

<b>JRPP No:</b>	<b>2011SYE005</b>
<b>DA No:</b>	<b>DA10/1359</b>
<b>PROPOSED DEVELOPMENT:</b>	Residential Flat Building Development - Demolition of Five (5) Dwellings, Construction of a Residential Flat Building Consisting of 31 Units and Consolidation of Five (5) Allotments Lots 1 to 5 DP 14764 – 558-566 President Avenue, Sutherland
<b>APPLICANT:</b>	Cuzeno Pty Ltd
<b>REPORT BY:</b>	Christine Edney, Environmental Assessment Officer- Planner Sutherland Shire Council 9710 0838

## 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 \$11,834,403.

#### 1.2 Proposal

The application is for the demolition of five (5) dwellings, the construction of a residential flat building consisting of 31 units with one (1) level of basement parking for 38 vehicles and the consolidation of the five (5) allotments at the above property.

#### 1.3 The Site

The subject site is located on the southern side of President Avenue, immediately east of Merton Street.

#### 1.4 The Issues

The main issues identified are as follows:

- Landscaped Area
- Site Coverage
- Design
- Solar Access
- Parking

#### 1.5 Conclusion

Following detailed assessment of the proposed development and an evaluation of a SEPP 1 Objection regarding the landscaped area, the current application is not considered worthy of support and should be refused for the reasons outlined in this report.

## 2.0 DESCRIPTION OF PROPOSAL

An application has been received for the demolition of five (5) dwellings, the construction of a residential flat building consisting of 31 units with one (1) level of basement parking for 38 vehicles and the consolidation of five (5) allotments at the above property.

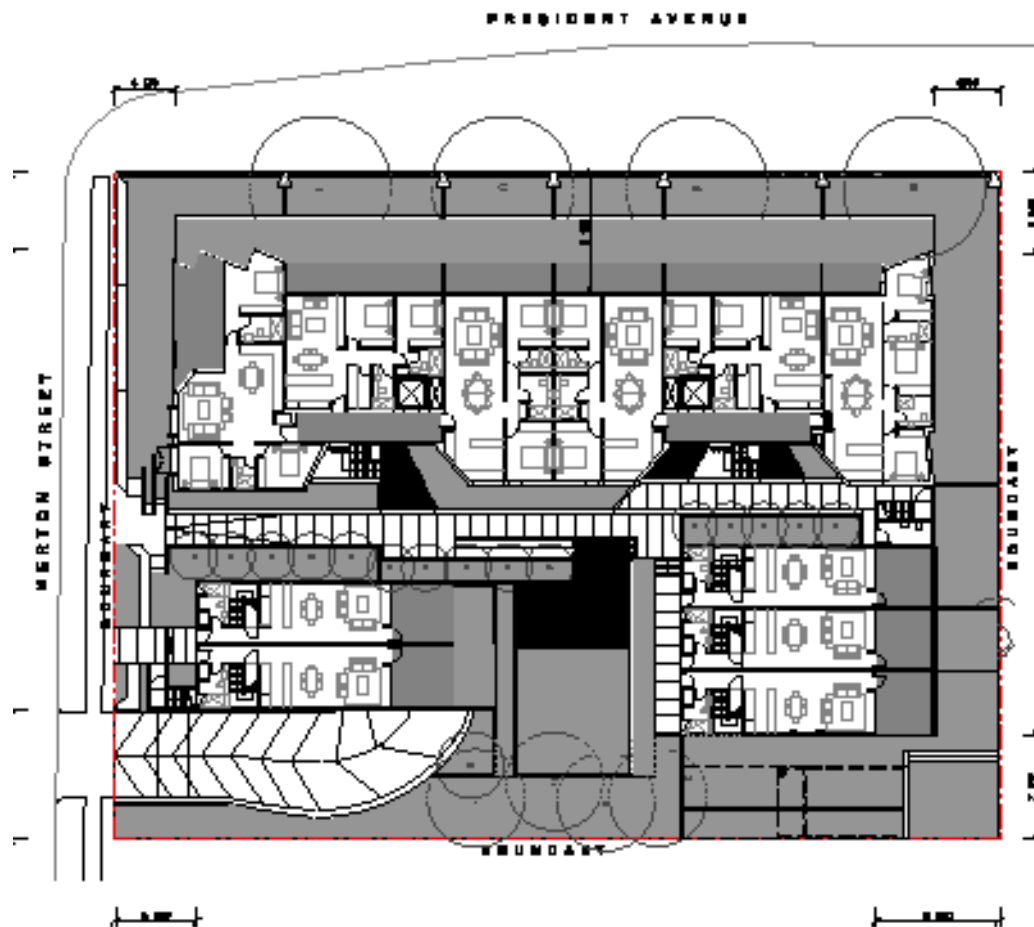
The proposal comprises three (3) buildings erected above an underground car parking level. The main (northern) building comprises four (4) levels above ground and contains 26 units (six (6) of which are adaptable). The other two (2) buildings are three (3) storeys above ground level and contain three (3) and two (2) 'townhouse' style residential flats respectively. The building containing three (3) units fronts Merton Street. The building containing two (2) units is located in the south-eastern corner of the site. The proposal has a total floor space of 2,787 m<sup>2</sup>.

