

Department of Planning, Housing and Infrastructure

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# Mixed use development with in-fill affordable housing, 4 Delmar Parade and 812 Pittwater Road, Dee Why

State Significant Development Assessment Report (SSD-68230714)

November 2024





# Acknowledgement of Country

The Department of Planning, Housing and Infrastructure acknowledges that it stands on Aboriginal land. We acknowledge the Traditional Custodians of the land and show our respect for Elders past, present and emerging through thoughtful and collaborative approaches to our work, seeking to demonstrate our ongoing commitment to providing places in which Aboriginal people are included socially, culturally and economically.

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# Preface

This assessment report provides a record of the Department of Planning, Housing and Infrastructure's (the Department) assessment and evaluation of the State significant development (SSD) application for the mixed-use development with in-fill affordable housing located at 4 Delmar Parade and 812 Pittwater Road, Dee Why, lodged by Landmark Group Australia (the Applicant). The report includes:

- an explanation of why the proposal is SSD and who the consent authority is
- an assessment of the proposal against government policy and statutory requirements, including mandatory considerations
- a demonstration of how matters raised by the community and other stakeholders have been considered
- an explanation of any changes made to the proposal during the assessment process
- an assessment of the likely environmental, social and economic impacts of the proposal
- an evaluation which weighs up the likely impacts and benefits of the proposal, having regard to the proposed mitigations, offsets, community views and expert advice; and provides a view on whether the impacts are on balance, acceptable
- an opinion on whether the proposal is approvable or not, along with the reasons, to assist the Independent Planning Commission (IPC) in making an informed decision about whether development consent for the proposal can be granted and any conditions that should be imposed.

# Executive Summary

This report details the Department's assessment of the State significant development application (SSD 68230714) at 4 Delmar Parade and 812 Pittwater Road, Dee Why, lodged by Landmark Group Australia (the Applicant). This report will be provided to the IPC for their consideration when deciding whether to grant consent to the SSD.

The Applicant proposes to construct 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 site is located in the Northern Beaches local government area (LGA) and is currently under construction in accordance with an existing development consent for 219 apartments issued by the Sydney North Planning Panel in July 2023.

This proposal, if approved, would modify the existing development consent in accordance with section 4.17(1)(b) and (5) of the *Environmental Planning and Assessment Act 1979* (EP&A Act).

The proposal has an estimated development cost (EDC) of \$97,818,200 and is expected to generate 200 construction jobs and 10 operational jobs.

The proposal is classified as SSD under section 4.36 of the EP&A Act because it is in-fill affordable housing as specified in clause 26A, Schedule 1 of the *State Environmental Planning Policy (Planning Systems) 2021* (Planning Systems SEPP). The IPC is the consent authority for the proposal under section 4.5(a) of the EP&A Act because it satisfies criteria under section 2.7(1) of the Planning Systems SEPP as Northern Beaches Council (Council) objected to the proposal during the environmental impact statement (EIS) public exhibition period required under Schedule 1 to the EP&A Act.

The Department exhibited the EIS from Friday 19 April 2024 until Thursday 16 May 2024. During the exhibition period, the Department received advice from eight government agencies, an objection from Council and 13 submissions from the public (11 objections and two comments).

The Applicant submitted a response to submissions (RtS) report on 25 July 2024 and additional information on 4 October 2024 to address the issues raised in submissions and agency advice. The Applicant submitted an Amendment Report on 5 November 2024 seeking to amend the proposal to remove some basement construction works from the proposal.

The Department has considered the merits of the proposal in accordance with the relevant matters under section 4.15(1) of the EP&A Act, the issues raised in the submissions, the Applicant's response and additional information.

The Department's assessment concludes the proposal is acceptable as:

- the development will support State government priorities to deliver well-located housing as it will deliver 43 affordable housing units in an accessible location
- it is permissible with consent, consistent with the applicable *Warringah Local Environmental Plan 2011* (WLEP 2011)
- it provides a bulk and scale which is compatible with the envisaged character of the area and an appropriate built-form relationship to adjoining development
- it does not result in unreasonable overshadowing, view or traffic impacts on adjoining development or the public domain
- it would provide for 200 construction and 10 operational jobs.

The Department has recommended conditions to appropriately address any residual issues.

Following its detailed assessment, the Department concludes the proposal is in the public interest and recommends that the proposal be approved, subject to conditions.

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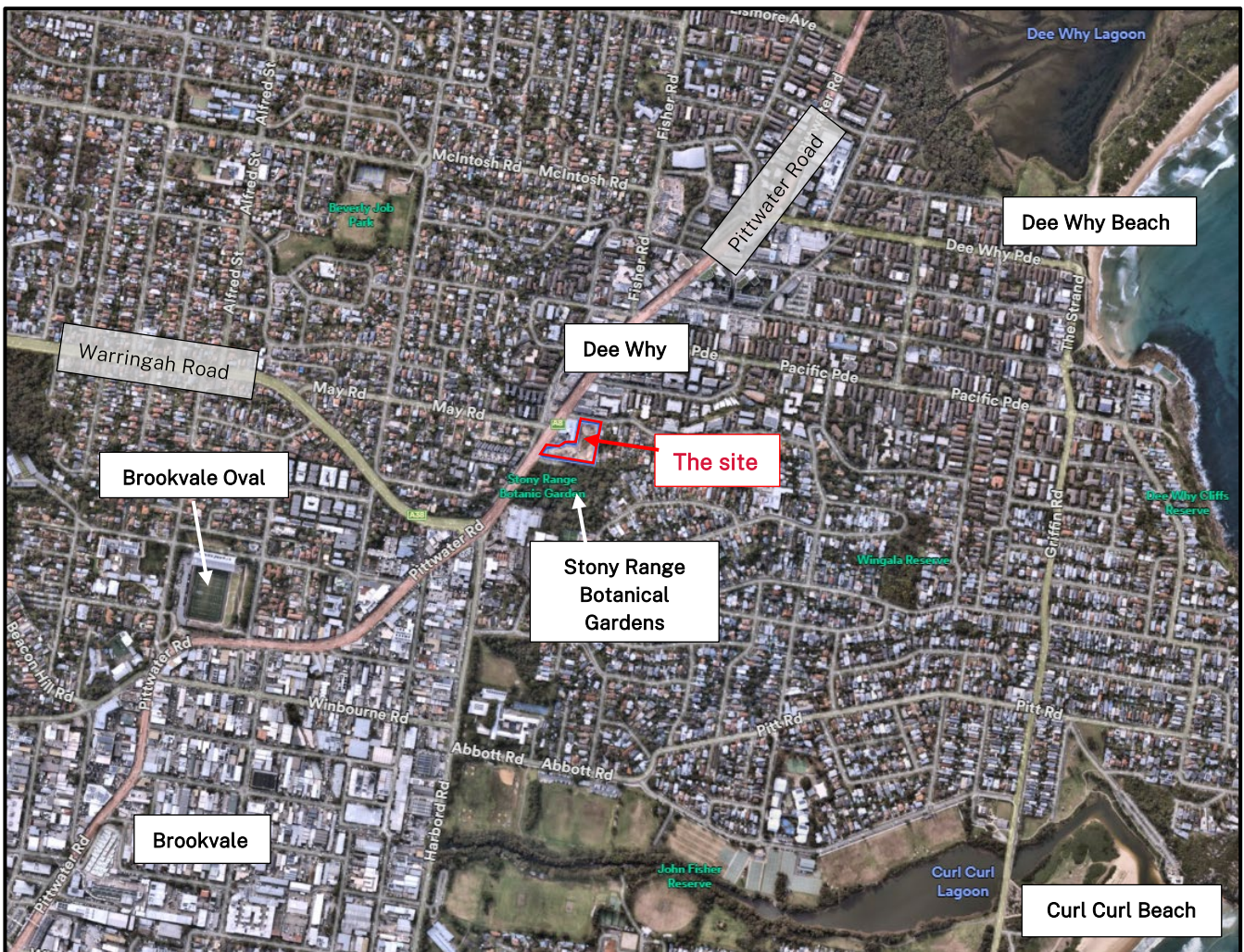
# 1 Introduction

## 1.1 The proposal

1. The Applicant seeks approval for construction of a mixed-use development with in-fill affordable housing (SSD 68230714) at 4 Delmar Parade and 812 Pittwater Road, Dee Why.
2. The project description and mitigation measures provided in **Section 3** and **Appendix 4** of the EIS are the subject of this report and will form part of the development consent if the project is approved.
3. An overview of the proposal is provided in **Section 2**.

## 1.2 Project location

4. The subject site is shown in **Figure 1** and **Figure 2**, and known as 4 Delmar Parade and 812 Pittwater Road, Dee Why. Further project location details are described in **Table 1**.



**Figure 1** | Regional context map (Base source: NearMap)





**Figure 2** | Local context map (Base source: EIS)

**Table 1** | Key aspects of the project site

Aspect	Description
<b>Address</b>	4 Delmar Parade and 812 Pittwater Road, Dee Why
<b>LGA</b>	Northern Beaches Council (Council)
<b>Legal description</b>	SP 32071, SP 32072 and SP 54641
<b>Site area</b>	7,790 m <sup>2</sup>
<b>Existing development</b>	The site is currently under construction. Excavation is currently occurring in accordance with the approved development consent DA2022/0145 (discussed in section 1.3)
<b>Surrounding roads</b>	Delmar Parade to the north, Pittwater Road to the west

Aspect	Description
<b>Topography</b>	Varies with the highest point located in the south-eastern corner of the site falling 6.27 m to the Delmar Road frontage and 2.05 m to the Pittwater Road frontage
<b>Existing access</b>	Access along Delmar Parade
<b>Public transport</b>	The site is located within 400 m of bus stops used by regular services including the Pittwater Road opposite Pacific Parade bus stop (for northbound services) and the Pittwater Road after Pacific Parade bus stop (for southbound services)
<b>Heritage</b>	Local heritage listed item 'flora reserve' is located adjacent to the south, known locally as Stony Range Regional Botanical Garden (SRRBG).
<b>Flooding</b>	The site is traversed by a stormwater trunk main that drains the reserve south of the site and a small residential catchment. The site is impacted by overland flows when the capacity of this trunk main is exceeded and water travels overland through the site
<b>Easements or covenants</b>	<ul style="list-style-type: none"> <li>• Stormwater easement for overland flow</li> <li>• Rights of carriageway providing access to 812 Pittwater Road from Delmar Parade</li> </ul>

### 1.3 Related projects and works

5. On 14 July 2023 the Sydney North Planning Panel granted consent to a DA for the comprehensive redevelopment of the site, including construction of a mixed-use development with four retail tenancies and 219 apartments (DA2022/0145) (approved DA).
6. The consent has been modified on two occasions to increase the basement, reduce the number of apartments to 218, change the apartment mix, amend the building design, allow truck movements to occur outside of standard construction hours and remove the need to tank the basement.
7. Works being undertaken via the approved DA commenced in March 2024.
8. The SSD proposal seeks approval for development in addition to the works approved in DA2022/0145 by using the in-fill affordable housing provisions of State Environmental Planning Policy (Housing) 2021 (Housing SEPP). While the SSD seeks additional height and density, it maintains the same ground floor building footprint, site accesses and flood mitigation measures as the approved DA.

9. The Applicant seeks to continue to undertake demolition works, tree removal, basement excavation and construction, construction of a stormwater pipe diversion, construction of flood walls and amendment of stormwater related easements through the approved DA.
10. A condition of consent has been recommended that the approved DA be amended to remove works covered by this application under section 4.17(1)(b) and (5) of the EP&A Act 1979.

# 2 Proposal

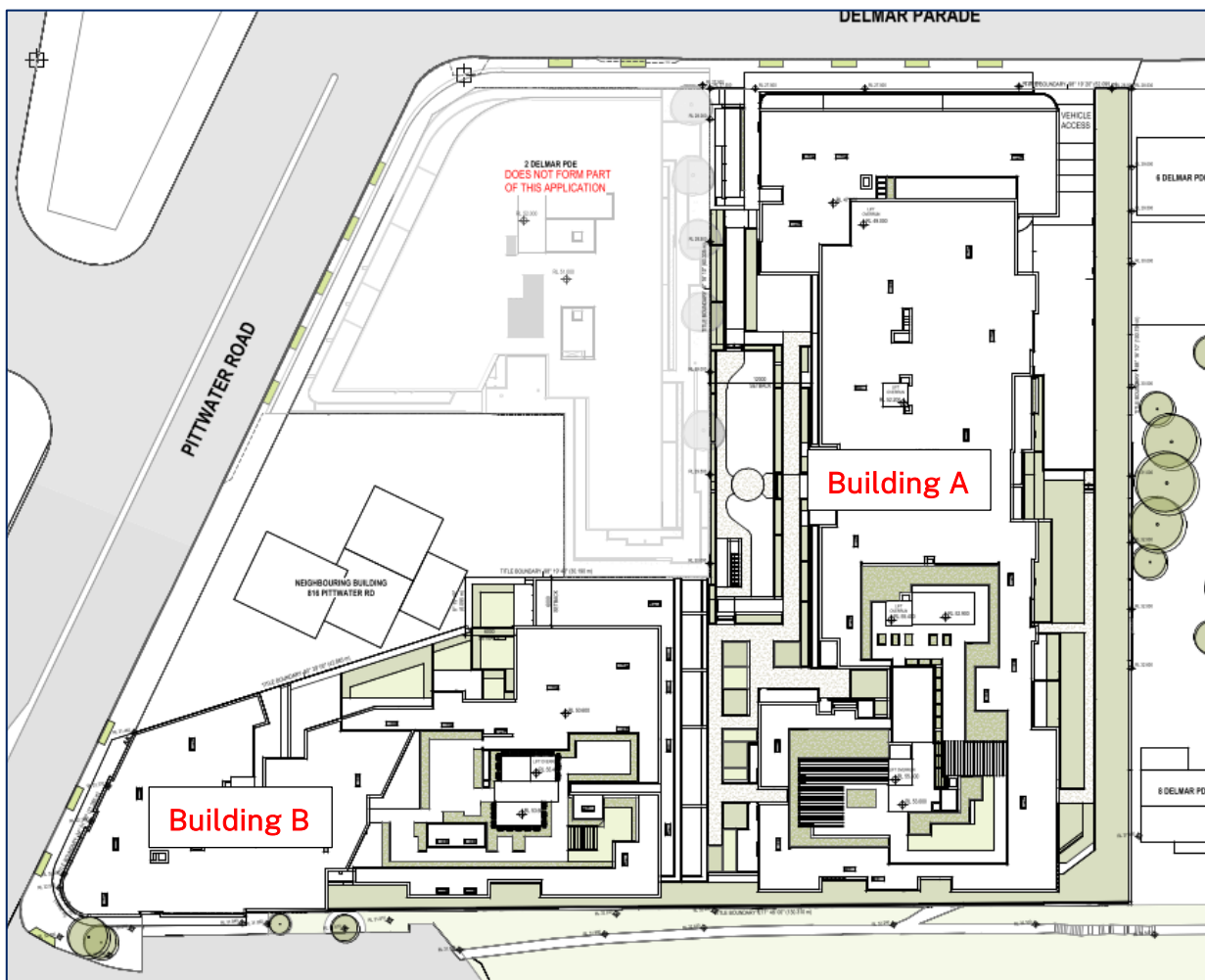
## 2.1 Proposal overview

11. The key aspects of the proposal are provided in detail in the Project Description chapter of the EIS (see **Appendix A**) and are outlined in **Table 2** and shown in Figures 3 and 4.
12. Demolition, tree removal, excavation and relocation of a Council stormwater pipe do not form part of this application and have commenced under DA2022/0145 granted by the Sydney North Planning Panel.

**Table 2** | Key aspects of the proposal

Aspect	Description
<b>Gross floor area (GFA)</b>	A total GFA of 24,954.4 m <sup>2</sup> , consisting of: <ul style="list-style-type: none"> <li>• residential GFA of 24,176.3 m<sup>2</sup></li> <li>• non-residential GFA of 778.1 m<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>• 304 bicycle spaces</li> </ul>
<b>Building heights</b>	Building A: 25.1 m / seven storeys Building B: 30.2 m / 10 storeys
<b>Dwellings</b>	A 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>• 1,013.8 m<sup>2</sup> of outdoor communal open space located on the ground floor</li> <li>• 934.5 m<sup>2</sup> communal open space located on the rooftops</li> </ul>

Aspect	Description
	<ul style="list-style-type: none"> <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
<b>Staging</b>	The proposal will be constructed in one stage and is anticipated to be completed at the end of 2025.
<b>EDC</b>	\$97,818,200
<b>Employment</b>	Construction: 200 jobs Operation: 10 jobs



**Figure 3 | Site plan**



**Figure 4 | Building A façade approved DA (top) and proposed (bottom) along Delmar Parade**



**Figure 5** | Building B façade approved DA (left) and proposed (right) along Pittwater Road

# 3 Policy and statutory context

## 3.1 Housing supply

- 13. The NSW Government has a target of delivering 377,000 well-located homes across the state by 2029. This target will support the National Housing Accord that provides a national target of delivering 1.2 million new, well-located homes over five years.
- 14. In December 2023, an SSD pathway was introduced for residential development with an EDC of over \$75 million in Greater Sydney, and \$30 million outside Greater Sydney, which includes at least 10% affordable housing. Additionally, the Housing SEPP was amended to introduce new in-fill affordable housing provisions which permit FSR and building height bonuses of 20-30% for projects that include residential development and at least 10-15% of GFA as affordable housing. This SSD application has been submitted pursuant to these initiatives that aim to support the delivery of well-located affordable and market housing.

## 3.2 Permissibility and assessment pathway

- 15. Details of the legal pathway under which consent is sought and the permissibility of the proposal are provided in **Table 3** below.

