

JRPP No:	2010SYE029
DA No:	DA10/0442
PROPOSED DEVELOPMENT:	Demolition of Existing Residential Flat Building and Construction of a New Residential Flat Building with Strata Subdivision 12 McDonald Street, Cronulla – Lot 38, DP 7024
APPLICANT:	Innovative Architects
REPORT BY:	Brad Harris, Assessment Officer Planner Sutherland Shire Council (02) 9710 0859

Assessment Report and Recommendation

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 Joint Regional Planning Panel (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 eight (8) units and the construction of a new residential flat building containing three (3) units. The application also seeks consent for strata subdivision.

1.3 The Site

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

1.4 The Issues

The main issues identified are as follows:

- Height
- Overshadowing
- Landscaped area
- Setbacks

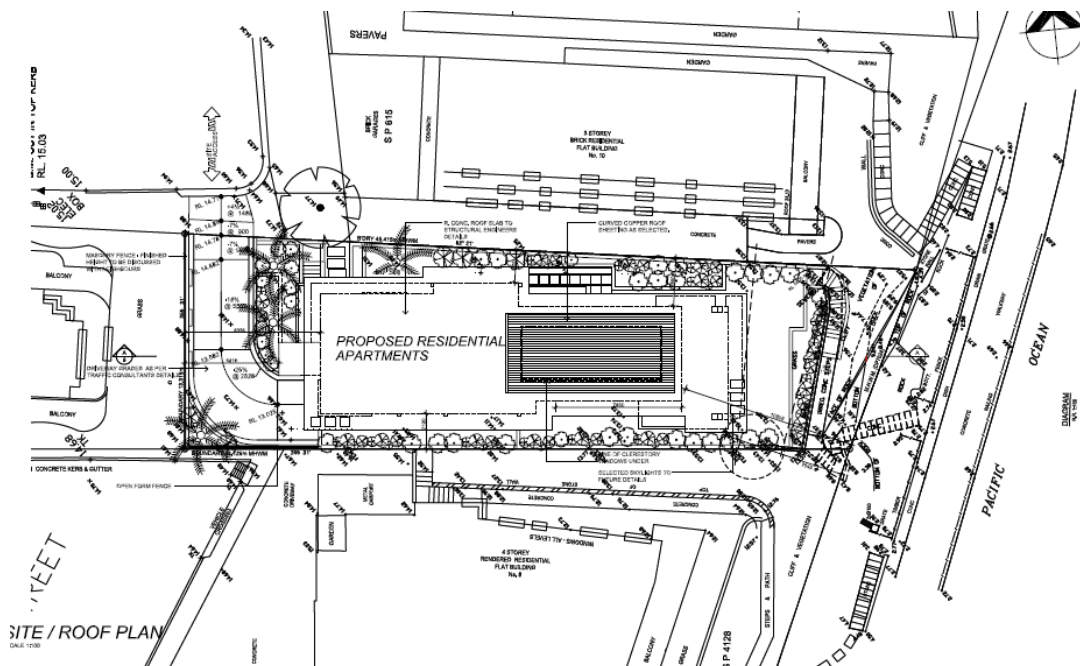
- Impact on heritage listed cliff
- View loss
- Privacy

1.5 Conclusion

Following detailed assessment of the proposed development the current application is considered worthy of support, and should be approved 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 three (3) units, each comprising two (2) levels. The application includes strata subdivision of the development.



Site plan showing the proposed development

Pedestrian access to the building is from the northern side of the site approximately 9m from the western boundary. Adjacent to this point a set of stairs provides access to the basement car park.

Vehicular access to the site is from McDonald Street and is located along the northern boundary. A 4m wide driveway provides access to a basement car parking area. The basement car park provides parking for ten (10) vehicles over two (2) split levels. In addition, a store room, garbage storage area and bicycle storage facility are provided in the upper level basement.

Stairs provide access to the street and a pedestrian lift provides access to the residential units. A car lift provides vehicular access to the lower level basement.

Each level can be described as follows:

Ground Level:

At the ground level is the lobby area for the entire development and the ground floor level of Unit 1. This level contains living and dining areas, kitchen, media room, WC and laundry. The living areas at the eastern end of the building are 700mm lower than the entry at the western end. A large courtyard/terrace is located at ground level at the eastern end of the building and is contiguous with a turfed open space area.

Level 1:

The first floor level contains the upper portion of Unit 1 and consists of 3 bedrooms (2 with ensuites) and a separate bathroom. A terrace at the eastern end of the building is accessed off the master bedroom. Bedroom 3 at the north western corner of the building opens out onto a west and north facing terrace, which is screened by a planter box and louvres.

Unit 1 has a total floor area of 266.3m².

Levels 2 & 3:

Unit 2 is contained within levels two (2) and three (3) which have an identical floor plan to the ground and first floor levels respectively.

Unit 2 has a total floor area of 266m².

Levels 4 & 5:

Unit 3 is contained within levels four (4) and five (5) which have an identical floor plan to the second and third floor levels respectively, apart from level 5 having an additional room on the south western corner where the fire stairs are located on every other level.

Unit 3 has a total floor area of 267m².

The total floor space of all three (3) units is 799.8m².

3.0 SITE DESCRIPTION AND LOCALITY

The subject site is known as 12 McDonald Street Cronulla. The site has frontage to the public walkway, known as The Esplanade, and Bate Bay (Pacific Ocean) beyond. The site is slightly irregular in shape with an approximate width of 13m and depth of 43m. The site has a total area of 529.6m².

Currently situated on the land is an existing two (2) storey residential flat building containing eight (8) units. The existing building is of brick construction. Currently the site provides informal parking for up to four (4) cars. There is minimal landscaped area.



Looking South toward the subject site (red brick building)

The development surrounding the site also consists of residential flat buildings of varying age, height and architectural style.

To the north of subject site is No. 10 McDonald Street, Cronulla. This site contains a three (3) storey residential flat building consisting of nine (9) strata titled units. Car parking is provided on site for six (6) vehicles. Three (3) of these spaces are in garages that front the street and a further three (3) stacked spaces are in front of the garages. The building is of face brick construction. The development has a flat roof. External to the building envelope there are balconies at each level on the eastern elevation.

To the south of the subject site is No. 8 Ozone Street, Cronulla. This site contains a four (4) storey residential flat building consisting of eight (8) strata titled units. The building is of masonry construction with a rendered finish. The development has a flat roof. External to the building envelope there are balconies at the eastern elevation on each level.

To the west of the subject site is No. 5 McDonald Street, Cronulla. This site contains a four (4) storey residential flat building of masonry construction with a rendered and painted finish.

Location Plan



Aerial Photograph



Existing building on 12 McDonald Street. 12 Ozone Street (2010SYS011) is also shown.

4.0 BACKGROUND

A history of the development proposal is as follows:

- On 23 December 2008 a Development Application (DA08/1354) was submitted to Council seeking consent for a five (5) storey residential flat building.
- The applicant appealed against the deemed refusal of that application and the Land & Environment Court on 5 February 2010 dismissed the Appeal (1032 of 2009 Innovative Architects Pty Ltd v Sutherland Shire Council [2010] NSWLEC 1022)
- The current application was submitted on 18 May 2010.
- The application was considered by Council's Architectural Review Advisory Panel (ARAP) on 27 May 2010
- The application was placed on public exhibition with the last day for submissions being 18 June 2010.
- An information session was held with concerned residents on 9 June 2010.
- The Sydney East JRPP was briefed on the application on 30 June 2010.
- Council wrote to the applicant on 17 June 2010 requesting additional information and attaching a copy of the ARAP report.
- An informal meeting was held between Council staff and the applicant on 9 July to clarify matters raised in Council's letter dated 17 June 2010.
- Revised plans and additional information were lodged with Council on 23 July 2010.

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 adequate 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.

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 from 25 May until 18 June 2010. In response to the public exhibition ten (10) submissions were received.

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 A** of this report.

The issues raised in these submissions are summarised as follows:

6.1 Concern about excessive height/number of storeys

Eight (8) submissions raised concern about the excessive height of the development.

Comment: The proposed development fails to comply with the development standard for height contained within Sutherland Shire Local Environmental Plan 2006 (SSLEP2006). A SEPP1 Objection has been lodged in support of a variation to this standard. This matter is addressed in the assessment section of this report.

6.2 Concern about impact on views

Three (3) submissions raised concern regarding view loss.

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

6.3 Concern about impact on the heritage value of the cliff and The Esplanade

Two (2) residents raised concern that the proposal will have a detrimental impact on the heritage listed cliff and adjacent public walkway known as The Esplanade.

Comment: Council's Heritage Architect assessed the proposal and is satisfied that there will be no detrimental impacts on adjacent heritage items. Further detail in respect of this matter is included in the assessment section of this report.

6.4 Concern about traffic impacts during construction

One (1) resident has raised concern 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 loss of property values

One (1) submission raises the potential negative impact on property values if the development proceeds.

Comment: No evidence has been provided to verify that the proposal would have any adverse impacts on property values. Given the age and condition of the existing building it is considered likely any development of the site would improve the value of adjacent properties.

6.6 Concern about insufficient landscaping

One (1) submission raised concern about the lack of landscaped area provided for the development.

Comment: The proposed development fails to comply with the development standard for landscaped area. A SEPP1 Objection has been lodged in support of a variation to this standard. This matter is addressed in the assessment section of this report.

6.7 Concern about general non-compliance with development controls

Concern was raised by one (1) resident about the extent to which the proposal fails to comply generally with Council's adopted development controls.

Comment: It is acknowledged that a number of development controls are breached, however it is considered that the small size of the site renders full compliance unfeasible. The extent of non-compliances and the respective impacts resulting from these non-compliances will be discussed under various sub-headings in the assessment section of this report.

6.8 Concern about overshadowing/impact on solar access

Concern has been raised by six (6) residents 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 that the site is being overdeveloped

Seven (7) residents raise concern that the proposal results in an overdevelopment of the site.

Comment: Floor space ratio is the control used to govern the intensity of the development. The maximum permitted on this site is 1.8:1 and the proposal is only 1.51:1. The overall impacts of the proposal on adjoining properties and

the locality in general are further addressed under various sub-headings in the assessment section of this report.

6.10 Foreshore impacts and precedent for future development

Concern has been raised in four (4) submissions that the proposal will result in adverse visual impacts when viewed from the foreshore and that approval of development on the site will set a precedent for similar types of development along the foreshore in this locality.

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

6.11 Concern that the proposal is contrary to zone objectives

One (1) submissions expresses the view that the proposal is contrary to the Objectives of Zone 6 – Multi Dwelling B under Sutherland Shire Local Environmental Plan 2006.

Comment: the Objectives of the zone are:

- (a) to allow residential flat buildings in a form that complements the predominantly urban landscape setting of the zone,*
- (b) to allow development that is of a scale and nature that reflects its position as part of an urban centre,*
- (c) to permit development on land at a density that is appropriate in terms of the land's proximity to the retail/commercial centre, public transport, services and employment opportunities,*
- (d) to provide a range of housing choices in accessible locations.*

It is considered that the development is consistent with the objectives of the zone. The density of the development and the impacts of the various non-compliances with specific development controls are addressed in the assessment section of this report.

