

<b>JRPP No:</b>	<b>2010SYE011</b>
<b>DA No:</b>	<b>DA10/0076</b>
<b>PROPOSED DEVELOPMENT:</b>	Demolition of existing residential flat building and construction of a new residential flat building with strata subdivision 12 Ozone Street, Cronulla - Lots 1-11, SP 831 & Lots 12-13, SP 66933
<b>APPLICANT:</b>	Presflow Pty Ltd
<b>REPORT BY:</b>	Carolyn Howell, Assessment Officer Planner Sutherland Shire Council (02) 9710 0841

## Assessment Report and Recommendation

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### 1.0 EXECUTIVE SUMMARY

#### 1.1 Reason for Report

Pursuant to the requirements of State Environmental Planning Policy (Major Development) 2005, this application is referred to the JRPP as the subject site is located within the coastal zone and involves a building that is greater than 13m in height, which fails to comply with the applicable development standard relating to height.

#### 1.2 Proposal

This application is for the demolition of an existing residential flat building containing twelve (12) units and the construction of a new residential flat building containing six (6) units with strata subdivision at the above property.

#### 1.3 The Site

The subject site is located on the eastern side of Ozone Street, Cronulla. The site runs east-west between Ozone Street and The Esplanade.

#### 1.4 The Issues

The main issues identified are as follows:

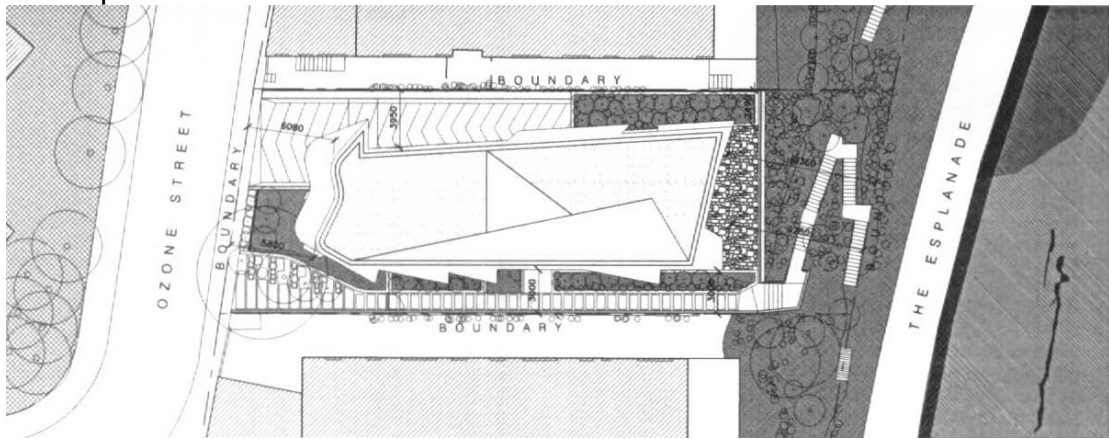
- Height
- Landscaped area
- Setbacks
- Impact on heritage listed cliff
- View loss
- Privacy

## 1.5 Conclusion

Following detailed assessment of the proposed development the current application is not considered worthy of support, and should be refused for the reasons outlined in this report.

## 2.0 DESCRIPTION OF PROPOSAL

The proposed development is for the demolition of an existing building and the construction of a six (6) storey residential flat building containing a single unit on each level. The application includes strata subdivision of the development.



Site plan showing the proposed development

From "Ozone Street" pedestrian access to the development is adjacent to the southern boundary and from "The Esplanade" the site is accessed via a set of stairs ascending the cliff. The pedestrian entrance into the building is located towards the centre of the site.

Vehicular access to the site is from "Ozone Street" and is located along the northern boundary. At the property boundary the driveway is 6.6 metres wide and narrows to 3.2 metres wide at the entrance to the basement. There is sufficient room for two way vehicular movement on the western end of the driveway. The basement car park provides parking for thirteen (13) vehicles over two (2) split levels. In addition, storage is provided adjacent to parking spaces No.6 and No.12.

Each level can be described as follows:

### Ground Level:

At the ground level is the lobby area for the entire development and one (1) unit. The unit at this level contains three (3) bedrooms, two (2) with ensuites; a separate bathroom; laundry; kitchen; dining and living area. This unit is a total of 152m<sup>2</sup> internally and also contains a large terrace at the eastern end, which is approximately 700mm above the existing terrace on the site.

#### Level 1:

The unit located on level one (1) of the development contains three (3) bedrooms, each with ensuites; a separate toilet; laundry; kitchen; dining and living area. The unit also has an internal “winter garden” space with an external brass operable screen and terraces on both the eastern and western ends of the development. Internally the unit has a total area of 186m<sup>2</sup>.

#### Levels 2 & 3:

Levels two (2) and three (3) contain an identical floor plan. As with level one(1) the units on level two (2) and three (3) contain three (3) bedrooms, each with ensuites; a separate toilet; laundry; kitchen; dining and living area. The unit also has an internal “winter garden” space with an external brass operable screen and terraces on both the eastern and western ends of the development. Internally each of these units has an area of 186m<sup>2</sup>.

#### Level 4:

Level four (4) of the development has the same floor plan as the two (2) levels below with the exception of the configuration of the western balcony and western-most bedroom. This unit has a total internal area of 189m<sup>2</sup>.

#### Level 5:

Level five (5) of the development is similar to level four (4) below, however there is no western balcony. This unit has an internal area of 189m<sup>2</sup>.

### 3.0 SITE DESCRIPTION AND LOCALITY

The subject site is known as 12 Ozone Street Cronulla. The site has frontage to the public walkway, known as the Esplanade, and Bate Bay beyond. The site is slightly irregular in shape with an approximate width of 15m and depth of 43m. The site has a total area of 645m<sup>2</sup>.



Existing building on 12 Ozone Street (red brick in centre). Looking west.







Aerial Photograph

## 4.0 BACKGROUND

A history of the development proposal is as follows:

- A pre-application discussion (PAD) was held on 23 December 2008 regarding this development site. As a result of this a formal letter of response was issued by Council dated 20 January 2009. A full copy of the advice provided to the Applicant is contained within Appendix A of this report. It should be noted that no plans were presented to Council at this meeting and that this meeting was not held with the current architects.
- A pre-application meeting with Council's Architectural Review Advisory Panel (ARAP) was held on 19 February 2009. As a result of this a formal copy of ARAP's report was forwarded to the applicant on 5 March 2010. A full copy of ARAP's report is provided within Appendix B of this report. Again, it should be noted that this meeting was not held with the current architects.
- A pre-application meeting with Council's ARAP was held on 10 December 2009. As a result of this a formal copy of ARAP's report was forwarded to the applicant on 22 December 2010. A full copy of ARAP's report is provided within Appendix C of this report. This meeting was held with the current architects in relation to the current architectural scheme.
- The current application was submitted on 1 February 2010.

- The application was considered by Council's ARAP on 11 February 2010.
- The application was placed on public exhibition with the last day for submissions being 24 February 2010.
- An information session was held with concerned residents on 17 February 2010.
- Council wrote to the applicant on 2 March 2010 requesting additional information and attaching a copy of the ARAP report.
- The Sydney East JRPP were briefed on the application on 11 March 2010.
- The applicant wrote to Council requesting additional time to prepare revised documentation on 12 March 2010.
- Council Officers met with the applicant and their architect on 1 April 2010 to discuss the revised documentation. At this meeting it was agreed that revised plans and documentation would be lodged with Council by 9 April 2010.
- Revised plans and additional information were lodged with Council on 15 April 2010.
- The revised plans and documentation were placed on public exhibition with the last day for submissions being 6 May 2010.
- Council Officer's contacted the applicant via email on 22 April 2010 informing them that there was still outstanding information that has not been lodged including a revised landscape plan and geotechnical engineers report.
- Council Officer's contacted the applicant via phone on 28 April 2010 following up on the email request of the 22 April 2010.
- A geotechnical report and revised photomontages were lodged with Council on 3 May 2010.
- A revised landscape plan was submitted to Council on 13 May 2010.
- A complete copy of the survey report was lodged with Council on 19 May 2010.
- The applicant lodged revised plans with Council after 4:30pm on 11 June 2010 requesting that these plans be reported to the JRPP.
- Council Officers informed the applicant on 16 June 2010 that the revised plans would not be considered as one (1) working day was an insufficient timeframe for Council Officer's to revise its assessment report to the JRPP.

## **5.0 ADEQUACY OF APPLICANT'S SUBMISSION**

In relation to the Statement of Environmental Effects, plans and other documentation submitted with the application, or after a request from Council, the applicant has provided inadequate information to enable a thorough assessment of this application. The application includes SEPP 1 Objections requesting a variation to the development standards for landscaped area and height, however the following information is missing from the application or inadequate:

- The geotechnical report failed to provide any firm recommendations or conclusions in relation to likely impact of the proposed works on the stability of the cliff.
- Insufficient detail has been provided in relation to louvers and shutters to enable an assessment of their utility.
- The plans fail to delineate setback lines including side boundary setbacks and the development standard for height.

