

2010SYE029 – 12 McDonald Street, Cronulla
DA10/0442

ASSESSMENT REPORT APPENDICES

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	C	Internal Architect response
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	F	Internal Building Surveyor response
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C34/1 McDonald Street, Cronulla	16 June 2010	3, 6, 7
1/5 McDonald Street Cronulla	18 June 2010	8, 6 (fence condition suggested)
1 McDonald Street Cronulla)	9 June 2010	2, 9
4C 1-3 McDonald Street Cronulla	18 June 2010	2, 3, 6, 10, 11
5/6 McDonald Street, Cronulla	18 June 2010	2, 3, 10, 11, 12, 13, 14
3/8 Ozone Street Cronulla	18 June 2010	2, 3, 10, 12, 13, 15, 16
1/8 Ozone Street Cronulla	18 June 2010	3, 10, 12, 16
4/8 Ozone Street, Cronulla	18 June 2010	2, 12, 15, 16
6/8 Ozone Street Cronulla	18 June 2010	2, 12, 16, 16

Issues

1. Approval would be contrary to the review of the original application made by the Land and Environment Court

2. Height / No. of Storeys

3. Overshadowing / Solar Access

4. Traffic Impacts

5. Non-Compliance with Development controls
6. View Loss
7. Property Values
8. General Support for Proposal
9. Insufficient landscaping
10. Foreshore Impacts (Precedent)
11. Heritage Impacts
12. Density
13. Overdevelopment
14. Contrary to Zone Objectives
15. Setbacks
16. Amenity Impacts

Architectural Review Advisory Panel

Proposal:

Demolition of Existing Building, Construction of a New Residential Flat Building with Basement Carparking & Strata Subdivision

Property:

12 McDonald Street CRONULLA NSW 2230

Applicant:

Innovative Architects Pty Ltd

File Number:

DA10/0442

The following is the report of the Architectural Review Advisory Panel Meeting held on Thursday, 27 May 2010 at the Administration Centre, Sutherland Shire Council, Eton Street, Sutherland. The report documents the Panel's consideration of the proposed development described above.

2. Consideration of Development Application No. 10/0442 – Residential Flat Building at 12 McDonald Street, Cronulla

Council's David Jarvis and Chris Greig outlined the proposal, including providing details of Council's relevant codes and policies.

Cameron Jones, Jeff Meade, Brandon Wallis, Michael Cripps and David Blyth addressed the Panel regarding the aims of the proposal and the constraints of the site.

The proposal consists of the demolition of an existing two storey residential flat building and the construction of a 6 storey residential flat building. The new development will contain 3 luxury apartments plus basement car parking providing 10 spaces.

The applicant has previously advised that neighbouring property owners have been contacted with a view to amalgamating the site to increase the area of the lot to a size that is more consistent with the minimum area (1800sqm) set out in Sutherland Shire Council's DCP. Both neighbouring properties have been unwilling to amalgamate sites.

An earlier design was reviewed by Architectural Review Advisor Panel (ARAP) in January 2009. That design was the subject of an appeal to the land and Environment court which was dismissed. The proposal has been developed to address some of the concerns previously raised during the Court proceedings.

At the outset the documentation for the project was identified as being inadequate. Particularly in a case such as this, the presentation of an architectural model that includes the context is considered essential as well as detailed sections of the facades and a sample board (as per EPA Regulations). Where it is necessary to argue that a non-complying development is worthy of support due to merit considerations, documentation is required to establish the merits of the scheme

Context

The buildings expression to the street is considered reasonable however the decorative treatment of the lift shaft draws attention to the verticality of the building. A calmer, less decorative treatment of the building elevations is recommended. Treatment of the natural cliff to retain existing material or to recreate the landscape is also necessary. A consistent setback from the edge of the cliff is appropriate.

Scale

The proposed building is very tall and slender. Its proposed height is considered to be inconsistent with the existing surrounding buildings which are generally 3 or 4 storeys. While the Panel acknowledges that this building may be the first of the next phase of development, the building does not represent a transition because it goes beyond what is envisaged by the adopted policy. The applicants argument about scale are not strong. However, articulation of the top two floors on the street elevation assists the overall scale. Given the planning controls for the site it represents a reasonable response to the anticipated future scale of the area.

Built Form

The tall slender building form is considered to be a reasonable response to the site. However the roof extension (large overhanging eaves) is considered inappropriate and the clerestory roof is considered unnecessary as the narrow building form already provides ample opportunities to provide solar access to the upper unit. The use of copper for the roof is supported as the view from taller neighbouring buildings will be greatly improved.

Density

The proposed three units and associated parking are considered to be of an appropriate density.

Resource, Energy and Water Efficiency

It is strongly recommended that further consideration be given to improving the environmental performance of the building. The building is ideally located to exploit natural breezes that will help reduce the necessity for air conditioning. The site conditions also provide opportunities for the use of mini wind turbines and heat sinks. Further consideration should also be given to the use of recycled material (particularly on site sandstone) and sourcing of local materials. The commitments for on-site water collection and storage need to be confirmed.

Landscape

The landscaping plan is generally well resolved however consideration should be given to the wind protection requirements of the planting to the north and south of the building. The landscaping to the sides of the building should allow view corridors down to the ocean to be maintained. Also a convincing argument justifying the level change adjacent to the cliff is required and the retention of the existing path on the cliff face needs to be resolved.

To some extent the landscape plan shows the natural cliff treatment. This indicates retention of the *Coprosma repens* because it is so well established and protects the cliff. It was agreed that although not a native plant, it is well established in an area that would be difficult for new planting to survive.

Amenity

Internal living spaces will be affected by too many windows to the north and south elevations. Further consideration should be given to the quality of the living spaces. Reducing the amount of windows in the north and south walls of living areas will reduce potential privacy issues with adjoining buildings (both current buildings and future developments) and also provide more appropriate and useful spaces. One of the owners expressed his concern about the lack of wall space for furnishings and the potential need for heavy curtains due to excessive light. The Panel agrees with this conclusion

It is acknowledged that the enclosing of the terraces in the north west corner of the top floor of the building would create improved amenity for building occupants. However the expression of a strong four storey element addressing the street in the north western corner is considered to be a successful element of the current design. The further enclosure of the upper level balconies should only be considered if it is achieved without compromising the expression of the four storey element to the street.

It is essential to resolve how the car park exhaust system will be provided at this stage of the design process.

The removal of the stairs from the rock face and general upgrade of the cliff face is considered to be a positive aspect of this proposal that will help to improve the visual amenity of the cliff face as viewed from the Esplanade.

