



New South Wales Government  
Independent Planning Commission

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# Dee Why Mixed Use Development SSD-68230714

## Statement of Reasons for Decision

Michael Chilcott (Chair)  
Suellen Fitzgerald

20 December 2024



## Executive Summary

Landmark Group Australia (Applicant) has sought consent for a mixed-use development with in-fill affordable housing located at 4 Delmar Parade and 812 Pittwater Road, Dee Why (Project) within the Northern Beaches Local Government Area. The Project would provide a total of 280 apartments, including 43 in-fill affordable housing units and 4 commercial tenancies. The Project is stated to support approximately 200 construction and 10 operational jobs.

The NSW Independent Planning Commission (Commission) has determined the application for the Project as the delegate of the Minister for Planning and Public Spaces per the Minister's 14 September 2011 delegation to the then Planning Assessment Commission.

Commissioners Michael Chilcott (Chair) and Suellen Fitzgerald were appointed to constitute the Commission Panel in determining the Application. As part of its determination process, the Commission met with representatives of the Applicant, the Department, Northern Beaches Council and the Stony Range Regional Botanic Garden Committee. The Commission also undertook a site inspection and received 26 public submissions on the Application, comprising 20 objections, 2 submissions in support, and 3 comments.

Key issues which are the subject of findings in this Statement of Reasons for Decision relate to built form, amenity, overshadowing, traffic, parking and impacts to Stony Range Regional Botanic Garden (SRRBG).

As a consequence of its assessment, the Commission has determined that consent should be granted to this State significant development application, subject to conditions.

The Commission is satisfied that the Project is consistent with the Objects of the EP&A Act and the provisions of applicable statutory instruments. The Commission finds that all residual environmental, social, land use and safety impacts of the Project can be managed or mitigated, subject to the conditions of consent imposed by the Commission, and approval of the Project is in the public interest.

The Commission finds that overshadowing and visual impacts on SRRBG do not form a basis for refusal of the application given that the Project would result in a lesser overshadowing impact than that which would result from a building of compliant height at the southern boundary of the Site, and visual impacts are consistent and reasonable having regard to the height and floor space development standards applicable to the Site.

The Commission acknowledges that SRRBG is a significant, volunteer-run community asset and notwithstanding the impacts of the Project, the Commission considers that SRRBG will be capable of providing continued benefit to users and visitors, including amenity, retreat, and socialisation.

Further, the Commission is satisfied that the Project will deliver additional in-fill housing (including affordable housing) as part of a high quality development within the Dee Why Town Centre on a site with access to public transport connections, employment centres, services and various amenities.

The Commission's reasons for approval of the Project are set out in this Statement of Reasons for Decision.

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## Defined Terms

ABBREVIATION	DEFINITION
<b>Apartment Design Guide</b>	<i>State Environmental Planning Policy No. 65 – Design Quality of Residential Apartment Development</i>
<b>AHD</b>	Australian Height Datum
<b>Applicant</b>	Landmark Group Australia
<b>Applicant's RFI response</b>	The Applicant's response to the Commission's request for further information, dated 11 December 2024
<b>Application</b>	SSD-68230714
<b>Approved DA</b>	Approved development consent DA2022/0145
<b>AR para</b>	Paragraph of the Department's Assessment Report
<b>Commission</b>	Independent Planning Commission of NSW
<b>Council</b>	Northern Beaches Council
<b>CTMP</b>	Construction Traffic Management Plan
<b>Department</b>	Department of Planning, Housing and Infrastructure
<b>Department's AR</b>	Department's Assessment Report, dated November 2024
<b>Department's RFI response</b>	Department's response to the Commission's request for further information, dated 17 December 2024
<b>DWTC</b>	Dee Why Town Centre
<b>DWTC Master Plan</b>	Dee Why Town Centre Master Plan
<b>EDC</b>	Estimated development cost
<b>EIS</b>	Environmental Impact Statement, dated March 2024
<b>EP&amp;A Act</b>	<i>Environmental Planning and Assessment Act 1979</i>
<b>EP&amp;A Regulation</b>	<i>Environmental Planning and Assessment Regulation 2021</i>
<b>EPI</b>	Environmental Planning Instrument
<b>ESD</b>	Ecologically Sustainable Development
<b>FSR</b>	Floor Space Ratio
<b>GFA</b>	Gross Floor Area
<b>Housing SEPP</b>	<i>State Environmental Planning Policy (Housing) 2021</i>
<b>LGA</b>	Local Government Area
<b>Mandatory Considerations</b>	Relevant mandatory considerations, as provided in s 4.15(1) of the EP&A Act
<b>Material</b>	The material set out in section 3.1
<b>Minister</b>	NSW Minister for Planning and Public Spaces
<b>Planning Systems SEPP</b>	<i>State Environmental Planning Policy (Planning Systems) 2021</i>
<b>Project</b>	Dee Why Mixed Use Development
<b>RtS</b>	Response to Submissions, dated July 2024
<b>Site</b>	The site as described in section 2.1 of this report
<b>SRtS</b>	Supplementary Response to Submissions Report, dated September 2024
<b>SSD</b>	State Significant Development
<b>SRRBG</b>	Stony Range Regional Botanical Garden
<b>TfNSW</b>	Transport for New South Wales
<b>TIA</b>	Traffic Impact Assessment
<b>WDCP 2011</b>	Warringah Development Control Plan 2011
<b>WLEP 2011</b>	Warringah Local Environment Plan 2011

# 1. Introduction

1. On 19 November 2024, the NSW Department of Planning, Housing and Infrastructure (**Department**) referred the State significant development (**SSD**) Application SSD-68230714 (**Application**) from Landmark Group Australia (**Applicant**) to the NSW Independent Planning Commission (**Commission**) for determination.
2. The Applicant seeks approval for the Dee Why Mixed Use Development (the **Project**) located in the Northern Beaches Council (**Council**) Local Government Area (**LGA**) under section 4.38 of the *Environmental Planning and Assessment Act 1979* (**EP&A Act**).
3. The Application constitutes SSD pursuant to section 4.36 of the EP&A Act as the Project satisfies the criteria under section 2.6(1) and section 26A of Schedule 1 of *State Environmental Planning Policy (Planning Systems) 2021* (**Planning Systems SEPP**), being a mixed use development that includes in-fill affordable housing and is residential development on land in the Eastern Harbour City with an estimated development cost (**EDC**) of more than \$75 million.
4. In accordance with section 4.38 of the EP&A Act and section 2.7 of SEPP Planning Systems, the Commission was the consent authority as Council objected to the Application. On 12 December 2024, the Department wrote to the Commission advising of changes to the Planning Systems SEPP that would have the consequence of changing the consent authority for the Application from the Commission to the Minister. In order to permit the Commission to continue to exercise its functions in relation to the Application, the Commission has determined the present Application as the delegate of the Minister in accordance with the Minister's 14 September 2011 delegation to the-then Planning Assessment Commission.
5. Andrew Mills, as Chair of the Commission, determined that Michael Chilcott (Chair) and Suellen Fitzgerald would constitute the Commission for the purpose of exercising its functions with respect to the Application.
6. The Department concluded in its Assessment Report (**AR**) that the impacts of the Project are acceptable, the Site is suitable for the proposed development, and that the Application is in the public interest and is approvable, subject to its recommended conditions of consent.

## 2. The Application

### 2.1 Site and Locality

7. Paragraph (**AR para**) 4 of the Department's AR states the 'Site' is located at 4 Delmar Parade and 812 Pittwater Road, Dee Why, within the Northern Beaches LGA. The Site has an 'L' shape comprising three (3) lots and is bounded by Pittwater Road to the west, Delmar Parade to the north, and Stony Range Regional Botanical Garden (**SRRBG**) carpark to the south (refer Figure 1 below).



