

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2022/1869
Responsible Officer:	Adam Croft
Land to be developed (Address):	Lot 1 DP 1104786, 4 - 6 Niangala Close BELROSE NSW 2085
Proposed Development:	Alterations and additions to Belrose Super Centre including six (6) new tenancies for use as specialised retail premises and reconfiguration of the existing car park
Zoning:	Warringah LEP2011 - Land zoned E3 Productivity Support OLDWarringah LEP2011 - Land zoned B7 Business Park Warringah LEP2011 - Land zoned C2 Environmental Conservation WLEP Land identified in Schedule 1 Additional Permitted Uses. Refer to attached extract of WLEP2011
Development Permissible:	Yes, under WLEP Schedule 1 Additional Permitted Uses
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	NBLPP
Land and Environment Court Action:	No
Owner:	Equity Trustees Limited
Applicant:	Home Consortium Limited
Application Lodged:	17/11/2022
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Commercial/Retail/Office
Notified:	24/11/2022 to 08/12/2022
Advertised:	Not Advertised
Submissions Received:	1
Clause 4.6 Variation:	4.3 Height of buildings: 103.36%
Recommendation:	Refusal
Estimated Cost of Works:	\$ 3,369,934.00

EXECUTIVE SUMMARY

This development application seeks consent for alterations and additions to the existing bulky goods retail centre (HomeCo Belrose).

Broadly, the proposed works encompass a 1,468m² addition at Level 2 of the building, the reconfiguration of the existing layout to provide a total of six (6) tenancies at that level and 2 x new signage zones.

The application is referred to the Northern Beaches Local Planning Panel (NBLPP) as it seeks a variation to the height of buildings development standard that exceeds 10%, and relates to a Class 2-9

building.

In response to the notification of the application, Council received one (1) submission in relation to the proposal. The concerns raised are address in detail under the Submissions section of this report.

The proposal seeks a variation of up to 106.36% to the height of buildings development standard. The Applicant's written Clause 4.6 request does not adequately demonstrate that the proposal achieves the underlying objectives of the development standard, nor does it adequately establish that compliance with standard is unreasonable or unnecessary, or that there are sufficient environmental planning grounds to justify the extent of the proposed variations sought.

Based on the extent of the variation sought and the volume of existing and proposed building in exceedance of the height control, it is considered that the development is excessive in height, bulk and scale and would be incompatible with the desired future character of the locality. In view of the building height variation, the existing site coverage non-compliance (18.6%) and the existing and proposed setback non-compliances (to two of the three site frontages), the proposal represents an overdevelopment of the site.

Despite the existing non-compliant nature of the building, the existing stepping of the built form from north to south and toward the most visually prominent part of the site (Garigal Road and corner of Forest Way), is a good urban design characteristic of the current development, and to lose this critical character attribute and design quality will be detrimental to the streetscape and deleterious to the broader objective of ensuring a high quality business park environment.

Based on the detailed assessment contained in this report, the application is **not supported** and is recommended that the NBLPP refuse the application for the reasons provided.

PROPOSED DEVELOPMENT IN DETAIL

The proposed development seeks consent for alterations and additions to the existing bulky goods retail centre. Specifically, the proposal involves a 1468m² addition at level 2 (roof level) of the existing building.

It is proposed to configure level 2 of the building into 6 tenancies ranging from 42m² to 1700m², for use as specialised retail premises. Two new signage zones are also proposed at the south-eastern corner of the building.

Car parking

The proposal necessitates the removal of 66 car parking spaces at level 2, resulting in a total of 974 car parking spaces within the development.

Hours of Operation

The application does not specify the proposed hours of operation, but states that they are intended to be consistent with the existing operating hours of the centre.

For the avoidance of doubt, the 6 proposed tenancies at level 2 of the centre would be subject to the following hours of operation (consistent with existing consents on the site) were the application recommended for approval:

- Monday to Wednesday - 9.00am - 5.30pm
- Thursday - 9.00am - 9.00pm
- Friday - 9.00am - 5.30pm
- Saturday - 9.00am - 5.00pm
- Sunday and Public Holidays - 10.00am - 5.00pm

Amendments to Proposal

Following lodgement, the following amendments were made to the proposal:

- Deletion of 2.4m eastern eave overhang
- 470mm reduction in the overall building height
- Addition of planter boxes at south-eastern corner of level 2
- Relocation of signage zones at south-eastern corner from level 2 to level 1
- Revised configuration of new level 2 tenancies
- While not clearly annotated on the amended plan set, it is understood that there is an approximate 1m reduction in the length of the addition at the western elevation

The proposed amendments are considered to result in a reduction in environmental impact and were not publicly re-notified, in accordance with the Northern Beaches Community Participation Plan.

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 Local Environmental Plan 2011 - 4.3 Height of buildings
Warringah Local Environmental Plan 2011 - 2.5 Additional permitted uses for particular land
Warringah Local Environmental Plan 2011 - Zone B7 Business Park
Warringah Local Environmental Plan 2011 - Zone C2 Environmental Conservation
Warringah Local Environmental Plan 2011 - 6.2 Earthworks
Warringah Development Control Plan - B4 Site Coverage
Warringah Development Control Plan - B7 Front Boundary Setbacks
Warringah Development Control Plan - B14 Main Roads Setback
Warringah Development Control Plan - C2 Traffic, Access and Safety
Warringah Development Control Plan - C4 Stormwater
Warringah Development Control Plan - D3 Noise
Warringah Development Control Plan - D6 Access to Sunlight
Warringah Development Control Plan - D7 Views
Warringah Development Control Plan - D9 Building Bulk

Warringah Development Control Plan - D10 Building Colours and Materials
Warringah Development Control Plan - D12 Glare and Reflection
Warringah Development Control Plan - D23 Signs
Warringah Development Control Plan - E1 Preservation of Trees or Bushland Vegetation
Warringah Development Control Plan - E3 Threatened species, populations, ecological communities listed under State or Commonwealth legislation, or High Conservation Habitat
Warringah Development Control Plan - E10 Landslip Risk

SITE DESCRIPTION

Property Description:	Lot 1 DP 1104786 , 4 - 6 Niangala Close BELROSE NSW 2085
Detailed Site Description:	The subject site consists of a single allotment bounded by Niangala Close to the west, Mona Vale Road to the north, Forest Way to the east and Garigal Road to the south. The site has a surveyed area of 4.023ha. The site is located within the E3 Productivity Support zone and accommodates a bulk good premises comprising 36,500m² of gross floor area. The site is also zoned C2 Environmental Conservation. This zoning applies to a portion of land around the perimeter of the site along the street frontages to Forest Way and Monda Vale Road. Surrounding development consists of a mix of light industrial and commercial premises. The topography of the site is characterised by a cross fall towards the south western corner. The site is bushfire prone and classified as Landslip Risk Class A and B on Council's Landslip Risk Map.

Map:



SITE HISTORY

DA2001/1615

The existing development was approved under Development Consent No. DA2001/1615 on 11 May 2004 for the construction of a bulky goods retail outlet, shops, restaurants, conservation of bushland and associated parking.

2001/1615 - Mod 1

On 27 February 2006, Council granted modified consent (2001/1615Mod 1) to provide an additional 124 car parking spaces on the rooftop, ramping, lighting and an increase to the parapet.

2001/1615 - Mod 2

On 26 September 2006, Council granted modified consent (2001/1615Mod 2) for the provision of a stairway linking the lower and upper level rooftop carparking areas.

MOD2009/0030 - Mod 3

On 18 February 2010, Council granted consent (MOD2009/0030) to modify condition No. 39 of consent 2001/1615 to increase the gross floor area of the shops component of the Development from 1,000m² to 2,500m².

Condition 39 stated:

39. The gross floor space of shops and restaurants in the development shall not exceed 2500 square metres for shops and 302 square metres for restaurants.

Condition Nos. 41A and 41B were added to the Consent by MOD2009/0030 as a result of an Economic Impact Assessment provided by Hill PDA dated 7 January 2010.

Condition No. 41A stated:

41A. Retailing of clothing or apparel

This consent does not authorise the use of any shop whose primary purpose is for the retailing of clothing or apparel.

Reason: To maintain the use of the centre for retailing of bulky goods.

Condition No. 41B stated:

41B. Size of the individual shops

This consent does not authorise any individual shop to exceed 400 square metres of gross floor space.

Reason: To prevent the creation of mini major retailers

MOD2010/0178 (Modification 4)

On 4 November 2010, Council granted consent (MOD2010/0178) to modify Condition No. 39 to become Condition No. 39A and to delete Condition Nos. 41A and 41B.

