

Purpose

Council has publicly exhibited a planning proposal and draft changes to the Warringah Development Control Plan 2011 relating to the Dee Why Town Centre.

The purpose of this report is to review submissions received as a result of the public exhibition that relate to properties that Council has a direct or indirect pecuniary interest and provide recommendations to Council in response to those submissions.

Summary

This report has been prepared by Geoff Goodyer of Symons Goodyer Pty Ltd.

I was requested to review four submissions relating to properties that Council has a direct or indirect pecuniary interest in.

Submission 1: Relates to the Civic Centre Precinct

Submission 2: Relates to Key Site A

Submission 3: Relates to Key Site A

Submission 4: Relates to Key Sites A, B, E and F

In undertaking this review I have considered the following documents:

- Planning Proposal (January 2018).
- Draft amendments to WDCP 2011 (January 2017).
- Dee Why Town Centre Master Plan (2013).
- Dee Why Town Centre Masterplan (2004).
- Report to Council Meeting on 24 March 2015 titled ““Site A” Dee Why Open Market Sale”.
- Report to Council Meeting on 11 December 2012 titled “Dee Why Community Hub Concept and the Proposed Sale of Site A”.
- Report by the Peter Walsh, Appointed Chairperson of the Public Hearing into the proposed land reclassification of the Howard/Oaks Avenue Carpark, which is part of Key Site A (June 2005).
- Council staff response to the report by Peter Walsh (26 August 2005).
- Supplementary Report by Peter Walsh (November 2005).
- Report to Council Meeting on 13 December 2005 titled “Draft LEPs for E21 Dee Why Town Centre locality and reclassification of Howard/Oaks Avenue carpark”.
- Joint Regional Planning Panel Reports and Minutes relating to the development of Key Site F (Mod2012/0087 and DA2013/1168).
- *Jubilee Properties v Warringah Council* [2015] NSWLEC 1042, relating to the development of Key site F.

Recommendation

1. That the requirement for a 6 metre setback to Kingsway be relocated from the provisions of the draft DCP relating to the Civic Centre site (Requirement 1(a)(iii)) to the general provisions relating to land zoned B4 within the Dee Why Town Centre.
2. That the reference to a “civic building” in Requirement 1(b) of the provisions relating to the Civic Centre site in the draft DCP be reworded to apply to any building.
3. That Requirement 1(g) of the provisions relating to the Civic Centre site in the draft DCP be reworded as follows:

- g. Retains and enhances the heritage significance of Dee Why Public Library and the Dee Why Civic Centre and retains the view corridors to and from the buildings.*
4. That the draft DCP be amended to recognise the need for parking/standing facilities for wedding vehicle, funeral vehicles, etc, to be provided adjacent to St Kevins Church.
 5. That a maximum floor space ratio of 4.0:1 be applied to Key Site F.
 6. That the heading to clause 7.12 of WLEP 2011 be amended. Suggested wording is "Provisions promoting non-residential activities" or "Provisions promoting non-residential activities at ground and first floor levels".

Submission 1

Submission 1 was received from the Heritage Council of NSW and relates to the Warringah Civic Centre Precinct.

The precinct contains a number of heritage items listed in WLEP 2011, including the Dee Why Public Library (Item I50), and Civic Centre landscaping (Item I137).

The site contains no items currently listed on the State Heritage Register. However, the Civic Centre Precinct, including the Dee Why Public Library, Warringah Civic Centre and Bruce Mackenzie landscaped gardens have been recommended for State Heritage Register listing by the Heritage Council of NSW.

The submission requests:

1. That the increase in building heights within the Dee Why Town Centre exclude the area around the Warringah Civic Centre Precinct (Area 10).

