

JRPP No:	2010SYE089
DA No:	DA10/1008
PROPOSED DEVELOPMENT:	Mixed Commercial/Residential Development - Demolition of Existing Buildings and Construction of a Mixed Commercial and Residential Development including Basement Parking and a 38 Lot Strata Subdivision Lots C & D DP29930 and Lots 2, 3 & 4 DP100517 (Nos. 971-975) Old Princes Highway, Engadine
APPLICANT:	Conquest Constructions (NSW) Pty Ltd
REPORT BY:	Christine Edney, Environmental Assessment Officer - Planner Sutherland Shire Council 9710.0838

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 of more than \$10,000,000. The application submitted to Council nominates the value of the project as \$10,779,458.

1.2 Proposal

The application is for the demolition of existing buildings and construction of a five (5) storey mixed commercial and residential development (including basement parking and a 38 lot strata subdivision) at the above property.

1.3 The Site

The subject site is located on the northern side of Old Princes Highway between Princes Highway and Caldarra Avenue, Engadine.

1.4 The Issues

The main issues identified are:

- Height
- Commercial component
- Site contamination

1.5 Conclusion

Following detailed assessment of the proposed development, including a SEPP 1 Objection for the height variation, the proposal is considered worthy of support, subject to conditions.

2.0 DESCRIPTION OF PROPOSAL

The application is for the demolition of existing buildings and construction of a five (5) storey mixed commercial/residential development (including two (2) levels of basement parking and a 38 lot strata subdivision) at Nos. 971-975 Old Princes Highway, Engadine.

The building comprises seven (7) levels. Two (2) levels are parking, one (1) of which is wholly below ground. The upper parking level, due to the fall of the land, extends partly above ground at the rear of the site. The ground floor is part commercial/part residential. The four (4) upper floors are residential units. The commercial component consists of four (4) tenancies. The residential component consists of 34 units and is a total of 3086 m² in area.

The proposal is sited on zero side setbacks for the front section (to 16 metres from the front boundary) of the lower four (4) floors, with the top floor being set in 2.5 to 4.8 metres from the side boundaries. The ground floor commercial areas have a nil front setback, the first to third floors have a two (2) metre setback and the top floor has a 4.15 metre setback. There are two (2) rear wings set in from the side and rear boundaries. The rear of the ground floor is a podium above a car parking level. Between the podium and the lane is a 6.5 to 7.2 metre wide landscaped area. The proposed building form can be seen in Figure 1 below.

All vehicular access is off Toms Lane. Parking is provided for 69 cars, 13 bicycles and one (1) motorcycle. Pedestrian access is from the Old Princes Highway and includes two lifts servicing all levels of the building and a separate commercial lift servicing the basement and ground levels.

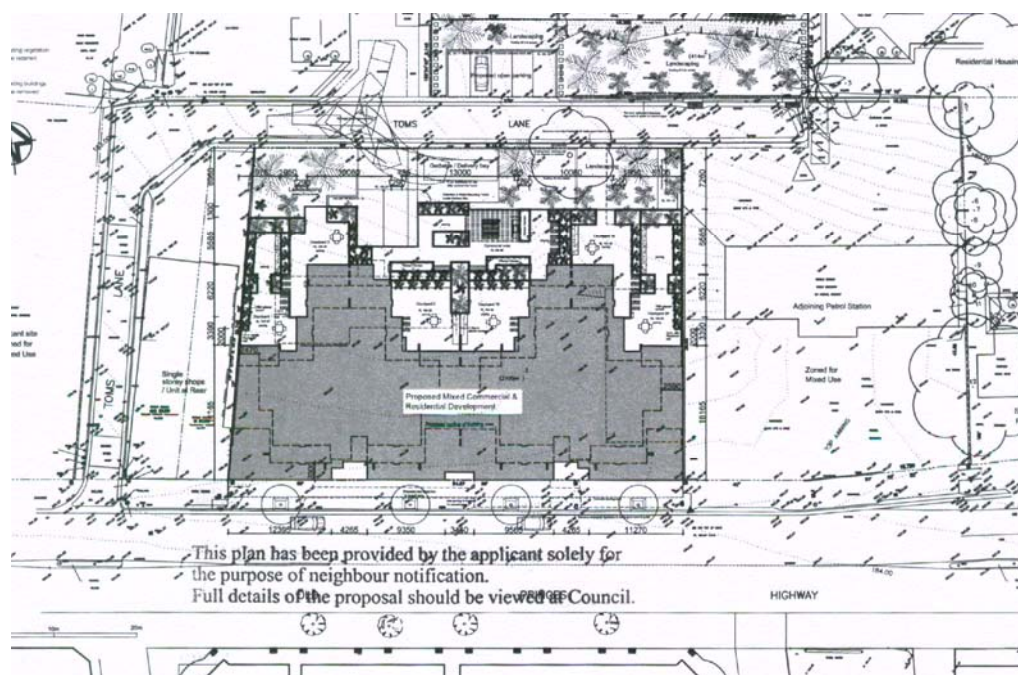


Fig 1 Site Plan

3.0 SITE DESCRIPTION AND LOCALITY

The subject site is located at Nos. 971-975 Old Princes Highway, Engadine. The development site is comprised of two separate parcels of land divided by a lane. The main parcel is 2100 m² in area and fronts the Old Princes Highway. The smaller parcel is 414 m² in area and fronts the northern side of Toms Lane. The development site has a total area of 2514 m².

The main parcel of the site is currently occupied by a plant nursery and an auto electrician's workshop. The smaller parcel is currently vacant and is used informally for car parking. The larger parcel has a frontage of 54.5 metres to Old Princes Highway and a depth of 39.7 metres. The smaller parcel has a frontage to Toms Lane of 45.2 metres and a depth of 9.1 metres. The main parcel falls from the Old Princes Highway to Toms Lane by approximately 3.5 metres. The smaller parcel falls approximately two (2) metres from the west to the north-east.

The streetscape in the immediate vicinity of the subject land is characterised by commercial development, including mixed commercial/residential buildings and residential development. Adjoining the site to the east is a service station (No. 963 Old Princes Highway). To the west are two (2) single storey commercial buildings, one (No. 987 Old Princes Highway) includes a residential component at the rear. To the south, across the road, is a modern three (3) storey mixed use development. To the north (rear) there is a two (2) to four (4) storey residential flat building accessed off Toms Lane and three (3) single dwelling houses fronting Nolan Avenue.

The area is currently undergoing change from older style low rise, low density service industry type development (service stations, plant nursery, hardware, pool supplies) to medium density, higher mixed use buildings.

The site is on the north-eastern fringe of the Engadine Town Centre and is approximately 400 metres from Engadine Railway Station.

There is a *Eucalyptus botryoides* (Bangalay gum) tree that is intended to be retained on the site near the Toms Lane boundary.



Fig 2 Aerial Photo showing site and surrounding development

4.0 BACKGROUND

A history of the development proposal is as follows:

- The site was the subject of a previous development application for a three (3) storey mixed commercial and residential development containing 33 residential units and four (4) commercial tenancies (DA09/0985) that was refused on 17 December 2009.
- Several pre-application Architectural Review Advisory Panel (ARAP) meetings were held in relation to this application (and the earlier application). A pre-application ARAP meeting considered the proposal on 24 June 2010 and a formal letter of response was issued by Council on 7 July 2010. A full copy of the pre-application ARAP report is contained within Appendix "A" of this report.
- The current application was submitted on 12 October 2010.
- The application was considered by Council's Architectural Review Advisory Panel (ARAP) on 28 October 2010. A copy of the ARAP report is contained within Appendix "C" of this report.
- An Information Session was held on 3 November 2010 and eight (8) people attended.
- The application was placed on exhibition, with the last date for public submissions being 12 November 2010. Twelve (12) submissions were received. Six (6) further submissions were received after the closing date.
- The application was considered by Council's Submissions Review Panel on 16 November 2010.
- Council requested that the following additional information be provided by the applicant :
 - Amended plans dealing with the matters raised by ARAP at its meeting of 28 October 2010.
 - A Stage 2 Contamination Report and Remedial Action Plan.

- Amended plans were lodged on 8 December 2010.
- A Stage 2 Site Contamination Report was submitted on 16 December 2010 but it is not considered adequate and lacks the required Remedial Action Plan.
- The Sydney East Joint Regional Planning Panel was briefed on the application on 15 December 2010.

5.0 ADEQUACY OF APPLICANT'S SUBMISSION

In relation to the Statement of Environmental Effects, plans and other documentation submitted with the application or after a request from Council, the applicant has provided adequate information to enable a proper assessment of this application, including a SEPP No. 1 Objection requesting a variation to the height standard.

The application is deficient in that a Remedial Action Plan has not been submitted. This matter is addressed further in the "Assessment" section of this report.

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).

Two hundred and fourteen (214) adjoining or affected owners were notified of the proposal and twelve (12) submissions were received as a result of neighbour notification. A further six (6) submissions were received during the assessment period following media reports about the changing character of Engadine.