In addition the timing of the applicant's submission should also be noted. Council requested additional information on 2 March 2010 and the information was submitted in a piecemeal manner, with the final piece of requested information lodged on 13 May 2010 (a time lapse of 72 days). Such delays in the lodgement of critical information significantly impacted on the length of the assessment process.

## **6.0 PUBLIC PARTICIPATION**

The application was advertised in accordance with the provisions of Chapter 12 of Sutherland Shire Development Control Plan 2006 (SSDCP 2006).

Adjoining or affected owners were notified of the proposal. The application was publicly exhibited on two (2) separate occasions. In response to the first round of public exhibition submissions were received from nine (9) households. In response to the second round of public exhibition submissions were received from six (6) households.

A full list of the locations of those who made submissions, the date/s of their letter/s and the issue/s raised is contained within Appendix D of this report.

The issues raised in these submissions are summarised as follows:

### **6.1 Insufficient car parking**

Concern was raised in two (2) submissions that insufficient car parking is provided for this style of development.

Comment: The proposed development provides a total of thirteen (13) car parking spaces within the basement. Council's DCP states that a maximum of nine (9) resident car parking spaces and two (2) visitor spaces should be provided. Given that the proposal exceeds Council's maximum DCP controls the argument that there is insufficient car parking provided on site is not supported.

### **6.2 Concern about Impact on views**

View loss has been raised as an issue by many people who made submissions.

Comment: This matter is addressed in the assessment section of this report.

### **6.3 Concern about the impact on privacy**

Privacy is an issue raised by several people who made submissions.

Comment: This matter is addressed in the assessment section of this report.

#### 6.4 Concern about the construction process

Concern has been raised in relation to the impact of the construction on the surrounding properties.

Comment: Construction on this site is likely to be inconvenient for the residents of the surrounding sites because of the narrow streets and limited on-street car parking. Appropriate conditions of development consent would seek to minimise the impact of the construction process and this matter could not be a reason for refusing the application.

#### 6.5 Concern about the impact of the proposed excavation

Concern has been raised in relation to the impact of the excavation on adjoining properties and on the cliff.

Comment: The impact of the excavation on adjoining properties could be appropriately managed with conditions including requirements for dilapidation reports and the presence of a geotechnical engineer on site during excavation. The concern about the impact of the excavation on the cliff face is dealt with in the assessment section of this report.

#### 6.6 Concern about the lack of landscaped area

Concern was raised about the lack of landscaped area provided for the development.

Comment: The proposed development fails to comply with the development standard for landscaped area and this matter is addressed in the assessment section of this report.

#### 6.7 Concern about the height of the development

Concern has been raised about the height of the development.

Comment: The proposed development fails to comply with the development standard for height contained within SSLEP 2006. This matter is addressed in the assessment section of this report.

#### 6.8 Concern about shadow impact

Concern has been raised about the shadow impact on adjoining properties, rock pools and the Esplanade.

Comment: This matter is addressed in the assessment section of this report.

#### 6.9 Concern about the lack of setback from the cliff

Concern has been raised about the lack of setback to the cliff.

Comment: This matter is addressed in the assessment section of this report.

#### 6.10 Concern about the notification process

Concern was raised that individual owners of units were not notified of the development.

Comment: The application has been publicly exhibited on two separate occasions. On each of these occasions the application was notified in accordance with the provisions of SSDCP 2006. It is Council's policy to notify the owner's corporation of each strata development and not the individual unit owners.



### 6.11 Concern that the site is being overdeveloped

Concern has been raised that the proposal results in an overdevelopment of the site.

Comment: The proposal fails to comply with a number of important development controls which results in an unacceptable impact on the locality.

## 7.0 STATUTORY CONSIDERATIONS

The subject site is located within Zone 6 – Multiple Dwelling B pursuant to Sutherland Shire Local Environmental Plan 2006 (SSLEP 2006). The proposed development, being a residential flat building, is permissible with development consent.

The following Environmental Planning Instruments (EPIs), Development Control Plans (DCPs), Codes or Policies are relevant to this application:

- State Environmental Planning Policy No. 1– Development Standards (SEPP 1)
- State Environmental Planning Policy No.65 – Design Quality of Residential Flat Development
- State Environmental Planning Policy No.71 – Coastal Protection (SEPP 71)
- State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004
- State Environmental Planning Policy (Major Development) 2005
- Sutherland Shire Local Environmental Plan 2006 (SSLEP 2006)
- Sutherland Shire Development Control Plan 2006 (SSDCP 2006)

The subject site also contains a heritage item, being the sandstone cliff, and adjoins the heritage listed pedestrian walkway known as the Esplanade pursuant to SSLEP 2006.

## 8.0 STATEMENT OF COMPLIANCE

The statement of compliance below contains a summary of applicable development standards and controls and a compliance checklist relative to these:

STANDARD	REQUIREMENT	PROPOSAL	COMPLIES?
Height SSLEP 2006	Max 4 Storeys to Ozone St Max 6 Storey to The Esplanade	6 Storeys	No
Floor Space Ratio SSLEP 2006	1.8:1	1.7:1	Yes
Landscaped Area SSLEP 2006	40%	22% (applicant) 20% (council)	No
Allotment :- size width	1800sqm 30m	645m <sup>2</sup> 15m	No *applicant seeks exception through clause 41(6) of SSLEP 2006
Setbacks:- The Esplanade Northern side	6m from cliff edge 4m	6.4m from boundary 2m	No No

STANDARD	REQUIREMENT	PROPOSAL	COMPLIES?
Southern side Ozone St	4m 4m street level 8m second level & above	2m 4m 5m	No Yes No
Site Coverage	Max 40%	45%	No
Open space:- Common  Private	Min 100sqm area Min 10m wide Min 12 sqm area Min 2.5m wide	None None >12m <sup>2</sup> >2.5m	No No Yes Yes
Apartment:- Internal height Room size Total size	Min 2.7m Min 3m width Min 130sqm	achievable >3m >130	Yes Yes Yes
Building Depth	Max 18m	<18m	Yes
Ventilation:- Cross ventilation Kitchen	Min 60% of dwgs 25% w a window	Yes	Yes
Solar access:- Open space  Adjoining property	Direct sun 10am- 2pm No greater than 1/3 of existing sunlight lost between 9am – 3pm	Yes  Complies	Yes  Yes
Adaptable dwelling	20% of units = 2 required	2	Yes
Car parking:- Resident Visitor	Max 1.5 spaces/dwg = 9 1 space/5 dwellings = 2	12 resident  1 visitor	No  No
Bicycles:- Resident Visitor	1 per 5 units (2) 1 per 10 units (1)	1 1	No Yes
Storage:- Area Size	1sqm per unit 6m <sup>3</sup>	Some storage shown, unclear how it would be allocated	unsure

## 9.0 SPECIALIST COMMENTS AND EXTERNAL REFERRALS

The application was referred to the following internal and external specialists for assessment and the following comments were received:

### 9.1 NSW Office of Water

As the applicant lodged this application as “Integrated Development”, Council referred the application to the NSW Office of Water who have subsequently advised that for the purposes of the Water Management Act 2000 a Controlled Activity Approval is not required. The application is no longer considered to be an integrated development application.

### 9.2 Department of Planning

Pursuant to the requirements of clause 9(1)(c) of State Environmental Planning Policy No. 71 – Coastal Protection (SEPP 71) the application was referred to the Department of Planning. The Department advised by letters dated 9 March 2010 and 4 May 2010 that they do not require any additional

matters to be taken into consideration apart from those matters identified within clause 8 of SEPP 71.

Further, clause 18 of SEPP 71 requires that the consent authority must not grant consent to the subdivision of land unless the Minister has adopted a master plan or the Minister has waived the need to prepare a master plan because of the nature of the development involved. The applicant has applied for a waiver, and the Department of Planning has advised that one has been granted.

### 9.3 Architectural Review Advisory Panel (ARAP)

Council's Architectural Review Advisory Panel considered this application on 11 February 2010. The report provided by ARAP is on the plans that were originally submitted to Council, which have subsequently been revised. A full copy of the report from ARAP is contained within Appendix E, however in conclusion this report noted the following:

*"The proposal is considered to have the potential to be a very good contemporary building of an appropriate scale and density. However further site investigation, design development and detail design is required to realise this potential. Acknowledging the quality of the building design, it must also be appropriate for its site and location. In particular, the proximity of the building to the cliff and that relationship to other sites could be an issue. The landscape quality of the cliff must be respected and not dominated by the building. Structurally, the cliff must not be endangered.*

*The current documentation is lacking in sufficient detail to fully assess the impact of the building and overall success of the development."*

Following receipt of revised plans the application was not referred back to Council's ARAP, instead Council's internal architect provided comments on the revised scheme.

