

<b>JRPP No:</b>	<b>2010SYE057</b>
<b>DA No:</b>	<b>DA10/0720</b>
<b>PROPOSED DEVELOPMENT:</b>	Proposal: <b>Commercial Development - Demolition of Existing Structures and Construction of a Four (4) Storey Commercial Building</b> Property: <b>Lot 18 DP 8461, Lot 19 DP 8461 &amp; Lot 1 DP 21256 (Nos. 531-533) Kingsway MIRANDA</b>
<b>APPLICANT:</b>	<b>Adrian Tripodina</b>
<b>REPORT BY:</b>	Carolyn Howell Environmental Assessment Officer (Planner) Sutherland Shire Council Phone: 9710.0841

## 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 development has a capital investment value of more than \$10 million.

#### 1.2 Proposal

An application has been received for the demolition of existing structures and the construction of a five (5) storey commercial building at the above property.

#### 1.3 The Site

The subject site is located on the northern side of Kingsway, just west of Clubb Crescent.

#### 1.4 The Issues

The main issues identified are as follows:

- Height
- Floor Space Ratio
- Car Parking
- Street Treatment

#### 1.5 Conclusion

Following detailed assessment of the proposed development the current application proposes significant variations to Council's development standards for density and height and significant variations to Council's development control plan controls for car parking, street treatment and setbacks. For the reasons outlined in this report the application cannot be supported.

## 2.0 DESCRIPTION OF PROPOSAL

The proposed development is for the demolition of existing structures on site and the construction of a four (4) level commercial building with two (2) levels of basement car parking. A large portion of the upper basement level is above ground level and therefore the development measures five (5) storeys in height. The proposal comprises 4716m<sup>2</sup> of commercial floor space and does not nominate a use for the building.



Photo of the subject site looking north

Pedestrian access to the site is from Kingsway via either a ramp or stairs. The ground floor level of the development is 420mm above Kingsway street level at the western edge of the site and 2820mm above Kingsway street level at the eastern edge of the site.

Vehicular access to the site is from Clubb Lane and is located towards the western boundary. Vehicular access into the site is shared with a loading area. The crossing width at the property boundary is 11.5 metres. The depth of the loading bay is seven (7) metres, accommodating a small rigid vehicle. The width of the entrance into the basement is 6.2 metres, sufficient to enable two (2) way movement.

Each of the two (2) basement levels are split in two (2) effectively meaning that car parking is provided over four (4) split levels. The upper floor level of the basement is located above street level in Clubb Lane and vehicles will ramp up into the basement, before ramping down into the lower levels. The basement car park has accommodation for 82 cars (including four (4) spaces for disabled persons), 10 motor bikes and 20 bicycles. In addition, two (2) large storage areas are located on the lower level basement and bin storage, change rooms and lockers are located on the upper level basement.

Each commercial level can be described as follows:

### Ground Level:

At the ground level is the central entry/lobby area accessed from Kingsway via stairs or a ramp or via the lift from the basement. A central core contains toilets and a kitchenette. No floor layout plan is provided for the remainder of this level. An external deck with an approximate area of 100m<sup>2</sup> is provided to the north. This deck is approximately five (5) metres above the street level of Clubb Lane. This level has a gross floor area (GFA) of approximately 1119m<sup>2</sup>.

#### Level 1:

Level one (1) shows concept tenancy layouts as well as the central core. The plans also detail the street awning terminating approximately two thirds of the way along the site. This level has a GFA of approximately 1183m<sup>2</sup>.

#### Level 2:

Level two (2) of the development is identical to level 1 below with the exception of the street awning. This level also has a GFA of approximately 1183m<sup>2</sup>.

#### Level 3:

Level three (3) of the development is identical to levels one (1) and two (2) below with the exception of an "L" shaped balcony proposed in the south-eastern corner. This balcony has an area of approximately 80m<sup>2</sup>. This level contains a GFA of approximately 1103m<sup>2</sup>.

### **3.0 SITE DESCRIPTION AND LOCALITY**

The subject site is known as 531-533 Kingsway, Miranda. The site has frontage to Kingsway to the south and Clubb Lane to the north. The site is trapezoidal in shape, with a frontage of 46.84m to Kingsway, 37.45m to Clubb Lane and a depth of 38.5m. The site has a total area of 1625m<sup>2</sup>.

The site slopes from Kingsway to Clubb Lane. There is also a significant cross fall. The site slopes diagonally 4.61m from the south-western corner to the north-eastern corner.

Currently situated on the land is a predominately demolished commercial development.

The site is located one property west of the north-eastern perimeter of the Miranda Centre. The development surrounding the site is varied with a mixture of residential, educational, religious and commercial buildings.

Adjoining the site to the east and the west are two (2) storey commercial buildings.

To the north, across Clubb Lane, is a four (4) level residential flat building and Our Lady Star of the Sea Primary School and Church. The residential flat building includes private car parking spaces accessed directly off the lane.

To the south of the site, across Kingsway is Saint Luke's Anglican Church.

Diagonally opposite the site to the south-east is a seven (7) storey commercial building incorporating a gymnasium, commercial floor space and a motel.

Further to the south-west is Westfield's Shopping Centre.