6.12 Concern that the proposal does not comply with setbacks

Concern has been raised in three (3) submissions that the proposal does not comply with side boundary setbacks.

Comment: It is acknowledged that the side boundary setbacks do not comply with Council standards, however full compliance on a site which is only 13.31m wide is not possible. The proposal has been designed to minimise consequential impacts of the reduced side boundary setbacks. This matter is discussed in the assessment section of this report.

6.13 Concern that the proposal will result in amenity impacts

Four (4) submissions refer to the proposal resulting in adverse amenity impacts for residents of adjacent properties.

Comment: The proposal has been designed to minimise amenity impacts. This matter is addressed in the assessment section of this report.

6.14 General support for the proposal

One resident has indicated general support for the proposal and has requested that Council impose specific conditions in relation to the need for an adequate fence between his property and the subject property.

Comment: This matter is addressed in the recommended conditions of consent.

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. 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)

Note: State Environmental Planning Policy No. 65 – Design Quality of Residential Flat Development does not apply to this application as the proposed building only contains three (3) dwellings.

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. A further heritage item, being a rock pool, is located in close proximity to the site.

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 McDonald Street Max 6 Storey to The Esplanade	6 Storeys	No (SEPP 1 Objection)
Floor Space Ratio SSLEP 2006	1.8:1	1.51:1	Yes
Landscaped Area SSLEP 2006	40%	21.4%	No (SEPP 1 Objection)
Allotment :- size width	1800sqm 30m	529.6m ² 13.31m	No *applicant seeks exception through Clause 41(6) of SSLEP 2006
Setbacks:- The Esplanade Northern side Southern side McDonald St	6m from cliff edge 4m 4m 4m street level 8m second level & above	5m from cliff edge 1.9m 1.2m – 3m 5.81m 5.81m	No, but complies with Draft DCP No No No No
Site Coverage	Max 40%	46.6%	No
Open space:- Common Private	Min 100 m ² Min 10m wide Min 12 sqm area Min 2.5m wide	50 m ² 5m >12m ² >2.5m	No No Yes Yes
Apartment:- Internal height Room size Total size	Min 2.7m Min 3m width Min 130sqm	3m >3m >130	Yes Yes Yes
Building Depth	Max 18m	28.65m	No, however sufficient solar access is achieved
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 Does not Comply	Yes A development fully complying with setback and height would be unlikely to comply due to the orientation of the lots
Adaptable dwelling	20% of units = 1 required	1	Yes
Car parking:- Resident Visitor	Max 1.5 spaces/dwg 1 space/5 dwellings	= 4.5 = 1 Total Max. 6 spaces 10 spaces provided	No. Maximum number of spaces is exceeded
Bicycles:- Resident Visitor	1 per 5 units (1) 1 per 10 units (1)	1 1	Yes Yes
Storage:- Area Size	1 m ² per unit 6m ³	Ample space for storage within each unit	Yes

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 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 letter dated 4 June 2010 that it does 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.

9.2 Architectural Review Advisory Panel (ARAP)

Council's Architectural Review Advisory Panel considered this application on 27 May 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 B**. However, in conclusion, this report noted the following:

"The height of the proposed building is considered to be inconsistent with the existing surrounding buildings, however given the planning controls for the site it is considered to be a reasonable response to the anticipated future scale of the area.

For such a small structure the proposed building is generally over articulated and the proposed use of materials and treatments to windows are fussy and over decorative when related to the overall urban context. The excessive roof over hang also contributes to the fussy presentation of the built form. Further development of the eastern balcony screens and environmental performance of the building is also recommended.

The proposal is considered to be an improvement on the scheme previously viewed by ARAP and responds to the opportunities and constraints of the site in a more appropriate manner. The proposal is supported by the Panel to proceed for design refinement and further rationalisation of the building aesthetics which should be completed before the proposal is considered by the Joint Regional Planning Panel".

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.

9.3 Council's Architect

Council's internal Architect did not provide comments on the originally submitted plans given that the proposal was subject to consideration by ARAP. Council's architect reviewed the amended plans submitted on 23 July 2010 taking into account the comments on the original plans made by ARAP, and he is generally supportive of the amended plans.

A full of copy of this internal report is provided in **Appendix C**.

9.4 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 D**. In summary Council's internal Heritage Architect supports the proposal and following points should be noted:

"The issues regarding the conservation of the cliff face were discussed and supported in a recent court case at the Land and Environment Court of NSW where Commissioner Hussey validated the significance of the sandstone cliff and the removal of existing unsympathetic stairs.

The proposed design scheme proposes the removal and non- replacement of the stairs down the cliff face and is supported on heritage grounds. The restoration of the cliff face will have a positive impact on the setting and amenity of The Esplanade.

The revegetation and weeding of the cliff face will help to stabilize the rock face and preserve the natural appearance of the landform and is supported on heritage grounds.

The excavation works for the car park and building foundation as well as the demolition of existing structures shall be done under the supervision of a qualified geotechnical heritage specialist. Remedial work to stabilize the cliff face and introduction of new material must be kept to a minimum and always under the supervision of a heritage specialist.

The walling and fencing of the eastern boundary shall be treated as visually recessive. The feature of the cladding of the eastern wall of the terrace with sandstone shall be limited to the existing wall only as this mimicking of the natural stone may have a negative impact that is not acceptable, obscuring the appreciation of the irregular natural stone formations of the cliff."

9.5 Engineering

Council's Development Engineer has undertaken an assessment of the application and advised construction management, stormwater management, geotechnical matters, car parking and road frontage works can be addressed by suitable conditions of development consent. A full copy of this internal report is provided in **Appendix E**.

9.6 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 F**.

9.7 Landscape

Council's Landscape Architect has reviewed the landscape plan submitted with the application and has found the landscape scheme satisfactory in terms of plant selection and landscape design. A full copy of these comments is included in **Appendix G**.

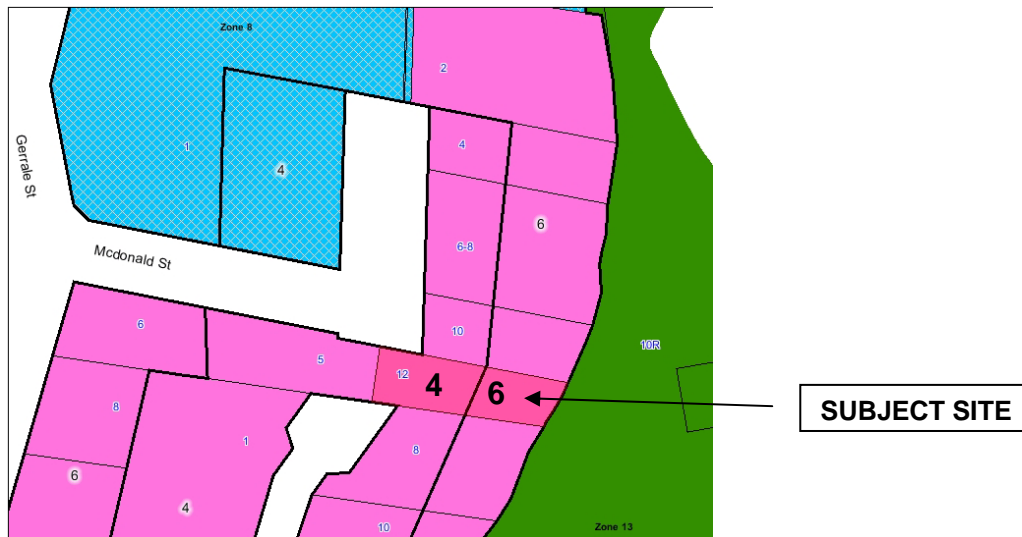
10.0 ASSESSMENT

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 McDonald 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

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 reproduced in **Appendix H** of this report. Reproduced below are extracts from the section of the SEPP 1 Objection that relates to how the proposed development meets the objective of the development standard:

“Explain how the proposal, notwithstanding the non-compliance with the development standard, will achieve the objective of the development standard.

Objective (a)

[to ensure the scale of buildings:

- (i) is consistent with the desired scale and character of the street and locality in which the buildings are located, and*
- (ii) compliments and natural landscape settings of the buildings]*

“When viewed from the Esplanade (the east), the western portion of the site would not be visible regardless of whether the building was to have a height of 4 or 6 storeys. The western portion of the building will be within the visual catchment of properties located to the north, south and west, and it will also be visible from the McDonald and Ozone Streets.

To achieve Council's desired urban design outcome of a stepped 4 and 6 storey development on the subject site, the western portion of the proposed building is architecturally designed to create a visually more dominant 4 storey base with a lighter 2 storey element placed above (to create a total height of 6 storeys). This is achieved through the following design elements:

- *Emphasising the first 4 storeys of the building through the use of a strong architectural feature that frames the balconies on the western elevation and includes fixed vertical louvres (the fixed louvres will also increase visual privacy for existing residents to the north and the future occupants of the proposed building)*

- *Positioning the first 4 storeys of the proposal closer to the western boundary compared to the top 2 floors (the fifth and sixth levels are setback 1.8m from the western edge of the building alignment below)*
- *Limiting the passenger lift located on the western elevation to a height of 5 storeys, which would typically be the height of a lift together with lift overrun for a 4 storey building; and*
- *Placement of additional glazing on the western elevation of the uppermost floor to reduce the apparent height of the building.*

Although the proposal will exceed the 4 storey height limit by 2 storeys to create a 6 storey building, particular attention is given to architectural treatment to create a prominent 4 storey building base with a visually subordinate 2 storeys above. This ensures that the objective of the height control is achieved with regard to Council's desired scale and character of the locality."

Objective (b)

[to allow reasonable daylight access to all buildings and the public domain]

Solar access into the proposed development complies with the requirements of SSDCP 2006. 10m² of each apartments' private open space receives 4 hours sunlight between 9am and 3pm mid winter and all apartments receive 3 hours sunlight to living areas during mid winter.

In terms of solar access to adjacent properties, the proposal does not comply with the requirements of SSDCP 2006 as it will eliminate more than one third of the existing sunlight to the private open space areas and windows of living areas of No.8 Ozone Street (adjacent southern property).

As discussed during the LEC appeal and as shown on the shadow diagrams provided with the application, a building with a compliant height of 4-6 stories (stepped) on the same side boundary setback of the existing proposed buildings would create essentially the same overshadowing impacts as the proposed development.

Objective (c)

[to minimise the impacts of new buildings on adjoining or nearby properties from loss of views, loss of privacy, overshadowing or visual intrusion]

"On balance, overshadowing impacts are considered reasonable given the comparable impacts of a scheme with compliant building height against the proposed development."

"In terms of view loss, the LEC was satisfied that provided new development on the site was positioned from the side boundaries at a distance that is no less than the existing building, then a reasonable outcome would be achieved in terms of preservation of existing views.

The LEC also formed the opinion that because site amalgamation was not possible with the adjacent northern property (No. 10 McDonald

Street)amenity benefits would be provided through the preservation of a view corridor along the northern boundary of the subject site.”