The basement car parking level contains 38 parking spaces made up of 32 resident and six (6) visitor spaces. One (1) of the visitor spaces also acts as a car wash bay. Six (6) of the resident and one (1) of the visitor spaces are provided as accessible parking spaces. All vehicular access is from Merton Street. Bicycle storage is provided at ground level under the stairways.

The proposal was amended by plans and additional information submitted to Council on 17 and 18 February 2011.

The main design changes shown on the amended plans were:

- (a) Changes to the northern (President Avenue) façade involving the removal of the full height vertical timber blades and replacement with a combination of more slender louvers and concrete balustrades with an opening above.
- (b) Replacement of part of the grassed central courtyard with an area of decking.
- (c) The addition of off form concrete panels to the southern face of the external stairs at the rear of the main building.
- (d) Reducing the gradient of the ramp to the car park from a maximum of 1 in 4 to a maximum of 1 in 5.
- (e) Showing the location of an intercom for the basement car park entry.
- (f) Addition of skylights to the roofs of the rear 'townhouse' style units.
- (g) Amendments to the landscaping of the site.
- (h) Addition of fences to the President Avenue and Merton Street boundaries of the site.



*Fig 1 Site Plan*

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

The subject site, comprising five (5) allotments, is located at the south-eastern corner of President Avenue and Merton Street and is known as Nos. 558 to 566 President Avenue, Sutherland. The site is currently occupied by five (5) single storey dwellings.

The development site is generally rectangular in shape. It has a frontage of 60.96 metres to President Avenue and a secondary frontage of 45.72 metres to Merton Street. The total area of the site is 2,787m<sup>2</sup>.

The site falls approximately four (4) metres from the corner of Merton Street and President Avenue to the rear (south-eastern) corner of the site and it is proposed that drainage will be provided by a drainage easement (through two (2) sites at the rear) which will drain to Belmont Street.

The streetscape in the immediate vicinity of the subject land is characterised by residential development to the east and south and schools to the north and west. Directly adjoining the site to the east is a single storey dwelling. To the south there is a complex of two (2) storey townhouses. The site is approximately 350 metres south-east of Sutherland Railway Station.

There are 22 existing trees on the site. One (1) of these trees (a Jacaranda) in the south-eastern corner of the site is proposed to be retained. The other trees are proposed to be removed.



*Fig 1 : Aerial Photo / Locality Diagram*

## 4.0 BACKGROUND

A history of the development proposal is as follows:

- Three (3) of the five (5) lots the subject of this application were the subject of a deferred commencement consent granted on 25 November 2004 for the erection of a part three (3), part four (4) storey residential flat building containing 16 units and basement parking (DA04/0700). That consent has lapsed. The deferred commencement condition related to a requirement for the creation of a drainage easement.
- The current application was submitted on 24 December 2010.
- The application was placed on exhibition, with the last date for public submissions being 2 February 2011. Three (3) submissions were received.
- Council officers wrote to the Applicant on 17 January 2011 and requested that the following additional matters be addressed:
  - Parking
  - Ramp gradients
  - Solar access
  - Drainage

- Architectural design
- The application was considered by Council's Architectural Review Advisory Panel (ARAP) on 20 January 2011. A copy of the ARAP report is attached as Appendix "A".
- An Information Session was held on 25 January 2011 and eight (8) people attended.
- The application was considered by Council's Submissions Review Panel on 4 February 2011.
- Additional information and amended plans were lodged on 17 and 18 February 2011.
- The Sydney East Joint Regional Planning Panel was briefed on the application on 10 March 2011.

No pre-application discussion or pre-application Architectural Review Advisory Panel (ARAP) meeting was held.

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

In relation to the Statement of Environmental Effects, plans and other documentation submitted with the application, the applicant has provided adequate information to enable an assessment of this application, including a SEPP No.1 Objection requesting a variation to the minimum landscaped area development standard.

## **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).

The owners and occupiers of one hundred and fifty two (152) adjoining or nearby properties were notified of the proposal and three (3) submissions were received as a result.

Submissions were received from the following properties:

<b>Address</b>	<b>Date of Letter/s</b>	<b>Issues</b>
554 and 556 President Ave Sutherland	2/2/2011	Issues 1, 2 and 3
548 President Ave Sutherland	31/1/2011	Issues 1, 2, 3, 6 and 7
550 President Ave Sutherland	27/1/2011	Issues 3, 4 and 5

The issues raised in these submissions are as follows:

### **6.1 Issue 1 – Parking (2 Submissions)**

The submissions questioned the adequacy of the proposed parking. One (1) submission suggested that the developer be given a dispensation from Section 94 open space contributions if the development provides extra parking.

Comment: Section 94 contributions cannot be reduced in return for increased parking provision. The matter of parking adequacy is addressed below in the “Assessment” section of this report.

#### 6.2 Issue 2 – Drainage (2 Submissions)

The submission was that the proposed drainage was inadequate.