Comment:

The proposed 3m increase in the height limit applying to the precinct will permit buildings to a maximum height of 27 metres. The submission is concerned that this has the potential to adversely impact on the views from Pittwater Road to the Warringah civic Centre Precinct. However, in my opinion the change in the height limit does not have this potential as the impact on views to the heritage items within the precinct would be equally impacted by buildings built to the current height limit of 24 metres. It is not the **height** of the buildings that has the potential to impact on views to the heritage items, but their location and design. In this regard I am satisfied that there is no basis to limit the height of buildings to 24 metres as requested and that the planning controls will otherwise protect those views through other provisions, including:

- The provisions of clause 5.10 of WLEP 2011
- Listing on the State heritage Register
- DCP provisions that requires that development:
 - g. Retains and respects the heritage significance of Dee Why Public Library and retains the view corridors to and from the Library.*
 - h. Retains and enhances the Civic Centre landscaping including sandstone outcrops and vegetation between the existing Council administration building, the existing library and along the western side of Civic Drive.*

2. That Council consider reducing the height limits on that part of Area 10 adjoining St. David Avenue and Pittwater Road such that significant views to the Warringah Civic Centre Precinct from the public domain are retained.

Comment:

As above, it is considered that it is not the height of buildings that has the potential to impact on views to the Civic Centre Precinct, but their location and design. Consequently, the submission that building heights be reduced on that part of Area 10 adjoining of St Davids Avenue and Pittwater Road is not concurred with.

3. That the draft DCP be amended such that the site layout for the Civic Centre Site (Figure 10) be amended such that it retains and enhances the significant views and view corridors to and from the Warringah Civic Centre Precinct and that any proposed

site layout does not obscure the views to the façade of the Warringah Civic Centre facing Pittwater Road.

Comment:

The site layout in the draft DCP has been taken from the adopted Master Plan:



Figure 10: Civic Centre site layout

Unless and until further master planning of the Civic Centre Precinct is undertaken it is considered that the diagram above taken from the adopted Master Plan is the most appropriate provision to be included in the DCP.

4. That the requirement for a 6 metre setback from Kingsway (Requirement 1(a)(iii)) be removed as it will be redundant if the site layout is amended.

Comment:

The Civic Centre Precinct does not have a frontage to Kingsway so Requirement 1(a)(iii) should be deleted. However, the provision remains relevant to development of land zoned B4 within the Dee Why Town Centre so the requirement should be incorporated into Section 4 – General Development Controls, relating to the Dee Why Town Centre.

Recommendation:

That the requirement for a 6 metre setback to Kingsway be relocated from the provisions of the draft DCP relating to the Civic Centre site (Requirement 1(a)(iii)) to the general provisions relating to land zoned B4 within the Dee Why Town Centre.

5. That the reference to a “civic building” (Requirement 1(b)) be clarified.

Comment:

The provision requiring a setback from the existing Norfolk Pine trees adjacent to Pittwater Road should be applied to any development on the site, due to their landscape significance. Consequently, the provision should be reworded such that it applies to any building rather than to a “civic building”.

Recommendation:

That the reference to a “civic building” in Requirement 1(b) of the provisions relating to the Civic Centre site in the draft DCP be reworded to apply to any building.

6. That Requirement 1(g) be reworded from “*retains and respects the heritage significance of Dee Why Public Library and retains the view corridors to and from the Library*” be amended to read “*retains and enhances the heritage significance of Dee Why Public Library and the Dee Why Civic Centre and retains the view corridors to and from the buildings*”.

Comment:

With regards to retaining views to and from the Civic Centre building, one of the objectives of redevelopment in the precinct is to address the difficulties with accessing the Civic Centre building from Pittwater Road. A solution to this is a building that butts up against the Civic Centre building. However, such a solution needs to recognise the heritage significance of the Civic Centre building, including views from Pittwater Road up to the building. This will be part of the detailed design of any future development, but it should be recognised within the DCP.

Recommendation:

That Requirement 1(g) of the provisions relating to the Civic Centre site in the draft DCP be reworded as suggested in the submission:

- g. Retains and enhances the heritage significance of Dee Why Public Library and the Dee Why Civic Centre and retains the view corridors to and from the buildings.*

Submission 2

Submission 2 relates to Site A.

The submission requests:

1. That public car parking be retained on Site A and be available to the parishioners of St Kevin’s Church, noting previous discussions with Council relating to a minimum of 150 public car spaces.

2. That the retained spaces include spaces adjacent to the church dedicated for church use on occasions such as weddings and funerals.