Condition No. 39A states:

39A. Notwithstanding Condition 41 [see note below] the following restrictions also apply to the gross floor

space of shops:

a) 1,000 square metres of shops may be utilised for general retailing.

b) 1,500 square metres of shops is subject to the following restrictions:

i. This consent does not authorise the use of the additional 1,500 square metres for shops whose primary purpose is for the retailing of clothing or apparel.

ii. This consent does not authorise any individual shop to exceed 400 square metres of gross floor space.

Note: Condition No. 41 states:

41. This consent does not authorise the use of any shop for the purposes of a supermarket or other similar food sales outlet.

DA2014/1369

On 1 July 2015, DA2014/1369 for alterations and additions including addition of a store room at Level 1, 2290m2 of retail floor space, corridor, plant room and goods lift at Level 2 was approved by Council subject to conditions.

DA2018/1254

On 26 July 2018, DA2018/1254 for alterations and additions to the existing Level 2 of the bulky goods retail centre was approved by Council subject to conditions.

DA2022/1869 - Current Application Under Assessment

(**Preface** - No Pre-lodgement meeting (PLM) was held with Council in relation to this proposal, despite the complex history of development on this site and the significant additional non-compliance with the building height development standard under WLEP 2011)

On 17 November 2022, DA2022/1869 was lodged.

On 28 February 2023, Council wrote to the Applicant via a *Request for Information* (RFI) outlining concerns, and that the application was not supported in relation to:

- Proposed building height breach, the resulting visual impact and the inadequacy of the

- submitted Clause 4.6 Variation; and
- Inadequate section plans and shadow diagrams.

The Applicant elected not to withdraw the application and respond by submitting additional information.

On 2 March 2023, Council wrote to the Applicant to request the following additional information:

- A Visual Impact Analysis (VIA) demonstrating the impact of the proposed development as viewed from the surrounding public domain; and
- An amended/additional Traffic and Parking Report in response to concerns raised by Council's Traffic Section.

On 11 April 2023, the Applicant submitted the VIA and amended Clause 4.6 Variation Statement, which was reviewed.

On 17 April 2023, Council wrote to the Applicant reiterating the concerns in relation to the building height breach, visual impact and adequacy of the submitted Clause 4.6 written request. The following information was requested to enable a complete assessment of the application:

- Amended architectural plans;
- Revised VIA reflecting the amended design;
- Amended Clause 4.6 written request in support of the application;
- Section plans and amended shadow diagrams; and
- Economic Impact Assessment (EIA)

On 17 April 2023, the Applicant submitted an amended Traffic and Parking Report and on 19 May 2023, the Applicant submitted an EIA and amended architectural plans. The amendments made to the architectural plans are summarised in the Detailed Description section of this report. No amended Clause 4.6 written request or revised VIA were submitted in support of the amended design.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

The relevant matters for consideration under 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. The NSW employment zones reforms have been made and came into force on 26 April 2023. These reforms will result in this property changing from a B7 zone to an E3 zone. The proposed use of the site remains permissible pursuant to the additional permitted uses applicable to the site under Clause 2.5 and Schedule 1 of the WLEP.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	There are no current draft environmental planning instruments.

Section 4.15 Matters for Consideration	Comments
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)	<u>Part 4, Division 2</u> of the EP&A Regulation 2021 requires the consent authority to consider "Prescribed conditions" of development consent. These matters are capable of being address by a condition of consent, should the application be recommended for approval. <u>Clause 29</u> of the EP&A Regulation 2021 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This clause is not relevant to this application. <u>Clauses 36 and 94</u> of the EP&A Regulation 2021 allow Council to request additional information. Additional information was requested in relation to the matters detailed in the Site History section of this report. <u>Clause 61</u> of the EP&A Regulation 2021 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter would be addressed via a condition of consent were the application recommended for approval. <u>Clauses 62 and/or 64</u> of the EP&A Regulation 2021 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This matter would be addressed via a condition of consent were the application recommended for approval. <u>Clause 69</u> of the EP&A Regulation 2021 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This clause is not relevant to this application. <u>Clause 69</u> of the EP&A Regulation 2021 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter would be addressed via a condition of consent were the application recommended for approval.

Section 4.15 Matters for Consideration	Comments
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	(i) Environmental Impact 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. In summary, the visual and streetscape impacts associated with the increase in height, bulk and scale are unsatisfactory and form recommended reasons for refusal of the application. (ii) Social Impact The proposed development would not have a detrimental social impact in the locality considering the character of the proposal. (iii) Economic Impact The proposed development would not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use. A more detailed assessment of this matter is provided below.
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered unsuitable for the proposed development for the reasons discussed in this assessment.
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 the WLEP and WDCP and would result in a development which will create an undesirable precedent such that it would undermine the desired future character of the area and be contrary to the expectations of the community. In this regard, the development, as proposed, is not considered to be in the public interest.

Section 4.15 (1)(b) - Economic Impact Assessment

Section 4.15 (1) (b) of the Environmental Planning and Assessment Act 1979 requires the consent authority to consider the economic impact of the proposed development in the locality.

The economic impact of the development was assessed primarily as part of the original development application/land and environment court proceedings and subsequent development and modification applications. Notwithstanding this, an assessment of the Economic Impact Assessment (EIA) submitted with the current application is provided below.

The EIA defines the likely catchment areas as follows:

- A Primary sector which surrounds the site within around 5km to the south and west and 8km to the east towards Mona Vale.
- A Secondary north-east sector extending from Narrabeen Lagoon north to Palm Beach.
- A Secondary south-east sector from Narrabeen to Manly and Middle Harbour.
- A Secondary west sector which extends as far as Gordon and Turramurra on the Pacific

Highway.

The catchment area has an estimated population of approximately 325,000 (2023) and is projected to increase by over 11,000 by 2030. The EIA also indicates that the catchment population's total available retail spending and large format retail spending are also projected to increase by 2030. The EIA states that the proposed additional floor space would be beneficial in terms of consumer benefits and generation of additional direct and indirect employment. The EIA does not foresee any substantial negative impacts on other centres in the region given the minimal proportion of additional floor area (approx. 4%) in comparison to the existing HomeCo Centre.

- *"The positive effects would include an estimated 20 or so staff positions created within the additional 1,422 sqm floorspace, based on typical averages for large format retailers. This translates to around 15 or so 'full-time equivalent' jobs. Indirect jobs would also be created in the wider economy.*

The new tenants would expand the range and/or depth of retail on offer for the local community, at a location that has proved successful and is convenient to people living in the catchment given the lack of dedicated LFR centres elsewhere in this part of Sydney.

The introduction of just 1,422 sqm [1468m²] of additional retail floorspace would have no effect on other centres in the region. For example, at typical averages the additional sales generated by this floorspace would be likely no more than around \$5-6m, which is an insignificant amount in the context of a spending market of \$7.5bn (it represents less than 0.1% of the market) of which \$1.8bn (of which the additional sales represents less than 0.4%) is spent on LFR merchandise. In any case, a large share of the 'impact' would involve competition with retailers within HomeCo Belrose itself."

The EIA demonstrates that while the proposal may increase competition between retailers within HomeCo Belrose, there is sufficient local demand to ensure that there would be negligible impact on the viability of other centres in the region.

For these reasons, the proposal is not considered to result in any unreasonable economic impacts.

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

The site is classified as bush fire prone land. Section 4.14 of the Environmental Planning and Assessment Act 1979 requires Council to be satisfied that the development conforms to the specifications and requirements of the version (as prescribed by the regulations) of the document entitled Planning for Bush Fire Protection.

A Bush Fire Report was submitted with the application that included a certificate (prepared by Bushfire Planning and Design, dated 10 August 2022) stating that the development conforms to the relevant specifications and requirements within Planning for Bush Fire Protection.

The recommendations of the Bush Fire Report would be incorporated into the conditions of consent were the application recommended for approval.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited from 24/11/2022 to 08/12/2022 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 1 submission/s from:

Name:	Address:
National Parks & Wildlife Service - Sydney North Area	82 Ferguson Street FORESTVILLE NSW 2087

One (1) submission was received from the National Parks and Wildlife Service (as an adjoining land owner) in relation to the proposed development.

The submission requested the imposition of conditions in relation to:

- Prevention of stormwater runoff, sediment and other materials entering the National Park;
- Prohibition on use of the National Park for access to the development site, storage of materials and machinery and maintenance access;
- Prevention of soil disturbance within the National Park;
- Reporting of waste, spoil or sediment spill into the National Park; and
- Compliance with *Australian Standard AS3959 (2009) – 'Construction of buildings in bushfire-prone areas'* (AS3959) and the *Building Code of Australia (BCA) 2010 references AS3959-2009* for building in bush fire prone areas.

