

<b>JRPP No:</b>	<b>2010SYE113</b>
<b>DA No:</b>	<b>DA10/1292</b>
<b>PROPOSED DEVELOPMENT:</b>	Commercial Development - Construction of a Four (4) Storey Commercial Building Lot 1 DP 21256, Lot 18 DP 8461 & Lot 19 DP 8461 - 531-533 Kingsway, Miranda
<b>APPLICANT:</b>	A V Tripodina
<b>REPORT BY:</b>	Carolyn Howell Environmental Assessment Officer (Planner) Sutherland Shire Council 9710 0841

## Assessment Report and Recommendation

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### 1.0 EXECUTIVE SUMMARY

#### 1.1 Reason for Report

Pursuant to the requirements of State Environmental Planning Policy (Major Development) 2005, this application is referred to the 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 \$10,957,650.

#### 1.2 Background

The JRPP considered an application for this site in November 2010 (2010SYE057). That application was refused and the current application seeks to address the reasons for refusal.

#### 1.3 Proposal

The proposal is for the demolition of all existing structures and the construction of a four (4) storey commercial building at the above property.

#### 1.4 The Site

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

#### 1.5 The Issues

The main issues identified are as follows:

- Height
- Floor space ratio
- Impact on streetscape and presentation to active street frontage

#### 1.6 Conclusion

Following detailed assessment of the proposed development the current application is considered worthy of support, subject to conditions including a

deferred commencement condition requiring the submission of documentation that clearly shows the extent of finishes to the exterior of the building.

## 2.0 DESCRIPTION OF PROPOSAL

The proposed development is for the demolition of all existing structures on site and the construction of a three (3) level commercial building with three (3) levels of basement car parking. A large portion of the upper basement level is above ground level and therefore the development measures four (4) storeys in height. The proposal comprises 3241m<sup>2</sup> of commercial floor space and does not nominate a use for the building.



Photo of the subject site looking north

Pedestrian access to the site is from Kingsway via either a ramp or stairs. The ground floor level of the development is at grade with the Kingsway street level at the western edge of the site and 2420mm above the Kingsway street level at the eastern edge of the site.

Vehicular access to the site is from Clubb Lane and is located towards the western boundary. Vehicular access is shared with a loading area. The crossing width at the property boundary is 11.5 metres. The depth of the loading bay is 9.5 metres, accommodating a medium rigid vehicle. The width of the entrance into the basement is 6.8 metres, sufficient to enable two (2) way movement and the provision of an intercom system.

Each of the three (3) basement levels are split in two (2), effectively meaning that car parking is provided over six (6) split levels. The upper floor level of the basement is located at street level in Clubb Lane and vehicles will enter the basement at grade, before ramping down into the lower levels. The basement car park has accommodation for 119 cars (including three (3) spaces for disabled persons), six (6) motor bikes and fourteen (14) bicycles. In addition, two (2) large storage areas are located on the lower level basement and bin storage, change rooms and lockers are located on the upper level basement.

Each commercial level can be described as follows:

#### Ground Level:

At the ground level is the central entry/lobby area accessed from Kingsway via stairs or a ramp or via the lift from the basement. A central core contains toilets and a kitchenette. No floor layout plan is provided for the remainder of this level. An external deck with an approximate area of 113m<sup>2</sup> is provided to the north. This deck is approximately four (4) metres above the street level of Clubb Lane. This level has a gross floor area (GFA) of approximately 1082m<sup>2</sup>.

#### Level 1:

Level 1 shows concept tenancy layouts as well as the central core. An external deck with an approximate area of 78m<sup>2</sup> is provided to the north. This level has a GFA of approximately 1080m<sup>2</sup>.

#### Level 2:

Level 2 of the development is identical to Level 1 below with the exception of the external deck. This level also has a GFA of approximately 1080m<sup>2</sup>.

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

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

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

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

The site is located one (1) property west of the north-eastern perimeter of the Miranda Centre. The development surrounding the site is varied with a mixture of residential, educational, religious and commercial buildings.

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

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

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

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

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



Location Plan – subject site shown shaded



Aerial Photograph – subject site shown shaded

## 4.0 BACKGROUND

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

- An application for the “demolition of existing structures and the construction of a two storey commercial building containing shops and offices and basement car parking for 75 vehicles” was submitted to Council on 15 June 2007 (DA07/0571). Following consideration of the application by Council’s Independent Hearing and Assessment Panel, Council approved this development application on 8 February 2008. The approved building is two (2) storeys in height and has a floor space ratio of 1.39:1.
- A separate development application for the demolition of the existing structures (DA07/1433) was lodged with Council on 21 December 2007. This application was approved under delegation on 7 January 2008.
- A Section 96 1(a) application (MA09/0130) to modify DA07/0571 was lodged with Council on 25 May 2009. This application was to relocate the lift and amenities and add additional stairs to the building. The s.96 application was approved under delegation on 16 June 2009.
- An application for the demolition of existing structures and the construction of a five (5) storey commercial building (DA10/0720 2010SYE057) was received by Council on 3 August 2010. This application was refused by the JRPP on 3 November 2010. A copy of the refusal notice is attached in Appendix A of this report.
- Council Officers met with the applicant on 31 November 2010 to discuss a future development application. The applicant was advised that the resolution of the JRPP, together with the Council’s report, provided a clear indication of the shortfalls of the application and the matters which were required to be addressed prior to re-lodgement.
- The current application was submitted on 15 December 2010.
- The application was referred to the Roads & Traffic Authority on 15 December 2010.
- An Information Session was held for concerned residents on 18 January 2011. One (1) resident attended.
- The application was placed on public exhibition, with the last day for submissions being 25 January 2011. No submissions were received during the exhibition period. One (1) late submission was received.
- The application was considered by Council’s Architectural Review Advisory Panel (ARAP) on 3 February 2011.
- Advisory comments were received from the RTA on 8 February 2011
- Council wrote to the applicant on 8 February 2011 requesting that several matters be addressed.
- Council provided the applicant with a copy of the ARAP report on 15 February 2011.
- The applicant responded to Council’s letter and the comments of ARAP on 8 March 2011. Additional information and revised plans were submitted.
- The applicant lodged further revisions to their application on 14 March 2011.

## **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, apart from documentation that clearly shows the extent of finishes to the exterior of the building, the applicant has provided adequate information to enable an assessment of this application. The documentation includes two (2) Objections prepared in accordance with the requirements of State Environmental Planning Policy No. 1 – Development Standards. The first is for height and the second is for density. It is recommended that the detailed section and sample of finishes be dealt with via a deferred commencement condition.