Comment:

Site A comprises both the Council car park and the Australia Post site on Oaks Avenue.

No changes are proposed to the planning controls applying to Site A. These controls have remained unchanged since WLEP 2011 was introduced on 9 December 2011 and they are essentially the same as those which had been adopted in WLEP 2000 (Amendment No. 21) on 28 November 2008.

The Council car park site has a lengthy history with regards to its planning controls and relationship to master planning for the Dee Why Town Centre. Its position on the eastern side of the Dee Why Town Centre and as a relatively large site that is owned and controlled by Council make it pivotal to the development of the Dee Why Town Centre.

Prior to 2008, Site A was identified in the planning controls (WLEP 2000) as being for open space purposes and categorised as “Community Land” under the Local Government Act 1993. These limited the land uses permitted on the land and restricted Council’s dealings in the land.

In September 2004 a Masterplan for the Dee Why Town Centre, prepared by the Government Architect’s Office, recommended that the land be redeveloped for a mix of land uses including a relocated library, a community centre, a Council shop-front, retail uses, residential development above, and basement car parking below.

Council adopted the Masterplan and, in 2005, a Public Hearing was held into the reclassification of the Council car park to “Operational Land” under the Local Government Act 1993 which was a necessary precursor to the implementation of the Masterplan.

In November 2008, following the Public Hearing and the exhibition of changes to the planning controls, WLEP 2000 (Amendment No. 21) was gazetted, with the stated purpose being to implement the Masterplan.

In July 2013 the Dee Why Town Centre Master Plan by Place Design Group Pty Ltd was prepared. This Master Plan has a significantly different vision for Site A compared to the 2004 Masterplan. In particular, the public car parking component that was part of the 2004 Masterplan is not included in the 2013 Master Plan, which instead refers to public car parking throughout the Dee Why Town Centre.

Council has adopted the 2013 Master Plan, the preparation of which included substantial public consultation. The 2013 Master Plan does not specify the Site A will provide public car parking.

The planning proposal and draft DCP do not preclude the provision of public car parking on Site A, but nor do they prescribe it. They maintain the status quo.

The submission raises valid concerns regarding the provision of car parking or car standing areas for particular vehicles related to the use of the adjacent church, such as for wedding vehicles, funeral vehicles, etc. The precise location of these parking/standing areas does not need to be determined at this time. However, it is

appropriate that the need for these parking/standing facilities be recognised in the DCP provisions.

Recommendation:

That the draft DCP be amended to recognise the need for parking/standing facilities for wedding vehicle, funeral vehicles, etc, to be provided adjacent to St Kevins Church.

Submission 3

Submission 3 relates to Site A.

The submission requests:

1. That Site A be reclassified to "Community Land", or
2. That an Independent Review be established by the Minister for Planning and Environment into the development of Site A, including the relative merits of an alternative "Open Space development".

Comment:

Site A comprises both the Council car park and the Australia Post site on Oaks Avenue.

No changes are proposed to the planning controls applying to Site A. These controls have remained unchanged since WLEP 2011 was introduced on 9 December 2011 and they are essentially the same as those which had been adopted in WLEP 2000 (Amendment No. 21) on 28 November 2008.

As detailed above, when that part of Site A owned by Council was reclassified from "Community Land" to "Operational Land" in 2008 (WLEP 2000 (Amendment No. 21)), it followed a public hearing in which the independent chair, Peter Walsh, commented in his report:

It seems to me that a council acting reasonably would not commit to reclassify community land to operational land unless there was a considerable degree of certainty that the intended outcome of this move was achievable. It can also be reasonable, in my view, to put in place contingency arrangements such that if the achievement of the outcome becomes unlikely or impossible, the land remain or revert back to community land status.

In a subsequent supplementary report Mr Walsh recommended that Council proceed to reclassify the land to enable the achievement of the benefits that were included in the 2004 Masterplan.