Comment: Given the distance between the development site and the adjacent National Park, it is not anticipated the proposal would result in or involve these occurrences. Regardless, were the application recommended for approval, these matters could be incorporated into the conditions of consent.

REFERRALS

Internal Referral Body	Comments
Building Assessment - Fire and Disability upgrades	<i>Supported with conditions.</i> The application has been investigated with respects to aspects relevant to the Building Certification and Fire Safety Department. There are no objections to approval of the development subject to inclusion of the attached conditions of approval and consideration of the notes below. Note: The proposed development may not comply with some requirements of the BCA and the Premises Standards. Issues such as this however may be determined at Construction Certificate Stage.

Environmental Health (Industrial)	<i>Supported with conditions.</i> General Comments Development consent is required for proposed alterations and additions to the existing bulky goods centre comprising and increase in GFA of 1,468m². It is proposed to reconfigure the second floor to comprise a total of six tenancies: ▪ Tenancy 1 – 48m² ▪ Tenancy 2 – 42m² ▪ Tenancy 3 – 481m² ▪ Tenancy 4 – 485m² ▪ Tenancy 5 – 1,700m² ▪ Tenancy 6 – 1,200m² The development of the extension to second floor will necessitate the removal of 64 car parking spaces to the roof. Environmental Health has reviewed our main concern - Potential Noise impacts
Internal Referral Body	Comments
	An acoustic assessment in summary states: " 7.1 No acoustic treatment is required for new plant located in specified locations (roof-top), that satisfies the following noise emission limits: Lw, dB(A) SPL at 1m dB(A) Air conditioning Plant 102 96 7.2 If noise emissions from individual items of air conditioning plant exceed the limits shown in Item 7.1 above acoustic barriers must be constructed between the plant and residences. Barrier construction should consist of either Acoustisorb panels (available through Modular Walls) or an outer layer of one sheet of 12mm fibre cement sheeting (Villaboard, Hardiflex), or 19mm marine plywood. The inside (plant side) is to be lined with an absorbent foam to reduce reverberant sound (fibrous infills are not recommended as they will deteriorate if wet), and must be minimum 300mm above the top of the plant item. 7.3 The contractor responsible for supplying and installing the plant should be asked to supply evidence that installed plant meets specified noise emission limits, or that noise control included with the plant is effective in reducing the sound level to the specified limit. Once selection and location of plant has been finalised, details should be forwarded to the acoustic consultant for approval. A noise impact assessment for existing and new mechanical plant on the roof of HomeCo Belrose, has been completed. This assessment has shown that, based on supplied information and measurements conducted at the site, the noise impact from all new and existing plant is predicted to be compliant with the criteria at all nearby residential receivers." There appears to be no impact/expansion or new food premises. Environmental Health therefore supports the proposal subject to conditions.

Traffic Engineer

Supported with conditions.

Additional comments - 4/5/23

The additional information provided by the applicant's traffic engineer is noted and the additional material has addressed the concerns raised in the original referral comments regarding Traffic generation, vehicular access and loading. The applicant's comments regarding pedestrian access are noted however the development generates pedestrian movements across Niangala Close and facilities to cater for these movements are required. While it is agreed that a marked pedestrian crossing is inappropriate in this location a pedestrian refuge with pram ramps located to the north of the main access driveway of the development and adjacent to the existing underutilised Taxi Pick up zone would be ideal to both slow traffic and allow pedestrians to stage their crossing. This will be conditioned

Original referral - 1/3/23

The proposed development is for additional large format retail, improved dining precinct and enhancement of level 2 rooftop to the existing Bulky Goods Retail development known as Belrose Super Centre. The improvements will increase the floor area of the Super Centre from 34810 m² to 36470m² an increase of 1660m². Vehicular ingress and egress arrangements for the centre will remain unchanged.

Parking

The Warringah DCP suggests that large format (bulky goods) retail outlets should determine their parking requirements by comparison with similar developments.

As the existing Super Centre has been operated in this location for several years at a similar scale, its own operations have been used for this analysis. It is currently served by some 1,040 carparking spaces. The proposed amendments will reduce the available parking on the site to a total of 974 parking spaces i.e 66 less spaces than existing. The applicant's traffic consultant has undertaken parking surveys on Saturday 20 August 2022 (Saturday being the busiest trading day of the week) which identified a peak parking demand on the site of 455 spaces occupied at 2:00pm. For comparison, a survey undertaken on Saturday 30 October 2021 found a peak parking demand of 635 spaces occupied i.e one space per 54.8m². Both surveys suggest that the existing parking provision of 1040 spaces is well in excess of what is needed to cater for demands generated by the existing tenancies on the site. Using the peak parking occupancy rate (one space per 54.8m² of floor area) from the two parking surveys the expanded floor area of 36,470m² would generate a peak parking requirement of some 666 spaces.

Internal Referral Body	Comments
	As noted in the applicants traffic report, the RMS guide to traffic generating developments suggests that retail centres are busiest in December with traffic flow surveys indicating up to 30% busier than in October. It is noted that parking surveys conducted to support DA2014/139 for this site found a peak parking occupancy of 740 spaces on Friday 27/12/2013 (1 space per 43.2m²) This would suggest that a peak December parking demand of some 844 spaces may be required to support the proposed floor area of 36470m. This is still less than the 974 spaces that will be available on site. The RMS guide to traffic generating developments also notes "If the proposed development is an extension of an existing retail development, additional parking demand could be less than proportional to the increase in floor area" Given the above, the proposed parking supply of 974 spaces is considered acceptable. A condition of consent will be added to require that the existing electronic parking availability system be adjusted to suit the new parking arrangements and updated to provide real time parking availability information to provide advice and guidance to motorists with regard to available parking. <u>Traffic Generation</u> The predicted traffic generation numbers have been reviewed and while the quantum of traffic generated by the proposed expansion is not disputed the distribution of the traffic is questioned. It is unclear why a such a high proportion of the traffic generated by the expansion has been allocated to the rooftop parking area given that volumes using the basement carpark access are almost double that for the rooftop access under existing conditions. It is also noted that although traffic counts have been undertaken at the access driveway into the basement carpark no SIDRA analysis of the operation of this junction has been undertaken. The capacity of the right turn bay into the Niangala Close basement carpark entrance needs to be reviewed. At present the bay is capable of accommodating a queue of 5 vehicles and under peak conditions such as in the December peak trading period this turning bay is full/near full. There is concern that it may queue out blocking northbound flows to other sites such as Bunnings. Further traffic generation data analysis in light of the above is required including submission of the SIDRA outputs for all modelled intersections for Council's review.

Internal Referral Body	Comments
	<u>Vehicle Access</u> The vehicle ingress/egress points from the centre remains unchanged. No dimensioned plans or swept path analysis have been provided to confirm that the design of the parking area is compliant with the requirements of AS 2890.1 (Off-street car parking). These details should be provided for review. <u>Loading</u> The new retail tenancies will be served by the existing loading dock on level 1 and a new loading bay adjacent to the level 2 extensions to cater for medium rigid trucks up to 8.8 metres in length. No details for the new loading dock have been provided however the applicant's traffic consultant advises that the new Loading Bay will be designed in accordance with the requirements of the Australian Standard for Parking Facilities (commercial vehicles) AS2890.2. No swept path plots or dimensioned plans have been provided and these should be provided to demonstrate that access to and from the local road network by a medium rigid truck to the new Loading Dock in a forwards direction is achievable. <u>Pedestrian Access Improvements</u> The applicant's traffic consultant has highlighted the need for the development to be accessible by walking cycling and public transport. There is an absence of any facilities to assist pedestrians to cross Niangala Close and Council officers have received many requests from pedestrians requesting provision of crossing facilities to ensure the safety of and assist pedestrians crossing to/from the Super Centre and other premises in Niangala Close, Belrose. Given the intensification of use of the Super Centre this demand will only increase. The developer will therefore be requested to provide designs for Council staff review and Traffic Committee approval for pedestrian crossing and amenity improvements on Niangala Close, between the Narabang Way roundabout and the roundabout at the access point to Bunnings. The approved works will then need to be constructed at the applicant's cost prior to occupation. It is envisaged that a pedestrian refuge at/near the Narabang Way roundabout and another immediately north of the driveway ingress into Belrose Super Centre will be required potentially with localised road widening to cater for two way truck movements.

External Referral Body	Comments
Ausgrid - SEPP (Transport and Infrastructure) 2021, s2.48	<i>Supported, subject to Conditions.</i> The proposal was referred to Ausgrid who provided a response 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	<i>Supported, subject to Conditions.</i> TfNSW Comment Reference is made to Council's referral regarding the abovementioned application, which was referred to Transport for NSW (TfNSW) for comment in accordance with Clause 2.122 of the <i>State Environment Planning Policy (Transport and Infrastructure) 2021</i>. TfNSW has reviewed the application and has no requirements as the proposed development is not expected to have a significant impact on the classified road network.