A full list of the details of the submissions and the issues raised is contained within Appendix "B" of this report.

The issues raised in these submissions are, in summary:

6.1 Issue 1 - Parking, Servicing and Traffic (15 Submissions)

These matters included the loss of parking on the land to the north of the lane, the adequacy of the proposed parking and existing parking in the area, the impact of the proposal on traffic in Toms Lane and on the Old Princes Highway, the capacity and width of the lane (particularly for servicing/garbage collection) and the need for a footpath in Toms Lane.

Comment: These matters are addressed in detail in the "Assessment" section of this report.

6.2 Issue 2 - Height (11 Submissions)

Comment: This matter is addressed in detail in the "Assessment" section of this report.

6.3 Issue 3 - Privacy (5 Submissions)

Comment: This matter is addressed in detail in the “Assessment” section of this report.

6.4 Issue 4 - Overshadowing (3 Submissions)

Comment: This matter is addressed in detail in the “Assessment” section of this report.

6.5 Issue 5 - View Loss (1 Submission)

Comment: This matter is addressed in detail in the “Assessment” section of this report.

6.6 Issue 6 - Site Contamination (1 Submission)

Comment: This matter is still outstanding as no Remedial Action Plan has been submitted and the Stage 2 Contamination Report has several technical deficiencies.

This matter is addressed in more detail in the “Assessment” section of this report.

6.7 Issue 7 - Property Value (1 Submission)

Comment: Impacts on property values are not within the Heads of Consideration under Section 79C of the Environmental Planning and Assessment Act and are difficult to quantify due to the multiplicity of factors affecting property values.

6.8 Issue 8 - Changing Character and Amenity of Area (7 Submissions)

Comment: This matter is addressed in detail in the “Assessment” section of this report.

6.9 Issue 9 - Effect on Breezes (1 Submission)

Comment: Impacts on breezes, as they affect the premises to the west, are considered to be minimal as the length of the building is comparable with the length of the buildings to the west and a substantial side setback is provided.

6.10 Issue 10 - Construction Impacts (1 Submission)

Comment: Potential construction impacts have been addressed by conditions (refer Conditions 12, 25, 26, 27, 43, 44, 45, 47, 48, 49, 50, 51 and 52).

6.11 Issue 11 - Works on Land Adjoining Houses to Rear (2 Submissions)

This relates to retention of access, landscaping of the parcel of land north of the lane and fencing between this parcel and the houses to the north.

Comment: The proposed landscaping has been assessed and is considered to be appropriate. The existing ground levels are being retained so the proposal will not impact on security by reducing the effective height of these fences. However the fence behind No. 17 is conditioned to be raised to be similar to No. 15 to aid in the privacy of that site’s rear yard.

The matter of access is addressed in detail in the “Assessment” section of this report.

The owners of one of the houses facing Nolan Avenue have requested a dilapidation report in their submission. Given the amount of excavation involved this request is supported. The recommendation of this report contains conditions that dilapidation reports be prepared for all adjoining sites, including the three (3) houses to the rear of the site (refer Conditions 27 and 66).

As the changes in the amended plans were submitted to address issues raised by ARAP and Council Officers and are relatively minor in nature compared to the overall development, the amended plans were considered to not warrant re-notification. This is in accordance with the provisions of Part 12 of SSDCP 2006.

The changes include refinement of façade detailing and finishes, widening the footpath awning, correction of the floor level of the garbage room and landscaping changes. The false façade at first floor level has been deleted and the colour scheme has been lightened. The changes are considered to not intensify or change the external impact of the development.

7.0 STATUTORY CONSIDERATIONS

The subject land is located within *Zone 8 – Urban Centre* under the provisions of Sutherland Shire Local Environmental Plan 2006 (SSLEP 2006). The proposed development, being a mixed use development, is a permissible land use within the zone with development consent.

In addition to SSLEP 2006, 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 (SEPP 55)
- State Environmental Planning Policy No. 65 – Design Quality of Residential Flat Development (SEPP 65)
- State Environmental Planning Policy (Major Development) 2005
- State Environmental Planning Policy (Infrastructure) 2007 (Infrastructure SEPP)
- State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004
- Sutherland Shire Development Control Plan 2006 (SSDCP 2006)
- Sutherland Shire Section 94 Open Space and Community Facilities Contribution Plans

8.0 STATEMENT OF COMPLIANCE

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

Standard/Control	Required	Proposed	Complies? (% Variation)
Sutherland Shire Local Environmental Plan 2006			
Clause 36 – Height	3 storeys	5 storeys	No (66%)
Density	2:1	1.37:1	Yes
Sutherland Shire Development Control Plan 2006			
Parking			
Cars	69	69	Yes
Motor bike	1	1	Yes
Bicycle	13	13	Yes
Front Setback	Nil at ground level, 2 metres for upper levels	Nil for ground level, 2 metres for first to third floors, 4.15 metres for fourth floor	Yes
Side Setback.	Nil	Part nil, part 6 to 7.5 m.	Yes
Commercial Component	Minimum 60%	11.7%	No (80%)

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. Architectural Review Advisory Panel

The Architectural Review Advisory Panel (ARAP) considered the proposal on 28 October 2010 and on several occasions prior to the lodgement of this development application. The latest report is attached as Appendix “C”.

In summary, ARAP generally supported the proposal, but requested further detailing and design amendments. The conclusion to the 28 October 2010 ARAP report is as follows:

“As a design principle, the Panel accepts that a five (5) storey solution has the potential to produce a superior design that will have less impact on adjoining residential properties to the north. As this site is located on one of the main entrances into Engadine, a building that has a five (5) storey component will add interest to the streetscape.

The major issue for discussion remains that of design excellence, which is required to support the application for additional storeys. The submission of further information outlining how design excellence has been achieved is recommended.

As there has been a long period of dialogue which has allowed many issues to be identified and resolved, the proposal is now superior to what was initially proposed and general support is justified. However, some additional improvements can be made and these should be covered by conditions.

The street facade/awning treatment remains an issue of concern. The Panel made a negative comment about the previous design but the new design has not demonstrated a satisfactory understanding and resolution of the design issues including:

- *Adequate weather protection to pedestrians*
- *Maximising available light and airiness to generally shaded street*
- *Integration of street trees into awning design*
- *Provision of light and openness to 1st floor apartments*
- *Use of higher quality materials adjacent to public areas*
- *Expression of entry /address points*
- *Signage provision for future street level commercial/retail tenants*
- *Night time footpath illumination*

This element requires a redesign.”

Amended plans addressing the issues raised by ARAP were received on 8 December 2010.

9.2. Assessment Architect

Council's Assessment Team Architect undertook an assessment of the application and advised that the amended proposal, as submitted on 8 December 2010, is consistent with the ARAP recommendations and may be supported. He has considered the amended plans with reference to the recommendations of ARAP and has indicated they are in accordance with those recommendations. Design issues are discussed further in the Assessment section of this report.

The applicant's 8 December 2010 submission included a report detailing how “design excellence” has been achieved in the proposal. Council's Architect has advised that he considers that “*the applicant has done his best with this aspect of the project*”.

Council's Architect also commented positively regarding the design changes including awning changes, lightening of proposed finishes and provision of a zone for future signage. He concluded that the changes “*make a positive contribution to the public “face” of the proposal and can be supported.*”

9.3. Engineering

Council's Assessment Team Engineer has undertaken an assessment of the application and advised that, subject to suitable conditions of development consent, no objection is raised to the proposal.

9.4. Building

Council's Building Assessment Officer has undertaken an assessment of the application and advised that the proposal appears to satisfy the Building Code of Australia and that, subject to suitable conditions of development consent, no objection is raised to the proposal.

9.5. Landscape Architect

Council's Landscape Architect has undertaken an assessment of the application and his report raised a concern regarding the tree, proposed to be retained at the rear of the main site, surviving the proposed works and suggested an alternative of removing the tree and lowering that part of the landscaped area to lane level. Originally, retention of this tree was encouraged by ARAP. This is seen as a good approach to the landscape outcome for the site.

On this basis all efforts should be made to ensure retention of the tree as a replacement tree of its scale would take many years to grow to a similar size. In addition, retention of the tree will improve the level of privacy of the residents at Nos. 15-9 Nolan Avenue. Lowering the landscaping area to lane level is not desirable as the landscaping acts as a step up to the podium level aesthetically and the low retaining wall maintains its identity as part of the site rather than a 'public space' and assists in limiting overlooking opportunities.

Council's Landscape Architect has advised that the landscape plan, as submitted, is satisfactory.

9.6. Community Services

Council's Community Services Unit has undertaken an assessment of the application and advised that, subject to suitable conditions of development consent, no objection is raised to the proposal.

9.7. Environmental Scientist

The site has the potential for contamination due its previous use as a service station.