However, the development envisaged by the 2004 Masterplan, and the inherent benefits (library, Council shopfront, public car parking), did not eventuate. The reasons for this are outlined in a report considered by Council on 11 December 2012. In particular, the 2004 Masterplan envisaged the development of Site in conjunction with the Town Square on Site B. An agreement could not be reached with the owner of Site B and the connection between the sites was made impossible by the subsequent approval of development on Site B that did not provide for any connection. At that time,

Council accepted that Site A was, by that time, “a highly constrained site for which community facilities would not be appropriate”.

Instead, Council endorsed the concept of the Dee Why Community Hub on the north west corner of St Davids Avenue and Pittwater Road, with the funds from the sale of Site A to be allocated to the Community Hub concept.

The 2013 Master Plan reflects this position. It identifies the Civic Site or Precinct on the north west corner of St Davids Avenue and Pittwater Road as a ‘one-stop-shop’ for a diverse range of community facilities and services. The key focus would be the redevelopment of a civic plaza. Basement parking is intended for all buildings in this precinct. The 2013 Master Plan has been adopted by Council. It has been through a process of public consultation. It is recognised that the circumstances that existed in 2004, when the first Masterplan was prepared, are different to the circumstances that existed in 2013, when the current Master Plan was prepared.

On 23 March 2015 Council again considered a report regarding the sale of Site A and again resolved to proceed with the sale process.

In the current situation, where the current planning proposal does not seek to alter the planning controls with regards to Site A, it would be inappropriate to change the classification of the land or conduct an enquiry that would change Council’s previous resolutions for the future development of Site A.

Recommendation:

That no further action be taken in response to this submission.

Submission 4

Submission 4 relates to Sites A, B, E and F and to general planning provisions for the Dee Why Town Centre.

The submission requests:

1. That the proposals for Site E be amended to take into consideration the topography of the site.

Comment:

The diagrams for Site in the draft DCP are reproduced below:

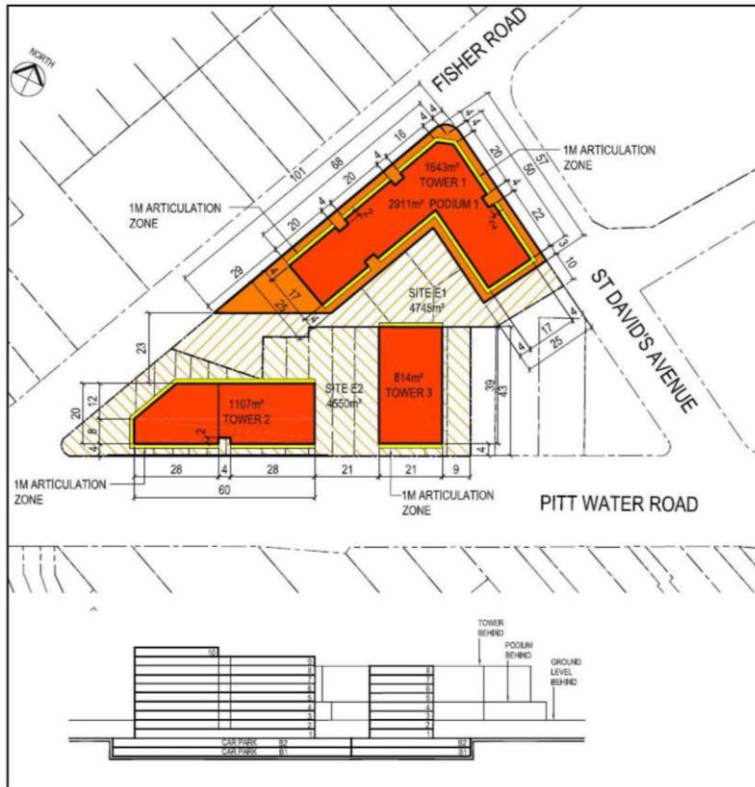


Figure 6: Site E Option 1 - Example building layout and form

Note: Option 1 demonstrates two tower forms (at 10 and 11 storeys) addressing Pittwater Road. The absence of podium levels allows for greater ground level circulation space and improved solar access to pedestrian areas.