Safety and Security

Consideration should be given to the detail design of the east facing balconies, to ensure adequate protection is provided from the elements. To provide a safe and comfortable environment on ocean facing balconies it is recommended that the proposed sliding screens on the eastern balconies be extended to shelter from the north easterly a greater extent of the balconies.

Social Dimension

It is acknowledged that the proposed building will provide a viable housing option only for people of a higher socio economic group.

Aesthetics

The proposal is considered to be somewhat over articulated and it is also considered to be over decorated. A rationalisation of the window treatments and a simplification of the use of colours and materials are recommended before the proposal can be approved. Again the facing of the lift shaft with sandstone cladding emphasises the vertical proportion of the building without providing a material quality.

Summary / Conclusion

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.

Colleen Baker
ARAP Coordinator

04 June 2010

SUTHERLAND SHIRE COUNCIL

TO: Brad Harris

FROM: David Jarvis

DATE: 14 July 2010

FILE REF: DA10/0442

SUBJECT: Application No. DA10/0442
 Description: Demolition of Existing Building, Construction of a New Residential Flat Building with Basement Car parking & Strata Subdivision
 Property: 12 Mcdonald Street CRONULLA NSW 2230

Brad

Thank you for the referral please note the following comments relating to how the revised (revision B) have address architectural issues previously raised by ARAP. Please note previous ARAP comments are high lighted in red:

Context

The buildings expression to the street is considered reasonable however the decorative treatment of the lift shaft draws attention to the verticality of the building. A calmer, less decorative treatment of the building elevations is recommended. Treatment of the natural cliff to retain existing material or to recreate the landscape is also necessary. A consistent setback from the edge of the cliff is appropriate.

There appears to be no significant alteration to the treatment of the lift shaft. Treatment to the cliff face set backs has improved with the introduction of an additional retaining wall set back further from the cliff face. Some minor modifications of the elevations are evident however the over all presentation of the building remains over articulated.

Scale

The proposed building is very tall and slender. Its proposed height is considered to be inconsistent with the existing surrounding buildings which are generally 3 or 4 storeys. While the Panel acknowledges that this building may be the first of the next phase of development, the building does not represent a transition because it goes beyond what is envisaged by the adopted policy. The applicant's argument about scale are not strong. However, articulation of the top two floors on the street elevation assists the overall scale. Given the planning controls for the site it represents a reasonable response to the anticipated future scale of the area.

Comment above remains valid.

Built Form

The tall slender building form is considered to be a reasonable response to the site. However the roof extension (large overhanging eaves) is considered inappropriate and the clerestory roof is considered unnecessary as the narrow building form already provides ample opportunities to provide solar access to the upper unit. The use of copper for the roof is supported as the view from taller neighbouring buildings will be greatly improved.

The extent of the clerestory and the depth of roof over hangs have been reduced to address this issue.

Density

The proposed three units and associated parking are considered to be of an appropriate density.

Comment above remains valid.

Resource, Energy and Water Efficiency

It is strongly recommended that further consideration be given to improving the environmental performance of the building. The building is ideally located to exploit natural breezes that will help reduce the necessity for air conditioning. The site conditions also provide opportunities for the use of mini wind turbines and heat sinks. Further consideration should also be given to the use of recycled material (particularly on site sandstone) and sourcing of local materials. The commitments for on-site water collection and storage need to be confirmed.

Comment above remains valid.

Landscape

The landscaping plan is generally well resolved however consideration should be given to the wind protection requirements of the planting to the north and south of the building. The landscaping to the sides of the building should allow view corridors down to the ocean to be maintained. Also a convincing argument justifying the level change adjacent to the cliff is required and the retention of the existing path on the cliff face needs to be resolved.

To some extent the landscape plan shows the natural cliff treatment. This indicates retention of the *Coprosma repens* because it is so well established and protects the cliff. It was agreed that although not a native plant, it is well established in an area that would be difficult for new planting to survive.

An additional retaining wall has been adjacent to the ground floor court yard to relocate the level change away from the face of the cliff. All other comment above remains valid.

Amenity

Internal living spaces will be affected by too many windows to the north and south elevations. Further consideration should be given to the quality of the living spaces.

Reducing the amount of windows in the north and south walls of living areas will reduce potential privacy issues with adjoining buildings (both current buildings and future developments) and also provide more appropriate and useful spaces. One of the owners expressed his concern about the lack of wall space for furnishings and the potential need for heavy curtains due to excessive light. The Panel agrees with this conclusion

Some minor amendments to the size of windows on the north and south elevations are evident. However the reduction is minimal and the issue raised previously regarding amenity and privacy remain. Further rationalisation of the following windows is recommended W2-2, W2-16, W2-17, W3-2, W3-15 and W3-16.

It is acknowledged that the enclosing of the terraces in the North West corner of the top floor of the building would create improved amenity for building occupants. However the expression of a strong four storey element addressing the street in the north western corner is considered to be a successful element of the current design. The further enclosure of the upper level balconies should only be considered if it is achieved without compromising the expression of the four storey element to the street.

It is essential to resolve how the car park exhaust system will be provided at this stage of the design process.

The removal of the stairs from the rock face and general upgrade of the cliff face is considered to be a positive aspect of this proposal that will help to improve the visual amenity of the cliff face as viewed from the Esplanade.

Safety and Security

Consideration should be given to the detail design of the east facing balconies, to ensure adequate protection is provided from the elements. To provide a safe and comfortable environment on ocean facing balconies it is recommended that the proposed sliding screens on the eastern balconies be extended to shelter from the north easterly a greater extent of the balconies.

Optional sliding screens have been incorporated.

Social Dimension

It is acknowledged that the proposed building will provide a viable housing option only for people of a higher socio economic group.

Comment above remains valid.

Aesthetics

The proposal is considered to be somewhat over articulated and it is also considered to be over decorated. A rationalisation of the window treatments and a simplification of the use of colours and materials are recommended before the proposal can be approved. Again the facing of the lift shaft with sandstone cladding emphasises the vertical proportion of the building without providing a material quality.

The aesthetic of the building have been some what rationalised by the development of the clerestory roof and some minor changes to the window configuration. There is a noted improvement however the over all presentation of the building remains over articulated and would benefit from further rationalisation.

Summary / Conclusion

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.

Further refinement of the windows outlined above (paragraph titled amenity) could help to rationalise the elevational treatment and reduce potential privacy issues with neighbour buildings and improve the amenity of the proposed building.