- 8. The Site has an area of 7,790 m<sup>2</sup> and is currently under construction, with excavation occurring in accordance with the approved development consent DA2022/0145 (**approved DA**) (refer section 2.2.2 below). As the AR notes, the Site has a varying topography with a fall from its south-eastern corner to its Delmar Road and Pittwater Road frontages. The SSRBG, which is a local heritage listed 'flora reserve', is located to the south and south-east of the Site (refer AR Table 2 and AR Figure 1).
- 9. The surrounding area is otherwise a mix of residential, commercial and mixed-use development. The Site is located within the southern end of the Dee Why Town Centre (**DWTC**), with a number of medium and high-density mixed use and commercial buildings situated along Pittwater Road to the north of the Site. Bus services are accessible via Pittwater Road, with the Site being approximately 200m from the closest bus stop. The Site is zoned MU1 – Mixed use zone under the Warringah Local Environment Plan 2011 (**WLEP 2011**).

Figure 1 – Local context (AR Figure 2)



## 2.2 The Project

### 2.2.1 Overview

10. The Application is seeking approval for a mixed-use development comprising commercial tenancies and residential flat buildings that contain a total of 280 apartments, including 43 in-fill affordable housing units. The development comprises two (2) buildings, known as Building A and Building B. A summary of the key Project details is provided at Table 1. The proposed Site plan and indicative renders of the development façades are shown at Figures 3, 4, and 5 of the AR.

*Table 1 – Key project details (AR Table 2)*

Component	Proposed Project
<b>Gross floor area (GFA)</b>	A total GFA of 24,954.4m <sup>2</sup> , consisting of: <ul style="list-style-type: none"> <li>residential GFA of 24,176.3m<sup>2</sup></li> <li>non-residential GFA of 778.1m<sup>2</sup></li> </ul>
<b>Basement</b>	Fit out of three levels of basement accessed via Delmar Parade containing: <ul style="list-style-type: none"> <li>425 car parking spaces</li> <li>307 bicycle spaces</li> </ul>
<b>Building heights</b>	Building A: 25.1m / seven storeys Building B: 30.2m / 10 storeys
<b>Dwellings</b>	Total of 280 apartments (including 43 affordable housing apartments), consisting of: <ul style="list-style-type: none"> <li>110 x one-bedroom apartments</li> <li>113 x two-bedroom apartments</li> <li>56 x three-bedroom apartments</li> <li>1 x four-bedroom apartment</li> </ul>
<b>Open space</b>	Communal space, consisting of: <ul style="list-style-type: none"> <li>1,013.8m<sup>2</sup> of outdoor communal open space located on the ground floor</li> <li>934.5m<sup>2</sup> communal open space located on the rooftops</li> <li>75m<sup>2</sup> indoor communal space on the ground floor consisting of a gym, sauna and changerooms</li> </ul>
<b>Commercial uses</b>	Four commercial tenancies (two addressing Delmar Parade and two addressing Pittwater Road)
<b>Subdivision</b>	Lot consolidation and stratum subdivision

### 2.2.2 Related projects and works

11. As noted at section 2.1 above, an approved DA applies to the Site, with works having commenced in March 2024. That DA was subject to a grant of consent in July 2023 by the Sydney North Planning Panel. It permits the comprehensive redevelopment of the Site, including construction of a mixed-use development with four retail tenancies and 219 apartments. The approved DA has since been modified twice (AR para 5 and 7).

12. The Application before the Commission seeks approval for a new development that is responsive to the in-fill affordable housing provisions of *State Environmental Planning Policy (Housing) 2021 (Housing SEPP)*. The Application seeks additional height and density, but maintains the same ground floor building footprint, Site access and flood mitigation measures as presented in the DA previously approved for the Site by the Sydney North Planning Panel.
13. The Commission has noted that the Applicant has undertaken demolition works, tree removal, basement excavation and construction, construction of a stormwater pipe diversion, construction of flood walls and amendment of stormwater related easements consistent with the approved DA (AR para 8-9).
14. The Department has recommended condition A7 requiring the approved DA be modified to remove works covered by the Application under section 4.17(1)(b) and (5) of the EP&A Act.

## 3. The Commission's Consideration

### 3.1 Material Considered by the Commission

15. In this determination, the Commission has considered the following material (**Material**):
  - the Planning Secretary's Environmental Assessment Requirements issued by the Department, dated 5 March 2024;
  - the following information provided by the Applicant:
    - the Environmental Impact Statement (**EIS**) dated March 2024 and its accompanying appendices;
    - the Response to Submissions Report (**RtS**) dated July 2024 and its accompanying appendices;
    - the Supplementary Response to Submissions Report (**SRtS**) dated September 2024 and its accompanying appendices;
    - the Amendment Report dated November 2024 and its accompanying appendices;
    - the response to the Commission's request for further information (**Applicant's RFI response**) dated 11 December 2024, comprising a covering letter, revised clause 4.6 variation requests, legal advice from Mills Oakley, and monthly shadow diagrams;
  - all public submissions on the EIS made to the Department during public exhibition;
  - all Government Agency advice to the Department;
  - the Department's AR, dated November 2024;
  - the Department's recommended conditions of consent, dated November 2024;
  - comments and presentation material from meetings with the Department, Applicant and Council, as referenced in Table 3 below;
  - all observations and material gathered at the Site inspection on 9 December 2024;
  - all written comments received by the Commission up until 5pm, 3 December 2024;
  - Council's response to the Commission's questions on notice, dated 16 December 2024;
  - the correspondence from SRRBG Committee to the Commission, dated 17 December 2024;



- the Department's response to the Commission's request for further information, dated 17 December 2024 (**Department's RFI response**), and including its comment on the feasibility, workability, and any potential unintended consequences of the proposed conditions

## 3.2 Strategic Context

16. The Commission has considered the strategic planning framework relevant to the Site and the Project, including the following plans and strategies:
- Greater Sydney Regional Plan – A Metropolis of Three Cities (Greater Cities Commission, 2018)
  - Eastern City District Plan (Greater Cities Commission, 2018)
  - Future Transport Strategy 2056 (Transport For NSW, 2022)
  - Better Placed (Government Architect NSW, 2023)
  - Towards 2040: Local Strategic Planning Statement 2020 (Council, 2020)
  - Local Housing Strategy (Council, 2021)
  - Affordable Housing Policy (Council, 2018)
  - Move: Northern Beaches Transport Strategy 2038 (Council, 2018)
  - Dee Why Town Centre Master Plan (Council, 2013) (**DWTC Master Plan**)
  - Northern Beaches Economic Development Strategy: Business on the Beaches (Council, 2023)
17. The recent government housing supply commitments are relevant to the Project, namely the NSW Government's target of delivering 377,000 well-located homes across the State by 2029 to support the National Housing Accord's national target of delivering 1.2 million new, well-located homes over five years. The Application has been submitted pursuant to:
- the introduction of an SSD pathway in December 2023 for residential development including at least 10% affordable housing; and
  - the amendments to the Housing SEPP establishing new in-fill affordable housing provisions which permit floor space ratio (**FSR**) and building height bonuses of 20-30% for projects that include residential development and at least 10-15% of GFA as affordable housing (AR para 13-14).

## 3.3 Statutory Context

### 3.3.1 State significant development

18. The proposal is declared SSD under section 4.36 of the EP&A Act as it satisfies the criteria under section 2.6(1) of the Planning Systems SEPP, being: not permissible without development consent; and development specified in section 26A of Schedule 1 of the Planning Systems SEPP (AR Table 3).

### 3.3.2 Permissibility

19. As described in section 2.1 above, the Site is located within the MU1 zone pursuant to the WLEP 2011. Within this zone, commercial premises are permissible with consent, but residential flat buildings are prohibited.