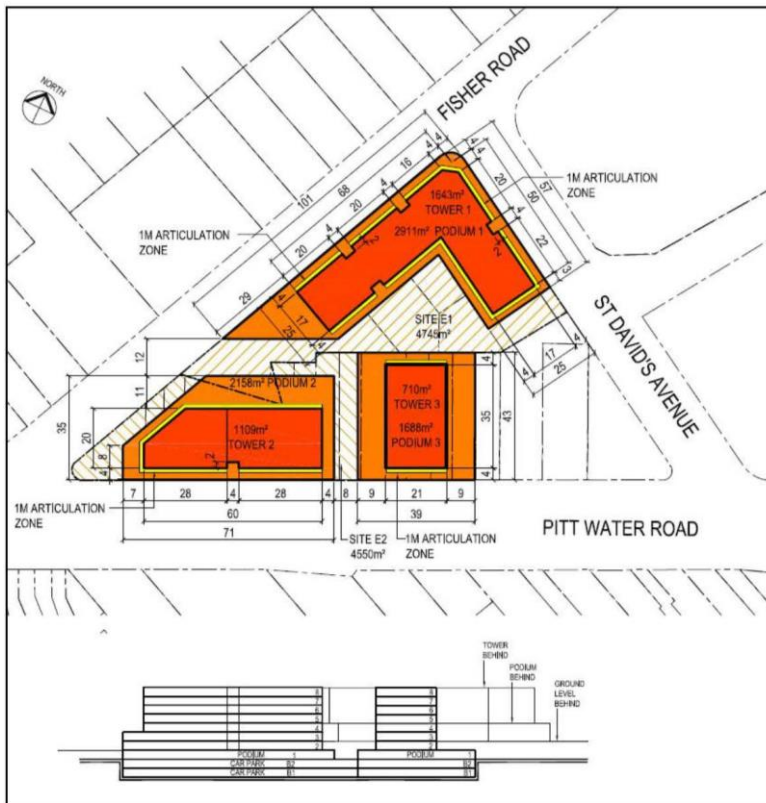


Figure 7: Site E Option 2- Example building layout and form

Note: Option 2 demonstrates three podium and tower forms (up to 8 storeys) whilst allowing adequate through site links.

The submission is made on the basis that the buildings fronting Fisher Road will rise higher than the buildings fronting Pittwater Road and that the diagrams do not take into consideration the change in topography between Pittwater Road and Fisher Road, with Fisher Road rising approximately 10 metres above the level of Pittwater Road.

A close examination of the diagrams reveals that this concern is unfounded. The diagrams do correctly indicate a "ground level behind" (ie: Fisher Road) that is elevated above Pittwater Road. The diagrams also show that the buildings in Fisher Road do not rise above the buildings in Pittwater Road.

However, the diagrams show 6 storey buildings on Fisher Road and this is consistent with the proposed height limit of 20 metres included in the planning proposal where a development provides community infrastructure.

In my opinion no change is required to the planning proposal or draft DCP with regards to the provisions for that part of Key Site E fronting Fisher Road.

2. That the height and floor space ratio controls for Site F should be the same as for those parts of Site E fronting Pittwater Road (ie: height of 49 metres and FSR of 4:1).

Comment:

The planning proposal includes a 49m height limit for Key Site F which is the same as for the neighbouring land fronting Pittwater Road in Key Site E.

The planning proposal includes a FSR of 5.86:1 for Key Site F, whereas the proposed FSR for the neighbouring land in Key Site E is 4.0:1.

A building is currently under construction on Key Site F pursuant to DA 2011/0887, as modified by Mod 2012/0087. The approval provides for a building with a FSR of 4.15:1.

It is noted that a proposal for a building with a FSR of 5.8:1 (DA2013/1168) was refused by the Joint Regional Planning Panel and that a subsequent appeal to the Land and Environment Court was dismissed.

In my opinion, there is no valid town planning reason for the floor space ratio applying to Key Site F to be different to that which applies to the neighbouring land fronting Pittwater Road in Key Site E. This submission is concurred with and it is recommended that the planning proposal be amended to provide a maximum floor space ratio of 4.0:1 to Key Site F.

Recommendation:

That a maximum floor space ratio of 4.0:1 be applied to Key Site F.