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 (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.

Roads and Maritime Service (RMS)

Section 2.118 - Development with frontage to classified road states:

The consent authority must not grant consent to development on land that has a frontage to a classified road unless it is satisfied that—

- (a) where practicable and safe, vehicular access to the land is provided by a road other than the classified road, and*
- (b) the safety, efficiency and ongoing operation of the classified road will not be adversely affected by the development as a result of—*
 - (i) the design of the vehicular access to the land, or*
 - (ii) the emission of smoke or dust from the development, or*
 - (iii) the nature, volume or frequency of vehicles using the classified road to gain access to the land, and*
- (c) the development is of a type that is not sensitive to traffic noise or vehicle emissions, or is appropriately located and designed, or includes measures, to ameliorate potential traffic noise or vehicle emissions within the site of the development arising from the adjacent classified road.*

Comment:

- (a) The existing access to the site is via Niangala Close, which is not a classified road.
- (b) The proposed development would not have a significant impact on the ongoing operation of Forest Way or Mona Vale Road, as advised by TfNSW.
- (c) The proposed development is not of a type that is sensitive to traffic noise or vehicle emissions.

Section 2.122 and Schedule 3 of this Policy requires that the following development(s) are referred to the TfNSW as Traffic Generating Development:

Purpose of Development	Size or Capacity (Site with access to any road)	Size of Capacity (Site with access to classified road or to a road that connects to classified road if access is within 90m of connection, measured along alignment of connecting road)
Shops	2,000m ²	500m ²

Note: Under Section 2.122(2) of Chapter 2, 'relevant size of capacity' is defined as meaning:

“(2) (a) in relation to development on a site that has direct vehicular or pedestrian access to any road - the size or capacity specified opposite that development in Column 2 of the Table to Schedule 3, or

(b) in relation to development on a site that has direct vehicular or pedestrian access to a classified road or to a road that connects to a classified road where the access (measured along the alignment of the connecting road) is within 90m of the connection - the size or capacity specified opposite that development in Column 3 of the Table to Schedule 3.”

Comment:

The application was referred to Transport for NSW who did not raise any objection to the proposal.

SEPP (Industry and Employment) 2021

Section 3.6 and 3.11 of Chapter 3 require Council to determine consistency with the objectives stipulated under Subsection 3.1 (1)(a) of the aforementioned SEPP and to assess the proposal against the assessment criteria of Schedule 5.

The objectives of this chapter aim to ensure that the proposed signage is compatible with the desired amenity and visual character of the locality, provides effective communication and is of high quality having regards to both design and finishes.

In accordance with the provisions stipulated under Schedule 5 of Chapter 3, the following assessment is provided:

Matters for Consideration	Comment	Complies
1. Character of the area Is the proposal compatible with the existing or desired future character of the area or locality in which it is proposed to be located?	The outcome for the signage is considered to be incompatible with the existing character of the area as the proliferation of signage at the south-eastern corner of the building is considered to result in visual clutter that would adversely impact the streetscape.	NO
Is the proposal consistent with a particular theme for outdoor advertising in the area or locality?	The outcome for the signage is inconsistent with that of B7 Business Park zoning area as the extent of advertising at this prominent corner of the building is excessive in relation to the built form.	NO
2. Special areas Does the proposal detract from the amenity or visual quality of any environmentally sensitive areas, heritage areas, natural or other conservation areas, open space areas, waterways, rural landscapes or residential areas?	Given the extent of the existing and proposed sign locations concentrated at the south-eastern corner of the building, the proposed signage will result in adverse visual impacts upon the streetscape and public domain.	NO
3. Views and vistas Does the proposal obscure or compromise important views?	The outcome for the signage does not compromise nor obscure views.	YES

Does the proposal dominate the skyline and reduce the quality of vistas?	The outcome for the signage is not of a scale to cause unreasonable impacts upon the existing views of the skyline and vistas.	YES
Does the proposal respect the viewing rights of other advertisers?	The signage respects the viewing rights of other advertisers.	YES
4. Streetscape, setting or landscape Is the scale, proportion and form of the proposal appropriate for the streetscape, setting or landscape?	As above, the extent of the existing and proposed sign locations concentrated at the south-eastern corner of the building are excessive and considered inappropriate for this context.	NO
Does the proposal contribute to the visual interest of the streetscape, setting or landscape?	The outcome for the signage is considered to give rise to adverse streetscape impacts.	NO
Does the proposal reduce clutter by rationalising and simplifying existing advertising?	The proposed signage zones are excessive and do not reduce clutter or simplify advertising.	NO
Does the proposal screen unsightliness?	There is no unsightliness to be screened	YES
Does the proposal protrude above buildings, structures or tree canopies in the area or locality?	The signage zones do not protrude above the building or structure.	NO
5. Site and building Is the proposal compatible with the scale, proportion and other characteristics of the site or building, or both, on which the proposed signage is to be located?	As above, the extent of advertising at the south-east corner of the building is excessive in relation to the built form.	NO
Does the proposal respect important features of the site or building, or both?	The proliferation of signage at the south-eastern corner of the building is not considered to respect the important features of the site.	NO
Does the proposal show innovation and imagination in its relationship to the site or building, or both?	Details of the signage content have not been provided as part of the application.	N/A
6. Associated devices and logos with advertisements and advertising structures Have any safety devices, platforms, lighting devices or logos been designed as an integral part of the signage or structure on which it is to be displayed?	N/A	N/A
7. Illumination Would illumination result in unacceptable glare, affect safety for pedestrians, vehicles or aircraft, detract from the amenity of any residence or other form of accommodation?	N/A	N/A
Can the intensity of the illumination be adjusted, if necessary?	N/A	N/A
Is the illumination subject to a curfew?	N/A	N/A

8. Safety Would the proposal reduce the safety for any public road, pedestrians or bicyclists?	The outcome for the signage will not reduce the safety for any road, pedestrian or bicyclist.	YES
Would the proposal reduce the safety for pedestrians, particularly children, by obscuring sightlines from public areas?	The proposal does not obscure sightlines from public areas.	YES

Accordingly, the proposed signage is not considered to be of a scale and design suitable for the locality. The proposal is therefore deemed to be inconsistent with the provisions of this chapter and its underlying objectives.

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. Council records indicate that the subject site has been used for commercial purposes for a significant period of time with no prior land uses. In this regard it is considered that the site poses no risk of contamination and therefore, no further consideration is required under sub-section 4.6 (1)(b) and (c) of this Chapter and the land is considered to be suitable for the commercial land use.

Warringah Local Environmental Plan 2011

Is the development permissible?	No
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

Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings	11.0m	Exhaust duct: 22.7m	106.36%	No
		Roof: 21m	90.9%	No

Compliance Assessment

Clause	Compliance with Requirements
2.5 Additional permitted uses for particular land	Yes
4.3 Height of buildings	No (see detail under Clause 4.6 below)
4.6 Exceptions to development standards	No
6.2 Earthworks	Yes
6.4 Development on sloping land	Yes

Detailed Assessment

2.5 Additional permitted uses for particular land

Schedule 1 Additional Permitted Uses (3) permits the use of land identified as "Area 3" being at the corner of Mona Vale Road and Forest Way, Belrose for the purpose of a specialised retail premises, subject to development consent.

Specialised retail premises means a building or place the principal purpose of which is the sale, hire or display of goods that are of a size, weight or quantity, that requires—

- (a) a large area for handling, display or storage, or
- (b) direct vehicular access to the site of the building or place by members of the public for the purpose of loading or unloading such goods into or from their vehicles after purchase or hire, but does not include a building or place used for the sale of foodstuffs or clothing unless their sale is ancillary to the sale, hire or display of other goods referred to in this definition.

Accordingly, pursuant to the existing use of the site and subclause (3) of Schedule 1, the development is permitted with consent.

Zone B7 Business Park

Despite not being a permissible use in the B7 zone, the proposed specialised retail premises' are permitted on the subject site pursuant to Schedule 1 (3) of the WLEP 2011.

The proposed development is considered against the underlying objectives of the B7 Business Park zone as follows.

- *To provide a range of office and light industrial uses.*

Comment

This objective is not applicable to the proposed development, which is permissible pursuant to the existing use rights applicable to the site.

- *To encourage employment opportunities.*

Comment:

In providing an additional 1468m² of commercial gross floor area, the proposed development would encourage further employment opportunities within the zone.