Location Plan – subject site shown shaded



Aerial Photograph – subject site shown shaded

## 4.0 BACKGROUND

A history of the development site and the current proposal is as follows:

- An application for the “demolition of existing structures and the construction of a two storey commercial building containing shops and offices and basement car parking for 75 vehicles” was submitted to Council on 15 June 2007 (DA07/0571). Following consideration of the application by Council’s Independent Hearing and Assessment Panel, Council approved this development application on 8 February 2008. The approved building is two (2) storeys in height and has a floor space ratio of 1.39: 1.
- A separate development application for the demolition of the existing structures was lodged with Council on 21 December 2010. The application was approved under delegation on 7 January 2008.
- A Section 96 1(a) application (MA09/0130) to modify DA07/0571 was lodged with Council on 25 May 2009. This application was to relocate the lift and amenities and add additional stairs to the building. The s.96 application was approved under delegation on 16 June 2009.
- Council Officers met with the applicant and his consultants to discuss the subject site on 26 February 2010. This meeting discussed the possibility of increasing the height of the development to five (5) storeys. At this meeting the applicant was advised that Council would not support a variation of this nature.
- The current application was submitted on 3 August 2010.
- The required traffic report was submitted to Council on 11 August 2010.
- The application was referred to the Roads & Traffic Authority on 12 August 2010.
- The application was considered by Council’s Architectural Review Advisory Panel (ARAP) on 19 August 2010.
- The application was placed on public exhibition, with the last day for submissions being 3 September 2010.
- An Information Session was held for concerned residents on 24 August 2010.
- Council wrote to the applicant on 1 September 2010 outlining its concerns with the application and attaching a copy of the ARAP report. Council did not request that the applicant respond to its concerns. Council did agree to meet with the applicant to discuss these concerns however the meeting was cancelled by the applicant.
- The JRPP members conducted a site visit and were briefed on the proposal on 15 September 2010.
- Council wrote to the applicant on 16 September 2010 informing them that a date has been set for the application to be considered by the JRPP and giving them an opportunity to withdraw the application.
- On 29 September 2010 the applicant forwarded an email to Council containing thirteen (13) letters from local businesses supporting the proposal.

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

In relation to the Statement of Environmental Effects, plans and other documentation submitted with the application, the applicant has provided adequate information to enable an assessment of this application, including two (2) Objections pursuant to State Environmental Planning Policy No. 1 – Development Standards (SEPP 1) requesting variations to the development standards for height and density.

## 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).

228 adjoining or affected owners were notified of the proposal and two (2) submissions were received raising concerns with the proposal. Fourteen (14) late submissions were received supporting the proposal.

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.

From the two (2) submissions received raising concerns with the proposal the following issues were raised:

### 6.1 Increased Traffic

Concern was raised about the increased traffic that is likely to result from the development and the impacts of this on the surrounding street system.

Comment: Council's Manager of Traffic & Transport has raised concerns with the potential impact of the development in Clubb Lane. This matter is addressed in detail in the "Specialist Comments" section of this report.

### 6.2 Increased Noise

Concern was raised about the potential for increased noise because of unknown future uses.

Comment: The current application is for the construction of the building and not for a particular end user and therefore it is not possible for an assessment of the noise impact to be undertaken at this stage. If the JRPP decides that the application is worthy of support then a suitable condition could be drafted requiring a separate development application to be submitted for the future use/s of the building.

### 6.3 Height & Density

Concern was raised about the development's non-compliance with the development standards for height and density.

Comment: The application fails to comply with the development standards for height and density and these matters are addressed in the "Assessment" section of this report.

### 6.4 Overdevelopment

Concern was raised that the development is an overdevelopment of the site, which results in adverse amenity impacts on surrounding residential properties.

Comment: The impact of the development on surrounding properties is addressed in the "Assessment" section of this report.

### 6.5 Car Parking

Concern was raised about the significant deficiency in the car parking numbers proposed and the potential for unauthorised use of visitor spaces belonging to the units at 9-13 Clubb Crescent, located opposite the site in Clubb Lane.



Comment: The application fails to provide car parking in accordance with the requirements of SSDCP 2006. This matter is addressed by Council's Manager of Traffic & Transport in the "Specialist Comments" section and again in the "Assessment" section of this report.

## 7.0 STATUTORY CONSIDERATIONS

The subject site is located within Zone 8 – Urban Centre pursuant to Sutherland Shire Local Environmental Plan 2006 (SSLEP 2006). The proposed development, being a business premises, is permissible with development consent.

The following Environmental Planning Instruments (EPI's), Development Control Plans (DCP's), Codes or Policies are relevant to this application:

- State Environmental Planning Policy No. 1 – Development Standards (SEPP 1)
- State Environmental Planning Policy No. 55—Remediation of Land
- State Environmental Planning Policy (Major Development) 2005
- State Environmental Planning Policy (Infrastructure) 2007
- Sutherland Shire Local Environmental Plan 2006 (SSLEP 2006)
- Sutherland Shire Development Control Plan 2006 (SSDCP 2006)
- Miranda Centre Core Commercial Land S94A Levy Plan