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

#### 6.3 Issue 3 – Road Issues (3 Submissions)

Two (2) submissions opposed the closure of the ‘service road’ as closure of the ‘road’ would reduce available parking and create access difficulties for nearby properties. One (1) submission supported the closure as it would provide an opportunity for increased landscaping.

Comment: Council’s Infrastructure Planning Civil Assets Section has advised that if the proposal was to proceed that they would seek to have the ‘service road’ closed in front of 558-566 President Avenue and have the area landscaped. A turning head would be provided in front of No. 556 President Avenue, which would maintain the existing access to the objectors’ houses. However, they would have to egress to Belmont Street and the objectors have indicated that they have concerns regarding that egress point due to visibility and safety concerns.

#### 6.4 Issue 4 – Design Issues (1 Submission)

The submission raised design issues relating to the bulk of the President Avenue building, lack of sunlight to and location of the open space area.

Comment:

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

#### 6.5 Issue 5 – Side Setback (1 Submission)

The submission raised concerns that the 4.5 metre side setback from the eastern boundary would create a privacy problem and suggested that the setback should be six (6) metres.

Comment:

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

#### 6.6 Issue 6 – Mix of Flats and Townhouses (1 Submission)

The submission raised the issue that having units and townhouses together was unusual and asked if that mix was permissible

Comment:

Both residential flat buildings and townhouses are permissible in the zone. The dwellings nominated as ‘townhouses’ in this proposal comprise three (3) levels each and therefore do not fit the SSLEP 2006 definition of townhouse and are by definition, residential flat buildings.

#### **6.7 Issue 7 -Crime (1 Submission)**

The submission suggested that new residents to the area and in particular those who live in units, will commit crime.

Comment: This suggestion is unsubstantiated and not a relevant planning consideration.

#### **6.8 Issue 8 – Future Access to the Property to the East (1 Submission)**

This submission requests that an underground driveway be provided for access to the lots to the east to allow vehicular access if they are developed independently of the three (3) lots between them and Belmont Street.

Comment: SSDCP 2006 identifies that the three (3) lots immediately to the east are to be developed as part of an amalgamated site with the three (3) lots closer to Belmont Street. Accordingly, a development of only the three (3) lots adjoining this site would not be encouraged and there is no reason to provide an underground driveway through to those lots. Such a driveway would result in the loss of two (2) or more parking spaces in the basement car park of the proposed building and would also result in a reduction in the site's deep soil landscaped area.

### **7.0 STATUTORY CONSIDERATIONS**

The subject land is located within Zone 6 - Multiple Dwelling B pursuant to the provisions of Clause 10 in Sutherland Shire Local Environmental Plan 2006 (SSLEP 2006). The proposed development, being a residential flat building, is a permissible land use within the zone with development consent from Council.

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 Local Environmental Plan 2006 (SSLEP 2006)
- Sutherland Shire Development Control Plan 2006 (SSDCP 2006)
- Sutherland Shire Section 94 Plans – Sutherland Centre, Open Space and Community Facilities.

## 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)
<b>Sutherland Shire Local Environmental Plan 2006</b>			
Clause 34 – Height	Maximum 4 storeys	4 storeys	Yes
Clause 35- Floor Space Ratio	Maximum 1:1	1:1	Yes
Clause 36 – Landscaped Area	Minimum 40 %	38.3% (Applicant's calc) 35.6% (Council's calc)	No 4.25% (applicant) 11% (Council)
Clause 41 (5) - Site Area	Minimum 1,800 m <sup>2</sup>	2,787 m <sup>2</sup>	Yes
Clause 41 (5) - Site Width	Minimum 30 metres	60.96 metres	Yes
<b>Sutherland Shire Development Control Plan 2006</b>			
Front Setback	Minimum 5 metres	5.075 metres	Yes
Secondary Frontage Setback	Minimum 4 metres	4 metres	Yes
Side Setback	Minimum 4.5 metres	4.5 metres	Yes
Rear Setback	Minimum 4 metres	7.17 metres (wall of building) 1.2 m (car park ramp)	Yes  No (Refer report)
Parking -Car -Bicycle	Maximum 50 spaces Minimum 9 spaces	38 spaces 6 spaces	Yes (24% below maximum) No
Site Coverage	Maximum 40 %	40.1%(Applicant's calc) 59.41% (Council's calc)	No 0.25% 48.52 %
Adaptable Units	Minimum 6	6	Yes
Private Open Space	Minimum 12 m <sup>2</sup>	2 units 11 m <sup>2</sup> Remainder >12 m <sup>2</sup>	No



## 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 independent Architectural Review Advisory Panel (ARAP) considered the proposal on 20 January 2010. Their report is attached as Appendix 'A'.