“With relation to privacy and visual intrusion, the adjoining properties will be benefited by the unique layout of the proposed development where only 3 x 2 storey apartments are proposed over the entire 6 storey building. It is conceivable that (given the proposed gross floor area and building height) that up to 10 apartments could be achieved in a building of this size on the subject site. This would inevitably result in reduced privacy for the adjoining residents as there would be a larger number of living areas and private open space areas (balconies) facing north and south. The proposal offers higher levels of privacy for adjoining residents when compared to a development of a similar size but standard apartment sizes (approximately 80sqm in area).”

Objective (d)

[to ensure that the visual impact of buildings is minimised when viewed from adjoining properties, the street, waterways and public reserves]

The building is designed as a simple and elegant piece of contemporary architecture. It has a slender form that is not bulky or inconsistent with existing buildings in the locality.

Building mass is controlled through the use of well articulated elevations, simple vertical and horizontal building elements, a soft colour palette and appropriate landscape features..

When viewed from the east and west the proposed building height is consistent with pattern of existing contemporary buildings and desired future building along this section of the Cronulla coastline. In a complying development where the western portion of the site is restricted to a 4 storey height limit, the dominant building height permitted for the centre and eastern end of the site. As such, a 6 storey building height for the entire site will not be visually any more dominant than a compliant scheme that also has a 6 storey height for the majority of the building footprint.”

Comment:

The rationale for the subject height control (ie the 4/6 storey split) is that the built form would be predominately four (4) storeys in height and in response to the change of levels (ie lower site levels toward the eastern part of the site) part of a level at the eastern end of the site would be below the street frontage ground level and one part level would be located on top of the building, thus creating six (6) storeys on the eastern part of the site.

The height standard for developments fronting McDonald Street is four (4) storeys and while there are no stated aims to the height control in this location, it is assumed its intention is to prevent the built form dominating the streetscapes of McDonald Street and Ozone Street, which are relatively narrow streets.

The proposed development does not have regard to the four (4) storey component of the height limit but maintains a consistent six (6) storeys across the site. The building will, because of the narrowness of the site, present a very tall, slender built form. To ameliorate the verticality of the building the applicant is seeking to use various articulation methods and variations in building materials and colours to visually break up the vertical elements of the building. Whilst the architectural merit of the design has elicited a variety of opinions, it is considered that the overall design intent will assist preventing the six (6) storey building from dominating McDonald Street.

The height of the building is a function of attempting to maximise development potential for the subject site given that amalgamation of the site has not proven possible. It is likely that, should the subject development be approved, the adjoining three (3) storey residential flat building at No. 10 McDonald Street would be redeveloped in a similar fashion to the subject site. Whilst this potential for creating a precedent has been raised in the submissions as being a concern, it is acknowledged that there are benefits to allowing both No. 10 and No. 12 McDonald Street to be developed independently with tall, slender buildings as this will allow a view corridor between the two sites. This view corridor will be evident as the site is viewed from the east-west section of McDonald Street when entering McDonald Street from Gerrale Street.

Alternatively, should the sites be amalgamated, this would result in a wider building on the site (albeit with potentially greater side boundary setbacks), which would block the view of the ocean that would otherwise be available between two separate buildings.

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 subject proposal has an overall roof height of 19m measured to the edge of the visible roof. (Note: there is a highlight/clerestory window and associated roof, which measures 1.4m in height however in this case the edge of the roof is recessed from the main plane of the elevation and will not be visible from ground level.

Floor to floor heights within the building are shown at 3.1m, resulting in a floor to ceiling height (by scaling) of 2.85m for all floors other than the ground floor, which has a 'stepped' floor plan with a foyer ceiling height of 2.85m and a general ceiling height of 3.6m.

The Residential Flat Design Code requires living areas to be provided with a ceiling height of 2.7m. Compliance with this Code would produce a cumulative height reduction of 0.9m. Whether or not reduction in the overall building height by this amount would achieve a better built form needs to be assessed in terms of actual physical impacts. A reduction in the visual impact of the overall building resulting from a lowering of the height by this amount (4%) is unlikely to be noticeable. In terms of solar access, a reduction in the height of

the building by this amount would not have any benefits as the building to the south is significantly lower and no change to shadow impacts would be achieved.

Chapter 2 of SSDCP 2006 contains Locality Strategies for Sutherland Shire. The subject land is identified as being within Precinct 8 of the locality of Cronulla. The DCP states *“Precinct 8 contains predominately medium density residential development at the edge of the cliff facing the ocean. Development should retain the compact residential nature of the area and ensure a high level of residential amenity is enjoyed by residents and existing adjoining residential development. Development at the cliff edge should be designed to ensure shadow and building heights do not erode the amenity of the foreshore below.*

The proposed narrow, but tall building suitably retains the compact nature of residential development on the foreshore and it is considered that the height of the building, whilst not complying with the dual 4 storey/6 storey height limit identified in SSLEP 2006, does not result in any amenity impacts on the foreshore below either in terms of visual or overshadowing impacts.

It is therefore considered that the proposed building height is acceptable and that the applicant's justification for the breach of the height standard as outlined in the SEPP1 Objection is considered reasonable. 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 well founded; and
- (ii) The granting of consent to the development application would be consistent 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 landscaped area (in accordance with the definition contained within SSLEP2006) of 21.4% is provided.

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 I** 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:

“As indicated, the proposal provides 251.45m² of landscaping, or 47.47% of the site. This includes deep soil planting of 113.36m² (21.4%), but also includes planting above basement areas with an average soil depth of 550mm, planting on terraces and patios and the roof terrace to Unit 3. Accordingly, the landscaped area provision on the site achieves the minimum 40%, however some of this area does not technically satisfy the definition of landscaped area.

...It is important to note that the subject site currently provides only 66.73m² or 12.6% landscaped area. Furthermore, the landscaping proposed by the development is of much higher quality and quantity compared to that provided on the subject site.

“Explain how the proposal, notwithstanding the non-compliance with the development standard, will achieve the objective of the development standard.

Objective (a) and (b)

[(a) to ensure adequate opportunities for the retention or provision of vegetation that contributes to biodiversity,

(b) to ensure adequate opportunities for tree retention and tree planting so as to preserve and enhance the tree canopy of Sutherland Shire]

At present the site contains 66.73m² or 12.6% landscaped area. Landscaping is essentially limited to a small number of shrubs to the east of the building amongst the cliff face. There are no trees on the site. The front and side setbacks are almost entirely paved. As a result, the proposal (sic) does not contain any significant vegetation and in no way contributes to the tree canopy of the locality. The landscape character of the site is similar to the wider locality. That character is urban in nature and as identified by aerial photography and streetscape photographs included in the Site Analysis prepared by Innovative Architects, does not contain any significant canopy planting or deep soil areas.

Typical of higher density urban areas, landscaping in the locality includes scattered pockets of planting and a greater proportion of hard landscape elements than more suburban style development in the Sutherland Shire. It is considered that this existing landscape character should be taken into account in assessing the appropriateness of the proposed landscaping against the generic development standard that does not acknowledge site and character differences.

..In the urban context of the site, the degree of planting is considered appropriate and reasonable and will assist in establishing a tree canopy in an area that is generally devoid of such landscape elements. This planting will also assist in fostering biodiversity. Accordingly, the proposal is considered to be consistent with objectives (a) and (b) of the development standard.

Objective (c)

[to minimise urban run-off by maximising pervious areas on the sites of development]

Given that the proposal provides for a large increase in landscape space from 66.73m² to 250.45m², opportunities for water retention will be significantly improved. Whilst some of the landscaped area does not technically satisfy the definition of landscaped area definition, the landscaped area at ground level above the basement parking level will provide an average soil depth of 550mm which will allow it to perform a water retention role. IN addition, the proposal incorporates water tanks (in accordance with the requirements of BASIX), which will be used for irrigation and as a supply to toilets in bathrooms. Accordingly, whilst some of the landscaped area proposed does not technically satisfy the definition of landscaped area, the proposed landscaping will be capable of achieving the run-off containment objectives of the control. As such, the proposal is considered to be consistent with objective (c).

Objective (d)

[to ensure that the visual impact of development is minimised by appropriate landscaping and that the landscaping is maintained]

The proposed landscaping at the north-west corner of the building will assist with screening the circulation core of the building and will soften the appearance of the driveway to the basement level. The planting at the curtilage of the building will result in a significant improvement compare to the existing situation whereby the entire front and side setbacks of the building contain paved area. Furthermore, planting within the eastern yard area will soften the base of the building as viewed from the east and will integrate with the natural cliff feature that extends below MHWL.

..the development will in fact provide a higher level of landscaped space than any surrounding development. Accordingly, in terms of visual impacts and consistency with area landscape character the proposal will provide for an improvement on the existing situation on site and will improve the contribution of the site to the wider area landscape character to an extent well in excess of surrounding development. Therefore, the proposal will not result in any adverse impacts on the landscaped area of the locality and is considered to be consistent with objective (d) of the development standard.

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

Is the objection well founded? Yes. The SEPP 1 objection provides 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.*

Yes. Granting of development consent would be consistent with the aims of SEPP1 and the objects of the Act. A variation to Council's minimum landscaped area development standard is considered to be reasonable in the circumstances of the case.

Comment:

The site is a small, narrow allotment and to accommodate the provision of car parking on site the basement car park extends from side boundary to side boundary, occupying approximately 78% 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 at surface level. It is unlikely however that the applicant would agree to reducing the number of spaces particularly as the development is to be marketed as luxury 'up market' units and these would not be viable without provision of three (3) spaces per unit.

An alternative option to maintain the number of spaces and achieve a greater landscaped area would be to provide a third level of basement parking. This is likely to increase construction costs and potentially have impacts on the cliff face. A further assessment would need to be made of any alternate proposals in terms of compliance with Australian Standards for parking spaces and manoeuvring areas.

A reduction in the horizontal dimensions of the basement could allow for additional deep soil plantings on the site. However, these would be within the side boundary setback and are unlikely to support significant tree or shrub growth due to salt air, wind and lack of sun. The harsh waterfront environment makes significant vegetation growth difficult to achieve and any attempts to provide such plantings are likely to impede views, both for residents of the subject development and for adjacent properties.

Informal meetings between Council staff and the applicant subsequent to the Court's determination of the previous application and prior to the lodgement of the current application indicated Council's preference for a minimum 30% landscaped area. However, given the circumstances of the site, it is

considered that there is merit in focussing attention on the provision of a high quality landscape setting rather than achieving a particular numeric value.

The proposed development provides half of the 40% landscaped area required by SSLEP 2006. The applicant's arguments in relation to the lack of existing landscape area would be considered irrelevant if the site was being amalgamated to achieve the required 1800m² site area. However, in the context of considering whether the site should be developed in isolation having regard to the impacts of the development on surrounding properties and the streetscape generally there is some merit in the argument that the proposal will provide an increase over the existing landscaped area and will provide more landscaping, particularly toward the street frontage, than many of the properties in the immediate locality (McDonald Street and Ozone Street).

SEPP 1 Conclusion

Having regard to the above, *and to the object and 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 well founded; and*
- (ii) The granting of consent to the development application would 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 SSLEP2006, 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 529.6m² in area and has a minimum width of 11.4m. In support of this variation the applicant's Statement of Environmental Effects states:

"The issues to be considered (ie Clause 49 of SSLEP 2006 Urban Design – residential buildings) have been dealt with in detail in Section 4.4 of this Statement. In summary, the proposal is considered to appropriately fit within the context of the locality and will not result in any significant adverse impacts upon adjoining properties."