20. The Department notes that the proposed residential flat building land use is permissible with consent pursuant to the *Standard Instrument (Local Environmental Plans) Order 2006* at Schedule 1 Part 2 clause 5. This allows for development that was previously permissible with consent under the former zone in force immediately prior to 26 April 2023 to continue being permitted with consent on the land until 26 April 2025. The MU1 zone replaced the previous B4 zone as part of the NSW Government's employment zones reforms, and residential flat buildings were permissible with consent in the B4 zone under the WLEP 2011 immediately prior to 26 April 2023 (AR Table 3).

### 3.3.3 Amendment of the application

21. In accordance with section 37 of the *Environmental Planning and Assessment Regulation 2021 (EP&A Regulation)*, an applicant can apply to amend a development application at any time before the application is determined. On 5 November 2024 the Applicant sought to amend the Application for the Project seeking to remove foundation construction works including piling and construction of the basement structure including slabs and walls from the Application, with these works sought to be undertaken under the approved DA (AR para 39 and 40). The Department, as delegate of the Commission, approved the application for the amendment on 5 November 2024.

## 3.4 Mandatory Considerations

22. In determining this Application, the Commission is required by section 4.15(1) of the EP&A Act to take into consideration such of the listed matters as are of relevance to the development the subject of the Application (**Mandatory Considerations**). The Mandatory Considerations are not an exhaustive statement of the matters the Commission is permitted to consider in determining the Application. To the extent that any of the Material does not fall within the Mandatory Considerations, the Commission has considered that Material where it is permitted to do so, having regard to the subject matter, scope and purpose of the EP&A Act.

Table 2 – Mandatory Considerations

Mandatory Considerations	Commission's Comments
Relevant EPIs	<p>Appendix C of the Department's AR identifies relevant EPIs for consideration. The key EPIs (in their present, consolidated form) include:</p> <ul style="list-style-type: none"> <li>• Planning Systems SEPP;</li> <li>• Housing SEPP;</li> <li>• <i>State Environmental Planning Policy (Transport and Infrastructure) 2021</i>;</li> <li>• <i>State Environmental Planning Policy (Resilience and Hazards) 2021</i>;</li> <li>• <i>State Environmental Planning Policy (Sustainable Buildings) 2022</i>;</li> <li>• <i>State Environmental Planning Policy (Biodiversity and Conservation) 2021</i>;</li> <li>• WLEP 2011;</li> </ul> <p>The Commission agrees with the Department's assessment of EPIs set out in Appendix C of the AR. The Commission therefore adopts the Department's assessment.</p>

<b>Relevant Development Control Plans</b>	Section 2.10 of the Planning Systems SEPP states that development control plans do not apply to SSD. Although the Commission is therefore not required to consider any development control plan in determining the present Application, the Commission has had regard to the traffic and parking controls set out in the Warringah Development Control Plan 2011 ( <b>WDCP 2011</b> ) in its determination of the Application in section 5.4 below.
<b>Likely Impacts of the Development</b>	The likely impacts of the Application have been considered in section 0 of this Statement of Reasons.
<b>Suitability of the Site for Development</b>	<p>The Commission has considered the suitability of the Site and finds that the Site is suitable for the following reasons:</p> <ul style="list-style-type: none"> <li>• the Project will provide diverse housing options, including 15% in-fill affordable housing dwellings meeting the needs of very low, low and moderate income households, in a mix of typologies;</li> <li>• the Project meets the objectives of the MU1 zone under the WLEP 2011;</li> <li>• the Project is consistent with the aims of the NSW Government to increase the supply of well-located housing, including affordable housing, in accordance with the National Housing Accord;</li> <li>• the Project is consistent with the relevant State and local planning framework in delivering a high quality mixed use development with in-fill housing and commercial floorspace, as also envisaged under the DWTC Master Plan;</li> <li>• the Site is in an advantageous location close to the existing public transport and road network, employment opportunities, open spaces, and forms part of the DWTC, in which Council is seeking to encourage increased residential density;</li> <li>• the Project is an orderly and economic use of the land;</li> <li>• the Project will provide appropriate internal and external amenity for future residents;</li> <li>• the Project will contribute to activation of the public domain and provide additional economic and community uses for the locality; and</li> <li>• any adverse impacts of the Project on surrounding land uses or neighbouring properties, including overshadowing and visual impacts on SRRBG, are consistent with a compliant built form under development standards applicable to the Site. In the Commission's assessment, they do not form a basis for refusal of the application.</li> </ul>
<b>Objects of the EP&amp;A Act</b>	The Commission is satisfied that the Application is consistent with the Objects of the EP&A Act.
<b>Ecologically Sustainable Development (ESD)</b>	The Commission finds that the development is consistent with the principles of ESD, It would achieve an acceptable balance between environmental, economic and social considerations, consistent with the precautionary principle.
<b>The Public Interest</b>	<p>The Commission has considered whether the grant of conditional consent to the Application is in the public interest. In doing so, the Commission has evaluated the likely impacts of the Application.</p> <p>The Commission's consideration of the public interest has also been informed by consideration of the principles of ESD.</p>

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The Commission has concluded that approval of the Project is in the public interest and merits the grant of consent, subject to conditions.

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### 3.5 Additional Considerations

23. In determining the Application, the Commission has also considered:
- Apartment Design Guide (prepared by the NSW Department of Planning and Environment (July 2015), as referenced by the Housing SEPP) (**ADG**)
  - Guide to exclusions from clause 4.6 of the Standard Instrument (NSW Department of Planning and Environment, 2023)
  - Interim Construction Noise Guideline (NSW Environment and Heritage, 2009)
  - Social Impact Assessment Guideline for State Significant Projects (NSW Government, 2021)

### 3.6 The Commission's Meetings

24. As part of the determination process, the Commission met with various persons as set out in Table 3. All meeting and Site inspection notes were made available on the Commission's website.

*Table 3 – Commission's Meetings*

Meeting	Date	Transcript/Notes Available on
Department	26 November 2024	29 November 2024
Council	26 November 2024	29 November 2024
Applicant	26 November 2024	29 November 2024
Site Inspection	9 December 2024	11 December 2024
SRRBG Committee	12 December 2024	16 December 2024

## 4. Community Participation & Public Submissions

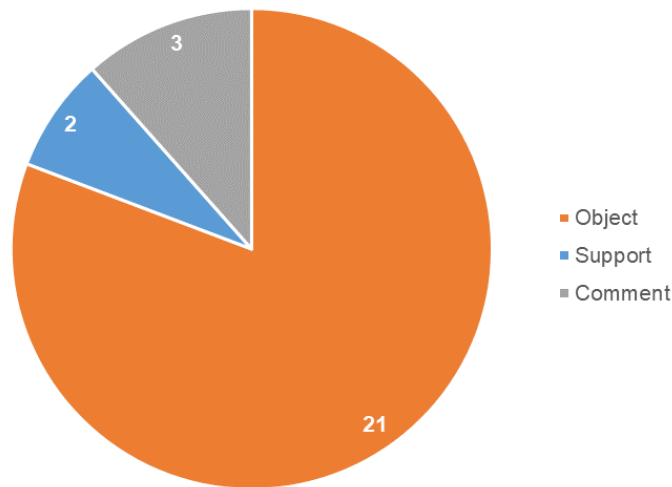
### 4.1 Site Inspection

25. On 9 December 2024, the Commission Panel conducted an inspection of the Site and immediate surrounds with the Applicant. The Commission published notes from the Site inspection on its website, as indicated in Table 3 above.

### 4.2 Public Submissions

26. As part of the Commission's consideration of the Project, all persons were offered the opportunity to make written submissions to the Commission until 5:00pm, Tuesday 3 December 2024. The Commission received a total of 26 written submissions on the Application through its website, comprising 20 objections, 2 submissions in support, and 3 comments (refer Figure 2).

