

<b>ITEM 0</b>	<b>HOWARD AND OAKS AVENUE DEE WHY 'SITE B'</b>
<b>REPORTING OFFICER</b>	<b>SENIOR STRATEGIC PLANNER</b>
<b>TRIM FILE REF</b>	<b>2014/284139</b>
<b>ATTACHMENTS</b>	<b>1 Planning Proposal</b>
	<b>2 Submissions Evaluation</b>
	<b>3 Urbis Planning Proposal</b>

**PURPOSE**

To seek the recommendation of the Warringah Development Assessment Panel (WDAP) regarding amendments to site specific planning controls contained within the Warringah Local Environmental Plan (WLEP) 2011.

The strategic justification of the application is outlined in the attached Planning Proposal (Attachment 1).

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**RECOMMENDATION OF DEPUTY GENERAL MANAGER ENVIRONMENT**

That the Warringah Development Assessment Panel recommends to Council that the Planning Proposal be supported for a Gateway Determination.

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<b>Application Number:</b>	PEX2014/0004
<b>Land (Address):</b>	Total of 13 lots, being; <ul style="list-style-type: none"><li>• 9, 11,15 and 17 Howard Avenue;</li><li>• 14,16 and 28 Oaks Avenue;</li><li>• 884- 896 Pittwater Road, Dee Why</li></ul>
<b>Site Area (sqm)</b>	14,466 sqm.
<b>Current Zoning (WLEP 2011):</b>	B4 Mixed Use
<b>Proposed WLEP 2011 Amendments:</b>	Amendments to Clause; <ul style="list-style-type: none"><li>• 7.3 Objectives for Development within Dee Why Town Centre, and</li><li>• 7.12 Provisions promoting retail activity</li></ul> Amendments to Height of Buildings Map - Sheet HOB_010AA & Sheet HOB_010AB.
<b>Owner:</b>	Karimbla Properties (No.41) Pty Ltd
<b>Applicant:</b>	Karimbla Constructions Services (NSW) Pty Ltd
<b>Application lodged:</b>	23 May 2014
<b>Notified:</b>	19 July 2014 to 4 August 2014
<b>Submissions:</b>	Total of 37 submissions were received which consists of: <ul style="list-style-type: none"><li>• 19 letters and emails</li><li>• 18 petition signatures</li></ul>
<b>Submission Issues:</b>	Key issues raised in objection include: <ul style="list-style-type: none"><li>• View loss and excessive building height</li><li>• Out of character development</li><li>• Significant potential overshadowing</li><li>• Traffic and noise generation</li><li>• Insufficient commercial floorspace</li></ul> A response to issues raised within public submissions is provided in Attachment 2.

## **EXECUTIVE SUMMARY**

In May 2014, Karimbla Construction Services Pty Ltd (Meriton) lodged a Planning Proposal seeking amendments to a number of Warringah Local Environmental Plan 2011 (WLEP) development standards that relate to land highlighted in Figure 1. The site is referenced in many of Council's planning documents as 'Site B', and is also commonly referred to as the former 'Multiplex/Brookfield' site.

The proposed amendments to the WLEP development standards aim to;

- Modify the building height control over certain portions of the site noting that no change is proposed to the overall maximum building height.
- Introduce the flexibility to utilise Level 1 and 2 of the proposed development for residential purposes.
- Introduce the flexibility to utilise the ground floor of the proposed development for a range of commercial uses including offices, medical centres and the like.
- Introduce leniency to provide a finished ground floor level above the footpath level as determined by flood planning requirements.

A development concept plan illustrating the intended outcomes of the proposed amendments has been included in the attached proponents Planning Proposal dated July 2014 (Attachment 3).

## **Consultation**

The Planning Proposal was publicly exhibited (non-statutory) from 19 July 2014 to 4 August 2014.

During the public exhibition period, Council received 37 submissions, which included 19 letters and emails of objection and 18 signatories to a petition. An evaluation of the submissions is provided in Attachment 2.

In light of comments received during the exhibition period and as a result of Council's detailed assessment, the following WLEP 2011 amendments have been added to those outlined in the exhibited Planning Proposal;

- A Height of Buildings map illustrating the proposed maximum building height controls.
- Provisions that stipulate the minimum quantum of commercial floorspace.

## **Conclusion**

The proposed amendments to the WLEP 2011 will result in a development of similar scale to that approved under DA2007/1249 whilst allowing greater response to market demand for future land uses.