In his consideration of the previous appeal, Commissioner Hussey stated “..I am also satisfied to rely on Mr Fletcher’s evidence that the approval of this development will not offend the economic and orderly development considerations. In this regard, I am satisfied it is possible to achieve a satisfactory scale RFB on the subject site alone and as No. 10 is of similar size, a similar outcome could likely be achieved if desired by those owners in the future.

Therefore, I rely on the planning experts agreement that amalgamation is not feasible and consider it appropriate to proceed with the consideration of the merits of the subject application.”

Whilst the applicant has not provided any evidence of attempts to achieve amalgamation with adjoining properties as part of this application, the previous Court Judgement acknowledges that such evidence was presented to the Court. The applicant has also undertaken to make it available should the Panel wish to view it.

To achieve compliance with the minimum 1,800m² 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. Due to the age and type of development in the immediate vicinity the only obvious opportunity for amalgamation would be No.10 and No.12 McDonald Street. This would result in a site of 1073m² and would still not comply with the 1800m² standard.

Whilst such an amalgamation would provide a greater capacity for the development site to provide on site car parking and comply with the development standard for landscaped area, it would result in a wider built form on the waterfront and result in the existing view corridors between No. 10 and No. 12 McDonald Street being lost. The view corridors on the perimeter of the amalgamated site would however be increased as the development would be more likely to be capable of complying with the side boundary setback requirements.

It is recognised that the failure to achieve a complying allotment size in this instance results in a situation where the neighbouring property to the north (No. 10 McDonald Street) will most likely also be developed in isolation. However, it is noted again that the Court has previously found that if it is possible to achieve a satisfactory scale residential flat building on the subject site, a similar outcome could be achieved on No.10.

Acknowledging that amalgamation is not feasible it is left to the Panel to determine whether the development of the subject site in isolation is appropriate given the extent of variation to development standards and potential impacts on adjoining residents, the streetscape and character of the locality more generally. Such determination can only be made in the context of a consideration of the cumulative impacts of each of the non-compliances.

In terms of streetscape and view corridors it is considered that development of the site in isolation with a tall, slender building carries with it advantages over a wider, bulkier building. Other potential impacts such as overshadowing and privacy are addressed in this report.

10.4 Setbacks

10.4.1 Setback to McDonald Street

The application fails to comply with the street setback controls contained within SSDCP2006. SSDCP2006 maps the setback requirements for McDonald Street on map 9 referred to in clause 3.b.12 of Chapter 3. SSDCP2006 requires a four (4) metre setback from McDonald 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 this setback control for all levels although it is acknowledged that due to the location of the subject site at the convergence of the east-west and north-south sections of McDonald Street and the cul-de-sac head of Ozone Street, the front setback controls are rendered impractical and effectively meaningless.

The main portion of the building is set back 8.2m from the western boundary of the site with the lift tower being set back 5.81m from this boundary. This boundary however, is not the street frontage. The actual street frontage to McDonald Street is a 6m section of the northern boundary. The nearest portion of the building to this section of boundary is set back 3m for the first four (4) levels and the uppermost two (2) levels provide a similar setback to a balcony roof and the roof of the building.

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 address the DCP control. However it is considered that the style of architecture and articulation of the western setback make a variation to this setback requirement acceptable in the circumstances of this case. The Court also agreed that the application of the setback controls is based on a larger consolidated lot and would be difficult to apply to a smaller site having a width of 13.31m at the western boundary and 11.4m at the eastern boundary.

10.4.2 Side Boundary Setbacks

The site's narrow width impedes its ability to comply with the minimum 4m side boundary setback control. Compliance with the control would leave a building footprint approximately 4m wide, which is practically unworkable. The northern and southern elevations are well articulated on varying setbacks between 2.19m and 3m. The existing building is set back 2.1m from the southern boundary and between 1.8m and 3m from the northern boundaries, however it is unarticulated.

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. As discussed above the current controls contained within SSDCP 2006 require a six (6) metre or four (4) metre setback from the cliff edge.

At ground level the proposed building setback is between 5m and 6m. The upper level balconies are set back between 4.5m and 5.5m from the top of the cliff.

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 SSDCP2006. The amendment does not change the setback intended to apply, it seeks only to clarify the current control to remove any uncertainty.

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 six (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 SSDCP2006 (Amendment No. 6) defined the required eastern setback for development on the subject site as being 7m measured along the southern boundary and 10m measured along the northern boundary. The development application complies with this setback requirement. Again, whilst the Draft DCP has no statutory weight, compliance with the Draft DCP is indicative that the proposal meets Council’s intention for any future development of the site in respect of setback from the foreshore.

10.4.4 SSLEP2006 – 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.

It is acknowledged that historically there has been work undertaken over the cliff face on this site, including a staircase and retaining walls. The staircase is an aging structure and is in an unsafe condition. The majority of the staircase is proposed to be removed as a part of this development application, with a small upper section to be rebuilt to provide access to the upper cliff face for maintenance of landscaping.

The removal of the staircase is supported as it will reinstate the cliff to a more natural appearance in keeping with its foreshore context.

Removal of the stairs that are outside the lot boundary and within The Esplanade will require a separate development approval with an application being supported by Owner's consent from the Department of Lands.

10.4.5 SSLEP 2006 - Foreshore Building Line (FSBL)

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 LEP 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 encroaches into this area by approximately 1.2m at the south-eastern corner. The breach to the foreshore building line is a prohibition as there is no ability for the consent authority to consider a residential flat building forward of this fixed line and the standard cannot be varied using SEPP 1.

The applicant has been advised of this encroachment and in response made the following comments in a letter dated 23 July 2010:

"It is only the extreme south-eastern corner of the upper basement level that slightly infringes the required FBL. The area concerned is below the finished ground level of the project and will not be visible."

The applicant provides comment in respect of how the proposed breach of the setback is not contrary to the objectives of the clause and meets the criteria set out in Clause 17(9)(b)(i) –(iv).

Notwithstanding the applicant's arguments, it is important to note that Clause 17 provides a prohibition on the erection of a building within the foreshore building line (in this case, 7.5m). The only exceptions provided within the clause are in relation to an existing dwelling house forward of the FSBL or a proposed new dwelling under certain circumstances. The exception within the clause is not considered to apply to any other form of development other than dwellings and therefore there is no opportunity available to the applicant to seek variation to the setback requirement (SEPP 1 does not apply to Clause 17).

Accordingly, it will be recommended that should the Panel be of a mind to approve the application, a condition of consent be imposed requiring the basement carpark to be amended to comply with the 7.5m FSBL. This modification will have the consequence of marginally increasing the landscaped area.

10.4.6 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 has been assessed in relation to the potential impacts on the structural integrity and visual quality of the heritage cliff. Both Council's assessment engineer and heritage architect have formed the view that the proposal is satisfactory in terms of impact on the cliff and appropriate conditions of consent are recommended to ensure adequate protection of the cliff during the construction phase should the Panel approve the development.

10.5 View Loss

View loss is an issue which has been raised by three (3) objectors to the proposal. The particular objectors are residents of No. 1 McDonald Street (Cote De Azur) and No. 5 McDonald Street. None of the objectors raise specific concerns in relation to the nature or extent of view loss that they anticipate should the development proceed.

An inspection of the subject site has been undertaken from the above properties and photographs below indicate the extent of existing views enjoyed by these properties.



View from 3rd Floor of No. 1 McDonald Street (Cote d'Azur)



View to south-east (toward subject site)



View to north-east from 2nd level No. 1 McDonald Street



**View from balcony at top level No. 5 McDonald Street (subject owner did not lodge a submission)
Note: A Complying development (with 4 storeys at the street frontage) would result in same extent of view loss.**



View toward site from McDonald Street near the corner of Gerrale Street looking east. Note gap between No.10 and No.12 McDonald Street which would be lost if these sites were amalgamated and developed conjointly.

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.

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 the ocean. This view is partly obscured by existing development and vegetation on the neighbouring sites. Existing views to the north and south from the balconies of adjoining properties will not be affected.

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 and living areas within various residential flat buildings located generally to the west of the subject site. It is noted that the only objections related to view loss are from No. 1 McDonald Street and No. 5 McDonald Street (see photos above).

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 adjacent properties.

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

It should be noted that the non-compliance with the SSLEP2006 height standard does not result in a significantly greater view loss for any property as the six (6) storey component of a fully complying development would result in a similar extent of view loss.

A further relevant consideration is the fact that the development proposed, whilst breaching a number of numerically expressed development standards, is of a high quality design, with specific design attributes aimed at minimising impacts on adjacent properties particularly in terms of privacy.

In considering whether to grant approval to the subject development contrary to the minimum lot size provisions of SSLEP 2006, a relevant consideration is the advantage of retaining a view corridor between narrow buildings on narrow lots as opposed to the view loss impacts that arise from larger, bulkier buildings on the waterfront which, whilst providing opportunities for greater side boundary setbacks, provide less 'breaks' between buildings and interrupt the rhythm that exists along the foreshore in streets such as McDonald Street and Ozone Street. These gaps between narrower buildings provide glimpses of the ocean which reinforce to residents and particularly to pedestrians, that they are in close proximity to the coastline, which is the primary attraction of Cronulla.



No 8 McDonald Street as viewed from level 2 of No.1 McDonald Street. An example of the type of development likely to result from an amalgamation of Nos 8 and 10 McDonald Street.

10.6 Amenity/Privacy Impacts

The privacy relationship between the existing building and its neighbours is currently very poor with windows facing each other separated by between 4m and 6.5m (approximately) 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. The initially submitted plans were considered by Council's ARAP to provide an excessive number, and overly large, windows on the northern and southern side elevations. To address this concern, amended plans were submitted and these are considered appropriate in preserving an adequate degree of privacy between the subject development and the adjoining properties.

10.7 Overshadowing/Solar Access

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.

As the development proposes variations to the height control, a shadow analysis has also been provided indicating the comparative impacts of a complying development and the subject proposal. This indicates that the extent of shadow impact from the proposal would not be significantly improved if the building were made to comply with the part four (4) storey part six (6) storey height limit as shown on the SSLEP2006 Height Control Map.

Some submissions raised concern that the shadow diagrams submitted with the application had been deliberately truncated to avoid showing the impact of afternoon shade on the rock pool to the east of the site. Amended plans have

been submitted which clarify that the shadowing impacts of the development on the foreshore are negligible.

10.8 SEPP 71 – Coastal Protection

The subject site is affected by the provisions of SEPP 71 and as such the consent authority must take into consideration certain matters, as outlined in the SEPP, when determining this application.

The relevant aims of the policy in relation to the subject development proposal are as follows:

- (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.*

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.*

Comment

The proposal has been assessed in accordance with the relevant aims of the Policy and Heads of Consideration contained therein and it is considered that the proposal is not inconsistent with the policy.

10.9 Common Open Space

The development does not provide a common open space area as required by SSDCP 2006. The proposed development contains three (3) 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.

10.10 Site Coverage

The proposed development fails to comply with the maximum 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 46.6%.