Figure 2 - Submissions received by Commission



27. For the reasons set out in sections 0 and 6 of this Statement of Reasons, the Commission considers that the matters raised in submissions do not preclude the grant of development consent and that the matters can be satisfactorily addressed by the conditions of consent imposed by the Commission.

#### 4.2.1 Matters raised in submissions

28. Submissions to the Commission raised a number of matters, which are outlined below. The Commission notes that the submissions referred to below are not an exhaustive report of the submissions considered by the Commission, but are instead reflective and illustrative of what the Commission regards as the primary issues that emerged from those submissions.

##### *Built form*

29. Submissions raised concern regarding the larger built form of the Project, compared to the approved DA, particularly the increased height, and the flow on effects this may have on residential amenity and SRRBG. Some submitters were of the view that the Project's built form is incompatible with the character of the surrounding area, especially nearby low density residential neighbourhoods, and that it represents an overdevelopment given the Site is at the edge of Dee Why's commercial centre.

##### *Amenity*

30. Submissions raised concern regarding the Project's impacts on amenity for residents, workers, and visitors to Dee Why, with some submissions stating that this particular area of Dee Why is being overdeveloped without enough focus on protecting amenity. Submissions raised a specific concern about the Project's potential negative impacts on the amenity and character of SRRBG (described further below).



### *Traffic and parking*

31. Submissions raised concern regarding the Project's potential to exacerbate existing traffic and parking issues in Dee Why and the Northern Beaches more broadly. Submitters noted the existing congestion problems on Pittwater Road, particularly during peak hour, the lack of parking in the area, and frequent rat-running on local roads as a result of peak hour traffic congestion. Submitters also noted that the B-Line bus service (servicing Dee Why along Pittwater Road) is often lacking in sufficient capacity or frequency.
32. Submissions raised concern regarding the Pittwater Road and Delmar Parade intersection, including congestion due to turning cars, safety issues, and difficulties crossing the intersection for pedestrians. One submitter considered that local traffic flow improvements were needed to mitigate the impacts of the Project and increased development in Dee Why more widely.

### *Impacts to Stony Range Regional Botanical Garden*

33. A majority of submissions raised concerns regarding potential impacts of the Project on SRRBG, particularly in relation to overshadowing, loss of visual and environmental amenity, and social impacts. Submitters noted that SRRBG is a rare and long-standing community asset in an area of the Northern Beaches that lacks public open space, and provides valuable opportunities for retreat, socialisation, and education.
34. Submitters further expressed concern in relation to additional overshadowing of SRRBG that would arise as a result of the Project's proposed height and bulk in comparison to the approved DA, and in particular. Submissions referred to overshadowing of SRRBG's facilities and amenities (including the picnic area) during mid-winter, and the impact that increased shade would have on the quality and amenity of SRRBG for users and visitors.

### *Pedestrian connections*

35. A number of submitters noted that prior to construction the Site provided a convenient through link that connected to the pedestrian connection between Tango Avenue and Pittwater Road. Submitters were of the view that this should be maintained in the interest of convenient access to services, shops, and public transport located along Pittwater Road.

### *Housing and social benefits*

36. Some submitters voiced their approval of delivering affordable housing, particularly amidst the current housing pressures in NSW. Whilst considering this to be a key social benefit and imperative for NSW in general, others also argued that this should not be at the cost of amenity, traffic, and overshadowing impacts.

## 5. Key Issues

### 5.1 Built Form and Land Use

#### 5.1.1 Overview

37. The Project proposes a number of variations to the built form controls applying to the Site. The Applicant has submitted variation requests pursuant to clause 4.6 of the WLEP 2011. Clause 4.6(3), in particular, provides that:

*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) *compliance with the development standard is unreasonable or unnecessary in the circumstances; and*
- b) *there are sufficient environmental planning grounds to justify the contravention of the development standard.*

38. The Department, in its assessment, had concluded the Applicant's written request adequately addressed the matters required to be demonstrated under clause 4.6 of the WLEP 2011 and the proposal is in the public interest because it is consistent with the overall objective of Division 1 of the Housing SEPP and the objectives for development within the zone (AR Appendix D).
39. Following the Commission's meeting with the Applicant on 26 November 2024, the Applicant provided the Commission with further information including revised clause 4.6 variation requests (**Revised CI 4.6 Requests**). The Revised CI 4.6 Requests included legal advice prepared by the firm Mills Oakley dated 5 December 2024 that was provided to the Commission on 11 December 2024.
40. On 11 December 2024, the Commission sought clarification from the Department as to whether this further information changes any of the Department's recommendations set out in the Department's Assessment Report or recommended conditions of consent. The Department confirmed to the Commission that the Revised CI 4.6 Requests "do not change any of the recommendations set out in the Department's [AR] or recommended conditions of consent" (Department's RFI response, page 1).

#### 5.1.2 Building height

41. Two maximum building heights apply to the Site per the WLEP 2011, with a maximum height of 16m applying to the eastern portion and a maximum height of 24m applying to the western portion (refer AR Figure 6). Given the provision of 15% of the floor space as affordable housing, section 16 of the Housing SEPP provides an additional 30% to the maximum permissible building height, bringing the applicable maximum building heights to 20.8m (eastern portion) and 31.2m (western portion), respectively (AR para 48-49).
42. The Application seeks approval for maximum building heights of 25.1m (eastern portion) and 30.2m (western portion) for the Site, exceeding the height in the approved DA and with small parts of the 7th storey and lift overruns, roof plant and communal open space of Building A exceeding the Housing SEPP development standard (AR para 50) (refer Figure 3 below and AR Table 6).



- the overarching objective of clause 15A would be thwarted by requiring strict compliance as this would result in the loss of the housing supply sought to be achieved under the Housing SEPP, in particular in relation to affordable housing. A requirement to comply with the height standard would “not meaningfully reduce the impact of the [Project] on the streetscape or neighbouring properties and would provide reduced amenity to occupants of the [Project] as well as “encourage a less desirable outcome for the [Site]” (page 8);
45. In addition to the reasons set out at paragraphs 43 and 44 above, the Applicant considers that there are sufficient environmental planning grounds to justify the contravention of the development standard in accordance with clause 4.6(3)(b) of the WLEP 2011. These include that (refer pages 9-11):
- the environmental amenity of neighbouring properties will be preserved, as demonstrated by the shadow diagrams prepared as part of the Applicant’s RFI response; and
  - the distribution of built form and massing across the Site has resulted from a considered analysis of, and response to, the Site’s context and constraints, and the desire to deliver a positive urban design and amenity outcome for both future residents and the broader public domain.
46. The Department’s AR considered that the proposed height variations were acceptable given the Site’s location, its topography and constraints, the scale and character of surrounding and nearby development, there would be no unacceptable solar, privacy, heritage or private view impacts to adjoining properties, traffic impacts can be appropriately managed and mitigated, the proposed built form achieves acceptable amenity, and as the Project makes a significant contribution towards the provision of housing, including affordable housing (AR para 57-58).

### 5.1.3 Floorspace ratio

47. Two maximum FSRs apply to the Site per the WLEP 2011, with maximum FSRs of 2.4:1 and 3.2:1 applying to the eastern and western portions of the Site respectively (refer AR Figure 6). Application of the bonuses under the Housing SEPP brings the applicable maximum FSRs to 3.12:1 (eastern portion) to 4.16:1 (western portion) respectively (AR para 48-49).
48. The Applicant seeks approval for a maximum GFA of 24,954.4m<sup>2</sup>. This complies with the overall maximum permitted GFA when averaging the two FSR controls applying to the Site, however exceeds the FSR on the western portion of the Site by 1,498.3m<sup>2</sup> (AR para 51) (refer Figure 4 below).
49. Council raised concern in its submission on the EIS that the proposed FSR is above that envisaged within the Dee Why Town Centre Masterplan (AR para 56).

