

**ADDENDUM STATEMENT
OF
ENVIRONMENTAL EFFECTS**



**Demolition & Construction of Residential Flat Building,
76B St Georges Crescent, Drummoyne**

15 December 2021

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1. INTRODUCTION

This report has been prepared to support the determination of a Development Application (DA) **DA2020/0349** currently the subject of an appeal in the Land & Environment Court (LEC), being **Proceedings 2021/00228144**. The proposal seeks approval for the demolition of the existing dwelling at 76B St Georges Crescent, Drummoyne, the construction of a residential flat building containing 3 units and its strata subdivision.

Minor internal renovations are also proposed to the existing Boatshed to repurpose it as a shared recreation building with kitchen facilities, for use by the future residents of the site. No work is proposed to the existing boat ramp, with minor works to the seawall to improve its defence against sea level rise.

In detail the proposed development involves -

- *Demolition of the existing dwelling at 76B St Georges Crescent and the construction of a new residential flat building containing 3 units, refurbished boathouse, landscaping and associated facilities and sea level rise proofing of the site.*
- *The proposed building will consist of:*
 - *Basement – car park containing seven (6) resident spaces + one (1) for visitors, three (3) bike spaces / storage areas, car lift (lower level), additional storage areas / cellars for each unit, lift and stair access to the upper floors. This level is wholly below existing ground level.*
 - *Ground Floor – contains a whole floor 3-bedroom unit, with outdoor terrace, garden and pool area (River side). The unit includes casual and formal dining & living areas, kitchen, bar, powder room, laundry, all bedrooms include en suites and walk-in robes.*

The central entry foyer, car lift (upper level), lift and stair access to the upper floors and basement are also provided on this level. Additionally, cabana type facilities and a swimming pool for the two upper floor units, together with communal open space are also located between the building and foreshore at ground level.

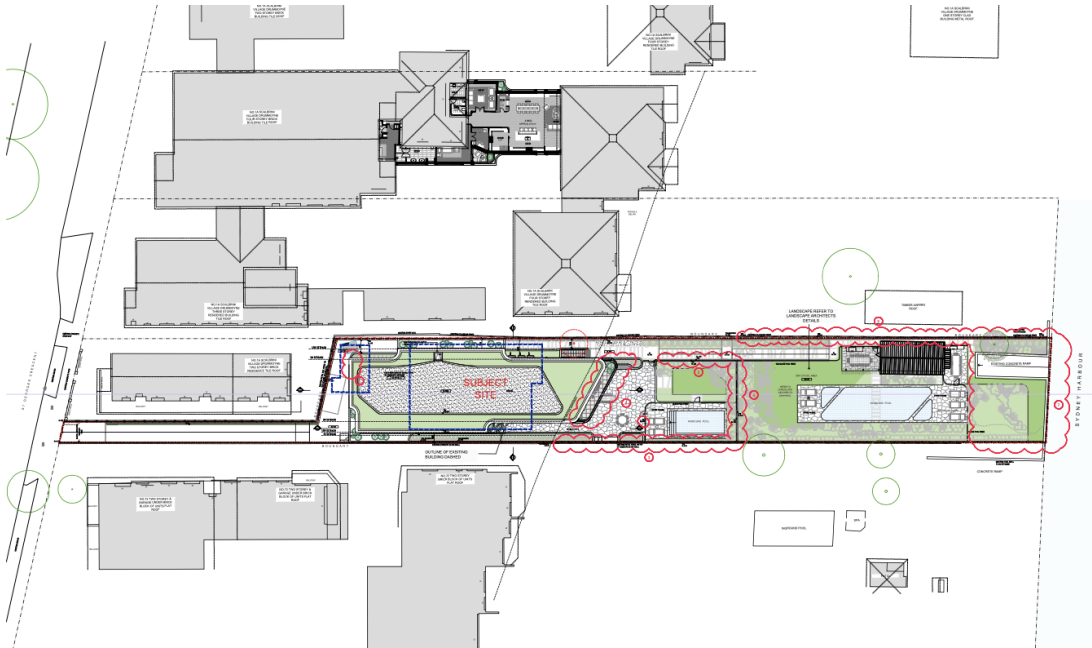
- *Levels 1 and 2 – Each level contains a whole floor 3 - bedroom unit with rear (River side) balcony, casual and formal dining & living areas, kitchen, bar, powder room, laundry, all bedrooms with en suites and walk in robes, front entry and foyer. Lift and stair access are provided to the lower floors and basement.*
- *Pedestrian and vehicle access to the site is provided by way of the driveway from St Georges Crescent. On the river side of the proposed building, the existing swimming pool, tennis court and rear yard are to be replaced with the facilities mentioned above.*
- *In order to protect the site from long-term sea-level rise, the existing structure above the sea wall is to be altered so that approximately 350mm – 400mm of its lower half is constructed of solid masonry. The current structure is more than twice this height, and while currently partly open, when viewed from the water the new works will appear as an overall reduction in built form.*
- *The built form of the proposal is in a modern style, incorporating a flat roof with the overall height being less far less than the adjoining Senior's living facility immediately to the north and similar to the existing medium density developments to the south along the foreshore and that immediately to the west of the site at No. 76 St Georges Crescent.*
- *Approval is also being sought for the strata subdivision of the proposed development.*

The amended development is illustrated on the plans numbered *DA 000 – DA 701 (Not Consecutive), Project No. 2024, Various Issues, with various dates*, as updated post the Section 34 Conference and *dated 09-12-2021*, drawn by *PBD / Architects* with associated Survey, Landscape and Services drawings, Civil, Flooding and Traffic Engineering reports and plans.

In essence this addendum report and associated amended plans seek to respond to the issues raised in the contentions contained within the Council's Statement of Facts and Contentions filed on 28 September 2021 and matters discussed in a Section 34 Conference held on 25 November 2021. Additionally matters raised in public submissions and Council's letter dated (23-02-21) requesting additional information are also addressed. Specifically, these matters included building height, foreshore building line alignment, view impacts and engineering concerns.

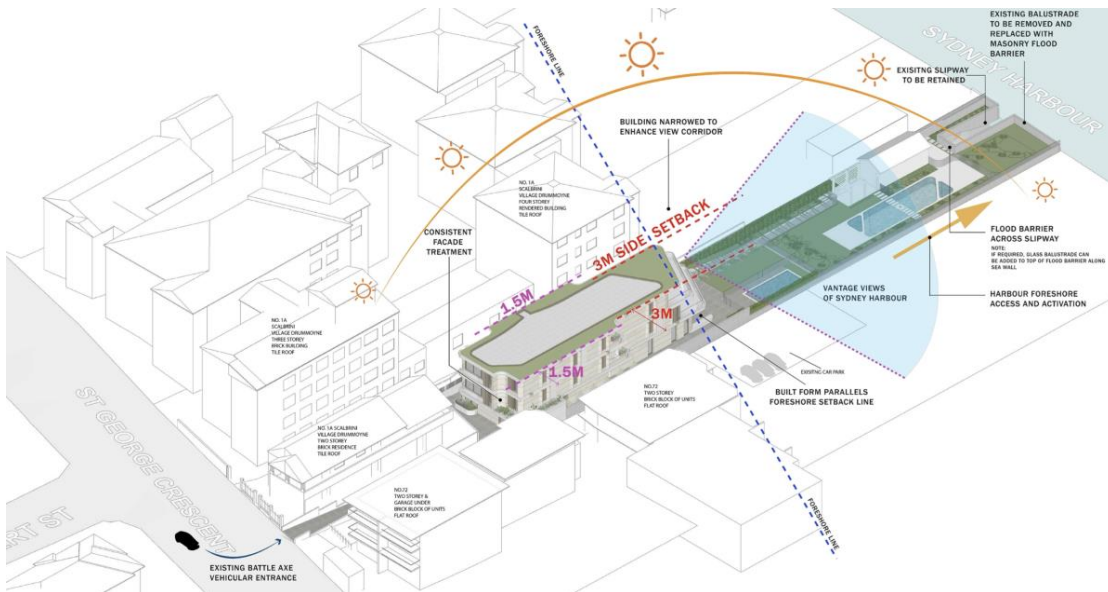
The site, site analysis and floor and roof layouts, height blankets and landscape plans (including the boatshed renovations) are shown in *Figures 1 - 9* on the following pages.

Figure 1 – Site Plan



Not Updated

Figure 2 – Site & Urban Design Analysis Plans



Not Updated

Figure 3 - Basement

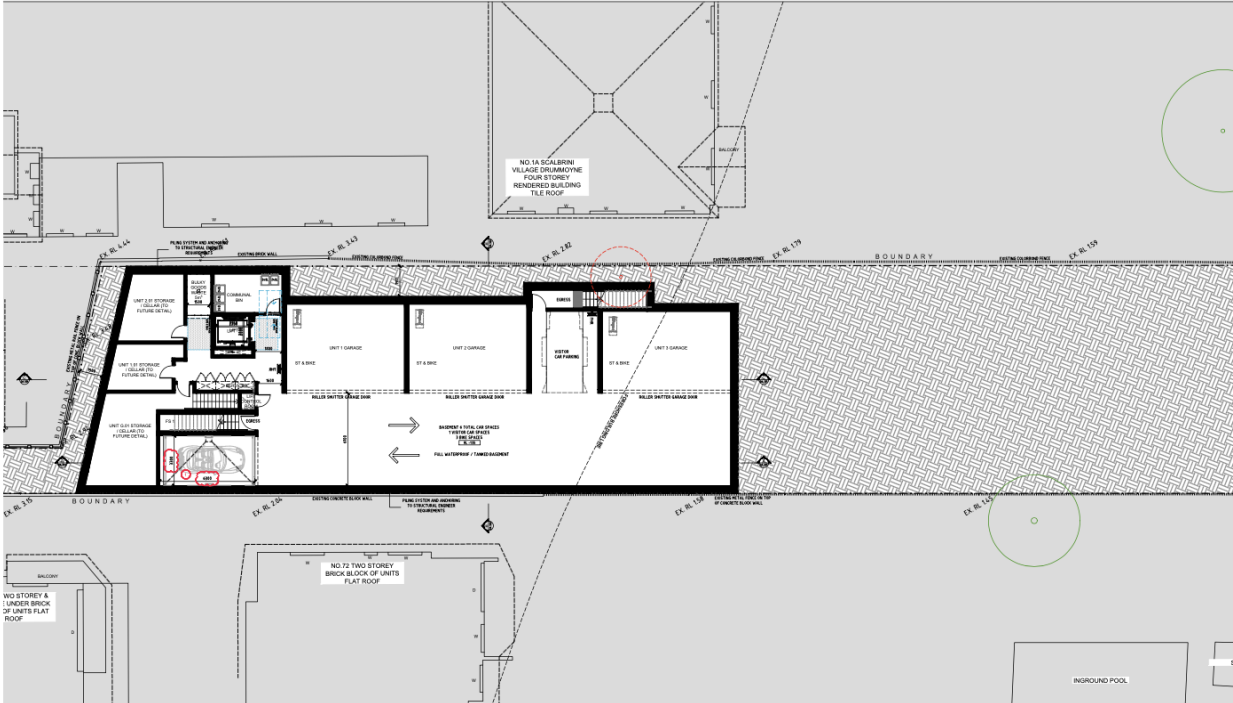


Figure 4 – Ground Floor (Building)