- *To enable other land uses that provide facilities or services to meet the day to day needs of workers in the area.*

Comment:

The proposal involves additions to the existing Centre and is not anticipated to have any adverse impact upon the ability of other land uses to provide facilities or services to meet the day to day needs of workers in the area.

- *To create business park employment environments of high visual quality that relate favourably in architectural and landscape treatment to neighbouring land uses and to the natural environment.*

Comment:

For the reasons discussed in this report, the proposal is **not** considered to result in a development of high visual quality that relates well to neighbouring land uses or the natural environment. As such, the proposal is assessed as being inconsistent with this objective.

- *To minimise conflict between land uses in the zone and adjoining zones and ensure the amenity of adjoining or nearby residential land uses.*

Comment:

The site is not bounded by any residential zones and the proposal would not adversely impact the amenity of any nearby residential properties.

Based on the above assessment, the proposal is inconsistent with objective (4) of the B7 zone and is not supportable and so this will form a recommended reason for refusal.

Zone C2 Environmental Conservation

The proposed development does not include any works within the C2 zoned portion of the site.

4.6 Exceptions to development standards

Description of Non-compliance

Development Standard:	Height of Buildings
Requirement:	11.0m
Proposed:	Exhaust duct: 22.7m Roof: 21m
Percentage Variation to Requirement:	Exhaust duct: 106.36% Roof: 90.9%

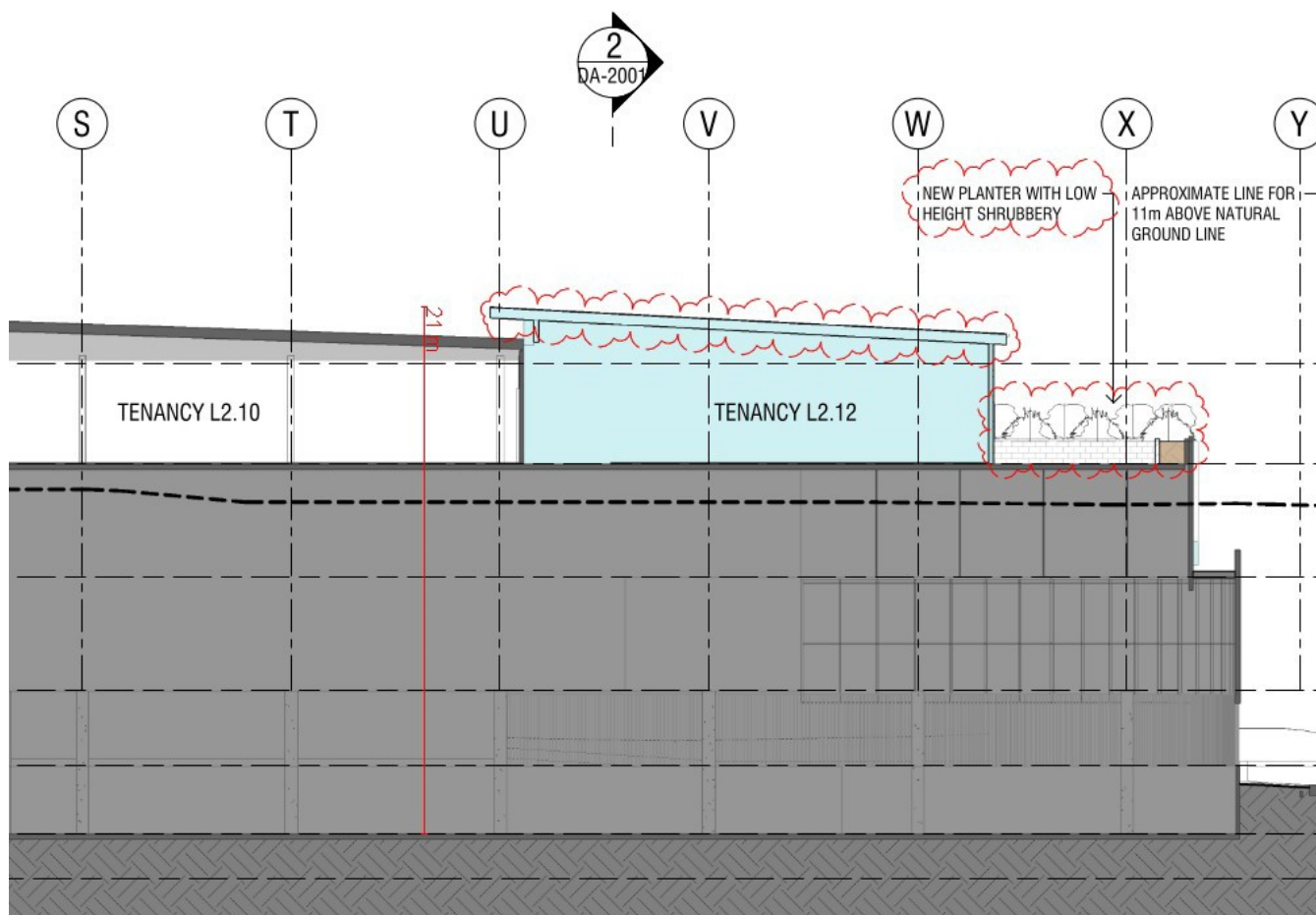


Figure 1. Part Section 1 with 21.0m maximum roof height annotation (Drawing DA-2001 prepared by Buchan Group).

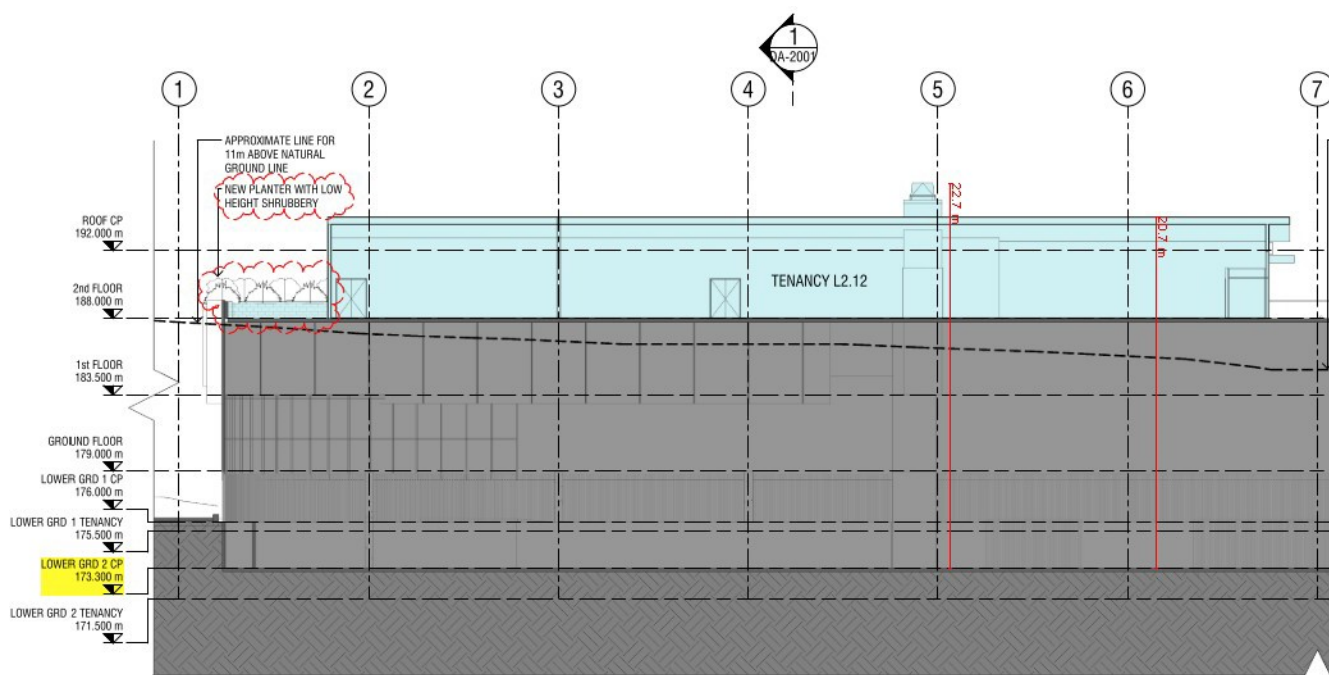


Figure 2. Part Section 2 with 22.7m maximum exhaust duct height annotation (Drawing DA-2001 prepared by Buchan Group).

The above section plans indicate the maximum building height of the proposed additions. It is noted that the 11.0m height plane overlaid on the section plans is inaccurate in that it is not based on the *existing* ground level in accordance with the judgement in *Merman Investments Pty Ltd v Woollahra Municipal Council* [2021] NSWLEC 1582. For the purpose of this assessment, the maximum building height has been measured from the lowest floor level of the building (existing ground level) below the proposed additions.