Regards

David Jarvis

SUTHERLAND SHIRE COUNCIL

TO: Brad Harris - Development Assessment Officer
Ext - 5859

FROM: Claudia Miro – Senior Heritage Architect
Ext - 5181

DATE: 21 July 2010

FILE REF: DA10/0442

SUBJECT: Application No. DA10/0442
Description: Demolition of Existing Building, Construction of a New Residential Flat Building with Basement Car parking & Strata Subdivision
Property: 12 McDonald Street CRONULLA NSW 2230

Brad,

I refer to plans 2195 Issue A, CS,01 to 08 and 10 to 16 April 2010 by Innovative Architects, Heritage Impact Statement by Chris Betteridge from MUSE cape Pty Ltd and landscape plans 34/10 Issue C by Site Design received on June 2010 for proposed works at 12 McDonald Street Cronulla and my comments are,

Background

The site at No12 McDonald Street CRONULLA includes a heritage listed item, listed in the Schedule 6 of the SSLEP2006 as LF35. The item is a landform, a cliff face that is the backdrop of another heritage item "The Esplanade", a walking path on the eastern foreshore.

The cliff extends from the Kingsway to Cronulla Park.

Its significance is stated in the inventory sheet LF35 from the Sutherland Council's Heritage Inventory:

"The Sandstone cliff above the Esplanade walkway has high scenic qualities and is a landmark in the Cronulla foreshore. The cliff was also the centre of community action for the preservation of a 100m foreshore strip without development for the enjoyment of the public. The cliff is the backdrop to the heritage listed "The Esplanade", a foreshore walking path built during the 1930's. It has Local significance."

The statement of significance also includes policies for the conservation of the heritage item as well as the Council's objectives on the conservation of landforms and landscapes.

"The continuation of the historical use of the site as a tourist attraction and the scenic quality of the landform must be considered when making decisions about the place."

The Esplanade (L059) and the Rock Pool (A050 the “children’s pool”) are also items of heritage significance that date from the beginning of the century and contributed to the enjoyment of the foreshore with social and historical connections to the development of Cronulla as a coastal suburb.

Statutory Context

54 Heritage

(1) Objectives

The objectives of this clause are as follows:

- (a) to conserve the environmental heritage of Sutherland Shire,
- (b) to conserve the heritage significance of heritage items, including associated fabric, settings and views,
- (e) to protect and recognise locally significant trees and natural landforms as part of Sutherland Shire’s environmental heritage,
- (h) to limit inappropriate and unsympathetic development in the vicinity of cultural heritage items.

(2) Requirement for consent

Development consent is required for any of the following:

- (b) altering a heritage item, including (in the case of a building) making changes to the detail, fabric, finish or appearance of its exterior,
- (f) erecting a building on, or subdividing, land on which a heritage item is located.

(9) Heritage impact assessment

The consent authority may, before granting consent to any development on land on which a heritage item is situated, require a heritage impact statement to be prepared.

55 Significant trees or natural landforms

- (1) This clause applies to land on which a significant tree or significant landform is located.
- (2) The consent authority must not consent to development on land to which this clause applies unless it is satisfied that:
 - (a) 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, and
 - (ii) the building will not encroach on, or adversely affect, any significant landform, and

Comments

The new proposed works show a greater setback from the cliff face than previous schemes as established by the SSDCP2006 Draft amendment 6 which requires a setback of 7m on south boundary and 10m on north boundary from east boundary.

Extract SSDCP2006

Precinct 8: Eastern Residential Area

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.

Precinct 9: The Esplanade

Precinct 9 consists of the foreshore along Bate Bay. It contains a strong, attractive walkway/linear open space linking Precincts 2 and 7, foreshore swimming areas and Cronulla Beach. The Precinct should be retained as a distinctive recreation area and its landscape character and pedestrian access should be protected and maintained to a high standard of appearance.

The SSDCP 2006 control objectives for Precinct 8 and 9 are designed in order that proposed developments do not erode the amenity of the foreshore.

Being established the significance of the sandstone cliff as an item of social and cultural value to the community, visually significant and part of the setting of "The Esplanade" and the Children's Rock pool; it is of outmost importance that the minimum requirements of setback are met by any development.

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 validate 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.

Recommendations/conditions

For the reasons stated above, it is in my view that the proposal may be supported on heritage grounds with the following conditions,

1. No new cliff face staircase shall be constructed, as established in recent court case judgement (12 McDonald St Cronulla) which supported the removal and non-replacement of the existing staircase down the cliff face to The Esplanade.
2. A Heritage specialist shall oversee any excavation and demolition works on and in the vicinity of the cliff face. Care shall be taken when removing the existing structures to minimize damage to the natural rock formations.
3. Landscape filling and formal plant beds/walling/fences shall be kept to a minimum; re-vegetation shall enhance the natural bush qualities of the landform.

Claudia Miro
Senior Heritage Architect

SUTHERLAND SHIRE COUNCIL

TO: Brad Harris - Development Assessment Officer

FROM: Michael Duffy - Development Assessment Officer

DATE: 28 July 2010

FILE REF: DA10/0442

SUBJECT: Development Application No. DA10/0442
Description: Demolition of Existing Building, Construction of a New Residential Flat Building with Basement Carparking & Strata Subdivision
Property: 12 McDonald Street CRONULLA NSW 2230

Brad

I refer to your memos dated 26 May 2010 and 26 July 2010 and I make the following comments :

Brief Summary

- The proposals in relation to traffic management, stormwater management, construction site management and strata subdivision proposals are considered to be generally acceptable subject to consent conditions.
- A preliminary Geotechnical Investigation Report has not been submitted in support of this application, to advise how site stability will be maintained during the demolition, construction and operational phases of the development. In the absence of any supporting geotechnical information, I have endeavoured to address this issue through consent conditions.

Assessment

Traffic Management

Site Access

- The location and width of the proposed footpath crossing and upper basement access ramp from the McDonald St frontage will not permit vehicle passing and has some potential to create queuing of vehicles in McDonald St.
- The location and width of the proposed footpath crossing and upper basement access ramp varies from approx 3.30m to 3.60m and therefore does not comply with the 5.50m width requirement of Clauses 2.b.3 or 4.b.4.1 of Chapter 7, SSDCP2006.
- However, given the context and constraints of the subject site, as well as the relatively small number of proposed dwelling units and the correspondingly low overall number of proposed car parking spaces, the vehicular site access proposals are considered to address the relevant objectives of Chapter 7, Clause 2 of SSDCP2996 to an acceptable extent.

