

<b>JRPP No</b>	<b>2011SYE020</b>
<b>DA No</b>	<b>DA11/0090</b>
<b>Local Government Area</b>	<b>Sutherland Shire</b>
<b>Proposed Development</b>	<b>Demolition of Existing Structures; Construction of a Residential Flat Building Consisting of 70 Apartments over Basement Parking; and 70 Lot Strata Subdivision</b>
<b>Street Address</b>	<b>273A Fowler Road, Illawong Lot 11 DP 1107327</b>
<b>Applicant/Owner</b>	<b>Mr Peter Azar/Azar Building &amp; Construction Services Pty Ltd &amp; Key Sites Pty Ltd</b>
<b>Number of Submissions</b>	<b>8</b>
<b>Recommendation</b>	<b>Refusal</b>
<b>Report By</b>	<b>Mark Adamson – Manager – West Assessment Team (Planner)</b>

## 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 \$21,278,400.00.

#### 1.2 Proposal

The application has been amended since its initial submission. The original application was for the construction of a five (5) storey residential flat building consisting of eighty five (85) apartments over basement parking at the above property. Revised documents have been received reducing the scale of the proposal to a four (4) storey residential flat building consisting of seventy (70) apartments over basement parking. This assessment report is based upon the current revised proposal.

#### 1.3 The Site

The subject site is located on the north-western corner of the intersection of Fowler Road and Hobart Place, Illawong, allowing it to have frontages to both roadways.

#### 1.4 The Issues

The main issues identified are as follows:

- Context.

- Height.
- Non compliances with development standards and controls.
- Bulk and scale.

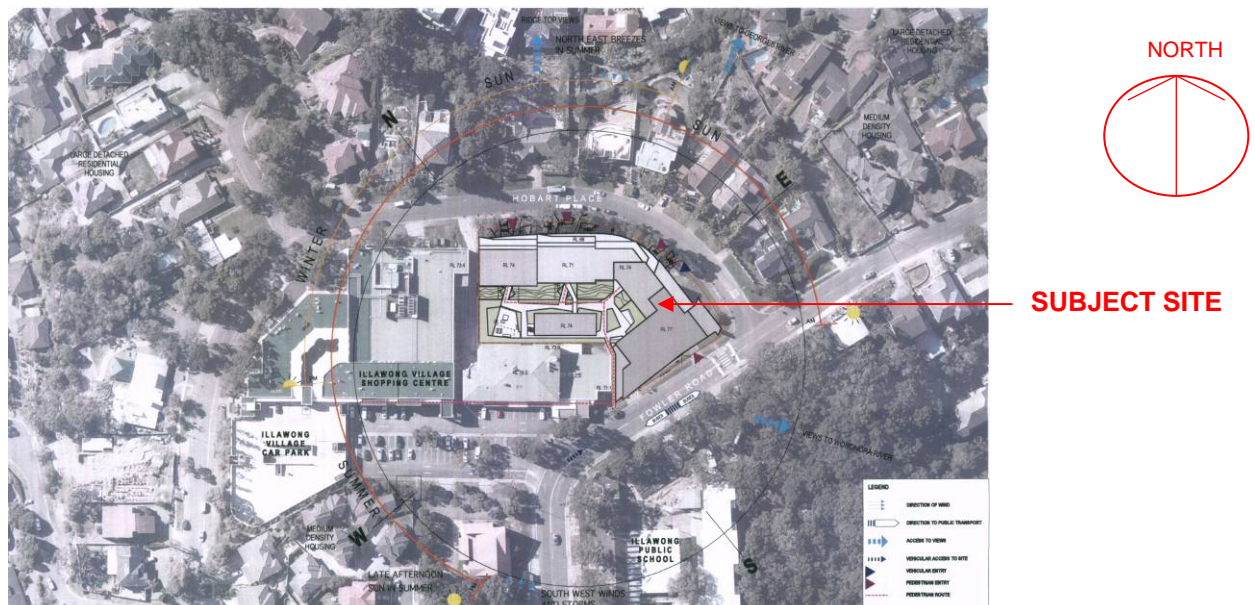
### 1.5 Conclusion

Following detailed assessment of the proposed development the current application cannot be supported as it exceeds the development standard for height and fails to satisfy the provisions of State Environmental Planning Policy No. 1 (SEPP 1).