This control assists in apportioning development on the site allowing 40% for building, 40% for landscaped area and 20% for ancillary development such as driveways, pedestrian paths and the like. The small size of the site makes it impractical to provide the normally expected balance between built form and open space/landscaped area. The 16.6% variation to this control is considered reasonable having regard to the constraints of the site, the nature of the design and the high level of internal amenity provided to the three (3) units.

10.11 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 five (5) car parking spaces. The DCP also requires the provision of one (1) visitor spaces. The proposal provides ten (10) resident parking spaces with visitor parking to be individually managed by the residents. The proposal provides four (4) car spaces in excess of Council's maximum control. Given the shortage of street parking in the vicinity of the subject site and the fact that a reduction of spaces would not necessarily have any advantage in terms of providing additional landscaped area, the level of parking provided is considered acceptable.

Given that the existing building contains eight (8) residential dwellings with only four (4) car parking spaces, the proposal will have a positive benefit in freeing up kerbside parking for existing residents in the locality and for casual parking.

10.12 Bicycle Storage

The proposed development provides bicycle storage within the upper level basement and thus complies with SSDCP 2006.

10.13 Storage

SSDCP2006 requires a secure space per dwelling of 6m³ (minimum dimensions of 1m²) 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.

10.14 Comparison to Proposal Considered by Land and Environment Court

An appeal against Council's deemed refusal of DA08/1354 for the construction of a five (5) storey residential flat building was dismissed by the Land and Environment Court (Commissioner Hussey) on 5 February 2010.

As the subject proposal is for a similar development (albeit six (6) storeys), the judgement of Commissioner Hussey is a relevant consideration in light of the current proposal. The applicant's Statement of Environmental Effects addresses the reasons why the previous proposal failed to satisfy the Court and outlines the manner in which the current application differs from the proposal considered by the Court.

The comparison of the two development proposals in relation to the key development controls is contained in the following Table:

Control	LEC Proposal	Current Proposal	Difference
Gross Floor Area	795.9m ²	799.8m ²	-3.9m ²
Floor Space Ratio	1.5:1	1.51:1	+ 0.1:1
Landscaped Area	210m ² (40%)	251.45m ² (47.47%)	+ 7.7%
Deep Soil L/A*	79.5m ² (15%)	113.36m ² (21.4%)	+6.4% (+33.86m ²)
Building Height	5 storeys (RL 33.21)	6 Storeys (RL34.82)	+ 1 Storey (+1.61m)
Boundary Wall Height – North - South	RL 16.65 RL 15.70	RL 14.80 RL 14.30	-1.85m -1.4m
Setbacks - northern boundary- - eastern boundary - southern boundary - western boundary	1.35m 9.07m 1.2m 5.81m	2.0m 10.78m 2.19m 5.81m	+645mm +171mm +990mm No Change
Car Parking Residents Visitor	9 Spaces Included in resident allocation	10 Spaces Included in resident allocation	+ 1 space No Change

* Complying with definition of Landscaped Area within Sutherland Shire Local Environmental Plan 2006

From the above table it can be seen that the current proposal is of a comparative scale to that refused by the Court. However, the reduced footprint of the current proposal provides greater side boundary setbacks and increased landscaping. Although the current proposal provides for an additional floor, the overall height is only marginally increased due to the lowering of the ground floor plate.

The most significant improvements in the scheme are the sinking of the basement into the ground, the increased side setbacks, the increased landscaped area, and better solutions in relation to privacy.

11.0 SECTION 94 CONTRIBUTIONS

Currently on the site is a residential flat building containing eight (8) units. The proposed development involves the demolition of this development and the construction of three (3) 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 three (3) luxury units, with each unit being split over two (2) levels.

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 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. An assessment of the proposal in light of the submissions raised indicates that the concerns raised by residents are either not substantive or can be addressed by way of conditions of development consent.

The subject site is 529.6m² and approximately 13 metres wide which is significantly smaller than the 1800 square metres and 30 metre width required pursuant to SSLEP 2006. To achieve economically viable development in terms of floor space, this undersized allotment is reliant on the proposed variation to the height standard. The application also fails to comply with the landscaped area development standard and with minimum side boundary setbacks. These variations have been assessed as having acceptable environmental and amenity impacts and variations to the height, landscaped area and side setback controls are supported in this instance.

The proposal in its current form breaches the foreshore building line however, a condition of consent has been proposed to rectify this breach.

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. 10/0442 may be supported for the reasons outlined in this report.

14.0 RECOMMENDATION

That Development Application No. 10/0442 for the Demolition of the Existing Residential Flat Building and Construction of a New Residential Flat Building with Strata Subdivision on Lot 38 DP 7024 (No. 12) McDonald Street, Cronulla be approved, subject to the following conditions:

CONDITIONS OF CONSENT

GENERAL CONDITIONS

These general conditions are imposed to ensure that the development is carried out in accordance with the development consent, having regard to the environmental circumstances of the site.

1. Approved Plans and Documents

The development shall be implemented substantially in accordance with the details and specifications set out on the Plan / Drawing No. Job No. 2195 Sheets 02-08 (all Issue C) received by Council on 23 July 2010 prepared by Innovative Architects, Landscape Plan Job No. 34/10 Issue C dated 4 May 2010 prepared by SiteDesign Landscape Architects and Drainage Works Plan No. 08141-C02-A dated 12 December 2008 any details on the application form and on any supporting information received with the application except as amended by the conditions specified and imposed hereunder.

Note 1:

Nothing in this development consent whatsoever approves or authorises the commencement, erection or construction of any building, construction or subdivision works.

Note 2:

Prior to the commencement of any building, construction, or subdivision work being carried out a 'construction certificate' shall be obtained from Council or an Accredited Certifier.

Note 3:

Should the development the subject of the consent involve the subdivision of land and the issue of a subdivision certificate as defined under section 109c(1)(9) of the Environmental Planning and Assessment Act 1979, please note that Sutherland Shire Council must be appointed as the Principal Certifying Authority for all subdivision works.

Note 4:

Prior to any work being carried out relating to the development the

subject of the consent, the person implementing the consent shall provide Council with:

- a) Notification of the appointment of a Principal Certifying Authority and a letter of acceptance from the PCA.
- b) Notification of the commencement of building and/or subdivision works with a minimum of 2 days notice of such commencement.

Note 5:

Should the development have a BASIX Certificate, your attention is drawn to the commitments made in the BASIX Certificate which forms part of the development consent and the necessity to comply with these as required under the Environmental Planning and Assessment Act 1979.

2. Prescribed Conditions - General

The following are prescribed conditions of development consent pursuant to s.80A(11) of the Environmental Planning and Assessment Act 1979 and cl.98 of the Environmental Planning and Assessment Regulation 2000.

A. Compliance with the Building Code of Australia

The development must be carried out in accordance with the provisions of the Building Code of Australia.

B. Residential building work

1. Building work that involves residential building work (within the meaning of the Home Building Act 1989) must not be carried out unless the **Principal Certifying Authority (PCA)** for the development to which the work relates:

- a) in the case of work to be done by a licensee under that Act:
 - i) has been informed in writing of the licensee's name and contractor license number, and
 - ii) is satisfied that the licensee has complied with the requirements of Part 6 of that Act, or
- b) in the case of work to be done by any other person:
 - i) has been informed in writing of the person's name and owner-builder permit number, or
 - ii) has been given a declaration, signed by the owner of the land, that states that the reasonable market cost of the labour and materials involved in the work is less than the amount prescribed for the purposes of the definition of "owner-builder work" in section 29 of that Act,
 - iii) and is given appropriate information and declarations under paragraphs (a) and (b) whenever arrangements for the doing of the work are changed in such a manner as to render out of date any information or declaration previously given under either of those paragraphs.

2. A certificate purporting to be issued by an approved insurer under Part 6 of the Home Building Act 1989 that states that a person is the holder of an insurance policy issued for the purposes of that Part is, for the purposes of this clause, sufficient evidence that the person has complied with the requirements of that Part.

C. Details to be provided to Council with the Notice of Commencement

Builders and Insurance details required under part B above shall be provided to Council with the Notice of Commencement. In relation to non-residential building work Builders details shall be provided to Council with the Notice of Commencement.

3. Approvals Required under Roads Act or Local Government Act
- The following works or activities shall not be carried out on public land (including a road) adjacent to the development site or within any Easement for Drainage in favour of Council without a relevant approval under either the Roads Act 1993 and/or the Local Government Act 1993:
- a) Placing or storing materials or equipment;
 - b) Placing waste containers or skip bins;
 - c) Pumping concrete from a public road;
 - d) Standing a mobile crane;
 - e) Pumping stormwater from the site into Council's stormwater drains;
 - f) Erecting a hoarding;
 - g) Establishing a construction zone;
 - h) Opening any public road reserve (or any part of the adjacent Crown Land to the east, or any part of the Easement for Drainage in favour of Council within the adjacent property No.8 Ozone St) for the purpose of any utility connections including telecommunications, water, sewer, gas, electricity and /or stormwater;
 - i) Constructing a vehicular crossing or footpath.

An application, together with the necessary fee, shall be submitted and approval granted by Council prior to any of the above works or activities commencing.

Note - Approval under the Roads Act or Local Government Act cannot be granted by a Principal Certifying Authority or by a Private Certifier. Failure to obtain approval may result in fines or prosecution.

4. Geotechnical Investigation Report - Prior to either the commencement of any works (including demolition) or the issue of a Construction Certificate the Applicant shall obtain a suitably detailed Geotechnical Investigation Report which identifies and addresses all matters relevant to the issue of site stability particularly during the demolition and excavation phases. Such matters shall include but shall not be limited to the following matters, namely :
- The identification of any potential demolition, excavation or construction impacts from the proposed development either within the site or within any other properties (whether such properties are immediately adjacent or not) and how such impacts should be addressed.
 - The identification of any neighbouring properties (whether immediately adjacent or not) which should be the subject of a Dilapidation Survey prior to commencement of any demolition or excavation work,
 - The identification of any restrictions that should be imposed either on the type and / or the utilisation of any demolition, excavation or construction equipment.
 - The identification of any monitoring measures or actions that may be necessary to ensure that no unacceptable impacts or vibrations will be adversely affect or be transmitted to the adjacent heritage protected cliff at the site's eastern boundary or to any neighbouring properties (whether such properties are immediately adjacent to the subject site or not) ,
 - The identification of site appropriate excavation and retention systems whether temporary or permanent including the identification of suitable design parameters for such systems.

The applicant shall have regard to the recommendations of the report in the implementation of all works associated with the demolition of the existing building and construction of the proposed development.

5. Protection of Heritage Cliff Face
- A heritage specialist shall oversee all excavation works and demolition works on and in the vicinity of the heritage cliff face. Care shall be taken when removing existing structures on the cliff face to minimise any damage to natural rock formations.
6. Environmental, Damage & Performance Security Bond
- Before the commencement of any works (including demolition) or the issue of a Construction Certificate, the applicant shall provide security to Council against damage caused to any Council property and / or the environment as a consequence of the implementation of this consent. The security may be provided by way of a deposit with the Council or a satisfactory guarantee. A non refundable inspection / administration fee is included in the bond value.

It is the applicant's responsibility to notify Council of any existing damage

to public areas in the vicinity of the development site through the submission of a current dilapidation report supported by photographs. This information shall be submitted to Council at least 2 days **prior** to the commencement of works.