**Table 3** | Permissibility and assessment pathway

Consideration	Description
<b>Assessment pathway</b>	<p><b>State significant development</b></p> <p>The proposal is declared SSD under section 4.36 of the EP&amp;A Act as it satisfies the criteria under section 2.6(1) of the Planning Systems SEPP as it is:</p> <ul style="list-style-type: none"> <li>• not permissible without development consent</li> <li>• development specified in section 26A of Schedule 1 of the Planning Systems SEPP.</li> </ul>
<b>Consent authority</b>	<p><b>Independent Planning Commission</b></p> <p>The IPC is the declared consent authority under section 4.5(a) of the EP&amp;A Act and section 2.7(1) of the Planning Systems SEPP, as Council duly made a submission by way of objection during the public exhibition of the EIS.</p>
<b>Permissibility</b>	<p><b>Permissible with consent</b></p> <ul style="list-style-type: none"> <li>• The site is zoned MU1 – Mixed use zone under WLEP 2011.</li> </ul>



Consideration	Description
	<ul style="list-style-type: none"> <li>Commercial premises are permissible with consent in the MU1 zone.</li> <li>Residential flat buildings are prohibited in the MU1 zone under the WLEP 2011. However, as the MU1 zone replaced the previous B4 zone as part of the Employment zone changes, the Standard Instrument (Local Environmental Plans) Order 2006 at Schedule 1 Part 2 clause 5, 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. Residential flat buildings were permissible with consent in the B4 zone under the WLEP 2011 immediately prior to 26 April 2023. As such, the residential flat building land use is permissible with consent.</li> </ul>

### 3.3 Other approvals and authorisations

- The proposal will not require an environment protection licence issued by the NSW Environment Protection Authority under section 42 of the *Protection of the Environment Operations Act 1997*.
- Under section 4.41 of the EP&A Act, a number of other authorisations required under other Acts are not required for SSD. This is because all relevant issues are considered during the assessment of the SSD application.
- Under section 4.42 of the EP&A Act, certain approvals cannot be refused if they are necessary to carry out the SSD (e.g. approvals for any road works under the *Roads Act 1993*). These authorisations must be substantially consistent with any SSD development consent for the proposal.
- The Department has consulted with and considered the advice of the relevant government agencies responsible for these other authorisations in its assessment of the proposal (see **Section 4** and **Section 5**). Suitable conditions have been included in the recommended conditions of consent (see **Appendix G**).

### 3.4 Planning Secretary's environmental assessment requirements

- The Department's review determined that the EIS addresses each matter set out in the Planning Secretary's environmental assessment requirements (SEARs) issued on 5 March 2024 and is sufficient to enable an adequate consideration and assessment of the proposal for determination purposes.

### 3.5 Mandatory matters for consideration

21. Mandatory matters for consideration include:
  - matters of consideration required by the EP&A Act
  - objects of the EP&A Act and ecologically sustainable development (ESD)
  - biodiversity development assessment report
  - matters of consideration required by the EP&A Regulation
  - matters of consideration required by environmental planning instruments.
22. The Department's consideration of these matters is summarised in **Appendix C**.
23. As a result of this consideration, the Department is satisfied that the development meets statutory requirements.

# 4 Engagement

## 4.1 Public exhibition of the EIS

24. After accepting the application and the EIS, the Department:
  - publicly exhibited the proposal from Friday 19 April 2024 until Thursday 16 May 2024 on the NSW Planning Portal
  - notified occupiers and landowners in the vicinity of the site about the public exhibition
  - notified and invited comment from relevant government agencies and Council.
25. The Department received 14 submissions, including 13 public submissions (11 objections and two comments), an objection from Council and advice from eight government agencies. Feedback from two members of the public was also received after the close of exhibition, which has also been considered as part of this assessment.
26. Department officers visited the site and surrounding area on 10 July 2024 to gain better understanding of the site context and the issues raised in submissions.
27. The Department asked the Applicant to respond to the issues raised in submissions and the comments received from government agencies. The Applicant submitted a RtS report to the Department on 25 July 2024 (see **Appendix A**).
28. The Department published the RtS on the NSW Planning Portal and forwarded it to relevant government agencies and Council for comment.
29. Following review of the RtS, the Department requested further information to address the issues raised by Council, government agencies and the Department. The Applicant submitted the additional information in response to the Departments request on 4 October 2024 (see **Appendix A**).
30. A summary of the key issues raised in submissions, feedback and agency advice is provided below.

## 4.2 Summary of advice received from government agencies

31. The Department received advice from eight government agencies on the EIS.
32. A summary of the agency advice is provided in **Table 4**. A link to the full copy of the advice is provided in **Appendix A**.

**Table 4 | Summary of agency advice**

Stage	Advice summary
<b>Ausgrid</b>	Ausgrid provided advice in relation to electrical infrastructure and recommended that existing Ausgrid easements, leases and/or right of ways must be maintained at all times to ensure 24-hour access.
<b>Environment Protection Agency (EPA)</b>	EPA advised they had no comment on the proposal and recommended consultation with Council as the regulatory authority under the POEO Act.
<b>Fire + Rescue NSW (FRNSW)</b>	F&R NSW raised no concerns.
<b>Heritage NSW (HNSW)</b>	HNSW recommended that the Aboriginal Cultural Heritage Assessment (ACHA) be updated to correctly reference the scope of works and provide a timetable for construction.
<b>NSW Department of Climate Change, Energy, the Environment and Water (DCCEEW) – Biodiversity, Conservation and Science (BCS)</b>	<p>BCS provided the following comments:</p> <ul style="list-style-type: none"> <li>• further clarification is needed regarding the flooding study, modelling inputs, flood void operation and evacuation</li> <li>• update documents to identify the flood planning level, basement crest levels and flood wall heights</li> <li>• clarify stormwater catchment modelling regarding inlet capacity and provide legible stormwater drawings</li> </ul>
<b>Sydney Water</b>	Sydney Water provided advice in relation to water and wastewater including the need to obtain a Section 73 Compliance Certificate and Building Plan Approval.
<b>Transport for NSW (TfNSW)</b>	TfNSW advised the proposal is unlikely to have an impact on the classified road network and recommended conditions related to excavation and service relocation.
<b>Water Group, DCCEEW (Water Group)</b>	NSW DCCEEW Water raised no concerns.

### 4.3 Summary of council submissions

33. Council objected to the proposal.

34. A link to the submission in full is provided in **Appendix A**. A summary of the issues raised by Council during exhibition is provided below:

- additional building height and bulk (above WLEP 2011 development standards) is inconsistent with the Dee Why Town Centre Master Plan
- built form concerns related to the podium, setbacks to upper levels and materials
- visual impacts and overshadowing on the SRRBG
- traffic and parking impacts and concerns related to modelling, roadworks required and onsite access for service, emergency and taxi vehicles
- stormwater and water quality concerns related to basement tanking during excavation, water sensitive design and management during construction
- waste concerns related to design of the bulky goods storage room
- landscaping concerns related to plant species and maintenance
- environmental health and building concerns related to the acoustic and contamination reports noting submitted reports will need to be reviewed.

35. In response to the RtS, Council reiterated their objection to the proposal and the issues raised during exhibition. Additionally, concerns regarding façade treatments, overshadowing and view impacts were also raised.

#### 4.4 Summary of public submissions

36. The Department received 13 submissions during the public exhibition period of the EIS (a submission from a special interest group and 12 submissions from individuals). 11 submissions objected to the proposal and two provided comment.

37. Further detail is provided in **Table 5** below and a link to all submissions in full is provided in **Appendix A**.

**Table 5** | Key issues raised in submissions on the EIS

Issue	Number of submissions that raised the issue (x/13)
Impact to <b>SRRBG</b>	10
Traffic, parking and pedestrian impacts (including loss of a through site connection)	8

Issue	Number of submissions that raised the issue (x/13)
Development scale and impact to the local character	4
Appropriateness of the height/density at the edge of the Dee Why Town Centre	2
Other <ul style="list-style-type: none"> <li>• noise impacts from rooftop communal spaces</li> <li>• overshadowing impacts to surrounding residences</li> <li>• loss of ocean views</li> <li>• lack of consultation</li> <li>• flooding impacts</li> <li>• impacts to water table from the basement</li> <li>• utilities capacity</li> <li>• cumulative impacts</li> </ul>	1 1 1 1 1 1 1 1

## 4.5 Summary of issues raised outside of the exhibition process

38. Feedback was also received from the community outside of the exhibition process via email, following EIS exhibition and submission of the RtS. The concerns related to:

- ability to amend the Council approval via the SSD pathway
- design issues including scale and highest points of the building
- impacts to SRRBG and providing development contributions to the SRRBG
- traffic impacts
- requesting review of the Council DA
- lack of consultation with people who made submissions to the Council DA
- maintaining an informal pedestrian link through the site.

## 4.6 Amendment report

39. The Applicant submitted an amendment application, under section 37 of the Environmental Planning and Assessment Regulation 2021 (EP&A Regulation), on 5 November 2024.

40. The amended application included an Amendment Report which changed the proposal to remove the following belowground works from the proposal (see **Appendix A**):
  - foundation construction works including piling
  - construction of the basement structure including slabs and walls.
41. The Applicant advised that these works would be undertaken under DA2022/0145.
42. The Department accepted and published the Amendment Report on the NSW Planning Portal on 5 November 2024.
43. The Department considered that exhibition of the Amendment Report was not required as the amended application does not create material environmental impact beyond the impacts expected by the initially proposed application.

# 5 Assessment

44. The Department has assessed the proposal, considering all documentation submitted by the Applicant, all issues raised in submissions and all advice provided by government agencies.
45. The Department considers the key assessment issues associated with the proposal are:
  - built form
  - residential amenity
  - traffic and parking
  - impacts to the Stony Range Regional Botanic Gardens
46. Each of these issues are discussed in the following sections of this report. The Department's consideration of other issues is provided in **Section 5.4** and the appendices of this report.

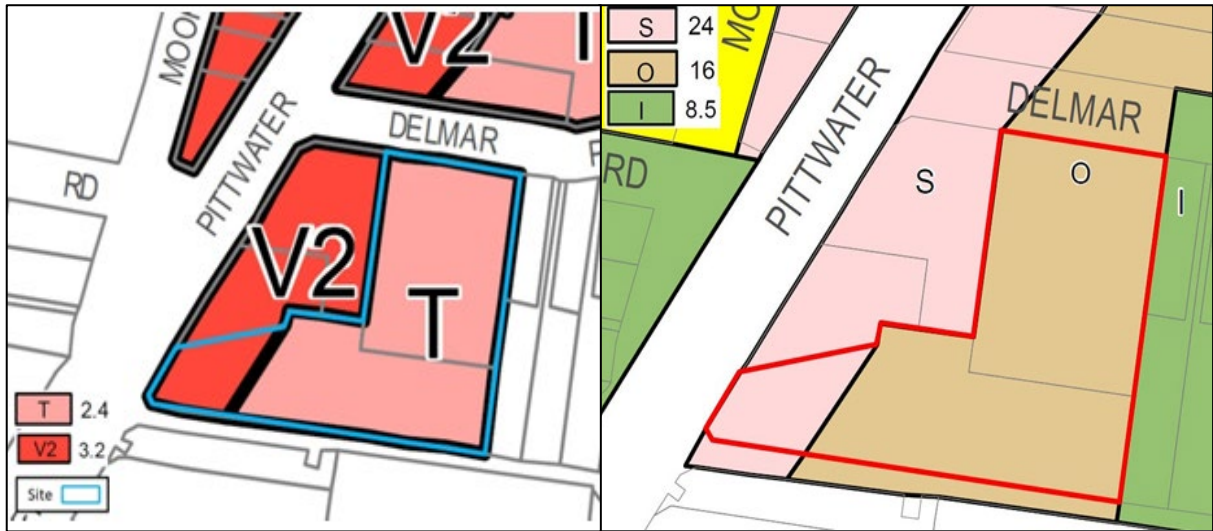
## 5.1 Built form

47. The Department considers the following aspects are key in determining the suitability of the built form for the proposal:
  - building height and floor space
  - podium height
  - building design and materials
  - view impacts

### 5.1.1 Building height and floor space

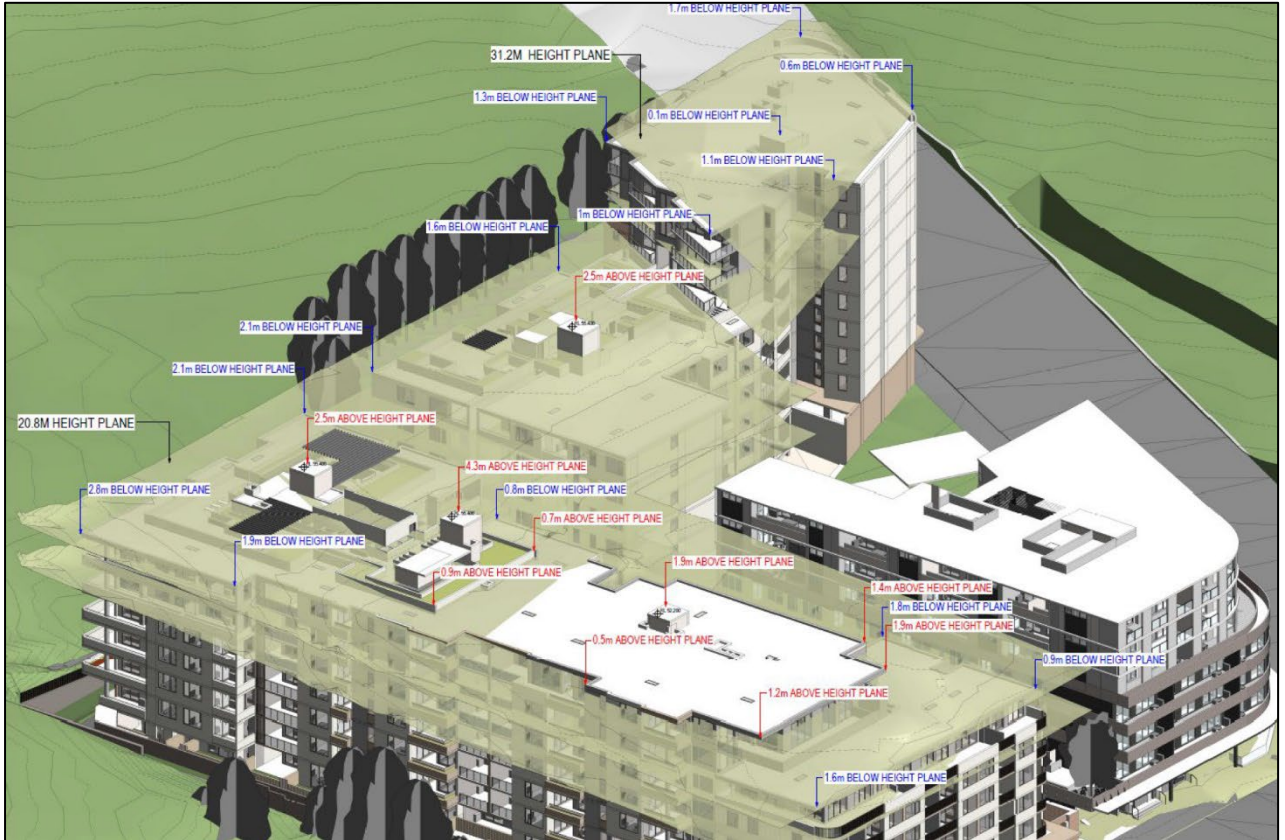
48. Building height and density are controlled by the WLEP 2011 and the Housing SEPP. The WLEP 2011 provides a maximum height of 16m in the eastern portion of the site to 24m in the western portion of the site. It provides a maximum FSR of 2.4:1 in the eastern portion of the site and 3.2:1 in the western portion of the site (**Figure 6**).
49. Notwithstanding, section 16 of the Housing SEPP provides an additional 30% of the maximum permissible building height and FSR as the proposal provides 15% of the floor space as affordable housing. Application of the bonuses available under the Housing SEPP increases the building height to 20.8m to 31.2m and the FSR to 3.12:1 to 4.16:1.





**Figure 6 | Maximum FSR (left) and building height (right) permitted under WLEP 2011**

50. The proposal seeks approval for a maximum building height of 25.1m in the eastern portion of the site and 30.2m in the western portion of the site. This building height is 1-2 storeys higher than the approved DA (Figures 4 and 5) and small parts of the 7<sup>th</sup> storey and lift overruns, roof plant and communal open space (COS) of Building A exceed the Housing SEPP development standard as summarised in Table 6 and Figure 7 below.



**Figure 7 | Proposed building elements which are above the Housing SEPP height limit**

**Table 6 | Building height summary table**

	LEP max. building height	Max. building height permitted (LEP + Housing SEPP)	Proposed building height	Difference
<b>Eastern portion (O)</b>	16 m	20.8 m	25.1 m	+4.3 m (20.7% exceedance)
<b>Western portion (S)</b>	24 m	31.2 m	30.2 m	-1m (complies)

51. The proposal also seeks approval for a maximum GFA of 24,954.4m<sup>2</sup>, which although complies with the overall maximum permitted GFA when averaging the two FSR controls which apply to the site, exceeds the FSR on the western portion of the site by 1,498.3m<sup>2</sup> as summarised in **Table 7** below.

**Table 7 | FSR and GFA summary table**

Site location	Site area	LEP max. FSR	Max FSR permitted (LEP + Housing SEPP)	Max. GFA permitted	Proposed GFA	Difference
<b>Eastern portion (T)</b>	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)
<b>Western portion (V2)</b>	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>	24,295.4m <sup>2</sup>	-380m <sup>2</sup> (complies)

52. Council raised concern that the development controls for the town centre have been set noting the limitations of the town centre, that the proposal sets a development precedent across the town centre and that it does not provide appropriate height and streetscape transitions to the lower density land to the east.
53. Several public submissions also raised concerns that the proposal is not compatible with the character of the local area adjacent to low density residential development and the SRRBG and that the proposal represents an overdevelopment of the site.

54. The Applicant has submitted clause 4.6 variation requests for the proposed building height and FSR variations (**Appendix D**). The Applicant has stated that the proposed building height and FSR are justified because:
- the proposal complies with the underlying objective of section 16 of the Housing SEPP to provide in-fill affordable housing
  - the variations do not cause significant visual, view, overshadowing or traffic impacts and incorporates appropriate materials and finishes to reduce building massing (discussed further below)
  - the proposal generally adheres to the development principles established for the site under the approved DA. The additional 1-2 storeys do not significantly change the relationship with context or transitions from the approved development and is consistent with the uplift incentivised by the Housing SEPP.
55. The Department has carefully considered the proposed height and FSR variation requests in **Appendix D**.
56. The Department appreciates Council's concern that the height and floor space is above that envisaged within the Dee Why Town Centre Masterplan. However, the Housing SEPP provisions which came into force in December 2023 provide the opportunity for appropriately designed additional building height and floor space to facilitate delivery of new affordable housing in accessible locations.
57. The Department acknowledges that the proposal does, in part, seek to vary the maximum FSR and building height provided in section 16 of the Housing SEPP. The Department however considers that the proposal is appropriate for the site and the height and floor space exceedances are acceptable as:
- the proposed height of 7 to 9 storeys is consistent with the height and scale of the recently completed, or under construction, developments at 2 Delmar Parade (7 storeys), 822 Pittwater Road (8 storeys) and 701 Pittwater Road (9 storeys) and would be compatible with the changing character of the Dee Why town centre
  - . The exceedance of the height control in the eastern portion of the site is acceptable in the circumstances as:
    - the variation is limited to small parts of the 7<sup>th</sup> storey which is setback 13m from the Delmar Parade frontage and lift overruns, roof plant and communal open space (COS) of Building A which are centrally located and setback from the building edges

- the variation will not be perceivable from the public domain and scale of the building remains consistent with what is permitted on the site
- the variations do not result in unreasonable additional overshadowing, privacy or view impacts
- the proposal responds to the topography of the site which has a crossfall of 6.27m between the Delmar Parade frontage and southern boundary.
- the proposed building forms and GFA distribution are consistent with the approved DA. The exceedance in the FSR control in the western portion of the site is acceptable in the circumstances as:
  - the proposal provides a lower GFA than allowed on the eastern portion of the site to ensure that the density overall does not exceed that permitted by the Housing SEPP
  - the proposal continues to achieve the intent of the WLEP 2011 FSR controls which seek to concentrate the higher density components of the development in the western portion of the site along Pittwater Road
- the setbacks, design, articulation, appearance and materiality of the development is acceptable (**Sections 5.1.2 and 5.2.1**)
- there would be no unacceptable solar, privacy, heritage or private view impacts to adjoining properties (**Sections 5.1.3 and 5.1.4**)
- traffic impacts can be managed and mitigated subject to treatment of Pittwater Road to limit right turn movements onto Delmar Parade.