It is therefore considered that the Planning Proposal has merit and it is therefore recommended that the WDAP refers the matter to Council with the recommendation to forward the Planning Proposal to the Minister for Planning seeking Gateway Determination.

## **Introduction**

In May 2014, Karimbla Construction Services Pty Ltd lodged a Planning Proposal seeking amendments to a number of clauses within the Warringah LEP 2011. The proposed amendments are site specific in that they only apply to the site highlighted in Figure 1.



Figure 1. Site identification map

## **Background**

In January 2008, Multiplex Dee Why Pty Ltd lodged DA2007/1249 with the intent to construct a mixed use development consisting of a publically accessible plaza (commonly referred to as the Town Square), retail and commercial uses within the podium levels with two residential towers above.

During this time, Council was developing the new WLEP 2011 which included specific controls for sites within Dee Why Town Centre, including the subject site. The WLEP was gazetted with a Height of Buildings Map that reflected the building envelope approved in DA2007/1249.

The inclusion of specific height and land use controls within the WLEP 2011 provided additional assurance that future development would be within the parameters considered acceptable during the assessment of DA2007/1249. The WLEP 2011 also included controls for the composition of land uses for the ground, first and second floors.

### **The Proposal**

The Planning Proposal application received in May 2014 requested significant amendments to the WLEP 2011, potentially resulting in a much larger building compared to that permitted under the current development standards. Subsequent revisions ensued and resulted in a revised Planning Proposal which represents a development that closely aligns with that approved under DA2007/1249. Councils Planning Proposal (enclosed as Attachment 1) utilised information provided within the proponents July 2014 Planning Proposal as well as responses to issues raised during the August public exhibition period.

Generally the Planning Proposal seeks to permit an amended built form with an alternate land use composition compared to that achieved under DA2007/1249 and as permitted under the existing WLEP 2011 development standards. The particular WLEP 2011 amendments and the intended effect have been detailed below.

#### WLEP 2011 Height of Building Map

Maximum permissible building height is stipulated by the WLEP 2011 Height of Buildings Map and supporting clauses. For Site B, height maximums are expressed with reference to the Australian Height Datum (AHD). The WLEP 2011 also stipulates that the specific location of the residential towers and building podiums cannot be varied by more than 2 metres in any horizontal direction. These controls were drafted to ensure the delivery of development consistent with that approved under DA2007/1249.

To further enforce the WLEP 2011 building height, the ability to consider a development application outside of the building height standards is prohibited via a specific exclusion from WLEP 2011 Clause 4.6 *Exceptions to development standards*. As such, the only mechanism that would allow the consideration of a future development outside the prescriptive WLEP 2011 height standards is a Planning Proposal.

The proponent's concept plan sits outside some of the prescriptive building heights and therefore amendments are proposed to the Height of Buildings Map. The concept building plan rationalises floor plates to improve building efficiency and compliance with the requirements of State Environmental Planning Policy 65- Design Quality of Residential Flat Development.

Importantly, the proposed amendments do not seek to increase the street frontage building height adjacent Oaks Avenue and Pittwater Road, or increase the overall maximum building height above 78AHD. This ensures that the projected overshadowing and visual impact under the current approval is not increased and that the overall building volume remains generally consistent with that approved under DA2007/1429.

Extracts of the proposed Height of Buildings map is included in the attached Planning Proposal (Attachment 1).