## 2.0 DESCRIPTION OF PROPOSAL

An application has been received for the demolition of the existing structures to provide for the construction of a new residential flat building consisting of 70 apartments over basement car parking and a 70 lot strata subdivision at the above property.

The original application (submitted on 3 February 2011) was for the construction of a five (5) storey residential flat building consisting of eighty five (85) apartments over basement parking. Following discussions with Council and the concerns raised by the Architectural Review Advisory Panel (ARAP), a revised design was submitted (18 July 2011) reducing the size of the proposal to a four (4) storey residential flat building consisting of seventy (70) apartments over basement parking. This assessment report is based upon the current amendment.



### Applicant's Site Analysis Plan

## 3.0 SITE DESCRIPTION AND LOCALITY

This area of Illawong is best described as a peninsula, with Fowler Road as a 'spine' road generally following the ridge line serving as the main vehicular access to the area. There are approximately 1,900 properties including the

subject site within this general locality, the majority of which are single detached dwellings. The subject site is positioned near the centre of the locality. Historically, the area was the original landing point for a vehicle punt that crossed the Georges River to the suburb of Lugarno on its northern shore.

The streetscape in Hobart Place in the immediate vicinity of the site is characterised by low density residential; some medium density residential; retail/commercial; community and educational development. Directly opposite the site to the Fowler Road frontage is the Illawong Primary School; to the south-west is a two (2) storey brick retail/commercial and attached single storey community centre building complex; to the north-west is the loading dock area of the Coles supermarket whilst to the Hobart Place boundary there are seven (7) single detached houses of various heights and architectural styles. The site, roadway and dwellings in Hobart Place enjoy significant views of the Georges River waterway.

The site is one (1) of two (2) separate titles contained within the Zone 9 – Local Centre planning area. The other site that adjoins the subject site to the west is a shopping centre and car park.

A large stand of trees is located within the Hobart Place footpath area, which currently provides a visual screen of the general site area from the roadway area as well as from more distant vistas. Drainage from the site is directed to the existing stormwater infrastructure system in the street.

The subject land, No. 273A Fowler Road, is currently occupied by an existing two (2) storey commercial/retail building with an on-grade forecourt car park area fronting Fowler Road. The remainder of the site is partly occupied by car parking for shoppers but is generally unused. There are no other significant features on the site.