58. In conclusion, the Department considers the proposed building height and FSR are acceptable and the variations are justified given the circumstances of the case. Overall, the Department considers the impacts of the building height and density are acceptable and the proposal makes a significant contribution towards the provision of housing, including 43 affordable housing units.

## 5.1.2 Podium heights

59. 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).
60. The proposal provides a 9 storey tower to Pittwater Road and 5 storey podium to Delmar Parade. This is higher than the approved DA which provided a 7 storey tower to Pittwater Road and a 4 storey podium to Delmar Parade.

61. The Applicant has submitted a clause 4.6 variation request for the proposed podium height variations. The Applicant has stated that the proposed podium heights are justified as:
- the 5 storey Delmar Parade podium provides for a more consistent built form along Delmar Parade considering the 4 storey podium height approved for 2 Delmar Parade
  - the tower design for the Pittwater Road frontage is an appropriate as it is a landmark location being the southern gateway into the Dee Why town centre
  - the underlying objective of the clause to achieve consistent built form is satisfied as surrounding redevelopments have higher podium heights than permitted by the controls
  - the underlying objective of the clause to maximise separation for visual appearance and amenity is satisfied as the variation does not give rise to visual or amenity issues.
62. Council raised concern that the proposal should be consistent with 2 Delmar Parade in terms of podium height (i.e. 4 storeys) and that the levels above levels should be setback.
63. The Department has considered the Applicants clause 4.6 request in **Appendix D** and considers that the podium height is acceptable despite the variation for the following reasons:
- the absence of a podium for the tower along Pittwater Road tower height is consistent with the approved DA which included a 7 storey tower with no podium and provides a marker for the southern edge of the town centre, in a similar way to the 8 storey tower at the northern edge of the town centre (1-5 Dee Why Parade)
  - the proposed 5 storey podium along Delmar Parade is considered appropriate as it is compatible with the surrounding area which contains a mix of podium height and towers (without podiums). In particular, the proposal would not be out of character with:
    - the 4 storey podium height at 2 Delmar Parade, particularly noting that the solid brick balcony edges at the 5<sup>th</sup> storey have the effect of reading as an additional podium level along the street frontage (**Figure 8**)
    - the 8 storey tower (no podium) opposite the site at 822 Pittwater Road (**Figure 9**)
    - other developments in the town centre at 701 Pittwater Road, 834 Pittwater Road and the Lighthouse development by Meriton at the corner of Pittwater Road and Howard Avenue which vary the LEP podium height control in a similar manner to the proposal (**Figure 10-12**).

- the proposal has been designed to minimise the bulk and scale and provide a human scale, and the variations to the podium heights do not result in significant visual or amenity issues to adjoining properties or the public domain



**Figure 8 |** Four storey podium at 2 Delmar Parade



**Figure 9 |** Eight storey podium addressing Delmar Parade at 822 Pittwater Road



**Figure 10** | Eight storey podium at 701 Pittwater Road



**Figure 11** | Five storey podium at 834 Pittwater Road



**Figure 12** | Tower structure at the Lighthouse development at 884-896 Pittwater Road

64. The Department is satisfied that the proposed podium heights are acceptable noting the location of the site as a gateway landmark to the Dee Why town centre and considers the overall building form would not be incongruent with buildings along Delmar Parade and more broadly within the Dee Why town centre.

### 5.1.3 Building design and materials

65. Section 7.4 of the WLEP 2011 requires that all new building in the Dee Why town centre exhibit design excellence.

66. Council raised concern that the proposal does not exhibit design excellence. Council recommended that the proposed design should be consistent with 2 Delmar Parade in terms of material selection and fenestration.

67. In response 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. The Applicant 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.

68. The Department has considered Council's concerns and the Applicant's response. The Department has undertaken a detailed assessment against the design quality principles in the Housing SEPP and design excellence provisions of the WLEP 2011 in **Appendix C** and is satisfied that the proposed design is acceptable and exhibits design excellence as:

- the proposal adopts similar external finishes and materials as the approved DA as modified
- facades are well articulated through building material variations, building breaks and balconies to reduce the vertical and horizontal scale of the building and break up the bulk.
- the Department has recommended a condition requiring treatment of the northern façade to Building B to ensure it provides visual interest and does not present a blank wall to 816 Pittwater Road, consistent with the approved DA.

69. The Department is satisfied that, subject to conditions, the proposal exhibits design excellence and achieves a high standard of design that will positively contribute to the quality and amenity of Dee Why town centre.

### 5.1.4 Ocean view impacts

70. The site is located approximately 1.2 to 1.5 kilometres from the Dee Why beach and the ocean respectively. A public submission received from a property on the western side of Pittwater



Road raised concerns regarding ocean view loss. Council also raised concern that properties bounded by Moorilla Road, May Road, Pittwater Road and Victoria Road may experience ocean view loss.

71. The Department has reviewed the concerns raised by the public and Council. The Department has also visited the site and surrounded and considered the analysis of impacts from public vantage points in the Applicant's Visual Impact Assessment.
72. The Department notes that surrounding area has a hilly topography, and that many public vantage points and private properties have an outlook toward the ocean. However, the outlook does vary depending on the topography, significant canopy vegetation and interruption by high density development in the Dee Why town centre (**Figures 13 and 14**).
73. With specific respect to the concerns raised by the public submission and Council, the Department notes:
  - the area highlighted by Council primarily has a north-east outlook toward the ocean, which would largely be unimpacted by the proposed development which is located to the east (**Figure 13**)
  - the visual impact of the proposed additional 1-2 storeys is unlikely to cause any material impact to the outlook to surrounding properties immediately to the west of Pittwater Road beyond what has already been approved by the existing DA given the close proximity to the site (**Figure 15**).
74. The Department considers that while outlook from some properties will change, the change is consistent with the development of the Dee Why town centre and is unlikely to cause unreasonable impacts on oceans views. On balance, the Department is satisfied that view impacts associated with the proposal are reasonable and acceptable.



**Figure 13** | View (zoomed in) from the intersection of May and Victor Streets



**Figure 14** | View from the intersection of May and Karrabee Streets



**Figure 15** | Street level view towards the site from the western side of Pittwater Road

## 5.2 Residential amenity

75. The Housing SEPP and the Apartment Design Guide (ADG) provide planning guidance and principles to ensure acceptable levels of internal amenity are provided to residential apartments.
76. The Department has assessed the proposal against the Housing SEPP and ADG at **Appendix C** and concludes the proposal provides a high level of internal amenity in accordance with the objectives and design guidance of these guidelines.
77. The proposal is consistent with the key ADG design criteria, with the exception of building separation, deep soil acoustic privacy which are discussed below. The proposal also includes one apartment which does not meet the recommended minimum balcony depth of 2 m and a number of apartments with depths greater than 8m, however these apartments continue to achieve a good level of amenity as discussed further in **Appendix C**.

### 5.2.1 Building separation

78. The ADG recommends that new buildings within the development be designed to ensure that habitable rooms / balconies are separated by a distance of:
  - 6 m up to 4 storeys, 9 m between 5 to 8 storeys and 12 m for 9 storeys and above between proposed buildings within the development and side and rear boundaries with adjoining properties.

- 12 m up to 4 storeys, 18 m between 5 to 8 storeys and 24 m for 9 storeys and above between proposed buildings within the development.

79. The proposed building setbacks and separation between Building A and B and the neighbouring properties are generally consistent with the approved DA. The key locations where the building setbacks and separation does not align with the ADG recommendation are outlined in **Table 8**:

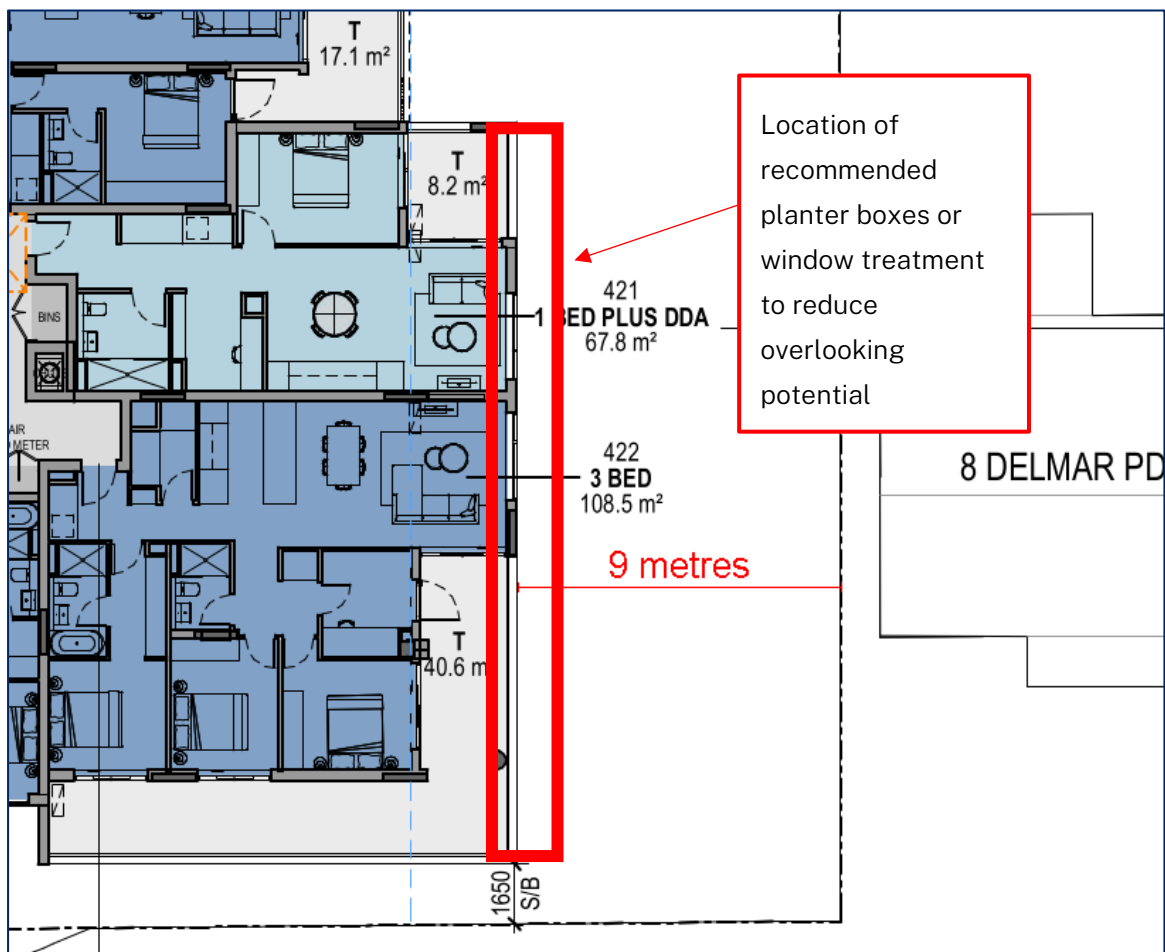
**Table 8** | Visual privacy variation summary table

Location	ADG recommendation	Provided
Building A and B at ground to level 3 (internal)	12 m	1.5 m to 7 m
Building A and B at levels 4 to 6 (internal)	18 m	12 m
Building A to low density residential zone at level 4 to level 6	12 m	9 m
Building A to 2 Delmar Parade at level 4 to level 5	9 m	6 m
Building B and 816 Pittwater Road at ground to level 3	6 m	0 m to 6 m
Building B and 816 Pittwater Road at level 4 to level 7	9 m	0 m to 6 m
Building B and 816 Pittwater Road at level 8 to 9	12 m	0 m

80. Council raised concern with setbacks provided noting that upper storeys should have increased setbacks to reduce the visual bulk and massing of the building.
81. The Applicant argues 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.
82. The Department has reviewed the information provided by the Applicant, Council concerns and the ADG. The Department notes that the proposal generally remain consistent with the approved DA in terms of its setbacks and separation and considers:
- internal separation is acceptable as overlooking between apartments is mitigated by high level windows, window screening and landscaping
  - only eight apartments are within the separation distances recommended for the low-density zone. Of these apartments, two apartments (numbers 407 and 504) overlook a

front setback and four apartments (518, 519, 611 and 612) are provided with balcony planting to limit overlooking. The Department has recommended a condition that the remaining two apartments (421 and 422) (see **Figure 16**) also be provided with facade and balcony planting and/or window treatment (which does not block light from apartments)

- the setback to 2 Delmar Parade is acceptable as windows have been provided with screening, windows have generally been offset and as the development at 2 Delmar Parade has been provided with planter boxes to mitigate its own separation variation
- the setback to 816 Pittwater Road is acceptable as the proposal contains no windows where a 0 m setback has been proposed. The Department has recommended a condition that the façade be provided with treatment to ensure a blank façade is not presented to 816 Pittwater Road.



**Figure 16** | Apartments to be provided with planter boxes to limit overlooking

83. The Department does not consider that additional setbacks are necessary to the upper storeys as the proposal maintains the same setback up to Level 7 to Pittwater Road as the approved DA and setting back the additional 1-2 storeys proposed in this application will not

significantly improve the amenity to adjoining properties or significantly reduce the perceived bulk of the development.

84. In conclusion, the Department is satisfied that the proposal provides acceptable setbacks and separation consistent with the approved DA to provide an acceptable level of visual privacy for future residents, subject to recommended conditions.

### 5.2.2 Deep soil

85. The ADG recommends that 7% of the site be provided as deep soil zones (DSZ) with minimum dimensions of 6m.

86. The proposal provides 3.5% of the site (272.4m<sup>2</sup>) as DSZs which meet the ADG minimum dimensions and a further 7.6% of the site (589.1m<sup>2</sup>) below the minimum dimensions of the ADG.

87. The Department considers the amount of DSZ provided in the proposal as acceptable for the following reasons:

- the ADG recognises that the design criteria may not be achieved for the sites located in high-density urban environments such as the subject site
- onsite stormwater measures have been provided to ensure adequate water management
- the DSZs are located along the eastern and southern site boundaries which allow for landscaping along the site edges to soften the development
- on structure landscaping, at roof level and on the building façade, is provided to increase residential amenity
- the proposal continues to provide a similar amount of DSZ as the approved DA.

88. The Department is satisfied that the amount of DSZ provided is acceptable with consideration of the site's location in a high-density area and as the DSZ provided, combined with other landscaping elements of the proposal, support plant growth.

### 5.2.3 Acoustic privacy

89. The ADG recommends that noisy areas be located next to or above each other and quieter areas located next to or above each other. Service areas (such as access cores or driveways) are to be located away from bedrooms.

90. The proposal generally minimises noise transfer between apartments, however some apartments have bedrooms that adjoin a lift core (for example, apartment 315) or are located near/above the loading dock (for example, apartments G.02, 107 and 110).
91. The EIS included an Acoustic Assessment that advised while internal architectural elements are to be detailed later in the detailed design process, the proposal can be designed to achieve compliance with the BCA. The Acoustic Assessment recommended that a further internal acoustic privacy assessment be undertaken to confirm that sound transmission of the proposed internal architectural elements will comply with the requirements outlined in the assessment.
92. The Department has recommended condition that the recommendations of the Acoustic Assessment be undertaken with a report be submitted to the certifier outlining compliance prior to construction and that confirmation that the Acoustic Assessment requirements have been properly constructed be given to the Certifier prior to occupation.
93. The Department considers the proposal can achieve good residential acoustic amenity subject to the recommended condition.

#### **5.2.4 Affordable housing amenity**

94. The Department has specifically considered the amenity of the 43 affordable housing apartments to ensure they are provided with a reasonable level of amenity within the overall development.
95. The affordable housing apartments are located on levels 1 to 9 in Building B which also contains market apartments on the same levels. The affordable housing will be accessed via the same lift core which will also contain market housing on levels 7 to 9.
96. The Department has reviewed the solar access and cross ventilation figures for all market and affordable housing. In total 86% of affordable housing apartments will achieve a minimum of two hours of solar access in midwinter (compared to 70.4% overall) while 62.8% would be cross-ventilated (compared to 61.8% overall). The affordable housing apartments are also indistinguishable from the market apartments in terms of other ADG design criteria such as apartment size, privacy, private open space and storage.
97. The Department concludes the affordable housing apartments would achieve a good level of amenity consistent with the ADG.

## 5.3 Traffic and parking

### 5.3.1 Traffic

98. The proposal was accompanied by a Traffic Impact Assessment (TIA) that concludes the proposal would not have a meaningful difference in traffic impacts compared to the approved DA2022/0145. The TIA states that:
- the proposal would generate approximately 71 and 99 vehicles per hour during the AM and PM peaks, respectively, which represents a minor increase of 11 and 13 vehicles per hour during the AM and PM peaks, compared to the approved DA and a negligible 1% increase in traffic on Pittwater Road
  - the minor increase in traffic does not warrant further assessment or modelling of the impacts to intersections on Pittwater Road which were assessed and considered acceptable as part of the approved DA
  - a PM peak ban (in addition to the existing AM peak ban) of right turn moves from Pittwater Road to Delmar Parade would reduce the concentration of traffic at one intersection and would not adversely impact other intersections through the redistribution of traffic.
99. Public submissions raised concerns that the proposal would exacerbate traffic issues and that providing vehicle access from Pittwater Road would reduce traffic impacts to Delmar Parade. Council requested that additional modelling of intersections along Pittwater Road be undertaken and that the closure of the median on Pittwater Road may be needed to block right turn movements onto Delmar Parade.
100. TfNSW did not raise traffic concerns.
101. The Department notes that during assessment of the approved DA the only traffic concerns related to right turn movements from Pittwater Road to Delmar Parade and queuing issues associated with the right turn movements into and out of Delmar Parade. However, Council also noted that in reality, only a few cars turn right out of Delmar Parade during the AM and PM peaks due to existing traffic conditions on Pittwater Road. To mitigate these impacts, Council recommended that the AM right turn ban on Pittwater Road be extended to the PM peak or that the median along Pittwater Road be closed to remove right turn movements into and out of Delmar Parade.
102. The Department has carefully considered the concerns raised in submissions and the assessment of the approved DA. The Department accepts the findings of the Applicant's TIA and considers that the proposal would have minimal impacts on the surrounding road network



given the low additional movements associated with the proposal when compared to the approved DA. It is also noted that TfNSW did not raise concerns about traffic impacts.