Should any public property and / or the environment sustain damage during the course of and as a result of construction, or if the construction works put Council's assets or the environment at risk, Council may carry out any works necessary to repair the damage and / or remove the risk. The costs incurred shall be deducted from the security.

A request for release of the security deposit may be made to Council after all works relating to this consent have been completed. Such a request shall be submitted to Council on the '*Bond Release Request Form*' signed by the owner or any person entitled to use of the consent.

The value of the bond shall be determined as follows:

Development Value	Refundable Deposit +
Less than \$50,000 ++	\$2,110.00
\$50,000 - \$150,000	\$2,110.00
\$150,000 - \$300,000	\$3,110.00
Greater than \$300,000	\$5,110.00
Swimming Pools	\$2,110.00
Demolition / Earthworks	\$3,110.00

+ Bond amount includes a non refundable administration fee of \$110. Where the bond takes the form of a Bank Guarantee, the \$110 administration fee must be paid separately.

++ Development valued at less than \$50,000 only where:

- deliveries or removal of materials occur in vehicles of Small Rigid Vehicle (4.0 tonnes) size or larger and / or
- there is delivery or removal of construction machinery, and
- a constructed footpath or a stormwater pit exists along the frontage of the property or within 10 metres on either side of the property.

Note: All enquiries in relation to bonds should be directed to Council's Civil Assets Manager on 97100134.

7. Public Liability Insurance

Prior to the commencement of work or the issue of a Construction Certificate, the owner or contractor shall take out a Public Liability Insurance Policy with a minimum cover of \$10 million in relation to the occupation of and works within Council's road reserve, for the full duration of the proposed works. Evidence of this policy shall be submitted to Council prior to commencement of work or the issue of a Construction Certificate.

MATTERS RELATING TO THE ISSUE OF A CONSTRUCTION CERTIFICATE

The following conditions involve either modification to the development proposal or further investigation prior to the issue of a Construction Certificate, so as to ensure that there will be no adverse impact on the environment or adjoining development. This information shall be submitted with the Construction Certificate.

8. BASIX Requirements

The Construction Certificate shall comprise all necessary documentation and information sufficient to verify that all commitments contained within the BASIX Certificate relevant to the issue of a Construction Certificate for works approved by this development consent have been included in the development.

9. Design Changes Required

To reduce the environmental and/or ecological impact of the development proposal, the following design changes shall be implemented:

- a) The CPM Engineering P/L Drainage Works Plan No.08141-C02-A dated 12/12/08 shall be amended to delete the proposed cliff top stormwater level spreader in favour of a stormwater outfall pipe which discharges into the existing stormwater junction pit located within the existing 1.82 wide and variable width Easement for Drainage located within the N.E. corner of the adjacent property known as No.8 Ozone St.
- b) The width of the proposed garage for the Adaptable Dwelling Unit shall be increased to 6.20m.
- c) The eastern alignment of the upper level basement shall be amended to comply with the 7.5m foreshore building line applicable to the subject site.
- d) The southern extremity of the terraces at the eastern end of the building shall be reduced in size so that they do not extend closer than 1.8m from the southern boundary. The area of each of the terraces south of the main building alignment shall consist of a planter box only. The spa baths located on the ground, second and fourth floor levels shall be deleted or relocated to comply with this condition.

Details of these design changes shall accompany the Construction Certificate.

10. Design and Construction of Works in adjacent Public Areas or within the Easement for Drainage in favour of Council

Council has determined that the proposed development generates a need for the following works to be undertaken by the Applicant within the Public Road Reserve and within the Easement for Drainage in favour of

Council (within No.8 Ozone St) and also within the adjacent Crown Land in conjunction with the development:

- a) A temporary concrete footpath crossing for construction vehicle access (should the existing footpath crossing not be suitable for the intended purpose).
- b) Stormwater drainage work comprised of an outfall pipeline from the site discharging into the existing cliff top junction pit located within the existing Easement for Drainage within No.8 Ozone St. and modification of the existing cliff top junction pit as specified.
- c) Demolition of the existing vehicular footpath crossing and kerb layback as may be required and replacement (to the levels issued by the Council) with a new nominal 3.50 wide vehicular footpath crossing to suit the proposed access ramp into the basement car parking areas.
- d) Regrading of the public footpath area in McDonald St to final design levels and reconstruction as may be required including across adjacent properties if existing levels are altered .
- e) Removal of existing concrete steps abutting the site within Crown Land
- f) Landscaping within Crown Land abutting the subject site.
- g) Erosion and sediment controls.
- h) Adjustment to public services infrastructure where appropriate.

Applications under the Roads Act 1993 and the Local Government Act 1919, together with the necessary fee, shall be submitted and approval granted by Council prior to any of the above works or activities commencing. Approval under the Roads Act 1993 or under the Local Government Act 1919 cannot be granted by a Principal Certifying Authority or by a Private Certifier. Failure to obtain approval may result in fines or prosecution.

Where the preparation of any survey and design plans for the above works are considered to be necessary such plans shall be prepared by Council's Consulting Services Unit and issued by Council's Civil Assets Manager prior to the issue of a Construction Certificate. A fee quotation may be obtained by contacting the Design Branch Manager on telephone 9710 0247.

11. Site Management Plan

An Environmental Site Management Plan shall accompany the Construction Certificate. This plan shall satisfy the Objectives and Controls in Part 4 of Chapter 8 of Sutherland Shire Development Control Plan 2006 and shall address the following:

- a) What actions and works are to be employed to ensure safe access to and from the site and what protection will be provided to the road and footpath area from building activities, crossings by heavy equipment, plant and materials delivery, and the like.
- b) The proposed method of loading and unloading excavation

- machines, building materials.
- c) Areas within the site to be used for the storage of excavated material, construction materials and waste containers during demolition / construction.
- d) How it is proposed to ensure that material is not transported on wheels or tracks of vehicles or plant and deposited on surrounding roadways.
- e) The proposed method of support to any excavation adjacent to adjoining properties, or the road reserve. The proposed method of support is to be certified by a Certifier accredited in civil engineering.
- f) The provision of temporary fencing to secure the work site (fencing, hoarding or awnings over public land require Council approval under the Roads Act).
- g) The control of surface water flows within and through the construction site to minimise erosion and movement of sediment off site.
- h) The type and location of erosion and sediment control measures, strategies to minimise the amount of soil uncovered at any time, the conservation of topsoil for re-use on site, the location and protection of stockpiles.

Note: The footpath and road reserve shall not be used for construction purposes (including storage of skips or building materials, standing cranes or concrete pumps, erecting hoardings, or as a construction zone) unless prior approval has been granted by Council under the Roads Act 1993.

12. Soil and Water Management

Prior to the commencement of works or the issue of a Construction Certificate, the applicant shall submit to and obtain Council approval of a Soil and Water Management Plan and Statement which clearly identifies site features, constraints and soil types together with the nature of proposed land disturbing activities and also specifies the type and location of erosion and sediment control measures and also rehabilitation techniques necessary to deal with such activities.

The Plan shall take into account the objectives of Council's Environmental Site Management Development Control Plan and shall be compatible with any Construction Management Plan thus ensuring the following objectives are achieved, namely:

- a) All possible sediment controls are installed before commencing work.
- b) To minimise the area of soils exposed at any one time.
- c) To conserve topsoil for re-use on site.
- d) To identify and protect proposed stockpile locations.
- e) To control surface water flows through the development construction site in a manner that:
 - i) Diverts clean run-off around disturbed areas.
 - ii) Minimises slope gradient and flow distance within disturbed areas.

- iii) Ensures surface run-off occurs at non-erodable velocities.
 - iv) Ensures disturbed areas are promptly rehabilitated.
- f) Trap sediment on site to prevent off site damage. Hay bales are not to be used as sediment control devices. To ensure regular monitoring and maintenance of erosion and sediment control measures and rehabilitation works until the site is stabilised (includes landscaping).

13. Spa Pools

To minimise the impact of the spa pools on the amenity of adjoining properties and to ensure the safety of the pool area, the design and construction of the spa pool and associated equipment shall comply with the following requirements:

- a) The *Swimming Pools Act & Regulations* applicable at the time of construction.
Note: *Swimming Pools Act* amendments commenced 14 December 2009.
- b) Australian Standard 1926 Swimming Pool Safety as prescribed under the Regulations.
- c) Protection of the Environment Operations Act 1997.
- d) The spa pump and associated equipment shall be sound insulated and/or isolated so that the noise emitted does not exceed an LAeq (15min) of not more than 5 dB(A) above the background level in any octave band from 31.5Hz to 8KHz centre frequencies inclusive at the boundary of the site.

- Note:
- i) The method of measurement of sound shall be carried out in accordance with Australian Standard 1055.1.
 - ii) Additional information is available from Sutherland Shire Swimming Pool Environmental Specification 2007.

Details of all child-resistant barriers (existing and proposed) to be utilised to comply with the requirements of the *Swimming Pools Act* and Regulations applicable at the time shall be shown on the Construction Certificate plans. The information is required for recording in Sutherland Shire Pool Register.

Where the wall of a building is to be used as part of the required child-resistant barrier, the plans shall indicate if the wall has any openings and how they comply with pool safety requirements.

Landscaping and ancillary structures are not to intrude into the child-resistant barrier Non-Climbable Zone.

Council must be notified of any changes to the child-resistant barriers indicated on the approved plans.

14. General Construction Certificate Condition 1

The recommendations contained in the Building Code of Australia report prepared by Local Consultancy Services Pty Ltd, dated May 2010 shall be incorporated within the scope of works covered by the Construction Certificate.

15. Access Application

An access application shall be made to Council to obtain footpath crossing and boundary alignment levels before commencing the final design of internal driveways, paths and car park area. The proposal shall comply with the levels issued by Council and a copy of the issued levels shall accompany the Construction Certificate.

16. Nomination of Engineering Works Supervisor

Prior to the issue of a Construction Certificate the applicant shall nominate an appropriately accredited certifier to supervise all public area works to ensure that they are constructed in compliance with Council's current "Specification for Civil Works Associated with Subdivisions and Developments" and with any approval issued pursuant to the Roads Act 1993 or the Local Government Act 1919.

The engineer shall:

- a) provide an acceptance in writing to supervise sufficient of the works to ensure compliance with:
 - i) all relevant statutory requirements;
 - ii) all relevant conditions of development consent;
 - iii) construction requirements detailed in the above Specification; and
 - iv) the requirements of all legislation relating to environmental protection;
- b) on completion of the works certify that all public works have been constructed in compliance with the approved plans, specifications and conditions of approval; and
- c) certify that the Works As Executed plans are a true and correct record of what has been built.

17. Sydney Water - Notice of Requirements

Prior to the issue of a Construction Certificate or Subdivision Certificate the applicant shall obtain a Notice of Requirements under the Sydney Water Act 1994, Part 6 Division 9 from Sydney Water and submit the Notice to the Council.

18. Sydney Water - Referral Requirements

The plans approved as part of the Construction Certificate shall be submitted to a Sydney Water Quick Check agent or Customer Centre to determine as to whether the development will affect Sydney Water's sewer and water mains, stormwater drains and / or easements, and if further requirements need to be met. Plans will be stamped

appropriately.