### 9.4 Council's Architect

Council's internal Architect reviewed the revised proposal together with the comments made by ARAP. A full of copy of this internal report is provided in Appendix F, in conclusion this report stated:

*"The extent of information available in relation to the heritage cliff face is limited due to the numerous existing structures concealing the cliff face. It is therefore recommended that a prudent approach is taken with the design of the building that will provide the best opportunity to maintain the heritage cliff face and present the building to the Esplanade in an appropriate manner. The basement should be set back further from the cliff face.*

*Further development of the basement and car park entry is recommended to improve the proposal's presentation to the street and enhance vistas down to the ocean in addition to improving opportunities to maintain the heritage cliff face. Further detail information of façade treatment is also required.*

*As previously stated by ARAP the proposal remains potentially a very good contemporary building of an appropriate scale and density. The proposal would be supported (architecturally) pending incorporation of the suggested developments to the basement / boundary treatments and further detail information of the façade treatment.”*

#### 9.5 Heritage Architect

As the subject site contains the heritage listed cliff face, Council's internal Heritage Architect was asked to comment on the proposal. Comments were provided following an assessment of the applicant's submission, including their Heritage Impact Statement. A full copy of this internal report is provided in Appendix G. In summary Council's internal Heritage Architect did not support the proposal and following points should be noted:

- The proposed removal of the existing unsympathetic structures from the cliff face and weeds is highly recommended.
- The impact of the new works is not supported as there is insufficient evidence to refute the possibility that the works will destabilise the cliff face; the impact of the required retaining wall is unacceptable; and it is believed that the proposed works will overpower the visual setting of the Esplanade.

#### 9.6 Engineering

Council's Development Engineer has undertaken an assessment of the application and advised construction management; stormwater management; car parking and road frontage works could be dealt with via suitable conditions of development consent. However, significant concern has been raised in relation to the extent of excavation and its proximity to the cliff. For this reason the application is not supported. A full copy of this internal report is provided in Appendix H.

#### 9.7 Building

Council's Building Surveyor has undertaken an assessment of the proposal and advised that subject to suitable conditions of development consent no objection is raised to the proposal on BCA grounds. A full copy of this internal report is provided in Appendix I.

### **10.0 ASSESSMENT**

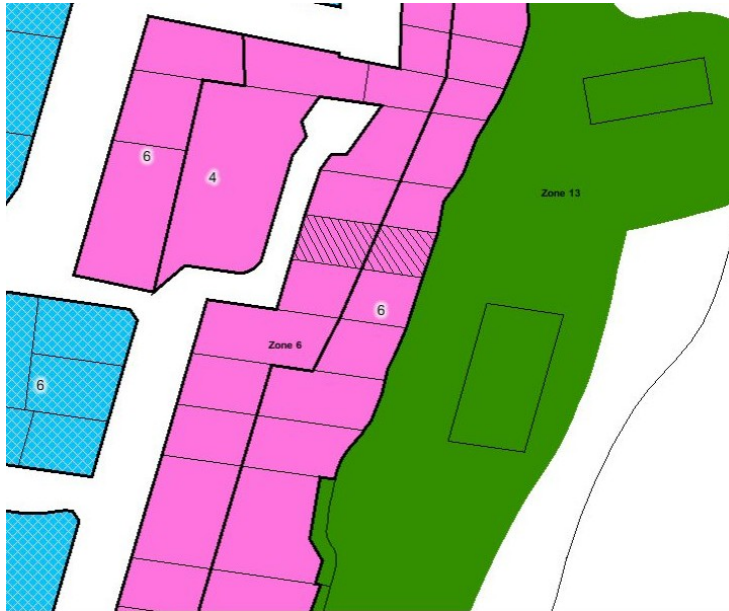
Following a detailed assessment of the application having regard to the Heads of Consideration under Section 79C(1) of the Environmental Planning and Assessment Act 1979 and the provisions of relevant environmental planning instruments, development control plans, codes and policies, the following matters are considered important to this application.

#### 10.1 Height

The proposed development fails to comply with the development standard for height. Clause 33(14)(a) of the SSLEP 2006 stipulates a maximum height for the development as set out in the height and density controls maps contained within SSLEP 2006. In the case of this site the maps stipulate a maximum

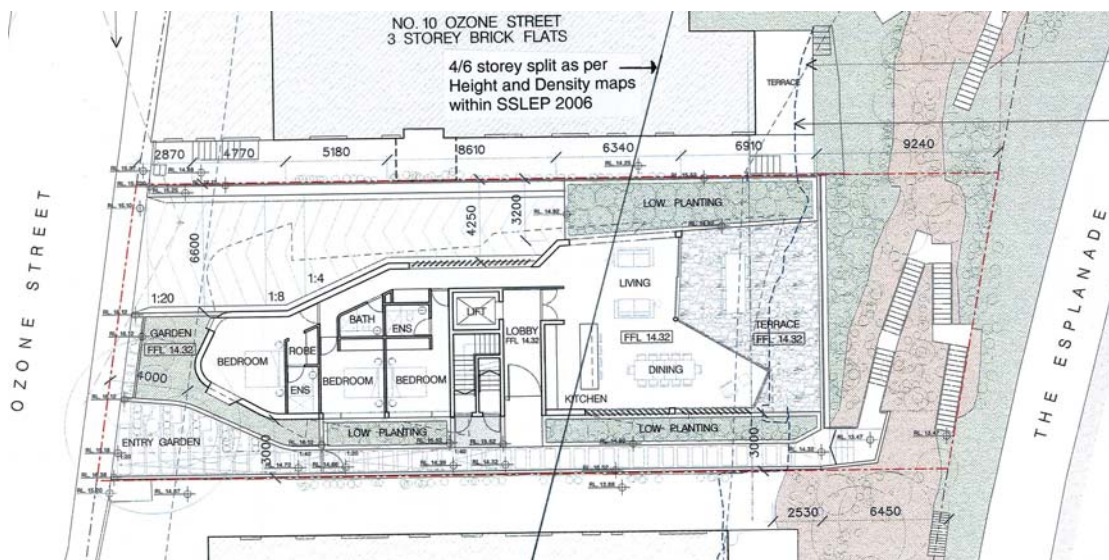
height of four (4) storeys adjacent to Ozone Street and six (6) storeys adjacent to the Esplanade.

The development proposes six (6) storeys across the entire site. The following extract from the height and density maps shows the height limit for the subject site and the surrounding properties.



Extract from SSLEP 2006 – Height and Density Map

The following plan shows the location of the four (4) storey / six (6) storey split in relation to the proposed development site.



Plan showing 4/6 storey split on the subject development site

To support this variation to the development standard for height the applicant lodged an objection pursuant to the requirements of SEPP 1. The full

submission is in Appendix J of this report and the most relevant section is reproduced below:

*“Compliance with the Building Height development standard is considered unreasonable or unnecessary in the circumstances of the case for the following reasons:*

- The proposed design does not result in a development that is out of context with the scale and nature of development in the area as envisaged by the planning controls. The design achieves an overall scale that is complementary to the scale of development in Ozone and Gerrale Streets.*
- The non-compliance with the building height control will not have any significant adverse impacts on adjoining land or the locality.*
- A development strictly complying would not result in significant reduction of impacts, however it would result in considerable reduction in the development potential and the quality of the design response to matters such as views between the building, and the relationship of the proposed built form above the cliff face.*
- In the context of this site and Council’s controls, it would be unreasonable for strict compliance to be enforced.*
- Given the circumstances of the case, the provision of a strict numerical compliance would be unnecessary and unreasonable on the basis of that the proposed development is able to achieve compliance with the objectives of the building height control and the zone objectives without necessarily complying with the numerical standard.”*

Comment:

The above plan demonstrates that when the four (4) / six (6) storey split is plotted the majority of the development should be four (4) storeys in height, whereas the applicant is proposing six (6) storeys across the entire site. The rationale for the control is that the built form would be predominately four (4) storeys in height and in response to the change of levels part of a level would tuck under the building on the eastern side and one part level would be located above.

The height standard for developments fronting Ozone Street is four (4) storeys and while there are no stated aims to the height control in this location, assumedly it is in part due to the narrowness of Ozone Street and the desire for the built form to not over dominate the street.

When viewing the site from Ozone Street the existing four (4) storey building appears tall in comparison to its neighbours and the proposed building is for two (2) additional levels. The applicant is seeking to use the built form, the proposed sandstone cladding, in lieu of a physical setback to create a visual break between levels one (1) to four (4) and levels five (5) and six (6). This is considered to be successful when the development is viewed from the street but does little to negate the bulk of the development when viewed from neighbouring properties.



The applicant's reasoning for varying the height standard is that there are no significant impacts resulting from the height other than the financial viability of the proposal. While economic considerations are important they are not the only factor. In an area that is likely to undergo significant redevelopment in the future a variation would establish a precedent and as such must be considered carefully. The additional height would result in a visual impact in Ozone Street, the question is whether it is acceptable or not.

Council's Architectural Review Advisory Panel has considered the height of the development and has reported that the development is of an appropriate scale and density.

The architectural treatment of the building, particularly its articulated western elevation add merit to the proposed height variation, however in the context of this application with major breaches to landscaped area and the eastern setback it is difficult to conclude the additional height is not another element contributing to the of the overdevelopment of the site. The breach of the height standard may be more easily justified if it enabled the proposal to more closely comply with landscaped area and setbacks by resulting in a smaller building footprint.