The applicant submitted a Stage 1 Contamination Report, which confirmed the likelihood of contamination. In accordance with SSDCP 2006 and State Environmental Planning Policy No. 55, a Stage 2 Contamination Report and a Remediation Action Plan was requested by letter dated 28 October 2010. A Stage 2 Contamination Report was received on 16 December 2010, however it has technical inadequacies and no Remedial Action Plan was submitted. The applicant was so informed.

At the time of finalisation of this report the requested information had not been submitted.

9.8. Traffic Engineer

Council's Traffic Engineer, recognising that the lane would benefit from the provision of a footway, advised that the proposal is acceptable subject to the

imposition of suitable conditions, including a requirement for dedication of a 1.2 metre wide strip along the western part of the Toms Lane frontage.

9.9. Environmental Health

Council's Environmental Health Officer has undertaken an assessment of the application and advised that, subject to suitable conditions of development consent, no objection is raised to the proposal.

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 proposal is for a five (5) storey building, which exceeds the planning controls for the site.

Clause 33 of SSLEP 2006 and the related height and density controls maps stipulate a maximum height of three (3) storeys for development on this site.

To support a variation to this standard the applicant has lodged an Objection pursuant to the requirements of State Environmental Planning Policy No 1 (SEPP 1). The full submission is in Appendix "D" of this report. The most relevant section is reproduced below:

"The basis of the Objection is as follows:

- The proposed development satisfies the objectives of the control.*
- The proposed smaller building envelope and building height will reduce the bulk and scale of the development.*
- The proposed smaller building envelope with a 5 storey building height will provide a superior design and will benefit the proposed residential units in terms of improved solar access and natural ventilation.*
- The proposed building height provides a better solution for the site.*
- The variation will not adversely impact on the amenity of the surrounding area in terms of the solar access and privacy.*
- The proposed development will not adversely impact on the streetscape.*
- The proposed development complies with Council's maximum floor space ratio control.*
- The development satisfies the general aims of Sutherland Shire Local Environmental Plan 2006.*
- The development satisfies the Objectives of the Zone under Sutherland Shire Local Environmental plan 2006.*
- The development satisfies the Objectives of the Environmental Planning and Assessment Act, 1979 (as amended).*

- *The departure will not set any undesirable planning precedent in the locality due to the fact that Council should consider each application on its merits.*
- *No matters of State or regional significance are raised to the variation of the standard.*
- *The proposed development will have a positive effect on the social and economic environment.*
- *The proposed development incorporates the principles of Design Excellence and the high quality design will positively contribute to the character of the Engadine Town Centre.*
- *Compliance with the Building Height standard would hinder the attainment of the objects specified in Sections 5 (a) (i) and 5 (a) (ii) of the Environmental Planning and Assessment Act 1979."*

Analysis: The non-compliance with the height development standard is a result of the building being designed to have a reduced footprint (and below maximum floor space ratio) so as to improve solar access to the units and adjoining sites and improve privacy and open space provision, whilst retaining the functionality of the project.

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 SEPP 1, in accordance with this convention, has been undertaken below.

(a) Is the Requirement a Development Standard?

Response: Yes, the three (3) storey height limit is a development standard contained in Clause 35(11) (a) of SSLEP 2006.

(b) What is the underlying object or purpose of the Standard?

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,*
 - (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 impact of new buildings on adjoining or nearby properties from loss of views, loss of privacy, overshadowing or visual intrusion,*
- (d) to ensure 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."*

Response: It is considered for the following reasons that, in the circumstances of this application, a higher building (with a smaller footprint as proposed) is consistent with the objectives of the development standard and appropriate for this site:

- (i) The granting of consent to the development application would be consistent with the aims of SEPP 1 as set out in Clause 3 of the Act.
- (ii) The proposal is consistent with the relevant objectives of the SSLEP 2006 height standard (listed above) in particular objectives (a) (i), (b), (c) and (d) relating to scale, daylight access/overshadowing, privacy, view loss and visual impact. (refer below for detailed assessment of these matters).
- (iii) The building, being five (5) levels with a small footprint concentrated on the southern portion of the site (instead of a three (3) storey building with a larger footprint that would result from complying with the height and floor space ratio controls), results in better amenity for the existing residents of Nos.15 and 17 Nolan Avenue, No. 10 Toms Lane and No. 987 Old Princes Highway in terms of overshadowing and privacy due to the increased rear setback of the development (relative to that of the previously refused three (3) storey scheme for the site).
- (iv) The building, being five (5) levels instead of three (3), results in better amenity (in comparison to that of the previously refused three (3) storey scheme for the site) for future residents of the development in terms of solar access, cross ventilation and privacy and provides them with better open space provision (in terms of both area provided and solar access to the open space). It also allows for a much greater setback from the rear lane and retention of a substantial existing tree.
- (v) The five (5) storey height is consistent with good architectural practice and is a suitable outcome in this location. In its report of 28 October 2010 ARAP commented :

“As a design principle, the Panel accepts that a five (5) storey solution has the potential to produce a superior design that will have less impact on adjoining residential properties to the north. As this site is located on one of the main entrances into Engadine, a building that has a five (5) storey component will add interest to the streetscape.”
- (vi) The submitted shadow diagrams indicate that the proposal does not have a shadowing impact on the residential floors of the mixed use development opposite the site on Old Princes Highway and only affects the footpath and colonnade on the southern side of the road in midwinter.
- (vii) The view loss from the buildings surrounding the proposal will be the same as that from a three (3) storey building as the surrounding buildings are three (3) storeys or less (other than No. 10 Toms Lane, which is four (4) storeys but located slightly downhill from the site).
- (viii) A six (6) storey building (aged care) was recently approved (by the JRPP) 120 metres from the subject site at 99 Caldarra Avenue Engadine.

- (ix) The proposal should be considered against the intended future character of Engadine not the area's existing character and it is considered that the proposal is consistent with the likely future character of Engadine.
- (x) Due to its flat roof, the overall height is similar to that of a four (4) storey building with a pitched roof such as exists at No.10 Toms Lane behind the site. The two (2) recently built developments on the opposite side of the Old Princes Highway are three (3) storey buildings with pitched roofs over.
- (xi) The top floor is set in on all sides including being 4.15 metres in from the front boundary, reducing its impact on the streetscape and on shadowing. The setback will serve to obscure the upper level from the footpath fronting the site and significantly reduce its presence from further along the Old Princes Highway.
- (xii) This application is distinguished from other recent applications for departures from the height control in that the proposal complies with other major applicable controls - in particular floor space ratio, which at 1.37:1 in this application is well below the applicable 2:1 development standard. The improvements result from allowing floor space to be located on an upper level and avoiding a lower sprawling form across the site.

(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.*

Response: Yes. For the reasons discussed in detail in (b) above it is considered that granting of development consent would be consistent with the aims of the objects of the Act. A variation to Council's maximum height development standard is considered to promote the orderly and economic use and development of land. The development serves to allow for a residential use that coexists and complements the commercial centre of Engadine whilst respecting the scale of the centre and the adjoining residential zone.

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

Response: Yes, for the reasons detailed in (b) above compliance with the development standard is considered to be unreasonable or unnecessary in the circumstances of the case.

(e) Is the Objection Well Founded?

Response: Yes. The SEPP 1 Objection provides evidence to demonstrate that compliance with the standard would be unreasonable or unnecessary in the circumstances of the case, particularly as the design results in an improved outcome when compared with envelopes that comply with both height and floor space ratio standards.

SEPP 1 Conclusion:

For the reasons outlined in (b) above it is considered that the SEPP 1 Objection to vary the three (3) storey height control is well founded and should be supported, particularly as the design results in an improved outcome when compared with envelopes that comply with both height and floor space ratio.

10.2 Floor Space Ratio

The proposal has a floor space ratio of 1.37:1 and is well below the 2:1 maximum floor space ratio permitted by Clause 35 of Sutherland Shire Local Environmental Plan 2006 (SSLEP 2006).

10.3 Commercial Component

The proposal includes four (4) shops of eight (8) metre depth fronting the Old Princes Highway.

Clause 9.b.1 of Chapter 3 of SSDCP 2006 requires a 60% commercial component for developments in Zone 8. The proposal has an 11.7% commercial component.

The relevant objectives of this control are:

- a) *to ensure that an appropriate balance between residential and commercial/retail floor space is achieved within urban, local and neighbourhood centres to encourage:*
 - i) *an active, vital and vibrant residential community within the centre.*
 - ii) *a sufficient number of commercial, service or retail activities to underpin the economic viability of the centre.*

It is considered that:

- The proposal provides for an active retail/commercial frontage across the full length of the ground floor fronting the Old Princes Highway.
- Engadine Town Centre is a vibrant and thriving shopping centre. However, as this part of the Old Princes Highway is on the periphery of the town centre and is relatively inactive commercially, it would benefit from the increased residential population.
- Increasing the depth of the ground floor retail/commercial space to achieve a 60% commercial component will result in a reduction of the communal open space and the loss of the units which have private courtyards. It would also increase overshadowing impacts on the sites

to the east and west and result in atypically deep retail/commercial tenancies.