Please refer to the web site www.sydneywater.com.au for:

- Quick Check agents details – see Building Development and Plumbing then Quick Check; and
- Guidelines for Building Over / Adjacent to Sydney Water Assets – see Building Development and Plumbing then Building and Renovation.

19. Public Utility Authorities

Arrangements shall be made to the satisfaction of all Utility Authorities including cable television network providers in respect to the services supplied to the development by those authorities. The necessity to provide or adjust conduits/ services within the road and footway areas shall be at full cost to the applicant.

20. Footing Design adjoining Easements

All footings within 2m of the existing Easement for Drainage within No.8 Ozone St shall be designed in such a manner that they are supported by foundations set at a minimum of 300mm below the Easement's pipe invert levels or, alternatively, founded on sound rock. Certification to this effect shall be provided by an Accredited Certifier and this shall accompany the Construction Certificate.

21. Basement Car Park Design

The basement carpark shall be designed in accordance with AS 2890 and shall incorporate the following:

- a) The minimum headroom in the basement parking area shall be a minimum of 2.20m (or a minimum of 2.50m in relation to the required car space for the Adaptable Dwelling Unit as per the Adaptable Dwelling Code AS4299-1995) measured from the parking floor to the underside of any beam, ventilation duct or service conduit, or to the underside of any door including a security door and fittings when those doors are in an open position.
- b) Where garage doors are proposed, all garages shall have a minimum width of 3m (or wider to comply with the Adaptable Dwelling Code AS4299-1995) with a minimum door opening of 2.75m wide x 2.2m high clear of any necessary hinges, jambs or fixtures required for the operation of the garage doors and any services within the garage area.

22. Parking Areas and Access

All vehicular access, parking and manoeuvring areas for the proposed development shall be designed and constructed to comply either with AS2890.1 - 2004 and (with respect to the required Adaptable Dwelling Unit) shall comply with AS4299-1995.

23. Submission of Fire Safety Schedule

A Fire Safety Schedule shall be issued by an appropriately qualified person and provided to Council as part of the Construction Certificate in accordance with the *Environmental Planning and Assessment Regulation 2000*. This schedule shall identify the proposed and required fire safety measures, with the minimum standard of performance being indicated for each fire safety measure. The Fire Safety Schedule shall identify each fire safety measure that is a Critical Fire Safety Measures and the intervals at which supplementary fire safety statements shall be given to the Council in respect of each such measure. The fire engineered alternate solution shall be clearly indicated.

PRE-COMMENCEMENT CONDITIONS

The following conditions are imposed to ensure that all pre-commencement matters are attended to before work is commenced.

24. Pre-Commencement - Notification Requirements

No works in connection with this development consent including demolition works shall be commenced until:

- a) A Construction Certificate has been issued and detailed plans and specifications have been endorsed and lodged with Council;
- b) A Principal Certifying Authority has been appointed. Council shall be notified of this appointment along with details of the Principal Certifying Authority, and their written acceptance of the appointment; and
- c) Notice of commencement has been provided to Council 48 hours prior to commencement of construction work on the approved development.

25. Signs to be Erected on Building and Demolition Sites

Where proposed works affect the external walls of a building, a rigid and durable sign shall be erected prior to the commencement of work and maintained in a prominent position on any work site on which building work, subdivision work or demolition work is being carried out. The responsibility for this to occur is that of the principal certifying authority or the principal contractor.

The signage, which must be able to be easily read by anyone in any public road or other public place adjacent to the site, must:

- a) show the name, address and telephone number of the principal certifying authority for the work, and
- b) show the name of the principal contractor (if any) for any building work and a telephone number on which that person may be contacted outside working hours, and
- c) state that unauthorised entry to the work site is prohibited.

Any such sign is to be maintained while the building work, subdivision work or demolition work is being carried out, but must be removed when the work has been completed.

CONSTRUCTION CONDITIONS

These conditions are imposed to ensure the development does not unreasonably impact on the amenity of the locality during the construction or demolition phase.

26. Environmental Site Management DCP

All construction work approved by this development consent shall be undertaken in accordance with the objectives and controls in Part 3 of Chapter 8 of Sutherland Shire Development Control Plan 2006 and the Sutherland Shire Environmental Specification 2007 - Environmental Site Management.

27. Permitted Hours for Building and Demolition Work

To minimise the noise impact on the surrounding environment all building and demolition work shall be carried out only between the hours of 7.00am and 6.00pm Monday to Friday inclusive, 8.00am and 1.00pm Saturdays. No work shall be carried out on Sundays and Public Holidays.

28. Toilet Facilities

Toilet facilities shall to be provided, at or in the vicinity of the work site on which work involved in the erection or demolition of a building is being carried out, at the rate of one toilet for every 20 persons or part of 20 persons employed at the site.

Each toilet provided:

- a) shall be a standard flushing toilet, and
- b) shall be connected:
 - i) to a public sewer, or
 - ii) if connection to a public sewer is not practicable, to an accredited sewage management facility approved by the Council, or
 - iii) if connection to a public sewer or an accredited sewage management facility is not practicable, to some other sewage management facility approved by the Council.

The provision of toilet facilities in accordance with this clause shall be completed before any other work is commenced.

29. Demolition Work

To ensure that demolition of structures is carried out in an environmentally acceptable and safe manner:

- a) The demolition of the existing building shall be carried out strictly in accordance with Australian Standard 2601 - The Demolition of Structures.
- b) It is the applicant's responsibility to notify Council of any existing damage to public areas in the vicinity of the development site through the submission of a dilapidation report supported with suitable photographic records. This information shall be submitted to Council prior to the commencement of work. Any damage other than that noted prior to commencement of the demolition shall be the responsibility of the owner of the property for repair or reinstatement.
- c) The applicant shall ensure that the demolition contractor has a current public risk insurance coverage for a minimum of \$5 million. A copy of the Policy must be submitted to the Council prior to demolition.
- d) If demolition is to commence prior to the issue of a Construction Certificate, the applicant shall submit to Council a Site Management Plan – Demolition for assessment prior to the commencement of any demolition work. This plan shall satisfy the objectives of Council's Environmental Site Management Development Control Plan and shall consider the following:
 - i) What actions and works are proposed to ensure safe access to and from the site and what protection will be provided to the road and footpath area from demolition activities, crossings by heavy equipment, plant and materials deliveries and the like;
 - ii) The proposed method of loading and unloading demolition machines within the site;
 - iii) The proposed areas within the site to be used for the storage of demolished material and waste containers during the demolition period;
 - iv) How it is proposed to ensure that soil / demolished material is not transported on wheels or tracks of vehicles or plant and deposited on surrounding roadways;
 - v) The requirements of any site specific Development Control Plan that may affect this development site.
- e) **Pre-Commencement Inspection**
 If demolition is to commence **prior** to the issue of a Construction Certificate, the Builder/principal contractor shall undertake a pre-commencement site inspection with Council's Engineering Compliance Officer and Council's Civil Asset Manager. The purpose of this inspection is to facilitate the implementation of the consent specifically with regard to the impact on the public way and to clarify any matters of concern.

Note: An inspection fee shall be paid to Council prior to the meeting. Please refer to Sutherland Shire Council's Adopted Schedule of Fees and Charges.

30. Demolition – Removal of Asbestos Material

To ensure that the removal and transportation of any asbestos material from the premises is carried out in an environmentally acceptable and safe manner, all work shall comply with the following:

- a) Occupational Health and Safety Act 2000;
- b) Occupational Health and Safety Regulation 2001;
- c) Code of Practice for the Safe Removal of Asbestos 2nd Edition [NOHSC:2002(2005)];
- d) Workcover NSW 'Working with Asbestos – Guide 2008'; and,
- e) Protection of the Environment Operations Act 1997.

Should works involve the removal of more than 10 square metres of asbestos material, a bonded asbestos licence is required. A friable asbestos licence is required to remove, repair or disturb any amount of friable asbestos. For further information contact the NSW Workcover Authority. Asbestos waste in any form shall be disposed of at a waste facility licensed by the Department of Environment Climate Change & Water to accept asbestos waste.

The applicant shall notify Council's Environment & Health Regulation Unit (phone (02) 97100333 during normal business hours) of any proposed removal of asbestos material not less than 72 hours prior to the commencement of the work.

31. Excavations and Backfilling

- a) All earthworks including excavations and backfilling associated with the erection or demolition of a building shall be executed safely and in accordance with appropriate professional standards.
- b) All excavations associated with the erection or demolition of a building must be properly guarded and protected to prevent them from being dangerous to life or property.
- c) All canopy, trunk and root system of all trees to be retained on site and neighbouring properties shall be protected from damage during excavation.

32. Retaining Walls and Drainage

If the soil conditions require it, retaining walls associated with the erection or demolition of a building or other approved methods of preventing movement of the soil shall be provided, and adequate provision must be made for drainage.

33. Support for Neighbouring Buildings

If an excavation associated with the erection or demolition of a building extends below the level of the base of the footings of a building on an adjoining allotment of land, the person causing the excavation to be made:

- a) Shall preserve and protect the building from damage.

- b) If necessary, shall underpin and support the building in an approved manner.
- c) Shall, at least 7 days before excavating below the level of the base of the footings of a building on an adjoining allotment of land, give notice of intention to do so to the owner of the adjoining allotment of land and furnish particulars of the excavation to the owner of the building being erected or demolished.
- d) The owner of the adjoining allotment of land is not liable for any part of the cost of work carried out for the purposes of this clause, whether carried out on the allotment of land being excavated or on the adjoining allotment of land.

In this clause, allotment of land includes a public road and any other public place.

34. Protection of Public Places

To protect public safety and convenience during the course of constructing the works covered by this consent, the following matters shall be complied with:

- a) If the work involved in the erection or demolition of a building:
 - i) is likely to cause pedestrian or vehicular traffic in a public place to be obstructed, inconvenienced, or rendered unsafe; or
 - ii) building involves the enclosure of a public place,
A hoarding or fence shall be erected between the work site and the public place.
- b) If necessary, an awning is to be erected, sufficient to prevent any substance from, or in connection with, the work falling into the public place.
- c) The work site must be kept lit between sunset and sunrise if it is likely to be hazardous to persons in the public place.

Any such hoarding, fence or awning shall be removed and any damage to any public place reinstated to Council's satisfaction when the work has been completed.

35. Noise Control during Construction and Demolition

To minimise the impact on the surrounding environment:

- a) For construction and demolition periods of four (4) weeks or less, the LAeq sound pressure level measured over a period of 15 minutes when the construction or demolition site is in operation, shall not exceed the ambient background level (LA90 15min) by more than 20dB(A) when measured at the nearest affected premises.
- b) For construction and demolition periods greater than four (4) weeks, the LAeq sound pressure level measured over a period of 15 minutes when the construction or demolition site is in operation, shall not exceed the ambient background level (LA90 15min) by

more than 10dB(A) when measured at the nearest affected premises.

36. Vibration damage

To minimise vibration damage and loss of support to the buildings in close proximity where a hydraulic hammer is to be used within 30 metres of any building (other than a path or a fence) a report shall be prepared by a qualified geotechnical engineer detailing the maximum size of hammer to be used for excavation purposes. This report shall accompany the Construction Certificate.