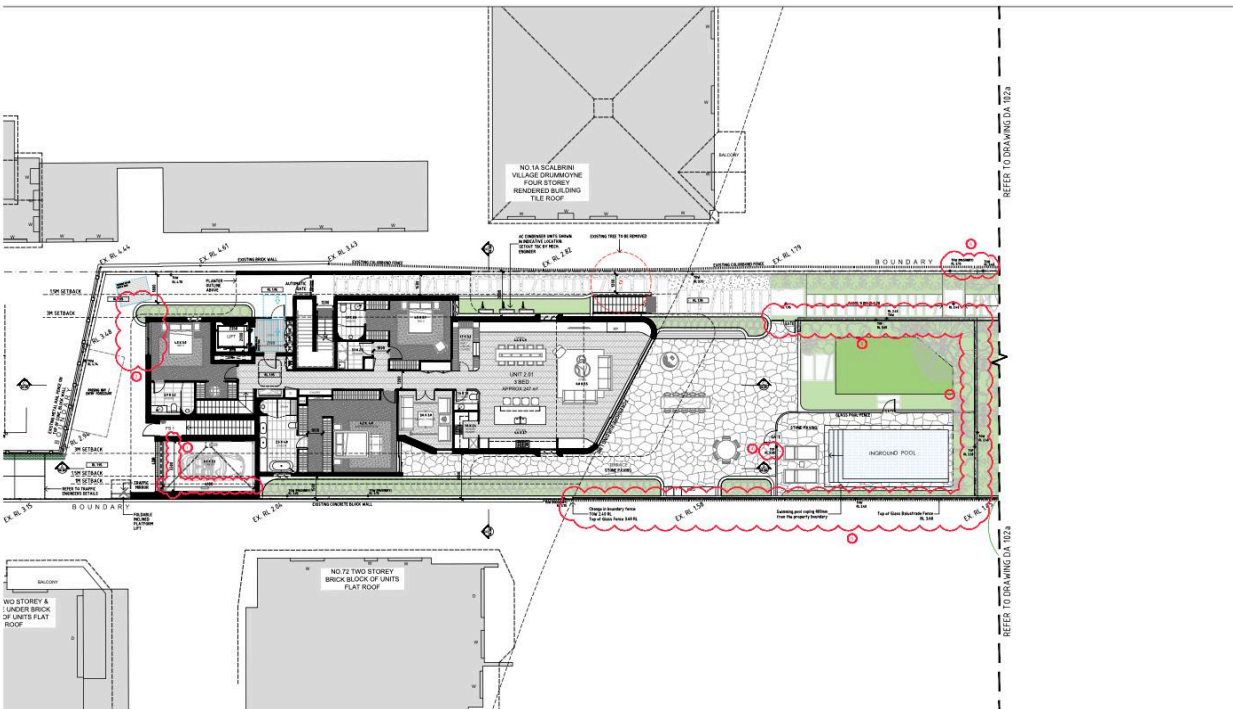


Figure 5 – Ground Floor (Foreshore)