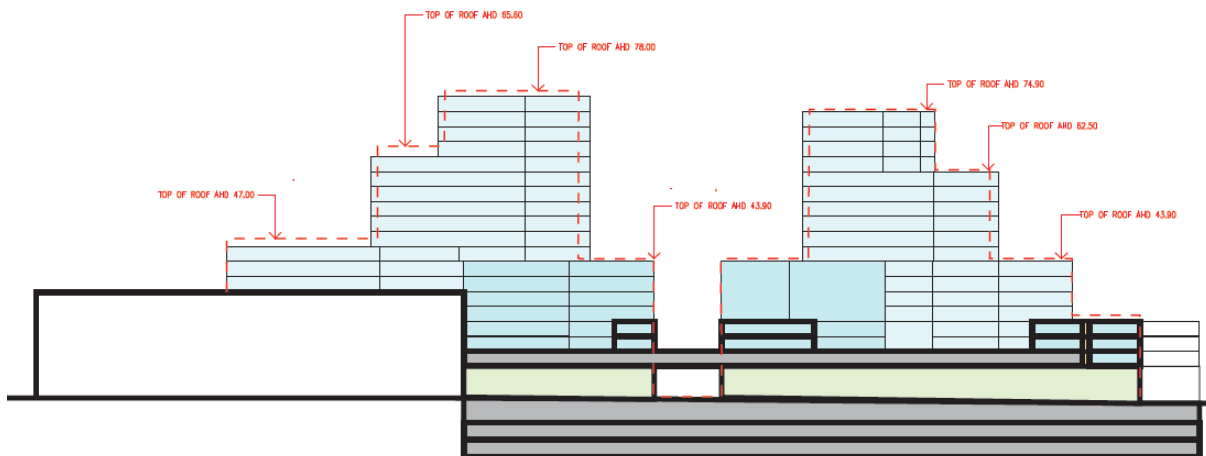


Figure 2. Site section Planning Proposal Concept Plan

(Broken red line indicates building outline approved under DA 2007/1249)

### **WLEP 2011 - Part 7 Local Provisions**

Part 7 contains local provisions that relate to the Dee Why Town Centre including a number of specific development controls for this site which reflect the scheme approved under DA2007/1249.

The clauses subject to amendments are provided below;

#### *Proposed Change*

#### *Clause 7.3 – Objectives for Development within Dee Why Town Centre*

*(i) To establish ground floor levels that are occupied by retail uses that:*

- (i) are highly active, accessible to the street and create a lively ambience, and*
- (ii) provide a mix of retail uses ~~shops, cafes and restaurants~~ at the edges of street, pedestrian areas and open spaces, and*

#### *Explanation*

The amendment to sub clause (ii) above provides an increase in the range of permissible retail uses (beyond shops, cafes and restaurants) for the building elevations that address publicly accessible areas. The amendment increases the potential range of permissible retail uses, allowing greater adaptation to market demand and therefore business viability.

#### *Proposed Change*

#### *Clause 7.3 – Objectives for Development within Dee Why Town Centre*

- (iii) ~~are at the same level as the footpaths and~~ provide opportunities for a generous promenade and distinctive street tree planting for shade and shelter.*



### *Explanation*

This aspect of the proposal is not supported. The reasons are provided as follows.

The existing requirement to construct retail premises at footpath level is to ensure ease of access for pedestrians, provide a human scale and improve the design and visibility of those businesses.

Due to the potential for flood inundation, the proponent requests amendments to Clause 7.3 (iii) (as highlighted above) allowing the construction of retail uses above the footpath level.

Street activation and the levels between the public domain and this site are significant considerations for the proposed development. The proposed development has an extensive street frontage and features a publicly accessible town square within the site.

Council does not support the amendment to Clause 7.3 (iii) however considers that solutions are available, particularly considering the outcomes of the Dee Why South Catchment Flood Study adopted in 2013 and associated Floodplain Risk Management Study. Drainage upgrades are being planned for the town centre designed to ameliorate current stormwater drainage disposal.

### *Proposed Change*

#### *Clause 7.3 – Objectives for Development within Dee Why Town Centre*

*(j) to accommodate additional employment opportunities, service functions and space for business, consistent with the role of Dee Why as a Major Centre by providing ~~-,at least 2 levels (excluding the ground floor) of development for non-residential purposes-~~ a gross floor area of not less than 12,745 square metres for use as commercial premises.*

### *Explanation*

The amendment to sub-clause (j) removes the prohibition of residential development on building levels above the ground floor. The amendment provides the flexibility to replace those areas designated for commercial floorspace with residential units.

The potential implication of the amendment is the reduction of commercial floorspace. The Planning Proposal concept plan (Attachment 1) indicates the provision of 11,767sqm of commercial floorspace compared to 37,600sqm approved under DA2007/1249.

The trend for a reduced supply of commercial floorspace within mixed-use developments is evident throughout a number of recent proposals. This trend is recognised within the Warringah Employment Study 2013 which acknowledges that Brookvale is likely to experience further commercial expansion while Dee Why will continue to be the focus for housing with some convenience retail and businesses.

The delivery of substantial commercial development (including Dee Why Grand and the expansion to Warringah Mall) within Dee Why and the larger trade catchment area further reduces investor confidence in the Dee Why commercial market in the short to medium term.