## **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).

256 adjoining or affected owners/residents were notified of the proposal and no submissions were received during the exhibition period. One (1) late submission was received from a resident of the unit block to the north. In their letter dated 24 January 2011 the following issues were raised:

### **6.1 Increased Traffic**

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

Comment: Council's Manager of Traffic & Transport has assessed the application and advised that subject to suitable conditions of consent no objection is raised to the proposal. This matter is addressed in more detail in the "Specialist Comments" section of this report.

### **6.2 Car Parking**

Concern was raised about the potential for unauthorised use of visitor spaces belonging to the units at 9-13 Clubb Crescent, located opposite the site in Clubb Lane. These spaces are provided via 90 degree parking directly off Clubb Lane.

Comment: The design of these visitor spaces makes it difficult to prevent their unauthorised use.

The current application provides car parking which satisfies the requirements of Sutherland Shire Development Control Plan 2006. The provision of adequate car parking within the basement, which has direct lift access into the development, will minimise the likelihood of the unauthorised use of neighbours' visitor spaces.

### 6.3 Height & Density

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

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

### 6.4 Overdevelopment

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

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

## **7.0 STATUTORY CONSIDERATIONS**

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

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

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

## **8.0 STATEMENT OF COMPLIANCE**

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

Standard/Control	Required	Proposed	Complies? (% Variation)
<b>Sutherland Shire Local Environmental Plan 2006</b>			
Height 33(8)(b)(ii)	3 Storeys	4 Storeys	No (33%)
Density 35(11)(b)	2:1 (GFA of 3250m <sup>2</sup> )	2.08:1 (GFA of 3393m <sup>2</sup> )	No (4%)
<b>Sutherland Shire Development Control Plan 2006</b>			
Parking Cars 7.1.b.18.1	108	119	Yes
Motor bikes 7.1.b.2.1	5	6	Yes
Bicycles 7.5.b.3.1	11	14	Yes
Loading facilities 7.4.b.9.2	Heavy Rigid Vehicle	Medium Rigid Vehicle	No
Setback above active street frontage (3.2.b.7.2)	2m	0m	No (100%)
Limited expanses of blank walls along active frontages (3.11.b.13.1)	Max 2m	14m	No (600%)
Level of development (3.8.b.1.4)	Active frontages must be at footpath level	0.02m to 2.42m above street level	No
Awning (3.11.b.6.11)	Active frontages must have a continuous awning	Awning proposed	Yes

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

## 9.0 SPECIALIST COMMENTS AND EXTERNAL REFERRALS

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

### 9.1 Roads & Traffic Authority (RTA)

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

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



management. Council's Development Engineer has reviewed these comments and applied relevant conditions.

## 9.2 NSW Police Force

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

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

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

The NSW Police have recommended that the following Crime Prevention through Environmental Design (CPTED) principle applications should be considered in the proposed development including the following:

- Landscaping
- Car park access control
- Car park amenities
- Lighting
- Surveillance
- Internal visibility
- Environmental maintenance
- Directional signage

The applicant has incorporated changes into their scheme to accommodate these principles, where appropriate. Where necessary, other issues have been dealt with via conditions of development consent.

## 9.3 Architectural Review Advisory Panel (ARAP)

Council's Architectural Review Advisory Panel considered this application on 3 February 2011. A full copy of the report from ARAP is contained within Appendix C of this report, however in conclusion this report noted the following:

*"The previous decision of the JRPP has provided clear criteria for the preparation of an amended design. As a consequence, the proposed building is of an appropriate scale and generally sits comfortably in its immediate context. However, it is suggested that the building's presentation to the rear laneway could be further improved by reducing the building footprint to retain the two large existing trees (on the adjoining property) and to create opportunities for more significant landscaping."*

*The proposed building has the potential to establish a new benchmark for buildings in this precinct. Further finishes and detail information (more detailed section, rationale for storey heights and a finishes board) should be submitted at this stage to ensure the design intent is realised.”*

The applicant has provided Council with revised plans seeking to address the concerns raised by the ARAP. Council's Architect has advised that

*“The proposed revisions are a commendable/positive response to the issues raised by ARAP. However an external finishes board and a revised detail section are required to ensure that the design intent is realised.”*

The applicant has however failed to submit documentation that clearly shows the extent of finishes to the exterior of the building. Given the scale of the development and its high profile location, the submission of documentation that clearly shows the extent of finishes to the exterior of the building is considered to be essential. The refined treatment of the façade detailed by the Architect at Council's ARAP is not demonstrated in the submitted documents and the elevations could be interpreted in a variety of ways.

#### 9.4 Traffic Engineer

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

##### *“Parking*

*The parking deficiency has now been addressed and parking is now considered to be satisfactory.*

##### *Traffic Generation*

*Further site inspections indicate that despite queuing in Kiora Road on approach to the Kingsway, platooning of traffic from the traffic signals at the Fiveways intersection will allow sufficient gaps for vehicles to safely turn left into Kiora Road from Clubb Lane and access southbound, through and westbound turning lanes. For safety reasons, given the increased traffic generation and the existing accident history, the existing concrete median island in Kiora Road should be extended by approximately 50m further north of the Kingsway to restrict Clubb Lane to left in, left out movements only.*

*Opposing movements in Clubb Crescent should be able to safely pass given the low speed environment of the laneway.”*

Council's Manager of Traffic and Transport does not raise objection to the proposal subject to a condition relating to the northerly extension of the median strip within Kiora Road. A suitable condition has been included in the

draft conditions should the JRPP decide that the application is worthy of support.

#### 9.5 Engineering

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

#### 9.6 Building

Council's Building Surveyor has undertaken an assessment of the proposal and advised that subject to suitable conditions of development consent no objection is raised to the proposal in respect to the Building Code of Australia (BCA).

#### 9.7 Community Services

Council's Community Services Department has undertaken an assessment of the application. Suitable conditions of consent have been included in the recommended conditions to address concerns in relation to access into the building and the facilities within the building. These conditions are recommended to ensure that the proposal complies with the relevant Australian Standards. Suitable conditions have been included in the draft conditions of consent.

### **10.0 ASSESSMENT**

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

#### 10.1 Height

The proposed development fails to comply with the development standard for height. Clause 33(8)(b)(ii) of SSLEP 2006 stipulates a maximum height of three (3) storeys for this site.