Proposed Sensor Based Traffic Signal System (SBTSS)

- To minimise the potential for vehicle queuing in McDonald St for vehicles seeking access to the subject site, the Applicant proposes that vehicular movements to and from the site be controlled by a SBTSS.
- The 'default' setting of the SBTSS would passively display a green signal to vehicles seeking to enter the site from McDonald St. and simultaneously display a 'default' red signal to vehicles intending to exit the site from within the upper basement parking area.
- On balance, it is considered that the proposed SBTSS system will contribute to a safer and more orderly access to and from the site.

Car Parking Facilities

Scope of Car Parking Comments

- **The overall number and type of car parking spaces required by SSDCP2006 should be addressed in your planning assessment.**
- This report addresses geometrical, dimensional and functional aspects of the car parking proposals which are classified as *User Class 1A* in *Table 1.1 of AS/NZS 2890.1:2004. Parking Facilities Part 1: Off Street Car Parking*).

Proposed Basement Parking Facilities

- The proposed car parking facilities are spread over two (2) levels known as the upper and lower basement levels which would each be connected by a ride-on car hoist enabling the driver and occupants to remain in vehicle.
- The ride-on hoist will include a range of safety and convenience features such as emergency phone, back up lights and emergency exit system.

General Turning / Manoeuvring within each Basement Parking Level

- The layout of each basement parking level enables B85 vehicles to enter and leave the subject site in a forward direction.
- The proposed car spaces and access aisles on each parking level dimensionally comply with the minimum requirements of AS/NZS2890.1:2004 and are adequate for the intended purpose, *except* in relation to accessing the most easterly car spaces on the upper basement level, where the access aisle is dimensionally constrained by a 7.50m building setback from the eastern boundary of the site.

Upper Basement Parking Level

- The upper basement level provides access to the proposed vehicle elevator which enables access to the lower basement level.
- It is relevant to note that the proposed adaptable dwelling garage is only 6.0m wide and needs to be widened by 200mm to 6.20m wide. **This issue can be addressed in consent conditions.**
- As the proposed car hoist space is immediately adjacent to the west of the adaptable dwelling garage, the required additional 200mm width will presumably need to be found by reducing the width of the most easterly garage from 6.0m wide to 5.80m wide, which together with a 5.50m (by plan scaling) aisle width allows B85 vehicles to access each 2.90m wide car space, although in respect to the most easterly car space multiple manoeuvres may be necessary during entry and exit mainly due to the 7.50m building setback area.

Lower Basement Parking Level

- Vehicular access to proposed car spaces on the lower basement level is initially from the McDonald St access ramp, then across the upper basement level access aisle to enter the proposed Car Hoist and descend to the lower basement level.
- The most easterly proposed car space is identified as a small car space by the Applicant due to some difficulty with the reverse exit manoeuvre from the space, although the Applicant's Traffic Consultant in a letter dated 13 May 2010 asserts (in that use by a B85 vehicle would be possible with multiple manoeuvres).
- However, as the nominated 'small car' space is proposed to be 3.0m wide and abuts a 5.75m (by plan scaling) wide access aisle, and has the benefit of a 1.0m blind aisle extension, it is considered that B85 vehicle access is available without undue dimensional constraint.

Visitor Vehicle Access

- Visitor vehicle access into the site will be managed by the tenants of each unit via the intercom system, as there are no dedicated visitor car spaces proposed.
- A Visitor's vehicle will contact a tenant via the intercom to ascertain if access can be granted to that tenant's garage, and if available the tenant will grant access and in the case of visitor access to the lower basement level will meet the visitor on the upper level to supervise entry to and control of the car hoist.

Proposed Car Hoist

- The architectural details indicate that a width of 3.60m and depth of 6.05m is available in which to install the proposed car hoist, and such dimensions appear to be consistent with the submitted information leaflet produced by Southwell P/L a car hoist manufacturer.

- The submitted information also indicates that such a car hoist would allow a 3000kg lift capacity on a 6.0m x 3.0m platform which is considered to be adequate for the proposed development.
- The designer and operator of a car hoist (which is defined as 'Plant' under OH&S Legislation) each have various obligations under OH&S Legislation.
- I suggest a referral be made to Council's Health Dept to assess operational impacts such as noise and air quality.

Proposed Garage for Adaptable Dwelling Unit

- The architectural plan 2195/03/C indicates a double garage on the upper basement level for use by the nominated Adaptable Dwelling which obviates the need for a disabled person's vehicle to use the proposed car hoist facility.
- The dimensions of the proposed adaptable dwelling garage are considered to be acceptable except in relation to the proposed (3.80 + 2.20m =) 6.0m width.
- In this regard it is considered that the minimum width of the adaptable dwelling should not be less than (3.80 + 2.40m =) 6.20m. **This issue can be addressed in consent conditions.**

Bicycle Parking Facilities

The issue of whether or not dedicated bike parking facilities are to be provided in accordance with the objectives of Clause 5 of Chapter 7 of SSDCP2006 should be addressed in your planning report.

Stormwater Management

Alternate Water Supply

- The proposals are Basix affected in relation to an alternate water supply.
- Basix Certificate No. 309471M dated 3/5/2010 requires the inclusion of a 10,000 litre minimum capacity rainwater tank for the irrigation of just 44.0m² of landscape area, and for car washing purposes.
- The proposed development indicates that a 12,000 litre RWT will be installed.

Site Outfall

- The proposed site outfall includes an overflow from the proposed 12000 litre RWT together with discharge from the proposed rising main from the basement holding tank.
- A stormwater 'level spreader' is proposed close to the cliff face in a manner which is intended to mimic natural surface flows from the site over the cliff face.
- However, the proposed level spreader is not supported by Council's Stormwater Manager Guy Amos who has indicated his preference for the site outfall to discharge into an existing junction pit located within the 1.80 wide and variable width Easement for Drainage located in the adjacent property to the south (No.8 Ozone St), and that the junction pit be modified / upgraded by the developer in a manner specified by Council.

This issue of site outfall can be addressed in consent conditions.

Geotechnical Considerations

A preliminary Geotechnical Investigation Report addressing issues of site stability has not been submitted in support of this application.

The issues relevant to site stability, should include but not be limited to :

- *The identification of any potential demolition and/or excavation impacts which may adversely affect the subject site or any other property. ;*
- *Whether or not a structural catch fence is required at the toe of the cliff face to ensure public safety during the demolition and / or construction phase,*
- *The identification of all properties should be the subject of a pre commencement dilapidation survey prior to commencement of any demolition works.*
- *The identification of any demolition or construction phase restrictions that may be necessary in relation to the type and utilisation of any demolition or excavation equipment ;*
- *Establishing whether or not quantitative vibration monitoring (continuous or otherwise) or any other measures are required to ensure that the transmission of unacceptable or adverse ground vibrations to neighbouring properties will not occur.*
- *The identification of any site appropriate excavation retention systems (whether temporary or permanent including any rock anchors) and related design parameters.*

- *Establishing whether or not public access along the The Esplanade may need to be restricted at any time during any of the demolition, excavation or construction phases ;*
- *The identification of measures necessary to ensure public safety and to minimise public inconvenience particularly within the The Esplanade during any of the demolition, excavation or construction phases.*

In the absence of a preliminary geotechnical investigation report this issue can be addressed in consent conditions.

