

All, Environmental Planning Instruments (SEPPs 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 and LEPs), Development Controls Plans and Council Policies have been considered in the assessment, many provisions contained within the document are not relevant or are enacting, definitions and operational provisions which the proposal is considered to be acceptable against.

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

### State Environmental Planning Policies (SEPPs) and State Regional Environmental Plans (SREPs)

## **SEPP (Housing) 2021**

### **Application of Chapter**

Clause 144 of State Environmental Planning Policy Housing 2021 (SEPP Housing) stipulates that:

(1) This chapter applies to development only if:

(a) the development consists of:

- (i) the erection of a new building,
- (ii) the substantial redevelopment or the substantial refurbishment of an existing building, or
- (iii) the conversion of an existing building, and

(b) the building concerned is at least 3 or more storeys, not including underground car parking storeys, and

(c) the building contains at least 4 dwellings.

The Assessment Report prepared with respect to the original development application included a detailed assessment of the development against the relevant provisions of SEPP 65 (now Chapter 4 of SEPP Housing) and the accompanying ADG. The modifications sought under this modification do not alter the built form or amenity outcomes achieved by the approved development and do not warrant re-assessment against Chapter 4 of SEPP Housing or the ADG.

## **SEPP (Transport and Infrastructure) 2021**

### Ausgrid

Section 2.48 of Chapter 2 requires the Consent Authority to consider any development application (or an application for modification of consent) for any development carried out:

- within or immediately adjacent to an easement for electricity purposes (whether or not the electricity infrastructure exists).
- immediately adjacent to an electricity substation.
- within 5.0m of an overhead power line.
- includes installation of a swimming pool any part of which is: within 30m of a structure supporting an overhead electricity transmission line and/or within 5.0m of an overhead electricity power line.

### Comment:

The proposal was referred to Ausgrid who raised no objections, subject to conditions which have been included in the recommendation of this report.

### Transport for NSW (TfNSW)

The proposed development was referred to TfNSW under Clause 109 of the *EP&A Regulation 2021*. TfNSW raised no objection to the proposed modification subject to the requirements listed in the referral response, which are incorporated into the recommended conditions of consent.



## SEPP (Resilience and Hazards) 2021

### Chapter 4 – Remediation of Land

Sub-section 4.6 (1)(a) of Chapter 4 requires the Consent Authority to consider whether land is contaminated.

Sub-section 4.6(1)(b) stipulates that *"if the land is contaminated, it [Council] is satisfied that the land is suitable in its contaminated state (or will be suitable, after remediation) for the purpose for which the development is proposed to be carried out"*.

Sub-section 4.6 (1)(c) stipulates that *"if the land requires remediation to be made suitable for the purpose for which the development is proposed to be carried out, it is satisfied that the land will be remediated before the land is used for that purpose"*.

The assessment of the original development application is considered to have appropriately addressed the potential contaminants existing on the site. The assessment concluded that Council was satisfied that the land could be made suitable for the proposed use and the recommendations of the preliminary and detailed site investigation reports were incorporated into the conditions of the consent.

### **Warringah Local Environmental Plan 2011**

Is the development permissible?	Yes
After consideration of the merits of the proposal, is the development consistent with:	
aims of the LEP?	Yes
zone objectives of the LEP?	Yes

### Principal Development Standards

The proposed amendments to the basement do not alter the approved building height, floor space ratio or podium heights of the approved development. Accordingly, there are no development standards within the WLEP to consider as part of this assessment.

### Compliance Assessment

Clause	Compliance with Requirements
5.21 Flood planning	Yes
6.2 Earthworks	Yes
6.4 Development on sloping land	Yes
7.3 Objectives for development within Dee Why Town Centre	Yes
7.4 Development must be consistent with objectives for development and design excellence	Yes
7.5 Design excellence within Dee Why Town Centre	Yes
7.13 Mobility, traffic management and parking	Yes

### **Warringah Development Control Plan**

### Built Form Controls

There are no built form controls within the WDCP to consider as part of this assessment.

### Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
C2 Traffic, Access and Safety	Yes	Yes
C3 Parking Facilities	Yes	Yes
C4 Stormwater	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
C9 Waste Management	Yes	Yes
D2 Private Open Space	Yes	Yes
D3 Noise	Yes	Yes
D6 Access to Sunlight	Yes	Yes
D7 Views	Yes	Yes
D8 Privacy	Yes	Yes
D9 Building Bulk	Yes	Yes
D14 Site Facilities	Yes	Yes
D20 Safety and Security	Yes	Yes
D22 Conservation of Energy and Water	Yes	Yes
E1 Preservation of Trees or Bushland Vegetation	Yes	Yes
E2 Prescribed Vegetation	Yes	Yes
E6 Retaining unique environmental features	Yes	Yes
E10 Landslip Risk	Yes	Yes
E11 Flood Prone Land	Yes	Yes

### Detailed Assessment

#### **C2 Traffic, Access and Safety**

##### Proposed Amendment of Condition 20

Condition 20 required the approval of a Construction Traffic Management Plan (CTMP) by Council and includes a restriction on truck movements to and from the site between the hours of 8:00am-9:30am and 4:30pm-6:00pm. The component of the condition proposed to be deleted reads as follows:

*"Due to heavy traffic congestion throughout the town centre, truck movements will be restricted during the major commuter peak times being 8.00-9.30am and 4.30-6.00pm."*

Council's Traffic Engineer raised no objection to the deletion of this requirement given that all truck movements be agreed by Council. For certainty, the restriction in the current approved CTMP

prohibiting site access through the Stony Range car park on Tuesdays between 7am and 1pm is incorporated into the amended Condition 20. It is noted that the remainder of Condition 20 is proposed to be retained.

#### Proposed Amendment of Basement Car Parking

Council's Traffic Engineer raised no objection to the proposed amendment of the basement levels, noting that the development yield and car parking provision remain unchanged.

#### **C4 Stormwater**

##### Proposed Deletion of Condition 30

Condition 30 required the permanent tanking of the basement area and a bore licence from the NSW Office of Environment and Heritage for any temporary dewatering works. The proposal seeks the deletion of Condition 30 in full, which reads as follows:

*"The basement area is to be permanently tanked. The Applicant is to submit structural details of the tanking, prepared by a suitably qualified Engineer. Where temporary dewatering works are required on the development site during construction, the developer/applicant must apply for and obtain a bore license from the NSW Office of Environment and Heritage. The bore license must be obtained prior to commencement of dewatering works. All requirements of the NSW Office of Water are to be complied with and a copy of the approval must be submitted to the Certifying Authority. Details demonstrating compliance are to be submitted to the Certifying Authority prior to the issue of the Construction Certificate.*

*Reason: To prevent ingress of sub-surface flows into the basement area and to comply with State Government Requirements."*

Based on the submitted hydrogeological report prepared by Morrow Geotechnical, Council's Development Engineer raised no objection to the deletion of Condition 30.

#### **D2 Private Open Space**

The proposed modification relates to the basement levels and does not alter the residential component of the approved development.

#### **D6 Access to Sunlight**

The proposed modification relates to the basement levels and will not cause any additional overshadowing impacts relative to the approved development.

#### **D7 Views**

The proposed modification relates to the basement levels and will not alter the view sharing outcomes relative to the approved development.

#### **D8 Privacy**

The proposed modification relates to the basement levels and will not alter the privacy outcomes relative to the approved development.

#### **D9 Building Bulk**

The proposed modification relates to the basement levels and will not alter the visual bulk of the approved development.

### **E10 Landslip Risk**

An updated geotechnical investigation report is submitted with the application and is incorporated into the recommended conditions of consent.

### **THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES**

The proposal will not significantly affect threatened species, populations or ecological communities, or their habitats.

### **CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN**

The proposal is consistent with the principles of Crime Prevention Through Environmental Design.

### **CONCLUSION**

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

- Environmental Planning and Assessment Act 1979;
- Environmental Planning and Assessment Regulation 2021;
- All relevant and draft Environmental Planning Instruments;
- Warringah Local Environment Plan;
- Warringah Development Control Plan; and
- Codes and Policies of Council.