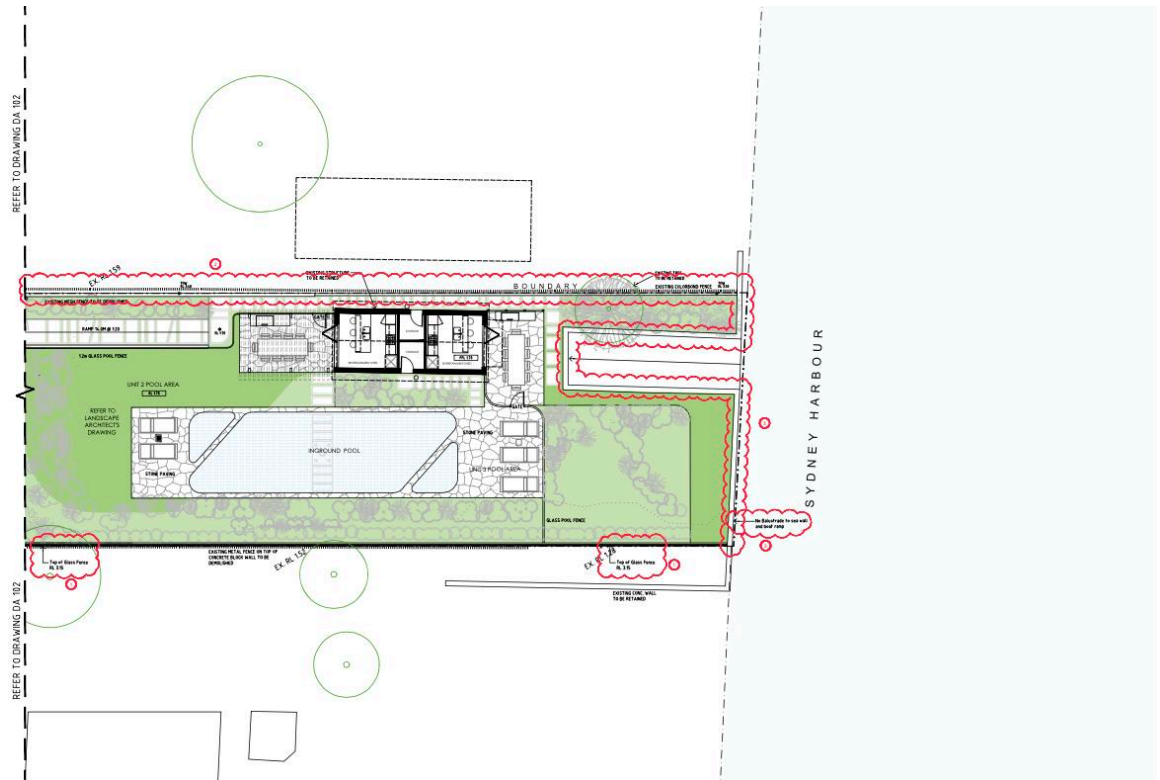


Figure 6 – Level 1

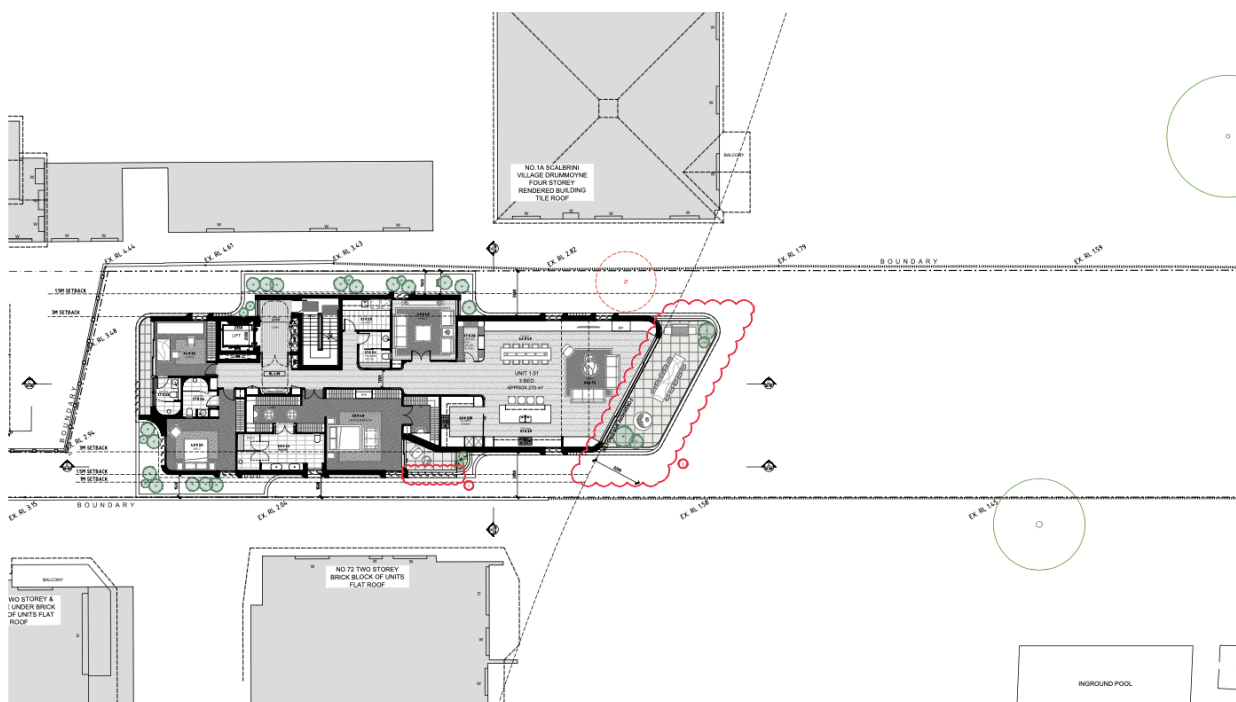


Figure 7 – Level 2

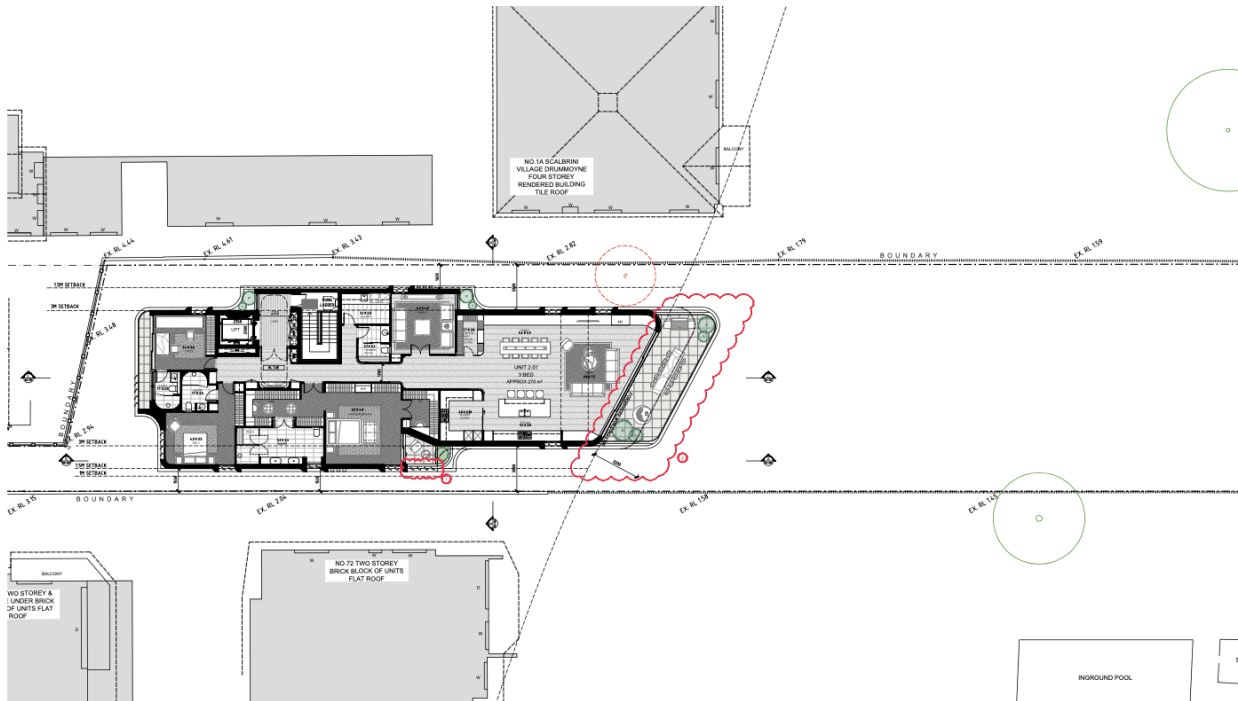


Figure 8 - Roof Plan

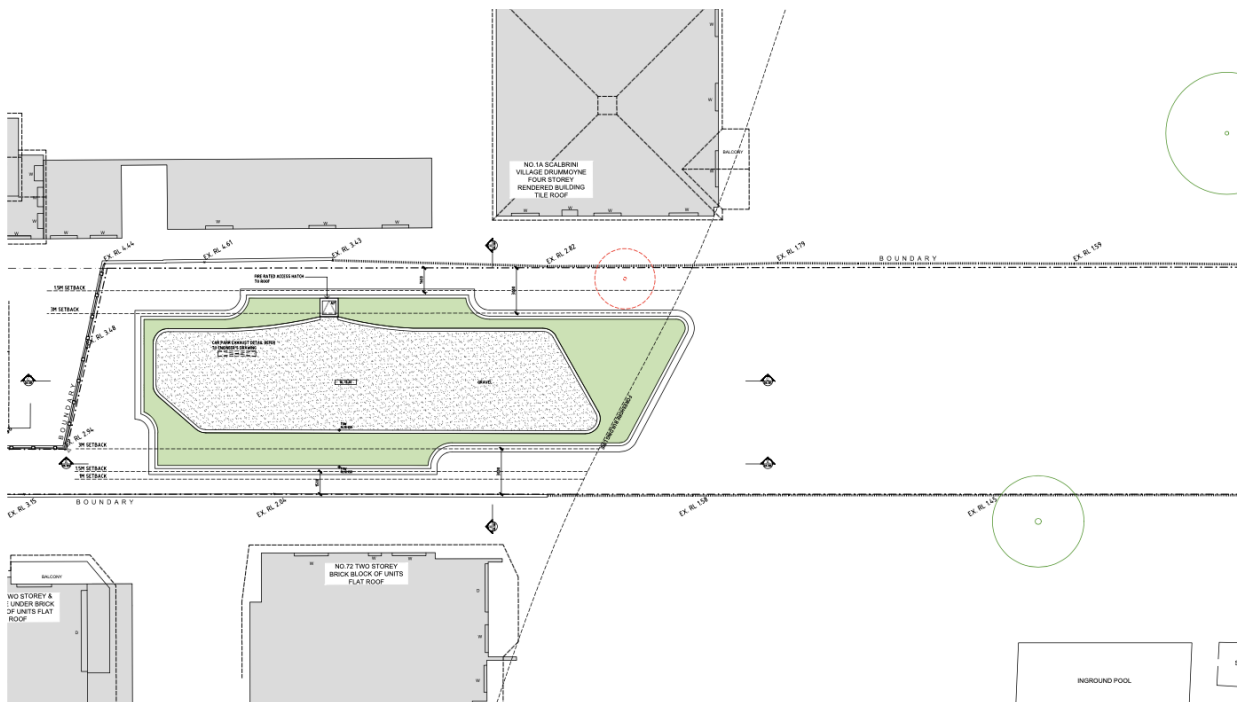
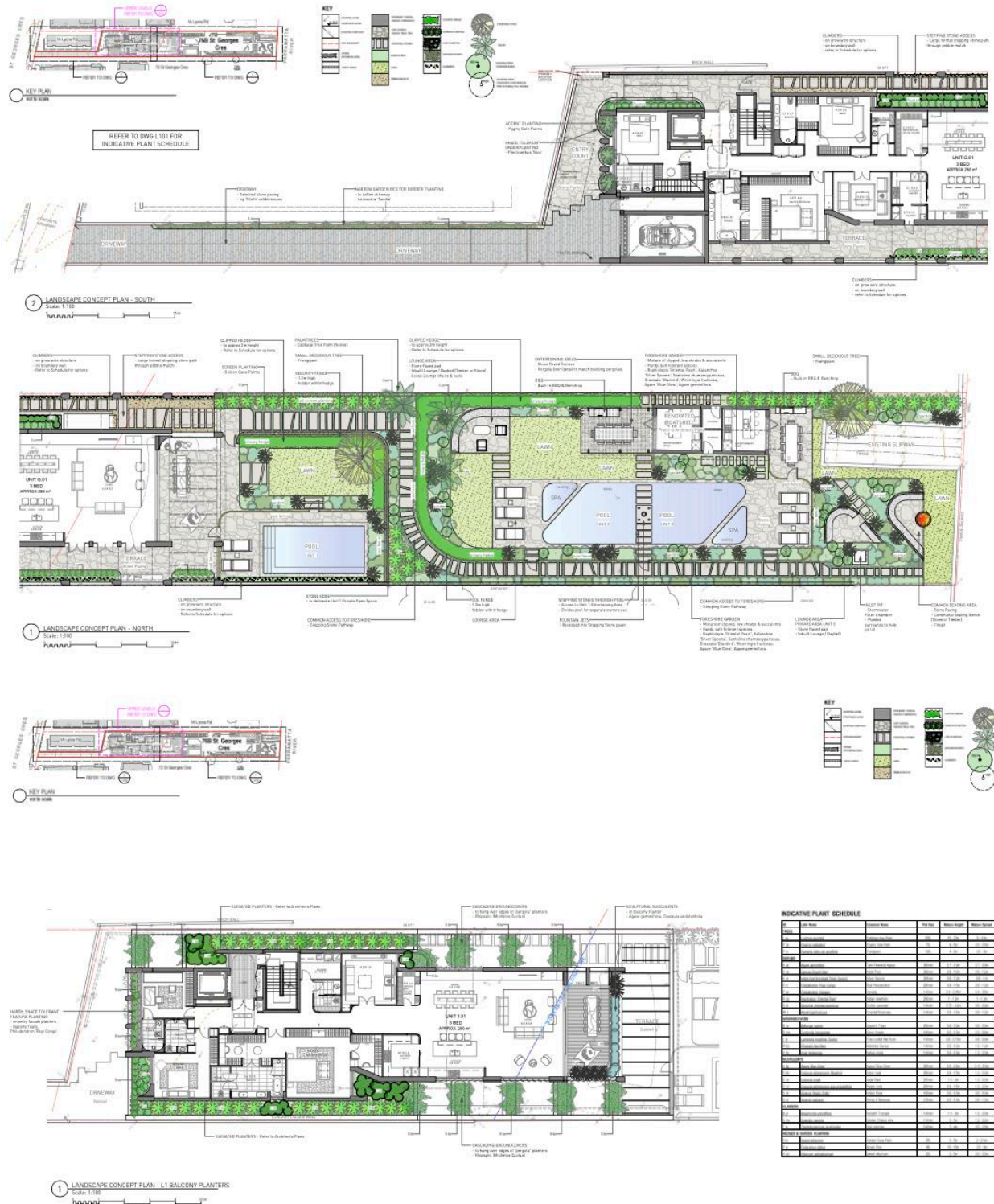


Figure 9 - Landscape Plans



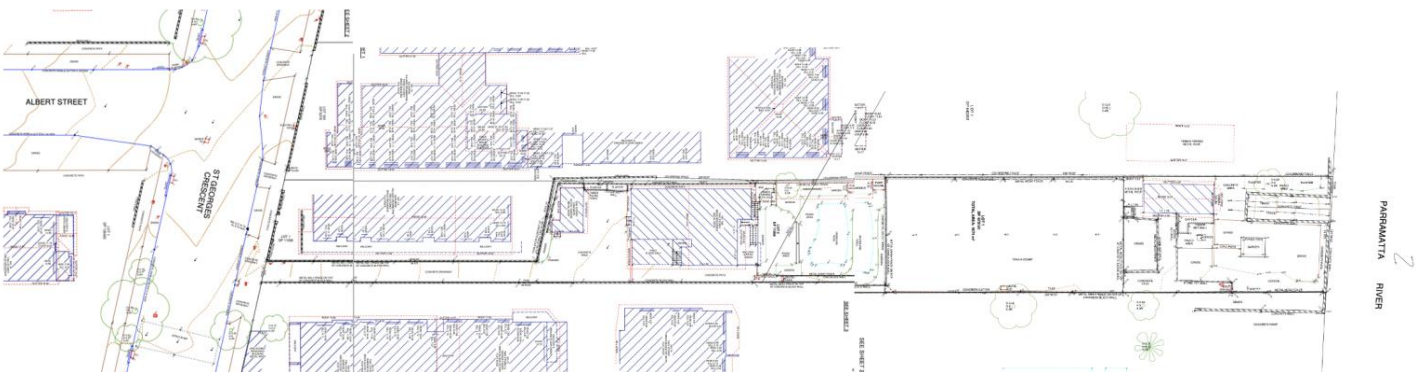
Not Updated

2. SITE AND LOCATION

The subject site occupies Lot 1 in DP 579151, and Lot 2 in DP11056 and is known as 76B St Georges Crescent, Drummoyne. It is located on the eastern side of St Georges Crescent approximately opposite its intersection with Albert Street.

The property is a battle axe shaped block with a long driveway providing pedestrian and vehicular access. The improvements on the property include a two - storey dwelling, swimming pool and tennis court. The site adjoins the Parramatta River via a sandstone sea wall with an existing boathouse and ramp. The overall area of the property is approximately 1674 square metres (m²), as per the **compilation copy of the survey** in *figure 10* below.

Figure 10 – Site Survey (Compilation)



The surrounding development is a mixture of Duplex, town house, multi unit developments and large dwellings of a myriad of styles and ages. Most dwellings on the eastern side of St Georges Crescent face the river, with many having access and car parking facilities (garages and car ports) facing the street.

Bus services currently run along St Georges Crescent linking to those operating along Victoria Road to the city and major centre of Burwood, whilst the Drummoyne wharf is nearby. The Drummoyne commercial centre on Victoria Road is a 3-5 minute walk, with the Birkenhead Point shopping precinct a further ten minutes walk to the south. Nearby recreation areas/ facilities include Peppercorn, Salton and Dunlop Reserves, the Bay Run and Drummoyne Pool, as well as a number of cafes, restaurants and clubs.

The site is **not** located within a Heritage Conservation Area, **nor** is it an Item of Environmental Heritage under the *Canada Bay Local Environmental Plan (LEP) 2013*. The site is however located across the road from the Birkenhead and Dawson Estates Conservation Area.

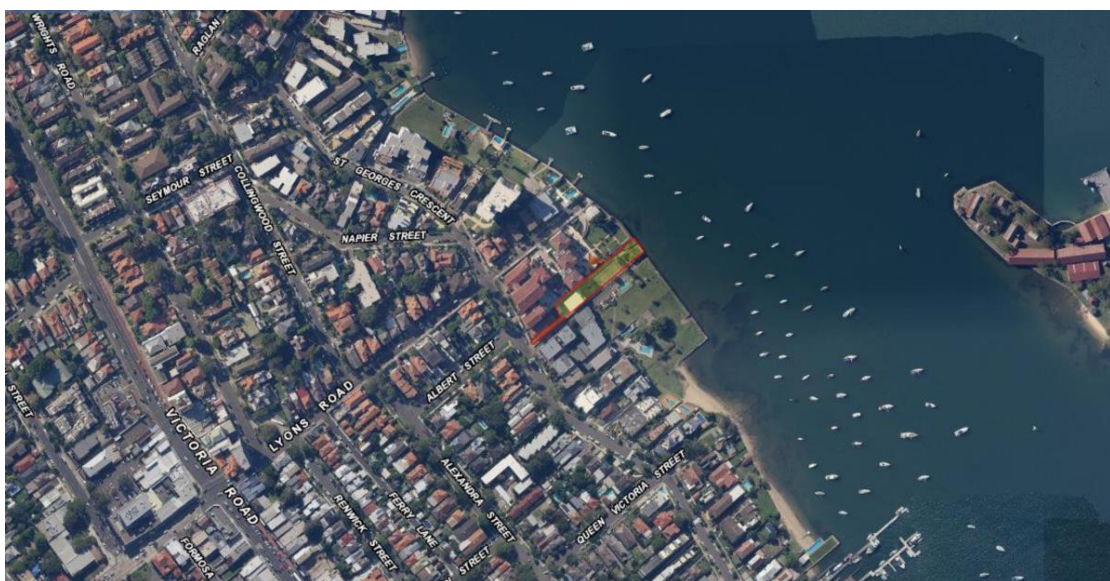
The general location of the property and the surrounding built form are shown in *figures 11* and *12* below.