Is the Requirement a Development Standard?

Yes, Clause 33(14)(a) of SSLEP 2006.

Is the Objection Well Founded?

No. The SEPP 1 Objection does not provide evidence to demonstrate that compliance with the standard would be unreasonable or unnecessary in the circumstances of the case.

Would the Granting of Consent be Consistent With the Aims of SEPP 1 as Set Out in Clause 3 of the Environmental Planning and Assessment Act, 1979?

The objects of the Act are:

- 5(a)(i) - to encourage the proper management, development and conservation of natural and man-made resources, including agricultural land, natural areas, forests, minerals, water, cities, towns and villages for the purpose of promoting the social and economic welfare of the community and a better environment.
- 5(a)(ii) - to encourage the promotion and coordination of the orderly and economic use and development of land.

No. Granting of development consent would not be consistent with the aims of SEPP1 and the objects of the Act. A variation to Council's maximum height development standard is not considered to be reasonable in the circumstances of the case.

SEPP 1 Conclusion:

Having regard to the object and the purpose of the standard for maximum height it is considered that:

- (i) The SEPP 1 Objection that compliance with the development standard is unreasonable and unnecessary is not well founded; and
- (ii) The granting of consent to the development application would be inconsistent with the aims of SEPP1 as set out in Clause 3 of the Act.

## 10.2 Landscaped Area

Clause 36(5)(h) of SSLEP 2006 stipulates a minimum landscaped area of 40%. SSLEP 2006 defines landscape area as follows:

***landscaped area*** means that part of a site that is used for growing plants, grasses or trees (including bushland), but does not include any building, structure, hard paved area, driveway, garbage storage area or swimming pool, or any planting over a basement, on a podium or roof top or within a planter box.

A calculation of landscaped area in accordance with the definition contained within SSLEP 2006 has revealed that 20% landscaped area is provided. The applicant claims that a landscaped area of 22% is achieved, the difference in the figures is a result of the applicant including part of the pedestrian access path as landscaped area.

To support the proposed variation the applicant has lodged an objection pursuant to the requirements of State Environmental Planning Policy No. 1. The full submission is in Appendix K of this report and the most relevant section is reproduced below:

*“Compliance with the Landscaped Area development standard is considered unreasonable or unnecessary in the circumstances of the case for the following reasons:*

- *The development proposed has increased the level of landscaped area provision on the site and introduced planting opportunities to accommodate canopy trees on the site.*
- *The proposed level of landscaping is consistent with the character of the area in that no other development of the neighbouring site provides 40% of the site as deep soil landscaped area.*
- *The effective building footprint has been significantly reduced from the current building to the proposed building, effectively increasing the level of separation between built form.*
- *Privacy has been improved through the incorporation of fixed louvres and the orientation of window openings away from side boundaries, achieving through design and objective of the provision of landscaped area to assist in providing privacy between dwellings.*
- *The capacity of the site due to the underlying sandstone geology to accommodate deep soil landscaping and on-site water absorption is severely limited.*
- *The proposal is in keeping with the context, scale and nature of development in the surrounding area and envisaged by the planning controls.*
- *The context of the site is not conducive to the provision of large areas of landscaped open space. The site is in a prominent coastal location above*

*a coastal cliff which is elevated above the water line and exposed to ocean salt spray and coastal winds.*

- The proposed development provides 139m<sup>2</sup> or 22% of the site as deep soil landscaped area which is an increase from the current landscaped area of 120m<sup>2</sup> or 18.6% of the site area. In addition to the deep soil landscaping the landscape treatment of the site, and the unbuilt upon area of the site equates to 269m<sup>2</sup> or 42% of the site.*
- The non-compliance with landscaped area will not have any significant adverse impact on adjoining land or the locality.*
- A development strictly complying would not facilitate the provision of on-site car parking as desired by the controls applying to the land.*
- In the context of this site and Council's proposed future controls, it would be unreasonable for strict compliance to be enforced.*
- Strict numerical compliance would be unnecessary and unreasonable given that the proposed development is able to achieve compliance with the objectives of landscaped area requirements and the zone objectives."*

Comment: The proposed development provides half of the 40% landscaped area required by SSLEP 2006. Some of the applicant's argument may be acceptable if the proposal was close to providing the required amount of landscaped area however this is not the case.

The site is a small narrow allotment and to necessitate the provision of car parking on site the basement car park extends from side boundary to side boundary occupying 73% of the site. It is this proportion of the site which is occupied by basement car parking, together with the need to facilitate pedestrian and vehicular access to the site, which results in the significant breach to Council's development standard for landscaped area.

It should be noted that the applicant provides car parking in excess of that required by Council and that a reduction in the size of the basement is likely to have a corresponding increase in landscaped area above the surface. A reduction in the size of the basement would also have the potential to improve the relationship of the development with the heritage cliff face.

The applicant's position that 42% of the site achieves landscaped treatment or is unbuilt upon is unsupportable since many of these areas are hard paved areas above a basement car park and clearly contribute little to landscape character.

To argue that many of the neighbouring sites fail to provide a complying portion of landscaped area or that the development will improve on what little landscaped area is currently provided fails to recognise the intent of the control or to recognise the importance of this coastal site. The type of landscaping provided may change because of this harsh coastal environment, but it does not negate the need to provide it. To the contrary it could be argued that additional area is required to cater for this harsh environment.

Many of the neighbouring sites are of a similar age to the subject site and may also redevelop in the future. To support a significant deficiency in landscaped area would set an undesirable precedent.

Is the requirement a development standard? Yes, clause 36(5)(h) of SSLEP 2006.

Is the objection well founded? No. The SEPP 1 objection does not provide evidence to demonstrate that compliance with the standard would be unreasonable or unnecessary in the circumstances of the case.

Would the granting of consent be consistent with the aims of SEPP 1 as set out in Clause 3 of the Environmental Planning and Assessment Act, 1979?

The objects of the Act are:

5(a)(i) - to encourage the proper management, development and conservation of natural and man-made resources, including agricultural land, natural areas, forests, minerals, water, cities, towns and villages for the purpose of promoting the social and economic welfare of the community and a better environment.

5(a)(ii) - to encourage the promotion and coordination of the orderly and economic use and development of land.

No. Granting of development consent would not be consistent with the aims of SEPP1 and the objects of the Act. A variation to Council's minimum landscaped area development standard is not considered to be reasonable in the circumstances of the case.

SEPP 1 Conclusion: Having regard to the object and the purpose of the standard for minimum landscaped area it is considered that:

- (i) The SEPP 1 objection that compliance with the development standard is unreasonable and unnecessary is not well founded; and
- (ii) The granting of consent to the development application would not be consistent with the aims of SEPP1 as set out in Clause 3 of the Act.

### 10.3 Allotment Size and Width

The development site is significantly smaller than the minimum size and width stipulated in SSLEP 2006. This application relies on clause 41(6) of SSLEP 2006, which relates to the inability of a site to be amalgamated with an adjoining site. Specifically this clause states:

*(6) despite subclause (5), a lot of land in Zone 6 – Multiple Dwelling B on which it is proposed to erect a residential flat building may be less than 1,800 square metres, or have a minimum width of less than 30m, if the consent authority is satisfied that:*

*(a) the amalgamation of the lot with an adjoining lot is not reasonably feasible, or*

*(b) the orderly and economic use and development of the lot and the adjoining lot can be achieved if amalgamation is not feasible.*

The subject site is 645m<sup>2</sup> in area and has a width of 15m. In support of this variation the applicant has lodged the following:

*“The site currently supports a part 4 part 5 storey residential flat building. The subject and adjoining buildings are strata title and therefore require agreement of all property owners to facilitate redevelopment and amalgamation. The economic incentive and ability to accommodate all owners across buildings is difficult and impractical.*

*From a design consideration, site amalgamation would destroy the current lot pattern and the provision of regular breaks between the buildings. The resulting streetscape would close off Ozone Street to the available water glimpses and break visual connection to the ocean.*

*The proposed design has clearly demonstrated that a redevelopment of the current holdings can be undertaken without creating substandard dwellings while also improving the amenity of adjoining dwellings by removing current privacy and overlooking concerns.*

*The amalgamation of the site would not necessarily lead to a better design outcome and could in fact block existing public and private views and create a sense of enclosure to Ozone Street that is not desirable.”*

The applicant has failed to provide any evidence of attempts to achieve amalgamation with adjoining properties, simply dismissing it as difficult and impractical. While it is accepted that gaining agreement from strata titled land holdings where the properties are held in multiple ownership is difficult, it has been achieved for the subject site so is clearly not impossible.

To achieve compliance with the minimum 1,800 square metres and 30 metre width standard within SSLEP 2006 would most likely require the amalgamation of three (3) properties, because of the size of the properties in this location. While different options may be available, because of the size of the allotments and age of the buildings, the most obvious amalgamation would be No.10, No.12 and No.14.