- The proposal is consistent with the objectives of the control as set out in Clause 9.a.1 of Chapter 3 of SSDCP 2006 in that an appropriate balance of commercial activity is provided by the development. Given that the commercial component extends the full width of the street frontage, it is the total area of each tenancy that is reduced rather than the overall number of commercial tenancies.
- A residential flat building without any commercial component is a permissible use on the site as it is in the area identified on the SSLEP 2006 maps as a site where residential flat buildings, without a commercial component, are permissible.

Accordingly, the departure from this control is considered to be acceptable.

10.4 State Environmental Planning Policy No. 65/Residential Flat Design Code

The proposal has been assessed having consideration to the principles and provisions of SEPP 65 and the Residential Flat Design Code (Design Code) and is considered to be consistent with all of their relevant principles and provisions. The principal matters are addressed below:

10.4.1 Unit Sizes/Mix

The proposed units have floor areas between 58 and 106 m². These floor areas accord with the “rule of thumb” (i.e. recommended) floor area provisions of the Design Code.

The unit mix is four (4) x one (1) bedroom units, 26 x two (2) bedroom units and four (4) x three (3) bedroom units. This unit mix is in accordance with the Design Code.

All of the units have a courtyard, balcony or roof terrace varying in size from 12 to 92 m². This is in accordance with the Design Code (and SSDCP 2006).

10.4.2 Adaptable Housing

The proposal provides for seven (7) adaptable units, which is compliant with the Design Code. The adaptable units are a mix of one (1), two (2) and three (3) bedroom units.

10.4.3 Solar Access

All of the common open space is orientated to the north and all units have a north facing balcony or courtyard. The Design Code requires that 70 % of units receive three (3) hours of direct sunlight in winter to living rooms and private open space areas. All of the units (100%) comply with this requirement.

10.4.4 Cross Ventilation

The Design Code requires a minimum of 60% of units to have cross ventilation. The proposal provides for 88% of the units to have cross ventilation.

10.5 Design

The plans have been amended in line with the matters raised in the ARAP report discussed above. The main change is the removal of the false front façade at first floor. Other changes include the widening of the awning over the footpath to provide better amenity for pedestrians and lightening the palette of finishes. Further detailing of the end walls has been incorporated to improve the appearance of these walls in the interim until the adjoining sites are redeveloped.

ARAP was, subject to the matters which have been addressed by the amended plans, supportive of the proposed design. It is considered that the proposal as amended demonstrates design excellence in terms of its design, residential amenity, materials and energy efficiency. The proposal matches or exceeds all the relevant provisions of the Residential Flat Design Code and exhibits a high degree of energy efficiency. As a result it will provide a high level of residential amenity for future residents of the building, whilst minimising impacts on surrounding development.

10.6 Parking

The proposal provides for a total of 69 car parking spaces (residents, commercial and visitor), two (2) motorcycle parking spaces and eleven (11) bicycle parking spaces. This provision is in accord with the requirements of Chapter 7 of SSDCP 2006. The design of the parking is generally in accordance with the requirements of the DCP and applicable Australian Standards.

The loading area (for commercial servicing and garbage collection) doubles as a car wash bay. This is considered to be acceptable as these areas are generally used at different times.

10.7 Toms Lane

Submissions from residents were received regarding the capacity and width of Toms Lane to accommodate additional traffic (particularly service vehicles). Several submissions requested the provision of a footpath across the rear of the site.

The lane is currently used for garbage truck access to the residential flat building at No. 10 Toms Lane. When that site was developed (under IDA99/0227) an area of the site was dedicated as public road to facilitate truck manoeuvring in the lane. That area, combined with the servicing area on the site, will be sufficient for garbage truck access and for small and medium rigid delivery vehicles.

Council does not have a policy for widening of lanes nor does Council normally require the provision of footpaths in rear or service lanes, as lanes are infrequently used by pedestrians. As the development at No.10 Toms Lane does not have access to any street other than the lane, the western end of the lane does have some use by pedestrians from that development.

It is conditioned that a strip of land be dedicated between the eastern end of the proposed driveway and the western boundary of the site to allow for a pedestrian path (refer Condition 4). Until either Nos. 987 and 989 Old Princes Highway (the sites to west of subject site) or No. 991 Old Princes Highway (the vacant site to the west of the north-south part of Toms Lane) are developed, it will not be possible to link this footpath through to Old Princes Highway.

10.8 Other Traffic Matters

The proposal's residential component would generate 140 to 175 trips per day according to the Roads and Traffic Authority Guidelines. The commercial space's traffic generation is dependent on the end uses of those tenancies but is unlikely to be significant as the commercial floor space is only 363m². Based on these figure the proposal would make only a minor contribution to the overall volume of traffic on the Old Princes Highway, which is currently in the vicinity of 12,000 vehicles per day.

The loading area has been made wide enough so that garbage and recycling bins awaiting collection do not obstruct the laneway. In recognising the limitations of the lane a condition is proposed that the bins be placed so as to not obstruct the laneway (refer Condition 78).

10.9 Privacy

The rear balconies of the proposed units are 44 metres from the rear windows of No. 15 Nolan Avenue (the nearest house to the north). The nearest window at No. 10 Toms Lane (the flat building to the north-west across the rear lane) facing the subject site is 30 metres from the rear balconies. The separation to the rear podium is 33.5 metres and 19.5 metres respectively.

These distances accord with Council's DCP 2006 (Clause 13.b.1 of Chapter 3 requires a nine (9) metre separation between habitable rooms). Apart from the separation between the podium and No. 10 Toms Lane the distances also accord with the more stringent NSW Residential Flat Design Code which, for buildings over three (3) storeys, recommends 24 metres between habitable rooms and balconies (but does not mention podiums).

Between the units and the houses at Nos.15-19 Nolan Avenue there is an existing large tree on the site and smaller trees in the yard of No. 17 Nolan Avenue. Substantial landscaping is proposed on both the part of the site north of the lane and the northern part of the main site. Privacy will be benefited by the tree's retention and it is considered that the other landscaping proposed, combined with the distances involved, will provide an appropriate level of privacy.

The applicant has submitted Drawing No 12A showing sections of the building in relation to Nos. 15 and 17 Nolan Avenue and existing/proposed vegetation.

Raising the height of the rear fence of No. 17 Nolan Avenue (subject to that resident's consent) is also conditioned (Condition 11) as this reduces

overlooking from the open car park area. The raised fence may require a retaining wall component.

The separation from the windows of the proposed building to the windows of No. 987 Old Princes Highway (the single storey part commercial/part residential building to the west of the site) is 7 to 8.5 metres, however, screen planting and a nib wall are also proposed along the western boundary.

The scheme refused in 2010 had only a 2.5 metre setback from the rear lane to the unit balconies and contained only minimal landscaping. The current proposal provides for greater privacy as its balconies are 14 metres in from the rear boundary of the main site and substantial landscaping is proposed in the setback area and on the podium.

10.10 Overshadowing

The design and orientation of the proposal result in the majority of the shadows cast by the proposal falling on the Old Princes Highway and on the driveway of the service station to the east. The windows affected at No. 987 Old Princes Highway (a single storey building with a commercial component at the front and a flat at the rear) are bedroom windows and there is minimal impact on living and open space areas. The shadowing impact on No. 987 Princes Highway is less than that generated by a compliant three (3) storey scheme. The shadowing impact is compliant with SSDCP 2006.

10.11 Site Contamination

Part of the site was previously a service station and the fuel tanks remain. The site has not been remediated. The adjoining site to the east is currently a service station with a documented history of contamination.

A Stage 2 Contamination report was received on 16 December 2010 however it had inadequacies and no Remedial Action Plan (RAP) was submitted. The applicant was so informed on 20 December 2010. At the time of finalisation of this report the requested information had not been submitted. A condition (Condition 41) has been included that the site be remediated in accordance with the RAP.

Additional/amended conditions may be required, depending on the content of the plan. It is recommended that the proposal not be formally approved until the additional information/Remedial Action Plan is received and Council has assessed the information and determined if the site can be made suitable and if any additional/amended conditions are required.

10.12 Views

One (1) submission was received regarding view loss. The objector lives on the third floor of the rear wing of the residential flat building at No. 998 Old Princes Highway (on the southern side of the road two (2) properties to the west of the site) and the existing view is over the roof of a two (2) storey building at Nos. 992-996 Old Princes Highway. The degree of view loss is comparable to that which would have occurred with a building compliant with the three (3) storey height control. The floor level of the objector's unit and

the floor level of the third storey in the proposed scheme are comparable (objector's unit balcony level RL191.09/internal floor level RL191.19, third floor internal floor level in proposed development RL190.85).