In summary, ARAP was not supportive of the proposal. The conclusion to the 20 January ARAP report is as follows:

*Fundamentally, the Panel is not convinced that the site planning has produced the best solution. Elimination of the southern townhouse units could have produced improved landscaped spaces with better solar access and overall amenity could have been improved. This proposal represents an opportunity where the full potential is not being realised.*

*A major issue for the Panel is the extent to which the success of the proposal relies upon embellishments to the buildings rather than the imbedded quality of the design. If the development proceeded but the louvres were abandoned or quality landscape planting was not achieved, the entire project could be a poor outcome. There is always concern that the vision and inspiration of the architect may be lost during construction.*

*The applicant accepted that some elements of the design need further review. These include the presentation of the building to President Avenue, the amenity of the smaller townhouse units and the quality of the landscape design overall. It is recommended that these issues be resolved promptly due to the time constraints imposed by the Joint Regional Planning Panel (JRRP) process."*

ARAP also considered the amended plans informally on 17 March 2011 and subsequently advised:

*"The response to the Panel's previous comments, while generally positive, has only been incremental. Fundamental issues remain unaddressed and the Panel remains unconvinced of a successful outcome. This is a site which should generate a high quality development, but the current proposal falls well short of realising that potential. Consequently, it is not possible to support the current proposal and refusal is recommended."*

A copy of the ARAP comments regarding the amended design is attached as Appendix 'B'.

#### 9.2. Assessment Architect

Council's Assessment Team Architect undertook an assessment of the application and the amended proposal. In relation to the amended proposal he advised, inter alia, that;

*"1. Overall site layout - no alternative schemes have been presented (as required by the RFDC). The present scheme maximises the amenity of the main unit block at the expense of the two southern unit blocks and the landscaped area which have poor amenity. A more evenly balanced scheme seems achievable.*

*2. Streetscape - while it is recognised that the proposal makes a strong statement, this statement appears to be more of an institutional (which is considered inappropriate in this context) rather than a domestic character.*

*3. The revised submission makes some small concessions to the previously raised architectural and landscape concerns, however ARAP's main concerns ... are unaffected by this recent submission. As a consequence this application cannot be supported on architectural grounds."*

#### 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. Landscape Architect

Council's Landscape Architect has undertaken an assessment of the application and advised that the proposal has a number of design deficiencies. His report concluded:

*"The presentation of the landscape design is fundamentally a result of the layout of the built form on the site. Although the landscape design has attempted to provide adequate aesthetics, privacy and pleasant usable open space in and around the site, difficulties arise in achieving a successful result due to the building form orientation.*

*In this instance it appears the building design/layout including the driveway and basement has dictated the form and location of the communal and private open space. In landscape design terms the landscape spaces have been arranged by the perfunctory restriction of building form at no fault of the landscape designer. In as much the landscape design potential has been lost and the creation of quality landscape spaces in form, function and amenity have been limited.*

*Site opportunities, especially a corner block location like this one, have not been fully explored and the design has failed to realise that fact. Unfortunately the dominance of the building form and orientation takes precedence in this scheme while the quality of the landscape design and outdoor space are subservient to the building. In any event if the building*

*layout was given closer consideration and changed it could improve and as a result a superior landscape scheme would be accomplished.”*

#### 9.5. Community Services

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

#### 9.6. Building

Council's Building Surveyor 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 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.

#### 9.8 Sutherland Police

The application was referred to Sutherland Local Area Command for comment with regard to 'Safer by Design' issues. By report received on 14 March 2011 the Police have advised that certain design changes are recommended to improve public safety. These changes include use of anti graffiti surfaces, changes to waste storage area and installation of security measures.

### **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 four (4) storey building and two (2) x three (3) storey buildings which complies with the applicable development standard pursuant to Clause 33(14)(a) of SSLEP 2006, which calls up Council's Height and Density Control Maps. These maps detail the maximum number of storeys and the maximum floor space ratio of future development in applicable locations.

#### 10.2 Floor Space Ratio

The proposal is for a 1:1 floor space ratio, which complies with the 1:1 floor space ratio permitted by Clause 35(9)(d)(ii) of SSLEP 2006.

#### 10.3 Landscaped Area

Clause 36(5)(h) of the SSLEP 2006 stipulates a minimum landscaped area for the development of 40% of the site area.

The development proposes a landscaped area of 38.3%, which is a 4.25% variation from the applicable control. However, the applicant's calculations appear to have included paved areas and other non landscaped areas as landscaping. Calculations by Council officers indicate a landscaped area of 35.6%, which is a variation of 11% from the applicable control. To support this variation to the development standard for landscaped area the applicant has lodged an Objection pursuant to the requirements of SEPP No. 1. The full submission is in Appendix 'C' of this report and the most relevant section is reproduced below:

*"The variation is considered acceptable for the following reasons:*

- *The development satisfies the objectives of the development standard;*
- *The proposal will achieve a series of meaningful outdoor landscaped spaces which will allow for entertainment and recreation opportunities for future residents;*
- *The proposed outdoor landscaped spaces have been designed to provide sufficient deep soil zones and areas that will allow for substantial plantings and vegetation;*
- *The landscaped area deficit is considered a technicality to a degree as the margin of con compliance is represented by the area (47m<sup>2</sup>) above the proposed OSD facility. ....;*
- *The proposal complies with all other key built form standards and controls including height, FSR, side setbacks, front and rear setbacks and site coverage;*
- *The deep soil landscaped area achieved is significant (1067 m<sup>2</sup>) and will facilitate the establishment of a canopy of trees and vegetation around and across the site;*
- *Notwithstanding the LEP definitions the proposal will achieve a total area of outdoor landscaped space which can be used for one or more functions ( i.e garden, entertainment , recreation, etc) equal to approximately 1559m<sup>2</sup> or 56 % of the site area;*
- *The deficit in landscaped area will not result in a development that will have significant impacts upon the amenity of the adjacent residential properties or the streetscape;*
- *The proposal will not set a precedent of non compliant development in the locality; and*
- *The proposed development is commensurate with the landscaping arrangements and totals achieved at residential properties within the immediate vicinity of the site and in the wider locality."*

#### Analysis:

It is considered that the proposal does not comply with the objectives of the development standard, in particular objectives (b) and (d) regarding tree retention and appropriate landscaping.