The development proposes a building which measures four (4) storeys in height and to support this variation the applicant has lodged an Objection pursuant to the requirements of SEPP 1. The full submission is contained within Appendix D of this report and the most relevant section is reproduced below:

*"In the circumstances of the case, to require strict compliance with the three storey height limit, which would as a result of site topography likely lead to a two storey form at the Kingsway frontage, is considered to be unnecessary and unreasonable given the likely future scale and form of development encouraged by the height controls for surrounding properties. The height limit that applies to the subject site is considered to be appropriate and has no clear relationship to Council's expression of desired future*

*character for the locality. That is, the subject site should be included within a height zone consistent with properties opposite the site to the south, and west of Kiora Road. In any case, the proposal has been reduced in height from the scheme presented under DA10/0720 and now reads as a three storey building from Kingsway.*

*Therefore, in the current circumstances and in the absence of any significant adverse amenity impacts on surrounding properties, strict compliance with the control would in fact be counter-productive in terms of achieving the objectives of the control, the zone and Council's LEP and DCP. Accordingly, it is considered that strict compliance with the development standard is unreasonable and unnecessary and this Objection is well founded on the basis that the objectives of the standard are achieved notwithstanding non-compliance."*

Analysis:

The subject site is located one property west of the north-eastern perimeter of the Miranda Commercial Centre. This portion of the Miranda Commercial Centre fronting Kingsway between Kiora Road and Clubb Crescent has a height limit of three (3) storeys. Some other portions of the Miranda Commercial Centre have height limits in the order of seven (7) storeys.

The following extract from the height and density maps contained within SSLEP 2006 shows the height limits applying to the surrounding sites. As this site is not identified it has the default height limit of three (3) storeys.



Extract from Height and Density Map contained within SSLEP 2006.

The proposal is for a building consisting of three (3) commercial levels with car parking below. Given the applicant's desire for a flat floor plate and fall of the site, the car park is significantly elevated out of the ground at the eastern end of the site. The result is a building measuring four (4) storeys in height.

As a background, Council is in the preliminary stage of reviewing height and other controls for the Shire's urban centres, including this portion of the Miranda Centre. It is not anticipated that any changes to Council's current planning controls will be publicly exhibited before November 2011.

The applicant has placed the south-western corner of the development at grade. Due to the fall of the land and the applicant's desire to have a single floor plate at the ground level the development becomes elevated by 4.57m at the north-eastern corner.

On the dominant Kingsway frontage the building would be elevated 2.42m in the south-eastern corner. Technical compliance with Council's height standard could be achieved by splitting the floor plate at the lower level. This would result in the ground level having high floor to ceiling heights. However, as there is no limit on the floor to ceiling height, technical compliance could be achieved without an outward change to the building.

As the applicant has a desire for a level floor plate they have chosen to instead treat the building façade to improve its relationship with the street. The development presents to Kingsway, its dominant frontage, as a three (3) storey building. The treatment of the elevated portion of the car park and the stepping of the awning entrenches this perception.

Following is an assessment of the submitted SEPP 1 Objection in accordance with the set of five (5) questions established by Justice Lloyd in *Winten Property Group Limited v North Sydney Council* (2001) NSW LEC 46. These questions are now an accepted convention for assessing a SEPP 1 Objection.

(a) Is the Requirement a Development Standard?

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

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

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

- “(a) to ensure the scale of buildings:
  - (i) is consistent with the desired scale and character of the street and locality in which the buildings are located, and*
  - (ii) complements any natural landscape setting of the buildings,**
- (b) to allow reasonable daylight access to all buildings and the public domain,*
- (c) to minimise the impacts of new buildings on adjoining or nearby properties from loss of views, loss of privacy, overshadowing or visual intrusion,*

- (d) *to ensure that the visual impact of buildings is minimised when viewed from adjoining properties, the street, waterways and public reserves,*
- (e) *to ensure, where possible, that the height of non-residential buildings in residential zones is compatible with the scale of residential buildings on land in those zones.”*

The character of the Miranda Centre is quite varied. There are a variety of land uses and building heights in close proximity to the subject site. The proposed development will be larger than the modest two (2) storey commercial buildings currently located either side of the subject site. However in the context of the broader commercial centre the scale is considered to be acceptable.

The orientation of the subject site results in much of the shadow falling on the road reserve. The adjoining commercial buildings will have increased overshadowing, however given that their frontages are orientated to the south this is considered to be acceptable.

The proposal results in an acceptable relationship between itself and its neighbours in terms of loss of views, loss of privacy, overshadowing or visual intrusion. The development has respected the residential property located to the north by setting back from its northern boundary and articulating the facade.

(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.”*

Yes. Granting of development consent would be consistent with the aims of SEPP 1 and the objects of the Act. A variation to Council’s height development standard is considered to be reasonable in the circumstances of the case.

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

As discussed above the applicant is seeking a development with a single floor plate. Modifications could be made to the ground level of the development to

ensure technical compliance with the proposal without changing the outward appearance of the development.

Having regard to the nature of the breach and the character of the surrounding development, compliance with the standard is considered to be unreasonable and unnecessary in the circumstance of this case.

(e) Is the Objection Well Founded?

Yes. The SEPP 1 Objection does provide evidence to demonstrate that compliance with the development standard would be unreasonable or unnecessary in the circumstances of the case.

SEPP 1 Conclusion:

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

- (i) The argument within the SEPP 1 Objection that compliance with the development standard is unreasonable and unnecessary is well founded; and
- (ii) 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.

10.2 Density

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

The development proposes a floor space ratio of 2.08:1, which exceeds the maximum allowed by approximately 4%. To support this variation the applicant has lodged an Objection pursuant to the requirements of SEPP 1. The full submission is in Appendix E of this report and the most relevant section is reproduced below:

*“In the circumstances of the case, it is considered unnecessary to reduce car parking to achieve strict compliance with the FSR control. The additional car parking will not generate additional vehicle trips to the site and will in fact reduce potential impacts on surrounding development through lessening demand for on-street parking. The proposal could be amended to strictly comply through conversion of parking spaces to storage space which is excluded from being included as GFA, however this approach is considered to be counter-productive in meeting the objectives of the control ie. additional car parking will have greater benefit than additional storage space.*

*Whilst from a town planning point of view, reduced car parking in town centres with good public transport access should be encouraged, Council officers have pointed to parking supply issues in Miranda. A nexus can be made between economic objectives and car parking supply. That is, future uses within*

*the proposed building and surrounding businesses will be benefited by a convenient and generous supply of car parking. Strict compliance with the FSR control would hinder the ability to provide this benefit, conflicting with the objects of the Act.”*

Analysis:

The proposed development exceeds the maximum FSR because it provides car parking in excess of Council's requirements. The proposal provides eleven (11) car parking spaces in excess of the requirements. As stated above, the proposal could easily be modified and the excess car parking spaces converted into storage to ensure compliance. This would result in no outward change to the building.