Construction Site Management Plan (CSMP)

- A CSMP has not been submitted in support of this application.
- Construction access to the site from The Esplanade is considered to be undesirable.

This matter will be addressed in consent conditions.

Public Place Enquiry (PPE)

- PPE Application No.10/0019 was lodged on 19/5/10 but at the time of this report (27/7/10) Proclaim advises that the PPE application has not been allocated nor has any processing of the PPE application commenced.
- Development consent conditions will be included to address public area issues.
- It is expected that in due course the PPE Application will be processed and a profile for the required new vehicular footpath crossing will be issued.

Environmental Damage & Performance Security Bond

In accordance with SPL email dated 6/4/2010, consent condition GEN2102A has been included as the PPE has not been processed.

Proclaim

Consent conditions which address the matters referred to in this report have been entered into Proclaim.

Michael Duffy - Development Assessment Officer

Date :

SUTHERLAND SHIRE COUNCIL

TO: Brad Harris - Development Assessment Officer

FROM: Tim Vanderlaan - Building Surveyor

DATE: 15 June 2010

FILE REF: DA10/0442

SUBJECT: Development Application No. DA10/0442
 Description: Demolition of Existing Building, Construction of a New Residential Flat Building with Basement Carparking & Strata Subdivision
 Property: 12 McDonald Street CRONULLA NSW 2230

A development application for the construction of a new residential flat building with basement car parking has been received for the above property.

For the purpose of this assessment the following BCA criteria is used:

Class 2 and 7a Use
Rise of 6 Storeys
Type A Construction



The site

The following plans have been considered in the assessment of this report:
 Plan numbers: 2195 sheets 01 to 16, issue A

It is further noted that there are no pressing concerns in relation to a future need for significant design changes to comply with the BCA, which may warrant the submission of an application under Section 96 of the EP & A Act 1979.

Part C Fire Resistance

The level of information would indicate that BCA compliance could be achieved.

Part D Egress

The level of information would indicate that BCA compliance could be achieved.

The alternate solution will ensure the performance objectives of the following will be met
Travel distance of up to 27 metres to a single exit within the basement carpark areas, the single exit stair serving the basement levels that area greater than 50 m² in area and requires a change of level more than 1.5 metres for occupant escape normally requiring two exits, the doors to the lift shaft open into the fire isolated exit (lobby) that serves the residential units, the door of unit 1 (ground floor) that directly accesses the fire isolated stair/ lobby does not swing in the direction of escape

Part E Fire Services

The level of information would indicate that BCA compliance could be achieved

The alternate solution will ensure the performance objectives of the following will be met:

The protection of external wall openings within 3.0metres of the allotment boundary, the ground floor fire hose reel will be located within the fire isolated exit (lobby)

RECOMMENDATION

The following conditions being considered:

GEN 1002,
CC 1090

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.

CC9004 as amended

PREC 1001, 1004

CONS 1002, 1003, 1004, 1004A, 1005, 1006, 1007, 1008, 1009, 1010, 1011, 1012, 1016

PCON 3001.

OP 1001A

These conditions have been entered into Proclaim to address the above mentioned issues.

Signed

Assessment Officer

Date

I have reviewed the landscape plan for the above development prepared by Site Design Landscape Architects dated 4.5.10 issue C. The landscape plan is generally satisfactory.

With regard to the outstanding matters raised by ARAP I provide the following comments.

1. Wind protection on the northern and southern boundary.

Response:

The species provided will be metrosideros and should grow to a maximum of 2 metres in the current growing conditions. Some wind protection will be provided although given the location it will be considered minimal.

2. Maintaining view corridors.

Response:

If view corridors are to be maintained the Cupaniopsis anacardioides (Tuckeroo tree) to be planted at the western end of the site will grow to a height of at least 6 metres. This may cause some obscuring of views to the lower units that are behind or to the west of the building if they grow this high. However some vegetative screening should be provided as the landscape area is narrow and the building is prominent.

3. Level change and path removal.

Response:

From notation on the plan it states that stairway access to the beachfront will be removed and the top portion of the existing stairs will be kept for maintenance.

4. Plant species.

Response:

The plant species proposed are dominantly indigenous and are suitable to the location. The existing Coprosma repens on the cliff face will be retained as greenery. This will maintain bank stability and is not a weed species. There is no objection to this vegetation being retained.

Overall the landscape plan is satisfactory given the constraints that the building creates on the site.

John Smith – Landscape Architect

State Environmental Planning Policy No.1

Objection to the Building Height Development Standard

12 McDonald Street Cronulla

Client: David Blyth Pty Ltd
28 Production Ave
Kogarah NSW 2217

Project Ref: 0031/10
Date: 18 May 2010

**STATE ENVIRONMENTAL PLANNING POLICY NO. 1
DEVELOPMENT STANDARDS
ENVIRONMENTAL PLANNING & ASSESSMENT ACT, 1979**

APPLICANT'S NAME: Innovative Architects Pty Ltd

SITE ADDRESS: 12 McDonald Street, Cronulla

PROPOSAL: Residential flat building

1. (i) **Name of the applicable planning instrument which specifies the development standard;**

Sutherland Shire Local Environmental Plan (LEP) 2006

- (ii) **The number of the relevant clause therein**

Clause 33

2. **Specify the nature of Development Standard sought to be varied and details of variation:**

Clause 33 of the LEP relates to building height limits throughout the Sutherland Shire. Subclause 33(14) specifically relates to development for the purposes of residential flat buildings and states inter alia:

- “ (14) **Residential flat buildings**
Despite anything to the contrary in this clause, a residential flat building must not comprise more than:
(a) the maximum number of storeys specified on the Height and Density Controls Map in relation to the land concerned, or
(b) if that map does not specify a maximum number of storeys in relation to the land concerned—3 storeys.”

A 'storey' is defined under the LEP in the following terms:

- “ **storey** means a space within a building situated between one floor level and the floor level above, or the ceiling or roof above, and includes the space within the following:
(a) foundation areas, garages, workshops, storerooms, basements and the like, whose external walls have a height of more than 1 metre, as measured from the ground level of the lowest point on the site,
(b) an attic within a residential building, but only if:
(i) the roof of the attic is pitched from more than 300mm above the floor of the attic or at an angle of more than 35 degrees, or
(ii) the area of the attic exceeds 60 percent of the floor space of the floor level below.”