The applicant contends that the proposed non-compliance with the landscaped area development standard is a result of the on-site detention tank in the south-eastern corner of the site. The departure is 122.63 m<sup>2</sup>, which is 2.75 times the area of the stormwater detention tank.

The landscaped area, as well as being numerically deficient, has poor solar access and thus poor amenity for the residents of the proposed development. During winter 95 to 100% of the central courtyard is overshadowed all day. In spring/autumn 50 to 75% of the central courtyard is in shadow at any one time. The front setback landscaped area, whilst receiving good solar access, has no privacy and is subject to road noise. The front setback is also below road level. In this regard the failure to provide adequate landscaped area is a symptom of the overall shortcomings of the design.

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?

Yes - Clause 36(5) of SSLEP 2006 is a development standard. Under Clause 8 of SSLEP 2006 it is a provision which can be varied under SEPP 1.

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

SSLEP 2006 sets out the following objectives for the landscaped area development standard.

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

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

*(c) to minimise urban run off by maximising pervious areas on the sites of development,*

*(d) to ensure that the visual impact of development is minimised by appropriate landscaping and that the landscaping is maintained.*

Response: The area of the landscaping combined with its poor solar access and the removal of 21 of the sites existing 22 trees are considered to result in a development inconsistent with the above objectives, in particular objective (b). Furthermore, there are no site constraints that would serve to support a variation to the standard given the full redevelopment of 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: No - granting of development consent would be inconsistent with the aims of SEPP 1 and the objects of the Act. A variation to Council's minimum landscaped area development standard is not considered to be reasonable in the circumstances of the case. The natural environment and the amenity of future residents and adjoining sites are negatively impacted by the proposal's landscaped area deficiency, by the loss of existing trees and by the poor amenity of the landscaped area that is provided and limited opportunity for a suitable landscaped outcome.

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

Response: No - for the reasons detailed in (b) above it is considered that the proposal should comply with the standard and that compliance would not be unreasonable or unnecessary.

(e) Is the Objection Well Founded?

Response: No - the SEPP 1 Objection is not considered to provide sufficient evidence to demonstrate that compliance with the 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 minimum landscaped area it is considered that:

- (i) The SEPP 1 Objection that compliance with the development standard is unreasonable and unnecessary is not well founded;
- (ii) The granting of consent to the development application would not be consistent with the aims of Clause 36 of SSLEP 2006; and
- (iii) The granting of consent to the development application would not be consistent with the aims of SEPP 1 as set out in Clause 3 of the Act.

#### 10.4 Site Coverage

Clause 4.b.1.1 of SSDCP 2006 requires a maximum site coverage of 40%. The application indicates that the proposal has a site coverage of 40.1%. However, Council calculations indicate a site coverage of 59.41 %, which is a 48.5 % variation to the control. The reason for the variation appears to be that the applicant's calculation is based on the above ground part of the building only, whereas Council calculations relate to the whole building footprint, including the basement.

#### 10.5 Amalgamation Pattern and Site Area/Width

The proposal complies with the site amalgamation pattern shown on the amalgamations requirement maps in Chapter 3 of SSDCP 2006.

The total site area of 2,787 m<sup>2</sup> complies with the minimum 1800 m<sup>2</sup> site area required by Clause 41 of SSLEP 2006 and the site width of 60.96 metres

complies with the minimum 30 metre site width requirement also contained in that Clause.

#### 10.6 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). The principal matters relating to the SEPP/Design Code are addressed below.

##### 10.6.1 Local Context

The proposal is not considered to be in keeping with its local context. The building is rectilinear and institutional in form. Whilst there is a rectilinear high school building to the north, the building's main context is the dwellings to the east and the town house development to the south. The institutional presentation is inconsistent with residential form in the locality and is incongruous with the pattern of residential development.

##### 10.6.2 Building Separation

The proposal does not comply with the 12 metre separation between buildings recommended in the Residential Flat Design Code. There is only a 4 metre separation between the main building and the eastern most of the smaller buildings and a 6.17 metre separation between the main building and the western most of the smaller buildings. However there is only one (1) window (a bathroom window) in the northern wall of each of the smaller buildings (the wall that faces the main building). There is a 5.5 metre separation between the main building and the house on the property to the east however the windows in the eastern wall of the main building which face the house are proposed to have fixed screens fitted.