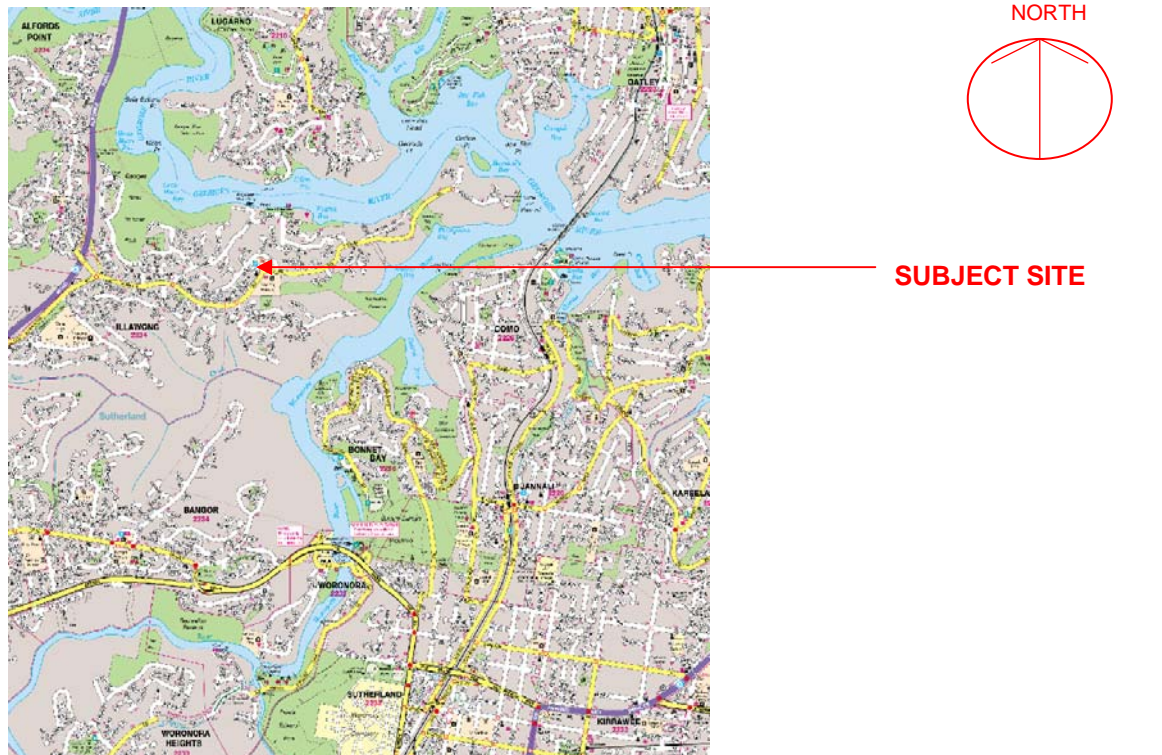
The site has a north-west to south-east major axis and is an unusual “L” irregular shape. It has a frontage of 52.44 metres to its nominated Fowler Road address and an adjoining curved boundary of 77.015 metres addressing Hobart Place. It has a depth of approximately 100.0 metres measured from the corner of Fowler Road and Hobart Place to its north-western boundary and a variable depth of 45.64 to approximately 72.11 metres from Hobart Place. The site has a total area of 4,566 square metres.

There is a complexity within the title of the subject site in that the site exists as a stratum between RL10.0 (AHD) and RL160.00 (AHD). The proposal extends from RL53.00 (AHD) to RL75.60 (AHD). There are easements for access, services and drainage along the western boundaries of the site.

The site dips within the central portion of its Hobart Place boundary alignment, with a 6.45 metre fall from its north-western side and a 10.23 metre fall from its intersection with Fowler Road. Generally the larger portion of the site is terraced at various levels, with differences between the lowest point in Hobart Place of 8.57 and 7.18 metres to a disused bitumen tennis court area



(currently used for machinery and waste earth piles) and a carpark area associated with the adjoining retail (hardware store) activity. The area of the site adjoining the Fowler Road frontage also has a flat bitumen car park area generally at the same level as Fowler Road to which it is accessed. There is a substantial concrete block retaining wall structure of varying height built along a significant portion of the Hobart Place curved boundary.



**Figure 1 – Locality Map**



**Figure 2 – Aerial Photo**

## 4.0 BACKGROUND

A history of the development proposal is as follows:

- Land and Environment Court consent (No.11089 of 2000, 13 November 2001) for a 31 unit residential flat building over four (4) storeys with basement carparking for 46 cars.
- Introduction of Sutherland Shire Local Environmental Plan 2006 increasing the allowable building density from 1:1 and nine (9) metre height limit to a 2:1 building density and a three (3) storey height limit.
- A pre-application discussion (PAD) was held on 6 October 2010 regarding the development of a multi storey ninety (90) unit residential flat building on this site. A formal letter of response was issued by Council dated 11 October 2010. A full copy of the advice provided to the Applicant is contained within Appendix “A” of this report. The main points contained in this letter are as follows:
  - Concern regarding non-compliance with the height development standard.
  - Concern with bulk, mass and scale.
  - Concern regarding the lack of reasonable landscaping features.
  - Concern regarding the impact from increased traffic.
- A pre-application Architectural Review Advisory Panel (ARAP) discussion was held on 14 October 2010 regarding the development of a multi storey ninety (90) unit residential flat building on this site. A formal letter of response was issued by Council dated 26 October 2010. A full copy of the advice provided to the Applicant is contained within Appendix “B”. The main points contained in this letter are as follows:
  - Concern with the height.
  - Concern with scale.
  - Concern regarding the lack of reasonable landscaping features.
- The application for a 85 unit residential flat building over five (5) to six (6) storeys with basement carparking for 131 cars was submitted on 3 February 2011.
- An Architectural Review Advisory Panel (ARAP) discussion was held on 17 February 2011. A full copy of the advice provided to the Applicant is contained within Appendix “C” of this report and the main points contained in this letter are as follows:
  - Concern with the height.
  - Concern with scale.
  - Concern with the amenity of the courtyard space.
  - Concern regarding the lack of reasonable landscaping features.
- The application was placed on exhibition with the last date for public submissions being 2 March 2011. Forty five (45) letters/emails and one (1) petition (98 signatures) were received.
- The application was considered by Council’s Submissions Review Panel on 4 March 2011.
- An Information Session was held on 23 February 2011 and 17 people attended.

- Amended plans reducing the scale of the proposed development to 70 units over three (3) to four (4) storeys with basement carparking for 118 cars were lodged on 18 July 2011.
- The revised submission was placed on exhibition with the last date for public submissions being 8 August 2011. Eight (8) submissions were received.
- An informal review by the Architectural Review Advisory Panel (ARAP) was held on 11 August 2011 regarding the revised design. This information was issued to the Applicant on 22 August 2011 for their consideration. A full copy of the advice provided to the Applicant is contained within Appendix “D” of this report and the main points are as follows:
  - Concern with the amenity of the courtyard.
  - Concern with safety and security around the ground level open accessway.
  - Concern regarding the lack of reasonable landscape information.
  - Concern regarding lack of information about the design of the façade.
- Amended landscape concept plans reflecting the extended landscape areas of the revised proposal were lodged with Council at 4.30 pm on 13 September 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, the applicant has provided adequate information to enable an assessment of this application, including a SEPP No. 1 Objection requesting a variation to the height standard.

In addition, the timing of the applicant’s submission should also be noted. The applicant requested an opportunity to submit a revised design on 6 May 2011, which was lodged on 18 July 2011.

## **6.0 PUBLIC PARTICIPATION**

The original application for 85 units was advertised in accordance with the provisions of Chapter 12 of Sutherland Shire Development Control Plan 2006 (SSDCP 2006).

Sixty two (62) adjoining or affected owners were notified of the proposal and 45 letters/emails and one (1) petition with 98 signatures were received as a result.

The revised application for 70 units was re-advertised in accordance with the provisions of Chapter 12 of Sutherland Shire Development Control Plan 2006 (SSDCP 2006).

One hundred and twelve (112) adjoining or affected owners were notified of the proposal and eight (8) letters/emails were received as a result.

Submissions were received from the following properties:

<b>Address</b>	<b>Date of Letter/s</b>	<b>Issues</b>
Illawong Alfords Point Progress Association	8 August 2011 2 March 2011	<ul style="list-style-type: none"> <li>• Traffic.</li> <li>• Allocation of developer's contributions.</li> </ul>
2 Thompson Avenue, Illawong	5 August 2011 1 March 2011	<ul style="list-style-type: none"> <li>• Traffic and parking.</li> <li>• Overdevelopment.</li> </ul>
66 Hobart Place, Illawong	5 August 2011 2 March 2011 1 March 2011 21 February 2011	<ul style="list-style-type: none"> <li>• Fails to address zone objectives.</li> <li>• Streetscape character.</li> <li>• Excessive height.</li> <li>• View loss.</li> <li>• Privacy and overshadowing.</li> <li>• Loss of commercial &amp; retail businesses.</li> <li>• Traffic.</li> <li>• Underground water flow diversion.</li> <li>• Tree loss.</li> <li>• Alter area topography &amp; views from the foreshore area.</li> <li>• Lack of outdoor drying area.</li> <li>• Height greater than adjoining development.</li> <li>• Acoustic privacy.</li> </ul>
17 Shand Close, Illawong	2 August 2011	<ul style="list-style-type: none"> <li>• Traffic.</li> <li>• Impact upon bushfire emergency evacuation situations.</li> <li>• Loss of existing hardware store.</li> </ul>
3/14 Barrier Place, Illawong	22 July 2011 21 February 2011	<ul style="list-style-type: none"> <li>• Out of character.</li> </ul>
Not provided	22 July 2011	<ul style="list-style-type: none"> <li>• Overdevelopment.</li> <li>• Traffic.</li> <li>• Out of character.</li> </ul>
27 Griffin Parade, Illawong	7 August 2011 28 February 2011	<ul style="list-style-type: none"> <li>• Non compliance with development controls.</li> <li>• Lack of outdoor drying area.</li> <li>• Traffic.</li> </ul>
70 Hobart Place, Illawong	6 August 2011 1 March 2011	<ul style="list-style-type: none"> <li>• Overdevelopment.</li> <li>• Loss of existing businesses.</li> <li>• Fails to address zone objectives.</li> </ul>

The issues raised in these submissions, as discussed in detail in the assessment section of this report, are as follows:

6.1 Issue 1 – Overdevelopment

6.2 Issue 2 – Non Compliance with Development Controls

6.3 Issue 3 – Fails to Address Zone Objectives

6.4 Issue 4 – Streetscape Character/Out of Character

6.5 Issue 5 – Traffic and Parking Impacts

6.6 Issue 6 – Excessive Height

6.7 Issue 7 – View Loss

6.8 Issue 8 – Height Greater Than Adjoining Development

Comment: Generally, this is an incorrect assumption in that the proposal will actually be lower than the height of the existing adjoining development at its upper level, however, it extends lower than the adjoining building as the contour falls away.

6.9 Issue 9 – Alter Area Topography & Views From the Foreshore Area

Comment: The proposed development would only alter the topography of the site, whereas the extent of existing development downhill of the site has already significantly altered the natural topography of the area. The proposal will be visible from parts of the waterway.

6.10 Issue 10 – Privacy and Overshadowing

6.11 Issue 11 – Loss of Commercial & Retail Businesses

6.12 Issue 12 – Impact Upon Bushfire Emergency Evacuation Situations

6.13 Issue 13 – Tree Loss

6.14 Issue 14 – Acoustic Privacy

Comment: The residential use of the proposed development is not considered a circumstance that would generate undue impacts upon the acoustic privacy of existing residential development located opposite the site.

6.15 Issue 15 – Allocation of Developers' Contributions

Comment: The purpose and allocation of developers' contributions is designed to collect contributions from new residential development to improve and expand Shire-wide open space; recreation and community facilities, in accordance with Section 94 of the Environmental Planning and Assessment Act (EP & A Act). Alternative use of these funds towards specific works as requested cannot be endorsed as a matter of consideration for this development.



#### 6.16 Issue 16 – Diversion of Underground Water Flow

Comment: The depth of the works for the proposed development would not alter the existing natural flow of moisture through the earth sub strata so as to affect the health of the existing vegetation downhill from the subject site.