The LEP *Height and Density Controls – Cronulla Centre Map* identifies the site as being subject to a 4 storey height limit on the western portion of the site and a 6 storey height limit on the eastern portion of

the site. The defining line between the permitted 4 and 6 storey height limit runs through the centre of the site. However, because of the small scale of the LEP height map it is difficult to accurately ascertain the exact point at which the 4 storey height limit becomes a 6 storey height limit.

Regardless, the entire building is proposed to be 6 storeys in height thereby creating a non-compliance with the maximum 4 storey height limit that applies to the western portion of the proposed building.

3. State the objective of the standard to be varied as it relates specifically to the subject site and proposal:

The objectives of Council's building height standards are contained in clause 33(2) of the LEP that states, inter alia:

- “
- (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) complements any natural landscape setting of the buildings,
 - (b) to allow reasonable daylight access to all buildings and the public domain,
 - (c) to minimise the impacts of new buildings on adjoining or nearby properties from loss of views, loss of privacy, overshadowing or visual intrusion,
 - (d) to ensure that the visual impact of buildings is minimised when viewed from adjoining properties, the street, waterways and public reserves,
 - (e) to ensure, where possible, that the height of non-residential buildings in residential zones is compatible with the scale of residential buildings on land in those zones.”

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

Objective (a)

The context of the site is well described on the site analysis plan and McDonald Street and Ozone Street elevation drawing. The elevation drawing incorporates existing buildings that are situated to the north and south of the subject site. The elevation drawing also details a potential building envelope (shown dashed) that would comply with Council's current planning controls. As noted on the elevation drawing, the potential building envelopes shown are conservative estimates only and it is conceivable that these building envelopes could alter as a result of a detailed urban design investigation.

The proposed six storey height limit is in accordance with the planning controls for the eastern portion of the site, however, the western portion of the site is subject to a 4 storey height limit, which the proposal exceeds.

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 within 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 the Council's desired scale and character of the locality.

It should also be noted that much of the current building design is a result of the LEC proceedings for the previous development proposal on the subject site (see the *Background* section of the submitted *Statement of Environment Effects*). Since the LEC proceedings refinements to the building have been made to satisfy the findings of Commissioner Hussey and also in consultation with Council Staff.

It was recognised by the LEC that as amalgamation with No.10 McDonald Street could not be achieved, strict adherence to the applicable planning controls would sterilise the subject site from redevelopment. Amalgamation with No.10 McDonald Street is not practicable and the LEC was satisfied of this position. Further, to compensate for increased side boundary setbacks, reduced building

width and to ensure that development of the site remains economically viable, negotiations have taken place with Council staff resulting in a building form that is consistent with that currently proposed.

The LEC also formed the view that an appropriate built form would be achieved on the site if the proposed side boundary setbacks were no less than the side boundary setbacks of the existing building on the site.

In terms of Clause 33(2)(a)(ii) of SSLEP 2006, the subject site is located in a highly modified urban environment with the only significant natural landscape feature being the heritage listed rock face situated at the eastern end of the site. However, the height variation is proposed for the western portion of the site, which is not within the visual catchment of the heritage listed rock face. As a consequence, the western portion of the site (subject of the proposed height variation) does not have any natural landscape setting to consider or respond to within the proposed building design.

Objective (b)

Shadow diagrams prepared by Innovative Architects are provided with the application. Shadows cast by the building have been produced in plan and elevation for 9am, 12 noon and 3pm, mid winter.

Solar access into the proposed development complies with the requirements of SSDCP 2006. 10m² of each apartments' private open space receives 4 hrs 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 the adjacent properties, the proposal does not comply with the requirement 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. To this end, the submitted shadow diagrams measure the shadow cast by a fully compliant development against the shadow cast by the proposed development with non-compliant height and side boundary setbacks (Refer to architectural plan number 13 prepared by Innovative Architects). Analysis of these shadow diagrams reveals that the proposed additional building height creates negligible additional shadow impact on the adjoining southern property with all windows in shade between 9am and 3pm, mid winter.

To allow for redevelopment of the subject site within a reasonable timeframe, an appropriate form of development could be achieved on the site if the side boundary setbacks (northern and southern boundaries) of the proposed development were increased from the design considered by the LEC to be consistent with the setbacks of the building existing on the subject site. If the setbacks were increased accordingly, a reasonable outcome would then be an additional 2 storeys for the western portion of the proposed building.

Accordingly, the proposal is considered to be consistent with Objective (b) of the height development standard.

Objective (c)

In accordance with the requirements of S.79(c) of the *Environmental Planning & Assessment Act, 1979*, the submitted Statement of Environmental Effects discusses in detail the potential impact that the proposed development is likely to have on the amenity enjoyed by adjoining properties.

Both the submitted Statement of Environmental Effects and the response provided above to requirements of objective (b) of Clause 32 of SSLEP 2006, provide a detailed assessment of the impacts of overshadowing. 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 St), 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 similar size but standard apartment sizes (approximately 80sqm in area).

All proposed living areas are positioned to the east to capture views of the Pacific Ocean and not towards the adjacent properties. Glazing is provided either in the form highlight windows or positioned behind fixed privacy louvres. The LEC found that the previous proposal would not result in any unreasonable or adverse privacy impacts and the current proposal is setback a larger distance to adjacent buildings in comparison to the Court considered scheme. The additional building height proposed for the western portion of the site is situated above the maximum height of adjacent properties, thereby not having any adverse impacts on privacy or creating visual intrusions.

Objective (d).

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 the pattern of existing contemporary buildings and desired future buildings 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 would be the 6 storey 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 anymore dominant than a compliant scheme that also has a 6 storey height for the majority of the building footprint.

To counteract the height non-compliance for the western portion of the site, the building design is emphasised by a visually more dominant 4 storey base with a lighter 2 storey portion above.

In comparison to the outdated red brick building located on the site, the proposed building will enhance the coastline when viewed from the Esplanade, surrounding developments and from within Bate Bay itself.

The proposal has been refined following the LEC hearing and discussions with Council Staff to produce a piece of architecture that is appropriate within the site context while meeting the needs of the future building occupants.

Photo montages are provided with the submitted development application.

Objective (e)

Objective (e) is not relevant to the current proposal.

Accordingly, notwithstanding non-compliance with the height development standard, the proposal is considered to satisfy the objectives of the standard. In the circumstances of the particular case, the SEPP No. 1 Objection for the non-compliance is considered to be well founded.