Figure 4 – FSR and GFA summary table (Source: AR Table 7)

Site location	Site area	LEP max. FSR	Max FSR permitted (LEP + Housing SEPP)	Max. GFA permitted	Proposed GFA	Difference
Eastern portion (T)	6,800m <sup>2</sup>	2.4:1	3.12:1	21,216m <sup>2</sup>	19,337.7m <sup>2</sup>	-1,878.3m <sup>2</sup> (complies)
Western portion (V2)	990m <sup>2</sup>	3.2:1	4.16:1	4,118m <sup>2</sup>	5,616.7m <sup>2</sup>	+1,498.3m <sup>2</sup> (36.4% exceedance)
<b>Total</b>	7,790m <sup>2</sup>			25,334m <sup>2</sup>	24,2954.4m <sup>2</sup>	-380m <sup>2</sup> (complies)

50. The Applicant's submitted that strict compliance with the FSR development standard is unreasonable and unnecessary in the circumstances of the Application for the following reasons as advanced in its revised Clause 4.6 – FSR Development Standard Report, dated December 2024 (refer pages 7-8):
- the objectives of the standard are achieved notwithstanding non-compliance with the standard. While the FSR development standard established under the Housing SEPP does not provide a specific objective, the Project is considered to achieve the underlying objective established for the Division in which the standard sits at clause 15A; and
  - the underlying objective of clause 15A would be thwarted by strict compliance with the FSR control, as this would “result in the loss of 15 apartments, of which approximately 3 apartments would be affordable housing” with no discernible change achieved in relation to potential impacts of the FSR of the Project.
51. Further, the Applicant submits that there are sufficient environmental planning grounds to justify the contravention of the development standard in accordance with clause 4.6(3)(b) of the WLEP 2011. These include that (refer pages 9-10):
- strict compliance with the FSR control for the 4.16:1 zone would also require floorspace to be redistributed into Building A in the 3.12:1 zone, “which could result in an anomalous outcome and significant height exceedance, as well as diminishing the ability to provide the most sensitive interface possible with the [adjoining land to the east]”;
  - the proposed built form within the 4.16:1 FSR zone “has a scale and proportions as anticipated by the planning controls such that the proposed variation does not result in any perceptible or detrimental impact or a built form outcome which differs from that which is expected on the [S]ite under [the Housing SEPP]”;
  - the appropriate contextual fit of the Project's built form provides an environmental planning ground to support the proposed FSR variation; and
  - the proposed variation does not result in any unreasonable impacts, and compliance with the standard would not result in a discernible reduction in the Project's impacts;



52. The Department's AR considered that the proposed FSR variation was acceptable given its consistency with the approved DA, the distribution of GFA across the Site is appropriate in view of the intent of the WLEP 2011 controls, there would be no unacceptable amenity impacts to adjoining properties, and traffic impacts can be appropriately managed and mitigated. The Department assessed that the proposed built form achieves acceptable amenity, and that the Project makes a significant contribution towards the provision of housing, including affordable housing (AR para 57-58).

#### 5.1.4 Commercial floorspace

53. Pursuant to clause 7.12(2)(c) of the WLEP 2011, two levels of proposed buildings in the DWTC are required to be provided as employment generating spaces including the entire ground floor of the building. The objectives of clause 7.12 are "to promote retail activity on the ground and first floors of new buildings in the [DWTC]" and "to promote employment generating uses in addition to retail activity".
54. The Applicant seeks approval to vary this requirement and only provide commercial floor space at the street frontages. Council raised concern in its submission on the EIS that insufficient employment generating floor space is being provided for the scale of the Project (AR Table 11).
55. The Applicant submitted that strict compliance with the clause 7.12 development standard is unreasonable and unnecessary in the circumstances of the Application for the following reasons as advanced in its revised Clause 4.6 – Clause 7.12 Development Standard Report, dated December 2024 (refer pages 6-7):
- the specific objectives of the standard are achieved notwithstanding non-compliance with the standard. When taking into account the Site's inherent constraints, the Project maximises and promotes retail activity in the DWTC "to the greatest extent possible", and will enable increased residential density on the Site, which will in turn assist in maximising and promoting retail activity in this location;
  - the specific objective of clause 7.12 to promote retail activity would be thwarted by requiring strict compliance with the standard, as it would render the Project commercially unviable and sterilise the Site from redevelopment. It would also inhibit the delivery of housing within the DWTC, including affordable housing; and
  - the specific objective for additional employment floorspace is not relevant to the Project, given the Site's inherent constraints, its location at the southern edge of the DWTC, and the limited demand for non-retail employment generating tenancies in this location.
56. In addition to the reasons set out at paragraph 55 above, the Applicant submits that there are sufficient environmental planning grounds to justify the contravention of the development standard in accordance with clause 4.6(3)(b), for the following reasons (refer pages 8-9) as follows:
- the visibility and feasibility of new retail tenancies would be highly constrained given the Site's disconnection from the DWTC's commercial core and its limited street frontage and exposure in comparison to other sites within the DWTC; and
  - the proposed variation does not result in any unreasonable impacts, and compliance with the standard would not result in a discernible reduction in the Project's impacts;
57. The Department's AR considered Applicant's proposed clause 7.12 variation and assessed that this is acceptable, noting the location and shape of the Site, the benefit provided by additional housing, and as the Site's attributes have not altered since the level of employment generating space provided in the approved DA was considered acceptable (AR Table 11).

### 5.1.5 Podium height

58. The WLEP 2011 requires a maximum podium height of 3 storeys for land fronting Pittwater Road and 2 storeys for other land (i.e. Delmar Parade), pursuant to clause 7.6A. The Applicant seeks approval for a 9 storey tower fronting Pittwater Road and 5 storey podium fronting Delmar Parade, and notes that this exceeds the approved DA which provides a 7 storey tower to Pittwater Road and a 4 storey podium to Delmar Parade (AR para 59-60).
59. The specific objectives of clause 7.6A are “to achieve a consistent built form character that features podiums that define the street edge, and to ensure upper level setbacks reduce the visual prominence of building height”, and “to maximise building separation for the purposes of visual appearance, privacy and maintaining solar access to adjoining properties and the public domain” (WLEP 2011).
60. Council raised concern that the Project should present in a manner consistent with the presentation of the building at 2 Delmar Parade in terms of podium height (i.e. 4 storeys) and incorporate further setbacks at upper levels (AR para 62).
61. The Applicant’s submission is that strict compliance with the podium height development standard is unreasonable and unnecessary in the circumstances of the Application for the following reasons as advanced in its revised Clause 4.6 – Podium Height Development Standard Report, dated December 2024 (refer pages 6-7):
- the specific objectives of the standard are achieved notwithstanding non-compliance with the standard. The proposed variations to the podium height standards for Buildings A and B will deliver a consistent built form character which also includes upper level setbacks which reduce the visual prominence of the building’s height. The building design also maximises building separation for the purposes of visual appearance, privacy and does not compromise solar access to adjoining properties and the public domain;
  - the objectives of clause 7.6A would be thwarted by requiring strict compliance with the podium height standards, as this “would result in an inconsistent urban design outcome and a complete lack of podium height cohesion”; and
  - the podium height control has been consistently set aside in recent approvals by Council, and by the Sydney North Planning Panel in its granting of consent to the approved DA in 2023. No sites within the visual catchment of the Site along Pittwater Road have a three storey podium, and no sites within the visual catchment of the Site along Delmar Parade have a two storey podium.
62. Further, the Applicant submits that there are sufficient environmental planning grounds to justify the contravention of the development standard in accordance with clause 4.6(3)(b) of the WLEP 2011. These include that (refer pages 7-8):
- the proposed podium heights Buildings A and B are consistent with the built form character established by other sites within the visual catchment of the Site, particularly 2 Delmar Parade and 822 Pittwater Road, and as such are an appropriate contextual response to the Site’s characteristics;
  - the proposed podium height for Building B is appropriate in view of the Site’s landmark location at the southern end of the DWTC, and consistent with the emerging built form character along Pittwater Road;
  - the proposed variations do not result in any unreasonable impacts and strict compliance would not achieve any discernible reduction in impacts of the Project.