Figure 11– Location Map



Map reproduced with permission of UBD. Copyright Universal Publishers Pty Ltd. DG 05/05

Figure 12 – Aerial Photo



Source: © DEPARTMENT OF LANDS SIX Portal www.lands.nsw.gov.au

3. PLANNING CONTROLS

The following environmental planning instruments and policies are relevant to the proposed development:

- 1. State Environmental Planning Policy (SEPP) No. 55 – Remediation of Land*
- 2. State Environmental Planning Policy (SEPP) No. 65 – Design Quality of Residential Apartment Development*
- 3. State Environmental Planning Policy (Building Sustainability Index (BASIX) 2004*
- 4. Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005.*
- 5. Canada Bay Local Environmental Plan (LEP) 2013.*
- 6. City of Canada Bay Comprehensive Development Control Plan (DCP) – Part E Residential Development.*

3.1 State Environmental Planning Policy (SEPP) N0. 55 – Remediation of Land

In accordance with the provisions of clause 7 of SEPP No. 55 Council may not consent to the carrying out of any development on land unless it has considered whether the land is contaminated. If the land is contaminated, Council must be satisfied that the land is suitable in its contaminated state (or will be suitable after remediation) for the purpose for which the development is proposed to be carried out.

The land is currently used for residential activities and has continued for that purpose over many years. There is no evidence that the land has been contaminated during its recent residential use and no further investigation is required. This position has been confirmed in a preliminary site investigation undertaken by the firm *ei Australia*, with the associated report, which has been submitted to Council, concluding in part -

In accordance with State Environmental Planning Policy 55(SEPP55) – Remediation of Land, the land was deemed suitable for the proposed development...

3.2 State Environmental Planning Policy (SEPP) N0. 65 – Design Quality of Residential Apartment Development

SEPP 65 is applicable to the consideration of all DAs for residential flat developments containing 3 or more storeys and 4 or more units. The SEPP has recently been amended via the introduction of the Government's *Apartment Design Guide ADG*.

Clause 4 of the amended SEPP states relevantly in part as follows:

4 Application of Policy

(1) This Policy applies to development for the purpose of a residential flat building, shop top housing or mixed use development with a residential accommodation component if:

(a) the development consists of any of the following:

(I) the erection of a new building,

(ii) the substantial redevelopment or the substantial refurbishment of an existing building,

(iii) the conversion of an existing building, and

(b) the building concerned is at least 3 or more storeys (not including levels below ground level (existing) or levels that are less than 1.2 metres above ground level (existing) that provide for car parking), and

(c) the building concerned contains at least 4 or more dwellings...

The proposal is of three stories in height however, as it contains only three units it is therefore excluded from the operations of the *SEPP* and the *ADG* under sub clause 1(c) above.

Notwithstanding this position, an Architectural Design Statement prepared by the project architect and was submitted with the DA.

3.3 State Environmental Planning Policy (Building Sustainability Index (BASIX) 2004

Clause 3 of the BASIX SEPP sets out the following aims:

(1) Regulations under the Act have established a scheme to encourage sustainable residential development (the BASIX scheme) under which:

(a) an application for a development consent, complying development certificate or construction certificate in relation to certain kinds of residential development must

be accompanied by a list of commitments by the applicant as to the manner in which the development will be carried out, and

(b) the carrying out of residential development pursuant to the resulting development consent, complying development certificate or construction certificate will be subject to a condition requiring such commitments to be fulfilled.

(2) The aim of this Policy is to ensure consistency in the implementation of the BASIX scheme throughout the State.

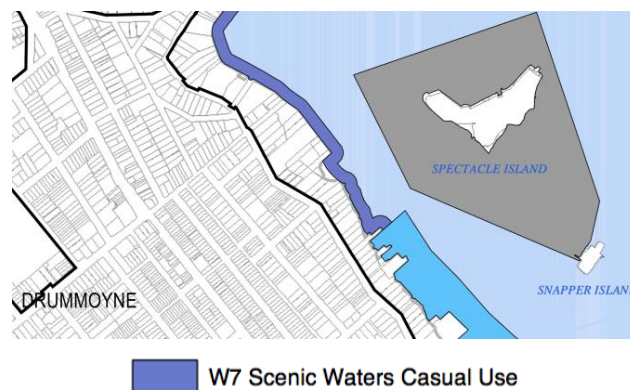
(3) This Policy achieves its aim by overriding provisions of other environmental planning instruments and development control plans that would otherwise add to, subtract from or modify any obligations arising under the BASIX scheme.

Under the Regulation, the proposed development is a "BASIX affected building". Clause 2A to Schedule 1 of the Regulation, requires that any Development Application involving the erection of a BASIX affected building must be accompanied by a BASIX certificate, issued no earlier than 3 months before the date on which the application is made. The required BASIX Certificate was lodged with the DA.

3.4 Sydney Regional Environmental Plan (SREP) (Sydney Harbour Catchment) 2005.

The REP is relevant to the current proposal as the site is located on the waterfront and renovation works are proposed to the existing boatshed. Under the REP the waterfront of the subject site is zoned *W7 Scenic Waters Casual Use*. **Figure 13** on the following page provides an extract from the relevant Zoning Plan within the REP

Figure 13 – SREP Zoning Map



Source: SREP (Sydney Harbour Catchment) 2005– Zoning Map

As can be noted from *figure 12* above, the *W7 Scenic Waters* zone begins at the sea wall, while the *R3 Medium Density Residential zoning* contained within the *Canada Bay LEP* applies to the land. Within the *W7* zoning both “skids” and “slipways” are permissible under the *SREP* and as no work is being proposed to the current facility, development consent under that plan is not required.

The conversion of the existing boatshed to a “recreational facility” is permissible under both the *R3* zoning of the site and *Clause 6.4* of the *LEP* which deals with the foreshore area. Out of interest, a recreation facility is also permissible in the *W7* zoning under the *SREP* and although that Plan is not applicable to the proposed works, for the sake of completeness, the relevant definition under the *SREP* is as follows:

recreational or club facility means a building or place used exclusively for sporting or leisure activities, whether operated for the purpose of gain or not.

Having dealt with the foreshore structures above there are a number of provisions within the *SREP* that may be relevant to the assessment of the proposal due to its proximity to the waterfront. These matters are discussed below.

Clause 21 of the *SREP* relates to Biodiversity, ecology and environment protection and states as follows

21 Biodiversity, ecology and environment protection

The matters to be taken into consideration in relation to biodiversity, ecology and environment protection are as follows:

- (a) development should have a neutral or beneficial effect on the quality of water entering the waterways,*
- (b) development should protect and enhance terrestrial and aquatic species, populations and ecological communities and, in particular, should avoid physical damage and shading of aquatic vegetation (such as seagrass, saltmarsh and algal and mangrove communities),*
- (c) development should promote ecological connectivity between neighbouring areas of aquatic vegetation (such as seagrass, saltmarsh and algal and mangrove communities),*
- (d) development should avoid indirect impacts on aquatic vegetation (such as changes to flow, current and wave action and changes to water quality) as a result of increased access,*

- (e) development should protect and reinstate natural intertidal foreshore areas, natural landforms and native vegetation,*
- (f) development should retain, rehabilitate and restore riparian land,*
- (g) development on land adjoining wetlands should maintain and enhance the ecological integrity of the wetlands and, where possible, should provide a vegetative buffer to protect the wetlands,*
- (h) the cumulative environmental impact of development,*
- (i) whether sediments in the waterway adjacent to the development are contaminated, and what means will minimise their disturbance.*

Comment: The proposed renovation of the existing boatshed will not disturb the existing ecology within the river area as those works are all on dry land back from the foreshore and outside the *W7* zone. There are no other works proposed in the area of the land / water interface.

In terms of sub clause (a) *development should have a neutral or beneficial effect on the quality of water entering the waterways*, this matter has been considered as part of the latest stormwater assessment undertaken by the applicant's Civil (stormwater) Engineering consultants in negotiations with Council's Engineers. The system as now designed and agreed includes stormwater catching and release to the river in controlled flows, with the proposed system incorporating cleansing devices to ensure that the released water is clean.

Clause 22 of the *SREP* relates to foreshore access and states as follows

22 Public access to, and use of, foreshores and waterways

The matters to be taken into consideration in relation to public access to, and use of, the foreshores and waterways are as follows:

- (a) development should maintain and improve public access to and along the foreshore, without adversely impacting on watercourses, wetlands, riparian lands or remnant vegetation,*
- (b) development should maintain and improve public access to and from the waterways for recreational purposes (such as swimming, fishing and boating), without adversely impacting on watercourses, wetlands, riparian lands or remnant vegetation,*

- (c) if foreshore land made available for public access is not in public ownership, development should provide appropriate tenure and management mechanisms to safeguard public access to, and public use of, that land,*
- (d) the undesirability of boardwalks as a means of access across or along land below the mean high water mark if adequate alternative public access can otherwise be provided,*
- (e) the need to minimise disturbance of contaminated sediments.*

Comment: This is a matter for consideration by Council in its assessment of an application. However, the proposal will not have any impact on access to the foreshore, as no public access is currently available through the subject site or the properties on either side of it.

Clauses 25(b) and 26 of the SREP concern the scenic quality and views to and from the waterway and relevantly state in part as follows

25 Foreshore and waterways scenic quality

The matters to be taken into consideration in relation to the maintenance, protection and enhancement of the scenic quality of foreshores and waterways are as follows:...

- (b) development should maintain, protect and enhance the unique visual qualities of Sydney Harbour and its islands, foreshores and tributaries,....*

Comment: This is also a matter for consideration by Council in its assessment of an application. However, the proposal seeks to renovate the existing boatshed, improving its appearance from the water and to replace an existing dwelling with a medium density building of a more modern design, with a bulk and scale similar to nearby residential flat buildings.

While the level 1 and 2 balconies are slightly forward of the Foreshore Building Line (FBL), the proposal remains well set back from the foreshore (over 60m), with landscaping and permissible structures closest to the waterfront. In this context it is unlikely to negatively impact on the visual quality of the Harbour.

On the ground floor, the private open space for unit 1 (recreation facility – outdoor) and associated swimming pool are to be located forward of the FBL. However, in accordance with the provisions

of Clause 6.4(2)(c) such facilities are permissible forward of the FBL. The proposed basement also

has an element forward of the FBL, however this part of the structure is wholly located below the ground and will thus not impact on the visual qualities of the Harbour.