Such an amalgamation would result in a complying allotment size and width. It would also greatly increase the capacity of the development site to provide car parking on site and comply with the development standard for landscaped area. While the existing view corridors between No. 10 and No. 12 and No. 12 and No. 14 would be lost, the view corridors on the perimeter of the amalgamated site would be increased as the development would be capable of complying with the side boundary setback requirements.

The failure to achieve a complying allotment size in this instance results in a situation where the neighbouring buildings will most likely also be developed in isolation. The isolated development of these properties is likely to result in significant breaches to landscaped area and side boundary setbacks due to the similar small areas of those sites.

The applicant has failed to demonstrate that amalgamation with an adjoining lot is not feasible or that the orderly and economic use and development of the lot can be achieved if amalgamation is not feasible.

#### 10.4 Setback from Eastern boundary (the Esplanade)

##### 10.4.1 SSLEP 2006 – Heritage Conservation

The site adjoins the heritage listed foreshore walking path known as “The Esplanade”. This track was built in the 1930s and the sandstone cliff above (located on the subject site) acts as a backdrop to this walking path. The cliff itself, which runs between Kingsway and Cronulla Park, is also listed as a Heritage Item in Schedule 6 of SSLEP 2006. The heritage inventory sheet for the cliff is contained within Appendix L of this report.

It is acknowledged that historically there has been considerable work undertaken over the cliff face on this site including a terrace, a staircase, retaining walls, planter boxes and lookouts. These aging structures are proposed to be removed as a part of this development application and access to the Esplanade is to be replaced with a metal staircase.

Until the existing structures are removed from the cliff face it is difficult to assess the extent of natural cliff which is located under or behind these structures. However, the applicant’s survey plan allows the location of the cliff to be easily established in the north eastern portion of the site and again on the neighbouring property to the south. The location of the cliff between these areas is more difficult to establish because of the abovementioned structures on the site, however the likely location of the edge of the cliff can be established by joining the contours between the locations where it has been established by survey.

Currently the natural cliff does not dominate the view of this site from the Esplanade and while it is admirable that the application proposes to remove many of the existing man-made structures the resultant development is still dominated by built form. The car park basement penetrates and extends up out of the cliff, whereas the intention of the LEP provisions is that development is setback from the cliff to preserve its integrity.

It is particularly unclear how the structural integrity of the cliff will be maintained given that excavation to a depth of 7.5m is proposed through the likely location of the cliff. Even in those portions of the site where the basement excavation is behind the established cliff edge the proximity and extent of excavation creates significant concerns in relation to the structural integrity of the cliff. The geotechnical report, provided by the applicant, fails to provide a clear statement of the impact of the works on the cliff or to refute the possibility that the works will destabilise the cliff.

Instead of taking a precautionary approach in relation to the heritage listed cliff and setting the basement back the applicant is seeking to construct the



basement forward of the existing building closer toward the Esplanade. Given the extent of unknowns in relation to what lies beneath or behind the existing structures such an approach is unsupportable.

#### 10.4.2 SSDCP 2006 – Foreshore Controls

SSDCP 2006 maps the setback requirements from the eastern boundary, which are described as “6.0m setback along cliff edge” on map 9 referred to in clause 3.b.12 of Chapter 3. In addition Diagram H, also referred to in clause 3.b.12 of Chapter 3 describes a “4.0m setback from the cliff edge”. The confusion created by these controls and the lack of a clear definition of the “cliff edge” was recognised by Commissioner Hussey in his consideration of *“Innovative Architects Pty Ltd v Sutherland Shire Council”* (10302 of 2009) for a nearby property.

While SSDCP 2006 does not provide a specific definition of the “cliff edge” the applicant’s survey plan denotes the “edge of high rock” as approximately the 13m contour, it also denotes the “base of exposed rock” towards the eastern extremity of the property. Council accepts the proposition that the “cliff edge” is the “edge of high rock” as established by the applicant’s surveyor.

As discussed above the current controls contained within SSDCP 2006 require a 6 metre or 4 metre setback from the cliff edge. Taking a 6 metre setback from the “cliff edge” locates the setback 14.3m along the southern boundary and 11.3 along the northern boundary, measured from the eastern boundary`.

In response to the criticism received from Commissioner Hussey in the abovementioned appeal Council sought to modify its controls to ensure that they are clear and that the integrity of this important heritage listed landform is maintained. Council prepared and exhibited draft Amendment No.6 to SSDCP 2006.

While it is noted that this draft DCP has no statutory standing in relation to this application, discussion of this draft plan in the context of the appropriateness of the setback proposed by the applicant is considered helpful. This amendment seeks to clarify the existing controls and remove any ambiguity in the setbacks. In essence the draft controls were seeking to maintain the status quo but to more clearly define the top of the cliff line and then set development 6 metres back from that point to ensure the structural integrity of the cliff and minimise the dominance of the built form.

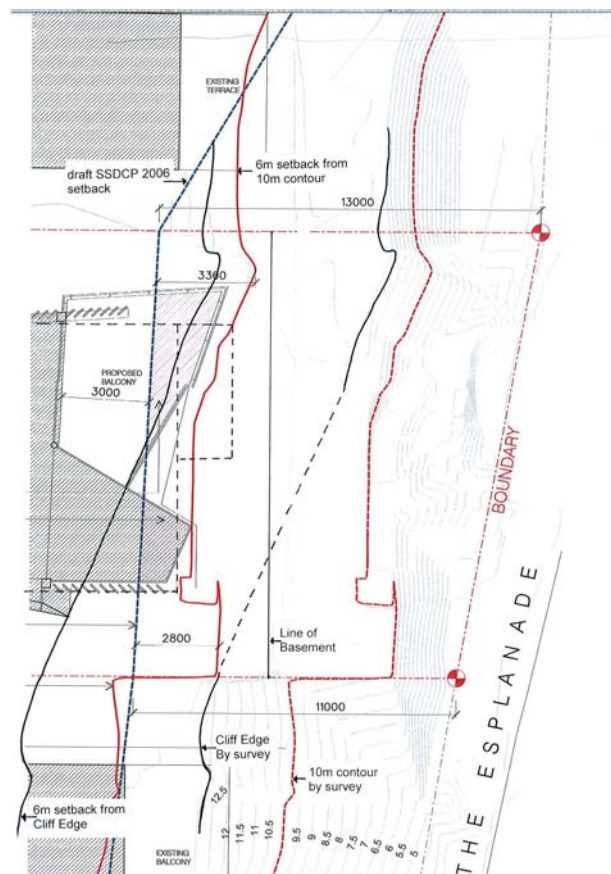
The map contained within draft SSDCP 2006 (amendment No.6) defined the top of the cliff face as the 10 metre contour line. The 10 metre contour was chosen on the basis of Council’s GIS data and appeared to be close to the top of the cliff. A site by site survey of the properties affected was not undertaken.

The applicant has provided detailed survey data which highlights that Council’s interpretation of the top of the cliff being akin to the 10 metre contour is incorrect and that in relation to this particular property the edge of

the cliff is more accurately defined as the 13 metre contour. In addition, this survey detail shows that the location of the 10 metre contour line is further east than indicated in draft SSDCP 2006 (amendment No.6).

The application appears to be focussed on ensuring numerical compliance with a 6 metre setback from the 10 metre contour instead of considering the underlying intention of the control, which is to establish the top of the cliff edge and setback from that point. The applicant's submission does not suggest that Council has incorrectly located the top of the cliff, but that the 10 metre contour has been incorrectly mapped and purports that the setback should be reduced accordingly.

The applicant suggests that the setback line should also respond to the improvements that have been made to the site including a lookout, which has significantly altered the topography of the site. The interpretation of the controls in this manner is considered to be unreasonable and without sound planning basis.



Plan showing the various interpretations of the setback control

The above plan shows the setback required by SSDCP 2006, being six (6) metres from the “cliff edge”; by draft SSDCP 2006 (amendment No.6), being the line between 13 metres back from the northern boundary and 11 metres back from the southern boundary; and the applicant's proposal of six (6) metres from the surveyed ten (10) metre contour line. In addition the surveyed top of cliff and the ten (10) metre contour are shown.

It should be noted that the terrace on the subject site and the neighbouring properties shown on the above plan are provided only at ground floor level and that the proposed balconies and built form extend over all five of the upper levels with a large terrace, extending to the line of the base proposed at the ground level. The plan shows that the proposed development involves a significant breach to the current SSDCP 2006 control of a six (6) metre setback from the cliff edge, both above and below ground. It also shows that the development breaches the control within draft SSDCP 2006 (Amendment No.6), both above and below ground. The plan further demonstrates that the proposed basement breaches the applicant's own suggested setback of a six (6) metre setback from the surveyed ten (10) contour line.

With three (3) potential setbacks from the cliff, the most appropriate is considered to be line proposed by draft SSDCP 2006 (amendment No.6) for the following reasons. The current SSDCP 2006 control of six (6) metres from the cliff edge obviously follows the contour line and on the southern side would position a building approximately three (3) metres west of the building to the south. On the northern side it would position the building approximately one (1) metre east of the neighbouring building. This setback would impact on the southern out look for future residents as it would be tucked significantly behind the existing building on the neighbouring southern site. It could also potentially impact at views obtained from the property to the north by placing development forward of existing development on the northern neighbours site. The applicant's proposal of a six (6) metre setback from the ten (10) metre contour provides insufficient setback from the heritage cliff to ensure its protection and is considered to be over dominant when viewed from the Esplanade.