103. The Department has recommended a condition the Applicant undertake works to restrict or remove the right turn movements from Pittwater Road into Delmar Parade with the endorsement of the appropriate road authority and that these works be completed prior to occupation of the development.

### 5.3.2 Parking and site servicing

104. The Housing SEPP provides a non-discretionary development standard which provides that a consent authority cannot require more than the following car parking:
- 0.4, 0.5 and 1 space for 1, 2 and 3 bedroom affordable housing units respectively
  - 0.5, 1 and 1.5 spaces for 1, 2 and 3 bedroom market housing units respectively.
105. The Housing SEPP does not provide a visitor parking rate.
106. The Warringah DCP provides a rate of 0.6 spaces, 0.9 spaces and 1.4 spaces for 1, 2 and 3 bedroom apartments respectively. It also provides a visitor parking rate of 1 space per 5 units.
107. The proposal seeks to provide 425 car parking space comprising 335 residential spaces, 56 residential visitor spaces and 34 commercial spaces (**Table 9**). This is 91 spaces greater than the approved DA which provided 334 spaces for 218 apartments and commercial uses.
108. The proposed resident car parking is 96 spaces above the minimum parking provided by the Housing SEPP and 84 spaces above the DCP parking rate. The visitor and commercial parking generally aligns the with DCP rates.
109. Public submissions raised concerns that residents would park in the Council car park and that less parking would be available for users of the SRRBG. Concern was also raised about impacts to on-street car parking availability. Council, on the other hand, raised concerns regarding excessive residential on-site car parking, lack of car share spaces and the need for on-site service vehicles parking.
110. In response, the Applicant notes that:
- evidence suggests that quality of public transport encourages residents to use it rather than provision of car parking spaces, survey data from Rhodes and Epping indicates that parking above DCP rates does not impact on peak hour traffic generation and that residents who commute to work still use cars for social/leisure uses

- reduced parking spaces will result in residents parking on-street adding to existing street parking capacity issues
- car parking rates provided for the proposal are consistent with rates provided for the approved DA
- site servicing is consistent with servicing arrangements in the approved DA including a ground level loading dock which can accommodate Councils waste vehicles and basement loading bay for commercial waste collection.

**Table 9 |** Parking summary table

Parking Type	Housing SEPP	DCP	Approved DA (218 apartments)	Proposed
<b>Residential</b>	239	251	259	335
<b>Residential Visitor</b>	N/A	57	47	56
<b>Commercial</b>	N/A	20-32	28	34
<b>Total</b>	<b>239</b>	<b>328-340</b>	<b>334</b>	<b>425</b>
<b>Bicycle:</b>				
• <b>Residential</b>	N/A	280	218	280
• <b>Residential Visitor</b>		23	21	22
• <b>Commercial</b>		4	-	2

111. The Department acknowledges that the approved DA provides for 259 spaces for the 218 apartments which exceeds the DCP rate. Noting that this was previously considered acceptable by Council, the Department considers it reasonable to maintain that approved number of spaces for the previously approved 218 apartments.
112. However, noting that the Housing SEPP provides height and floor space bonuses for the affordable housing within accessible areas, the Department considers that the additional apartments above the approved DA (i.e.. 62 apartments) should be limited to providing car parking in line with the Housing SEPP rates. This would result in 300 resident parking spaces which is 35 less than proposed (**Table 10**).

**Table 10 | Housing SEPP parking rates required for new apartments**

	Additional apartments		Housing SEPP parking requirements		Total
	Affordable housing	Market housing	Affordable housing	Market housing	
27 x 1 bedroom	18	9	7.2 spaces	4.5 spaces	11.7 spaces
23 x 2 bedroom	13	10	6.5 spaces	10 spaces	16.5 spaces
12 x 3+ bedroom	12	0	12 spaces	N/A	12 spaces
Housing SEPP parking spaces required for 62 new apartments					41 spaces
Parking spaces provided for apartments in approved DA					259 spaces
<b>Total residential parking spaces required</b>					<b>300 spaces</b>

113. The Department also notes that the DCP would requires 11 car share spaces. The approved DA and the proposal do not propose any car share spaces. The Department considers this is acceptable in this instance as the Applicant has provided more than the minimum amount of residential spaces, there is no opportunity to provide car share spaces at ground level and the Applicant has consulted with a car share company who advised due to the secure location of parking on the site it would not be interested.
114. 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 DCP.
115. The Department is also satisfied that adequate bicycle parking is provided for within the resident storage gages which exceed the minimum storage space recommended by the ADG. It recommends that two additional commercial bicycle spaces and one additional visitor bicycle spaces are provided to align with the DCP.
116. The Department has considered the concerns raised by the community and Council as part of its assessment of car parking, however on balance the Department is satisfied that the proposal will provide adequate car parking, subject to the recommended conditions, and is not expected to adversely impact on on-street or Council car parking spaces.

117. The Department has recommended conditions related to changes to the total number and mix of parking, provision of additional bicycle parking spaces, construction standards for parking and access requirements and that a car parking, loading and servicing management plan be prepared for operation of the development. The Department concludes that the proposal is acceptable in relation to parking subject to the recommended conditions.

## 5.4 Impacts to SRRBG

118. Most public submissions raised concerns about impacts to the SRRBG related to overshadowing, visual impacts, overlooking, loss of car parking and the significance of the SRRBG.
119. Council also raised concerns regarding overshadowing impacts to vegetation in the SRRBG and also recommended a condition that no construction works be undertaken on land in the SRRBG.
120. In response to concerns about impacts to the SRRBG, the Applicant noted:
- the majority of the SRRBG is unaffected by overshadowing and the proposal does not cast shadow to the SRRBG between September to March
  - the proposal results in only a minor increase in overshadowing beyond the approved DA, which does not create any meaningful further impact
  - the visual impacts are consistent with and reasonable having regard to the height and floor space with development standards for the site and the increase in the variety of material used along the southern façade will improve the appearance of the development
  - the proposal would not impact on the operation of SRRBG and adequate onsite car parking is provided to cater for the demands of the proposal (discussed further in **Section 5.3**)
121. The Applicant also provided a Flora and Fauna Assessment which concludes:
- that canopy trees in the locations where shadows are cast are taller than the proposal and as such, their access to light will not be impacted by the proposal
  - the understorey vegetation will not be significantly impacted as the area is already overshadowed by the canopy trees, light would be available to most areas during the main growing season and vegetation is mostly composed of shade tolerant rainforest/wet sclerophyll forest species

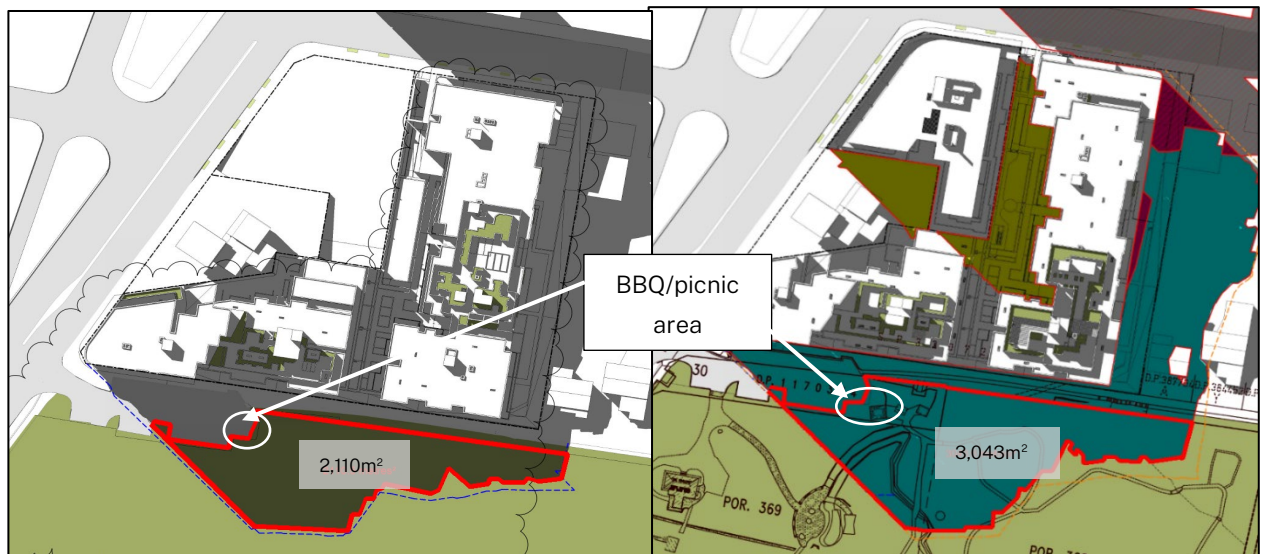
- the west facing slope would be the area most impacted by shadow and increased soil moisture however existing species adapted to lower light will thrive at these locations and any impacts will be negated during summer when there are no shadows
- shading moves through the day further reducing impacts
- fauna movements would not be impacted due to the existing urban nature of the site and surrounding developments.

122. The Department has reviewed the concerns raised by the public, Council and the response provided by the Applicant and considers:

- the additional overshadowing caused by the proposal is minor and incremental in comparison to the approved DA and would not result in any substantial amenity or flora and fauna impacts to the SRRBG (**Figure 17 and 18**)
- basement car parking has been provided to cater for the residential and commercial uses on the site
- overlooking of the SRRBG car park by apartments will increase passive surveillance promoting safety and security
- the visual impacts to the SRRBG in comparison to the approved DA are considered minor and acceptable as the vegetation associated with the SRRBG provides for high quality amenity
- as the proposal seeks construction access to the site in the same manner as the approved DA, the Department has recommended a condition that owners consent be obtained from Council for an access via the SRRBG car park prior to commencing construction.



**Figure 17** | 9am overshadowing comparison between the approved DA (left) and proposal (right)



**Figure 18** | 3pm overshadowing comparison between the approved DA (left) and proposal (right)

123. On balance the Department concludes that the proposal results in a commensurate level of impact the approved DA which would be expected by any development on the site permitted by the planning controls.

## 5.5 Other issues

124. The Department’s consideration of other issues is summarised in **Table 11** below.

**Table 11** | Assessment of other issues

Conclusions	Recommended conditions
<p><b>Flooding</b></p> <p>The site is affected by overland flooding from the local catchment when Council’s drainage infrastructure exceeds capacity.</p> <p>BCS raised concerns regarding flooding management proposed. Council did not raise concern regarding proposed flood management.</p> <p>The Applicant seeks to manage flooding via the same methods as the approved DA and is currently undertaking construction works to divert and upgrade the trunk main on the site to contain up to 5% AEP flood events under the same approval. The Applicant has provided a Flood Study which:</p>	<p>Conditions B4, B16 to B19, C7, E28 and E39 of Appendix E</p>

## Conclusions

## Recommended conditions

- notes the flood planning level (FPL) for the site is ranges from 28 m AHD at the northern boundary at the Delmar Parade to 32.4 m AHD at the southern boundary
- recommends the following measures to convey floodwaters during events greater than the 5% AEP:
  - a 3-4 m overland flow path along the eastern (above the trunk main pipe) and part southern boundary
  - a flood conveyance void through the ground floor of Building B to convey floodwaters
  - a flood wall along the flow paths built to the various FPLs along the wall path
- concludes the ground floor level does not need to be at the FPL as the proposal provides for overland flow paths, flood voids, flood wall and basement crest levels to stop floodwaters from entering the buildings
- notes that evacuation via Pittwater Road and Delmar Parade is available and should roads be blocked, nominates shelter in place locations in the development
- confirms the proposal will have nil to minimal impacts on flood behaviour on adjacent land and meets the requirements of Council
- confirms the proposal is capable of complying with the requirements of the Flood Risk Management Manual 2023 (FRMM).

The Department has considered the findings and recommendations of the Applicant's Flood Study, the outcomes of the approved DA and the advice provided by BCS. The Department is satisfied that:

- the Applicant has used the same flood model and seeks to manage flooding in the same way considered acceptable by Council the approved DA
- measures will improve flood impacts to 816 Pittwater Road and the Delmar Parade road reserve during flood events
- the Applicant has confirmed the measures proposed will not result in floodwaters entering the building.

The Department has recommended the following conditions to ensure flooding is appropriately managed:

Conclusions	Recommended conditions
<ul style="list-style-type: none"> <li>confirmation that the flood emergency management is consistent with broader flood emergency management arrangements for the area</li> <li>that the proposal be constructed with flood compatible materials and methods</li> <li>confirmation that the trunk main upgrade works undertaken under the approved DA have been completed</li> <li>preparation and implementation of a construction and operational flood evacuation management plan (FEMP).</li> </ul> <p>The Department is satisfied that subject to conditions, the proposal will appropriately manage flood impacts associate with the proposal.</p>	
<p><b>Commercial floor space</b></p> <p>Section 7.12(2)(c) of the WLEP 2011 requires that two levels of proposed buildings in the Dee Why Town Centre be provided as employment generating spaces including the entire ground floor of the building. The proposal seeks to vary this requirement only providing commercial floor space at the street frontages.</p> <p>Council raised concern that insufficient employment generating floor space is being provided for the scale of the development.</p> <p>In response the Applicant noted that the proposal proposes the same amount of employment generating space considered acceptable in the approved DA, the number of apartments proposed is not relevant to determine amount of employment floor space and the site’s location at the edge of the Dee Why town centre is not does not lend itself for more commercial development.</p> <p>The Department considers the variation to the WLEP 2011 requirement is acceptable as detailed in <b>Appendix D</b>. Further, the Department notes the site attributes have not altered since the level of employment generating space provided in the approved DA was considered acceptable.</p> <p>The Department notes that the potential redesign of the substations and fire escape stairs (discussed below) may result in less employment generating space than currently proposed. However, the Department considers that the reasons for varying the requirement remain unchanged.</p> <p>On balance, the Department considers the variation to the amount of the employment generating space as acceptable noting the location and shape of the site and benefits associated with the additional housing provided.</p>	<p>No changes or conditions required.</p>



Conclusions	Recommended conditions
<p><b>Construction impacts</b></p> <p>The EIS included:</p> <ul style="list-style-type: none"> <li>• Construction Traffic Management Plan (CTMP) which included consideration of construction traffic, parking and access and is consistent with the CTMP approved by Council</li> <li>• Construction Noise and Vibration Management Plan which considers noise and vibration impacts and provided recommendations to ensure appropriate levels of impacts to nearby sensitive receivers</li> <li>• a Waste Management Plan which considered construction waste removal and minimisation.</li> </ul> <p>The Department has recommended several conditions to ensure the construction does not unreasonable impact on the amenity of adjoining residents or result in any damage to adjoining development and public domain.</p> <p>The Department is satisfied that construction impacts associated with the proposal can be appropriately managed, subject to conditions of consent.</p>	<p>Conditions C1 to C7, C10 to C16, D3 to D25 of Appendix E</p>
<p><b>Pedestrian connections</b></p> <p>Public submissions and feedback comments raised concern that a public through site link between Delmar Parade and the pedestrian walkway to Tango Avenue has not been provided. Submissions noted that previously users were able to ‘cut through’ the site via the driveway shortening the walking distance to the town centre.</p> <p>Council requested that the footpath to the bus stops on Pittwater Road be upgraded and pedestrian crossings be provided.</p> <p>In response, the Applicant noted that the proposal adopts the same ground plane layout as the approved DA which also did not provide for the through site link, there is no legal requirement for the through site link on the site. The Applicant also noted that the existing pedestrian infrastructure can accommodate the proposal noting there are shared paths and crossings surrounding the site.</p> <p>The Department has considered the issues raised by the community as well as the Applicant’s response and considers that a through site link is not required as the Dee Why Town Centre Masterplan does not identify the site as requiring a pedestrian link and the existing pedestrian link from Tango Avenue to Pittwater Road will not be impacted by the proposed development including during construction.</p>	<p>No changes or conditions required.</p>

Conclusions	Recommended conditions
<p>In relation to the Council request for upgrades footpaths along Pittwater Road, the Department considers that as there are existing footpaths along Pittwater Road it is unreasonable to require the Applicant to reconstruct these footpaths and notes that the approved DA did not require reconstruction of footpaths to bus stops.</p>	
<p><b>Noise and vibration</b></p> <p>A public submission raised concern about operational noise impacts from the development particular noise impacts from the rooftop communal areas.</p> <p>In response, the Applicant provided updated Acoustic Design and Construction Advice (acoustic advice) which considered impacts from rooftop communal areas alongside future resident acoustic and vibration amenity. The acoustic advice concluded that the development would be capable of achieving satisfactory amenity subject to recommendations including acoustic glazing, building insulation, mechanical ventilation and material and building selection. To further ensure acoustic amenity, the acoustic advice recommends a building noise management plan be prepared which includes behavioural measures and operating hours for outdoor common areas to minimise emissions.</p> <p>The Department has recommended conditions requiring compliance with construction measures outlined in the acoustic advice and preparation of an operational plan of management (OPM) which includes measures for noise management of communal areas. The Department is satisfied that operational noise impacts associated with the proposal can be appropriately managed subject to recommended conditions.</p>	<p>Conditions B12 and E15 of Appendix E</p>
<p><b>CPTED</b></p> <p>The EIS included consideration of CPTED principles noting the proposal improves crime prevent through introduction of active frontages, passive surveillance of the public domain, clear demarcation of private/public areas and common areas which promote interaction. The EIS also notes that further measures such as security cameras, controlled access, maintenance and lighting can be implemented to improve crime prevention.</p> <p>The Department has recommended a condition that a CPTED report be prepared with recommendations of the report implemented in the development.</p> <p>The Department notes that the proposal already implements several measures to promote crime prevention and is satisfied that subject to implementation of further measures identified the CPTED report required by condition, the proposal will not result in unacceptable safety and security impacts.</p>	<p>Condition B10 of Appendix E</p>