Assessment of Request to Vary a Development Standard

The following assessment of the variation to Clause 4.3 – Height of Buildings development standard, has taken into consideration the judgements contained within *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118, *Baron Corporation Pty Limited v Council of the City of Sydney* [2019] NSWLEC 61, and *RebelMH Neutral Bay Pty Limited v North Sydney Council* [2019] NSWCA 130.

Clause 4.6 Exceptions to Development Standards

(1) *The objectives of this clause are as follows:*

- (a) *to provide an appropriate degree of flexibility in applying certain development standards to particular development,*
- (b) *to achieve better outcomes for and from development by allowing flexibility in particular circumstances.*

(2) *Development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.*

Comment:

Clause 4.3 – Height of Buildings development standard is not expressly excluded from the operation of this clause.

(3) *Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:*

- (a) *that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*
- (b) *that there are sufficient environmental planning grounds to justify contravening the development standard.*

(4) *Development consent must not be granted for development that contravenes a development standard unless:*

- (a) *the consent authority is satisfied that:*
 - (i) *the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and*
 - (ii) *the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and*
- (b) *the concurrence of the Secretary has been obtained.*

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 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.'

s 1.3 of the EPA Act reads as follows:

1.3 Objects of Act(cf previous s 5)

The objects of this Act are as follows:

- (a) to promote the social and economic welfare of the community and a better environment by the proper management, development and conservation of the State's natural and other resources,*
- (b) to facilitate ecologically sustainable development by integrating relevant economic, environmental and social considerations in decision-making about environmental planning and assessment,*
- (c) to promote the orderly and economic use and development of land,*
- (d) to promote the delivery and maintenance of affordable housing,*
- (e) to protect the environment, including the conservation of threatened and other species of native animals and plants, ecological communities and their habitats,*
- (f) to promote the sustainable management of built and cultural heritage (including Aboriginal cultural heritage),*
- (g) to promote good design and amenity of the built environment,*
- (h) to promote the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants,*

(i) to promote the sharing of the responsibility for environmental planning and assessment between the different levels of government in the State,

(j) to provide increased opportunity for community participation in environmental planning and assessment.

Applicants Written Request

The applicants written request argues, in part:

1. ***The proposal is entirely consistent with the underlying objectives and purposes of the standard, as demonstrated in Section 4.1.***

Comment: The proposed development is not considered to achieve the underlying objectives of the height of buildings development standard as assessed below. Regardless, consistency with the objectives of the standard is not identified as an environmental planning ground. As such, the first environmental planning ground put forward by the applicant is not sufficient.

2. ***The proposal is entirely consistent with the underlying objective or purpose of the B7 Business Development zone, as demonstrated in Sections 4.2 and 4.3.***

Comment: The proposed development is assessed as being inconsistent with Objective (4) of the B7 zone. Regardless, consistency with the objectives of the zone is not identified as an environmental planning ground. As such, the second environmental planning ground put forward by the applicant is not sufficient.

3. ***Compliance with the standard would be unreasonable and unnecessary for the reasons outlined in Section 4.3.***

Comment: The reasonableness and necessity of compliance with the development standard relates to the objectives of the standard and is not identified as an environmental planning ground. As such, the third environmental planning ground put forward by the applicant is not sufficient.

4. ***The proposed non-compliance results in a built form and land use, which is permitted at the Site.***

Comment: On the contrary, the proposed development does not result in a built form which is permitted at the site, as evidenced by the **106.36%** building height variation that the Applicant's written request is seeking to justify and the 7.7% variation WDCP B14 (Main Roads Setback to Forest Way). As noted below, the existing built form is also non-compliant with the site coverage control and the required front setbacks to Garigal Road and Forest Way. Further, the permissibility of the proposed land use is not identified as an environmental planning ground. As such, the fourth environmental planning ground put forward by the applicant is not sufficient.

5. ***The proposal is consistent with the desired future character of the Site within the surrounding locality and generally complies with the relevant built form controls.***

Comment: The desired future character of the locality is set out by the planning controls contained within the WLEP and WDCP. Given the significance of the proposed building height variation and the setback non-compliances detailed below, it cannot be said that the proposal is consistent with the desired future character of the locality or that it generally complies with the relevant built form controls. As such, the fifth environmental planning ground put forward by the applicant is not sufficient.

6. ***The proposal has been designed to be sympathetic and respectful to the existing surrounding amenity and local character, particularly regarding visual bulk, privacy and overshadowing whilst expanding on the existing functional residential building Site.***

Comment: It is acknowledged that the proposal will not cause unreasonable privacy or overshadowing impacts. However, the extent and siting of the built form above the 11m height control is not considered sympathetic or respectful to the surrounding local character, particularly on the opposite corner to the south. The proposal represents a substantial increase in the volume of the built form that breaches the height plane and the setback control to Forest Way and would bring that non-compliant built form closer to the southern building line, increasing its visibility and visual prominence when viewed from the public domain. The bulk and scale of the proposal is visually intrusive and is incompatible with nearby developments within the surrounding B7 zone, which are more sympathetic to the bushland character of the locality. As such, the fifth environmental planning ground put forward by the applicant is not sufficient.

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).

Therefore, Council is not satisfied that the applicant's written request has adequately addressed the matters required to be demonstrated by cl 4.6(3).

Clause 4.6 (4)(a)(ii) (Public Interest) Assessment

cl 4.6 (4)(a)(ii) requires the consent authority to be satisfied that:

(ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out

Comment:

In considering whether or not the proposed development will be in the public interest, consideration must be given to the underlying objectives of the Height of Buildings development standard and the objectives of the B7 Business Park zone.

An assessment against these objectives is provided below.

Objectives of the Development Standard

The underlying objectives of the standard, pursuant to Clause 4.3 – 'Height of Buildings' of the WLEP 2011 are:

(1) The objectives of this clause are as follows:

a) to ensure that buildings are compatible with the height and scale of surrounding and nearby development

Comment:

The proposed development is not compatible with the height and scale of surrounding and nearby development. Notably, the existing development at 1 Garigal Road, on the south-western corner of the intersection with Forest Way, is significantly lower in height and provides greater setbacks to its northern and eastern frontages, thereby minimising its visual bulk and scale. In

contrast, the proposed development seeks to extend the already non-compliant Level 2 built form towards the south, which exacerbates the already significant visual impact of the building on this exposed and prominent corner.

The Applicant's written request claims that the proposal is consistent with the height and scale of the existing development and would not add additional height to the site. Objective (a) does not require that development is compatible with the height of scale of the *existing* development, but with that of *surrounding and nearby development*. In any case, the proposal would materially add to the height and scale of the non-compliant Level 2 as demonstrated in the submitted *Visual Impact Assessment*, and is not supported.

For these reasons, the proposal is assessed as being inconsistent with Objective (a).

b) to minimise visual impact, disruption of views, loss of privacy and loss of solar access

Comment:

Based on the submitted *Visual Impact Assessment*, the extent and location of the proposed building height breach would result in excessive visual impact as viewed from the surrounding public domain, primarily at the intersection of Forest Way and Garigal Road. Given that the building height control does not envisage any building mass and presence in the location proposed, the level of visual impact is found to be unacceptable.

For this reason, the proposal is assessed as being inconsistent with Objective (b).

c) to minimise adverse impact of development on the scenic quality of Warringah's coastal and bush environments

Comment:

The surrounding locality is reflective of Warringah's bush environments, being bounded by Garigal National Park. The proposed development is not considered to minimise its visual impact on the scenic quality of the surrounding bush environment.

For this reason, the proposal is assessed as being inconsistent with Objective (c).

d) to manage the visual impact of development when viewed from public places such as parks and reserves, roads and community facilities

Comment:

By virtue of the proposed building height variation and insufficient parapet setbacks, the proposal fails to manage and mitigate the visual impact of the additions when viewed from the surrounding road network and National Park, particularly to those areas to the south-east of the site.

For this reason, the proposal is assessed as being inconsistent with Objective (d).

Zone Objectives

The underlying objectives of the B7 Business Park zone are:

- ***To provide a range of office and light industrial uses.***

Comment

The proposed variation does not alter the proposal's consistency with this objective, as assessed earlier in this report.

- ***To encourage employment opportunities.***

Comment:

The proposed variation does not alter the proposal's consistency with this objective, as assessed earlier in this report.

- ***To enable other land uses that provide facilities or services to meet the day to day needs of workers in the area.***

Comment:

The proposed variation does not alter the proposal's consistency with this objective, as assessed earlier in this report.