The applicant's proposal is for a tall slender building which will be significantly taller than neighbouring development. It will be very prominent because of its height and architectural style. It needs to be appropriately setback to ensure that the solid balcony and winter garden elements of the design do not over dominate the heritage cliff line. The current proposal which has projections forward of the existing development, on the levels above the first floor, is not appropriate.

In addition the development which is proposed below ground has the potential to significantly impact on this heritage landform. The ground floor terrace, which is proposed approximately 700mm above the existing terrace, and the basement car park are located forward of the applicants suggested setback. These structures, which are clearly visible above the ground (refer to eastern elevation), are part of the building and should be located behind the setback.

The basement will protrude above the ground and because of the chosen location of the basement and the fall of the land at this point of the site, the basement is likely to be exposed by up to five (5) metres in height. It is only on a technicality that this exposed basement is not calculated as a storey, but when viewed from the Esplanade and the rock pools it will appear as an additional storey and is unacceptable.

#### 10.4.3 SSLEP 2006 - Foreshore Building Line

The subject site is affected by a 7.5 metre foreshore building line subject to clause 17(3)(b)(i) of SSLEP 2006. This clause applies to properties with a deemed mean high water mark where the foreshore building line is not shown on the map. In effect it is a default provision for situations where the foreshore building line has not been mapped.

The proposed development breaches the foreshore building line as part of the basement, and the terrace area above, encroach into this area. In addition the development fails to satisfy many of the objectives of clause 17, in particular clause 17(f) and 17(g). These clauses are as follow:

- “(f) to minimise any adverse visual impact of development when viewed from adjacent land and waterways by using a design and materials that complement the natural landscape of the land to which this clause applies,*
- (g) to minimise any adverse impact of development on the natural landform of foreshore areas and waterways by integrating structures into the site with minimal change to the natural topography of the land to which this clause applies,”*

It is noted that the bulk of the basement car park and the terrace are located behind the foreshore building line and that this line on its own is insufficient to ensure that the above objectives are achieved. Council has further controls in the form of the SSDCP 2006 to ensure development is appropriately setback from the cliff edge.

The breach to the foreshore building line in this instance, however, is a prohibition as there is no ability for the consent authority to consider a residential flat building forward of this fixed line and it cannot be varied using SEPP1.

#### 10.4.4 SSLEP 2006 - Significant landform

Clause 55 of SSLEP 2006 applies to land on which a significant landform or tree is located. This clause states that the:

*“the consent authority must not consent to development on land to which this clause applies unless it is satisfied that the development will be carried out in a manner that ensures the continued good health of the tree or the continued structural integrity and visual quality of the landforms”. In addition the consent authority must ensure that “the building will not encroach on, or adversely affect, any significant landform”*

As discussed above the application fails to demonstrate that the structural integrity and visual quality of the heritage cliff will be protected. In addition it is likely that the proposed building, particularly the basement car parking, will adversely affect the cliff. In light of this the application could not be supported.

#### 10.4.5 Conclusion - Eastern Setback and Impact on Cliff

Ensuring the integrity of the cliff is maintained and protected is an underlying intention of the controls under SSLEP 2006, SSDCP 2006 and those proposed by draft SSDCP 2006 (amendment No.6). Ensuring a significant setback from the cliff is the only certain and practical way to minimising the likelihood of damage to this heritage listed landform and to minimise the visual dominance of the built structure. The applicant's submission fails to demonstrate that the proposed setback is adequate or appropriate. In the plans submitted with the application the applicant fails to address the impact of the basement car park on the cliff edge or its non-compliance with the DCP setback controls.

#### 10.5 Setback to Ozone Street

The application fails to comply with the street setback controls contained within SSDCP 2006. SSDCP 2006 maps the setback requirements for Ozone Street on map 9 referred to in clause 3.b.12 of Chapter 3. SSDCP 2006 requires a four (4) metre setback from Ozone Street for the ground and first levels of the development and an eight (8) metre setback for the second level. The proposed development fails to comply with the setback control for the upper levels, maintaining a four (4) metre setback until the upper level which has a 5.7 metre setback.

The applicant has used the built form to create a visual break in the building between the lower four (4) levels and the upper two (2) but has not attempted to deal with this control at all. The style of architecture proposed does not fit comfortably within the DCP controls and setting the building back at the upper levels is not an option which could easily be accommodated within the current architectural scheme. The strong architecture and articulation of the western setback make a variation to this setback requirement acceptable in the circumstances of this case.

#### 10.6 Side Boundary Setbacks

The site's narrow width impedes its ability to comply with the minimum 4m side boundary setback control. The northern and southern elevations are well articulated on varying setbacks between two (2) metres and four (4) metres. The existing building is setback three (3) metres from its northern and southern boundaries, however is unarticulated.

The objectives of side boundary setbacks include the provision of acoustic and visual privacy, the control of shadow, provision for deep soil planting to reinforce the spatial character of an area and to mitigate visual intrusion. The scheme attempts to deal with privacy through design and this is discussed in further detail below, however given the narrow allotment the proposed side boundary setbacks are considered to be appropriate to ensure privacy for residents if designed effectively.

As the basement extends from boundary to boundary there is no opportunity to provide deep soil planting within the side boundary setbacks. In the circumstances of this case the spatial character of the area is provided in part by the visual gaps between the buildings which create view corridors to ocean, and this important feature should be maintained. These ocean views

also assist in mitigating the visual intrusion as they focus attention towards the ocean rather than the height of the building.

The current scheme attempts to do this however a number of structures proposed within the side setback areas will impede views of the ocean from Ozone Street. Incorporating light weight or transparent boundary fence treatments and lowering the planter bed positioned over parking spaces No. 4 and No.5 and would improve these view corridors.

Concern remains about the retention of these ocean views in the future particularly in relation to the views between No. 10 and No.12 as future residents of the development may seek to improve the privacy relationship with their northern neighbour by placing more substantial plantings in the planter bed between the buildings. More substantial plantings are likely to erode views between the buildings.

#### 10.7 Access to the Esplanade

The application includes minimal detail of the proposed staircase down the cliff face. In part this is difficult for the applicant to provide because until the existing structures are removed it is uncertain what remains of the cliff and how this is to be most appropriately treated. This is a very prominent site containing a heritage listed cliff and a “trust us” approach is inappropriate. If the application was approved, it would be better to delete the access stairs from the proposal and submit a further application for the stairs once the site conditions are fully understood.

The existing stairs extend beyond the property boundary onto Crown land and the proposal shows that the new structure will be located within the property boundary. Given the known location of the cliff in this portion of the site it is difficult to envisage how this will work without some damage to the cliff face.

#### 10.8 View loss

View loss is an issue which has been raised a number of objectors to the proposal. The assessment of views has been undertaken from the different locations that it has been raised as an issue.

In *Tenacity Consulting v Warringah Council*, Senior Commissioner Roseth established a planning principle in relation to view loss. An assessment of the impact of the proposed development on the adjoining properties, in terms of view loss, has been undertaken in accordance with this principle.

##### 10.8.1 From Unit 3, No. 10 Ozone Street

Following is an assessment of the view loss from the above property. The view loss concern was in relation views south to Cronulla Beach from the eastern balcony.





View from balcony of Unit 3, No.10 Ozone Street, looking south

*Step 1 - The first step is the assessment of views to be affected.*

The view that will be affected is the view to the south across the subject development site to Cronulla Beach, this view is partly obscured by existing development and vegetation on the neighbouring sites.

*Step 2 - The second step is to consider from what part of the property the views are obtained.*

The view is obtained from the balcony.

*Step 3 - The third step is to assess the extent of the impact.*

The proposed development will have minimal impact on the views currently enjoyed from the balcony as the furthest most projection of the proposed balcony is in line with the existing balcony projection.

*Step 4 - The fourth step is to assess the reasonableness of the proposal that is causing the impact.*

The impact is considered reasonable. It is noted however that a development complying with Council's setback controls would improve the views available to Cronulla Beach from this property.

#### 10.8.2 From Unit 8, No.10 Ozone Street

Following is an assessment of the view loss from the above property. The view loss concern was in relation to views south to Cronulla Beach and surf zone from the main bedroom and views to the ocean from the second bedroom.



View from main bedroom of Unit 8, No.10 Ozone Street, looking south



View from second bedroom of Unit 8,  
No.10 Ozone Street, looking east

Step 1 - *The first step is the assessment of views to be affected.*

Main Bedroom - The view that will be affected is the view to the south across the subject development site to Cronulla Beach.

Second Bedroom – The view that will be affected is to the east towards the ocean.

Step 2 - *The second step is to consider from what part of the property the views are obtained.*

Main Bedroom – The view to the south towards Cronulla Beach is obtained when standing adjacent to the glass in the window of main bedroom.