## 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/Control	Required	Proposed	Complies? (% Variation)
<b>Sutherland Shire Local Environmental Plan 2006</b>			
Height 33(8)(b)(ii)	3 Storeys	5 Storeys	No (66%)
Density 35(11)(b)	2:1 (GFA of 3250m <sup>2</sup> )	2.83:1 (GFA of 4588m <sup>2</sup> )	No (41.5%)
<b>Sutherland Shire Development Control Plan 2006</b>			
Parking Cars 7.1.b.18.1	153 (1/30m <sup>2</sup> )	82 (1/56m <sup>2</sup> )	No (46%)
Motor bikes 7.1.b.2.1	7	10	Yes
Bicycles 7.5.b.3.1	16	20	Yes
Loading facilities 7.4.b.9.2	Heavy Rigid Vehicle	Small Rigid Vehicle	No
Side & rear setbacks for levels above ground floor (3.3.b.11.3)	2m	1.4m (rear) 0m (sides)	No (30%) No (100%)

Setback above active street frontage (3.2.b.7.2)	2m	0m	No (100%)
Limited expanses of blank walls along active frontages (3.11.b.13.1)	Max 2m	14m+	No (600%)
Level of development (3.8.b.1.4)	Active frontages must be at footpath level	0.42m to 2.82m above street level	No
Awning (3.11.b.6.11)	Active frontages must have a continuous awning	Awning terminates 2/3 of the way through the site.	No (33%)

\* Kingsway frontage of the site is identified in Chapter 3, Clause 3.8.b.1, Map 19 of SSDCP 2006 as requiring an active frontage

## 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 Roads & Traffic Authority (RTA)

Pursuant to Schedule 3 of State Environmental Planning policy (Infrastructure) 2007 the application was referred to RTA for comment. The RTA provided Council with advisory comments, a copy of which is located within Appendix B of this report.

In summary, the RTA requires Council to be satisfied in relation to car parking, bicycle storage, loading, car and truck manoeuvring and site management.

### 9.2 NSW Police Force

In accordance with the protocol between the NSW Police Force and Sutherland Shire Council this application was forwarded to the NSW Police Force for comment.

The NSW Police Force has undertaken a NSW Police Force Crime Risk Evaluation. This evaluation process is based upon the Australian and New Zealand Risk Management Standard ANZS4360:1999. It is a contextually flexible process that identifies and quantifies crime risks and hazards.

As a result of this process a low crime risk rating has been identified for this development on a sliding scale of low, moderate, high, extreme crime risk.

A number of recommendations have been made in relation to the proposal taking into consideration Crime Prevention through Environmental Design (CPTED) factors. Some of these recommendations require significant redesign of the development such as the recommendation to orientate the development towards the street to improve surveillance. Others such as painting the basement white are more easily



accommodated. Concern has also been raised in relation to the creation of areas for potential entrapment within the basement

Further comment on Crime Prevention through Environmental Design is contained within the "Assessment" section of this report.

### 9.3 Architectural Review Advisory Panel (ARAP)

Council's Architectural Review Advisory Panel considered this application on 19 August 2010. A full copy of the report from ARAP is contained within Appendix C of this report, however in conclusion this report noted the following:

*"The proposed building height is considered out of scale with its existing context, but further research as part of a policy study may establish heights appropriate for the future desired character for the area. The increased floor area of the building is considered excessive, resulting in a very poor relationship with the existing residential development to the north. The base of the building is also considered to respond poorly to its immediate context."*

The applicant has been provided with a copy of the ARAP report however Council did not request the applicant to make changes to their proposal in response to the comments made by ARAP.

### 9.4 Traffic Engineer

Council's Manager of Traffic and Transport has undertaken an assessment of the proposed development and provided the following comments in relation to car parking numbers and traffic generation.

#### *"Car Parking*

*The proposed development has a significant car parking deficiency with respect to parking rates specified for commercial development in Council's DCP and the RTA Guide to Traffic Generating Developments. It is argued by the applicant that this deficiency can be justified in that the site should be treated as a restrained situation, given its location within a major commercial centre and its proximity to readily available public transport.*

*Whilst this argument has some merit, in reality the subject site is not a fully restrained situation as unrestricted on street parking is available within adjoining residential areas within similar walking distance to the bus interchange and railway station. Commuter intrusion into these areas would be inevitable as a consequence of parking deficiencies on site.*

*The type of use for the office space is also relevant with respect to provision of tenant and visitor parking. The type of use is unspecified, however, medical consultancies are alluded to on the introduction contained on the architectural drawings which would create a higher demand for visitor parking. Neither the plans nor Statement of Environmental Effects specify visitor parking allocation. Stacked parking is also problematic depending on the type of use for the floor space. Insufficient visitor parking onsite for this type of use would impact on nearby unrestricted and time limited on-street parking availability and turnover.*

*It should also be noted that the traffic and parking report incorrectly uses Gross Leasable Floor Area instead of Gross Floor Area (GFA) in determining required parking allocation. GFA is indicated as 4588m<sup>2</sup>. The provision of 82 spaces equates to 1 space per 56m<sup>2</sup> GFA.*

#### *Traffic Generation*

*There is concern with regard to the increased traffic generation in Clubb Lane for the following reasons:*

- Significant increase in right turn movements from Clubb Lane into Kiora Road creates safety concerns due to queuing in Kiora Road during the PM peak. In this regard, if the development were to be approved, it should include a condition of consent to extend the existing concrete median island in Kiora Road a further 50m north of the Kingsway to restrict Clubb Lane to left in left out movements only at Kiora Road. It should be noted that the alternative option of making Clubb Lane one way east bound is not favoured due to a potential rat run between Kiora Road and Kingsway.*
- The capacity for vehicles turning left from Clubb Lane into Kiora Road is restricted due to the volume of traffic in Kiora Road and queuing at the intersection of Kingsway. With right turn restrictions in place it is assumed that approximately 60 - 70% of vehicles exiting Clubb Lane will wish to proceed south on Kiora Road or turn right at Kingsway. This requires merging across multiple traffic lanes which will be restricted by queued vehicles in the PM peak. This could result in delays and risk taking manoeuvres.*
- Increased frequency of vehicles travelling in opposite directions within the laneway which has only a 4.5m wide carriageway."*

For the reasons outlined above Council's Traffic and Transport Section does not support the current proposal. Should the JRPP decide that the application is worthy of support suitable conditions could be drafted in relation to the availability of car parking and the northerly extension of the median strip within Kiora Road.