#### 6.17 Issue 17 – Lack of Outdoor Drying Area

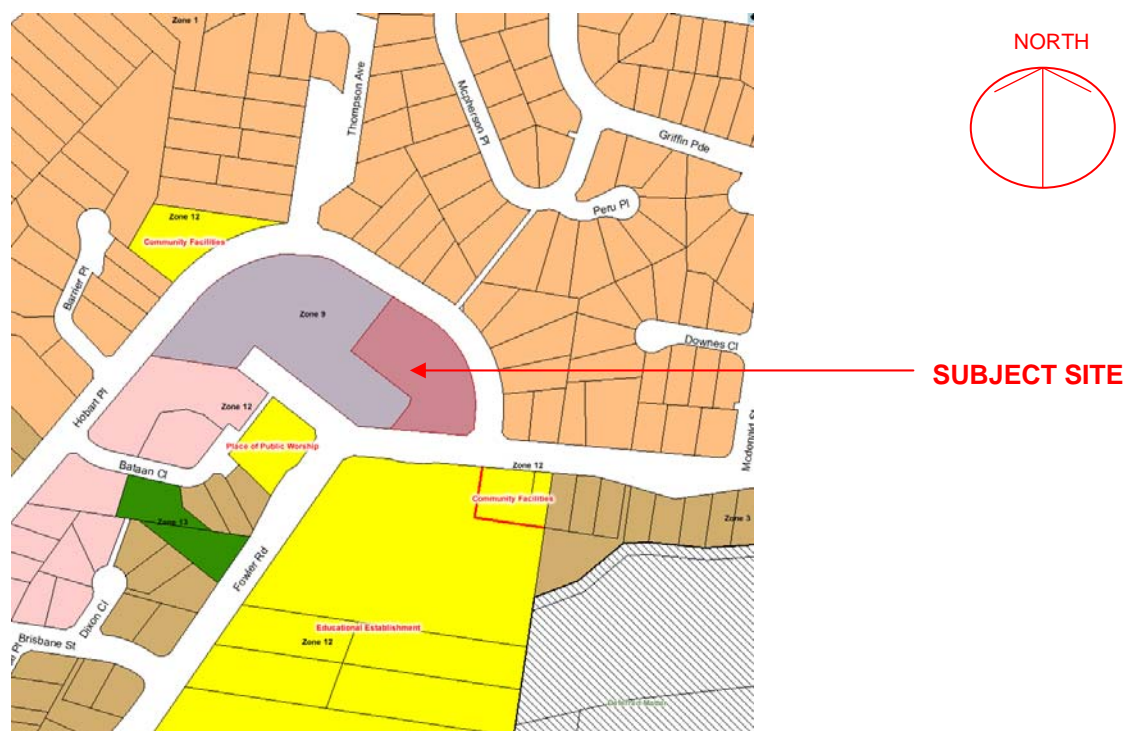
Comment: The provision for clothes drying will be made available within the individual laundry areas of each unit.

### 7.0 STATUTORY CONSIDERATIONS

The subject land is located within Zone 9 – Local Centre 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.

The objectives of this zone are as follows:–

*“(a) to identify appropriate land for the provision of a wide range of retail, business and professional activities,  
(b) to promote viable, small, local and specialty shops to support the needs of the local community and provide local employment,  
(c) to provide for a mix of commercial, office, retail and residential buildings,  
(d) to create attractive, vibrant and safe establishments and facilities as a focus for community spirit.”*



**Figure 3 – Zoning Plan**

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. 65 – Design Quality of Residential Flat Development (SEPP 65).
- State Environmental Planning Policy (Major Development) 2005.
- State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004.
- Greater Metropolitan Regional Environmental Plan No. 2 – Georges River Catchment.
- Sutherland Shire Local Environmental Plan 2006 (SSLEP 2006).
- Sutherland Shire Development Control Plan 2006 (SSDCP 2006).
- Section 94 Developer Contribution Plans - 2005 Shire-Wide Open Space and Recreation Facilities and 2003 Community Facilities Plan