63. The Department's AR considered that the proposed podium height variation is acceptable given the Site's location, the Project's compatibility with surrounding and recently approved development (including 2 Delmar Parade's 4 storey podium and 822 Pittwater Road's 8 storey podium as well as other developments in the DWTC to the north of the Site – refer AR Figures 8-12), and as the proposed variations do not result in significant visual or amenity issues to adjoining properties or the public domain (AR para 63).

#### **5.1.6 Design and materials**

64. Section 7.4 of the WLEP 2011 requires that all new buildings in the DWTC exhibit design excellence. In its submission on the EIS, Council raised concern that the proposal does not exhibit design excellence and recommended that the proposed design should be consistent with 2 Delmar Parade in terms of material selection and fenestration (AR para 65-66).
65. The Applicant considers that the elements which contribute to design excellence are not significantly different to that previously accepted by Council in the approved DA and also amended the external finishes to be generally consistent with what Council accepted for the most recent modification, approved in August 2024, to the approved DA (AR para 67).
66. The Department has assessed the Project against the design quality principles in the Housing SEPP and design excellence provisions of the WLEP 2011 and considers the proposed design and materials to be acceptable as well as exhibiting design excellence. The Project adopts similar external finishes and materials as the approved DA (as modified), and the design demonstrates an appropriate level of articulation through material variation, building breaks and balconies that reduce scale and bulk (AR para 68).

#### **5.1.7 View impacts**

67. Submissions to the EIS, including from Council, raised concern about ocean view impacts. None of the submissions to the Commission specifically raised ocean view impacts.
68. Based on its inspection of the Site and assessment of concerns raised in submissions to the EIS, the Department concluded that changes to view outlooks are consistent with the development of the DWTC, unlikely to cause unreasonable impacts on ocean views, and on balance are reasonable and acceptable (AR para 74).

#### **5.1.8 Commission's findings**

69. The Commission has considered the Applicant's Revised CI 4.6 Requests seeking to vary building height, FSR, commercial floorspace and podium height controls.
70. The Commission has reviewed the Applicant's justification as set out in its Revised CI 4.6 Requests, and described in sections 5.1.2, 5.1.3, 5.1.4, and 5.1.5 above. The Commission is of the view that the Applicant's Revised CI 4.6 Requests should be upheld as they satisfy the matters required to be satisfied under clause 4.6(3) of the WLEP 2011 for the following reasons:
- they demonstrate that compliance with the various development standards that are the subject of the requests is unreasonable and unnecessary in the circumstances of the case, for the reasons provided above, which the Commission adopts;
  - there are sufficient environmental planning grounds to justify contravening the various development standards for reasons provided above, which the Commission adopts;
  - they demonstrate that the Project achieves consistency with the objectives of the zoning of the Site; and

- approval of the Project with the requested variations would be in the public interest.
71. The Commission agrees with the Department and is of the view that the Project would deliver a better planning outcome for the Site and would enable the delivery of new in-fill housing, include affordable housing to meet the needs of very low, low and moderate income households, in an appropriate and advantageous location forming part of the DWTC. The Commission is satisfied that the Project's proposed built form and land use is appropriate in view of the Site's location and the density envisioned for the Site under the applicable planning controls.
72. In relation to design and materials, the Commission agrees with the Department that the Project exhibits design excellence and achieves a high standard of design that would positively contribute to the quality and amenity of DWTC. The Commission agrees with the Department and considers that the Project's impacts on views are reasonable and acceptable and commensurate with the development of the DWTC.

## 5.2 Amenity

73. The Housing SEPP and the ADG provide planning guidance and principles to ensure acceptable levels of internal amenity are provided to residential apartments. The Project is generally consistent with the key ADG design criteria, with the exception of building separation, deep soil, and acoustic privacy. The Project also includes one apartment which does not meet the recommended minimum balcony depth of 2m under the ADG and a number of apartments with depths greater than 8m (AR para 75 and 77).
74. The Department has specifically considered the amenity of the 43 affordable housing apartments and concluded that these apartments would achieve a good level of amenity consistent with the ADG, including in relation to solar access and cross-ventilation (AR para 96-97).

### 5.2.1 Building separation

75. Table 8 of the AR indicates where the Project's building setbacks and separation do not align with the ADG's recommendations. As the Department note, Council raised concern in its submission on the EIS regarding setbacks and noted that upper storeys should have increased setbacks to reduce the visual bulk and massing of the building (AR para 80).
76. The Applicant's position is that the proposed building separation is consistent with what was accepted in the approved DA and would ensure an acceptable level of privacy within the development and to neighbouring developments (AR para 81).
77. The Department considers that the Project is generally consistent with the approved DA in terms of its setbacks and separation and that the departures from the ADG's recommendations are acceptable as overlooking between the Project's apartments are mitigated by high level windows, screening, landscaping, and other treatments. Additional setbacks at upper storeys are also not considered necessary as the Project maintains the same setback up to Level 7 to Pittwater Road as the approved DA and setting back the additional 1-2 storeys proposed for the Project will not significantly improve the amenity to adjoining properties or significantly reduce the perceived bulk of the development (AR para 81-83).

### 5.2.2 Deep soil

78. The Project provides 3.5% of the Site (272.4m<sup>2</sup>) as deep soil zones which meet the ADG minimum dimensions, with a further 7.6% of the Site (589.1m<sup>2</sup>) below the minimum dimensions of the ADG (AR para 86). The Department considers that the Project's provision of deep soil zones is acceptable in view of the Site's location in a high-density area and as the deep soil zones provided, in combination with the Project's other landscaping elements, will support plant growth (AR para 88).

### 5.2.3 Acoustic privacy

79. The Project generally minimises noise transfer between apartments, however some apartments have bedrooms that adjoin a lift core or are located near or above the loading dock (AR para 90). The Applicant's Acoustic Assessment, dated 19 March 2024, concluded that the Project can be designed to comply with all applicable standards, including the National Construction Code.
80. The Department considers that the Project can achieve good residential acoustic amenity subject to its recommended condition which addresses the recommendations of the Acoustic Assessment (AR para 92-93).

### 5.2.4 Commission's findings

81. The Commission agrees with the Department and has concluded that the Project achieves acceptable visual privacy, deep soil zones and acoustic amenity outcomes for future residents, including for affordable housing residents, subject to the imposed conditions.