#### 9.5 Engineering

Council's development engineer has undertaken an assessment of the application and has raised significant concerns in relation to the design of the proposed loading bay. This facility has been designed to accommodate a small rigid vehicle. Given the size and scale of the development, the loading facility should be capable of accommodating at least a medium rigid vehicle. Council's development engineer has advised that other engineering matters can be dealt with via conditions of development consent.

#### 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 in respect to the Building Code of Australia (BCA).

### 9.7 Community Services

Council's Community Services Section has undertaken an assessment of the application and has expressed concern in relation to ensuring the development complies with the relevant access requirements. In this regard should the JRPP decide the application is worthy of support suitable conditions could be drafted in relation to a requirement for the accessible car parking spaces to comply with AS2890.6:2009 and access into the building and the facilities within the building to comply with AS1428.1:2009. It should be noted that in order to comply with the standard the accessible car parking spaces will need to be rearranged or alternatively will result in the loss of car parking space/spaces.

## 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(8)(b)(ii) of SSLEP 2006 stipulates a maximum height of three (3) storeys for this site.

The development proposes a building which measures five (5) storeys in height and to support this variation the applicant has lodged an Objection pursuant to the requirements of SEPP 1. The full submission is contained within Appendix D of this report and the most relevant section is reproduced below:

*"In the circumstances of the case, to limit any redevelopment of the site to a maximum of three storeys is considered to be unnecessary and unreasonable given the likely future scale and form of development encouraged by the height controls for surrounding properties. The height limit that applies to the subject site is considered to be inappropriate and has no clear relationship to Council's expression of desired future character for the locality. That is, the subject site should be included within a height zone consistent with properties opposite the site to the south, and west of Kiara Road.*

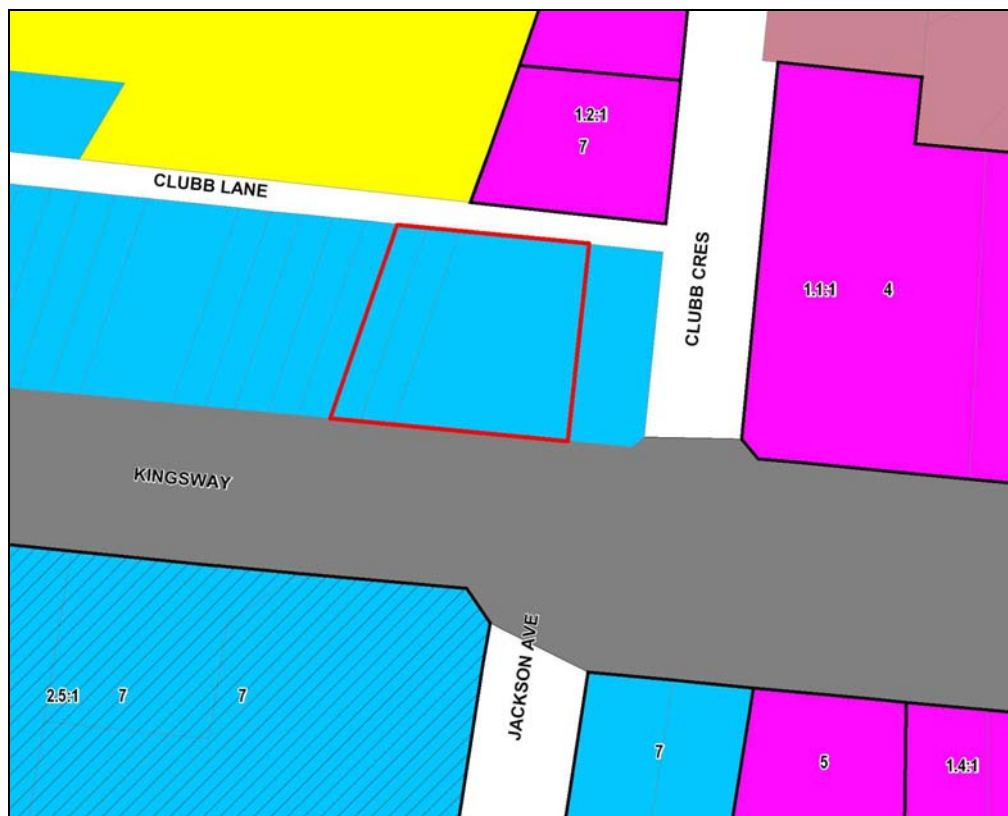
*It is considered that strict adherence to the height control is likely to result in development that is less appropriate to achieving consistency in scale and character with future development in the locality, which is in clear contradiction of the objectives of the height control. Should support of the proposed development and variation of the height control set a precedent for adjoining development sites to the west, it is considered that this would be a positive outcome.*