Conclusions	Recommended conditions
<p><b>Utilities</b></p> <p>The EIS included an Infrastructure Report which advises:</p> <ul style="list-style-type: none"> <li>the site serviced by sewer, water, gas, electricity and telecommunications</li> <li>upgrade works for sewer and water may be required which will be discussed with Sydney Water</li> <li>in relation to electricity, that decommissioning works of a connection to an existing substation on Delmar Parade will be required and construction of two new substations in the site will be required.</li> </ul> <p>A public submission raised concern about the lack of utility capacity to cater for existing development in the area.</p> <p>Ausgrid recommended that the Applicant enquire with Ausgrid to determine availability of electricity capacity and consider electricity infrastructure in vicinity of the site. Sydney Water noted that water and wastewater servicing should be available for the proposal however recommended that further consultation with Sydney Water occur prior to works commencing to determine Sydney Water infrastructure in the vicinity and that a Section 73 Certificate be obtained.</p> <p>The Department notes that while the proposal provides for two new substations on the ground level of the building, the doors associated with the substations open outward onto Council land. Additionally, a fire escape door also opens outward onto Council land along the same façade. The Department has recommended a condition requiring the Applicant either provide Council consent for the three doors opening onto Council land or redesign so that the doors open inwards (subject to compliance with relevant building standards) or provide a redesign of these spaces so that these doors open onto the site.</p> <p>The Department has also recommended conditions related to utility service provision. The Department is satisfied the adequate utilities would be available for the proposal subject to recommended conditions.</p>	<p>Conditions B2, B6, C22, C23, E22, E23 and G9 of Appendix E</p>
<p><b>Impacts to 816 Pittwater Road and adjoining residential development</b></p> <ul style="list-style-type: none"> <li>Council raised concerns regarding future development of the adjoining site at 816 Pittwater Road (currently operating as a car rental business).</li> <li>In response, the Applicant contends that the proposal does not create site isolation issues the approved DA already established a development outcome for the site. The Applicant notes that Council considered site isolation when</li> </ul>	<p>No changes or conditions required.</p>

Conclusions	Recommended conditions
<p>assessing the approved DA and concluded that 816 Pittwater Road was capable of being developed on its own right. Regardless, the Applicant provided plans demonstrating that development could be undertaken at 816 Pittwater Road.</p> <ul style="list-style-type: none"> <li>• The Department has reviewed the concerns raised by Council and the response provided by the Applicant and is satisfied that: <ul style="list-style-type: none"> <li>– the documentation provided by the Applicant satisfactorily demonstrates that 816 Pittwater Road is capable of a reasonable level of development in line with the WLEP 2011 and future dwellings can be designed to achieve good levels of amenity. Access to the site has also been provided for as part of the development at 2 Delmar Parade</li> <li>– the Applicant made attempts to acquire the site prior to lodgement of the approved DA</li> <li>– the Department notified the landowner of 816 Pittwater Road during the exhibition period and did not receive any submission in response</li> </ul> </li> <li>• In relation to adjoining residential development, the Department notes that the development at 2 Delmar Parade continues to maintains solar access in line with the ADG and dwellings located to the east of the site will achieve three hours of solar access between 9am to 12pm midwinter.</li> <li>• The Department considers that the proposal does not unreasonably create additional impacts on the future development of 816 Pittwater Road and continues to allow surrounding residential properties with an acceptable level of amenity.</li> </ul>	
<p><b>Water</b></p> <ul style="list-style-type: none"> <li>• The proposal adopts the same stormwater design and water quality treatment measures as the approved DA.</li> <li>• BCS raised concerns about the stormwater modelling provided. Council noted that stormwater had been considered in the approved DA and did not raise any further concerns following review of additional information provided by the Applicant in its RtS.</li> <li>• The Department has considered the information provided by the Applicant and the comments by BCS. The Department, however, notes that the proposal seeks to implement the same stormwater management as the approved DA</li> </ul>	<p>Conditions B5, C1, C6, D18-D20, E11, E31-E33, E38, and F1 of Appendix E</p>

Conclusions	Recommended conditions
<p>and does not consider that this warrants reinterrogation noting that Council remains satisfied.</p> <ul style="list-style-type: none"> <li>The Department has therefore recommended conditions related to detailed design of the stormwater system, construction stormwater management and preparation of a Stormwater Operational and Maintenance Plan (SOMP).</li> </ul>	
<p><b>Existing consent</b></p> <p>The approved DA granted by the Sydney North Planning Panel and subsequently modified by Council allows for site preparation works and construction of a mixed use building containing 218 apartments.</p> <p>To ensure there is no ambiguity related to the prevailing development consent applying to the land, the Department has recommended conditions requiring the modification of DA2022/0145, under s4.17(1)(b) of the Act, to remove works that form part of this application. The Department considers that orderly development can be undertaken on the site subject to the recommended condition.</p>	<p>Conditions A7 and A8 of Appendix E</p>
<p><b>Development contributions</b></p> <p>The Dee Why Town Centre Contributions Plan 2019 (the Contributions Plan) requires payment of contributions for upgrade of local infrastructure resulting from development in the town centre.</p> <p>Council advised that the proposal would be subject to contributions however a credit for contributions paid for the approved DA would be available.</p> <p>The Department notes that the proposal is not exempt from the Contributions Plan as the proposal does not meet exemption criteria in section 2.6 of the Contributions Plan. However, a credit for contributions already paid under the approved DA is available and would be considered by Council at the time of payment.</p> <p>Contributions under the Housing and Productivity Contributions (HPC) are also applicable to commercial and residential GFA. The Department notes there are 218 apartments approved on the site and works under that approval have already commenced. The proposal seeks to increase the total number of apartments by 62 with the majority (43) of additional apartments being affordable housing which is exempt from the HPC. The proposal also seeks to increase commercial GFA by 31.4m<sup>2</sup> above the approved DA.</p> <p>Noting this, the Department considers it appropriate to levy the HPC on the additional market dwellings and commercial GFA associated with this application.</p>	<p>Conditions A9 and A10 of Appendix E</p>

Conclusions	Recommended conditions
<p>The Department recommended conditions requiring contributions associated with the Contributions Plan and HPC be paid prior to issue of a construction certificate.</p>	
<p><b>Aboriginal Cultural Heritage</b></p> <p>The Applicant prepared an Aboriginal Cultural Heritage Assessment Report (ACHAR). Heritage NSW advised that final version of the ACHAR that correctly identifies the proposal scope and works schedule is required. In response the Applicant provided an updated final ACHAR which confirmed no further archaeological work is required and recommended an unexpected finds protocol be in place during construction. The Department has recommended a condition related to unexpected finds.</p>	<p>Condition D23 of Appendix E</p>
<p><b>Review of DA2022/0145</b></p> <p>Feedback received from the public requested that the Department review the validity DA2022/0145. The Department notes it is not within the scope of this assessment to review the validity of this consent.</p>	<p>No changes or conditions required.</p>
<p><b>Location within Dee Why town centre</b></p> <p>Several public submissions raised concerns about the site being included within the Dee Why town centre noting it may be a Council oversight when setting the boundaries of the town centre.</p> <p>The Department considers that the proposal has been appropriately considered against applicable height and floor space controls in the WLEP 2011 and the Housing SEPP.</p>	<p>No changes or conditions required.</p>
<p><b>Consultation</b></p> <p>A public submission raised concern that inadequate consultation about the proposal has been undertaken with visitors to the SRRBG. In response, the Applicant advised that 539 written notices of the proposal were distributed in late 2023 to nearby properties (including the SRRBG) and a community webinar was held on 14 December 2023.</p> <p>The Department notes that the Applicant has also provided a Community Engagement Report detailing the matters raised and responses provided to the issues raised by the community and confirming that consultation has been undertaken in line with the Department's <i>'Undertaking Engagement Guidelines for State Significant Development'</i>. During exhibition of the proposal, the Department notified properties in</p>	<p>No changes or conditions required.</p>

**Conclusions****Recommended conditions**

accordance with the Department's Community Participation Plan. The Department considers that satisfactory community engagement has been undertaken.

## 6 Evaluation

125. The Department's assessment has considered the relevant matters and objects of the EP&A Act, including the principles of ESD, advice from government agencies, local councils and public submissions, and government policies and plans.
126. The Department's assessment concludes that the proposal is acceptable as:
- it is consistent with and supports the strategic planning objectives to deliver additional housing, including 43 affordable housing apartments, offering housing choice in a highly accessible location
  - it includes commercial floor space which would generate approximately 10 ongoing employment opportunities
  - it is compatible with the existing, adjoining, and surrounding land uses and provides a bulk and scale which is compatible with the envisaged character of the area and an appropriate built-form relationship to adjoining development
  - it does not result in any unreasonable overshadowing, view or privacy impacts on adjoining development or the public domain
127. The Department's recommended conditions can appropriately address any residual issues.
128. Overall, the Department considers the impacts of the development are acceptable and can be appropriately managed or mitigated through the implementation of recommended conditions of consent. Consequently, the Department considers the proposal is in the public interest and is approvable, subject to conditions.
129. This assessment report is hereby presented to the IPC to determine the application.



## Appendix A – List of referenced documents

The following documents can access at <https://www.planningportal.nsw.gov.au/major-projects/projects/mixed-use-development-fill-affordable-housing-4-delmar-parade-and-812-pittwater-road-dee-why>:

- Environmental Impact Statement
- Submissions (public and Council)
- Government agency advice
- Response to Submissions report
- Applicant's additional Information
- Amendment Report

## Appendix B – Department’s consideration of submissions

**Table 12** | Consideration of submissions

Issue	Consideration
<p><b>Impacts to the SRRBG</b></p>	<p>The proposal included overshadowing plans, a Flora and Fauna Assessment and a VIA considering the impact of the SRRBG. The proposal also included a TIA noting that car parking generated by the proposal will be accommodated onsite in basement parking.</p> <p>The Department acknowledges that while the proposal will overshadow only a small part of the SRRBG this area includes the entrance and a picnic area. The Department considers that these areas will be impacted by any development of the site, including by the existing consent applying to site, and are currently partially shadowed by existing vegetation.</p> <p>The Department is satisfied that the proposal does not result unreasonable impacts to the SRRBG.</p>
<p><b>Traffic, parking and pedestrian impacts</b></p>	<p>The proposal is anticipated to have minimal impacts on the surrounding road network given the low additional movement associated with the proposal when compared to the approved DA. To mitigate queueing impacts to Pittwater Road from vehicles wanting to turn right onto Delmar Parade, the Department has recommended that the Applicant either close the median on Pittwater Road or extend the right turn ban to the PM peak or provide an alternative measure as agreed by the road authority.</p> <p>The proposal provides for adequate parking, subject to conditions.</p> <p>Existing pedestrian connections surrounding the site will be maintained however there is no legal or strategic requirement that a through-site link be provided on the site.</p> <p><i>Recommended conditions:</i></p> <ul style="list-style-type: none"> <li>• Reduction of 35 residential parking spaces, reduction of 2 commercial spaces and an increase of one residential visitor space</li> <li>• A restriction on right turn movements from Pittwater Road to Delmar Parade as agreed by the roads authority.</li> <li>• Provision of car parking and bicycle parking spaces in accordance with the Australian Standards</li> <li>• Provision of a car parking, loading and servicing management plan</li> </ul>

Issue	Consideration
<p><b>Built form</b></p>	<p>The proposal seeks to vary maximum FSR and building height permitted for the site under s16 of the Housing SEPP and podium heights permitted under the WLEP 2011. The Department has considered the variation requests at <b>Appendix D</b> and is satisfied that the proposal acceptable in this instance as it continues to maintain the massing envisaged for the site by the spilt FSR of the site, the variations do not create unreasonable impacts and the scale of the building along Delmar Parade is consistent with other sites on Delmar Parade redeveloped as part of the Dee Why town centre.</p> <p>The Department considers that the proposal achieves design excellence as required by the WLEP 2011 as detailed in <b>Appendix C</b>.</p> <p>The Department considers that the proposal generally provides for adequate setbacks and building separation within the site and to neighbouring sites and will achieve acceptable visual and acoustic privacy subject to conditions.</p> <p><i>Recommended conditions:</i></p> <ul style="list-style-type: none"> <li>• Update of the northern façade to Building B so that it does not present a blank wall to the neighbouring site</li> <li>• Provision of planter boxes or window screening to the eastern façade of apartments 421 and 422 in Building A to prevent overlooking</li> </ul>
<p><b>View loss</b></p>	<p>The proposal included a VIA which concluded that the proposal would not result in unreasonable impacts to views or outlook and provides for a sensitive architectural solution for the site.</p> <p>The Department acknowledges that outlooks for some properties will change, the changes are consistent with impacts associated with the redevelopment of the Dee Why town centre. The Department has also considered whether the proposal will interrupt water views of surrounding properties and considered this unlikely due to the topography of the surrounding land, presence of significant vegetation and distance from the ocean.</p> <p>The Department is satisfied that view impacts associated with the proposal are reasonable and acceptable.</p>
<p><b>Commercial floor space</b></p>	<p>The proposal seeks to vary the amount of commercial floor space required for the development under the WLEP 2011. The Applicant contends that location of the site within the Dee Why town centre and site shape restricts the viability of commercial floor space. The Applicant also noted that a similar amount of commercial floor space was considered acceptable in the approved DA.</p>

Issue	Consideration
	<p>The Department has considered the variation at <b>Appendix D</b> and is satisfied that the proposal is acceptable noting the site attributes.</p>
<p><b>Noise</b></p>	<p>The proposal included Acoustic Advice which concluded the proposal would be capable of achieving satisfactory amenity subject to recommendations related to building design and preparation of a building noise management plan which includes operational requirements for the outdoor common areas.</p> <p><i>Recommended conditions:</i></p> <ul style="list-style-type: none"> <li>• Preparation of a report confirming that the recommendations of the Acoustic Advice have been incorporated into the construction level plans</li> <li>• Preparation of an Operational Plan of Management</li> </ul>
<p><b>Contamination</b></p>	<p>The proposal included a DSI providing recommendations for during demolition and excavation works.</p> <p><i>Recommended conditions:</i></p> <ul style="list-style-type: none"> <li>• Certification that all recommendations of the DSI were completed as part of works associated with the approved DA.</li> </ul>
<p><b>Flooding</b></p>	<p>The proposal included a Flood Study which confirmed that the proposal seeks to manage flooding the same way as considered acceptable by Council in the approved DA, measures will improve flood impacts to some surrounding land and that measures will ensure flood waters will not enter the site.</p> <p>The Department considers that subject to conditions, the proposal will manage flood impacts associated with the proposal.</p> <p><i>Recommended conditions:</i></p> <ul style="list-style-type: none"> <li>• Confirmation that the proposal is constructed with flood compatible materials and methods</li> <li>• Review of the proposed flood emergency management against the broader flood emergency management arrangements of the area to ensure consistency</li> <li>• Preparation of a construction and operational FEMPs</li> <li>• Confirmation that trunk main upgrade works constructed as part of the approved DA have been completed.</li> </ul>

Issue	Consideration
<b>Water</b>	<p>The proposal confirmed that basement excavation does not form part of the scope of works and will be managed through conditions imposed on the approved DA. Further water quality solutions proposed are consistent with the approved DA.</p> <p>The Department considers that subject to conditions, the proposal will manage stormwater and water quality impacts associated with the proposal.</p> <p><i>Recommended conditions:</i></p> <ul style="list-style-type: none"> <li>• Preparation of the detailed stormwater system in accordance with Council requirements</li> <li>• Preparation of a construction soil and water management plan</li> <li>• Measures to manage seepage and stormwater during constructions</li> <li>• Preparation of a Stormwater Operational and Maintenance Plan and required easements for the OSD</li> <li>• Confirmation that trunk main upgrade works constructed as part of the approved DA have been completed.</li> </ul>
<b>Utility capacity</b>	<p>The proposal included an Infrastructure Report which advised that existing utilities are capable of servicing the proposal and that detailed discussions with Sydney Water regarding water and sewer will be undertaken post consent. Sydney Water confirmed water and sewer should be available for the proposal and recommended the Applicant undertake standard post determination enquiries with Sydney Water.</p> <p><i>Recommended conditions:</i></p> <ul style="list-style-type: none"> <li>• Compliance with utility providers standard post determination requirements</li> <li>• Confirmation from utility providers that satisfactory arrangements have been made for provision of services</li> <li>• Complete any utility adjustment or augmentation required prior to occupation</li> </ul>
<b>Site location in Dee Why Town Centre</b>	<p>The site is identified in multiple Council documents are being located within the Dee Why town centre.</p>

Issue	Consideration
<p><b>Lack of consultation with SRRBG users</b></p>	<p>The proposal included a Community Engagement Report outlining consultation undertaken with surrounding properties prior to lodgement of the application including the SRRBG.</p> <p>The Department also notified surrounding properties, including the SRRBG, during exhibition of the application. The Department is satisfied that appropriate community consultation has been undertaken.</p>
<p><b>Contributions</b></p>	<p>Council noted that local contributions would be applicable however a credit for contributions paid for the approved would be available.</p> <p><i>Recommended conditions:</i></p> <ul style="list-style-type: none"> <li>• Payment of local contributions (with considerations of credits available) prior to issue of the Construction Certificate.</li> </ul>
<p><b>Waste</b></p>	<p>The proposal included an updated door design of the bulky good storage room to comply with Council's requirements.</p> <p><i>Recommended conditions:</i></p> <ul style="list-style-type: none"> <li>• The development be constructed in accordance with approved plans.</li> </ul>
<p><b>Landscaping</b></p>	<p>The proposal included Landscape Plans detailing landscaping works proposed at ground level, on building and at the rooftop communal spaces including plant species.</p> <p><i>Recommended conditions:</i></p> <ul style="list-style-type: none"> <li>• Preparation of detailed Landscape Plans detailing waterproofing methods and maintenance requirements.</li> </ul>

## Appendix C Statutory considerations

### Matters of consideration required by the EP&A Act

Section 4.15 of the EP&A Act sets out matters to be considered by a consent authority when determining a development application. The Department's consideration of these matters is shown in **Table 13** below.

**Table 13** | Matters for consideration

Matter for consideration	Department's assessment
Environmental planning instruments, proposed instruments, development control plans & planning agreements	Appendix C
EP&A Regulation	Appendix C
Likely impacts	See <b>Section 5</b> (Assessment) of this report
Suitability of the site	See <b>Section 1.2</b> (Project background), <b>Section 3</b> (Policy and statutory context) and <b>Section 5</b> (Assessment)
Public submissions	See <b>Section 4</b> (Engagement) and <b>Section 5</b> (Assessment)
Public interest	See <b>Section 4</b> (Engagement), <b>Section 5</b> (Assessment) & <b>Section 6</b> (Evaluation)

### Objects of the EP&A Act

In determining the application, the consent authority should consider whether the proposal is consistent with the relevant objects of the EP&A Act (s 1.3) including the principles of ESD. Consideration of those factors is described in **Table 14** below.

As a result of its analysis, the Department is satisfied that the development is consistent with the objectives of the EP&A Act and the principles of ESD.