This assessment has taken into consideration the submitted plans, Statement of Environmental Effects, all other documentation supporting the application and public submissions, and does not result in any unreasonable impacts on surrounding, adjoining, adjacent and nearby properties subject to the conditions contained within the recommendation.

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

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

It is considered that the proposed development satisfies the appropriate controls and that all processes and assessments have been satisfactorily addressed.

### **RECOMMENDATION**

THAT Council as the consent authority grant approval to Modification Application No. Mod2024/0083 for Modification of Development Consent DA2022/0145 granted for Demolition works and construction of a mixed-use development comprising a residential flat building and shop top housing, basement parking, lot consolidation and torrens title subdivision. on land at Lot CP SP 32072,812 Pittwater Road, DEE WHY, Lot CP SP 32071,4 Delmar Parade, DEE WHY, subject to the conditions printed below:

## Modification Summary

The development consent is modified as follows:

### MODIFICATION SUMMARY TABLE

Application Number	Determination Date	Modification description
PAN 414798 Mod2024/0083	The date of this notice of determination	Modification of Development Consent DA2022/0145 granted for Demolition works and construction of a mixed-use development comprising a residential flat building and shop top housing, basement parking, lot consolidation and torrens title subdivision.  Add Condition 1A Add Condition 2A Modify Condition 20 Delete Condition 30

### Modified conditions

**A. Add Condition No. 1A. Modification of Consent - Approved Plans and supporting documentation, to read as follows:**

#### **1A. Modification of Consent - Approved Plans and supporting documentation**

Development must be carried out in accordance with the following approved plans (stamped by Council) and supporting documentation, except where the conditions of this consent expressly require otherwise.

Approved Plans				
Plan Number	Revision Number	Plan Title	Drawn By	Date of Plan
TP00.07	E	Bulk Excavation Diagram	Rothe Lowman	16 January 2024
TP01.00	A	Basement 3	Rothe Lowman	16 January 2024
TP01.01	F	Basement 2	Rothe Lowman	16 January 2024
TP01.02	F	Basement 1	Rothe Lowman	16 January 2024
TP03.01	E	Sections - 1, 2 & 3	Rothe Lowman	19 June 2024
TP03.02	E	Sections - 4, 5 & 6	Rothe Lowman	19 June 2024



TP06.21	E	Storage Schedule	Rothe Lowman	16 January 2024
-	E	Subdivision Plan - Basement 3 & Below	Christopher Thomas Norton	7 February 2024
-	E	Subdivision Plan - Basement 2	Christopher Thomas Norton	7 February 2024
-	E	Subdivision Plan - Basement 1	Christopher Thomas Norton	7 February 2024

Approved Reports and Documentation			
Document Title	Version Number	Prepared By	Date of Document
Site Hydrogeology Report	Rev 1	Morrow Geotechnics	2 May 2024
Dewatering Management Plan	Rev 1	Morrow Geotechnics	2 May 2024
Geotechnical Investigation Report	Rev 3	Morrow Geotechnics	2 May 2024
Construction Traffic Management Plan	V06	The Transport Planning Partnership	3 May 2024
Site Waste Management Report	J	Senica Consultancy Group	23 February 2024

In the event of any inconsistency between the approved plans, reports and documentation, the approved plans prevail.

In the event of any inconsistency with the approved plans and a condition of this consent, the condition prevails.

Reason: To ensure all parties are aware of the approved plans and supporting documentation that applies to the development.

**B. Add Condition No. 2A. Compliance with Other Department, Authority or Service Requirements to read as follows:**

**2A. Compliance with Other Department, Authority or Service Requirements**

The development must be carried out in compliance with all recommendations and requirements, excluding general advice, within the following:

Other Department, Authority or Service	EDMS Reference	Dated
Ausgrid	Ausgrid Referral Response	29 April 2024
Transport for NSW	TfNSW Referral Response	22 April 2024
WaterNSW	WaterNSW Referral Response	14 June 2024

(NOTE: For a copy of the above referenced document/s, please see Application Tracking on Council's

website [www.northernbeaches.nsw.gov.au](http://www.northernbeaches.nsw.gov.au))

Reason: To ensure the work is carried out in accordance with the determination and the statutory requirements of other departments, authorities or bodies.