The change to the control does not prevent the development of this level for commercial uses. It may be that market demand warrants the commercial use of this floor space.

Other sites within the B4 Mixed Use zone do not have a mandatory requirement to provide commercial floorspace above the ground floor.

For these reasons, increasing land use flexibility for this site whilst mandating a minimum amount of commercial floorspace is an appropriate outcome. Council is imposing a requirement that future development incorporates at least 12,745sqm of commercial gross floor area, which equates to the existing supply currently operating on site. The delivery of 12,745sqm equates to 22% of the total deliverable floorspace indicated on the concept plan.

*Proposed Change**Clause 7.12 – Provisions promoting retail activity*

*(2) Development consent must not be granted to development in the Dee Why Town Centre unless the consent authority is satisfied that:*

*(a) in the case of ground floor level development on Site A and Site B—the development will not be used for any of the following purposes (other than the provision of access to such purposes):*

*(i) residential accommodation,*

~~*(ii) medical centres,*~~

~~*(iii) office premises, and*~~

~~*(c) in the case of first floor development on Site B—the development will not be used for any of the following purposes (other than the provision of access to such purposes):*~~

~~*(i) residential accommodation,*~~

~~*(ii) office premises, and*~~

~~*(d) in the case of second floor development on Site B—the development will not be used for residential accommodation*~~

*Explanation*

Similar to Clause 7.3 (j) outlined above, Clause 7.12 prohibits certain land uses on the lower levels of development with the aim of maximising retail and other business types that provide active and engaging shopfronts. The proposed amendments seek to increase the range of permissible commercial uses by allowing medical centres and office premises on the ground floor whilst still prohibiting residential units.

The deletion of sub clause 2 (c) and 2 (d) introduces residential accommodation as a permissible land use to Levels 1 and 2, and office premises as a permissible land use for Level 2.

The proposed WLEP amendments introduce land use flexibility to suit the market conditions whilst still ensuring a strong commercial presence on this site. The intent of delivering active and engaging shopfronts will be considered during the assessment of Development Applications rather than the current WLEP 2011 mechanism of prohibiting land uses on certain building levels.

**Voluntary Planning Agreement (VPA)**

The Voluntary Planning Agreement (VPA) negotiated during the assessment of DA 2007/1249 still applies to the site and ensures the delivery of the following;

- A town square that can be used for community and cultural events
- A pedestrian connection between Howard and Oaks Avenue
- A bus layback area along Pittwater Road
- Monetary contribution towards the construction of a proposed new road between Howard and Oaks Avenue.

The applicant has indicated (page 18 of their proposal) that they may wish to revise the VPA based on their investigations into the bus layback on Pittwater Road. They have indicated that this may involve additional construction expense than what has been estimated.



These matters are not contingent upon the nature and the extent of amendments sought by this Planning Proposal. It is recommended that, if the need arises, Council and the proponent consider amendments to the VPA at a later stage in the planning approval process.

### **Public exhibition and public authority consultation**

The Planning Proposal was publicly exhibited from 19 July 2014 to 4 August 2014. The exhibition period was not required by legislation however it was undertaken to notify local residents and the public generally of the Planning Proposal.

During the public exhibition period, Council received 37 submissions, which included 19 letters and emails of objection and 18 signatories to a petition. An evaluation of the submissions is provided in Attachment 2.

An additional two weeks was granted to those who provided submissions during the initial exhibition period. This extension of time was granted on the basis that two versions of the Planning Proposal were available through Councils website, being the initial Planning Proposal dated May 2014, and the updated July 2014 Planning Proposal. The extension was to grant additional time for review of the significant amount of information presented in the two documents.

Council is in the process of administering a Planning Proposal for the Dee Why Town Centre. The Proposal seeks to implement recommendations from the Dee Why Master Plan 2013 and complimentary studies. The Master Plan reflected the findings from previous urban design studies and the outcomes of DA2007/1249 which endorsed Site B as the location for a Town Square and the tallest buildings in the town centre.

The Town Centre Planning Proposal does not seek to amend the planning controls for land subject to this planning Proposal, and the nearby Council car park (Site A).

As such, the two Planning Proposals can be assessed and gazetted irrespective of any delays or amendments to the other.

### **Conclusion**

It is recommended that WDAP refer the Planning Proposal to the elected Council with the intent to proceed to Gateway Determination.