**Table 14** | Objects of the EP&A Act and how they have been considered

Object	Consideration
<p><b>(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></p>	<p>The proposal promotes the social and economic welfare of the community by providing additional housing, affordable housing and jobs on an accessible site, contributing to the achievement of State, regional and local planning objectives.</p> <p>The proposed development does not have any impacts on the State’s natural or other resources.</p>
<p><b>(b) to facilitate ecologically sustainable development by integrating relevant economic, environmental and social considerations in decision-making about environmental planning and assessment,</b></p>	<p>The proposal includes ESD initiatives and sustainability measures, which aims to meet the ESD requirements for design and construction. The proposal includes a BASIX certificate and includes measures such as energy efficient fittings and fixtures, energy efficient hot water systems and orientating apartments to receive maximum solar access and natural ventilation.</p>
<p><b>(c) to promote the orderly and economic use and development of land,</b></p>	<p>The proposal represents the orderly and economic use of the land primarily as it will increase employment and housing opportunities near services and public transport.</p> <p>The proposed land uses are permissible, and the form of the development has had regard to the planning controls that apply to the site, the character of the locality and the context of surrounding sites.</p>
<p><b>(d) to promote the delivery and maintenance of affordable housing,</b></p>	<p>The proposal will result in the delivery of 43 in-fill affordable housing dwellings to be managed by a CHP for 15 years.</p>
<p><b>(e) to protect the environment, including the conservation of threatened and other species of native animals and plants, ecological communities and their habitats,</b></p>	<p>The proposal will not adversely affect the protection of the environment. Also see the consideration of the biodiversity in this Section.</p>



Object	Consideration
<p><b>(f) to promote the sustainable management of built and cultural heritage (including Aboriginal cultural heritage),</b></p>	<p>The proposal is accompanied by an Aboriginal Cultural Heritage Assessment Report and Heritage Impact Statement which confirm the proposal will not have any unreasonable heritage impacts.</p>
<p><b>(g) to promote good design and amenity of the built environment,</b></p>	<p>The proposal demonstrates a good design approach to the relevant planning controls and local character. The proposal has been designed to minimise amenity impacts to neighbours and the surrounding environment and to provide good levels of internal amenity.</p> <p>Other amenity impacts would be managed by either the form of the development or by the recommended conditions of consent for mitigation measures during the construction and operational phase of the development.</p>
<p><b>(h) to promote the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants,</b></p>	<p>The proposal demonstrates that construction work will be undertaken in accordance with national construction standards, relevant regulation and the site-specific construction management plan. Any impacts during this phase will be monitored and managed in keeping with the conditions of consent set out to mitigate any impacts.</p>
<p><b>(i) to promote the sharing of the responsibility for environmental planning and assessment between the different levels of government in the State,</b></p>	<p>The Department publicly exhibited the proposal as outlined in <b>Section 4</b>. This included consultation with Council and other government agencies, and consideration of their responses.</p>
<p><b>(j) to provide increased opportunity for community participation in environmental planning and assessment.</b></p>	<p>The Department publicly exhibited the application, which included notifying adjoining landowners and displaying the application on the Department's website.</p> <p>The Department placed the Applicant's RtS and additional information on its website, in addition to providing a copy to Council and other relevant Government agencies.</p>

Object	Consideration
	The engagement activities carried out by the Department are detailed in <b>Section 4</b> .

### Ecologically sustainable development

The EP&A Act adopts the definition of ESD found in the *Protection of the Environment Administration Act 1991*. Section 6(2) of that Act states that ESD requires the effective integration of economic and environmental considerations in decision-making processes and that ESD can be achieved through the implementation of:

- the precautionary principle
- inter-generational equity
- conservation of biological diversity and ecological integrity
- improved valuation, pricing and incentive mechanisms.

The Applicant has committed to achieving the following minimum sustainability targets:

- achieve minimum average of 7.9 star NatHERS rating
- meet or exceed BASIX minimum Energy and Water requirements
- meet the BASIX thermal performance requirements.

The proposal also provides for good sustainable design through the provision of adequate cross-ventilation and solar access.

The Department has considered the proposal in relation to the ESD principles. The precautionary and inter-generational equity principles have been applied in the decision-making process via a thorough and rigorous assessment of the environmental impacts of the proposal. The conservation principle has been applied through the provision of new landscaping around, on and within the proposal and the valuation principle has been applied through the efficient use of the site, application of sustainability measures and creation of new employment opportunities.

The Department has recommended conditions requiring the implementation of ESD measures and minimum sustainability targets.

Subject to the above conditions, the proposal would be consistent with ESD principles, and the Department is satisfied the future detailed development is capable of encouraging ESD, in accordance with the objects of the EP&A Act.

## Biodiversity development assessment report

Section 7.9(2) of the *Biodiversity Conservation Act 2016* (BC Act) requires all SSD applications to be accompanied by a Biodiversity Development Assessment Report (BDAR) unless the Planning Agency Head and the Environment Agency Head determine that the proposal is not likely to have any significant impact on biodiversity values (as identified in the BC Act and in the *Biodiversity Conservation Regulation 2017*).

A BDAR waiver request was submitted to the Department on 8 July 2024. The Environment Agency Head and the Team Leader, Social and Affordable Housing Assessments as delegate of the Planning Secretary, determined that the development is not likely to have any significant impact on biodiversity values. A BDAR waiver was granted on 30 July 2024.

## EP&A Regulation

The EP&A Regulation requires the Applicant to have regard to the *State Significant Development Guidelines* when preparing their application. In addition, the SEARs require the Applicant to have regard to the following:

- *Social Impact Assessment Guideline for State Significant Projects*
- *Undertaking Engagement Guidelines for State Significant Projects*

The Department considers the requirements of the EP&A Regulations have been complied with.

## Environmental Planning Instruments (EPIs)

### SEPP (Planning Systems) 2021

The proposal is SSD under section 2.6(1) and section 26A of Schedule 1 of the Planning Systems SEPP, being an in-fill affordable housing development pursuant to Chapter 2, Part 2, Division 1 of the Housing SEPP as it is located on land within the Eastern Harbour City in the Six Cities Region with an EDC of more than \$75 million. Further consideration of the relevant standard of is available in **Section 3**.

### SEPP (Housing) 2021

A summary of the Department's consideration of the relevant standards contained in the State Environmental Planning Policy (Housing) 2021 are provided in **Table 15**.

**Table 15 | Consideration of Chapter 2, Division 1 of the Housing SEPP**

Control	Department’s consideration																												
<p><b>15C Development to which division applies</b></p> <p>(1) This division applies to development that includes residential development if –</p> <p>(a) the development is permitted with consent under Chapter 3, Part 4, Chapter 5 or another environmental planning instrument, and</p> <p>(b) the affordable housing component is at least 10%, and</p> <p>(c) all or part of the development is carried out –</p> <p style="padding-left: 20px;">(i) for development on land in the Six Cities Region, other than in the City of Shoalhaven or Port Stephens local government area – in an accessible area, or</p>	<p>(a) the proposal is permitted with development under the WLEP 2011</p> <p>(b) the proposal includes an affordable housing component which is at least 10%</p> <p>(c) the site is in the Six Cities Region and in an accessible area being approximately 280m walking distance from a bus stop (Stop ID: 209923) which has a bus service (Route 178) that operates at the required frequency.</p>																												
<p><b>16 Floor space ratio</b></p> <p>(1) The maximum floor space ratio (FSR) for development that includes residential development to which this division applies is the maximum permissible floor space ratio for the land plus an additional floor space ratio of up to 30%, based on the minimum affordable housing component calculated in accordance with subsection (2).</p> <p>(2) The minimum affordable housing component, which must be at least 10%, is calculated as follows-</p> <p style="padding-left: 20px;">Affordable housing component = additional floor space (as a percentage) divided by 2</p> <p>(3) If the development includes residential flat buildings or shop top housing, the maximum building height used for residential flat buildings or shop top housing is the maximum permissible building height for the land plus an additional building height that is the same percentage as the additional</p>	<p>(1) The site has two FSR zones under the WLEP 2011 which results in the below:</p> <table border="1" style="width: 100%; border-collapse: collapse; text-align: center;"> <thead> <tr> <th>Site area</th> <th>LEP FSR</th> <th>LEP FSR + SEPP 30% bonus</th> <th>Permitted GFA</th> <th>Total site permitted GFA</th> <th>Proposed GFA</th> <th>Total site proposed GFA</th> </tr> </thead> <tbody> <tr> <td>6800m<sup>2</sup></td> <td>2.4:1</td> <td>3.12:1</td> <td>21,216m<sup>2</sup></td> <td rowspan="2">25,334.4m<sup>2</sup></td> <td>19,337.7m<sup>2</sup></td> <td rowspan="2">24,954.4m<sup>2</sup></td> </tr> <tr> <td>990m<sup>2</sup></td> <td>3.2:1</td> <td>4.16:1</td> <td>4,118.4m<sup>2</sup></td> <td>5,616.7m<sup>2</sup></td> </tr> </tbody> </table> <p>(2) The proposal provides for 15% of the total GFA as affordable housing.</p> <p>(3) The site has two height zones under the LEP which results in the below:</p> <table border="1" style="width: 100%; border-collapse: collapse; text-align: center;"> <thead> <tr> <th>LEP Height</th> <th>LEP FSR + SEPP 30% bonus</th> <th>Proposed height</th> </tr> </thead> <tbody> <tr> <td>16m</td> <td>20.8m</td> <td>25.1m</td> </tr> <tr> <td>24m</td> <td>31.2m</td> <td>30.2m</td> </tr> </tbody> </table> <p>The proposal seeks a variation to the height and FSR control (see <b>Section 5.1</b> and <b>Appendix D</b>).</p>	Site area	LEP FSR	LEP FSR + SEPP 30% bonus	Permitted GFA	Total site permitted GFA	Proposed GFA	Total site proposed GFA	6800m <sup>2</sup>	2.4:1	3.12:1	21,216m <sup>2</sup>	25,334.4m <sup>2</sup>	19,337.7m <sup>2</sup>	24,954.4m <sup>2</sup>	990m <sup>2</sup>	3.2:1	4.16:1	4,118.4m <sup>2</sup>	5,616.7m <sup>2</sup>	LEP Height	LEP FSR + SEPP 30% bonus	Proposed height	16m	20.8m	25.1m	24m	31.2m	30.2m
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Control	Department's consideration
<p>floor space ratio permitted under subsection (1).</p>	
<p><b>19 Non-discretionary development standards</b></p> <p>(2) The following are non-discretionary development standards in relation to the residential development to which this division applies-</p> <p>(a) a minimum site area of 450 m<sup>2</sup></p> <p>(b) a minimum landscaped area that is the lesser of-</p> <p>(i) 35 m<sup>2</sup> per dwelling, or</p> <p>(ii) 30% of the site area</p> <p>(c) a deep soil zone of at least 15% of the site area</p> <p>(d) living rooms and private open spaces in at least 70% of dwellings receive at least 3 hours of direct solar access between 9am and 3pm at midwinter</p> <p>(e) the following number of parking spaces for dwellings used for affordable housing-</p> <p>(i) for each dwelling containing 1 bedroom – at least 0.4 parking spaces</p> <p>(ii) for each dwelling containing 2 bedrooms – at least 0.5 parking spaces</p> <p>(iii) for each dwelling containing at least 3 bedrooms – at least 1 parking space</p> <p>(f) the following number of parking spaces for dwellings not used for affordable housing-</p> <p>(i) for each dwelling containing 1 bedroom – at least 0.5 parking spaces</p> <p>(ii) for each dwelling containing 2 bedrooms – at least 1 parking space</p> <p>(iii) for each dwelling containing at least 3 bedrooms – at least 1.5 parking spaces</p>	<p>(a) Complies</p> <p>(b) The proposal provides for approximately 23.2% of the site has landscape area. The Department considers this acceptable as adequate areas for landscaping has been provided on the ground floor to soften the proposal at the eastern and southern boundaries, additional landscaping has been provided for on roof level and the overall site FSR is below maximum permitted on the land.</p> <p>(c) N/A under section 19(3)</p> <p>(d) N/A under section 19(3)</p> <p>(e) Complies</p> <p>(f) Complies</p> <p>(g) Complies</p>

Control	Department's consideration
<p>(g) the minimum internal area, if any, specified by the ADG for the type of residential development.</p>	
<p><b>20 Design requirements</b></p> <p>(3) Development consent must not be granted to development under this division unless the consent authority has considered whether the design of the residential development is compatible with-</p> <p>(a) the desirable elements of the character of the local area, or</p> <p>(b) for precincts undergoing transition – the desired future character of the precinct.</p>	<p>The site is located within the Dee Why town centre with development within the town centre area characterised by a mix of medium to high-density mixed-use developments and one- to two-storey commercial developments. The site also already benefits from a development consent for the construction of a part five- and part seven-storey mixed use development.</p> <p>The Department considers the proposal would result in appropriately scaled buildings that would sit comfortably within the surrounding streetscapes and would be compatible with the current and desired future character of the area.</p>
<p><b>21 Must be used for affordable housing for at least 15 years</b></p> <p>(1) Development consent must not be granted to development under this division unless the consent authority is satisfied that for a period of at least 15 years commencing on the day an occupation certificate is issued for the development-</p> <p>(a) the development will include the affordable housing component required for the development under section 16, 17 or 18, and</p> <p>(b) the affordable housing component will be managed by a registered community housing provider.</p>	<p>The Applicant is a registered community housing provider, and the EIS includes a nomination plan identifying that 43 apartments would be provided for affordable housing required under the Housing SEPP. The Department has also recommended a condition to this effect.</p>

Section 147(1)(a) of Chapter 4 of the Housing SEPP requires the consent authority to consider the design principles for residential apartment development set out in Schedule 9 while Section 147(1)(b) requires the consent authority to consider the ADG (see **Table 16**). Importantly, Section 147(3) of the Housing SEPP does not require a consent authority to require compliance with the design criteria specified in the ADG.

Section 148 of Chapter 4 of the Housing SEPP also contains non-discretionary standards in relation to minimum car parking rates, internal areas for apartments, and minimum ceiling heights. The proposal satisfies these non-discretionary development standards (see **Table 17**).

The ADG is closely linked to the design principles and sets out best practice design principles for residential developments. The Department is satisfied that the proposal achieves the objectives of Schedule 9 of the SEPP Housing as detailed in the table below:

**Table 16** | Consideration of Housing SEPP design principles for residential apartment development

Principle	Department's consideration
<p><b>Context and neighbourhood character</b></p>	<p>The proposal is located in the Dee Why town centre area and adjoins a low-density residential area to the east and a public recreation area to the south. The proposal is consistent in its form and function with the desired character of the town centre and provides for adequate separation and articulation to the low density residential and public recreational uses.</p> <p>The Department has considered the proposal's height, scale and design in <b>Section 5.1</b> and considers the proposal responds to the existing and future context of the site and surrounding area while maintaining adequate levels of amenity for surrounding properties</p>
<p><b>Built form and scale</b></p>	<p>The built form and scale of the proposed buildings are appropriate within the context of the site and the desired future character of the Dee Why Town Centre. The built form adequately defines the public domain, contributes to the character of the streetscape and provides satisfactory internal amenity and outlook. The proposed built form is considered in <b>Section 5.1</b>.</p> <p>The proposal would be of a high standard of architectural design and appearance as discussed in <b>Section 5.1</b>.</p>
<p><b>Density</b></p>	<p>The proposal is compatible with the existing and future desired density for the Dee Why town centre. The density of the overall development is consistent with the provisions of the Housing SEPP and the proposal has demonstrated that would not have adverse built form, traffic or amenity impacts (see <b>Section 5</b>).</p>
<p><b>Sustainability</b></p>	<p>The proposal has been designed in accordance with ESD principals and satisfies BASIX requirements in relation to energy efficiency, water conservation and thermal comfort.</p>
<p><b>Landscape</b></p>	<p>The site has currently been cleared of all vegetation under a separate approval. The proposal includes landscaping consisting of trees, shrubs and groundcover at both ground level and roof level as detailed in the Landscape Plans. The proposed landscaping would provide a high level of amenity for future residents and improve the landscape outcomes on the site.</p>

Principle	Department's consideration
<b>Amenity</b>	The proposal complies with the Housing SEPP design principles and satisfies the intent of the ADG in terms of achieving a high level of residential amenity for future residents (see <b>Section 5.2</b> and the ADG assessment in <b>Table 15</b> below).
<b>Safety</b>	The proposal will introduce activated street frontages and apartments which overlook internal communal areas and the SRRBG car park. The EIS also notes that measures such as security-controlled access, CCTV, lighting and regular cleaning can be implemented. To ensure safety outcomes are achieved, the Department has recommended a condition that a Crime Prevention Through Environmental Design Report be prepared and implemented.
<b>Housing diversity and social interaction</b>	The proposal will improve housing supply and choice, provides for a mix of apartment types to cater for a range of households, provide communal areas for interaction by all residents. The proposal provides 43 affordable dwellings to increase the supply of affordable housing in the region. The provision of new housing will aid in the creation of a mixed and balanced community.
<b>Aesthetics</b>	The proposal includes appropriate building articulation, modulation and setbacks to complement the desired character for the site and land within the Dee Why town centre. The palette of materials and finishes would appropriately articulate the building form. The architectural detail responds appropriately to the site's opportunities and constraints and provides for a contemporary building.

**Table 17 | Department's consideration of ADG best practice design criteria**

ADG – Relevant Criteria	Department's consideration
<b>3A Site Analysis</b>	Consistent
<b>3B Orientation</b>	Consistent
<b>3C Public Domain Interface</b>	Consistent
<b>3D Communal and Public Open Space</b>	Consistent
<b>3E Deep Soil Zones</b>	The proposal provides 3.5% of the site as deep soil zone with a further 7.6% of the site as deep soil zone with a dimension of less than 6m. This has been carefully considered in <b>Section 5.2</b> and is acceptable in the circumstances.



ADG – Relevant Criteria	Department’s consideration
3F Visual Privacy	The proposal includes building separation and setbacks which are less than recommended by this design criteria. This has been carefully in <b>Section 5.2</b> and is acceptable subject to conditions.
3G Pedestrian Access to Entries	Consistent
3H Vehicle Access	Consistent
3J Bicycle and Car Parking	Consistent
4A Solar and Daylight Access	Consistent
4B Natural Ventilation	Consistent
4C Ceiling Heights	Consistent
4D Apartment Size and Layout	<p>Consistent with minimum apartment size, provision of window and width requirements.</p> <p>A variation to habitable room depth to several apartments is considered acceptable. While most habitable room depth/width recommendations are satisfied, several apartments contain habitable area depths of between 8 m to 10 m which are considered acceptable as the apartments generally have a dual aspect, more than one window to the habitable area or an oversized window to allow light</p>
4E Private Open Space and Balconies	<p>Generally consistent</p> <p>Except for apartment 138, all apartments include a courtyard or balcony which meet minimum size and depth requirements. Apartment 138 has a balcony which meets minimum size requirements however the depth ranges from approximately 1.4 m to 2.6 m. the Department considers this acceptable as that the overall size and usability of the balcony is acceptable.</p>
4F Common Circulation and Spaces	Consistent
4G Storage	Consistent
4H Acoustic Privacy	<p>Generally consistent</p> <p>The Acoustic Assessment indicates that the proposal can comply with BCA requirements and that an internal acoustic privacy assessment be prepared prior to issue of the construction certificate to confirm appropriate insulation has been provided to mitigate sound transmission. Refer to <b>Section 5.2</b> for discussion.</p>

ADG – Relevant Criteria	Department’s consideration
4J Noise and Pollution	Consistent subject to compliance with the recommendations of the acoustic report discussed in <b>Section 5.2</b> .
4K Apartment Mix	Consistent
4L Ground Floor Apartments	Consistent
4M Facades	Consistent
4N Roof Design	Consistent
4O Landscape Design and 4P Planting on Structures	Consistent
4Q Universal Design	Consistent
4S Mixed Use	Consistent
4T Awning and Signage	Consistent
4U Energy Efficiency	Consistent
4V Water Management and Conservation	Consistent
4W Waste Management	Consistent
4X Building Maintenance	Consistent

## SEPP (Transport and Infrastructure) 2021

Chapter 2 of this SEPP is relevant to this proposal and identifies matters to be considered in the assessment of development adjacent to particular types of infrastructure development and providing for consultation with relevant public authorities about certain development during the assessment process.