Second Bedroom – The view towards the ocean is obtained when looking east adjacent to the glass in the window of the second bedroom.

Step 3 - *The third step is to assess the extent of the impact.*

Main Bedroom – The development will remove the view of the shore line and Cronulla Surf Club. The impact will be severe.

Second Bedroom – The development will significantly narrow the view towards the ocean. The impact will be severe.

Step 4 - *The fourth step is to assess the reasonableness of the proposal that is causing the impact.*

Main Bedroom – The impact is considered to be unreasonable as the view loss results from a breach to the setback contained within SSDCP 2006.

Second Bedroom – The impact is also considered to be unreasonable as the view loss results from a breach to the setback contained within SSDCP 2006.

#### 10.8.3 From Unit 9, No.10 Ozone Street

Following is an assessment of the view loss from the above property. Access to this property was unable to be obtained and the photo below has been extracted from the applicant's view loss analysis.



*Step 1 - The first step is the assessment of views to be affected.*

The view that will be affected is to the south across the subject development site to Cronulla Beach.

*Step 2 - The second step is to consider from what part of the property the views are obtained.*

The views are obtained from the balcony.

*Step 3 - The third step is to assess the extent of the impact.*

The development will remove the view of the beach, the shore line and Cronulla Surf Club. The impact is will be severe to devastating.

*Step 4 - The fourth step is to assess the reasonableness of the proposal that is causing the impact.*

The impact is also considered to be unreasonable as the view loss results from a breach to the setback contained within SSDCP 2006.

#### 10.8.4 Views between the buildings

Concern has been raised in relation to the impact of the development on existing views between No.10 and No. 12 (northern view corridor) and between No. 12 and No.14 (southern view corridor). The applicant's submission includes an assessment of these views from the street (drawing No. DA-1506). Retention of these views is considered to be fundamental to this application as one of the reasons put forward by the applicant for not complying with the minimum allotment size and width is that the amalgamation of the sites would destroy the current lot pattern which provides water glimpses between the current buildings.

While some effort has been made to maintain ocean views from the street, incorporating light weight or transparent boundary fence treatments and lowering the planter bed positioned over parking spaces No. 4 and No.5 is appropriate.

Concern remains about the retention of these ocean views in the future, particularly in relation to the views between No. 10 and No.12, as future residents of the development may seek to improve the privacy relationship with their northern neighbour by placing more substantial plantings in the planter bed between the buildings. More substantial plantings are likely to erode views between the buildings.

#### 10.8.5 View loss resulting from Height

The issue of view loss resulting from the height of the development was raised in a submission without reference to the specific property to which may be affected in terms of view loss. It is noted that the main view over this development is towards the east and the non-compliance with height at the western end of the development is unlikely to have an impact on views greater than the complying portion of the development.

#### 10.9 Privacy Impacts

The privacy relationship between the existing building and its neighbours is currently very poor with windows facing each other separated by approximately five (5) metres with no screening or landscaping between them.

The proposed development seeks to improve the privacy relationship of the subject site with its neighbours through the use of louvres and the design of windows. However, based on the minimal information available it is unclear how successful this will be.

##### 10.9.1 Privacy for No. 10 Ozone Street

The privacy relationship between the proposed development and No. 10 to the north is varied. At the ground level the buildings are separated by approximately 4.5 metres at their closest point. There is an extensive amount of glazing as well as the terrace, which have an orientation to the north. Adjacent to the hallway fixed marble louvers are proposed. No detail has been provided in relation to these and it is therefore unclear how they will protect privacy. Adjacent to the living area there is a large window, which appears to be a fixed plane of glass. This window is orientated to the north overlooking a planting area, however given that low lying planting is proposed, to protect ocean views from the street, this planting will do little to improve the privacy relationship with the northern neighbour. The terrace has a north eastern orientation and as with the living area overlooks a planting area.

At the upper levels the northern elevation has extensive areas of glazing adjacent to the hallway, desk and dining area. Externally marble louvers and timber shutters are adjacent to this glazing, though as stated above no detail is provided and it is therefore unclear how these devices will protect privacy.

### 10.9.2 Privacy for No. 14 Ozone Street

The relationship of the development with its southern neighbour, No. 14 is also varied. At the ground level the buildings are separated by approximately six (6) metres, which reduces at the levels above to between five (5) and six (6) metres. The ground level has a large span of glazing adjacent to the kitchen and dining areas, which also has marble louvers.

At the upper levels the stairwell, kitchen and winter garden have glazing facing south again with external marble louvers.

### 10.9.3 Conclusion - Privacy

Overall, the privacy relationship between the proposed development and its neighbours is unclear. It has the potential to be far superior to the existing situation if the shutters and louvres are angled appropriately and far worse if they are not. At the ground level there is concern that the desire for improved privacy may lead future occupants to replace the low planting with more substantial plantings. If this was to occur it would erode views through the property from the street towards the ocean. The lack of detail provided with the application does not allow a conclusion to be drawn in relation to the privacy relationship between this development and its northern and southern neighbours.

### 10.10 Shadow Impact

The east west orientation of the site obviously means that the allotment to the south is going to be significantly affected by shadow. The applicant has provided shadow diagrams showing the shadow impact resulting from the existing building and the shadow resulting from the proposed development. The development proposes variations to the height and setback controls and a more appropriate shadow analysis would have been the impact of a complying development compared with the proposal.

An increased eastern setback would obviously decrease the amount of shadow cast by the proposal towards the Esplanade in the afternoon, though given the height and setbacks of neighbouring buildings it is unlikely to make any significant difference to overall area of land in shadow. Reducing the height of the development to part four (4) part six (6) storeys as required by SSLEP 2006 is also unlikely to result in a material difference to the length of the shadow cast as is shown by comparing the existing part four (4) part five (5) storey with the proposed development.

Increasing the side boundary setback to a complying four (4) metre setback is also unlikely to result in any significant improvement in sunlight in to the southern neighbour during mid winter.

## 10.11 SEPP 65 – Design Quality of Residential Flat Development

SEPP 65 was introduced to improve the design of residential flat development in NSW. The policy includes ten (10) design principles which must be considered when determining a development application for a residential flat building. These matters were considered by Council's ARAP in relation to the plans submitted originally with the application; their report is contained within Appendix E of this report. Council's internal architect has reviewed the revised plans and provided comment in this regard; a full copy of this internal report is provided in Appendix F. Following is a brief assessment of the proposal pursuant to the design principles contained within SEPP 65 incorporating the comments made by Council's ARAP and internal architect.

### *Context*

The key natural and built features of this site and its surrounds are the heritage listed cliff line and pedestrian walking path below, together with the ocean vistas which are evident between the existing buildings in this section of Ozone Street. Concern remains as to whether the proposal is appropriate for its context, particularly given its relationship with the cliff and the impact of the proposal on views of the ocean currently enjoyed from street level.

### *Scale*

The scale of the development, in terms of bulk and height was considered by ARAP and Council's internal architect and considered to be acceptable.

### *Built form*

The building is considered to be a well proportioned, tall and slender building. ARAP noted that the requirement for the building to be reduced to four (4) storeys at the eastern end and stated that the proposal mediated the different scales in a more sophisticated fashion and that the variation was supported.

Concern was raised by ARAP and remains even after the assessment of the additional information into the appropriateness of the development's relationship with the cliff.

### *Density*

The development complies with the relevant floor space ratio for the site and the density was considered by ARAP and Council's internal architect to be appropriate.

### *Resource, Energy and Water Efficiency*

The application shows BASIX commitments on the plans. Concern was raised by ARAP in relation to the selection of appropriate and sustainable materials. The applicant's schedule of finishes remains unchanged.

### *Landscape*

The landscape plan provided by the applicant is lacking in detail and considered inappropriate for the scale of the development and the prominence of the site.



### *Amenity*

The development has the potential to provide a high level of amenity for future occupants. Some concern remains in relation to privacy and solar access because of the lack of details for the louvres and screens.

Concern also remains in relation to the ability to effectively clean the large glazed areas within the development, particularly given its harsh coastal environment.

The open stair case is also considered to provide poor amenity and discourage its use on a daily basis.

### *Safety and Security*

The application is considered to be appropriate in terms of safety and security.

### *Social Dimensions*

The development is clearly aiming to cater for the higher end of the market.

### *Aesthetics*

ARAP reported that the *“proposed building is considered to be generally well designed and potentially a very good building if the design intent is carried through. However, further design development and detail resolution is required to realise this potential”*.

ARAP request detailed sections (1:20) be provided to demonstrate how the building will be constructed, how the external finishes are detailed and how services will be provided within the proposed three (3) metre floor to ceiling height. This has not been provided.

## 10.12 SEPP 72 – Coastal Protection

The subject site is affected by the provisions of SEPP 72 and as such the consent authority must take into consideration certain matters, as outlined in the SEPP, when determining this application.