The view affected is from a living room and balcony and is a distant view of the city and a mid ground view to part of the Royal National Park. The view is shown in Figure 3 below. As the location of the objector's unit is in the rear wing of the development, the existing northern outlook is restricted to a 30 degree arc (approx). The proposal would affect about half of this view corridor. The section affected is the eastern (right hand part) in the photo below.

It is considered that the degree of view loss is acceptable as part of the view is retained and a proposal compliant with the applicable height control would result in an equivalent degree of view loss. The view to the city is a very distant view and about half of this view would remain. Most of the view to the Royal National Park would be lost. A degree of view loss is to be expected in an area of redevelopment.



Fig 3 View from objector's balcony.

10.13 Part of Site to the North of Toms Lane

One of the unique aspects of this site is the nine (9) metre deep isolated section of land located to the north of Toms Lane. This area is to be densely landscaped, which will greatly improve the privacy of the residents at Nos. 15 to 19 Nolan Avenue.

Several objections refer to the loss of existing parking on this parcel. However, the land is private property and not available for public parking.

The houses to the north have physical access over this parcel, which is not reflected on title. One (1) submission asked for this access to be retained. The submitted plans show access paths/stairs being provided to the rear of all

three (3) properties. The proposal does not include reflecting this on title. This is a civil matter to be resolved between the land owners.

Another submission from residents of one of these dwellings requested that the retaining wall and landscaping behind their site be designed to give their property privacy and to maintain security. The existing ground levels adjoining the rear fences of these houses are to be retained. Dense landscaping, including twelve (12) trees between six (6) and ten (10) metres mature height and 30 large shrubs (2.5 to 3 metre mature height) is proposed. This landscaping will achieve the desired privacy.

No retaining walls are proposed, only the retention of the existing ground levels and fences. This objector's fence is lower than the fences of the adjoining houses and privacy from the car parking north of the lane would be improved by raising the fence to a similar height to the adjoining fences. A low retaining wall is desirable for soil retention so if the fence is replaced it should contain a retaining wall section. This is conditioned (Condition 11).

10.14 Road Noise

The proposal is subject to the provisions of Clause 102 of the Infrastructure SEPP, due to its proximity to the Princes Highway. The applicant has submitted an Acoustic Report, which makes recommendations to achieve the appropriate noise attenuation to comply with the SEPP provisions. The proposal has been designed in accordance with that report.

10.15 Landscaping

The development proposes three bands of landscaping - on the podium level, on the lower/rear part of the main site and on the part of the site to the north of Toms Lane.

The landscaping of the podium is designed to provide amenity areas for the residents (BBQ, seating and clothes drying areas) as well as a layer of privacy planting (between courtyards and from the podium towards the houses/flats to the north).

Dense planting (including a significant number of trees and large shrubs) is proposed to the area between the podium and the area north of the lane.

It is considered that the landscape scheme proposed provides a suitable balance to the built form and adjoining residential zone to the north of the site.

10.16 Other Matters

The proposal complies with the other relevant SSDCP 2006 matters, including storage area, open space provision, balcony width, provision of active frontage and awning and provision of clothes drying area requirements.

Reports have been submitted with the application showing the proposal's compliance with BASIX requirements and the provisions of the Building Code of Australia.

11.0 SECTION 94 CONTRIBUTION

Due to its nature, the proposed development will increase the demand for local and district facilities within the area. Accordingly, it is subject to the provisions of Council's Open Space and Community Facilities Section 94 plans. As it is not predominately commercial development the proposal is not subject to the Engadine Centre Section 94A levy plan.

This contribution has been calculated on the basis of 34 proposed residential units and a credit for five (5) existing allotments (refer Conditions 7 and 8).

12.0 DECLARATION OF AFFILIATION

There was no declaration of affiliation, gifts or political donations noted on the development application form submitted with this application.

13.0 CONCLUSION

The proposed development is for the demolition of existing buildings and construction of a five (5) storey mixed commercial and residential development including basement parking and a 38 lot strata subdivision.

The proposed development is a permissible land use, within Zone 8, with development consent.

In response to public exhibition, twelve (12) submissions were received. Six (6) further submissions were received at a later time. The matters raised in the submissions have been discussed in this report and have been addressed by design changes or conditions of consent, where appropriate.

The proposal includes variations to the height development standard and the commercial component control. These variations have been discussed and are considered acceptable.

The SEPP 1 Objection to the development standard regarding height is considered reasonable and is supported for the reasons detailed in this report. In particular the current five (5) storey proposal, being higher with a smaller footprint than the previously refused compliant three (3) storey development, results in significantly better amenity for surrounding residents and for future residents of the site itself.

Concentration of the development to the southern portion of the site will reduce the impact on the northern neighbours.

The issues raised as a result of the ARAP review of the proposal have been satisfactorily addressed by the applicant through design changes and the submission of additional information.

The design and scale of the proposed building are considered acceptable. It has been demonstrated that the proposal has adequately met the design

principles and controls in SEPP 65, the Residential Flat Design Code and SSDCP 2006.

The application satisfies the aims and objectives of SSLEP 2006, SSDCP 2006 and SEPP 65 and is considered to be an appropriate design for the subject site.

The application has been assessed having regard to the Heads of Consideration under Section 79C (1) of the Environmental Planning and Assessment Act 1979 and the provisions of Sutherland Shire Local Environmental Plan and all relevant Council DCP, Codes and Policies. Following detailed assessment it is considered that Development Application No. 10/1008 may be supported for the reasons outlined in this report.

14.0 RECOMMENDATION

14.1 That pursuant to the provisions of Clause 6 of State Environmental Planning Policy No. 1 (SEPP 1), the Objection submitted in relation to the requested variation of the three (3) storey height development standard under Clause 33 of Sutherland Shire Local Environmental Plan 2006 is considered to be well founded and is therefore supported. Accordingly, the provisions of SEPP No. 1 are invoked and this development standard is varied to five (5) storeys in respect to this development application.

14.2 That Development Application No. 10/1008 for Demolition of the Existing Buildings and Construction of a Mixed Commercial and Residential Development Including Basement Parking and a 38 Lot Subdivision at Lot C & D DP29930 and Lots 2, 3 & 4 DP100517 (Nos. 971-973 Old Princes Highway, Engadine be approved upon receipt of the requested additional contamination information and Remedial Action Plan to Council's satisfaction, subject to the draft conditions of consent detailed in Part 15.0 of the Report and any additional/amended conditions necessary as a result of the additional information.

15.0 DRAFT CONDITIONS OF DEVELOPMENT CONSENT

GENERAL CONDITIONS

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

1. Approved Plans and Documents

The development shall be implemented substantially in accordance with the details and specifications set out on the Drawing Nos. 1080 - 1 Issue B, 2 Issue A, 3 to 6 Issue B, 7 to 9 Issue A, 10 to 12 Issue B, D1 Issue B prepared by Bentley Architects, Drawing No L1 Issue B by Eximia Design, Drawing Nos CC0210 E1 Rev B , E2 Rev A, D1 to D3 Rev A, D4 and D5 Rev C, D6 to D8 Rev B, D9 to D11 Rev A by LMW Design Group P/L and any details on the application form and on any supporting information received with the application except as amended by the conditions specified and imposed hereunder.

Note 1:

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

Note 2:

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

Note 3:

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

Note 4:

Prior to any work being carried out relating to the development the subject of the consent, the person implementing the consent shall provide Council with:

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

Note 5:

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

1979.

2. Prescribed Conditions - General

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

A. Compliance with the Building Code of Australia

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

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

Builder's details shall be provided to Council with the Notice of Commencement.

3. Approvals Required under Roads Act or Local Government Act

The following works or activities shall not be carried out on public land (including a road) adjacent to the development site without approval under the Roads Act 1993 and/or the Local Government Act 1993:

- a) Placing or storing materials or equipment;
- b) Placing waste containers or skip bins;
- c) Pumping concrete from a public road;
- d) Standing a mobile crane;
- e) Pumping stormwater from the site into Council's stormwater drains;
- f) Erecting a hoarding;
- g) Establishing a construction zone;
- h) Opening the road reserve for the purpose of connections including telecommunications, water, sewer, gas, electricity and stormwater; or
- i) Constructing a vehicular crossing or footpath.

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

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

4. Dedication of land

A strip of land 1.4 metres wide and 25 metres in length (measured from the western boundary of the main site) adjoining Toms Lane shall be dedicated to Council as road reserve prior to or at the time of strata subdivision of the building, or prior to occupation of the building if the building is not strata titled. Such area shall be concrete surfaced to

council requirements prior to dedication.

5. Public Place Environmental, Damage & Performance Security Bond

Before the commencement of any works (including demolition) or the issue of a Construction Certificate, the applicant shall provide security to Council against damage caused to any Council property and / or the environment as a consequence of the implementation of this consent. The security may be provided by way of a deposit with the Council or a satisfactory guarantee. A non refundable inspection / administration fee is included in the bond value.