Given the location of the development on the fringe of the Miranda Centre, the additional car parking spaces are considered to have greater community benefit than storage.

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

(a) Is the Requirement a Development Standard?

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

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

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

*“The objectives of this clause are as follows:*

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

The proposal could be modified to comply without any outward change to the building and essentially it is a technical non-compliance.

The development is of an appropriate bulk and scale in the context of the locality. The breach does not result in any adverse impact on the amenity of adjoining residential properties. The additional parking is however likely to reduce the demand for the 90 degree visitor parking in Clubb Lane, which belongs to the adjoining residential flat building.



(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.”*

Yes. Granting of development consent would be consistent with the aims of SEPP 1 and the objects of the Act. A variation to Council’s density development standard is considered to be reasonable in the circumstances of the case.

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

The proposed development could be modified to comply without there being any outward change to the building. In the circumstances of this application a compliant development would result in reduced car parking and increased storage areas within the basement. Given the location of the site on the fringe of the Miranda Centre the additional car parking is considered to be appropriate as it will assist in reducing the demand for on street car parking and the potential for overflow car parking into the nearby residential streets.

(e) Is the Objection Well Founded?

Yes. The SEPP 1 Objection does provide evidence to demonstrate that compliance with the development standard would be unreasonable or unnecessary in the circumstances of the case.

SEPP 1 Conclusion:

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

- (i) The argument within the SEPP 1 Objection that compliance with the development standard is unreasonable and unnecessary is well founded; and
- (ii) The granting of consent to the development application would be consistent with the aims of SEPP 1 as set out in Clause 3 of the Act.

### 10.3 Loading

SSDCP 2006 requires all loading facilities to accommodate a heavy rigid vehicle. Council’s Development Engineer has advised that the proposed

development is able to accommodate a medium rigid vehicle and that this is appropriate for the scale of this development.

#### 10.4 Non-Compliance with SSDCP 2006 Street Setback Control

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

While the exact use of the site has not yet been decided, the building has been designed as a commercial building with a homogenous floor plate. The external expression of the building reflects the likely internal use of the building.

The lack of setback above ground level is also consistent with surrounding development and is considered to be acceptable.

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

As detailed in the compliance table above, the proposed development fails to comply with all relevant streetscape controls within SSDCP 2006. The Kingsway frontage of this site is identified as requiring an active frontage.

This site is on the north-eastern edge of the Miranda Commercial Centre and as this portion of the centre is not heavily trafficked by foot, retail type uses have traditionally struggled at this end of the Kingsway. The current proposal does not include an application to use the site. However, the design of the building, with its elevation above street level, is not well suited to traditional retail uses which rely on passing trade.

Unlike the previous proposal that the JRPP considered for this site, the current scheme makes a more concerted effort to engage the street. The current scheme attempts to reconcile the desires of the applicant for a single floor plate, the requirements of the Council to activate the street and the reality, that given its location on the edge of the centre, the development is unlikely to be occupied by a traditional retail user.

While the proposal does not technically comply with the controls within the DCP, the outcome is considered to be acceptable. The large expanses of blank wall created by the elevated basement car parking have been addressed by dropping the glazing to street level. This creates a commercial look to the development. While not exactly what was envisaged by the DCP, this type of frontage is considered appropriate in this location.

The extension of the awning across the frontage has also increased the perceived connectivity of the development with the street.

#### 10.6 Relationship with Neighbouring Residential Properties

It is important to recognise that Clubb Lane is the interface between the commercial and residential zones. Recognition of this relationship is required by both the applicant and the neighbouring residential properties.

The orientation of the site results in no impact on neighbouring/nearby residential flat buildings in terms of overshadowing.

In terms of the visual relationship between the proposed development and the residential property to the north, this is improved from the previous proposal. The reduced height, increased setback at the upper levels and modifications to the facade all contribute positively to the streetscape.

The application does not include any proposed use of the site. As such, a condition has been included in the recommended conditions, should the JRPP decide to support the proposal, that a separate development application is required for the initial use of the building. Upon the submission of future applications for usage, it will be possible to assess possible amenity impacts on adjoining or nearby properties. A traditional office use is unlikely to result in any significant impacts on adjoining properties.

#### 10.7 Remediation of Land

The previous development applications have considered potential contamination and it was considered that conditions of consent were adequate to address the issue of contamination. The extent of excavation proposed provides a level of comfort that if any contamination is located on the site, it will effectively be removed as part of the proposed works.

Historically this site has been occupied by a service station. It is unclear if the underground storage tanks (UST) have been removed. Given the uncertainty surrounding the presence of UST's on the site, it would be necessary to undertake an assessment of the contamination status of the site. A suitable condition has been included in the draft conditions requiring the removal and disposal of any UST's (if identified on the site) in accordance with the Protection of the Environment Operations (Underground Petroleum Storage Systems) Regulation 2008.

From a contamination perspective, a site Audit statement would also be required in order to ensure that the site is suitable for the proposed use.

Suitable conditions of development consent have been included in the draft conditions of development consent should the JRPP decide the application is worthy of support.

#### 10.8 Tree Removal

The proposed development will result in an adverse impact on the three (3) trees located on the neighbouring property. These trees are a *Liquidamber styraciflua* (Liquidamber); a *Jacaranda mimosifolia* (Jacaranda) and *Cinnamomum camphora* (Camphor – Laurel).

The previous approval for the site (DA07/0571) proposed a basement car park, as does the current application. Implementation of this approval and the construction of a basement car park are likely to destabilise these trees and it would be more appropriate to remove them prior to the commencement of excavation work.

The Liquidamber and the Camphor – Laurel are not protected species under SSLEP 2006 and can be removed without Council approval. Approval would be required to remove the Jacaranda.

As the trees are on the neighbouring property, owner's consent is required from the neighbouring property owner to remove the trees. It will still be necessary for the approval to be sought from Council for the removal of the Jacaranda tree as development on the adjoining site is not covered by this application.

The applicant's planning consultant has indicated to Council that the neighbour does not object to the trees being removed.

Given the previous approval on the site and the location of the Jacaranda, its removal and replacement with a more suitable species and location is not opposed.