The application's failure to provide adequate protection to the heritage listed cliff results in its failure to comply with the following aims of contained within clause 2 of SEPP 72:

- (e) to ensure that the visual amenity of the coast is protected, and*
- (i) to protect and preserve rock platforms, and*
- (j) to manage the coastal zone in accordance with the principles of ecologically sustainable development (within the meaning of section 6 (2) of the Protection of the Environment Administration Act 1991), and*
- (k) to ensure that the type, bulk, scale and size of development is appropriate for the location and protects and improves the natural scenic quality of the surrounding area, and*

In addition the following matters for consideration contained within clause 8 of the SEPP are particularly relevant to the assessment and determination of this application:

- (d) the suitability of development given its type, location and design and its relationship with the surrounding area,*
- (e) any detrimental impact that development may have on the amenity of the coastal foreshore, including any significant overshadowing of the coastal foreshore and any significant loss of views from a public place to the coastal foreshore,*
- (f) the scenic qualities of the New South Wales coast, and means to protect and improve these qualities,*
- (n) the conservation and preservation of items of heritage, archaeological or historic significance,*
- (p) only in cases in which a development application in relation to proposed development is determined:*
  - (i) the cumulative impacts of the proposed development on the environment, and*
  - (ii) measures to ensure that water and energy usage by the proposed development is efficient.*

#### 10.13 Common Open Space

The development does not provide a common open space area as required by SSDCP 2006. The proposed development contains six (6) luxury apartments on a relatively small site. Each apartment has a large outdoor entertainment area. Given the nature of the development a common outdoor area is not considered to be necessary.

#### 10.14 Site Coverage

The proposed development fails to comply with the site coverage control of 40% stipulated within SSDCP 2006. Site coverage is that part of the site occupied by building. The proposal has a site coverage of 45%.

This control assists in apportioning development on the site allowing 40% for building; leaving 40% for landscaped area and 20% for ancillary development such as driveways, pedestrian paths and the like. This apportioning does not work on this site as the basement car park extends beyond the building footprint, and occupies some 73% of the site leaving little area for landscaping. In the circumstances of this application reducing the site coverage would not increase the amount of landscaping provided on site.

Failure to comply with this control does demonstrate that the extent of built form proposed on the site is inappropriate. If this development was modified to comply with the eastern boundary setback is also likely to comply with the site coverage control.

### 10.15 Car Parking

SSDCP 2006 sets a maximum number of car parking spaces in this location of 1.5 per unit or in the case of this application nine (9) car parking spaces. The DCP also requires the provision of two (2) visitor spaces. The proposal provides twelve (12) resident parking spaces and one (1) visitor space. When the car spaces are reapportioned, to provide the correct number of visitor spaces, the proposal provides two (2) car spaces in excess of Council's maximum control.

Given the impact of the basement car park on the heritage cliff line the provision of additional car parking spaces is not supported.

### 10.16 Bicycle Storage

The proposed development provides one (1) resident and one (1) visitor bicycle parking space and SSDCP 2006 requires two (2) resident and one (1) visitor bicycle parking space to be provided. It is considered that there is scope within the current scheme to provide accommodation for another bicycle parking space.

### 10.17 Storage

SSDCP 2006 requires a secure space per dwelling of 6m<sup>3</sup> (minimum dimensions of 1m<sup>2</sup>) to be provided within the basement. The current scheme provides storage within the basement but there is no detail provided as to how this will be distributed. It is likely that the proposal could be modified to comply with this control.

## **11.0 SECTION 94 CONTRIBUTIONS**

Currently on the site is a residential flat building containing twelve (12) units. The proposed development involves the demolition of this development and the construction of six (6) units as such the proposed development does not require nor increase the demand for local and district facilities within the area. Accordingly it does not generate any Section 94 Contributions.

## **12.0 DECLARATION OF AFFILIATION**

There was no declaration of affiliation, gifts or political donations noted on the Development Application Form submitted with this application.

## **13.0 CONCLUSION**

The proposed development is for the demolition of an existing residential flat building and the construction of a six (6) storey residential flat building containing a single unit on each level.

The proposed development is located within Zone 6 – Multiple Dwelling B pursuant to Sutherland Shire Local Environmental Plan 2006 and the proposed development is permissible with development consent.

The application was placed on public exhibition on two (2) separate occasions and in response to public exhibition, submissions were received from ten (10) households. The matters raised in these submissions have been discussed in this report and include view loss, impact on the cliff, privacy and construction management.

The subject site is 645 square metres in area and approximately 15 metres wide which is significantly smaller than the 1800 square metres and 30 metre width required pursuant to SSLEP 2006. To achieve the maximum floor space ratio, or close to it, this undersized allotment is reliant on the proposed variation to the height standard. Despite this variation to the height standard the application also fails to comply with the landscaped area development standard and to provide adequate setbacks.

The proposal in its current form breaches the foreshore building line and is therefore prohibited. Putting this aside if this application was approved in its current form significant concern remains in relation to the impact of the development on the structural integrity of the heritage listed cliff and the visual impact of the development on the Esplanade due to non-compliance with the required cliff setback.

The application has been assessed having regard to the Heads of Consideration under Section 79C(1) of the Environmental Planning and Assessment Act 1979, the provisions of Sutherland Shire Local Environmental Plan 2006 and all relevant Council DCPs, Codes and Policies. Following detailed assessment it is considered that development application No. 10/0076 cannot be supported for the reasons outlined in this report.

## **14.0 RECOMMENDATION**

That development application No. DA10/0076 for the demolition of the existing residential flat building and construction of a new residential flat building with strata subdivision at property Lots 1-10 SP831 and Lots 12-13 SP66933 known as No.12 Ozone Street, Cronulla, be refused for the following reasons:

1. The application is considered unacceptable pursuant to the provisions of s.79C(1)(a)(i) of the Environmental Planning and Assessment Act 1979 in that the proposed development fails to comply with the development standard for maximum height and contributes to the overdevelopment of the site.
2. The objection submitted pursuant with the provisions of cl.6 of SEPP No.1, with respect to the development standard for maximum height established in Clause 33(14)(a) of SSLEP 2006 is not considered to be well founded as the applicant has not adequately demonstrated why, in

the case of this application, compliance with this development standard is either unreasonable or unnecessary.

3. The application is considered unacceptable pursuant to the provisions of s.79C(1)(a)(i) of the Environmental Planning and Assessment Act 1979 in that the proposed development fails to comply with the development standard for minimum landscaped area.
4. The objection submitted pursuant with the provisions of cl.6 of SEPP No.1, with respect to the development standard for landscaped area established in Clause 36(5)(h) of SSLEP 2006 is not considered to be well founded as the applicant has not adequately demonstrated why, in the case of this application, compliance with this development standard is either unreasonable or unnecessary.
5. The application is considered unacceptable pursuant to the provisions of s.79C(1)(a)(i) of the Environmental Planning and Assessment Act 1979 in that the proposed development fails to comply with the minimum allotment size and minimum width standard contained within SSLEP 2006 and fails to satisfy the exemption clause contained within clause 41(6) of SSLEP 2006 permitting a variation to this standard.
6. The application is considered unacceptable pursuant to the provisions of s.79C(1)(a)(i) of the Environmental Planning and Assessment Act 1979 in that the proposed development breaches the foreshore building line standard contained within clause 17 (b)(i) of SSLEP 2006 and the development in its current form is prohibited.
7. The application is considered unacceptable pursuant to the provisions of s.79C(1)(a)(i) and s.79C(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 in that the proposed development fails to ensure an adequate setback to protect the integrity of heritage listed cliff both structurally and visually contrary to clauses 54(1)(e) and 55(2) of SSLEP 2006 and clause 3.b.12 of Chapter 3 of SSDCP 2006.
8. The application is considered unacceptable pursuant to the provisions of s.79C(1)(a)(i) and s.79C(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 in that the proposed development is unacceptable as it results in unreasonable view loss to neighbouring properties contrary to clause 49(b) of SSLEP 2006 and clause 15 of Chapter 3 of SSDCP 2006.
9. The application is considered unacceptable pursuant to the provisions of s.79C(1)(a)(i) of the Environmental Planning and Assessment Act 1979 in that the proposed development is unacceptable as it results in unreasonable privacy impacts to neighbouring properties contrary to clause 49(b) of SSLEP 2006.
10. The application is considered unacceptable pursuant to the provisions of s.79C(1)(a)(iii) of the Environmental Planning and Assessment Act 1979

in that the proposed development fails to comply with the site coverage control contained within clause 4.b.2 of chapter 3 of SSDCP 2006.

11. The application is considered unacceptable pursuant to the provisions of s.79C(1)(a)(i) of the Environmental Planning and Assessment Act 1979 in that the proposed development provides car parking in excess of the maximum car parking requirements contained within clause 1.b.5 of chapter 7 of SSDCP 2006.
12. The application is considered unacceptable pursuant to the provisions of s.79C(1)(a)(i) of the Environmental Planning and Assessment Act 1979 in that the proposed development fails to satisfy the design principles contained within SEPP 65 particularly in relation to context, landscaping, amenity and aesthetics.
13. The application is considered unacceptable in that the application has failed to provide adequate information to enable a thorough assessment of the application.