26 Maintenance, protection and enhancement of views

The matters to be taken into consideration in relation to the maintenance, protection and enhancement of views are as follows:

- (a) development should maintain, protect and enhance views (including night views) to and from Sydney Harbour,***
- (b) development should minimise any adverse impacts on views and vistas to and from public places, landmarks and heritage items,***
- (c) the cumulative impact of development on views should be minimised.***

Comment: This is also a matter for consideration by Council in its assessment of an application. However, the proposal seeks to conform to these criteria in that it will merely replace an existing dwelling with an alternate building in a similar location. The design process has involved the consideration of existing view corridors, with the purpose of maximising their retention.

The proposal seeks to vary the maximum LEP height limit, by up to 670mm in relation to the eastern part of the building, due to the fall of the land. However, on its western end the proposal is compliant, being below the 8.5m height limit.

Richard Lamb & Associates were engaged to undertake a view analysis as per the principles in “***Tenacity***”. This assessment reviewed all views from surrounding properties and while the proposal does impact on some minor views to the waterway, substantive views remain from those locations and / or would be impacted by a compliant building envelope.

Dr Lamb concludes his report as follows:

This concludes my assessment of the impacts of the proposal on view sharing with neighbouring properties.

The assessment confirms the finding of my December, 2020 report, that impacts on views in the private domain would be very limited. There are minor non-compliances of the proposal with the FBL and the development standard for the height of buildings, the impact resulting from which would be reasonable.

The extent of impact on two viewing places would be moderate or severe, both in the Scalabrini Village development, one an aged care unit and the other a Town House in 76A, St Georges Crescent. The non-compliant parts of the proposed development would not cause increased impacts on view sharing. Any complying development would cause similar extents of impact and view sharing is reasonable in both cases, despite severe view loss in one case.

The only dwelling assessed where there would be a quantitative difference in view caused by a non-compliance with a statutory control compared to strict compliance is Unit 31 in Drummoyne Waters, where one view across the side boundary was considered, initially in isolation. There is a minor view loss. if it was the only view available to this apartment, the importance of the impact would be greater. However, the apartment has unimpeded, panoramic, scenic views from the same location studied, in which there are no impacts.

Taking everything relevant into consideration, the view sharing outcome of the proposal on this apartment is considered to be reasonable.

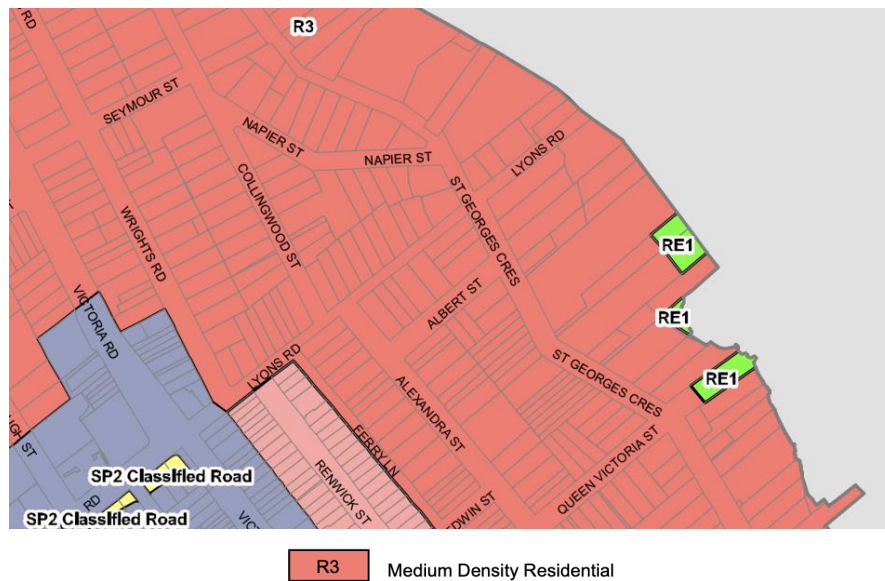
Clause 36 of the **SREP** sets out criteria for the consideration of impacts on land containing acid sulphate soils. This matter will be addressed in **Section 3.5** of this report.

There are no other provisions of the SREP that are relevant to the subject proposal.

3.5 City of Canada Bay LEP 2013

The LEP zones the subject site **R3 Medium Density Residential** and its redevelopment for a new dwelling is permissible with Council's consent. The relevant zoning is shown in **figure 14** below.

Figure 14 – Zoning Map



Source: City of Canada Bay LEP 2013 – Zoning Map

The relevant zone objectives within the LEP are as follows:

- *To provide for the housing needs of the community within a medium density residential environment.*
- *To provide a variety of housing types within a medium density residential environment.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*
- *To facilitate public access to and along the foreshore*

The proposal satisfies these objectives in that it provides for the ongoing residential occupation of the site within a similar built form to many other nearby properties. It will maintain the range and type of residential accommodation available in the area within a scheme that fits within the medium density nature of the precinct.

Clause 4.3 of the *LEP* sets height limitations for buildings on the site and states relevantly in part as that - *(1) The height of a building on any land is not to exceed the maximum height shown for the land on the Height of Buildings Map....*

The map extract below confirms a maximum building height for the site of 8.5m to the ridge.

Figure 15 – Height Map



Source: City of Canada Bay LEP 2013 – Height Map

The subject site falls from St Georges Crescent to the waterfront by approximately 4.75m. As a result, the proposed building will sit below the 8.5m building height line at its western end, by approximately 350mm but will vary the height limit in its eastern portion by up to 670mm (including the parapet) as shown in figure 16 of this report.

This matter will be the subject of a request to vary the height standard under *clause 4.6* of the *LEP* in a separate report to be submitted with the DA. However, *Clause 4.3* of the LEP contains objectives indicating the purpose of the height control. These objectives have recently been altered in an amendment to the LEP (26-02-21). As this matter remains undetermined, those updated objectives are listed below together with comments on the proposal's performance against them.

(a) to ensure that buildings are compatible with the height, bulk and scale of the desired future character of the locality and positively contribute to the streetscape and public spaces,

Comment: The amended proposal generally accords with the LEP height limit (8.5m), with its bulk and scale substantially less than the building immediately to its north and commensurate with the development to its south. It is not obviously perceptible from St Georges Crescent due to the battle axe nature of the subject site and its fall from the street, while its 60+m setback from the foreshore, ensures its compatibility with the majority of nearby development. In that context the character of the area and its attributes as expected under the planning framework will not be detrimentally affected by the proposal.

(b) to protect the amenity of residential accommodation, neighbouring properties and public spaces in terms of—

- (i) visual and acoustic privacy, and*
- (ii) solar access and view sharing,*

Comment: The amendments proposed as a result of the current proceedings, (reduced built form and screening) have addressed both of these matters, resulting in an acceptable outcome. The issue of view sharing has been prominent in the design development of the project, as assessed and found to be acceptable by Dr Lamb in his review. The reduced length of the building and softening of the waterside terraces have further improved this relationship with adjoining properties.

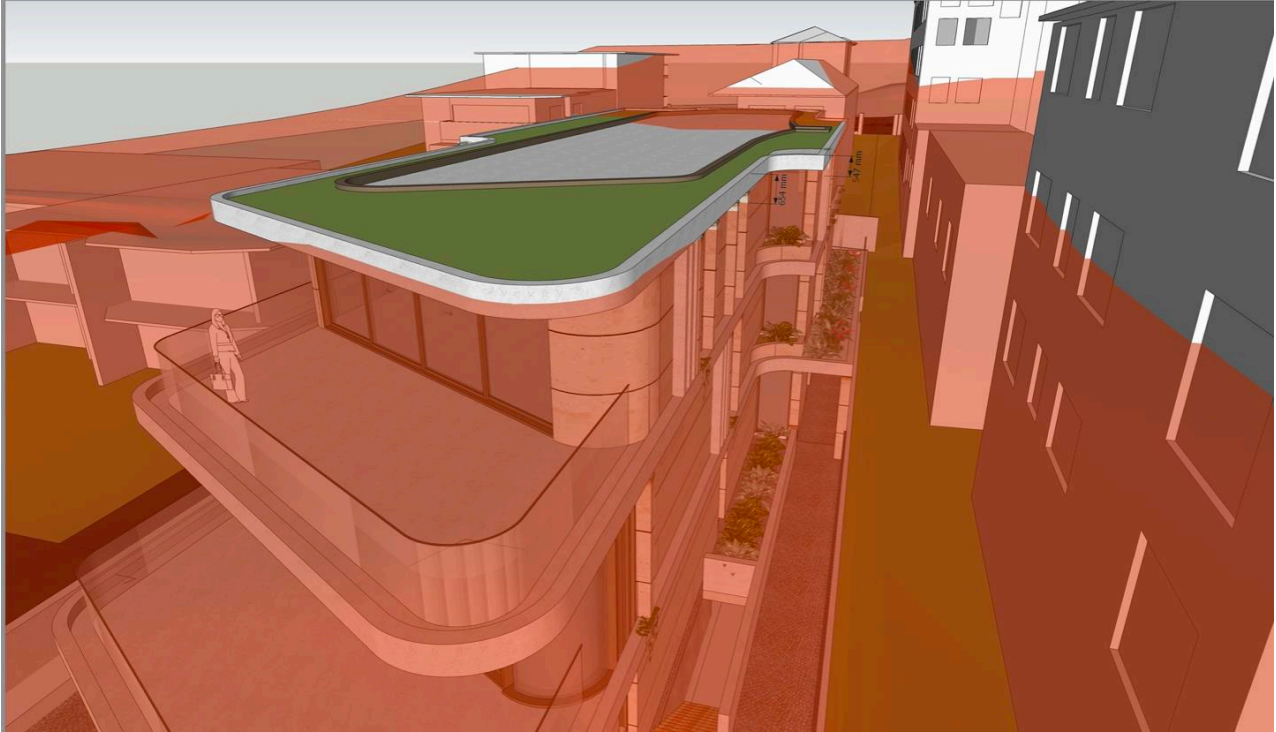
(c) to establish a transition in scale between medium and high density centres and adjoining lower density and open space zones to protect local amenity,

Comment: The proposed building height at its upper eaves is, in the main, compliant or less than the permissible height. Its location within the middle of the R3 zone ensures that there is no negative impact with any lower density zone. The design has carefully considered the windows in neighbouring buildings and any shadow impact will be generally commensurate with that cast by a compliant height building, ensuring the maintenance of local amenity. This proposed built form will provide a transition in terms of height between the buildings to the north of the site (4 – 5 storeys) and those to the south (2 – 3 storeys).

(d) to ensure that buildings respond to the natural topography of the area.

Comment: The proposed building is sited commensurately with the gradient of the site and generally follows the existing ground level as it tapers from the west to the east of the site. The minor height variation is purely as result of this land fall and the need to protect the building from future tidal influences and normal stormwater circumstances.