- ***To create business park employment environments of high visual quality that relate favourably in architectural and landscape treatment to neighbouring land uses and to the natural environment.***

Comment:

For the reasons discussed in this Clause 4.6 Assessment and elsewhere in this report, the proposal is not considered to result in a development of high visual quality that relates well to neighbouring land uses or the natural environment. As such, the proposal is assessed as being inconsistent with this objective.

- ***To minimise conflict between land uses in the zone and adjoining zones and ensure the amenity of adjoining or nearby residential land uses.***

Comment:

The proposed variation does not alter the proposal's consistency with this objective, as assessed earlier in this report.

Conclusions on Zone Objectives

For the reasons detailed above, the proposal is considered to be inconsistent with the objectives of the B7 Business Park zone.

Clause 4.6 (4)(b) (Concurrence of the Secretary) Assessment

Clause 4.6(4)(b) requires the concurrence of the Secretary to be obtained in order for development consent to be granted.

Planning Circular PS20-002 dated 5 May 2020, as issued by the NSW Department of Planning, advises that the concurrence of the Director-General may be assumed for exceptions to development standards

under environmental planning instruments that adopt Clause 4.6 of the Standard Instrument. In this regard, given the inconsistency of the variation with the objectives of the height of buildings development standard and the zone objectives and the lack of sufficient environmental planning grounds, the concurrence of the Director-General for the variation to the development standard cannot be assumed.

6.2 Earthworks

The proposal does not involve any excavation works.

Warringah Development Control Plan

Built Form Controls

Built Form Control	Requirement	Proposed	% Variation*	Complies
B4 Site Coverage	33.3% 13,396.59m ²	39.5% 15,886m ²	18.6%	No (as approved)
B7 Front Boundary Setbacks	Garigal Road: 10m	15.8m (proposed addition)	N/A	Yes
	Niangala Close: 6.5m	55.6m (proposed addition)	N/A	Yes
B14 Main Roads Setback	Forest Way: 30m	27.7m (proposed addition)	7.7%	No
	Mona Vale Road: 30m	327.6m (proposed addition)	N/A	Yes
D1 Landscaped Open Space (LOS) and Bushland Setting	33.3% 13,396.59m ²	> 33%	N/A	Yes

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A.5 Objectives	No	No
B4 Site Coverage	No	Yes
B7 Front Boundary Setbacks	Yes	Yes
B14 Main Roads Setback	No	No
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
D1 Landscaped Open Space and Bushland Setting	Yes	Yes
D3 Noise	Yes	Yes
D6 Access to Sunlight	Yes	Yes
D7 Views	Yes	Yes
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
D20 Safety and Security	Yes	Yes
D23 Signs	No	No
E1 Preservation of Trees or Bushland Vegetation	Yes	Yes
E2 Prescribed Vegetation	Yes	Yes
E3 Threatened species, populations, ecological communities listed under State or Commonwealth legislation, or High Conservation Habitat	Yes	Yes
E4 Wildlife Corridors	Yes	Yes
E5 Native Vegetation	Yes	Yes
E6 Retaining unique environmental features	Yes	Yes
E10 Landslip Risk	Yes	Yes

Detailed Assessment

B4 Site Coverage

The existing site coverage of 39.5% is non-compliant with the 33.3% control. Although the proposal does not result in any increase to the existing site coverage, the existing non-compliance is a relevant consideration insofar as the existing scope of development on site is representative of the site as developed, reaching its highest and best use.

B7 Front Boundary Setbacks

Compliance with control

The control requires setbacks of 10.0m to Garigal Road and 6.5m to Niangala Close.

The proposed additions are setback compliant distances from Niangala Close and Garigal Road as required by this control. While compliant, the proposed setback to Garigal Road is insufficient to minimise the visual impact of the built form (which is wholly non-compliant with the building height development standard) as viewed from the surrounding public domain. This matter is discussed in detail under the Clause 4.6 and WDCP D9 sections of this report.

In addition to the existing breaches of Section B14, the existing building is also non-compliant with the required setback to Garigal Close, with a minimum setback of 7.8m at the western end of the building.

B14 Main Roads Setback

Description of Non-compliance

The control requires setbacks of 30m to Forest Way and Mona Vale Road. The setback to Mona Vale Road is compliant, however the proposed 27.7m setback to Forest Way results in a 7.7% variation to the control. It is also noted that the existing building breaches this control, with minimum setbacks of 20.7m to the lower levels and 27.7m to the existing built form at Level 2.

Merit consideration:

With regard to the consideration for a variation, the development is considered against the underlying Objectives of the Control as follows:

- ***To provide a densely landscaped buffer between the development and the main road/s.***

Comment:

The existing Forest Way setback provides an effective landscape buffer to the existing building as viewed from the west. However, the southward extension of Level 2 cannot be screened sufficiently and will result in an unacceptable level of visual impact when viewed from Forest Way and the surrounding public domain.

- ***To enhance the aesthetic quality of main roads.***

Comment:

The proposal would not enhance the aesthetic quality of Forest Way, from which the existing B7 zone presents predominantly as commercial buildings within a landscaped setting. Conversely, the proposed additions are considered to be of a height and scale that is incompatible with nearby developments and the surrounding bushland character.

Having regard to the above assessment, it is concluded that the proposed development is inconsistent with the relevant objectives of the control.

Accordingly, this assessment finds that the proposal is **not supported** in this particular circumstance.

C2 Traffic, Access and Safety

The application was referred to Council's Traffic section and TfNSW, with no concerns raised in relation to vehicular movements or car parking. The conditions recommended by Council's Traffic section would be applied were the application recommended for approval.

C4 Stormwater

Were the application recommended for approval, conditions would be recommended to ensure appropriate disposal of stormwater from the site.

D3 Noise

The submitted Acoustic Report anticipates that the proposal would comply with the relevant noise criteria in relation to nearby residential receivers. Were the application recommended for approval, the recommendations of the report would be incorporated into the conditions of consent.

D6 Access to Sunlight

Compliance with control

Requirements

- 1. Development should avoid unreasonable overshadowing any public open space.*

Comment:

The proposal would not cause any adverse overshadowing of the public domain, with minimal additional impact to the Garigal Road road reserve throughout the day.

D7 Views

The proposal will not adversely impact views from surrounding developments. Concerns regarding the visual bulk and scale impacts of the development are addressed elsewhere in this report.

D9 Building Bulk

Description of Non-compliance

Requirements

- 1. Side and rear setbacks are to be progressively increased as wall height increases.*
- 2. Large areas of continuous wall planes are to be avoided by varying building setbacks and using appropriate techniques to provide visual relief.*
- 3. On sloping land, the height and bulk of development (particularly on the downhill side) is to be minimised, and the need for cut and fill reduced by designs which minimise the building footprint and allow the building mass to step down the slope. In particular:
The amount of fill is not to exceed one metre in depth.
Fill is not to spread beyond the footprint of the building.
Excavation of the landform is to be minimised.*
- 4. Building height and scale needs to relate to topography and site conditions.*
- 5. Orientate development to address the street.*
- 6. Use colour, materials and surface treatment to reduce building bulk.*
- 7. Landscape plantings are to be provided to reduce the visual bulk of new building and works.*
- 8. Articulate walls to reduce building mass.*

Comment:

Despite being setback from the levels below, the proposed design is unsatisfactory in minimising the visual perception of the new built form that is not anticipated under the building height control for the site and locality. Furthermore, the proposed additions are non-compliant with the required front setback to Forest Way and do not incorporate articulation of the Level 2 wall planes to provide adequate visual relief. Noting the existing building's non-compliance with height and setbacks the proposed use of colours, materials and planter boxes are not considered sufficient to minimise the visual bulk of the development in this case. The proposed amendments, including; the lowering of the building height by

470mm, reduction in the width by approximately 1.0m at the western elevation and deletion of the eastern overhang, are not considered sufficient to materially alter the level of visual impact indicated in the submitted VIA or resolve Council's concerns in relation to bulk and visual impact.

Importantly, in the context of this site, the existing stepping of the built form from north to south and toward the most visually prominent part of the site (Garigal Road and corner of Forest Way), is a good urban design characteristic of the current development, and to lose this critical design quality will be detrimental to the streetscape and deleterious to the broader objective of ensuring a high quality business park environment.

Accordingly, the proposal is assessed as non-compliant with Requirements (1), (2) & (8) of the control.

Merit Consideration

The development is considered against the underlying Objectives of the Control as follows:

- ***To encourage good design and innovative architecture to improve the urban environment.***

Comment:

For the reasons discussed above and elsewhere in this report, the proposal is not considered to represent a good or innovative design that would improve the surrounding environment.