Reasons to proceed with the Planning Proposal are detailed as follows;

- The proposal does not increase the overall building volume compared to the development approved under DA2007/1249.
- The proposal maintains a comparable quantum of floorspace to that approved under DA2007/1249.
- The proposal allows for increased flexibility to provide land uses that adapt with market demand.
- The WLEP 2011 will continue to regulate development through prescriptive building height controls that are not able to be varied through the application of WLEP 2011 Clause 4.6 Exception to development standards.

## 4.0 PLANNING PROPOSALS

4.1	HOWARD AND OAKS AVENUE DEE WHY 'SITE B'
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PEX2014/0004

### PROCEEDINGS IN BRIEF

The Panel read the extensive reports and the submissions in the agenda documents and inspected the site. At the public hearing the Panel was addressed by two objectors and one representative of the applicant.

The Planning Proposal application originally requested significant amendments to the WLEP 2011 that would result in a much larger building than permitted under the statute. Public exhibition of the proposal and revisions of the plans have resulted in the changes now sought retaining buildings closely aligned in height, floor space and position to that approved in DA2007/1249.

The application still seeks to amend the built form but in minor ways. The main changes sought will reduce the commercial/retail floorspace permitted and increase the number of apartments permitted.

The changed uses inside these buildings would be :

- Residential units increased for 300 to 461.
- Retail floorspace reduced from 33,400 sq m to 8,710.
- Other business floorspace reduced from 4,200 sq m to 3,057.
- Parking reduced from 1500 to 1141 (approx.).
- Total building floorspace increasing from 62,806 sq m to 63,452; (5647 sq m of which is above ground carparking). This latter is created partially by local flooding conditions making basement parking limited.

The proposal retains the town square concept on Howard Ave with walk through access from Oaks Ave, and a setback on Pittwater Rd for a bus bay to reduce traffic congestion on the main road, and approx. \$2.7 million increased contributions to roads, facilities and services for the town centre in an updated Voluntary Planning Agreement (VPA).

The objectors concerns are principally the reduction of the retail and other business floorspace. The reduction is significant. The original intention of those uses in the existing statute is to provide for employment growth and retail and commercial services in Dee Why as the population increases.

The objectors see Dee Why as a major centre as indeed does the regional plan. It has better access to the northern beaches and to the west along Warringah Rd and the Wakehurst Parkway than Brookvale. They believe Dee Why should grow in employment as well as population more in parallel with Brookvale than these changes would allow. There was extensive public participation in formulating the existing statute and the objectors do not want to see the effort and principles established being changed.

The applicant's representative said that recent large developments in Dee Why have had trouble letting their retail/commercial floorspace and market and economic analysis shows that investors in those uses are favouring Brookvale and its vicinity. If the "Site B" development is to proceed in the foreseeable future, there needs to be more residential components in the buildings because

that is what the people in the market is looking for in Dee Why. Its beach and coastal and community attractions favour residential development. Keeping the buildings more or less in the same size and format leave only adjustment of the uses to establish feasibility.

The reports before the Panel detailed the changes sought to WLEP2011 in cl 7.3(i), (iii) and (j); 7.12 .

The Panel examined these and the proposed changes to the approved buildings, heights and positions and satisfied itself that except for the floorspace changes to the proposed uses, the development would remain substantially the same. The question of the reduction in retail/commercial floorspace and its replacement with residential units is an important issue for the regional strategy. It is one that is best answered by more extensive examination at the State level.

**Voting 4/0**

#### **DECISION OF THE WARRINGAH DEVELOPMENT ASSESSMENT PANEL**

THAT Planning Proposal No. PEX2014/0004 be referred to the elected Council with the recommendation that it determine to allow the proposal to proceed to Gateway Determination under the Environmental Planning and Assessment Act, 1979.

The reasons for this recommendation are:

1. The proposal does not increase the overall building volume compared to the development approved under DA2007/1249.
2. The proposal maintains a comparable quantum of floorspace to that approved under DA 2007/1249.
3. The proposal allows for increased flexibility to provide land uses that adapt with market demand.
4. The WLEP 2011 will continue to regulate development of the site through prescriptive building height controls that are not able to be varied through the application of WLEP 2011 Clause 4.6 – Exception to development standards.
5. A Gateway Determination will enable a review of the future employment potential of 'Site B' and the wider Dee Why Town Centre against regional planning objectives.