Figure 17 – Height Blanket



The LEP also sets floor space ratio (FSR) limitations for buildings throughout the City of Canada Bay. *Clause 4.4* states relevantly in part as follows

4.4 Floor space ratio

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

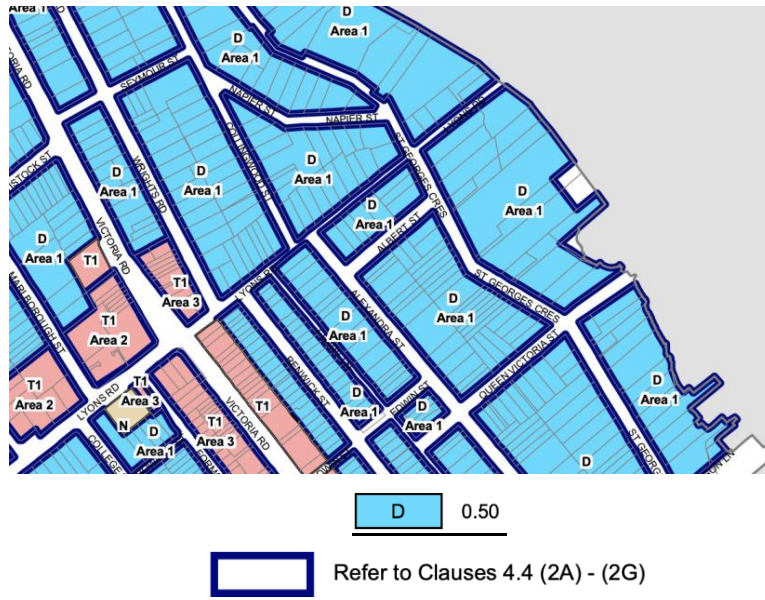
- (a) to ensure that buildings are compatible with the bulk and scale of the desired future character of the locality,*
- (b) to provide a suitable balance between landscaping and built form,*
- (c) to minimise the effects of bulk and scale of buildings.*

(2) The maximum floor space ratio for a building on any land is not to exceed the floor space ratio shown for the land on the Floor Space Ratio Map.

(2A) Despite subclause (2), the maximum floor space ratio for a building does not apply to multi dwelling housing or a residential flat building on land identified as “Area 1” on the Floor Space Ratio Map.

Figure 18 below indicates the relevant extract from the LEP FSR map

Figure 18 – FSR Map

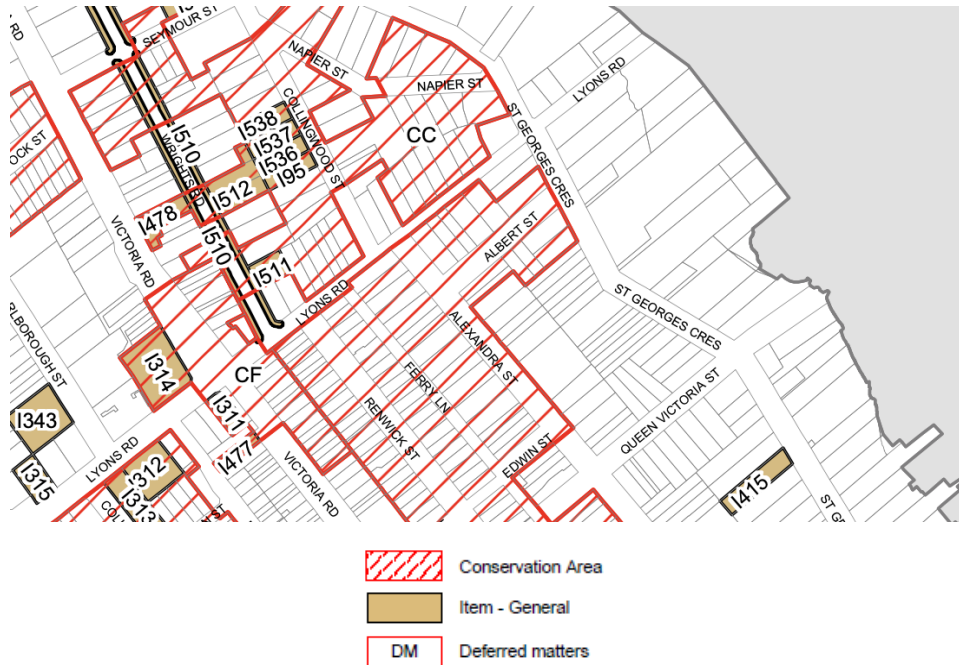


As shown in the FSR map above, the subject site is located in a street block marked “Area 1” and as such there is no FSR applicable to the land or the proposed development.

Clause 5.10 of the *LEP* deals with development on or near to properties within Heritage Conservation Areas or Items of Environmental Heritage. While the site is not located within a Heritage Conservation Area, nor is it an Item of Environmental Heritage, it is located across the road from the **Birkenhead and Dawson Estates Conservation Area**.

Figure 19 on the following page provides an extract from the relevant LEP Heritage Map.

Figure 19 – Heritage Map



Source: City of Canada Bay LEP 2013 – Heritage Map

The relevant provisions within clause 5.10 are set out below:

5.10 Heritage conservation (5)

The consent authority may, before granting consent to any development:

- (a) on land on which a heritage item is located, or*
- (b) on land that is within a heritage conservation area, or*
- (c) on land that is within the vicinity of land referred to in paragraph (a) or (b)*

require a heritage management document to be prepared that assesses the extent to which the carrying out of the proposed development would affect the heritage significance of the heritage item or heritage conservation area concerned.....

A heritage management document has not been prepared. In consideration of the generally compliant bulk and scale of the proposed building and the fact that it is largely hidden behind the street front building is not considered to be necessary. The proposed building will be a neutral element, in the streetscape and will not have an adverse impact in terms of dominating the conservation area and the surrounding development.

The LEP also contains criteria for development on land affected by acid sulphate soils, such as the subject property. *Clause 6.1* states relevantly in part as follows.

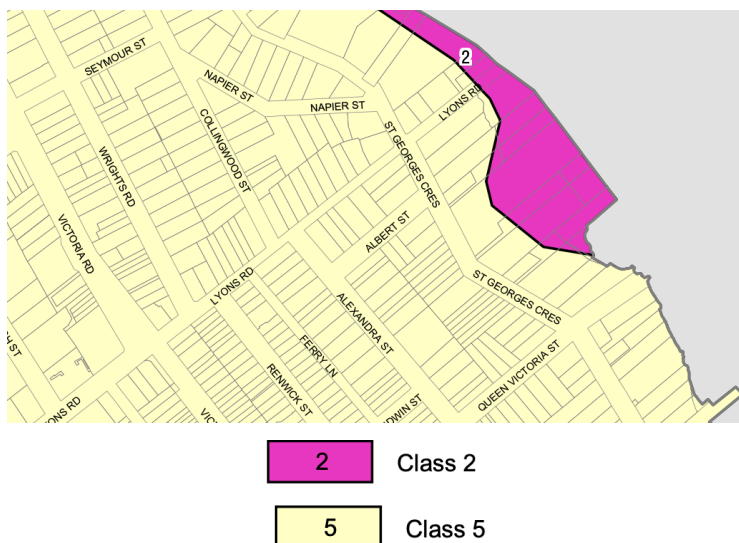
Acid sulfate soils

- (1) *The objective of this clause is to ensure that development does not disturb, expose or drain acid sulfate soils and cause environmental damage.*
- (2) *Development consent is required for the carrying out of works described in the Table to this subclause on land shown on the Acid Sulfate Soils Map as being of the class specified for those works, except as provided by this clause.*
- (3)

<i>(Class of land</i>	<i>Works</i>
<i>1</i>	<i>Any works.</i>
<i>2</i>	<i>Works below the natural ground surface.</i>
	<i>Works by which the watertable is likely to be lowered.....</i>
<i>5</i>	<i>Works within 500 metres of adjacent Class 1, 2, 3 or 4 land that is below 5 metres Australian Height Datum by which the watertable is likely to be lowered below 1 metre Australian Height Datum on adjacent Class 1, 2, 3 or 4 land.</i>

Figure 20 below provides the relevant extract from the Acid Sulphate Soils Map

Figure 20 – Acid Sulphate Map



Source: City of Canada Bay LEP 2013 – Acid Sulphates Map

The subject site incorporates *Class 2 land that is below 5 metres Australian Height Datum.*

The firm *ei Australia* has undertaken a preliminary site assessment of the ground conditions of the site. In the associated report, previously submitted with the DA, a number of references are made to the likelihood of acid sulcate soils on site, including the following:

Given that the proposed development involves demolition of site structures and modification to the natural ground surface; ASS is likely to be encountered during the works....

Soils observed during drilling, comprised silty sand fill overlaying natural sandstone bedrock. Visual indicators of actual acid sulfate soils (ASS)... were not observed....

The soil was unlikely to be potential acid sulfate soils...

In the conclusion the report states in part:

The site occurs in an area where potential or actual ASS may be encountered. However, soil assessment found a low potential for actual or potential acid sulfate soil within the proposed development footprint

The LEP also contains criteria for development on land affected by Terrestrial Biodiversity, such as the subject property. *Clause 6.3* states relevantly in part as follows.

6.3 Terrestrial biodiversity

(1) The objective of this clause is to maintain terrestrial biodiversity by:

- (a) protecting native fauna and flora, and*
- (b) protecting the ecological processes necessary for their continued existence, and*
- (c) encouraging the conservation and recovery of native fauna and flora and their habitats.*

(2) This clause applies to the following land:

- (a) land in Zone E2 Environmental Conservation,*
- (b) land identified as “Terrestrial Biodiversity” on the Terrestrial Biodiversity Map.*

(3) Before determining a development application for development on land to which this clause applies, the consent authority must consider:

(a) whether the development is likely to have:

(i) any adverse impact on the condition, ecological value and significance of the fauna and flora on the land, and

(ii) any adverse impact on the importance of the vegetation on the land to the habitat and survival of native fauna, and

(iii) any potential to fragment, disturb or diminish the biodiversity structure, function and composition of the land, and

(iv) any adverse impact on the habitat elements providing connectivity on the land, and

(b) any appropriate measures proposed to avoid, minimise or mitigate the impacts of the development.

(4) Development consent must not be granted to development on land to which this clause applies unless the consent authority is satisfied that:

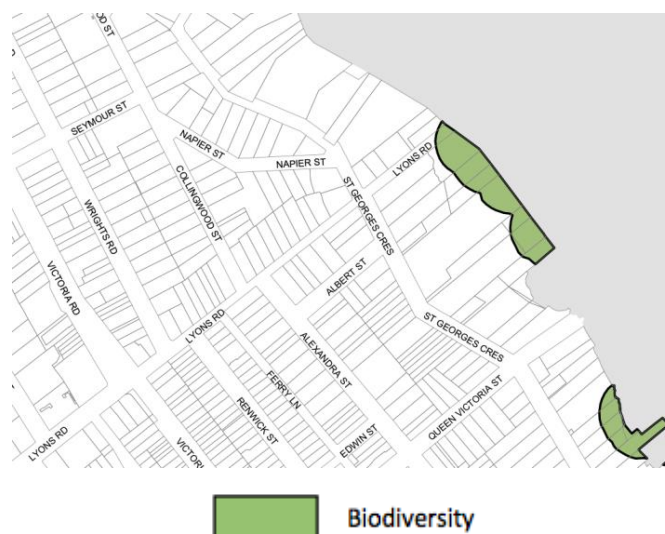
(a) the development is designed, sited and will be managed to avoid any significant adverse environmental impact, or

(b) if that impact cannot be reasonably avoided by adopting feasible alternatives—the development is designed, sited and will be managed to minimise that impact, or

(c) if that impact cannot be minimised—the development will be managed to mitigate that impact.

Figure 21 below is an extract from the Terrestrial Biodiversity Map.

Figure 21 – Terrestrial Biodiversity Map



Source: City of Canada Bay LEP 2013 – Terrestrial Biodiversity Map

Comment The proposal does not seek to do any building works on the foreshore, with the exception of renovations to the existing boathouse. These works do not involve any activity at or below the water line.