## **11.0 SECTION 94 CONTRIBUTIONS**

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

This contribution is based upon the proposed cost of the development and has been calculated at 1% of \$10,957,650 (the estimated cost of development identified on the development application form). Therefore, Section 94A Levy contributions for the proposed development would be \$109,576.50 should the JRPP decide the application is worthy of support.

## **12.0 DECLARATION OF AFFILIATION**

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

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

### **13.0 CONCLUSION**

The proposed development is for the demolition of existing structures and the construction of a three (3) level commercial building with basement car parking. Due to the elevated nature of the basement car park, the building measures four (4) storeys in height.

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

The application was placed on public exhibition and one (1) late submission was received raising concerns with the proposal in terms of traffic, parking and potential amenity impacts.

The proposed development involves technical non-compliances to the SSLEP 2006 development standards for height and density and non-compliances to SSDCP 2006 in terms of active frontages and street setbacks. The proposal provides car parking in excess of that required by SSDCP 2006 and modifications to the facade have addressed the streetscape concerns of the previous proposal. Overall the proposal has merit and is likely to positively contribute to this portion of the commercial centre.

The application has been assessed having regard to the Heads of Consideration under Section 79C(1) of the Environmental Planning and Assessment Act 1979, the provisions of Sutherland Shire Local Environmental Plan 2006, Sutherland Shire Development Control Plans 2006 and all relevant Council Codes and Policies. Following detailed assessment it is considered that Development Application No. 10/1292 should 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 height development standard under Clause 33(8)(b)(ii) 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 four (4) storeys in respect to this development application.
- 14.2 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 density development standard under Clause 35(11)(b) 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 2.08:1 in respect to this development application.

- 14.3 That Development Application No. 10/1292 for the Demolition of All Existing Structures and the Construction of a Three (3) Level Commercial Building With Three (3) Levels of Basement Car Parking at Lot 1 DP 21256, Lot 18 DP 8461 and Lot 19 DP 8461 known as 531-533 Kingsway, Miranda be approved, subject to the following draft conditions of consent, including a deferred commencement condition requiring the submission of documentation that clearly shows the extent of finishes to the exterior of the building.

## **15.0 DRAFT CONDITIONS OF CONSENT**

### **PART 1 - DEFERRED COMMENCEMENT CONDITIONS**

To enable the submission of further information to clarify or resolve specific aspects of the proposed development this Development Consent is issued as a "Deferred Commencement" Consent under the provisions of Section 80(3) of the Environmental Planning and Assessment Act as amended. The Consent shall not operate until the applicant satisfies the Council as to the following matters.

The required information shall be submitted within six (6) months of the date of issue of this development consent.

Note- Under the provisions of Clause 95A(5) of the Environmental Planning and Assessment Regulation 2000 upon submission of the required information, Council shall advise in writing whether or not it is satisfied as to the relevant matters.

1. External Finishes/Materials

Documentation that clearly shows the extent of finishes to the exterior of the building.

### **PART 2 - CONDITIONS OF CONSENT**

Upon the satisfactory resolution of those matters listed above in Part 1 – Deferred Commencement Conditions and the receipt of written verification of this from Council, this Consent shall operate subject to the following 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.

## 2. Approved Plans and Documents

The development shall be implemented substantially in accordance with the details and specifications set out on the architectural plans drawing No. 1015 DA07A; DA08A; DA09B; DA10; DA11; DA12; DA13; DA14A; DA15A; DA16A; DA17; prepared by Kennedy Associates Architects; landscape plan No. 10-2389 LO1, prepared by Zenith Landscape Designs, concept stormwater drainage design drawings No.10088-C01-A sheets 1, 2 & 3 prepared by CPM Engineering, the construction & site management plan drawing No.10088-C01-A sheet 4 prepared by CPM Engineering 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:**

The following works or activities shall not be carried out within the Road Reserve associated with this development without approval under the Roads 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;
- i) Constructing a vehicular crossing or footpath;
- j) Installation of rock anchors.

### **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, and
- b) Notification of the commencement of building and/or subdivision works with a minimum of 2 days notice of such commencement.

**Note 5:**

This development does not approve any boundary fencing.

**3. 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**

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

**4. Dilapidation Report**

It is the applicant/owner's responsibility to notify Council of any existing damage to the public area and buildings in close proximity of the development site, through the submission of a current dilapidation report supported by photographs. This information must be submitted at least seven (7) days prior to the commencement of any works, to Sutherland Shire Council (for retention on record) and to the Roads & Traffic Authority (for retention on record) and the Owners of No.9 to 13 Clubb Crescent, No.44 to 50 Kiora Road, No.525 Kingsway and No.535 Kingsway.

Note: RTA contact is - Project Engineer of External Works at RTA Office Level 6/27 Argyle Street Parramatta NSW 2150.

**5. Future use of the Development**

This development consent does not grant approval for the use of the development. To enable an assessment of the potential impacts of the development a separate development application shall be lodged with Council for "use" of the site prior to the occupation of the development.

**6. Validation of Site and Site Audit Statement**

Council records indicate the potential presence of several underground storage tanks on the site. A site contamination assessment shall be undertaken in accordance with the NSW Department of Environment, Climate Change and Water Guidelines to determine the number and location of tanks on the site and the nature and extent of any site contamination, including groundwater. Based on the results of this assessment a Remedial Action Plan shall be developed and implemented to remediate the site and surrounds as necessary, to



render them suitable for the proposed use.

A Statutory Site Audit Statement, prepared by a DECCW approved site auditor, indicating that the site is suitable for the proposed use, is required to be submitted to Council immediately following site validation, prior to issue of the Construction Certificate and prior to further excavation for the basement

7. Soils to be used on site

Any soil to be reused on site must be tested for contaminants by a suitably qualified consultant. Soils imported onto the subject site for the purpose of backfilling excavation, must be of a standard that is suitable for the receiving site.

Documentation indicating the suitability of these soils must be included in the validation reporting for the development.

8. Removal and disposal of storage tanks

Storage tanks removed from the site must be removed and disposed of in accordance with the Protection of the Environment Operations (Underground Petroleum Storage Systems) Regulation 2008 and Australian Standard 4897-2008: The design, installation and operation of underground petroleum storage systems.

Documentation demonstrating compliance with the above documents must be included in the validation reporting as part of the proposal.

### **Bonds and Contributions**

The following security bonds and contributions have been levied in relation to the proposed development.

9. 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 \$20,000.

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.

10. 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.