It is the applicant's responsibility to notify Council of any existing damage to public areas in the vicinity of the development site through the submission of a current dilapidation report supported by photographs. This information shall be submitted to Council at least two (2) days **prior** to the commencement of works.

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

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

The value of the bond shall be \$50,110.

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

6. Landscape Security (Tree Protection)

Prior to the commencement of any works associated with this consent the applicant shall provide a bond to the Council to the value of \$5000 (in the form of cash, cheque or bank guarantee). This bond is to ensure that the following tree) on the subject land is retained and is maintained in the same condition as found prior to the issue of this consent:

No.	Species (botanical & common name)	Location	Monetary Value
1	Eucalyptus botryoides bangalay Gum	rear of site adjoining Toms Lane	\$5,000

An application for refund of this bond may be made to Council following the issue of the Final Occupation Certificate. In the event that the specified tree is found damaged, dying or dead at any time during the

construction period as a result of construction activity, the bond may be forfeited to Council.

7. Public Liability Insurance

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

Section 94 Contributions

The following contributions have been levied in relation to the proposed development pursuant to Section 94 of the Environmental Planning and Assessment Act 1979.

8. Community Facilities, Shire Wide 2003 Plan

A monetary contribution of \$34724.02 shall be made for the cost of providing community facilities.

This contribution has been assessed pursuant to s.94 of the Environmental Planning and Assessment Act, and the Sutherland Shire Contributions Plan - Community Facilities in the Sutherland Shire, after identifying the likelihood that this development will require or increase the demand for community facilities within the shire. It has been calculated on the basis of 34 proposed Residential Flat Units, Apartments etc, with a concession for 5 existing allotments.

The contribution will be indexed on 1 July in each year in accordance with the Implicit Price Deflator for Gross Fixed Capital Expenditure – Private Dwellings, with amended rates being available from Council.

Payment shall be made prior to the issue of the Construction Certificate.

The Contributions Plan may be inspected or a copy purchased at the Customer Service Counter in Council's Administration Centre, Eton Street, Sutherland during office hours.

9. Monetary Contribution for Shire-Wide Open Space and Recreational Facilities

Pursuant to Section 94 of the Environmental Planning and Assessment Act 1979 and Sutherland Shire Council's Contributions Plan – Shire Wide Open Space and Recreation Facilities 2005, a monetary contribution of \$198326.40 shall be paid to Sutherland Shire Council toward the cost of land identified for acquisition and works contained in the Works Programme of the Contributions Plan.

This contribution has been assessed and calculated in accordance with

the Shire Wide Open Space and Recreation Facilities 2005, Contribution Plan on the basis of 34 proposed Residential Flat Units, Apartments etc, with a concession for 5 existing allotments.

The contribution will be indexed on 1 July in each year in accordance with the Implicit Price Deflator for Gross Fixed Capital Expenditure – Private Dwellings, with amended rates being available from Council.

Payment shall be made prior to the issue of the Construction Certificate.

The Contribution Plan may be inspected or a copy purchased at the Customer Service Counter in Council's Administration Centre, Eton Street, Sutherland during office hours.

MATTERS RELATING TO THE ISSUE OF A CONSTRUCTION CERTIFICATE

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

10. BASIX Requirements

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

11. Design Changes Required

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

- a) The seven resident bicycle parking spaces shall be changed to individual secure lockers designed in accordance with AS2890.3
- b) Doors shall be provided between the commercial lobby and commercial tenancies 2 and 3 to allow direct servicing of those tenancies from the commercial lift without the need to use the footpath in front of the premises.
- c) Subject to the agreement of the owners of No.17 Nolan Avenue the fence between the rear of their site and the rear part of the subject site shall be raised in height to similar to the fence at the rear of No 15 Nolan Avenue. A low retaining wall section shall be included at the base of the fence for soil retention.
- d) The street tree species for planting to the Old Princes Highway frontage shall be changed to Fraxinus tree species

12. Site Management Plan

An Environmental Site Management Plan shall accompany the

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

- a) What actions and works are to be employed to ensure safe access to and from the site and what protection will be provided to the road and footpath area from building activities, crossings by heavy equipment, plant and materials delivery, and the like.
- b) The proposed method of loading and unloading excavation machines, building materials.
- c) Areas within the site to be used for the storage of excavated material, construction materials and waste containers during demolition / construction.
- d) How it is proposed to ensure that material is not transported on wheels or tracks of vehicles or plant and deposited on surrounding roadways.
- e) The proposed method of support to any excavation adjacent to adjoining properties, or the road reserve. The proposed method of support is to be certified by a Certifier accredited in civil engineering.
- f) The provision of temporary fencing to secure the work site (fencing, hoarding or awnings over public land require Council approval under the Roads Act).
- g) The control of surface water flows within and through the construction site to minimise erosion and movement of sediment off site.
- h) The type and location of erosion and sediment control measures, strategies to minimise the amount of soil uncovered at any time, the conservation of topsoil for re-use on site, the location and protection of stockpiles.
- i) Identify all trees that are to be retained and the measures proposed to protect them (including fencing, mulching, watering, erection of signs excluding access to the protection zone, etc), and identify areas for revegetation.

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

13. Verification of Design for Construction – SEPP 65

Design verification shall be provided by a suitably qualified designer (Architect) pursuant to SEPP 65 stating that the design intent approved by the Development Consent has been maintained in the building / architectural plans submitted with the Construction Certificate. This shall accompany the Construction Certificate.

14. Safety and Security

To ensure safety and security;

- (1) All pathways shall be lit to ANZS 1158.3- 1 -Public Lighting standard or higher with special consideration to the requirement of facial recognition at 15 metres. Lighting should be even and not contain pools of light and dark.
- (2) Security access to the resident parking areas shall meet minimum Australian Standard requirements.
- (3) Pedestrian routes through the parking areas shall be clearly marked and shall be lit to a minimum of ANZS1158.3- 1 standards.
- (4) The walls and ceilings of the car park shall be light coloured. Lighting of the carpark shall meet or exceed relevant Australian standards.

15. Tree Retention

The Bangalay gum tree at the rear of the site shall be retained. Appropriate tree protection measures as detailed in the Landscape Plan submitted with the application shall be implemented.

16. Lot Consolidation:

Documentation demonstrating that the lots have been consolidated must be submitted to the Principal Certifying Authority prior to the issue of Construction Certificate. Note: All other conditions requiring a subdivision certificate relate to the strata subdivision.

17. Road Opening Approval Required

No work whatsoever shall be carried out within the Public Road Reserve unless a "Road Opening Permit" under the Roads Act, 1993 (NSW) has been issued by either Council or the Roads and Traffic Authority for every opening of the public road reserve.

Note: An application fee is payable for this application.

18. Nomination of Engineering Works Supervisor

Prior to the issue of a Construction Certificate the applicant shall nominate an appropriately accredited certifier to supervise all public area civil and drainage works to ensure that they are constructed in compliance with Council's current "Specification for Civil Works Associated with Subdivisions and Developments".

The engineer shall:

- a) provide an acceptance in writing to supervise sufficient of the works to ensure compliance with:
 - i) all relevant statutory requirements;
 - ii) all relevant conditions of development consent;
 - iii) construction requirements detailed in the above Specification; and
 - iv) the requirements of all legislation relating to environmental protection;
- b) on completion of the works certify that the works have been constructed in compliance with the approved plans, specifications

- and conditions of approval; and
- c) certify that the Works As Executed plans are a true and correct record of what has been built.

19. Sydney Water - Notice of Requirements

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

20. Public Utility Authorities

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

21. Drainage Construction:

The stormwater drainage on the site is to be constructed generally in accordance with plan CC0110 D1 to D14 Rev A prepared by LMW Design Group P/L dated July 2010 and the required amendments to comply with Water Quality Control objectives.

Certification by a suitably qualified engineer of the above plans must be submitted to the Principle Certifying Authority stating that the design fully complies with, Sutherland Shire Development Control Plan 2006 (Chapter 8 - Ecologically 'Sustainable Development'; Section 6 - 'Stormwater Management') Sutherland Shire Environmental Specification – Stormwater Management and AS-3500.3 2003 The plans and certification must be submitted to the Principal Certifying Authority prior to the issue of the Construction Certificate

22. On site parking facilities:

The on-site vehicular manoeuvring and parking facilities design shall

☐ Comply with AS2890.1 (2004), AS2890.2 (2002) and AS2890.6 (2009) in relation to the design of vehicular access, parking and general manoeuvring.

☐ Ensure car wash bays and visitor parking spaces are suitably signposted.

☐ Incorporate a CCTV system into the intercom system to ensure that the visitor space availability can be determined.

A Compliance Certificate issued by an appropriately accredited person to the effect that these design requirements have been met shall accompany the Construction Certificate.