*Whilst variation of a development standard should not typically be used as a mechanism to bring about strategic planning change, it is considered that in the current circumstances and in the absence of any significant adverse amenity impacts on surrounding properties, strict compliance with the control would in fact*

*be counter-productive in terms of achieving the objectives of the control, the zone and Council's LEP and DCP. Accordingly, it is considered that strict compliance with the development standard is unreasonable and unnecessary and this Objection is well founded on that basis that the objectives of the standard are achieved notwithstanding non-compliance."*

Analysis: The subject site is located one property west of the eastern edge of the north-eastern perimeter of the Miranda Commercial Centre. The portion of the Miranda Commercial Centre fronting Kingsway between Kiora Road and Clubb Crescent has a height limit of three (3) storeys. Some other portions of the Miranda Commercial Centre have height limits in the order of seven (7) storeys. The applicant's proposed variation relies on the height controls applying to surrounding precincts and purports that this portion of the Miranda Commercial Centre has been given an inappropriate height control.

The below extract from the height and density maps contained within SSLEP 2006 demonstrates that the subject site does not benefit from the provisions of this clause.



Extract from Height and Density Map contained within SSLEP 2006. Subject site shown with a red border.

The applicant has undertaken an analysis of the area and suggests that the proposed five (5) storey building is a better contextual fit than the current three (3) storey limit. The applicant's approach to this application is inappropriate and goes beyond the intention of SEPP 1 to provide flexibility in the planning system. It is suggesting in this case that it is appropriate to use SEPP 1 to make strategic plans for this portion of the Miranda Commercial Centre.

An initial perusal of the controls applying to this precinct may raise the question of whether or not the three (3) storey height limit is an appropriate contextual fit. This is

particularly the case given the seven (7) storey height limit applying to the residential site to the north. Despite the seven (7) storey height limit, this site has already been redeveloped and contains a four (4) storey residential flat building. The commercial development to the east has not been developed to its maximum height and the church located opposite the site to the south is also unlikely to be redeveloped in the short to medium term. The school site to the north-west of the site also has a two (2) storey height limit.

Council is in the very preliminary stage of reviewing height and other controls for the Shire's urban centres, including this portion of the Miranda Centre, to ensure the most appropriate planning outcomes. Should a change to the development standards be deemed appropriate following a proper strategic analysis of this portion of the Miranda Commercial Centre then a draft Local Environmental Plan would be prepared and exhibited. The notion of adjusting development standards through the assessment process is flawed as it devalues the importance of development standards and undermines the intention of SEPP 1 and the principles of orderly planning in the Environmental Planning & Assessment Act.

In *Winten Property Group Limited v North Sydney Council* (2001) NSW LEC 46, Justice Lloyd established a set of five (5) questions which now are an accepted convention for assessing a SEPP 1 Objection. An assessment of the submitted SEPP 1 in accordance with this convention has been undertaken below.

(a) Is the Requirement a Development Standard?

Yes - Clause 33(8)(b)(ii) of SSLEP 2006.

(b) What is the Underlying Object or Purpose of the Standard?

Clause 33(2) of SSLEP 2006 sets out the following objectives for the height development standard. The objectives of this clause are as follows:

- (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.*

The current proposal is not consistent with the desired scale and character of the street and locality as Council's current controls set a three (3) storey height limit. This proposal significantly exceeds this control and if approved in its current form would significantly dwarf existing buildings and future buildings constructed in accordance with the relevant planning controls.

(c) Is compliance with the development standard consistent with the aims of the Policy, and in particular does compliance with the development standard tend to hinder the attainment of the objects specified in Section 5(a)(i) and (ii) of the EP&A Act?

The objects of the Act are:

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

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

No. Granting of development consent would not be consistent with the aims of SEPP 1 and the objects of the Act. A variation to Council's height development standard is not considered to be reasonable in the circumstances of the case.

(d) Is compliance with the development standard unreasonable or unnecessary in the circumstances of the case?

A development which complies with the development standard for height is considered to be appropriate in the circumstances of this case. A complying development would allow for a reduced non-compliance with the building density development standard as well as a reduced non-compliance with the car parking requirements.

(e) Is the Objection Well Founded?

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

SEPP 1 Conclusion:

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

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

## 10.2 Density

The proposed development fails to comply with the development standard for density. Clause 35(11)(b) of SSLEP 2006 stipulates a maximum floor space ratio (FSR) of 2:1 for this site.

The development proposes an FSR of 2.83:1, which exceeds the maximum allowed by over 40%. To support this variation the applicant has lodged an Objection

pursuant to the requirements of SEPP 1. The full submission is in Appendix E of this report and the most relevant section is reproduced below:

*“In the circumstances of the case, to limit any redevelopment of the site to a maximum of 2:1 FSR is considered to be unnecessary and unreasonable given the likely future scale and form of development encouraged by the planning controls, particularly height controls, for surrounding development sites. The FSR requirement for the site is also particularly limiting in terms of providing for a scale and form of development that can provide a strong and active street edge proportionate to the width of the Kingsway and compatible in scale to existing development along the southern side of the Kingsway to the south-east and south-west.*

*Therefore, it is considered that strict adherence to the FSR control is likely to result in development that is less appropriate to achieving consistency in scale and character with existing and future development in the locality, which is in clear contradiction of the objectives of the FSR control and the general LEP and DCP objectives relating to built form. Should support of the proposed development and variation to the FSR control set a precedent for adjoining development sites to the west, it is considered to be a positive outcome.*