11. Property & Road Reserve Security Bond - Demolition & Bulk Earthworks

At least two days prior to the commencement of any works the applicant shall provide security to Council to the value of \$50,000 against damage caused to any Council property or adjoining land in private ownership as a consequence of excavation. The security may be provided by way of a deposit with the Council or a guarantee satisfactory to the Council.

Should any public property or neighbouring buildings sustain damage during the course of and as a result of the excavation works any necessary repair or stabilization of the damage may be deducted from the security.

This bond will be released upon satisfactory completion of the demolition, excavation and construction of the basement levels sufficient to ensure stability of the surrounding grounds and removal of any shoring. Such request may be submitted to Council on the '*Bond Release Request Form*' signed by the owner or any person entitled to act on the consent, together with Certification from an Accredited Certifier or a Chartered Structural Engineer, to the effect that the aforementioned works have been completed to their satisfaction.

## **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.

12. S.94A - Contribution for Miranda Centre Core Commercial Land S94A Levy Plan

Pursuant to s.80A(1) of the Environmental Planning and Assessment Act 1979, and Council's Section 94A Contribution Plan for Miranda Centre Core Commercial Land, a contribution of \$109,576.50 shall be paid to Sutherland Shire Council towards the cost of works contained in the contribution plan. The amount to be paid is to be adjusted at the time of the actual payment, in accordance with the provisions of the Section 94A Development Contributions Plan. The amount payable of monetary s.94 contributions will be indexed on 1 July each year in accordance with the Contribution Plan and the following formula:

$$\text{Current outstanding Contribution} \times \text{current IPD} \div \text{previous year's IPD}$$

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.

## **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.

### **Design Conditions**

These design conditions are imposed to ensure the development, when constructed, meets appropriate standards for public safety and convenience.

13. Design Changes Required

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

- a) A reinforced concrete pedestrian footpath pavement shall be created adjacent to the full length of the northern boundary of the development site, except in the area of the vehicular access-ways. The footpath pavement shall extend from the rear edge of the realigned and reconstructed street kerb in Clubb Lane to the property boundary.
- b) All pedestrian and vehicular access-ways adjacent to the northern and southern property boundary lines shall match Council's issued property alignment levels.
- c) The awning on the southern elevation of the building, within the air space of the Road Reserve, shall be reduced in width to 2m (cite;

14. Design and Construction of Road Frontage Works

Council has determined that the proposed development generates a need for the following frontage works to be undertaken by the Applicant in the Road Reserve in conjunction with the development. The design drawing shall generally comply with the approved architectural design drawings and address the following;

- a) Establish the property alignment levels,
- b) Construct vehicular crossings and associated laybacks where required,
- c) Remove redundant crossings and associated laybacks,
- d) Reconstruct the kerb and gutter along the southern side of Clubb Lane, to an alignment 5m off and parallel with the existing gutter on the northern side of Clubb Lane, measured kerb face to kerb face,
- e) Construct a full width decorative concrete footpath pavement, along the Kingsway Road frontage,
- f) Provide transition works for the footpath pavement and kerb and gutter to eliminate any 'trip' hazards and create a gentle change of grades,
- g) Repair and or construct the Road carriageway adjacent to all new gutter works, where required,
- h) Adjust public services infrastructure where required,
- i) Adjust street parking signs where required,
- j) Modify the existing street drainage pit in Clubb Lane adjacent to the loading dock to allow vehicular access to the loading dock and construct a new street drainage pit with an extended kerb inlet in Clubb Lane, just south of the proposed vehicular crossing,
- k) A reinforced concrete pedestrian footpath pavement shall be constructed adjacent to the full length of the northern boundary of the development site, except in the area of the vehicular access-ways. The footpath pavement shall extend from the rear edge of the realigned and reconstructed street kerb to the property boundary,
- l) The existing concrete median island in Kiora Road shall be extended approximately 50m north to restrict motorists to a left turn into Clubb Lane from Kiora Road and restrict motorists to a left turn into Kiora Road from Clubb Lane. Signage must be erected where required to cover the aforementioned restrictive movements, and
- m) Install Street trees along the Kingsway frontage.

The creation of the design shall be undertaken by Sutherland Shire Council's Engineering Division. An application under the Roads Act shall be submitted and alignment levels shall be issued by Council prior to the issue of a Construction Certificate. Approval under the Roads Act cannot be granted by a Principal Certifying Authority or by a Private Certifier.

Note 1: Council's Engineering Division charges a fee for the creation of the road frontage works design. A quotation may be obtained by

contacting the Sutherland Shire Council's Assets Manager, on telephone 97100480.

15. Construction and Site Management Plan

A Construction and Site Management Plan (C&SMP) shall be prepared, that satisfies the objectives of Section 4 Chapter 8 of Council's document SSCDCP2006 and generally accord with the approved concept construction and site management plan drawings, except where modified by the following;

- a) 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 building activities, movement of heavy equipment, plant and materials delivery, or static loads from cranes, concrete pumps and the like,
- b) The proposed method of loading and unloading excavation machines and building materials,
- c) All existing traffic movements in Clubb Lane including access to angle parking on the northern side of Clubb Lane shall be maintained at all times unless otherwise approved by Council's Engineering Division.
- d) The proposed areas within the site to be used for the storage of excavated material, construction materials and waste containers during the construction period,
- e) How it is proposed to ensure that soil / excavated material is not transported on wheels or tracks of vehicles or plant and deposited on surrounding roadways,
- f) Construction vehicle access to the site from the Kingsway is not permitted,
- g) Delivery of building materials from Clubb Lane is not permitted by articulated vehicle access,
- h) To minimise vibration damage to buildings in close proximity, where a hydraulic hammer is to be used a report shall be prepared by a qualified geotechnical engineer detailing the maximum size of hammer,
- i) A Geotechnical Report that addresses all matters relevant to the maintenance of site stability during the construction phase shall be prepared by a suitably qualified geotechnical engineer. The Report must address the following;
  - i) Preserve and protect the neighbouring buildings and structures within Road,
  - ii) Any required underpinning and support the neighbouring buildings and structures, and
  - iii) Method of Shoring and anchoring.
  - iv) Detail how the carriageway will be monitored for settlement.
- j) A copy of the Geotechnical Report must be provided to the Owners of No.9 to 13 Clubb Crescent, No.44 to 50 Kiora Road, No.525 Kingsway and No.535 Kingsway and Sutherland Shire Council (for retention on record) seven (7) days prior to any excavation. The owners of the adjoining properties and the Road are not liable for

any part of the cost of work carried out for the purposes of this clause, whether carried out on the property of land being excavated or on the adjoining property.