23. Geotechnical report:

A geotechnical report prepared by a suitably qualified engineer is to be completed for the subject property. The geotechnical report is to detail the sites geotechnical characteristics and the recommendations for construction. The recommendations of the geotechnical report are to be

used in the design of the retaining structures, footings and excavations. The geotechnical engineer is to submit a compliance certificate detailing that the structural design of the retaining walls and footings meet the requirements of the geotechnical report. The geotechnical compliance certificate is to be submitted to the Principal Certifying Authority prior to the issue of the Construction Certificate.

24. Design of retaining structures:

All retaining structures greater than 600mm in height are to be designed and certified for construction by a suitably qualified engineer. The structural design is to comply with, all relevant design codes and Australian standards and recommendations of the Geotechnical report.

25. Geotechnical Monitoring Program:

Excavation works associated with the proposed development must be overseen and monitored by a suitably qualified engineer. A Geotechnical Monitoring Program shall be submitted to the Principal Certifying Authority prior to issue of a Construction Certificate. The Geotechnical Monitoring Program must be produced by suitably qualified engineer ensuring that all geotechnical matters are regularly assessed during construction.

The Geotechnical Monitoring Program for the construction works must be in accordance with the recommendations of the Geotechnical Report and is to include

- ☐ Recommended hold points to allow for inspection by a suitably qualified engineer during the following construction procedures;
 - ☐ Excavation of the site (face of excavation, base, etc)
 - ☐ Installation and construction of temporary and permanent shoring/ retaining walls.
 - ☐ Foundation bearing conditions and footing construction.
 - ☐ Installation of sub-soil drainage.
- ☐ Location, type and regularity of further geotechnical investigations and testing.

Excavation and construction works must be undertaken in accordance with the Geotechnical Monitoring Program.

26. Construction Methodology Report:

There are structures on neighbouring properties that are deemed to be in the zone of influence of the proposed excavations. A suitably qualified engineer must prepare a Construction Methodology Report demonstrating that the proposed excavation will have no adverse impact on any surrounding property and infrastructure. The report must be submitted to Principal Certifying Authority prior to issue of a Construction Certificate. The details must include a geotechnical report to determine the design parameters appropriate to the specific development and site. The Report must include recommendations on appropriate construction techniques to ameliorate any potential adverse impacts. The development works are to be undertaken in accordance with the recommendations of the Construction Methodology report

27. Predevelopment Dilapidation report:

A dilapidation report shall be provided to the extent possible in consultation with the owners of the adjoining properties

- ☐ 987 & 989 Old Princess Hwy,
- ☐ 963 Old Princess Hwy,
- ☐ 15, 17 and 19 Nolan Ave
- ☐ 10 Toms Lane
- ☐ Council's road infrastructure. Old Princess Hwy (from corner of Railway Parade to Caldara Ave) & Toms Lane

The Dilapidation report must be conducted by a suitably qualified engineer prior to the commencement of any demolition, excavation or construction works. The extent of the survey must cover the structures that have the potential to be affected by any excavation works including dewatering, and/or construction works including vibration. The Initial dilapidation report must be submitted to the Principal Certifying Authority prior to issue of a Construction Certificate and a copy forwarded to the owners of the affected properties.

28. Soil and water management / site management plan:

Soil and Water Management / site management plan shall be prepared by a suitably qualified consultant must be submitted to the Principal Certifying Authority prior to the issue of the Construction Certificate. The plan must be completed in accordance with the guidelines set out in Part 3 of Chapter 8 of Sutherland Shire Development Control Plan 2006, Sutherland Shire Environmental Specification 2007 - Environmental Site Management and the manual *"Managing Urban Stormwater, Soils and Construction Fourth Edition 2004 Volume 1"* prepared by LANDCOM.

The soil and water management / site management plan must detail

- a) The actions and works that are to be employed to ensure safe access to and from the site and what protection will be provided to the road and footpath area from building activities, crossings by heavy equipment, plant and deliveries.
- b) The proposed method of loading and unloading excavation machines, building materials.
- c) Areas within the site to be used for the storage of excavated material, construction materials and waste containers during demolition / construction.
- d) How it is proposed to ensure that material is not transported on wheels or tracks of vehicles or plant and deposited on surrounding roadways.
- e) The provision of temporary fencing to secure the work site (fencing, hoarding or awnings over public land require Council approval under the Roads Act).

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

29. Road Frontage Design Requirement:

An application to Council's engineering services division shall be made for a detailed design of the required road frontage upgrades.

30. Garbage, Recycling and Green-waste Storage Area

To ensure proper storage of waste from the premises, an enclosed garbage and recycling storage area shall be provided. This facility shall be designed and positioned to accommodate (and if necessary provide collection access to) waste and recycling bins to Council's requirements and in order to minimise noise and odour, it shall be located as far as possible away from nearby premises. Within this area a smooth impervious floor shall be provided that is graded to a floor waste and a tap and hose provided to facilitate regular cleaning of the bins. All waste water shall be discharged to the sewer in accordance with the requirements of Sydney Water.

The required number and type of waste and recycling material containers shall be provided at the full cost of the developer.

Details of the garbage, recycling and greenwaste storage area shall accompany the Construction Certificate.

The works included above shall be completed prior to the issue of an occupation certificate.

31. External Lighting - (Amenity)

Any lighting on the site shall be designed and operated so as not to cause a nuisance nor adverse impact on the other residents of the surrounding area nor to motorists on nearby roads. All external lights shall be designed in accordance with Australian Standard AS4282 - Control of the Obtrusive Effects of Outdoor Lighting.

32. Building Ventilation

To ensure that adequate provision is made for ventilation of the building mechanical and / or natural ventilation systems shall be provided. These shall be designed, in accordance with the provisions of:

- a) The Building Code of Australia.
- b) AS 1668 Part 1 - 1998.
- c) AS 1668 Part 2 - 1991.
- d) The Public Health Act - 1991.
- e) The Public Health (Microbial Control) - Regulation 2000.
- f) AS 3666.1 - 2002.
- g) AS 3666.2 - 2002.
- h) AS 3666.3 - 2000.

Details of all mechanical and / or natural ventilation systems, along with specific certification provided by an appropriately qualified person

verifying compliance with the abovementioned requirements, shall accompany the Construction Certificate.

33. Noise from Road

To minimise the impact of noise from the nearby major road on the occupants, the building shall be constructed in accordance with the recommendations of the Acoustic Report by Acoustic Logic dated 22 October 2010 approved as part of this application.

Details of the proposed acoustic treatment shall accompany the Construction Certificate.

34. Noise Control - Design of Plant and Equipment (General Use)

To minimise the impact of noise from the development, all sound producing plant, equipment, machinery, mechanical ventilation system or refrigeration systems, shall be designed and / or located so that the noise emitted does not exceed an LAeq sound pressure level of 5dB above the ambient background level when measured at the most affected point on or within any residential property boundary.

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

35. Car-Park Ventilation – Alternate system

As the basement car-park does not comply with the natural ventilation requirements of Part 7.4 of AS1668.2 - 1991, the car-park shall be either mechanically ventilated by a mechanical ventilation system complying with AS1668.2 -1991 OR alternatively by the natural ventilation system proposed providing it is certified by a practicing mechanical ventilation engineer to the effect that the system is an adequate system of natural ventilation. The certification shall confirm that the system will protect the health of the occupants of the car-park at any time it is used and would satisfy the exposure rates specified in Clause 7.2.2 of AS1668.2 – 1991

Details of the method of ventilation and relevant certification shall accompany the Construction Certificate.

36. Energy Efficiency - General

Details demonstrating how it is intended to comply with the energy efficiency requirements of any relevant Development Control Plan through the use of recycled, plantation timber and non-polluting building materials etc shall accompany the Construction Certificate. Choice of materials shall be made from the items listed in the Sustainable Materials Schedule.

BCA Fire Safety Conditions

The following conditions have been imposed for the purpose of ensuring that the proposed development meets BCA fire safety requirements.

37. BCA Assessment Report

A Building Code of Australia Assessment Report shall be submitted with the Construction Certificate. This shall be prepared by an appropriately qualified person and shall provide recommendations regarding what is required to ensure the proposed development is brought into conformity with the *Building Code of Australia*. The report shall address how it is proposed to protect persons using the building, egress from the building and restriction of the spread of fire from the building to other buildings nearby. Further, all recommendations contained within this report shall be incorporated within the scope of works covered by the Construction Certificate.

38. Submission of Fire Safety Schedule

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

PRE-COMMENCEMENT CONDITIONS

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

39. Pre-Commencement - Notification Requirements

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

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

40. Signs to be Erected on Building and Demolition Sites

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

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

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

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

41. Remedial Works

The remedial works recommended in the submitted Remedial Action Plan shall be completed under the supervision of an appropriately qualified environmental scientist prior to the commencement of the work approved by this development consent. Certification from an appropriately qualified person verifying that the site has been fully remediated in accordance with the recommendations of the Remedial Action Plan shall be completed and submitted to Council within 30 days of the completion of the remedial works.