5. Will non-compliance with the development standard be inconsistent with any planning objectives for the locality? State why.

Under the LEP the subject property is within *Zone 6 – Multiple Dwelling B*, the specific objectives of which are identified in the LEP as follows:

“ Zone 6—Multiple Dwelling B

1 Objectives of zone

The objectives of this zone are as follows:

- (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.”

The proposal is considered to be entirely consistent with the objectives of the Zone. The proposal will provide a quality residential flat development generally consistent with the provisions of the Sutherland Shire LEP 2006 and consistent with the intent of the Zone in terms of scale, density and built form.

The proposal will substantially increase landscaped area on the site and it will introduce new plants species and mass planted areas. The completed development will be entirely consistent with the high density character of the locality and maintain appropriate levels of amenity for the surrounding residents (as previously outlined).

The subject site is within close proximity to the Cronulla Town Centre, places of employment, restaurants and public recreation, it is considered suitable that a height increase be permitted for the western portion of the site given the absence of any demonstrable amenity impacts.

The development will complement the urban landscape and replace the existing dilapidated apartment block with luxury apartments within a prime location.

The bulk and scale of the proposed development is considered to be suitable to the site context, as discussed in detail in the Statement of Environmental Effects submitted with this application.

6. In the circumstances of the proposal, would strict compliance with the development standard:

- (i) be unnecessary or unreasonable?**
- (ii) tend to hinder the attainment of the objectives under Section 5(a)(i) and (ii) of the Environmental Planning and Assessment Act, 1979?**

- (i) Yes. In the circumstances of the case, compliance with Council's development standard for building height is considered to be unreasonable and unnecessary.

The subject site is narrow with a width ranging from 11.4m to 13.3m. The planning controls require side boundary setbacks of 4m and this would allow for a building ranging from 3.4m to 5.3m. Consequently the previous development proposal on the site that was considered by the LEC included northern and southern side boundary setbacks of 1.355m and 1.2m, respectively.

The Court concluded that new residential development on the land should propose side boundary setbacks that are no less than the side boundary setbacks of the existing building on the site. The existing building is setback 1.8m to the northern boundary and 2m to the southern boundary. An increased setback from the eastern boundary is also required by the current planning controls that stipulate a setback of between 7m and 10m (an eastern boundary building setback line is a new SSDCP control that did not exist at the time of lodgement of the LEC considered proposal).

Together with an increase in the required side boundary setbacks the northern and southern building elevations require articulation to prevent continuous linear walls. These constraints have diminished the available building footprint on the site (refer to the building footprint comparison provided at Section 4.2.7 of the submitted Statement of Environmental Effects).

To ensure that redevelopment of the subject site remains economically viable, an increase in the building height from 4 stories to 6 storeys was negotiated with Council. This has been met with an appropriate architectural form that emphasises the first 4 storeys of the building to create a building form consistent

with the desired character of 4 and 6 storeys.

The additional 2 storeys proposed for the western portion of the site will contain bedrooms and not main living areas thereby not impacting on the amenity of surrounding residents.

Given the site constraints and in the absence of any unreasonable amenity related impacts, it is considered that strict compliance with the building height development standard would be unreasonable and unnecessary in the circumstances of the case.

- (ii) Yes. The non-compliance with the building height standard is not likely to have any significant adverse effect on adjoining or surrounding properties. The proposal has been refined following the LEC hearing and following discussions with Council officers, where it was recognised that the existing planning controls are onerous and development of the site must be considered on merit to prevent sterilisation of the site.

The development will result in a significant improvement on the site and in the locality. Therefore, insistence upon strict compliance would unnecessarily complicate orderly and economic development of an ideal site for the development type proposed, in accordance with the intentions of the zoning and the objectives of the Act.

State Environmental Planning Policy No.1

Objection to the Landscaped Area Development Standard

12 McDonald Street Cronulla

Client: David Blyth Pty Ltd
28 Production Ave
Kogarah NSW 2217

Project Ref: 0031/10
Date: 18 May 2010

**STATE ENVIRONMENTAL PLANNING POLICY NO. 1
DEVELOPMENT STANDARDS
ENVIRONMENTAL PLANNING & ASSESSMENT ACT, 1979**

APPLICANT'S NAME: Innovative Architects Pty Ltd
SITE ADDRESS: 12 McDonald Street, Cronulla
PROPOSAL: Residential flat building

1. (i) Name of the applicable planning instrument which specifies the development standard;

Sutherland Shire Local Environmental Plan (LEP) 2006

(ii) The number of the relevant clause therein

Clause 36

2. Specify the nature of Development Standard sought to be varied and details of variation:

Clause 36 of the LEP relates landscaped area in various zones and specifies a minimum of 40% (211.84m² of landscaping with relation to the subject site) of the site area is to be provided as landscaped area in Zone 6 - Multiple Dwelling B Zone.

Landscaped area is very narrowly defined under the LEP as follows, inter alia:

" *landscaped area*, in relation to a site, means any area of the site that comprise bushland or is otherwise vegetated with gardens, lawns, shrubs or trees and does not include any area that is:
(a) paved or comprises a driveway, or
(b) occupied by a garbage storage area, swimming pool or any other building."

Accordingly, when strictly applied, landscaped area excludes any hard landscaping such as paths or patios, but arguably may have included landscaped garden areas reinstated above basement or podium structures. Under the current LEP definition, the proposal results in a landscaped area of 251.45m² or 47.47%. This includes 21.4% (113.36m²) of deep soil planting compared with the SSDCP 2006 requirement that 50% of landscaped area be deep soil, which is achieved by the proposal with 53% of the landscaped area provided as deep soil.

Accordingly, when the proposed new definition is strictly applied, landscaped area is essentially deep soil area and excludes any hard

landscaping such as paths or patios as well as landscaping above any part of a building, irrespective of soil depth. This exclusion applies to planters above basement levels and planters on roof terraces or balconies.

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*. When calculated strictly in accordance with the *landscaped area* definition, the proposal results in a landscaped area of 113.36m² or 21.40%. Therefore, the proposed variation essentially relates to interpretation of the landscaped area definition.

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 a much higher quality and quantity compared to that provided on the subject site.

3. State the objective of the standard to be varied as it relates specifically to the subject site and proposal:

The objectives of Council's landscaped area standards are contained in clause 36(1) of the LEP that states, *inter alia*:

- “ The objectives of this clause are as follows:
- (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,
 - (c) to minimise urban run-off by maximising pervious areas on the sites of development,
 - (d) to ensure that the visual impact of development is minimised by appropriate landscaping and that the landscaping is maintained,
 - (e) to facilitate the provision of private open space for each dwelling, being private space that is useable and provides a reasonable level of privacy and access to sunlight,
 - (f) to ensure that landscaping carried out in connection with development on land in Zone 11—Employment is sufficient to complement the scale of buildings, provide shade, screen parking areas and enhance workforce amenities.”