37. Environment Protection and Management

The environment protection and management measures described in the required Environmental Site Management Plan (including sediment controls and tree protection) shall be installed or implemented prior to commencement of any site works and continuously maintained during the period of construction or demolition. These measures shall generally be in accordance with the requirements of Part 3 of Chapter 8 of Sutherland Shire Development Control Plan 2006 and the Sutherland Shire Environmental Specification 2007 - Environmental Site Management.

38. Run-off and Erosion Controls

Run-off and erosion controls shall be installed prior to commencement of any site works and shall be continuously maintained during the period of construction or demolition. These control measures shall generally be in accordance with the requirements of Part 3 of Chapter 8 of Sutherland Shire Development Control Plan 2006 and the Sutherland Shire Environmental Specification 2007 - Environmental Site Management and shall specifically address the following matters:

- a) diversion of uncontaminated runoff around cleared or disturbed areas;
- b) a silt fence or other device to prevent sediment and other debris escaping from the cleared or disturbed areas into drainage systems or waterways;
- c) controls to prevent tracking of sediment by vehicles onto adjoining roadways and public areas; and
- d) disturbed areas shall be stabilised either temporarily or permanently by the use of turf, mulch, paving or other methods approved by the Council.

39. Stockpiling of materials during construction

Topsoil, excavated material, construction and landscaping supplies and on site debris shall be stockpiled within the erosion containment boundary and shall not encroach beyond the boundaries of the property or the drip-line of any tree marked for retention. For further information, refer to Part 3 of Chapter 8 of Sutherland Shire Development Control Plan 2006 and the Sutherland Shire Environmental Specification 2007 -

Environmental Site Management.

40. Construction materials and machinery must be kept within the site
All construction materials, sheds, skip bins, temporary water closets, spoil, and the like, shall be kept within the property. No vehicles or machines shall be permitted to stand on Council's footpath. For further information, refer to Part 3 of Chapter 8 of Sutherland Shire Development Control Plan 2006 and the Sutherland Shire Environmental Specification 2007 - Environmental Site Management.
41. Spoil deposited on public way (roads or reserves)
Any spoil deposited on public roads during cartage of materials from or to the site shall be removed immediately to the satisfaction of Council. If Council determines that excessive depositing of spoil onto the public way is taking place then the cartage of spoil shall cease if so directed by Council.
42. Vibration Control - Residential
The proposed security door fitted to the car parking area entrance shall be independently mounted on rubber pads to prevent vibration noise transmission through the concrete walls and / or columns.
43. Provision of Letter Box Facilities
Suitable letter box facilities (including Owner's Corporation in the case of strata units) shall be provided in accordance with Australia Post specifications.
44. Disposal of Excavation
Any water from excavations to be discharged to Council's stormwater system must meet the following criteria:
- It shall not contain a concentration of suspended sediment exceeding 50 mg/L;
 - It shall have a pH of between 6.5-8
 - It shall comply with the ANZECC Guidelines for Marine and Freshwater Quality, for Protection of Aquatic Ecosystems (95% protection level).
- Water testing shall be carried out to ensure compliance with the above by a suitably qualified environmental scientist, and results provided to Council upon request. A permit may be required to discharge water to Council's stormwater system. Consultation with Council shall be undertaken prior to discharge of any water to stormwater.
45. Rainwater Harvesting and Use
Tank Installation
The tank and support structure shall be placed on a suitable foundation in accordance with the manufacturer's or engineer's details. It must not rest (in full or part) on the footings of any building or structure or on a

retaining wall without being specifically designed for.

The tank shall not be installed over or immediately adjacent to a stormwater drainage easement, water or sewer main or associated infrastructure without the consent of the appropriate authority.

The tank may be free standing, partially or wholly below ground level, incorporated into the building eaves or fixed to a wall.

The tank installation and all plumbing works shall be carried out by a plumber licensed with the NSW Department of Fair Trading.

Plumbing Connections

Pipes that may be in contact with rainwater for extended period are to comply with AS/NZS4020. In general, this does not apply to guttering or downpipes that deliver rainwater directly by gravity into the top of the rainwater tanks because contact with the water is transient.

Underground pipework delivering water to the tank, or between tanks, or from tanks to houses (for reuse in toilets and laundries) shall comply with AS/NZS4020.

Polyethylene pipes used for such pressure applications shall comply with AS/NZS4130.

The installation of tanks and associated pipework infrastructure shall comply with the following standards:

1. AS/NZS2179 – Specifications for rainwater goods, accessories and fasteners.
2. AS2180 – Metal rainwater goods – selection and installation.
3. AS/NZS3500 – National Plumbing and Drainage Code.
4. AS/NZS4130 – Polyethylene (PE) pipes for pressure applications.

Potable Water Back-up

Potable water from the back-up system shall be introduced directly to the rainwater tank/s and not to the distribution system. Potable water is to be supplied via a dry break connection.

For the developments where a single rainwater tank is used, this tank shall be considered as the Potable Water Make-up Tank. Should a development include more than one (1) rainwater tank, a single rainwater tank shall be nominated as the Potable Water Make-up Tank.

The Potable Water Make-up Tank shall be installed such that potable water is supplied when the storage level is reduced to between 5% and 10% of installed rainwater storage capacity.

At this level, an approved mechanical float device or electrical float switch is to be used to make up potable water.

Overflow

Intense or prolonged rainfall will exceed the capacity of the rainwater tank therefore a (gravity) overflow system shall be provided to an appropriate approved Council storm water drainage system and via any OSD or retention facility if required.

POST CONSTRUCTION CONDITIONS

These conditions are imposed to ensure all works are completed in accordance with the Development Consent prior to either the issue of an Occupation Certificate, a Subdivision Certificate or habitation / occupation of the development.

46. Section 73 Compliance Certificate

A Compliance Certificate under s73 of the Sydney Water Act, 1994, shall be submitted to Council by the PCA prior to the issue of an Occupation Certificate or before the issue of a Subdivision Certificate. Sydney Water may require the construction of works and/or the payment of developer charges.

Advice from Sydney Water:

An application must be made through an authorised Water Servicing Coordinator. For details see the Sydney Water web site at www.sydneywater.com.au/customer/urban/index or by telephone 13 20 92.

Following application a "Notice of Requirements" will be forwarded detailing water and sewer extensions to be built and charges to be paid. Please make early contact with the Coordinator, since building of water / sewer extensions can be time consuming and may impact on other services as well as building, driveway or landscaping design.

47. Works As Executed Information

Certification shall be provided from a Registered Surveyor to the effect that all civil engineering works required by this development consent have been carried out in accordance with the terms of the development consent and the approved engineering drawings with regard to location and level.

48. Works As Executed Drawings

Certification shall be provided from the Nominated Engineering Supervisor to the effect that:

- a) All civil engineering and stormwater works associated with development have been carried out in accordance with the terms of the development consent, the approved engineering drawings and in the case of public works with Council's "Specifications for Civil Works associated with Subdivisions and Developments" or with

any approval issued under the Roads Act 1993 or the Local Government Act 1919.

- b) The construction of the stormwater drainage system for the proposed development has been carried out generally in accordance with the requirements of the Construction Certificate endorsed stormwater drainage plans, and that all assumptions made during the design remain valid.

Works-as-Executed drawings certified in the above manner and in relation to any public works containing all relevant information as required by Council's "Specification for Civil Works Associated with Subdivisions and Developments" shall accompany the Application for Subdivision Certificate.

49. Completion of Work on Public Land

All work on public land required or proposed as part of this consent shall be completed in accordance with the requirements and time frames specified in the approvals granted by Council for the work under the Local Government Act 1993 or the Roads Act 1993.

No work shall be undertaken within the road reserve or on public land without approval from Council.

50. Set out of Building

Certificate from a Registered Surveyor certifying that the building has been set-out in relation to location and levels, in accordance with the requirements of the development consent.

51. Level of Lowest Floor

Certification from a Registered Surveyor certifying that the lowest floor (or the initial floor construction) of the development has been constructed in compliance with the levels approved by this development consent.

52. Noise Emission - Equipment

Certification from a suitably qualified Acoustic Engineer certifying that the noise from all sound producing plant, equipment, machinery, mechanical ventilation and / or the refrigeration system complies with the terms of the development consent.

53. Completion of Landscaping

Certification shall be provided from a suitably qualified and experienced Landscape Designer or Landscape Architect within three months after the issue of the Final Occupation Certificate for the development. This Certification shall verify that the landscape works have been completed to the stage of practical completion in accordance with the approved detailed landscape plan and relevant conditions of this consent.

Note: A Landscape Designer is a person eligible for membership of the Australian Institute of Landscape Designers and Managers and a Landscape Architect is a person eligible for membership of the Australian Institute of Landscape Architects as a Registered Landscape Architect.

54. Prior to Occupation or Use of the Development

The Development shall not be occupied or used until:

- a) A Final Occupation Certificate is issued and provided to Council for the development; or
- b) An Interim Occupation Certificate is issued and provided to Council for the development. This shall clearly identify the part of the development to which the Interim Occupation Certificate relates.

55. Endorsement of Linen Plan of Strata Subdivision

Following completion of the requirements detailed in the conditions of this Development Consent a film and five (5) paper copies of the Strata Plan of Subdivision shall be submitted to Council together with the Instrument (in duplicate) under Section 88B of the Conveyancing Act, where required for ultimate lodgement at the Land titles Office.

Alternatively, a Subdivision Certificate issued by an Accredited Certifier and a copy of the registered Plan of Strata Subdivision shall be submitted to Council following completion of the requirements detailed in the conditions of this Development Consent.

56. Issue of Strata Subdivision Certificate - Accredited Certifier

A Subdivision Certificate shall not be issued by an Accredited Certifier with respect to a Plan of Strata Subdivision until such time that all relevant conditions of development consent with respect to the construction of this development have been completed. Specifically so as to ensure public safety all conditions of this development consent that call for construction, earthworks or the like, either within or around the site that by its nature creates a hazard to either the public or occupants of the site shall be fully completed prior to the issue of the Subdivision Certificate.

OPERATIONAL CONDITIONS

These conditions are imposed to ensure that the use or operation of the development does not adversely impact on the amenity of the neighbourhood and the environment.

57. Maintenance and Operational Efficiency of BASIX Requirements

The operation of all devices or appliances installed within the development approved by this consent as stipulated in the BASIX Certificate shall be maintained in good operating order at all times.

58. Noise Control – Design of Plant & Equipment (From Residential Unit Block)

To minimise the impact on the surrounding residents, all sound producing plant, equipment, machinery, mechanical ventilation system or refrigeration systems shall be operated so that the noise emitted does not exceed an LAeq sound pressure level of 5dB above the ambient background noise level when measured at the most affected point on or within any residential property boundary or at the external edge of any sole occupancy unit balcony within the premises itself at any time the equipment operates. Notwithstanding the above requirements, any noise generated by the plant and/or equipment must not be heard within a habitable room in any sole occupancy unit or other residential premises (regardless of whether any door or window to that room is open):

- (a) before 8am or after 10pm on any Saturday, Sunday or public holiday, or
- (b) before 7am or after 10pm on any other day.

Note: The method of measurement of sound shall be carried out in accordance with Australian Standard 1055.1.