*Whilst variation of a development standard should not typically be used as a mechanism to bring about strategic planning change, it is considered that in the current circumstances and in the absence of any significant adverse amenity impacts on surrounding properties, strict compliance with the control would in fact be counter-productive in terms of achieving the objectives of the control, the zone and Council’s LEP and DCP. Accordingly, it is considered that strict compliance with the development standard is unreasonable and unnecessary and this Objection is well founded on the basis that the objectives of the standard are achieved notwithstanding non-compliance.”*

Analysis: Whilst an analysis of the height limits applying to the Miranda Commercial Centre may raise the question of whether the appropriate height limits have been applied to this precinct of Kingsway between Kiora Road and Clubb Crescent, no such conclusion can be drawn in relation to density. The bulk of the Miranda Commercial Centre has an allowable FSR of 2:1 with the exception of the “Westfield precinct” which has an FSR of 2.5:1.

The applicant suggests that it is appropriate to have a site on the edge of the Miranda Commercial Centre with an FSR in excess of that allowed for the nearby regional shopping centre. This is not a position which has strong planning merit.

This building is not only significantly taller than the buildings that immediately surround it but it also has significantly greater bulk. The majority of the building presents to Kingsway as being five (5) storeys in height, spanning boundary to boundary.

The applicant has not undertaken an analysis of what is the most appropriate FSR for the precinct, similar to the analysis they have undertaken in relation to height. It appears that the suitability of the current scheme has been driven on the basis of



commercial desire rather than the relationship with the adjoining properties or the ability of surrounding infrastructure to absorb any additional demand created by the development.

Again using the “Winter” test an assessment of the applicant’s SEPP 1 Objection for density has been undertaken below.

(a) Is the Requirement a Development Standard?

Yes - Clause 35(11)(b) of SSLEP 2006.

(b) What is the Underlying Object or Purpose of the Standard?

Clause 35(2) of SSLEP 2006 sets out the following objectives for the density development standard.

*The objectives of this clause are as follows:*

- (a) to ensure that development is in keeping with the characteristics of the site and the local area,*
- (b) to provide a degree of consistency in the bulk and scale of new buildings that relates to the context and environmental qualities of the locality,*
- (c) to minimise the impact of buildings on the amenity of adjoining residential properties,*
- (d) to ensure, where possible, that non-residential buildings in residential zones are compatible with the scale and character of residential buildings on land in those zones.*

The current proposal is not in keeping with the characteristics of the site and the local area. It proposes a building which is significantly larger in bulk and scale than envisaged by the current controls. This proposal exceeds the maximum density control by over 40%. If the proposal was approved in its current form it would result in a development which is out of context with its immediate neighbours and with future developments constructed in accordance with the planning controls.

(c) Is compliance with the development standard consistent with the aims of the Policy, and in particular does compliance with the development standard tend to hinder the attainment of the objects specified in section 5(a)(i) and (ii) of the EP&A Act?

The objects of the Act are:

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

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

No. Granting of development consent would not be consistent with the aims of SEPP 1 and the objects of the Act. A variation to Council’s density development standard is not considered to be reasonable in the circumstances of the case.

(d) Is compliance with the development standard unreasonable or unnecessary in the circumstances of the case?

A development which complies with the development standard for density is considered to be appropriate in the circumstances of this case. A compliant development would better respond to its context and be capable of complying with streetscape, setback, height and car parking controls.

(e) Is the Objection Well Founded?

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

SEPP 1 Conclusion:

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

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

### 10.3 Car Parking

As detailed above in the compliance table and in the comments provided by Council's Manager of Traffic and Transport the proposal is significantly deficient in the number of car parking spaces provided (71 spaces less than required, 46% deficiency). The applicant has submitted a traffic and parking impact assessment report with their application to justify this deficiency.

The justification put forward by the applicant's traffic engineer is based on a comparison with other commercial centres in the Sydney Metropolitan area, including Parramatta, Hurstville, Liverpool and North Sydney. This report states the car parking requirements for the Miranda Centre are much greater than these other centres and the car parking rate should be reduced accordingly. It further argues that by providing the required car parking on site, the use of public transport would be discouraged.

There is theoretically some merit to the applicant's argument however in the circumstances of this case it is considered to be flawed. For lack of parking to encourage the use of public transport the surrounding street parking needs to be restrained. Unrestricted parking is available in the nearby residential area, which is closer than the bus interchange or railway station. The availability of this parking means that employees/customers will not necessarily be encouraged to use public transport and will more likely park in the nearby residential streets, should parking not be available on site.

The intrusion of further commercial parking into surrounding residential areas is not supported. The current unrestricted car parking arrangements for Westfield Miranda also devalue the applicant's argument that public transport will be favoured over passenger cars. Further, the concern raised by an adjoining resident to the north that

the visitor spaces belonging to 9-13 Clubb Crescent, located adjacent to Clubb Lane, will be used without authorisation is a likely scenario.

Miranda is still very much a suburban centre and comparison with more CBD like centres such as Parramatta and North Sydney is considered inappropriate. Unlike both Hurstville and Liverpool, Miranda is not serviced by an express train service.