There are no existing trees on the site. In this context the proposal will not trigger any of the questions for Council's consideration under *Clause 6.3 (3)(a)* and *(b)* of the LEP, as set out above.

Clause 6.4 of the LEP states relevantly in part as follows.

6.4 Limited development on foreshore area

(1) The objective of this clause is to ensure that development in the foreshore area will not impact on natural foreshore processes or affect the significance and amenity of the area.

(2) Development consent must not be granted for development on land in the foreshore area except for the following purposes:

(a) the extension, alteration or rebuilding of an existing building wholly or partly in the foreshore area,

*(b) the erection of a building in the foreshore area, if the levels, **depth** or other exceptional features of the site make it appropriate to do so,...*

(3) Development consent must not be granted under subclause (2) unless the consent authority is satisfied that:

(a) the development will contribute to achieving the objectives for the zone in which the land is located, and

(b) the appearance of any proposed structure, from both the waterway and adjacent foreshore areas, will be compatible with the surrounding area, and

(c) the development will not cause environmental harm such as:

(i) pollution or siltation of the waterway, or

(ii) an adverse effect on surrounding uses, marine habitat, wetland areas, fauna and flora habitats, or

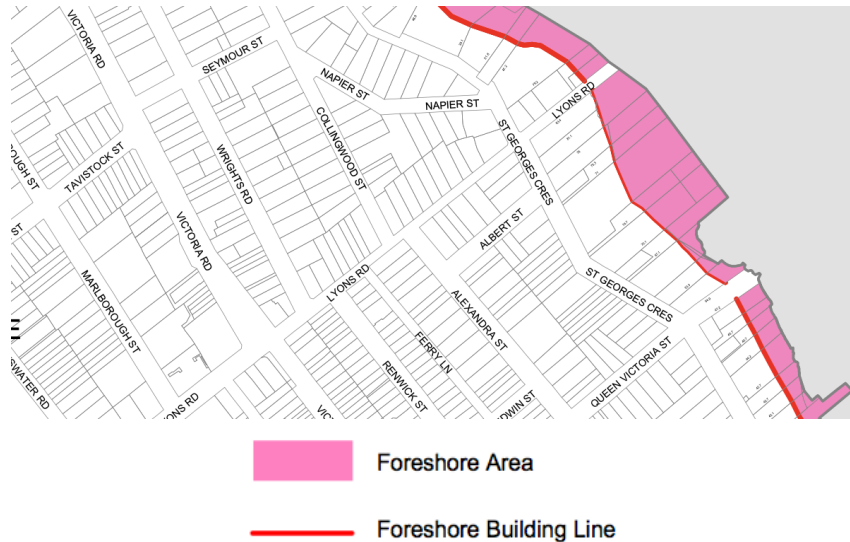
(iii) an adverse effect on drainage patterns, and

(d) the development will not cause congestion or generate conflict between people using open space areas or the waterway, and

- (e) opportunities to provide continuous public access along the foreshore and to the waterway will not be compromised, and*
 - (f) any historic, scientific, cultural, social, archaeological, architectural, natural or aesthetic significance of the land on which the development is to be carried out and of surrounding land will be maintained, and*
 - (g) in the case of development for the alteration or rebuilding of an existing building wholly or partly in the foreshore area, the alteration or rebuilding will not have an adverse impact on the amenity or aesthetic appearance of the foreshore, and*
 - (h) sea level rise or change of flooding patterns as a result of climate change has been considered.*
- (4) In deciding whether to grant consent for development in the foreshore area, the consent authority must consider whether and to what extent the development would encourage the following:*
- (a) continuous public access to and along the foreshore through or adjacent to the proposed development,*
 - (b) public access to link with existing or proposed open space*
 - (c) public access to be secured by appropriate covenants, agreements or other instruments registered on the title to land,*
 - (d) public access to be located above mean high water mark,*
 - (e) the reinforcing of the foreshore character and respect for existing environmental conditions.*
- (5) In this clause:*
- foreshore area means the land between the foreshore building line and the mean high water mark of the nearest natural waterbody shown on the Foreshore Building Line Map.*
- Foreshore building line means:*
- (a) the line that is landward of, and at the distance specified on the Foreshore Building Line Map from, the mean high water mark of the nearest natural waterbody shown on that map, or*
 - (b) if no distance is specified, the line shown as the foreshore building line on that map.*

The relevant extract from the LEP Foreshore Building Line map is included in *figure 22*.

Figure 22 – Foreshore Building Line Map



Source: City of Canada Bay LEP 2013 – Terrestrial Biodiversity Map

Comment As indicated on the amended plans the following components of the building are now proposed to be located beyond the foreshore building line (FBL):

- *Part of the basement car park;*
- *The private open space & swimming pool (recreation facility – outdoor) for the ground floor unit.*
- *The terraces for the units on levels 1 and 2.*
- *The existing boatshed renovated and re purposed for recreational use and associated swimming pool (recreation facility – outdoor), associated with the units on levels 1 and 2.*
- *Part of the basement.*

These variations to the FBL have been reduced from that originally proposed, with the building form now staggered and its extent lessened following as a result of discussions with Council following receipt of its RFI letter. These components of the proposal are minor and not detrimental to the objectives of the zone, nor will they *impact on natural foreshore processes or affect the significance and amenity of the area.*

Clause 6.4 (2) states that *“Development consent must not be granted for development on land in the foreshore area except for the following purposes:”*

Sub clause 2(b) states “*(b) the erection of a building in the foreshore area, if the levels, depth or other exceptional features of the site make it appropriate to do so,*”

The matter of the depth of the site has been addressed in the original Statement of Environmental Effects (SEE) and it again needs to be noted that the site has a depth of more than 140m from St Georges Crescent, clearly complying with one of the exceptions to the standard, as contained in *sub clause (2)(b)* above. Regarding the question of “*other exceptional features of the site*”, two additional matters also need to be considered.

Firstly, the subject site is a battle axe allotment, meaning that the street side portion of the land is not available for construction, apart from a driveway. This effectively removes over 36m lineal distance of the site, which can be built on. The impact of this issue is that the foreshore building line as set back from the waterway, substantially reduces the area of the site available for a building footprint. If the site was a normal rectilinear allotment this issue would not arise and thus creates an exceptional feature of the property.

Secondly, the subject site consists of two allotments of land, being lot 2 in DP11056 (the battle axe lot) and lot 1 in DP 579151. The second lot is located east (waterside) of the battle axe lot and much of its area is forward of the foreshore building line. The impact of the foreshore building line on this lot, is that it effectively sterilises its redevelopment. This is despite the fact that this particular land is already the subject of a tennis court, boat house and slipway.

The matters for consideration contained in *sub clause 3* have all been the subject of discussions between Council’s and the applicant’s experts. Decisions on ground levels, flooding avoidance and sea level rise have all been arrived at with the relevant reports / plans to be provided to Council.

It is interesting to note, that most of those matters have nothing to do with any potential impact(s) of the building being located partially forward of the FBL. The primary potential impact would arise if the variation created unreasonable view sharing impacts, which the *Lamb report* clearly indicates it does not.

However, for the purposes of assisting in the consideration of the matters to be reviewed by Council under clause 6.4(3) of the LEP, the following comments are provided.

the development will contribute to achieving the objectives for the zone in which the land is located, and

Comment: An assessment of the proposal's conformity with the relevant zone objectives has been undertaken earlier in this section of this report and the proposal found to be satisfactory.

the appearance of any proposed structure, from both the waterway and adjacent foreshore areas, will be compatible with the surrounding area, and

Comment: Such an assessment must also consider the compatibility of the proposal with its surroundings, in terms of the parameters laid out in the matter of *Project Venture Development Pty Ltd v Pittwater Council* by the L & E Court. In this sense the proposed use is permissible within the relevant zoning, while in terms of its proposed height it provides a transition from the 4 – 5 storey buildings to the north of the site and the 2 – 3 storey residential flat buildings to the south.

When viewed from the Parramatta River, the minor incursion into the FBL will be imperceptible bearing in mind the substantial setback of the building from the foreshore (over 60m). This contextual position is further strengthened in light of the light - weight structure, reduced depth and appearance of the water side terraces on levels 1 and 2.

(c) the development will not cause environmental harm such as:

(i) pollution or siltation of the waterway, or

(ii) an adverse effect on surrounding uses, marine habitat, wetland areas, fauna and flora habitats, or

(iii) an adverse effect on drainage patterns, and

Comment: As indicated previously in **section 3.4 of this report**, this matter has been considered as part of the latest stormwater assessment undertaken by the applicant's Civil (stormwater) Engineering consultants in negotiations with Council's Engineers. The system as now designed and agreed includes stormwater catching and release to the river in controlled flows, with the proposed system incorporating cleansing devices to ensure that the released water is clean.

(d) the development will not cause congestion or generate conflict between people using open space areas or the waterway, and

Comment: With only three units within the proposal any associated traffic movements will not generate any conflicts with the use of the waterway or nearby public spaces.

(e) opportunities to provide continuous public access along the foreshore and to the waterway will not be compromised, and

Comment: There is no public access to the properties on either side of the subject land and therefore no such access can be provided as part of this proposal. This matter was previously addressed in **section 3.4 of this report.**

(f) any historic, scientific, cultural, social, archaeological, architectural, natural or aesthetic significance of the land on which the development is to be carried out and of surrounding land will be maintained, and

Comment: The site has no significance in the areas set out in the clause.

(g) in the case of development for the alteration or rebuilding of an existing building wholly or partly in the foreshore area, the alteration or rebuilding will not have an adverse impact on the amenity or aesthetic appearance of the foreshore, and

Comment: This clause is not applicable to the subject proposal.

(h) sea level rise or change of flooding patterns as a result of climate change has been considered.

Comment: These matters have been discussed and agreed between the Council's Engineers and the applicant's consultant (Horton Coastal Engineering) with appropriate ground levels determined, a flood barrier proposed forward (foreshore side) of the building, with associated facilities to drain any floor waters.

In general terms, while the level 1 and 2 balconies are slightly forward of the Foreshore Building Line (FBL), the proposal remains well set back from the foreshore (over 60m), with landscaping and permissible structures closest to the waterfront. The basement has an element forward of the FBL but is wholly located below the ground. In this context neither of these components are likely to negatively impact on the visual quality of the Harbour.

The foreshore frontage is well landscaped, and provides soft landscaping, swimming pools, recreational areas and access to the waterfront and existing slipway. The site depth of more than 140m from St Georges Crescent, achieves one of the exceptions to the standard, as contained in *sub clause (2)(b)* above. The setback of over 60m from the foreshore, provides considerable relief from

the built form when viewed from the water. The proposed building also provides a transition between the existing buildings on either side of it, both in terms of height and length.

In view of all of the above, the minor encroachment is considered acceptable, and the proposal will not compromise any of the criteria contained in *Clauses 6.4 (3) or (4)* of the *LEP*.

There are no other provisions of the LEP applicable to the subject proposal.