The C&SMP must be submitted to the PCA seven (7) days prior to commencement of any works upon or the subject properties or associated works within the Road Reserve.

Certification from an Accredited Certifier or a Chartered Civil Engineer or a Chartered Structural Engineering, to the effect that the hoardings were designed in accordance with Work Cover's Code of Practice "Overhead Protective Structures", Council's Hoarding Roads Act Consent and to their satisfaction, shall accompany the C&SMP.

Certification/Endorsement/Concurrence from the Supervising Geotechnical Engineer (Structures) of the Roads & Traffic Authority, to the effect that the construction and site management plan was prepared in accordance with aforementioned sub-condition j) and (with regards to sub-condition j) only) to their satisfaction, shall accompany the C&SMP.

Note 1: RTA contact for all matters pertinent to the Geotechnical Report is – Supervising Geotechnical Engineer (Structures) at RTA Office Level 2C/99 Philip Street Parramatta NSW 2150. (Bo Xiao 88370763)

Note 2: The applicant/developer shall meet the full cost of the assessment of the sub-condition j) of condition "Construction and Site management Plan", by the RTA.

Note 3: 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.

#### 16. Access

To ensure appropriate levels of access to all parts of the building the development in its entirety shall comply with the requirements of AS1428.1 2009. The plans submitted with the CC shall contain details of internal dimensions, fixtures and fit out of the development to demonstrate compliance. Further tactile ground surface indicators shall be shown on the plans in accordance with the requirements of AS1428.4. Certification, from a suitably qualified person, that the proposal complies with these Australian Standards shall accompany the application for a Construction Certificate.

#### **Public Utility Authorities Requirements**

These conditions are imposed to avoid problems in servicing the development and reduce adverse impacts on the lot layout or the design of buildings or associated facilities.

17. Public Utilities - Subdivision

Arrangements shall be made with Energy Australia, Telstra, cable television network providers and other public utilities in relation to:

- a) The necessity for the provision of underground low voltage electricity conduits and cable television conduits within the footway area of Clubb Lane and the Kingsway.
- b) The method of connection of the property to the Energy Australia supply, ie either underground connection or by overhead supply.
- c) The need for the provision of a kiosk-type substation.

18. Sydney Water - Referral Requirements

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

Please refer to the web site [www.sydneywater.com.au](http://www.sydneywater.com.au) for:

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

19. Public Utility Authorities

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

20. Nomination of Engineering Works Supervisor

Prior to the commencement of any works the applicant shall nominate an appropriately qualified Accredited Certifier in civil engineering works or a Charter Civil Engineer to supervise all works within the Road Reserve, construction of the stormwater drainage system, bulk excavation, construction of the basement pump-out system, construction of the rainwater harvesting and reuse systems. The Engineer shall:

- a) Provided an acceptance in writing to supervise sufficient of the aforementioned works to ensure compliance with the relevant conditions of Development Consent and pertinent Roads Act Consents, and
- b) On completion of the works certify that the aforementioned works have been constructed in compliance with the approved plans, specifications and conditions of Consents.

21. Stormwater Drainage & Rainwater Harvesting System

Plans indicating all engineering details relevant to the site regarding collection and disposal of stormwater from the site and building shall form part of the Construction Certificate. The stormwater drainage system shall be designed and constructed in accordance with AS/NZS3500.3:2003 and the approved concept stormwater drainage design drawing, except where amended by the following;

- a) Stormwater, seepage water and dehumidification water from the development shall discharge directly to a street double grated gully pit within the Road Reserve of Clubb Lane,
- b) Drainage is to be by gravity (not a charged system).
- c) The existing 150mm diameter private pipeline connecting to Council's stormwater drainage pipeline shall be disconnected, unless otherwise determined by Council.
- d) For design purposes it is to be assumed that the Hydraulic Grade Line of the public stormwater drainage system for a 1 in 10 year storm event is equal to the obvert of Council's stormwater drainage pipeline in Clubb Lane and the 1 in 20 year storm event is equal to the invert of the street gutter in Clubb Lane,
- e) The rainwater harvesting system shall comply with the following;
  - i) At least 100% of roof area shall be capture and directed to the rainwater tank,
  - ii) Minimum total tank capacity 42,000 litres, with the overflow connected to the stormwater drainage system,
  - iii) Harvested rainwater shall be used for the flushing of all toilets, irrigation, to wash garbage bins and the garbage room enclosure, and
  - iv) All landscapes areas shall be provided with an efficient automatic irrigation system to enable effective landscape maintenance.

Certification from an Accredited Certifier for stormwater design or a Chartered Civil Engineer, to the effect that the stormwater drainage, rainwater reuse and water harvesting systems have been prepared having regard to the conditions of development consent, shall accompany the application for the Construction Certificate.

Certification from an Accredited Certifier for stormwater design or a Chartered Civil Engineer, to the effect that the basement pump-out system has been prepared having regard to Sections 5 and 9 and Appendix L of AS/NZS3500.3:2003, shall accompany the application for the Construction Certificate.

22. Vehicular Access-way, Parking, Parking Layout and Loading Dock

The vehicular access-way and basement car park shall be designed and constructed to comply with AS2890.1:2004 and the approved architectural design drawings, except where modified by the following;



- a) Align with Council's issued vehicular crossing levels,
- b) The vertical alignment of the vehicular access-way shall ensure that a B99 vehicle will not scrape the surface of the crossing, driveway, aisles or parking bays,
- c) No parking bay shall be caged or enclosed,
- d) Three (3) "disable" spaces shall complying with AS2890.6:2009. At or near the entrance to the car park signage must be provided to assist motorist with the location of the three (3) "disable" car parking bays,
- e) The minimum headroom in the basement parking area shall be 2.2 metres measured from the parking floor to the underside of any beam, ventilation duct or service conduit, or to the underside of any door including a security door and fittings when those doors are in an open position,
- f) The minimum headroom for the driveway ramp shall be 2.2 metres, in compliance with Figure 5.3, measured from the surface of the driveway ramp to the underside of any beam, ventilation duct or service conduit, or to the underside of any door including a security door and fittings when those doors are in an open position,
- g) Provide a maximum driveway grade of 5% for the boundary to the carpark entry shutter/door,
- h) Suitable signage shall be erected within the site at the carpark exit so as to advise drivers that vehicles must turn left only and that there is no vehicular access to Clubb Crescent.
- i) The ceiling of the basement car park shall be painted white, and
- j) The loading dock shall be signed and line marked on its eastern side to ensure delivery vehicles do not obstruct motorist access-way to the basement car park.