The proposal's significant deficiency in car parking is not supported for the reasons outlined above. This application is seeking significant changes to the relevant planning controls and would set a precedent for other development in the Miranda Commercial Centre and possibly beyond.

#### 10.4 Loading

The application fails to provide appropriate loading facilities for the likely future users of the development. The loading facility provided is only capable of accommodating a small rigid vehicle. SSDCP 2006 requires the loading dock to accommodate a heavy rigid vehicle. However, given the size of the development and the width of Clubb Lane Council's development engineer is of the opinion that the proposal should at the very least accommodate a medium rigid vehicle. To accommodate a medium rigid vehicle the applicant would need to make significant changes to the layout of the building and it is considered inappropriate to address such changes via the imposition of conditions of development consent.

#### 10.5 Non-Compliance with SSDCP 2006 Setback Controls

As detailed in the compliance table above, the proposed development fails to comply with the required two (2) metre setback controls from all boundaries above ground level. This control envisaged the creation of a break or separation in the building, intended to differentiate between the active ground floor and the less active upper levels. It was envisaged that this would entail a retail type development at the lower level and residential or commercial use above.

The design of the development, which seeks an almost universal floor plate over four (4) levels, fails to consider the streetscape implications of such a design.

Other sites within the Miranda Centre which have seven (7) storey height limits are required to adhere to the setback controls. As detailed above the applicant is seeking significant variations to the height and density development standards applying to the site and part of the argument for this variation is that other sites in the Miranda Centre have greater height limits. However, even on these sites the controls did not envisage a building as bulky as is currently proposed, as despite having higher height limits, they have the same maximum floor space ratio as the subject site.

#### 10.6 Non-Compliance with SSDCP 2006 Streetscape Controls

As detailed in the compliance table above, the proposed development fails to comply with all relevant streetscape controls within SSDCP 2006. The Kingsway frontage of this site is identified as requiring an active frontage. These controls also apply to the Westfield Shopping Centre and the development consent for major upgrades to that facility (approved in 2009) adopts this approach. The proposed development fails to engage the street on a number of levels.

Firstly, the development is set significantly above street level. The applicant's desire for a level floor plate fails to properly consider the topography of the site and the 2.4 metre fall from west to east across the Kingsway frontage. Even at the western end of the Kingsway frontage the development is located 420mm above street level. Elevating the building in such a manner means that there is no opportunity for engagement.

Secondly, this elevation of the development creates large expanses of blank walls that the applicant is proposing to tile. These are the basement car park walls. The controls within SSDCP 2006 seek to activate the street, not have it dominated by blank walls enclosing car parking.

Thirdly, the awning terminates approximately two thirds of the way across the site. As detailed elsewhere in this report, this site is one (1) site west of the north-eastern edge of the Miranda Commercial Centre and the termination of the awning in the manner proposed is another factor which further isolates the property on the north eastern edge of the centre.

The awning terminates at the eastern edge of the stairs and this may seem logical if looking at the building in isolation. However, when considering the awning in the context of its location, its termination in this location is odd. The site is not the edge of the centre and therefore it would seem appropriate to extend the awning across the entire frontage. If a decision was made to terminate it short of the eastern boundary then a logical location for its termination would be at eastern side of the intersection at Jackson Avenue so that pedestrians crossing at the traffic lights would be protected from the elements.

The applicant's submission speaks of development being required to increase patronage in this portion of the Centre however the design of the development seeks to isolate it from both the street and its neighbours.

#### 10.7 Crime Prevention Through Environmental Design (CPTED) Principles

An assessment of the design pursuant to CPTED principles has highlighted several concerns with the proposal. The elevated nature of the development reduces the potential for natural surveillance, an important CPTED principle.

The design of the rear of the development, with large areas of masonry finish, provides extensive opportunity for graffiti. While it is noted that the landscape plan suggests wall climbing plants to address this issue, it is further noted that ARAP did not consider this a useful design element and may ultimately damage the building. Putting this aside, there are still large areas of masonry wall adjacent to the loading area which will be largely free from informal observation outside of business hours.

The bicycle storage area and associated lockers and shower rooms are poorly designed from a safety and security view point. Lockers should be provided for bicycles in a basement situation and the addition of a door to the locker room would improve safety.

#### **10.8 Relationship with Neighbouring Properties**

The orientation of the site results in no impact on neighbouring/nearby residential flat buildings in relation to overshadowing. There is increased overshadowing to the neighbouring commercial properties.

There is however significant concern about the visual relationship between the development site and the residential property to the north, particularly given the narrow nature of the laneway. The wall of the basement car park is set back between 1.4 and 2.4 metres from the northern boundary and has a height of between 5 and 6 metres (including the height of the solid balustrade). This wall has a length of twenty (20) metres and is broken only by a large ventilation grill. Beyond this, on a seven (7) metre setback, sits the four (4) storey commercial building.

Whilst it is important to recognise that this is the interface between the commercial and residential zones, there is significant opportunity to improve the relationship between these buildings. The height of the basement wall, its design and setback, are considered poor and the elevated nature, size and lack of screening of the northern deck area require further consideration.

#### **10.9 Remediation of Land**

The previous development applications have considered potential contamination and it has been concluded that the site is suitable for the proposed development subject to suitable conditions of development consent. Should the JRPP decide that the application is worthy of approval suitable conditions could be drafted to address this issue.