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

Objectives (a) and (b)

At present, the subject 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 does not contain any significant vegetation and in no way contributes to the tree canopy of the locality. The landscape character of the subject site is similar to the wider locality. That character is urban in nature and as identified by aerial photography and streetscape photographs included on 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 a generic development standard that does not acknowledge site and character differences.

In any case, the proposal will more than quadruple the amount of landscaping provided on the site from 66.73m² to 251.45m². This includes 113.36m² of deep soil area that strictly adheres to the definition of *landscaped area*. Within the area that does not strictly constitute deep soil area, 138.09m² is at ground level above the proposed basement level and has an average soil depth of 550mm. Therefore, whilst not technically included as landscaped area, these landscaped spaces will be capable of accommodating sufficient tree growth as identified on the Landscape Plan prepared by Site Design Pty Ltd and submitted separately with this application.

Accordingly, the proposed development will provide a vast improvement in terms of tree planting on the site compared with the existing site conditions, well in excess of that provided to surrounding sites. 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)

Given that the proposal provides for a large increase in landscaped 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 *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 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)

As indicated, the proposal will result in an increase in landscaped space on the site of over 183m². Whilst some of this area may not technically constitute *landscaped area* under the definition, the proposal complies with the overall area requirement of 40% and proposes a landscaped area of 47.47%. Despite technical non-compliance of some of the area with the definition of *landscaped area*, the visual role the landscaping undertakes is the same as landscaping that would satisfy the definition. In particular, the ground level planters will have an average soil depth of 500mm which will accommodate significant tree planting that will soften the appearance of the side elevations and provide an attractive building base.

The proposed landscaping at the north-western 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 within the curtilage of the building will result in a significant improvement compared 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 to below MHWL.

The proposed landscaping to the upper level balconies and terraces, whilst not technically constituting landscaped area, will assist with articulating and softening the upper parts of each elevation as well as performing a privacy function.

As indicated previously, the landscape context of the subject site is urban in nature and does not incorporate any significant degree of canopy planting. The following table summarises the landscaped area for surrounding development. It is noted that these figures include all landscaped areas, rather than only deep soil areas as per definition of *landscaped area* under SSLEP 2006. In terms of deep soil, the figures provided in this table would be much less.

TABLE 1: Site Data for Surrounding Development	
Property	Existing Landscaped Area (including podium landscaping)
14 Ozone St	157.58m ² or 21.4%
12 Ozone St	72.46m ² or 10.93%
10 Ozone St	202.22m ² or 30.1%
8 Ozone St	279.91m ² or 30.78%
12 McDonald St	107.43m ² or 20.3%
10 McDonald St	142.59m ² or 26.0%

6-8 McDonald St	256.0m ² or 21.9%
4 McDonald St	178.16m ² or 27.6%
2 McDonald St	496.3m ² or 37%

Source: Innovative Architects Pty Ltd (2008)

On the basis of this development data, it can be seen that the proposed 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.

Objective (e)

The existing building on the subject site provides private open space to east facing units only. In contrast, the current proposal provides large outdoor terraces or patios off the main living area to each dwelling, facing east to take in views to Bate Bay and achieve access to east and north-eastern daylight. Each dwelling is provided secondary private open space off bedrooms. All primary private open space fully complies with the dimension requirements of SSDCP 2006. Given the size of the proposed development and the generous provision of private open space, it is considered that the provision of communal open space is not necessary. Therefore, it is considered that the proposal provides high levels of residential amenity in terms of private open spaces and is consistent with objective (e).

Objective (f)

Objective (f) is not relevant or applicable to the subject development.

Accordingly, notwithstanding the non-compliance with the strict definition of landscaped area, the proposal is considered to satisfy the objectives of the standard (for the reasons discussed). In the circumstances of the particular case, the SEPP No. 1 Objection for the non-compliance is considered to be well founded.

5. Will non-compliance with the development standard be inconsistent with any planning objectives for the locality? State why.

Under the LEP the subject property is within *Zone 6 – Multiple Dwelling B*, the specific objectives of which are identified in the LEP as follows:

- “ **Zone 6—Multiple Dwelling B**
1 Objectives of zone
The objectives of this zone are as follows:

- (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."

The proposal is considered to be entirely consistent with the objectives of the Zone. The proposal will provide a quality residential flat development generally consistent with the provisions of the Sutherland Shire LEP 2006 and consistent with the intent of the Zone in terms of scale, density and built form. The proposal will provide for an increase in landscaped area on the site and will result in a higher level of landscaping than surrounding development, therefore complementing the urban landscape of the locality. The scale of development is considered to be suitable to the site context, as discussed in detail in the Statement of Environmental Effects submitted with this application, and the landscaping proposed is considered to be suitable to the scale and form of development.

6. In the circumstances of the proposal, would strict compliance with the development standard:

- (i) be unnecessary or unreasonable?**
- (ii) tend to hinder the attainment of the objectives under Section 5(a)(i) and (ii) of the Environmental Planning and Assessment Act, 1979?**

- (i) Yes. In the circumstances of the case, compliance with Council's development standard for minimum landscaped area is considered to be unreasonable and unnecessary. The landscape concept proposed will adequately perform the functions encouraged by the objectives of the requirement and will result in a significant improvement in the landscape character on the site and the locality. Given the site dimensions, in order to meet Council's car parking requirements, basement parking is required and must extend to the site boundaries to provide for vehicle manoeuvring. As a result, a significant amount of the proposed landscaping is located above the basement. Notwithstanding, due to the soil depth proposed, this landscaping performs the functions sought by the objectives of the control. Accordingly, strict compliance is not necessary in order to meet the objectives.

Given the urban context of the site and the consequent landscape character of the locality, it is considered reasonable to provide landscaping in a different manner than a typical suburban site provided the landscape concept addresses the

objectives of the control. As outlined above the proposal is considered to achieve these intentions.

- (ii) Yes. The non-compliance with the landscaped area standard is not considered likely to have any significant adverse effect on adjoining or surrounding properties. The proposal does in fact meet Council's objectives for landscaping and will result in an improvement on the site and in the locality. Therefore, insistence upon strict compliance would unnecessarily complicate orderly and economic development of an ideal site for the development type proposed, in accordance with the intentions of the zoning and the objectives of the Act.