Note: Be advised that item b) is based on Council's minimum standard of a B99 vehicle (Holden Statesman Sedan). The recommended condition will not necessarily protect exotic or altered cars from "scraping" the vehicular access-way.

## 23. Garbage, Recycling and Green-waste Storage Area

To ensure proper storage of waste from the premises the garbage and recycling storage room shall be designed with a smooth impervious floor 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.

## 24. 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.

Note: To ensure that adequate provision is made for the removal of commercial kitchen exhaust, any food shop requiring mechanical exhaust ventilation shall be capable of discharging to the roof level via a vertical riser in accordance with AS 1668.2 and the Building Code of Australia.

25. 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.

26. Submission of Fire Safety Schedule

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

## **PRE-COMMENCEMENT CONDITIONS**

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

27. Pre-Commencement - Notification Requirements

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

- a) A Construction Certificate / Subdivision 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.

28. Pre-commencement Site Inspection - Road Frontage Works

The Principal Certifying Authority and / or the Supervising Engineer shall undertake a site inspection with Council staff prior to commencement of the road frontage works. The purpose of this inspection is to enable Council's Civil Assets Engineer to clarify Council's requirements, as owner of the roadway, in relation to the carrying out of the works.

Contact shall be made with Council's Civil Assets Branch on 97100357 to arrange for the inspection.

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

29. Signs to be Erected on Building and Demolition Sites

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

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

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

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

the work has been completed.

## **CONSTRUCTION CONDITIONS**

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

### **30. 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.

### **31. 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.

### **32. 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.

### **33. Excavations and Backfilling**

- a) All earthworks including excavations and backfilling associated with the erection or demolition of a building shall be executed safely and in accordance with appropriate professional standards.
- b) All excavations associated with the erection or demolition of a building must be properly guarded and protected to prevent them

- from being dangerous to life or property.
- c) All canopy, trunk and root system of all trees to be retained on site and neighbouring properties shall be protected from damage during excavation.

34. Noise Control during Construction and Demolition

To minimise the impact on the surrounding environment:

- a) For construction and demolition periods of four (4) weeks or less, the LAeq sound pressure level measured over a period of 15 minutes when the construction or demolition site is in operation, shall not exceed the ambient background level (LA90 15min) by more than 20dB(A) when measured at the nearest affected premises.
- b) For construction and demolition periods greater than four (4) weeks, the LAeq sound pressure level measured over a period of 15 minutes when the construction or demolition site is in operation, shall not exceed the ambient background level (LA90 15min) by more than 10dB(A) when measured at the nearest affected premises.

35. 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.

36. 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.

## **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.

### **37. 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](http://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.*

### **38. Works-As-Executed Drawings (W.A.E.D) and Certification of Works**

- a) The Supervising Engineer shall certify that the stormwater drainage works, rainwater harvesting facility and rainwater reuse system were constructed to their satisfaction and in accordance with the Development Consent. Prior to the occupation or use of the building the Applicant/Owner shall submit to Council a copy of the aforementioned letter of certification.
- b) The Supervising Engineer shall certify that the basement pump-out system was constructed in accordance with the Development Consent and to their satisfaction. Prior to the occupation or use of the building the Applicant/Owner shall submit to Council a copy of the aforementioned letter of certification.
- c) The Supervising Engineer shall certify that the frontage works were constructed in accordance with the Development Consent and associated Roads Act Consent and to their satisfaction. Prior to the occupation or use of the building the Applicant/Owner shall submit to Council a copy of the aforementioned letter of certification.

### **39. Mechanical or Natural Ventilation**

Certification from a suitably qualified Mechanical Engineer certifying that all work associated with the installation of the mechanical or natural

ventilation systems has been carried out in accordance with the conditions of the development consent.

40. General Compliance

Certification from the Principal Certifying Authority certifying that all works have been completed and comply with the approved plans, conditions and specifications.

41. 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.

**Subdivision Plan Requirements**

The following conditions have been imposed in relation to the preparation and release of the Linen Plans of Subdivision.

42. Endorsement of Linen Plan of Consolidation

To facilitate the issue of the Plan of Subdivision for the consolidation of Lot 18 and Lot 19 in Deposited Plan No.8461 and Lot 1 in Deposited Plan No.21256 into one lot, following completion of the requirements detailed in the condition of this Development Consent and the issue of the Subdivision Certificate by Council, a film eight (8) paper copies of the Plan of Subdivision shall be submitted together with any necessary Instrument under the Conveyancing Act, where required for ultimate lodgement of the Land Titles Office.

**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.

43. Car Parking Areas

To ensure that the car parking area satisfies the demands of the development it shall be made available between the hours of 8am and 6pm Monday to Friday on an unrestricted basis for employees' and visitors' vehicles. Outside of these hours, visitors and employees shall be able to access the building via the intercom system.

44. Car Parking Allocation

Car-parking provided shall only be used in conjunction with the tenancies contained within the development.

Any future strata plan shall allocate the parking on the basis of a

minimum of one (1) space per 30m<sup>2</sup> of commercial floor space.

45. 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. Loading and unloading of vehicles from the roadway is not permitted.

46. 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.

47. Noise Control - Plant & Equipment (General)

To minimise the impact of noise from the development, all sound producing plant, equipment, machinery, mechanical ventilation or refrigeration systems, shall be operated and maintained in such a manner so that the noise emitted does not exceed a LAeq sound pressure level of 5 dB 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.

48. Ventilation – Operation

To ensure that adequate ventilation within the building, all mechanical and / or natural ventilation systems shall be operated and maintained 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 - 2002.
- g) AS 3666.2 - 2002.
- h) AS 3666.3 - 2000.

49. Rainwater Harvesting and Reuse

The operation of all devices or appliances installed within the development approved by this consent as required by conditions pertinent to rainwater harvesting and rainwater reuse shall be maintained in good operating order at all times.

50. Waste and Recycling Bins

All waste bins and recycling bins shall be stored wholly within the property boundaries in a designated waste storage area. The garbage



bin shall be designed to prevent the escape of any liquid leachate and shall be fitted with a lid to prevent the entry of vermin. The bins shall only be put out for collection in the evening prior to pick-up and returned to the storage area as soon as possible after pick-up.

51. Collection / Delivery Services

To minimise the noise impact of the development on the surrounding environment, the collection and delivery of goods and materials (including garbage and recycling waste) from the premises shall not take place between the hours of 8.00pm and 8.00am on any day.

**END OF CONDITIONS**