## 5.3 Impacts to Stony Range Regional Botanical Garden

### 5.3.1 Overshadowing, visual impacts, and overlooking

82. The Applicant has submitted that the Project's overshadowing, visual and overlooking impacts on SRRBG are consistent with the statutory provisions applicable to development on the site, are consistent with, or less than, would result from a compliant built form on the Site, and are minor in nature on the following basis (refer AR para 120 and Applicant RtS, page 54):
- the Project results in less shadow than that which would result from a compliant building height at the southern boundary of the Site;
  - the Project results in only a minor increase in overshadowing beyond the approved DA, which does not create any further discernible impact beyond that already approved by the Sydney North Planning Panel;
  - any visual impacts as a result of Project are reasonable having regard to the height and floor space development standards applicable to development on the Site, and the increase in the variety of material used along the southern façade will improve the appearance of the Project; and
  - the majority of SRRBG is unaffected by overshadowing;



83. The Applicant's Flora and Fauna Assessment concluded that there is unlikely to be any appreciable long-term impact on the composition of native vegetation within the reserve as a consequence of the Project, including canopy trees, understorey, shrub, and groundcover. Groundcover and shrub species within SRRBG are also already heavily shaded by the existing canopy and small tree layers. Whilst SRRBG contains four (4) threatened plant species, the Flora and Fauna Assessment notes that "[n]one of these species occur naturally in [SRRBG] nor the local area" and as such "there would not be a significant impact" on any of these four listed species (page 5).
84. Concerns were raised in submissions, including by Council in its meeting with the Commission, regarding the overshadowing of existing picnic and BBQ facilities within SRRBG. As noted by the Applicant in its meeting with the Commission, these picnic facilities are already overshadowed by the approved DA, and are less than would be created by a building of compliant height (refer AR Figures 17-18). The Applicant submits that it has also sought to implement measures to reduce visual and overshadowing impacts including a further set back of the rooftop amenities from the building edge (refer Meeting Transcript and Applicant meeting presentation, dated 29 November 2024).
85. The Commission viewed the affected areas of SRRBG as part of its site inspection and has reviewed the latest shadow plans provided as part of the Applicant's RFI response. The latter demonstrate the extent of overshadowing of SRRBG, including the overshadowing that would already be created by the approved DA and that which would be created by a compliant development on the Site built to the maximum allowable height at the Site's southern interface (see Figure 5 and Figure 6 below).
86. SRRBG Committee, in its meeting with the Commission, confirmed that it is in regular dialogue with the Applicant regarding an alternative location for SRRBG's picnic and BBQ facilities, including the Applicant's assistance in relocating the existing facilities and constructing any new facilities. SRRBG Committee also advised its preferred location for the relocation of the picnic facilities (refer Meeting Transcript, pages 4-5). Per the shadow plans provided as part of the Applicant's RFI response, the Commission notes that this location would not be significantly overshadowed by the Project.
87. Council in its response to the Commission dated 16 December 2024, advised that no discussions have been had between Council and the Applicant regarding the potential relocation of facilities within SRRBG. Council also stated they did not consider relocation to be feasible as it would require clearing of existing trees for siting of relocated facilities and to receive adequate natural sunlight that should be expected for any recreation facilities.
88. Following its meeting with the Commission, SRRBG Committee provided correspondence to the Commission dated 17 December 2024 commenting on the shadow plans provided as part of the Applicant's RFI response. This correspondence again raised concern regarding the overshadowing impacts of the Project, particularly in comparison to the approved DA, and also noted that any alternative picnic and BBQ facilities locations are likely to require trees and vegetation to be removed.

Figure 5 – Shadow Plans – Winter, 12pm (Source: Applicant RFI response, Drawing No. TP05.04).

Note: red shading indicates shadow extent from the approved DA, teal shading indicates shadow extent from the Project, and orange line indicates shadow extent from a compliant building envelope.



Figure 6 – Shadow Plans – Winter, 1pm (Source: Applicant RFI response, Drawing No. TP05.05)



### 5.3.2 Commission’s findings

89. The Commission acknowledges the concerns raised by Council, SRRBG Committee and in submissions regarding the impacts of the Project on SRRBG. In particular, the Commission notes the efforts of SRRBG Committee in providing information to the Commission including in relation to its long-standing work in maintaining and operating SRRBG. However, the Commission finds that overshadowing and visual impacts on SRRBG do not form a basis for refusal of the application given that:

- the Project would result in a lesser overshadowing impact than that which would result from a building of compliant height at the southern boundary of the Site;
  - visual impacts are consistent and reasonable having regard to the height and floor space development standards applicable to the Site;
90. The Commission acknowledges that SRRBG is a significant, volunteer-run community asset and notwithstanding the impacts of the Project set out above, the Commission considers that SRRBG will be capable of providing continued benefit to users and visitors, including amenity, retreat, and socialisation. The Commission notes that, notwithstanding submissions from Council, there are ongoing discussions between SRRBG Committee and the Applicant regarding the relocation of picnic facilities within SRRBG.

## 5.4 Traffic and Parking

### 5.4.1 Traffic

91. Vehicle access to the Site would be provided via a single tow-lane driveway off Delmar Parade. The Applicant's Traffic Impact Assessment (**TIA**) dated 3 July 2024 states the Project would generate 71-99 vehicles per hour (page 20). The Department notes that this represents a minor increase of 11 and 13 vehicles per hour during the AM and PM peaks, compared to the existing approval (AR para 98). The TIA concludes that the Project would have a negligible impact on the surrounding roads and that there would be no adverse traffic implications resulting from the proposed development (page 30). The Department noted that Transport for NSW (**TfNSW**) did not raise concerns regarding traffic impacts (AR para 102).
92. The EIS included a construction traffic management plan (**CTMP**) dated 3 May 2024 which included consideration of construction traffic, parking and access. The Applicant's CTMP concluded that the measures set out in this plan would adequately address the potential impacts of the construction works on the surrounding road network and road users (page 25). The Department was satisfied that construction impacts associated with the Project can be appropriately managed, subject to conditions of consent.

### 5.4.2 Parking

93. The Project seeks consent for 425 car parking spaces comprising 335 residential spaces, 56 residential visitor spaces and 34 commercial spaces. The Department noted that this is 91 spaces greater than the approved DA which provides 334 spaces for 218 apartments and commercial uses (AR para 107).
94. The Department considers that the additional apartments above the 62 apartments in the approved DA should be limited to the provision of car parking in line with the Housing SEPP rates. This would result in 300 resident parking spaces which is 35 less than proposed.
95. The Department is generally satisfied that adequate commercial and visitor parking is provided subject to a condition for a reduction in two commercial spaces (from 34 to 32) and an increase in one visitor space (from 56 to 57) to align with the Warringah Development Control Plan 2011 (**WDCP 2011**).
96. The Department also notes that the WDCP 2011 would require 11 car share spaces. The approved DA did not propose any car share spaces. The Department considers this is acceptable as the Applicant has provided more than the minimum amount of residential spaces and there is no opportunity to provide car share spaces at ground level (AR para 112).



97. The Applicant's RFI response noted that the Department had recommended a reduction of 35 residential car parking spaces (from 335 to 300 spaces), a reduction of 2 commercial car parking spaces (from 34 to 32 spaces), an increase in one residential visitor space (from 56 to 57 spaces) and updated development summary plans to reflect these changes. The Applicant's RFI response stated that there was no statutory basis for this change noting that the proposed car parking provision is compliant with minimum car parking controls contained within the Housing SEPP and that there are no adverse impacts as a consequence of the car parking proposed for the Project.
98. The Department's RFI response noted that it "maintains its position, as outlined in the [AR], that the additional dwellings above the 218 dwellings already approved should be limited to providing parking in line with the Housing SEPP" (page 2).

#### **5.4.3 Construction parking**

99. The Applicant seeks to utilise the Council-owned SRRBG car park for access and car parking during construction of the Project, per its existing approved CTMP for the approved DA. In its meeting with the Commission, the Applicant noted that use of this car park during construction would also assist in mitigating congestion on Pittwater and Delmar Roads (refer Meeting Transcript).
100. In its meeting with the Commission, the SRRBG Committee raised concern about the impact that the Applicant's existing allocation (13 of the car park's 25 spaces) under the CTMP for the approved DA has on SRRBG volunteers and visitors (refer Meeting Transcript).
101. Council stated in its meeting with the Commission that the use of the SRRBG car park as part of the approved DA already represents what Council considers to be a maximum use of the car park, and that it would be unlikely to support any additional use of the car park's spaces beyond what has already been approved (refer Meeting Transcript).