**C. Modify Condition No. 20. Construction Traffic Management Plan to read as follows:**

**20. Construction Traffic Management Plan**

As a result of the site constraints, limited vehicle access and parking, a Construction Traffic Management Plan (CTMP) and report shall be prepared by an RMS accredited person and submitted to and approved by the Northern Beaches Council Traffic Team prior to issue of any Construction Certificate.

No access to the site through the Stony Range car park area is permitted on Tuesdays between 7am and 1pm. Truck movements must be agreed with Council's Traffic Engineer prior to submission of the CTMP.

The CTMP must address following:

- The proposed phases of construction works on the site, and the expected duration of each construction phase
- The proposed order in which works on the site will be undertaken, and the method statements on how various stages of construction will be undertaken
- Make provision for all construction materials to be stored on site, at all times
- The proposed areas within the site to be used for the storage of excavated materials, construction materials and waste containers during the construction period
- The proposed method of access to and egress from the site for construction vehicles, including access routes and truck routes through the Council area and the location and type of temporary vehicular crossing for the purpose of minimising traffic congestion and noise in the area, with no access across public parks or reserves being allowed
- The proposed method of loading and unloading excavation and construction machinery, excavation and building materials, formwork and the erection of any part of the structure within the site. Wherever possible mobile cranes should be located wholly within the site
- Make provision for parking onsite. All Staff and Contractors are to use the basement parking once available
- Temporary truck standing/ queuing locations in a public roadway/ domain in the vicinity of the site are not permitted unless approved by Council prior
- Include a Traffic Control Plan prepared by a person with suitable RMS accreditation for any activities involving the management of vehicle and pedestrian safety
- The proposed manner in which adjoining property owners will be kept advised of the timeframes for completion of each phase of development/construction process. It must also specify that a minimum Fourteen (14) days notification must be provided to adjoining property owners prior to the implementation of any temporary traffic control measure
- Include a site plan showing the location of any site sheds, location of requested Work Zones, anticipated use of cranes and concrete pumps, structures proposed on the footpath areas (hoardings, scaffolding or shoring) and any tree protection zones around Council street trees
- Take into consideration the combined construction activities of other development in the surrounding area. To this end, the consultant preparing the CTMP must engage and consult with developers undertaking major development works within a 250m radius of the subject site to ensure that appropriate measures are in place to prevent the combined impact of construction activities, such as (but not limited to) concrete pours, crane lifts and dump truck routes. These communications must be documented and submitted to Council prior to work commencing on site

- The proposed method/device to remove loose material from all vehicles and/or machinery before entering the road reserve, any run-off from the washing down of vehicles shall be directed to the sediment control system within the site
- Specify that the roadway (including footpath) must be kept in a serviceable condition for the duration of construction. At the direction of Council, undertake remedial treatments such as patching at no cost to Council
- The proposed method of support to any excavation adjacent to adjoining properties, or the road reserve. The proposed method of support is to be designed and certified by an appropriately qualified and practising Structural Engineer, or equivalent
- Proposed protection for Council and adjoining properties
- The location and operation of any on site crane

The CTMP shall be prepared in accordance with relevant sections of Australian Standard 1742 – “Manual of Uniform Traffic Control Devices”, RMS’ Manual – “Traffic Control at Work Sites”.

All fees and charges associated with the review of this plan is to be in accordance with Council’s Schedule of Fees and Charges and are to be paid at the time that the Construction Traffic Management Plan is submitted.

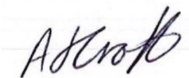
Reason: To ensure public safety and minimise any impacts to the adjoining pedestrian and vehicular traffic systems.

**D. Delete Condition No. 30. Tanking of Basement Level to read as follows:**

**30. DELETED**

In signing this report, I declare that I do not have a Conflict of Interest.

**Signed**



**Adam Croft, Principal Planner**

The application is determined on 26/06/2024, under the delegated authority of:



**Steven Findlay, Manager Development Assessments**