##### 10.6.3 Site Configuration

The "Site Configuration" section of the Residential Flat Design Code states that developments should be designed to minimise overshadowing of communal open space so as to facilitate the use of those areas.

##### 10.6.4 Unit Sizes/Mix

The proposed unit sizes are:

- 1 bedroom units 51m<sup>2</sup> to 58 m<sup>2</sup> (6 units)
- 2 bedroom units 70m<sup>2</sup> to 92 m<sup>2</sup> (10 units)
- 3 bedroom units 96m<sup>2</sup> to 125 m<sup>2</sup> (15 units)

These unit sizes, whilst complying with the Residential Flat Design Code unit sizes for affordable housing, are for most of the units considerably below the recommended sizes. For example, two (2) bedroom cross through units are recommended to be a minimum of 89 m<sup>2</sup> in area and three (3) bedroom units are recommended to be 124 m<sup>2</sup> in area. The mix of units proposed is considered acceptable.

#### 10.6.5 Solar Access

The proposal does not comply with the objectives and best design practice guidelines relating to daylight access in the Residential Flat Design Code. In particular, the proposal does not ensure daylight access to communal open space between March and September. Solar access is discussed in more detail in 10.9 below.

#### 10.6.6 Cross Ventilation

Whilst the units are designed to allow for cross ventilation, the Acoustic Report submitted with the application indicates that the windows facing President Avenue need to be closed to comply with the applicable required internal noise levels. In this regard, cross ventilation of the units in the main building is poor.

### 10.7 Setbacks

#### 10.7.1 Setbacks to President Avenue and Auburn Street

Clause 2.b.10 of Chapter 3 of SSCDP 2006 requires a five (5) metre setback to President Avenue and a four (4) metre setback to Merton Street. The walls of the proposal have a President Avenue setback of 5.075 metres and a setback to Merton Street of four (4) metres with the exception of a small encroachment by the egress stairs from the basement car park. However, the roof of the main building encroaches 2.2 metres into both setbacks. The clearance below the overhang is 12.6 metres, which has the potential to impact on the large trees proposed to be grown in the setback. The extent of the overhang also raises design concerns and impacts on sunlight penetration into the upper floor units.

#### 10.7.2 Side and Rear Setbacks

Clause 3.b.9.1 of Chapter 3 of SSDCP 2006 requires four (4) metre side and rear setbacks for residential flat buildings. The proposal has a side setback of 4.5 metres and a rear setback (to the building) of 7.15 metres which complies with the control. However, the ramp to the basement car park comes to within 1.4 metres of the rear boundary and this would not allow for an adequate area for deep soil planting of screening vegetation and thus is considered to be inconsistent with the relevant objective of this control.

The roof of the main building encroaches 2.2 metres into the side setback.

### 10.8 Privacy

The proposal has minimal privacy impacts on the townhouse development to the south as the only windows to the southern elevation of the townhouses above ground level are highlight bathroom windows. The main building's separation from the southern boundary will minimise any overlooking potential.

The neighbour to the east was concerned that the four (4) metre setback of the building and the windows in the eastern elevation (to bedrooms on each floor) would result in overlooking, particularly if a similar setback was provided



on a development on the adjoining site. SEPP 65 recommends a minimum 12 metre separation which is not achieved. The proposal has addressed privacy to the east by showing timber screening to the proposed bedroom windows.

#### 10.9 Solar Access/Overshadowing

The proposal does not comply with Clause 14.b.3 of Chapter 3 of SSDCP 2006 which requires that new development be designed to ensure direct daylight access to communal open space between March and September. The proposal's design and orientation result in significant overshadowing of the site's primary private open space area. During winter 95 to 100% of the central courtyard is overshadowed all day. In spring/autumn 50 to 75% of the central courtyard is in shadow at any one time.

In winter the proposal also severely impacts on the five (5) northern most townhouses at 28 Merton Street. For example, the living room of the eastern townhouse is overshadowed from noon onward and the eastern townhouse in the central group only receives sunlight at 1 and 2 pm.

No diagrams indicating the extent of solar access to each unit type were submitted by the applicant for the amended proposal. However solar access was assessed by Council's officers and found to be lacking to all units. For example, only 1.5 m<sup>2</sup> of the living room of Unit 1.06 and 2.76 m<sup>2</sup> of the living room of Unit 1.07 receive sunlight for three (3) hours in winter. Whilst this may be seen as a technical compliance with the control it is not considered to be in keeping with the intent of the control. These are north facing units and a better solar penetration should surely be able to be achieved.

The shadow diagrams submitted show that the living rooms in the units in the building in the south-eastern corner receive sun only at 9 am in winter and those in the south-western corner receive no sun in winter. However, it should be noted that these diagrams include the shadow cast by the walls of the proposed building and not the roof. In reality the shadow situation would be worse than depicted.

#### 10.10 Parking and Access

The proposal provides parking at basement level for 38 cars, including 32 resident spaces and six (6) visitor spaces. Six (6) of the resident and one (1) of the visitor spaces are suitable or can be made suitable (by deletion of adjoining storage areas) for disabled parking. One (1) of the visitor spaces is designated to be both a visitor space and a wash bay.