42. Appointment of a Supervising Arborist

Prior to the commencement of any demolition or works on site the applicant shall engage a suitably qualified and experienced Arborist (a person with current membership of the National Arborists Association of Australia at a grade of General Member, Affiliate Member or Life Member or alternatively a person who has obtained a TAFE Certificate in Horticulture (Arboriculture) Level 2 or higher).

The Supervising Arborist shall:

- a) Be present during any works within the dripline of any tree marked for retention and have the authority to direct works to ensure the trees long term preservation.
- b) Ensure any excavation within the dripline of the tree/s is hand dug and to oversee works and strictly supervise that there is no disturbance or severing of roots greater than 50mm and to cleanly cut and treat those roots between 10-50mm in diameter.

43. Traffic Management Plan

A traffic management plan must be submitted and approved by Sutherland Shire's Traffic Committee prior to the submission of the plan to the Principal Certifying Authority. The traffic management plan must be prepared by a suitably qualified person. The plan is to detail construction vehicle routes, number and size of trucks, hours of

operation for truck movements, access arrangements and what provisions have been made to reduce the impact on both pedestrian and vehicular traffic on the surrounding streets. A certification completed by a suitably qualified person must be submitted stating full compliance with AS-1742.3 2002. The plans and certification shall be submitted to the Principal Certifying Authority prior to the commencement of any site works.

CONSTRUCTION CONDITIONS

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

44. Environmental Site Management DCP

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

45. Permitted Hours for Building and Demolition Work

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

46. Toilet Facilities

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

Each toilet provided:

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

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

47. Demolition Work

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

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

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

and Charges.

48. Demolition – Removal of Asbestos Material

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

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

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

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

49. Protection of Public Places

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

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

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

50. Noise Control during Construction and Demolition

To minimise the impact on the surrounding environment, the LAeq sound pressure level measured over a period of 15 minutes when the construction or demolition site is in operation, shall not exceed the ambient background level (LA90 15min) by more than 10dB(A) when measured at the nearest affected premises.

51. Vibration damage

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

52. Environment Protection and Management

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

53. Stockpiling of materials during construction

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

54. Construction materials and machinery must be kept within the site

All construction materials, sheds, skip bins, temporary water closets, spoil, and the like, shall be kept within the property. No vehicles or machines shall be permitted to stand on Council's footpath. For further information, refer to Part 3 of Chapter 8 of Sutherland Shire Development Control Plan 2006 and the Sutherland Shire Environmental Specification 2007 - Environmental Site Management.

55. Spoil deposited on public way (roads or reserves)

Any spoil deposited on public roads during cartage of materials from or to the site shall be removed immediately to the satisfaction of Council. If Council determines that excessive depositing of spoil onto the public way is taking place then the cartage of spoil shall cease if so directed by Council.

56. Provision of Letter Box Facilities

Suitable letter box facilities (including Owner's Corporation in the case of strata units) shall be provided in accordance with Australia Post specifications.

57. Disposal of Site Soils

All soils excavated from the subject site are to be classified under the NSW DECC Waste Classification Guidelines (2009). Testing is required prior to off site disposal.

All waste materials shall be removed to appropriately licensed waste facilities by a suitably qualified contractor in accordance with NSW DECC Waste Classification Guidelines (2009).

Note: Attention is drawn to Part 4 of the NSW DECC Waste Classification Guidelines (2009) which makes particular reference to the management and disposal of Acid & Potential Acid Sulfate Soils.

58. Dewatering of Excavation

Any water from excavations to be discharged to Council's stormwater system must meet the following criteria:

It shall not contain a concentration of suspended sediment exceeding 50 mg/L;

It shall have a pH of between 6.5-8

It shall comply with the ANZECC Guidelines for Marine and Freshwater Quality, for Protection of Aquatic Ecosystems (95% protection level)

Water testing shall be carried out to ensure compliance with the above by a suitably qualified environmental scientist, and results provided to Council upon request. A permit may be required to discharge water to Council's stormwater system. Consultation with Council shall be undertaken prior to discharge of any water to stormwater.

59. Irrigation system

The communal open space areas shall be provided with an efficient irrigation system to enable effective landscape maintenance. Details of this shall be provided in the landscape plan which shall accompany the Construction Certificate.

60. Podium Planting

Podium Planting shall be constructed in accordance with part 1, section 2.3.3 of Councils Landscape Environmental Specification.

61. Rainwater Harvesting and Use

Tank Installation

The tank and support structure shall be placed on a suitable foundation in accordance with the manufacturer's or engineer's details. It must not

rest (in full or part) on the footings of any building or structure or on a retaining wall without being specifically designed for.

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

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

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

Plumbing Connections

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

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

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

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

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

Potable Water Back-up

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

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

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

At this level, an approved mechanical float device or electrical float

switch is to be used to make up potable water.

Overflow

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

POST CONSTRUCTION CONDITIONS

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

62. Section 73 Compliance Certificate

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

Advice from Sydney Water:

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

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

63. Works As Executed Information

Certification shall be provided from a registered surveyor to the effect that:

- a) All civil engineering works required by this development consent have been carried out in accordance with the terms of the development consent and the approved engineering drawings with regard to location and level.
- b) All pipes, pits and detention facilities lay within their relevant existing or proposed easements.
- c) All rights-of-way or positive covenants required by conditions of this development consent have been provided.

64. Works As Executed Drawings

Certification shall be provided from the supervising engineer acting as an

Accredited Certifier, to the effect that:

- a) All civil engineering and stormwater works associated with development have been carried out in accordance with the terms of the development consent, the approved engineering drawings and in the case of public works Council's "Specifications for Civil Works associated with Subdivisions and Developments".
- b) The construction of the drainage system for the proposed development has been carried out generally in accordance with the requirements of the approved stormwater drainage plans, Council's stormwater management policy and guidelines and Council's On-site Detention Policy and has been carried out in order that stormwater runoff downstream is not increased as a result of the development and that all assumptions made during the design remain valid. Works-as-Executed drawings certified in the above manner and containing all relevant information as required by Council's "Specification for Civil Works Associated with Subdivisions and Developments" shall accompany the Subdivision / Occupation Certificate.

65. Completion of Work on Public Land

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

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

66. Post Development Dilapidation Report:

The applicant is to provide at the completion of the works a dilapidation report recording structural conditions of all structures originally assessed prior to the commencement of works. Such must be submitted to the Principal Certifying Authority prior to the issue of an Occupation Certificate.

67. Acoustic Treatment

Certification shall be provided from a suitably qualified acoustic engineer certifying that the acoustic treatment of the building complies with the requirements of the development consent. This shall accompany the Occupation Certificate.

68. Disabled Access and Adaptable Housing Certification.

Certification shall be provided by a person suitably accredited by the Association of Consultants in Access Australia, verifying that the development has been constructed in accordance with the requirements of AS4299 - Adaptable Housing and AS1428 - Design for Access and Mobility and in accordance with the report and checklist submitted with the Construction Certificate.

69. Verification of Design at Completion – SEPP 65

Design verification shall be provided by a suitably qualified designer (Architect) pursuant to SEPP 65 stating that the design intent approved by the Development Consent has been maintained throughout the construction of the building / development. This shall be provided prior to the issued of the final Occupation Certificate.

70. Prior to Occupation or Use of the Development

The Development shall not be occupied or used until:

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

71. Endorsement of Linen Plan of Strata Subdivision

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

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

OPERATIONAL CONDITIONS

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

72. Maintenance and Operational Efficiency of BASIX Requirements

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

73. Carparking Areas

- a) To ensure that the carparking area satisfies the demands of the development it shall be made available on an unrestricted basis at all times for residents and visitors vehicles.
- b) Use of the parking area shall be restricted to the occupiers of the premises their visitors, staff and customers.

74. Common Property

To ensure that the visitor /customer component of the car parking area satisfies the demands of the development it shall be made available as common property in any future strata subdivision.

75. Loading and Unloading

In the interests of public safety and amenity, all delivery vehicles servicing the property shall stand within the curtilage of the site and shall be able to be driven in a forward direction when entering and leaving the Old Princes Highway. Loading and unloading of vehicles from the roadway is not permitted.

76. External Lighting

All external lights shall be operated and maintained in accordance with the Australian Standard AS4282 - Control of the Obtrusive Effects of Outdoor Lighting so as not to cause a nuisance or adverse impact on the amenity of residents of the surrounding area nor to motorists on nearby roads.

77. Noise Control – Plant & Equipment (Continual operation)

To minimise the impact of noise from the development, all sound producing plant, equipment, machinery, mechanical ventilation systems and / or refrigeration systems, shall be operated so that the noise emitted does not exceed the Project Specific Noise level when measured at the most affected point on or within any residential property boundary.

The Project Specific Noise level shall be the most stringent noise level of the Intrusive and Amenity criteria and be calculated in accordance with the provisions of the Department of Environment and Climate Change Industrial Noise Policy.

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

78. Bins

The waste bins from the premises shall when placed out for collection be so placed as to not obstruct the laneway.

END OF CONDITIONS