3. That the exclusion of clause 4.6 variations to the height control be extended to exclude variations to the floor space ratio controls.

Comment:

Clause 4.6 aims to provide a degree of flexibility and to achieve better outcomes for and from development. Variations are permitted where development demonstrates that there are sufficient environmental planning ground justifying the variation and where

compliance is unreasonable or unnecessary. The development must be in the public interest, being consistent with the objectives of the zone and the standard.

Clause 4.6 is a widely accepted mechanism for achieving better planning outcomes from development. However, it does introduce a degree of uncertainty as to development outcomes; this is a necessary outcome from permitting some flexibility into the planning system.

In my opinion there is no justification for excluding the floor space ratio controls from the application for clause 4.6 and the beneficial planning outcomes outweigh the implicit lack of certainty.

However, it is recognised that the floor space ratio controls are based on related studies, particularly traffic studies, that are predicated on a certain gross amount of development within the Dee Why Town Centre. It would be appropriate to review the issue of the exclusion of the floor space ratio controls from the application of clause 4.6 in the future if it appears that the total development yield is likely to exceed forecasts as a result of consistent variations to the floor space ratio control.

4. That the heading of clause 7.12 of WLEP 2011 "Provisions promoting retail activity" be amended to include the promotion of commercial activities.

Comment:

Clause 7.12 does more than promote retail activities. On the ground floor level it promotes business premises as well as retail premises. On the first floor it promotes any permissible use other than residential accommodation, including medical centres and offices premises as well as retail and business premises. The heading of the clause does not clearly reflect the provisions of the clause.

It should be noted that under section 35 of the *Interpretation Act 1987* the heading to a clause in WLEP 2011 is taken not to be a part of the instrument. In other words, leaving the existing heading or changing it has no practical effect.

Notwithstanding this, headings do provide assistance to people reading WLEP 2011 as an indication of what the provisions do.

Recommendation:

That the heading to clause 7.12 be amended. Suggested wording is "Provisions promoting non-residential activities" or "Provisions promoting non-residential activities at ground and first floor levels".

5. That Council address an apparent conflict of interest with regards to the increase in the height of buildings for the site on the corner of Fisher Road and St Davids Avenue, which is part of Site E, currently occupied by the NSW Police.

Comment:

The submitter raises the issue of a potential conflict of interest for Council arising from its dealings with regards to Site A. On 24 March 2015 Council considered a report regarding the sale of Site A (owned by Council) and that such a sale would be subject to a condition requiring commercial floor space in the future development of the land to be returned to Council. This commercial floor space would be leased as the Dee Why Police Local Area Command which is seeking to relocate from its current site on the

corner of Fisher Road and St Davids Avenue and upgrade its facilities. The nett effect for Council would be a reduction in the sale value of Site A but an ongoing income stream from the leasing of floor space to the NSW Police.

The site on the corner of Fisher Road and St Davids Avenue is within Site E. The planning proposal seeks to increase the permissible height of buildings in this location from 13 metres to 16 metres. The increase in building height by three metres is one of the recommendations of the Masterplan. The increase permits an additional storey of development in exchange for a reduction in the height of the podium of any future development. The development yield is not anticipated to be increased by this change in the building height control.

The planning proposal also seeks to impose a maximum floor space ratio of 2.4:1 where there is no current restriction. As there is currently no floor space ratio restriction this does not represent an increase in the development yield of the site.

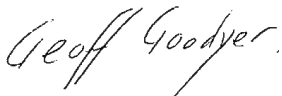
The planning proposal also proposes an increase in building height up to 20 metres subject to the provision of community infrastructure. The provision recognises the potential for a community benefit to accrue where, for instance, pedestrian links are provided through site E and that an increase in building height is appropriate as an offset to the development yield in such circumstances.

The planning proposal does not seek to provide additional benefits to the land on the corner of Fisher Road and St Davids Avenue when compared to the remaining land within Site E.

In my opinion the planning proposal includes appropriate controls for the land on the corner of Fisher Road and St Davids Avenue in accordance with the recommendations of the Masterplan.

Recommendation:

That no changes be made to the planning proposal in response to this submission.



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27 August 2018