Section 2.48 requires the consent authority to notify the relevant utility authority about the proposal. The Department consulted Ausgrid and its response is summarised at **Section 4**. The Department has recommended conditions requiring the Applicant to obtain approval from utility providers for any necessary service connections and infrastructure augmentations.

Section 2.119 requires vehicle access be provided from a non-classified road if possible and the development not impact the operation of the classified road. Site access will not be from a classified road and the ongoing operation of the classified road will not be impacted subject to a condition requiring the right turn movement onto Delmar Parade be limited or banned. The proposal also includes measures to mitigate traffic noise and emissions.

Section 2.120 sets noise levels for development on land adjacent to busy roads. An acoustic report was submitted which confirmed subject to construction and design recommendations of the report relevant noise requirements can be complied with. The Department has recommended conditions requiring the construction and design recommendations be incorporated into the detail design stage.

Section 2.122 requires the consent authority notify TfNSW of the proposal. TfNSW did not raise objection to the proposal and recommended conditions related to excavation. The Department notes that the proposal does not seek approval for excavation which is being undertaken on the site under a separate approval. The accessibility of the site and traffic impacts of the proposal is considered acceptable and is discussed in **Section 5.3**.

### **SEPP (Resilience and Hazards) 2021**

Chapter 4 of this SEPP aims to promote remediation of contaminated land to reduce risk to human health and the environment. The proposal was accompanied by a Detailed Site Investigation (DSI) prepared for the development when considered by Council. The DSI concluded that the site is suitable for residential and commercial land use subject to conditions related to demolition, asbestos management and soil sampling and management post demolition.

The Department notes that recommendations of the DSI have been conditioned as part of the approved DA. These works are to be conducted during demolition and excavation works currently being undertaken on the site. The DSI does not recommend further requirements during other construction stages or operation of the development.

The Department has recommended a condition that details of compliance with the DSI recommendations be provided prior to works commencement on the site. The Department considers the site is suitable for the proposed development subject to the recommended condition.

### **SEPP (Sustainable Buildings) 2022**

This SEPP encourages sustainable residential development by setting targets that measure efficiency of buildings in relation to water and energy use and thermal comfort.

A BASIX certificate was submitted demonstrating the proposal achieves compliance with the BASIX water, energy and thermal comfort requirements under this SEPP. The Department recommends a condition of consent requiring compliance with the BASIX certificate.

### **SEPP (Biodiversity and Conservation) 2021**

Relevant chapters of this SEPP aim to protect the biodiversity values of vegetation in non-rural areas and to protect the water quality and quantity of water catchments.

The Department notes the proposal does not seek to remove trees and considers that water quality would be appropriately addressed through the implementation of proposed water sensitive urban

design measures, including directing runoff from roof and landscaped areas to storm filter chambers within the on-site detention system to achieve pollution reduction.

## Warringah LEP 2011

A summary of the Department’s consideration of the relevant standards contained in the WLEP 2011 are provided in **Table 18** below and concludes that the proposal is consistent with the WLEP 2011.

**Table 18** | Compliance with LEP development standards

Clause	Department’s consideration
<p><b>2.3 Zone objectives and land use table</b></p>	<p>The site is zoned MU1 Mixed Use. Permissibility is considered in <b>Section 3.2</b>.</p> <p>The proposal achieves the objectives of the zone as it:</p> <ul style="list-style-type: none"> <li>• provides an appropriate level of non-residential uses at the ground level noting the site’s location at the edge of the Dee Why town centre</li> <li>• provides active street frontages to encourage pedestrian activity and contribute to vibrant streets</li> <li>• provides for housing, including affordable housing, within walking distance of transport and services.</li> </ul>
<p><b>4.3 Height of buildings</b></p>	<p>The Department has considered the height of buildings at <b>Section 5.1, Appendix C Table 9 and Appendix D</b>.</p>
<p><b>4.4 Floor space ratio</b></p>	<p>The Department has considered floor space ratio at <b>Section 5.1, Appendix C Table 9 and Appendix D</b>.</p>
<p><b>4.6 Exceptions to development standards</b></p>	<p>The proposal seeks variations to s7.6A podium heights and s7.12 provisions promoting retail activity. The Department has reviewed the Applicant’s written request to vary these controls and considers a variation in this instance is acceptable as detailed in <b>Section 5.1 and Appendix D</b>.</p>
<p><b>5.10 Heritage conservation</b></p>	<p>The site is in vicinity of three locally listed heritage items being Stony Range Flora Reserve Conservation Area (C6), Former Wormald Building (item no. 149) and a Bus Shelter (item no. 15).</p> <p>The application included a Heritage Impact Statement (HIS) which concluded the proposal will not impact on the heritage significance of the heritage items and recommended that an unexpected finds protocol be implemented as there is up to a moderate potential of archaeology</p>

Clause	Department's consideration
	discovery. Subject to a recommended condition regarding unexpected finds, the Department considers the proposal will not impact heritage significance.
<b>5.21 Flood planning</b>	<p>The site is located on flood prone land.</p> <p>The application included a Flood Assessment which concluded that subject to implementation of the flow paths, flood wall and flood void chamber combined with the updated stormwater infrastructure currently under construction, the proposal will not be impacted by flood water. The Department has considered flood impact at <b>Section 5.4</b>.</p>
<b>6.4 Development on sloping land</b>	<p>The site identified as being partly Site A and partly Site B on the Landslip Risk Map. The EIS notes that most of the site is located in Site A with a slope of less than 5°, that the stormwater plan appropriately redirects stormwater flows on the site and that the proposal maintains the same solution considered acceptable by Council.</p> <p>Noting the information provided in the EIS, the Department considers the proposal appropriately mitigates stormwater impacts to minimise landslip risk.</p>
<b>7.2 Land to which this Part applies</b>	The site is located within the Dee Why town centre
<b>7.3 Objectives for development within Dee Why town centre</b>	<p>The proposal is consistent with the objectives of the clause as:</p> <ul style="list-style-type: none"> <li>• it provides for a high-quality mixed-use development with commercial and residential uses in the town centre with activated street frontages</li> <li>• the tallest part of the development is located along Pittwater Road (west side of the site) with the scale reducing toward the low density residential (at the eastern side of the site)</li> <li>• it includes measures to manage stormwater, flooding, parking and visual impacts of the proposal.</li> </ul>
<b>7.4 Development must be consistent with objectives for development and design excellence</b>	<p>The proposal:</p> <ul style="list-style-type: none"> <li>• is consistent with the objectives of Part 7 Dee Why Town Centre of the WLEP 2011</li> <li>• incorporates measures to manage stormwater impacts, flooding and the pedestrian interface</li> </ul>

Clause	Department's consideration
	<ul style="list-style-type: none"> <li>exhibit design excellence.</li> </ul>
<b>7.5 Design excellence within Dee Why Town Centre</b>	<p>The proposal exhibits design excellence as:</p> <ul style="list-style-type: none"> <li>it provides an architecturally designed contemporary development in line with the scale required for a town centre development</li> <li>the development will improve the amenity of the public domain as it will provide active street frontages with an improved public domain interface than currently provided and opportunities for passive surveillance of public areas</li> <li>the development achieves sustainability, solar access and natural ventilation requirements and includes measures and recommended conditions to ensure wind, reflectivity, acoustic and visual privacy is satisfied</li> <li>it includes both indoor and outdoor communal areas to encourage social interaction</li> <li>it includes a landscaped corridor along the eastern boundary and part southern boundary to support the network of green spaces in the town centre.</li> </ul>
<b>7.6A Podium heights</b>	<p>Considered acceptable.</p> <p>The proposal seeks a variation to the podium heights identified as discussed in <b>Section 5.1</b> and <b>Appendix D</b>.</p>
<b>7.10 Allowance for external ancillary plant and rood access</b>	<p>The proposal provides for acceptable external plant which does not exceed 3m, has been setback from the building edge, is less than 10% of the roof area and has been appropriately designed to minimise visual impacts.</p>
<b>7.12 Provision promoting retail activity</b>	<p>Considered acceptable.</p> <p>The proposal seeks a variation to the amount of non-residential space provided as discussed in <b>Section 5.5</b> and <b>Appendix D</b>.</p>
<b>7.13 Mobility, traffic management and parking</b>	<p>The proposal provides for one vehicle access point to the site to minimise conflicted with pedestrians, underground parking, onsite waste collection and loading areas integrated into the design of Building A.</p>

## Appendix D – Variations

The proposal seeks variation of the following development controls:

- Section 16 Affordable housing requirements for additional floor space ratio of the Housing SEPP in relation to floor space ratio
- Section 16 Affordable housing requirements for additional floor space ratio of the Housing SEPP in relation to building height
- Clause 7.6A Podium heights of the WLEP 2011
- Clause 7.12 Provisions promoting retail activity of the WLEP 2011.

Clause 4.6(2) of the WLEP 2011 permits the consent authority to consider a variation to a development standard imposed by the WLEP 2011 or any other environmental planning instrument. The objectives of Clause 4.6 are to provide an appropriate degree of flexibility in applying certain development standards and to achieve better outcomes for and from development by allowing flexibility in particular circumstances. In consideration of the proposed variation, Clause 4.6(3) requires the following:

*(3) Development consent must not be granted to development that contravenes a development standard unless the consent authority is satisfied the Applicant has demonstrated that –*

*(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.*

In accordance with s35B of the Environmental Planning and Assessment Regulation 2021, the Applicant has prepared written requests to vary the development standards (see **Appendix A**)

### Floor Space Ratio

The site is subject to two different mapped FSR provisions under the WLEP 2011 and as the proposal includes 15% infill affordable housing, section 16 of the Housing SEPP allows for a 30% bonus to the maximum permissible FSR. **Table 7** and **Figure 5** in **Section 5.1** respectively set out the proposed and available FSRs and illustrates the location of the spilt FSR areas.

While complying with the overall maximum GFA permitted for the site when combining the total GFA permitted by the two mapped FSR areas and distributing it across the site, the proposal departs from the maximum permissible FSR in zone V2 of the site by 1.51:1 (36.4%).

The following provides an assessment of the proposed exception to the FSR development standard under clause 4.6 of the WLEP 2011, applying the tests summarised by Chief Justice Preston of the NSW Land and Environment Court in *Initial Action Pty Ltd v Woollahra Municipal Council [2018]*

NSWLEC 118, *Wehbe v Pittwater Council* (2007) 156 LGERA 446; [2007] NSWLEC 827 and as reaffirmed in *Randwick City Council v Micaul Holdings Pty Ltd* [2016] NSWLEC 7 [34].

1. *Has the consent authority considered a written request demonstrating compliance with the development standard is unreasonable or unnecessary in the circumstances of the case?*

The Applicant has submitted a written request (see **Appendix A**) seeking variation to the FSR development standard that applies to the site. The Applicant noted that the development standard under the Housing SEPP does not contain any objectives however there is an overall objective for the entire Division at section 15A that notes the division seeks to *facilitate the delivery of new in-fill affordable housing to meet the needs of very low-, low- and moderate-income households*.

In summary, the Applicant's clause 4.6 request demonstrates that compliance with the FSR development standard is unreasonable and unnecessary in the circumstances of the case as the proposal is consistent the objectives of the Division and the underlying purpose of the development standard would be defeated or thwarted if compliance was required, in keeping with the first and third tests of the five-part tests in the *Wehbe* case.

More specifically, the Applicant's request demonstrates the proposal responds to the objectives and outcomes of both Division 1 of the Housing SEPP and the principles of policy at section 3 of the Housing SEPP as:

- the proposal complies with the underlying objective and purpose of section 16 of the Housing SEPP to provide in-fill affordable housing to meet the needs of the community. Strict compliance with the FSR controls would result in the loss of approximately 15 apartments including three affordable housing apartments
- the proposal complies with the intent of the split FSR mapping which applies to the site, with a higher density along the Pittwater Road frontage and lower density for the remainder of the site
- the overall density across the site is below the maximum permitted with the variation to the western part of the site is compensated by a reduction in density to the eastern part of the site. Redistribution of the density will result in a larger variation to the building height to the eastern part of the site and adversely impact the interface with the adjoining low density residential area to the east
- the proposal complies with the maximum height permitted along the Pittwater Road frontage
- the variation will not result in significant visual, view, overshadowing or traffic impacts and incorporates appropriate materials and finishes to break up the building mass
- the proposal complies with the objectives of the MU1 Mixed Use zone as it seeks to provide housing close to transport and services, promotes active street frontages contributing to the



positively to street life, provides an appropriate mix of residential and commercial uses noting the site's location in the Dee Why town centre and it amalgamates several large sites to reduce vehicle crossings.

The Applicant's request also notes that the proposal adopts the fundamental design parameters established for the site under the approved DA and which approved a similar 33% variation to the FSR development standard.

For the reasons provided above, the Department accepts that compliance with the FSR development standard is unreasonable or unnecessary given the circumstances of the case.

*2. Has the consent authority considered a written request that demonstrates there are sufficient environmental planning grounds to justify contravening the development standard?*

The Department considers there are sufficient environmental planning grounds to justify the proposal's contravention of the development standard in the circumstances as provided in the Applicant's written request and as summarised below:

- the FSR zone where the variation is proposed complies with maximum permissible height allowed for zone, does not result in additional impacts and is consistent with the setbacks and massing established for the site in the approved DA
- the overall proposal does not exceed the overall maximum density permissible on the site when combining the maximum GFA permissible within the two mapped FSR areas and distributing this across the site
- strict numerical compliance will result in the loss of housing, including infill affordable housing, or require redistribution of floor space to Building A leading to a less sensitive interface with the adjoining low density residential zone and non-compliance with the scale and proportions anticipated by the spilt FSR and building height development standards for the site
- the proposal will provide for additional housing, including affordable housing, in an area close to transport, employment and services.

*3. Is the consent authority satisfied that the proposed development will be consistent with the objectives of the standard?*

Noting that section 16 of the Housing SEPP does not have a stated objective, the Department considers the proposal is consistent with the overall objective of Division 1 of the Housing SEPP to facilitate delivery of new in-fill affordable housing.

4. *Is the consent authority satisfied that the proposed development will be consistent with the objectives of the zone?*

The Department is satisfied the Applicant's written request has sufficiently demonstrated the development would be consistent with the objectives of the MU1 zone under the WLEP 2011 despite the proposed variation.

### Conclusion

Having considered the Applicant's written request, the Department considers the Applicant has provided sufficient environmental planning grounds to justify the contravention of the FSR development standard and the matters required to be demonstrated have been adequately addressed. The Department considers that the proposal will deliver a better planning outcome for the site and the proposed additional FSR is acceptable because:

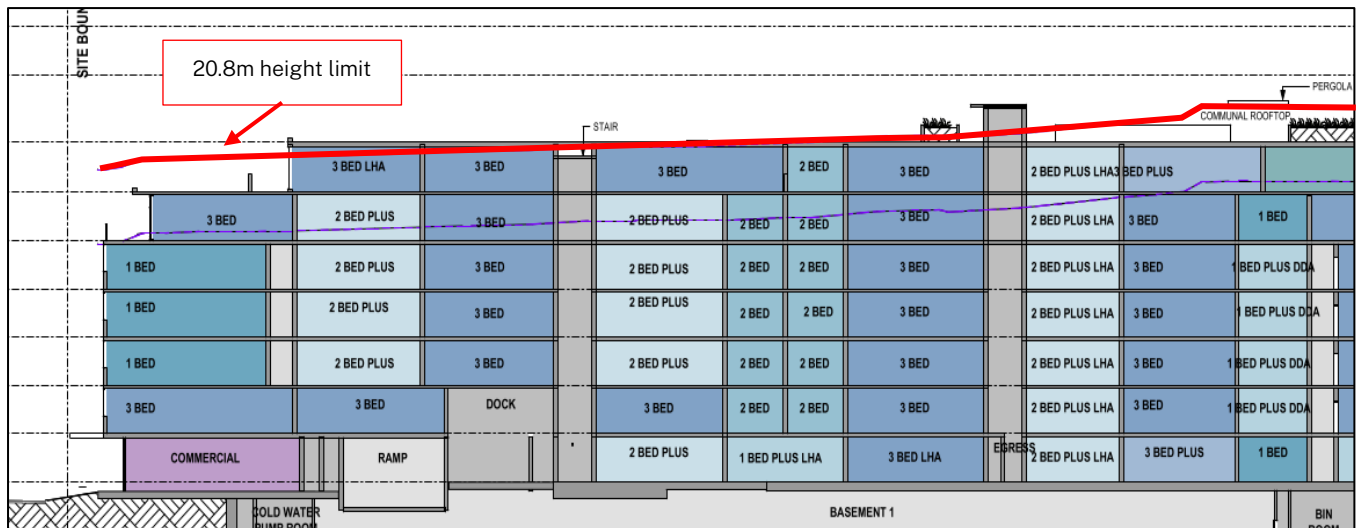
- the proposal would not result in any unreasonable impacts on neighbouring development in terms of view loss, overshadowing, bulk and scale or privacy
- the proposal achieves the scale permissible for the western part of the site noting compliance with maximum building height and is similar in scale with existing development along Pittwater Road in vicinity of the site including at 2 Delmar Parade (seven storeys) and 822 Pittwater Road (eight storeys with a double height ground floor)
- strict compliance with the numerical FSR development standard would result in the removal of approximately two- to three-storeys along the Pittwater Road frontage reducing much needed housing supply and thwarting the intent of the WLEP 2011 to focus larger scale development along the Pittwater Road frontage before stepping down development closer to the R2 low density zone.

The Department concludes the Applicant's written request adequately addresses 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.

### **Building height**

The site is subject to two building height mapped areas in the WLEP 2011 and as the proposal includes 15% infill affordable housing, section 16 of the Housing SEPP allows for a 30% bonus to the maximum permissible building height. **Table 6** and **Figure 6** in **Section 5.1** respectively set out the proposed and available building heights and illustrates the location of the spilt building height zones

The proposal seeks a maximum 4.3 m (20.7%) variation to the portion of the site identified as '0' in **Figure 6** in **Section 5.1** and at the locations shown in **Figure 7** in **Section 5.1** and **Figure 19** below.