- ***To minimise the visual impact of development when viewed from adjoining properties, streets, waterways and land zoned for public recreation purposes.***

Comment:

Noting the proposal's non-compliance with the height of buildings development standard, the non-compliant front setback to Forest Way and the inadequate front setback to Garigal Close, it cannot be said that the visual impact of the development when viewed from adjoining properties, streets and the public domain has been minimised.

Having regard to the above assessment, it is concluded that the proposed development is inconsistent with the relevant objectives of the control.

Accordingly, this assessment finds that the proposal is **not supported** in this particular circumstance.

D10 Building Colours and Materials

No schedule of materials and finishes was submitted with the application, however the Statement of Environmental Effects and photomontages indicate that the finishes would complement the existing character and styling of the building. Were the application recommended for approval, conditions of consent would be imposed in this regard.

D12 Glare and Reflection

It is not anticipated that the proposal would have adverse sunlight glare impacts on surrounding developments. Were the application recommended for approval, conditions of consent would be imposed in relation to glare and light spill from signage.

D23 Signs

Description of Non-compliance

The proposal includes 2 new signage zones at the Level 1 southern and eastern elevations. Details of the signage content have not been provided as part of the application. The signage zones have dimensions as follows:

- South - 45m² (9m L x 5m H)
- East - 32.5m² (6.5m L x 5m H)

Requirements

- 1. Signs are to be sited and designed so that they do not adversely impact on the amenity of the streetscape and the surrounding locality. In particular, signs are not to dominate or obscure other signs or result in visual clutter.*
- 2. Signs are to be compatible with the design, scale and architectural character of the building or site on which they are to be placed.*

Comment:

In addition to the proposed 45m² southern and 32.5m² eastern signage zones, the existing building contains a further 83m² of signage at the southern elevation and 84m² at the eastern elevation. The ground floor tenancy also appears to have installed two large window signs at the south-eastern corner; it is unclear whether any consent has been granted for these signs.

This proliferation of signage at the south-eastern corner of the building is considered to result in visual clutter that would adversely impact the streetscape. The extent of advertising at this prominent corner of the building is excessive in relation to the built form.

Merit Consideration

With regard to the consideration for a variation, the development is considered against the underlying Objectives of the Control as follows:

- *To encourage well designed and suitably located signs that allow for the identification of a land use, business or activity to which the sign relates.*
- *To achieve well designed and coordinated signage that uses high quality materials.*
- *To ensure that signs do not result in an adverse visual impact on the streetscape or the surrounding locality.*
- *To ensure the provision of signs does not adversely impact on the amenity of residential properties.*
- *To protect open space areas and heritage items or conservation areas from the adverse impacts of inappropriate signage.*

Comment:

Given the extent of the existing and proposed sign locations concentrated at the south-eastern corner of the building, the proposed signage zones are not considered to be suitably designed and located and will result in adverse visual impacts upon the streetscape and public domain. As such, the proposal is

assessed being inconsistent with Objectives (1), (2) and (3).

Having regard to the above assessment, it is concluded that the proposed development is inconsistent with the relevant objectives of the control.

Accordingly, this assessment finds that the proposal is **not supported** in this particular circumstance.

E1 Preservation of Trees or Bushland Vegetation

The proposal is limited to works at the roof level of the existing building and will not adversely impact any trees or bushland vegetation.

E3 Threatened species, populations, ecological communities listed under State or Commonwealth legislation, or High Conservation Habitat

The proposal is limited to works at the roof level of the existing building and will not adversely impact any threatened species, biodiversity values, wildlife corridors, native vegetation or environmental features present in the vicinity of the site.

E10 Landslip Risk

The site is mapped as Landslip Risk Areas A and B. A preliminary Geotechnical Report was prepared in relation to the proposal and concludes that no further geotechnical investigation is required.

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.

POLICY CONTROLS

Northern Beaches Section 7.12 Contributions Plan 2022

The proposal is subject to the application of Northern Beaches Section 7.12 Contributions Plan 2022.

A monetary contribution of \$33,699 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$3,369,934.

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, in this regard the application is not considered to be acceptable and is recommended for refusal.

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

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

Council is not satisfied that:

1) The Applicant's written request under Clause 4.6 of the Warringah Local Environmental Plan 2011 seeking to justify a contravention of Clause 4.3 Height of Buildings has adequately addressed and demonstrated that:

- a) Compliance with the standard is unreasonable or unnecessary in the circumstances of the case; and
- b) There are sufficient environmental planning grounds to justify the contravention.

2) The proposed development will be in the public interest because it is consistent with the objectives of the standard and the objectives for development within the zone in which the development is proposed to be carried out.

The detailed assessment of the proposed development finds that the proposal is an overdevelopment of the site and inconsistent with the desired future character as set by the applicable controls.

The variations to both the WLEP 2011 and WDCP 2011 planning controls, which are intended to limit the intensity, impact and ensure an appropriate and suitable character of development, demonstrate that the proposed additions are not suitable or appropriate on this site, particularly given the sites gateway location at the main entry to the Austlink Business Park.

The proposed additions are excessive in height, bulk and scale and would cause undue visual impact when viewed from the surrounding road network and public domain, noting that this built form is entirely above the prescribed 11.0m building height control, and will significantly increase the amount of built form which is non-compliant and that will have a demonstrable impact.

The proposal seeks a variation of 106.36% to the building height development standard and the Applicant's Clause 4.6 written request is not well-founded and fails to adequately justify this breach.

Importantly, in the context of this site, despite the existing non-compliant nature of the building, the existing stepping of the built form from north to south and toward the most visually prominent part of the site (Garigal Road and corner of Forest Way), is a good urban design characteristic of the current development, and to lose this critical character attribute and design quality will be detrimental to the streetscape and deleterious to the broader objective of ensuring a high quality business park

environment.

Whilst the applicant cites examples of non-compliant developments in the business park, including the subject building, these variations are based on specific environmental planning grounds, which simply do not exist in relation to the current proposal to add more floorspace for commercial gain. Furthermore, no other site in the business park has such a high level of visual prominence and exposure to an arterial road (in this case Forest Way), as the subject site, which elevates the importance of ensuring the built form does not overly dominate, which this assessment finds that it does.

For the reasons set out in this report, the application is recommended for **REFUSAL**.

It is considered that the proposed development does not satisfy the appropriate controls and that all processes and assessments have been satisfactorily addressed.

RECOMMENDATION

THAT the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council , as the consent authority REFUSE Development Consent to Development Application No DA2022/1869 for the Alterations and additions to Belrose Super Centre including six (6) new tenancies for use as specialised retail premises and reconfiguration of the existing car park on land at Lot 1 DP 1104786,4 - 6 Niangala Close, BELROSE, for the reasons outlined as follows:

1. Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause 4.3 Height of Buildings and Clause 4.6 Exceptions to Development Standards of the Warringah Local Environmental Plan 2011.

Specifically, the proposal is not compatible with the height and scale of surrounding and nearby development, the proposed building height breach would result in excessive visual impact as viewed from the surrounding public domain, the proposed development is not considered to minimise its visual impact on the scenic quality of the surrounding bush environment, and the proposal fails to manage and mitigate the visual impact of the additions when viewed from the surrounding road network and National Park. In this regard, the proposal is inconsistent with the underlying objectives of WLEP Clause 4.3 Height of Buildings.

Further, the applicant's written request under Clause 4.6 of MLEP has not adequately demonstrated that compliance with the standards is unreasonable or unnecessary, that there are sufficient environmental planning grounds to justify the contraventions or that the proposed development will be in the public interest.

2. Pursuant to Section 4.15(1)(e) of the Environmental Planning and Assessment Act 1979, the proposed development is not in the public interest.

Specifically, the proposal is contrary to the relevant requirements of the WLEP and WDCP and would result in a development which will create an undesirable precedent such that it would undermine the desired future character of the area and be contrary to the expectations of the community.

3. Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of State Environmental Planning Policy (Industry and Employment) 2021.
4. Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the Clause 1.2 Aims of The Plan of the Warringah Local Environmental Plan 2011.
5. Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause Zone B7 Business Park of the Warringah Local Environmental Plan 2011.
6. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause B14 Main Roads Setback of the Warringah Development Control Plan.

Specifically, the non-compliant setback to Forest Way contributes to the proposal's excessive bulk and visual impact when viewed from the surrounding road network and public domain.

7. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause D9 Building Bulk of the Warringah Development Control Plan.

Specifically, the proposed variations to the building height development standard and the front setback, in combination with the adequate articulation of the built, fail to achieve a reasonable level of building bulk and scale.

8. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause D23 Signs of the Warringah Development Control Plan.