The site is located in Parking Area 2 as identified on the Sutherland Car Parking zones map in Chapter 7 of SSDCP 2006. Clause 1.b.40 of Chapter 7 applies, which requires a maximum parking provision of 50 spaces. The rate is a maximum due to the site's proximity to Sutherland Railway Station and Sutherland Centre. If the site was outside the special areas near railway stations identified on the Map the applicable requirement would be a minimum of 60 parking spaces including a wash bay.

The proposed provision for parking is 24% below the maximum for Parking Area 2. It is considered that a departure to this extent is excessive. The immediate vicinity has to accommodate not only any overflow from existing and proposed residential development but also commuter parking and parking associated with the adjoining schools. It has been observed that particularly during school hours/terms parking in this area is already at capacity, with a number of vehicles parking on the setback area between President Avenue and the adjoining residences.

Clause 5.b.2 of Chapter 7 requires nine (9) bicycle parking spaces (six (6) resident and three (3) visitor). Bicycle racks for six (6) bicycles are shown underneath the stairs of the main building. Spaces in such a location may be appropriate for short term visitor use but are inappropriate for resident use. Resident spaces should be secure and protected from the weather.

#### 10.11 Drainage

On-site stormwater retention and detention is proposed in an underground tank in the south-eastern corner of the site and is in accordance with relevant engineering requirements.

As the site slopes away from President Avenue and Merton Street a drainage easement to Belmont Street is required. Documentation has been submitted showing that the Owners Corporation of 49 to 53 Belmont Street has agreed to the creation of an easement over part of their site. A letter from Housing NSW has been received agreeing in principle to the creation of an easement over part of 28-32 Merton Street.

Lack of a drainage easement was the reason that the previous application was a deferred commencement consent and why the consent was never activated.

#### 10.12 Other Matters

The garbage room is at basement level, which is desirable on streetscape grounds, however the ramp from the basement to the street is too steep to manually bring up the bins for street collection. The proposed ramp gradient (1 in 5) considerably exceeds Council's guideline of a maximum 1 in 14 gradient (Clause 6.b.1.1.3 of Chapter 8 of SSDCP 2006). The Applicant has indicated that there is an alternative of using the passenger lifts but that alternative is unlikely to be implemented and, if it were, it would be unhygienic.

The proposal does not provide for clothes lines as required by Clause 10.b.4 of Chapter 3 of SSDCP 2006. When this was raised with the applicant the reply included that "the proposed communal open space is located in a position that will not receive full sunlight" and "while creative and thoughtful treatments have been employed in the amended landscape design, this cannot overcome the sunlight issue for the common open space and therefore the positioning of clothes drying lines in the central common open space would not be effective". Even though clothes dryers are to be installed in the units, Council's policy requires clothes lines. Reliance on clothes dryers alone

is considered to be environmentally unacceptable. In addition, the lack of clothes lines is likely to create a streetscape issue with washing hung on the balconies.

The amended plans provide off form concrete panels to the external stairs. This change resulted from comments at ARAP regarding the poor amenity of these stairs and the associated walkways, which face south and are exposed to wind and rain. The concrete panels give only minimal weather protection and therefore do not resolve the amenity concern. Whilst enclosing the stairs would not increase the proposal's floor space ratio enclosing the walkways would. The development is already at maximum floor space ratio and any additional floor space would result in a non-compliance with the floor space ratio development standard.

The applicant has advised that the car park is to be a security car park and this is desirable on safety grounds. However, the location of the security gate is not shown on the plans and the intercom for visitors is shown on the left hand side of the ramp, three (3) metres in from the property's front boundary. As this location is on the passenger's side of an entering vehicle, a driver, if alone, would have to park and walk to the intercom thus potentially holding up other entering vehicles and causing on street queuing. As the intercom is only three (3) metres from the front boundary, vehicles that are queuing over the footway will potentially obstruct pedestrian movements on the footpath. As can be seen, this situation is impractical.

The site's previous history is for residential use only. Accordingly, site contamination is not considered to be a concern.

The site is subject to noise from road traffic. This issue is addressed by an Acoustic report and by design.

## **11.0 SECTION 94 CONTRIBUTIONS**

Due to its nature, the proposed development will require or increase the demand for local and district facilities within the area. Accordingly, it generates Section 94 contributions totalling \$ 277,659.71 should the JRPP decide that the application is worthy of support. This contribution has been calculated on the basis of 31 proposed residential units and a credit for the five (5) existing allotments.

## **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 five (5) dwellings, the construction of a residential flat building consisting of 31 units with basement

parking and the consolidation of five (5) allotments at Nos. 558-566 President Avenue, Sutherland.

The subject land is located within Zone 6 – Multiple Dwelling B pursuant to the provisions of Sutherland Shire Local Environmental Plan 2006. The proposed development, being a residential flat building, is a permissible land use within the zone with development consent.

In response to public exhibition three (3) submissions were received. Concerns were raised in these submissions with regard to parking, drainage, design and road issues.

The proposal includes a variation to the landscaped area development standard. This variation is considered to be unacceptable due to the degree of the variation, the poor quality of the space and the poor solar access of the landscaped area that is provided. The proposal also departs from the site coverage control in SSDCP 2006.