**Figure 19 | Section identifying location of height exceedances in Building A**

The following provides an assessment of the proposed exception to the building height development standard under clause 4.6 of the WLEP 2011, applying the tests summarised by Chief Justice Preston of the NSW Land and Environment Court in *Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118*, *Wehbe v Pittwater Council (2007) 156 LGERA 446*; [2007] NSWLEC 827 and as reaffirmed in *Randwick City Council v Micaul Holdings Pty Ltd [2016] NSWLEC 7 [34]*.

1. *Has the consent authority considered a written request demonstrating compliance with the development standard is unreasonable or unnecessary in the circumstances of the case?*

The Applicant has submitted a written request (see **Appendix A**) seeking variation to the building height development standard that applies to the site. The Applicant noted that the development standard under the Housing SEPP does not contain any objectives however there is an overall objective for the entire Division at section 15A that notes the division seeks to *facilitate the delivery of new in-fill affordable housing to meet the needs of very low-, low- and moderate-income households*.

In summary, the Applicant's clause 4.6 request demonstrates that compliance with the building height development standard is unreasonable and unnecessary in the circumstances of the case as the proposal is consistent the objectives of the Division and the underlying purpose of the control would be defeated or thwarted if compliance was required, in keeping with the first and third tests of the five-part tests in the *Wehbe* case.

More specifically, the Applicant's request demonstrates the proposal responds to the objectives and outcomes of both Division 1 of the Housing SEPP and the principles of policy at section 3 of the Housing SEPP as:

- the proposal complies with the underlying objective and purpose of section 16 of the Housing SEPP to provide in-fill affordable housing to meet the needs of the community

- the underlying object of purpose would be defeated or thwarted if compliance was required as it would result in the loss of apartments reducing both the amount of market housing and affordable housing provided by the proposal
  - some of the building height breaches are related to rooftop communal open space (COS) which are centrally located in the proposal. Strict compliance with the development standard would not meaningfully reduce the impact of the proposal on the streetscape or neighbouring properties and would reduce amenity to occupants of the proposal through loss of rooftop COS. The site falls more than one storey to the southern boundary, the proposal adopts a balanced approach to the fall to reduce the overshadowing when compared with a strictly compliant roof height at the southern boundary
  - the scale of the proposal is compatible with the desired future scale and character of the locality which envisages high density residential development within a town centre setting
  - the variation will not result in significant view and overshadowing impacts.
2. *Has the consent authority considered a written request that demonstrates there are sufficient environmental planning grounds to justify contravening the development standard?*

The Department considers there are sufficient environmental planning grounds to justify the proposal's contravention of the development standard in the circumstances as provided in the Applicant's written request and as summarised below:

- the proposal responds to the fall of the site towards the southern boundary with the Building A roof at the southern end being below the height control whilst the roof at the northern end above the height control to reduce shadow when compared to a compliant roof form
  - the remainder of the breaches provide increased amenity to the buildings by providing rooftop COS. The areas of non-compliance are centrally located and not visible from the public domain
  - the variations do not result in significant view and overshadowing impacts
  - strict compliance would not deliver additional benefits to future residents, surrounding properties or the public
3. *Is the consent authority satisfied that the proposed development will be consistent with the objectives of the standard?*

Noting that s16 of the Housing SEPP does not have a stated objective, the Department considers the proposal is consistent with the overall objective of Division 1 of the Housing SEPP to facilitate delivery of new in-fill affordable housing.

4. *Is the consent authority satisfied that the proposed development will be consistent with the objectives of the zone?*

The Department is satisfied the Applicant’s written request has sufficiently demonstrated the development would be consistent with the objectives of the MU1 zone under the WLEP 2011 despite the proposed variation.

### Conclusion

Having considered the Applicant’s written request, the Department considers the Applicant has provided sufficient environmental planning grounds to justify the contravention of the height development standard and the matters required to be demonstrated have been adequately addressed. The Department considers that the proposal will deliver a better planning outcome for the site and the proposed additional building height is acceptable because:

- the areas of the building height variation are setback from the building edges, will not be visually perceivable from the public domain and would not result in any unreasonable impacts on neighbouring development in terms of view loss, overshadowing, bulk and scale or privacy
- the proposal responds to the topography of the site which has a crossfall of 6.27 m between the Delmar Parade frontage and the southern boundary
- strict compliance with the development standard would result in a reduction of in-fill affordable housing, conflicting with the underlying aim of the s16 and Division 1 of the Housing SEPP to facilitate delivery of new in-fill affordable housing to meet the needs of very low to moderate income households

The Department concludes the Applicant’s written request adequately addresses the matters required to be demonstrated under clause 4.6 of the LEP 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.

### Podium height

The site is subject to two maximum podium heights in the WLEP 2011. **Table 19** below sets out the maximum podium height at each site frontage, the proposed podium height, proposed variation and the podium heights in the approved DA. **Figures 20** and **21** illustrate the proposed street elevations and the maximum podium height permitted at each frontage.

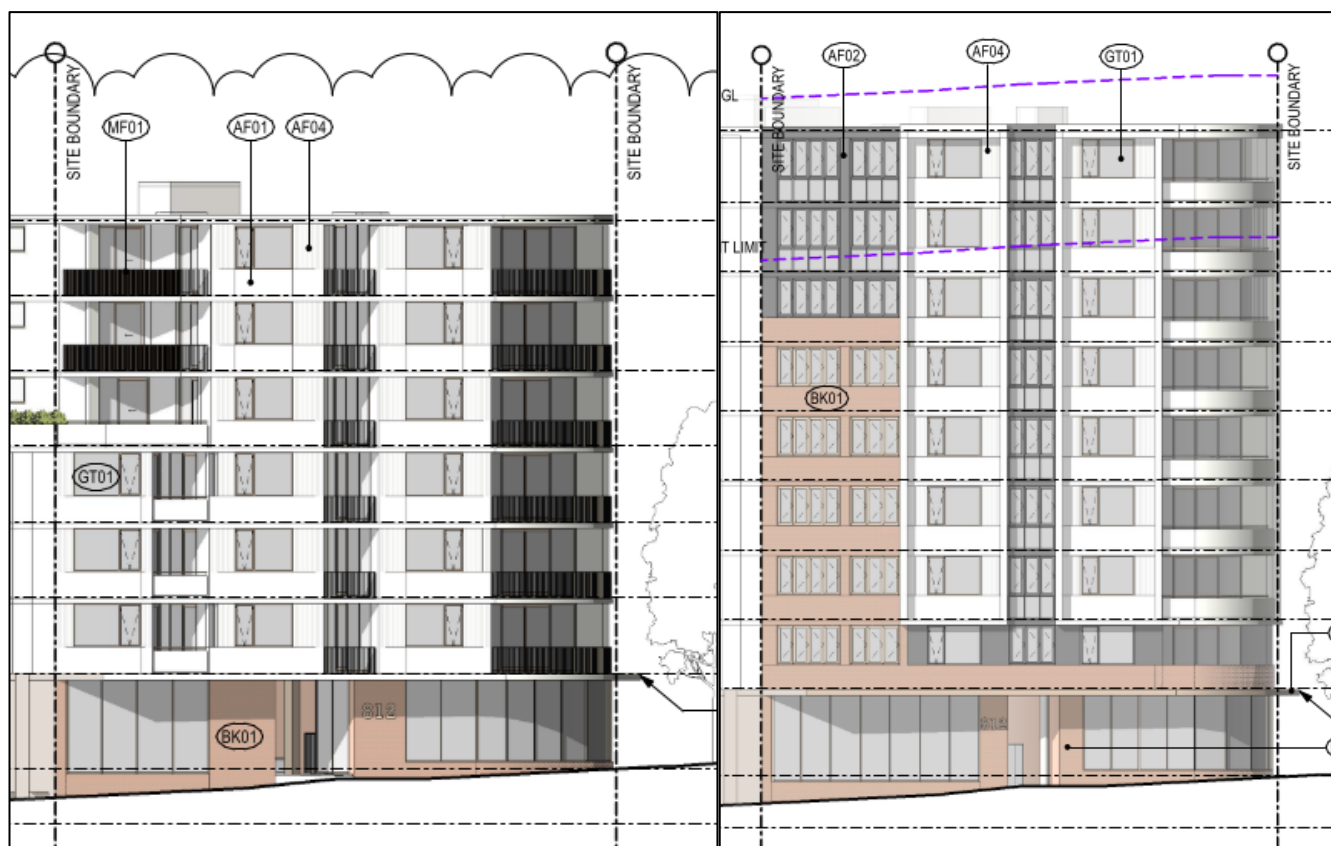
**Table 19** | Podium height summary table

Building / street frontage	LEP max. podium height	Proposed podium height	Variation	Approved DA podium height
Building A / Delmar Parade	2 storeys	5 storeys	3 storeys	4 storeys

Building / street frontage	LEP max. podium height	Proposed podium height	Variation	Approved DA podium height
Building B / Pittwater Road	3 storeys	9 storey tower (no podium)	6 storeys	7 storey tower (no podium)



**Figure 20 | Building A, Delmar Parade approved DA (top) and proposed (bottom) podium height comparison**



**Figure 21 | Building B, Pittwater Road approved Da (left) and proposed (right) podium height comparison**

The proposal seeks to provide a five-storey podium to Delmar Parade with the sixth storey building line setback approx. 3.5 m and the seventh storey setback approximately 13 m from the Delmar Parade boundary. To Pittwater Road, the proposal seeks to provide a nine-storey tower with no podium. This exceeds the LEP podium heights by 3-6 storeys.

The following provides an assessment of the proposed exception to the podium height development standard under clause 4.6 of the WLEP 2011, applying the tests summarised by Chief Justice Preston of the NSW Land and Environment Court in *Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118*, *Wehbe v Pittwater Council (2007) 156 LGERA 446*; *[2007] NSWLEC 827* and as reaffirmed in *Randwick City Council v Micaul Holdings Pty Ltd [2016] NSWLEC 7 [34]*.

1. *Has the consent authority considered a written request demonstrating compliance with the development standard is unreasonable or unnecessary in the circumstances of the case?*

The Applicant has submitted a written request (see **Appendix A**) seeking variation to the podium heights standard that applies to the site.

In summary, the Applicant's clause 4.6 request demonstrates that compliance with the podium height standard is unreasonable and unnecessary in the circumstances of the case as the proposal is consistent with the objectives of the control and the underlying purpose of the development standard

would be defeated or thwarted if compliance was required, in keeping with the first and third tests of the five-part tests in the Wehbe case.

More specifically, the Applicant's request demonstrates the proposal responds to the objectives of the development standard as:

- the Building A variation provides a more consistent built form having regard to the higher podium heights on Delmar Parade within visual catchment of the site and strict compliance would result in an inconsistent and incohesive built form outcome
- the Building B variation is an appropriate design outcome as the site is a landmark location being the southern gateway into Dee Why town centre
- the proposal achieves appropriate building separation, privacy and solar access to adjoining properties
- the underlying objective to achieve consistent built form would be diminished by strict compliance with the control noting the surrounding redevelopments have higher podium heights than permitted by the controls

2. *Has the consent authority considered a written request that demonstrates there are sufficient environmental planning grounds to justify contravening the development standard?*

The Department considers there are sufficient environmental planning grounds to justify the development's contravention of the development standard in the circumstances as provided in the Applicant's written request and as summarised below:

- Building A variation achieves a coordinated and cohesive podium with the 2 Delmar Parade podium which is 4 storeys. Strict compliance with the control will result in an anomalous urban design outcome
- Building B variation is in a landmark location being the southern entry to the Dee Why town centre and according is provided with a strong vertical language without a podium/upper level. It is also consistent with the development at 822 Pittwater Road which is also a tower structure without a podium
- the variations do not result in unreasonable impacts

3. *Is the consent authority satisfied that the proposed development will be consistent with the objectives of the standard?*

The Department considers the proposal is consistent with the objectives of clause 7.6A of the WLEP 2011, as outlined in this section.

4. *Is the consent authority satisfied that the proposed development will be consistent with the objectives of the zone?*



The Department is satisfied the Applicant's written request has sufficiently demonstrated the development would be consistent with the objectives of the MU1 zone under the WLEP 2011 despite the proposed variation.

### Conclusion

Having considered the Applicant's written request, the Department considers the Applicant has provided sufficient environmental planning grounds to justify the contravention of the podium height development standard and the matters required to be demonstrated have been adequately addressed. The Department considers that the development will deliver a good planning outcome for the site and the proposed podium heights are acceptable because:

- the proposal is in keeping with a similar podium height, being eight storeys, at 1-5 Dee Why Parade which marks the northern entrance to the Dee Why town centre
- variations to the control have been considered acceptable at 822 Pittwater Road (8 storey tower to Delmar Parade), 701 Pittwater Road (8 storey tower to Pittwater Road) and 834 Pittwater Road (5 storey tower to Pittwater Road)
- the proposal provides for a consistent built form character along Delmar Parade noting that 2 Delmar Parade has a podium of 4 storeys and 822 Pittwater Road has an 8 storey tower addressing Delmar Parade. Further, levels above the 5<sup>th</sup> storey of the proposal have been setback to reduce the visual prominence of the building
- the proposal provides for a defined street edge and marks the beginning of the Dee Why town centre at the Pittwater Road frontage
- variation of the podium heights does not give way to significant solar access, privacy or visual issues to adjoining properties and the public domain

The Department concludes the Applicant's written request adequately addresses the matters required to be demonstrated under clause 4.6 of the LEP and the proposed development is in the public interest because it is consistent with the objectives clause 7.6A of the WLEP 2011 and the objectives for development within the zone.

### **Retail activity**

Clause 7.12 of the WLEP 2011 requires buildings in the Dee Why town centre have at least two floor levels, inclusive of the ground floor level, of employment generating space. The proposal provides part of the ground floor as commercial floor space with the remainder being residential floor space and no commercial floor space above the ground floor.

The following provides an assessment of the proposed exception to the provision of retail activity development standard under clause 4.6 of the WLEP 2011, applying the tests summarised by Chief

Justice Preston of the NSW Land and Environment Court in *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118, *Wehbe v Pittwater Council* (2007) 156 LGERA 446; [2007] NSWLEC 827 and as reaffirmed in *Randwick City Council v Micaul Holdings Pty Ltd* [2016] NSWLEC 7 [34].

1. *Has the consent authority considered a written request demonstrating compliance with the development standard is unreasonable or unnecessary in the circumstances of the case?*

The Applicant has submitted a written request (see **Appendix A**) seeking variation to the retail activity development standard that applies to the site.

In summary, the Applicant's clause 4.6 request demonstrates that compliance with the retail activity development standard is unreasonable and unnecessary in the circumstances of the case as the proposal is consistent the objectives of the development standard and the underlying purpose of the control would be defeated or thwarted if compliance was required, in keeping with the first, second and third tests of the five-part tests in the *Wehbe* case.

More specifically, the Applicant's request demonstrates the proposal responds to the objectives of the development standard as:

- the proposal provides retail uses at the street frontages to activate the street as due to the site's location at the southern edge of the Dee Why town centre with limited street exposure and street frontage, retail across the entire ground floor is not commercially viable
  - noting the site's location at the periphery of the town centre and its distance from the commercial core of the town centre, retail or commercial uses on the first floor of the proposal would not be attractive uses
  - while the proposal seeks to promote retail activity to the greatest extent at the site frontages, the underlying objective to provide additional retail and commercial space beyond the street frontages is not considered relevant due to the site's location at the edge of the Dee Why town centre and site shape with limited street exposure
  - strict compliance with the standard would result in the proposal being unviable preventing the retail spaces and housing, including affordable housing, from being delivered on the site.
2. *Has the consent authority considered a written request that demonstrates there are sufficient environmental planning grounds to justify contravening the development standard?*

The Department considers there are sufficient environmental planning grounds to justify the proposal's contravention of the development standard in the circumstances as provided in the Applicant's written request and as summarised below:

- the site is located at the southern edge of the Dee Why town centre, is largely disconnected from the commercial core of the centre, does not benefit from extensive street frontage or

through site links to attract tenants to make it viable or feasible to provide more commercial space than proposed

- changes to employment floor space following the pandemic also support why additional commercial space is not viable at the site
- the requirement that the entire ground and first floor be employment generating space is more intended for the key identified sites in the Dee Why town centre noting other controls in the development standard which are specifically aimed at other sites
- the variation will contribute to increased residential density to support viability of the commercial spaces proposed and result in unreasonable or adverse impacts
- strict compliance with the development standard will prevent delivery of housing and an activated streetscape as proposed by the proposal.

3. *Is the consent authority satisfied that the proposed development will be consistent with the objectives of the standard?*

The Department considers the proposal is consistent with the objectives of clause 7.12 of the WLEP 2011, as outlined in this section.

4. *Is the consent authority satisfied that the proposed development will be consistent with the objectives of the zone?*

The Department is satisfied the Applicant's written request has sufficiently demonstrated the development would be consistent with the objectives of the MU1 zone under the WLEP 2011 despite the proposed variation.

### Conclusion

Having considered the Applicant's written request, the Department considers the Applicant has provided sufficient environmental planning grounds to justify the contravention of the retail activity development standard and the matters required to be demonstrated have been adequately addressed. The Department considers that the proposal will deliver a good planning outcome for the site and the proposed amount of retail/commercial space is acceptable because:

- the site is located in the periphery of the town centre and does not benefit from large street frontages or through site links which are important for successful retail tenancies on the whole ground floor and above ground commercial uses
- commercial tenancies have been provided to activate the two street frontages and contribute to an active street life as required by the clause
- the site directly adjoins land zoned R2 Low Density Residential unlike other sites in the town centre which adjoin R3 Medium Density Residential or are separated from residential zones by

streets, it would be preferable to have a residential second level to transition to the low-density residential zone rather than above ground level commercial uses

- the amount of commercial floor space provided is consistent with the approved DA, which also concluded the site's location did not lend itself for additional commercial floorspace.

The Applicant's written request notes the development standard being varied requiring the entire ground and first floors be used for non-residential uses may only be intended to apply for the identified sites in the town centre. The Department notes the ambiguous drafting of the clause as each requirement is followed by an 'and' linking it to the next requirement with the first requirement in the clause only applying to the identified sites in the town centre. It is also noted that the land specifically excluded from the application of the clause are not located within an identified site in the town centre. As such the Department considers for an abundance of caution, that a clause 4.6 variation needs to be considered for the development standard.

The Department concludes the Applicant's written request adequately addresses 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 objectives clause 7.12 of the WLEP 2011, provides an acceptable level of commercial uses noting the site's location within the town centre and the objectives for development within the zone.

## Appendix E Recommended instrument of consent

<https://www.planningportal.nsw.gov.au/major-projects/projects/mixed-use-development-fill-affordable-housing-4-delmar-parade-and-812-pittwater-road-dee-why>