3.5 City of Canada Bay Comprehensive DCP – Part E Residential Development.

The provisions of *Part E* of the *City of Canada Bay Comprehensive DCP* affect the proposed development. *Section E2.2* of the DCP contains criteria to be considered in relation to development near to the foreshore. The provisions and comment thereon are as follows

E.2.2 Harbour foreshore development and foreshore access

Objectives

- O1 To recognise, protect and enhance the natural, scenic, environmental, cultural and heritage qualities of the foreshore of the City of Canada Bay.*
- O2 To ensure the Parramatta River foreshore is developed and promoted as a community asset in public ownership or with unrestricted public access.*
- O3. Sydney Harbour is to be recognised as a public resource, owned by the public, to be protected for the public good:*
 - The public good has precedence over the private good whenever and whatever change is proposed for Sydney Harbour and its foreshores.*
 - Protection of the natural assets of Sydney Harbour has precedence over all other interests.*
 - The public good includes but is not restricted to the existing views, vistas and amenity available from the public and private domain.*

Comment: Public access to the foreshore is **not** available on the subject site or widely in this area. Most of the properties in the precinct are protected by sea walls with no “*beach*” access at low tide. The only works proposed at / near the foreshore are the renovation of the existing boatshed. These works will not impact on the public good nor the general opportunity for the enjoyment of the river by the public. These matters have been considered in the design phase of the project and the proposal will not compromise any of these objectives

Controls

- C1. Building forms should follow the natural topography and maintain and enhance vegetation cover as viewed from the Parramatta River. For example, buildings are not to be cantilevered.*

Comment: The proposal will be sited in approximately the same location as the existing dwelling and is of a similar height and scale. The proposal seeks to vary the foreshore building line as discussed previously in **section 3.5 of this report**, however, the extensive separation (over 60m) of the building from the waterfront reduces its obviousness and scale when viewed from the river.

C2. Roof lines should be below the tree canopy backdrop to maintain the importance of any tree line.

Comment: The height of the proposal is generally within the relevant LEP height criteria, with its flat roof form reducing its impact and allowing the overall structure to sit well in its foreshore topography. The proposal will be well below the height of the building immediately to its north.

C3. Buildings should be designed and constructed to present a recessive appearance when viewed from the Parramatta River through the use of materials, colours, wall articulation, building form and landscaping. Glass elevations and excessive use of windows resulting in reflectivity and glare will not be permitted.

Comment: These matters have been addressed in the design phase of the project, with the proposed building located well back from the foreshore in a recessive manner, presenting as a much more modest structure than the neighbouring Senior's living development to its north. The amended design provides a more recessive appearance through the use of glass balustrading and the breaking up of the long facades.

C4. Pergolas, boatsheds and other structures are to be designed and constructed to complement the overall appearance of the development. Such structures are to be no more than one storey in height.

Comment: The existing boatshed to be retained and repurposed as a cabana.

C5. Swimming pools and spa pools constructed within the foreshore setback are to have no more than 300mm of the pool wall visible above existing ground level.

Comment: The two proposed pools will be at ground level.

C6. Swimming pool and spa pool walls are to be suitably treated to complement the natural foreshore and where visible, are to be sandstone and to incorporate suitable screen landscaping.

Comment: The pool fences, will be of a glazed finish with appropriate landscape treatments and will therefore complement the foreshore setting.

C7. Boundary fences are not permitted within 8.0 metres of the mean high water mark.

Comment: The only proposed fences within 8m of the foreshore relate to the securing of the swimming pools and the protection from potential sea level rise.

C8. Retaining walls are to have a maximum height of 500mm.

Comment: The existing retaining walls are to be maintained and refurbished as required.

C9. Hard surfaces and artificial surfaces, such as paving, within the Foreshore Building Line Area must be limited to swimming pool surrounds or modest walkways between the residential building and foreshore structures such as swimming pools or boat ramps.

Comment: The proposal will satisfy these requirements.

C10. Mature trees or significant landscaping are not to be removed to locate foreshore structures.

Comment: There are no significant trees within the foreshore area.

C11. Any development on the foreshore should:

- a) Enhance the existing flora of the allotment;*
- b) Where appropriate, include native trees which will be 12 metres or greater at maturity; and*
- c) Avoid introduced species known to seed freely or spread easily.*

Comment: The existing landscaping of the site will be enhanced as per the proposed landscape plan.

The remaining controls in [Section E2.2](#) relate to the protection of the natural foreshore and foreshore public access. Neither of these issues are relevant to the subject site or proposal, as the foreshore is already built - upon and public access is unavailable along the full length of this street block.

Section E3 of the DCP contains general numerical standards applicable to new dwellings. *Table 1* below outlines those standards and the proposal's level of compliance therewith.

<u>TABLE 1 – DCP COMPLIANCE</u>			
<u>Control</u>	<u>Standard</u>	<u>Proposed</u>	<u>Compliance</u>
Minimum frontage	4m	3.05m	N/A
	20m	15.75	Existing Lot
Site area	450m ²	1674m ²	Yes
FSR	N/A (see LEP)		N/A
Site Coverage	40%	20%	Yes
Density	Site Area – min 690m ²	1674m ²	Yes
Front Setback	4.5m or prevailing street setback	N/A Battle Axe block	N/A
Side Setbacks	5m	Zero, 1.4m– 3m	No (See 3.5.1)
Rear Setback	6m	>6m	Yes
Height	Max Two Storeys	Three Storeys	No See 3.5.2
Private Open Space	40m ² per ground floor dwelling	Min 291m ²	Yes
	10m ² per upper floor dwelling	Min 198.2m ²	Yes
	Min dimension 5m		
Landscaped Area	360m ²	475.5 m ²	Yes
Resident Parking	Min 5.2 spaces incl Visitors	10 spaces	Yes

The proposal therefore complies with the majority of the numerical DCP standards with the non-compliances discussed in *Sections 3.5.1 – 3.5.2* below.

3.5.1 Side Setbacks

The ground floor of the proposed building incorporates side setbacks of 1.4m – 3m, except for the car lift which is located on the boundary. While these setbacks are less than the DCP requirements, the variations in this instance are considered acceptable on the following basis:

- The subject site is a battle axe allotment of a maximum width of less than 16m only. There is no opportunity to enlarge the site, due to the strata and senior 's housing developments on either side of it. In this context the lesser side setbacks are reasonable, particularly in consideration of the built form of the adjoining buildings and the location of openings within the subject proposal.
- The adjoining residential flat building to the south has its driveway along the full length of this boundary with the upper habitable floors well above the level of the ground floor of the proposed building. The units of that development that face the foreshore at ground level are not affected by the location of the proposed building. As such the separation between the existing and proposed buildings are substantial and satisfactory.
- There are no windows in the car lift section of the southern elevation of the proposed building and it is approximately six metres in length, only.
- The upper side setbacks range from a minimum of 1.5m up to 3m, which together with the points made above creates adequate building separation and sufficient space for the movement of air and obtaining of light between the sites.

3.5.2 Height

The DCP remains subservient in planning terms to the LEP, which sets a maximum height limit of 8.5m, (with which the proposal generally complies), while also including a maximum height control of 2 storeys. However, *Section 3.43(5)* of the *Environmental Planning and Assessment (EP&A)*, deals with such circumstances and states as follows:

(5) A provision of a development control plan (whenever made) has no effect to the extent that:

- (a) it is the same or substantially the same as a provision of an environmental planning instrument applying to the same land, or*
- (b) it is inconsistent or incompatible with a provision of any such instrument.*

As the LEP sets the maximum height limit at 8.5m, the DCP restriction in height (in storeys) may be inconsistent with that provision and therefore in accordance with subsection (5)(b) above, has no effect., notwithstanding that the proposal contains only 3 storeys. The lowest level of the proposed

building is categorised as a basement, being no more than 1m above existing ground level. In this context the proposed height is acceptable

This matter is further discussed within a separate report under *Clause 4.6* of the LEP, which considers the minor variation to the 8.5m LEP height limit proposed.

DCP Conclusion

In view of the discussion above, the departures from the DCP are considered reasonable in this instance and the variation in those standards is unlikely to set an undesirable precedent.

4. SECTION 4.15 ASSESSMENT

The matters to be considered in the assessment pursuant to *Section 4.15* of the *Environmental Planning and Assessment Act, 1979* are:

(d) the provisions of:

- (i) any environmental planning instrument, and*
- (ii) any proposed instrument that is or has been the subject of public consultation under this Act and that has been notified to the consent authority (unless the Director-General has notified the consent authority that the making of the proposed instrument has been deferred indefinitely or has not been approved), and*
- (iii) any development control plan, and*
- (iiia) any planning agreement that has been entered into under section 7.4, or any draft planning agreement that a developer has offered to enter into under section 7.4, and*
- (iv) the regulations (to the extent that they prescribe matters for the purposes of this paragraph), that apply to the land to which the development application relates,*
- (b) the likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality,*
- (c) the suitability of the site for the development,*
- (d) any submissions made in accordance with this Act or the regulations,*
- (e) the public interest.*

5.1 Environmental Planning Instruments

The proposed development is subject to the provisions of

- *State Environmental Planning Policy (SEPP) No. 55 – Remediation of Land;*
- *State Environmental Planning Policy (SEPP) No. 65 – Design Quality of Residential Apartment Development;*
- *State Environmental Planning Policy (Building Sustainability Index (BASIX) 2004;*
- *Sydney Regional Environmental Plan (Sydney Harbour Catchment) 200; and*
- *Canada Bay Local Environmental Plan (LEP) 2013.*

It is permissible in the relevant land and water - based zones with the consent of Council. The relevant objectives of the LEP zone have been satisfied as indicated earlier in this report.

5.2 Any Proposed Instruments

There are no draft Environmental Planning Instruments relevant to the subject site or proposal.

5.3 Development Control Plans

The proposed development is subject to the provisions of the *City of Canada Bay Comprehensive DCP* and is generally compliant with the relevant provisions. Any proposed variations have been discussed in a previous section of this report and are considered to be acceptable.

5.4 Any Planning Agreement or draft under Section 7.4 of the Act

There is no draft or finalised Planning Agreement under Section 7.4 of the Act, relevant to the subject site and/ or current proposal.

5.5 Matters prescribed by the Regulation

Beyond *Part 6 - Procedures relating to Development Applications*, there are no matters prescribed by the Regulation that are relevant to the proposed development.

5.6 Likely Impacts

The proposal is permissible within the relevant land use zone. It will not result in any diminution of the area's amenity nor create any adverse environmental impacts.

5.7 Suitability of the Site

The current proposal seeks to replace an existing older dwelling with a contemporary medium density development within a similar scale to the developments nearby, with the exception of the much larger seniors living development immediately to the north. The proposal is permissible within the relevant land use zone, with the suitability of the site to accommodate this form of activity being previously determined.

5.8 Submissions made in accordance with the Act or the Regulations

There are no submissions available at this stage.

5.9 Public Interest

The public interest is served in circumstances where a proposed development results in an improved design outcome that enhances the built form and amenity of a locality.

6. CONCLUSION

The proposal is permissible, with Council's consent, under the terms of the *Canada Bay LEP*. It conforms to the relevant objectives and provisions of that Plan and the objectives and controls within the *Canada Bay Comprehensive Development Control Plan*.

The development represents an appropriate design response to the opportunities and constraints offered by the site and will be compatible and consistent with the existing and desired future character of this locality. The proposal will not have any unreasonable impact on the amenity enjoyed by the residents of adjoining and nearby properties.

Approval of the development will serve the public interest on the following grounds:

- *the improved use of the existing physical and social infrastructure of the area;*
- *the provision of additional housing opportunities and improved built form outcomes without any adverse environmental effects;*
- *the proposal's consistency with the principles of urban consolidation leading to the more efficient use of community infrastructure; and*
- *the employment opportunities during the construction phase of the development.*

The proposal is in conformity with the statutory heads of considerations contained in Section 79C of the *Environmental Planning and Assessment Act 1979*.

Accordingly, the application is considered to be suitable for approval.

David Furlong - BTP, MPIA

Director