### **11.0 SECTION 94 CONTRIBUTIONS**

The proposed development is likely to increase employment growth in the precinct and will require the provision of additional public facilities to meet additional demand. In order to provide high quality and diverse public facilities, the proposed development will attract Section 94A Contributions in accordance with Council's adopted contribution plan for land within the Miranda Centre.

This contribution is based upon the proposed cost of the development and has been calculated at 1% of \$12,625,215 (the estimated cost of development identified on the development application form). Therefore, Section 94A Levy contributions for the proposed development would be \$126,252.15 should the JRPP decide the application is worthy of support.

### **12.0 DECLARATION OF AFFILIATION**

Section 147 of the Environmental Planning and Assessment, 1979 requires the declaration of donations/gifts in excess of \$1000. In addition Council's development application form requires a general declaration of affiliation. In relation to this development application the following declaration has been made:

The applicant, Mr Adrian Tripodina, has declared that he has a friendship with Councillor Kevin Schreiber and that he made a donation to Kevin Schreiber / Liberal Party of \$5,000 two (2) years ago.

### **13.0 CONCLUSION**

The proposed development is for the demolition of existing structures and the construction of a four (4) storey commercial building with basement car parking at the above property. Due to the elevated nature of the basement car park the building measures five (5) storeys in height.

The subject site is located within Zone 8 – Urban Centre pursuant to Sutherland Shire Local Environmental Plan 2006 (SSLEP 2006). The proposed development, being a business premises, is permissible with development consent.

The application was placed on public exhibition and in response two (2) submissions were received raising concerns with the proposal. Fourteen (14) late submissions were received supporting the proposal.

The proposed development involves significant variations to the SSLEP 2006 development standards for height and density and relies upon variations to SSDCP 2006 controls in relation to car parking, loading, streetscape and height above street level. The cumulative impact of these variations results in a gross overdevelopment of the site. The approval of the development in its current form would result in an undesirable precedent for the Miranda Commercial Centre.

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. 10/0720 cannot be supported for the reasons outlined in this report.

### **14.0 RECOMMENDATION**

That Development Application No. 10/0720 for the Demolition of Existing Structures and the Construction of a Four (4) Storey Commercial Building at Lots 18 & 19 DP8461 and Lot 1 DP 21256 known as 531-533 Kingsway, Miranda be refused for the following reasons:

1. The application is considered unacceptable pursuant to the provisions of s.79C(1)(a)(i) of the Environmental Planning & Assessment Act 1979 in that the proposed development fails to comply with the development standard for maximum height contained within Clause 33(8)(b)(ii) of Sutherland Shire Local Environmental Plan 2006.
2. The Objection submitted pursuant to the provisions of Clause 6 of SEPP 1 with respect to the developments standard for height established in Clause 33(8)(b)(ii) of Sutherland Shire Local Environmental Plan 2006 is not considered to be well founded as the applicant has not demonstrated why, in the case of this

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

3. The application is considered unacceptable pursuant to the provisions of s.79C(1)(a)(i) of the Environmental Planning & Assessment Act 1979 in that the proposed development fails to comply with the development standard for density contained within Clause 35(11)(b) of Sutherland Shire Local Environmental Plan 2006.
4. The Objection submitted pursuant to the provisions of Clause 6 of SEPP 1 with respect to the development standard for density established in Clause 35(11)(b) of Sutherland Shire Local Environmental Plan 2006 is not considered to be well founded as the applicant has not demonstrated why, in the case of this application, compliance with this development standard is either unreasonable or unnecessary.
5. The application is considered unacceptable pursuant to the provisions of s.79C(1)(a)(iii) of the Environmental Planning & Assessment Act 1979 in that the proposed development fails to comply with the control for minimum car parking numbers required by Clause 7.1.b.18.1 of Sutherland Shire Development Control Plan 2006 and will result in adverse impacts on surrounding residential streets.
6. The application is considered unacceptable pursuant to the provisions of s.79C(1)(a)(iii) of the Environmental Planning & Assessment Act 1979 in that the proposed development fails to provide an appropriate loading facility as required by Clause 7.4.b.9.2 of Sutherland Shire Development Control Plan 2006 and will result in an adverse impact on the operation of Clubb Lane.
7. The application is considered unacceptable pursuant to the provisions of s.79C(1)(a)(iii) of the Environmental Planning & Assessment Act 1979 in that the proposed development fails to comply with the front, side and rear setbacks for levels above ground floor required by Clauses 3.2.b.7.2 and 3.3.b.11.3 of Sutherland Shire Development Control Plan 2006 and results in a development which is bulkier than anticipated by the controls.
8. The application is considered unacceptable pursuant to the provisions of s.79C(1)(a)(iii) of the Environmental Planning & Assessment Act 1979 in that the proposed development adversely impacts on the streetscape resulting from the elevation of the development above street level, large expanses of blank walls and termination of the awning two thirds of the way through the site (Clauses 3.8.b.1.4; 3.11.b.13.1; 3.11.b.6.11 of Sutherland Shire Development Control Plan 2006).
9. The application is considered unacceptable pursuant to the provisions of s.79C(1)(b) of the Environmental Planning & Assessment Act 1979 in that the proposed development fails to adequately consider the principles of Crime Prevention through Environmental Design.



10. The application is considered unacceptable pursuant to the provisions of s.79C(1)(e) of the Environmental Planning & Assessment Act 1979 in that the proposed development is not considered to be in the public interest.