The design of the proposed building is considered to be unacceptable and not an appropriate design for the subject site. The design issues were raised with the applicant. Minor amendments were made however they fail to resolve the fundamental flaws in the proposal.

It is considered that the application does not satisfy the aims and objectives of SSLEP 2006, SSDCP 2006 and SEPP 65.

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 DCPs, Codes and Policies.

Following detailed assessment it is considered that Development Application No. 10/1359 is not supported for the reasons outlined in this report.

## **14.0 RECOMMENDATION**

14.1 That Development Application No. 10/1359 for Demolition of Five (5) Dwellings, Construction of a Residential Flat Building Consisting of 31 Units and Consolidation of Five ( ) Allotments at Lots 1 to 5 DP 14764 (Nos. 558-566) President Avenue, Sutherland be refused for the following reasons:

1. The application is considered unacceptable pursuant to the provisions of Section 79C(1)(a)(i) of the Environmental Planning and Assessment Act 1979 in that the proposed development fails to comply with the development standard for landscaped area contained in Clause 36(5)(h) of Sutherland Shire Local Environmental Plan 2006.

2. The Objection submitted pursuant to the provisions of Clause 6 of State Environmental Planning Policy No. 1 (SEPP 1) with respect to the development standard for landscaped area established in Clause 36(5)(h) of Sutherland Shire Local Environmental Plan 2006 is not considered to be well founded as the applicant has not adequately demonstrated why, in the circumstances of the case of this application, compliance with this development standard is either unreasonable or unnecessary.
3. The application is considered unacceptable pursuant to the provisions of Section 79C(1)(a)(i) of the Environmental Planning and Assessment Act 1979 in that the proposed development fails to comply with Objective (b) of Clause 36(1) of Sutherland Shire Local Environmental Plan 2006 in relation to tree retention.
4. The application is considered unacceptable pursuant to the provisions of Section 79C(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 in that the proposed development fails to comply with the site coverage control contained in Clause 4.b.1.1 of Chapter 3 of Sutherland Shire Development Control Plan 2006.
5. The application is considered unacceptable pursuant to the provisions of Section 79C(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 in that the proposal is inconsistent with the objective relating to site coverage contained in Clause 4.a.1 of Chapter 3 of Sutherland Shire Development Control Plan 2006.
6. The application is considered unacceptable pursuant to the provisions of Section 79C(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 in that the proposed development fails to comply with the rear boundary setback control contained in Clause 3.b.9.1 of Chapter 3 of Sutherland Shire Development Control Plan 2006 and as a result cannot provide for deep soil tree planting adjacent to the ramp to the basement.
7. The application is considered unacceptable pursuant to the provisions of Section 79C(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 in that the proposed development fails to comply with objectives (c) and (e) contained in Clause 3.a.1.1 of Chapter 3 of Sutherland Shire Development Control Plan 2006.
8. The application is considered unacceptable pursuant to the provisions of Section 79C(1)(a)(iii) and (e) of the Environmental Planning and Assessment Act 1979 in that the proposed development:
  - (a) Fails to provide an appropriate level of car parking and accordingly will impact on on-street parking in the vicinity and not be in the public interest.

(b) Fails to comply with objectives (a), (c) and (d) contained in Clause 1.a.1.1 of Chapter 7 of Sutherland Shire Development Control Plan 2006.

9. The application is considered unacceptable pursuant to the provisions of Section 79C(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 in that the proposed development fails to comply with Clause 5.b.1 of Chapter 7 of Sutherland Shire Development Control Plan 2006 as it fails to provide bicycle parking with appropriate security and weather protection.
10. The application is considered unacceptable pursuant to the provisions of Section 79C(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 in that the proposed development fails to comply with objectives (a), (b), (d), (e) and (f) relating to daylight access contained in Clause 14.a.1.1 of Chapter 3 of Sutherland Shire Development Control Plan 2006.
11. The application is considered unacceptable pursuant to the provisions of Section 79C(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 in that the proposed development fails to comply with Clause 14.b.3.1 of Chapter 3 of Sutherland Shire Development Control Plan 2006 as it fails to provide common open space which receives an appropriate amount of direct solar access.
12. The application is considered unacceptable pursuant to the provisions of Section 79C(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 in that the proposed development fails to comply with Clause 10.b.4.1 of Chapter 3 of Sutherland Shire Development Control Plan 2006 as the proposal fails to provide clothes lines and in particular clothes lines with solar access.
13. The application is considered unacceptable pursuant to the provisions of Section 79C(1)(b) and (e) of the Environmental Planning and Assessment Act 1979 in that the proposed development adversely impacts on the amenity of the residents of the site to the south and on future residents of the site itself in terms of overshadowing impact and poor solar access and accordingly is not in the public interest.
14. The application is considered unacceptable pursuant to the provisions of Section 79C(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 in that the proposed development does not comply with Clause 6.b.1.1 of Chapter 8 of Sutherland Shire Development Control Plan 2006 as it fails to provide appropriate measures for the transfer of waste from the basement garbage room to the street collection point.