#### **5.4.4 Bicycle spaces**

102. The Project proposes 304 bicycle spaces comprising 280 residential spaces, 22 residential visitor spaces and 2 commercial spaces. The Department is satisfied that adequate bicycle parking is provided for within the resident storage area which exceeds the minimum storage space recommended by the ADG.
103. The WDCP 2011 requires 280 residential bicycle spaces, 23 residential visitor bicycle spaces and 4 commercial bicycle spaces. The Department recommends that two additional commercial bicycle spaces and one additional visitor bicycle space is provided to align with the DCP requirements (AR para 115)



### 5.4.5 Roadworks

104. The Applicant's RFI response stated that draft condition C24, as recommended by the Department, requires that the Applicant, prior to the commencement of above ground works, submit for approval by the Planning Secretary details of roadworks to prevent right turn movements from Pittwater Road to Delmar Parade. The Applicant stated that they did not object to the requirements set out in condition C24, however the Applicant noted that construction on the Site is well advanced and the requirement to have this matter resolved with TfNSW prior to the commencement of aboveground works is unreasonable and would present an unacceptable risk to the ability for construction to continue seamlessly on Site. The Applicant stated that it is very likely that the capacity to continue works on Site will be prevented and construction will be stalled and that there is no planning purpose which is served by requiring this approval prior to above ground works, rather than prior to release of the first Occupation Certificate.
105. Noting the above, and a possibility that obtaining endorsement from TfNSW may take several months, the Applicant requested that the Commission consider an amendment to condition C24 such that it require the Applicant to submit for approval by the Planning Secretary details of roadworks to prevent right turn movements from Pittwater Road to Delmar Parade, prior to the issue of the Occupation Certificate (as opposed to prior to commencement of above ground works).
106. The Department's RFI response noted that it does not consider the Applicant's proposed approach appropriate as the associated works "need to be delivered prior to occupation of the development to ensure traffic impacts are mitigated" and "sufficient time needs to be provided for any construction associated with the roadworks between the time that the roadwork design is approved by the road authority and occupation of the buildings" (page 2). Acknowledging that works are underway on the Site however, the Department has proposed that an alternative timeframe of "prior to the first Construction Certificate for works associated with fit-out and finishes of the building" would be appropriate as this would enable time for necessary approvals, the continuation of construction works, and provide sufficient time for roadworks to be constructed prior to occupation.

### 5.4.6 Commission's findings

107. The Commission agrees with the Department that the Project would have minimal impacts on the surrounding road network (AR para 102) and that construction impacts associated with the Project can be appropriately managed subject to conditions of consent (AR Table 11). The Commission is of the view that the Project would provide adequate bicycle spaces if provided in accordance with the Department's recommendation above, and is satisfied the Project would not adversely impact on on-street or Council car parking spaces.
108. In relation to car parking, the Commission agrees with the Applicant that the car parking controls at section 19(2)(e) and (f) of the Housing SEPP are minimum requirements. It also notes that concerns were raised in submissions regarding parking issues in the area including the risk of overflow parking from the Project. As the proposed car parking provision is compliant with the Housing SEPP and there is potential for the reduction of 35 residential spaces to create an adverse impact, the Commission has deleted recommended condition B1(c) from the conditions to be imposed with its consent.
109. For the reasons set out above, the Commission has imposed the following conditions of consent:

- the Applicant must provide a total of 307 bicycle parking spaces, including a minimum of 23 residential visitor spaces and 4 commercial visitor spaces (condition B9(g)(iii));
- the Applicant must prepare a Construction Traffic and Pedestrian Management Sub-Plan with measures to reduce environmental impacts and harm arising from construction traffic. The Applicant must obtain Council's owners consent to use the Council car park adjoining the Site (condition C2); and
- Prior to the first Construction Certificate for works associated with fit-out and finishes of the building, the Applicant must submit for approval by the Planning Secretary details of roadworks to prevent right turn movements from Pittwater Road to Delmar Parade, including written endorsement of the of the roadworks from the relevant roads authority (condition C24).

## 5.5 Other Issues

110. The Commission agrees with the Department's assessment of other issues at Table 11 of the AR (flooding, commercial floorspace, pedestrian connections, noise and vibration, crime prevention through environment design principles, utilities, impacts to adjoining developments, water, development contributions, Aboriginal cultural heritage, the approved DA, the Site's location within the DWTC, and consultation). Subject to the imposed conditions relevant to each of these issues, the Commission is satisfied that the Project's impacts are capable of being appropriately managed and mitigated.
111. The Commission acknowledges that the Site previously provided an informal through site link between Delmar Parade and the pedestrian walkway and steps to Tango Avenue via a private carpark. However, the Commission agrees with the Department and the Applicant that a through site link is not required, given: the Project adopts the same ground plane layout as the approved DA which also did not provide for a through site link; there is no legal requirement for a through site link; and the DWTC Master Plan does not identify the Site as requiring a pedestrian link (AR Table 11). The Commission notes that the existing pedestrian link between Pittwater Road and Tango Avenue will be unaffected by the Project and will continue to be accessible for nearby residents and visitors to SRRBG and surrounds.

## 6. The Commission's Findings and Determination

112. The views of the community were expressed through public submissions and comments received (as part of exhibition and as part of the Commission's determination process). The Commission carefully considered all of these views as part of making its decision.
113. The Commission has considered the Material before it as set out in section 3.1 and has weighed the broader strategic and social benefit of increased housing in the context of the impacts on the environment and amenity of local residents and surrounding land uses. The Commission finds that the Project would support State government priorities to deliver new, well-located housing and to boost the supply of in-fill affordable housing.
114. Based on its consideration of the Material, the Commission finds that approval of the Project is in the public interest, subject to conditions of consent for the following reasons:
- the Project will provide diverse housing options, including 15% in-fill affordable housing dwellings meeting the needs of very low, low and moderate income households, in a mix of typologies;
  - the Project meets the objectives of the MU1 zone under the WLEP 2011;

- the Project is consistent with the aims of the NSW Government to increase the supply of well-located housing, including affordable housing, in accordance with the National Housing Accord;
  - the Project is consistent with the relevant State and local planning framework in delivering a high quality mixed use development with in-fill housing and commercial floorspace, as also envisaged under the DWTC Master Plan;
  - the Site is in an advantageous location close to the existing public transport and road network, employment opportunities, open spaces, and forms part of the DWTC, in which Council is seeking to encourage increased residential density;
  - the Project is an orderly and economic use of the land;
  - the Project will provide appropriate internal and external amenity for future residents;
  - the Project will contribute to activation of the public domain and provide additional economic and community uses for the locality;
  - the Project's proposed built form and land use is appropriate in view of the Site's location and the density envisioned for the Site under the applicable planning controls;
  - the Project will have minimal impacts on the surrounding road network, will provide adequate car parking and bicycle spaces, and will not adversely impact on on-street or Council car parking spaces, including the Council-owned SRRBG car park post construction;
  - the Applicant's Revised CI 4.6 Requests satisfy the matters required to be satisfied under clause 4.6(3) of the WLEP 2011; and
  - any adverse impacts of the Project on surrounding land uses or neighbouring properties, including overshadowing and visual impacts on SRRBG, are consistent with a compliant built form under development standards applicable to the Site. In the Commission's assessment, they do not form a basis for refusal of the application.
115. For the reasons set out in paragraph 114 above, the Commission has determined that consent should be granted subject to conditions. These conditions are designed to:
- prevent, minimise and/or offset adverse environmental and social and safety impacts;
  - set standards and performance measures for acceptable environmental and safety performance;
  - require regular monitoring and reporting; and
  - provide for the on-going environmental management of the development.
116. The reasons for the Decision are given in the Statement of Reasons for Decision dated 20 December 2024.



Michael Chilcott (Chair)  
Member of the Commission



Suellen Fitzgerald  
Member of the Commission



**New South Wales Government**  
Independent Planning Commission

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