## 8.0 STATEMENT OF COMPLIANCE

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

<b>Sutherland Shire Local Environmental Plan 2006</b>			
<b>Standard/Control</b>	<b>Required</b>	<b>Proposed</b>	<b>Complies? (% Variation)</b>
Clause 33(8)(b)(ii) – Building Height	Maximum 3 Storey	4 Storeys (5 Storeys in part)	No (33%)
Clause 35(11)(b) – Building Density	Maximum 2:1	1.74:1	Yes
Landscaping	Nil	Minimal	Yes
<b>Sutherland Shire Development Control Plan 2006</b>			
<b>Urban Design</b> Chapter 3, 2.b.7 – Street Setback	2m minimum street setback for storeys above an active street frontage	2m	Yes
Chapter 3, 3.b.9 – Side & Rear Setbacks	4m minimum side and rear setback	2.5m side setback and nil rear setback	No. (100%)
Chapter 3, 7.b.4.3.a – Communal Space	A combination of private balconies/patio and communal open space must be provided	A combination of private balconies/patio and communal open spaces provided	Yes
Chapter 3, 7.b.4.3.b – Communal Space	The communal open space must be centrally located and have a min. area of 100sqm with a min. dimension of 2.5m	The communal open space is centrally located and has a min. area of 100sqm with a min. dimension of 2.5m	Yes

Chapter 3, 7.b.4.4 – Building Depth	The maximum internal plan depth of a building should be 18 metres from glass line to glass line	The maximum internal plan depth is 16 metres from glass line to glass line	Yes
Chapter 3, 7.b.5.3.c – Balcony Size	Each dwelling must be provided with a primary balcony/patio having a minimum area of 12sqm with a minimum dimension of 2.5m	Units 4.03 & 3.03 have the smallest and minimum balcony area of 12sqm with a minimum dimension of 2.5m for two units	Yes
Chapter 3, 11.b.1 – Building Form	Articulated and broken façade and roof design required.	Refer ARAP commentary	Yes
Chapter 3, 11.b.1 – Streetscape	Design to give human scale to the building at street level.	Refer ARAP commentary	Yes
Chapter 3, 12.b.4 – Podium Landscape	Minimum of 25% of the podium surface not occupied by building is to be planted.	Approx 33% provided	Yes
Chapter 3, 14.b.2.2 – Daylight Access	New development must not eliminate more than one third of the existing sunlight, to useable private open space and windows of living areas, of an adjoining property measured at 9am and 3pm on 21 June.	No private open spaces or windows of living areas of an adjoining property will be affected. (Note: Adjoining property to the south is a community centre. This area is overshadowed by the proposal during mid winter.)	Yes
Chapter 3, 14.b.3.6 – Daylight access	Living rooms and private open spaces for at least 70% of apartments in a development should receive a minimum of 3 hours direct sunlight between 9am and 3pm in mid winter.	Minimum 70% units achieved.	Yes
Chapter 3, 17.b.1.1 – Adaptable Housing	Twenty percent (20%) of dwellings on a site to be adaptable.	15 provided (21%)	Yes

<b>Vehicular Access, Traffic, Parking and Bicycles</b> Chapter 7, 1.b.40.5	Maximum 84 car spaces. (1 car space per unit + 1 visitor car space per 5 units)	118	No (40%)
Chapter 7, 5.b.2	Minimum 21 bicycle parking spaces (1 bicycle parking space per 5 dwelling units + 1 visitor space per 10 units)	16	No (24%)

<b>State Environmental Planning Policy No 65 Design Quality of Residential Flat Development</b>		
<b>Requirement</b>	<b>Control</b>	<b>Comply</b>
Design verification from registered architect.	Statement provided.	Yes
Design quality principles addressed.	Statement provided.	Yes
Review by design review panel.	ARAP reviews	Yes

## **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 Rural Fire Services**

The original proposal was referred to the Rural Fire Services (RFS) for comment resulting in a request from the RFS for additional information in respect to the capacity of the road network and proposed landscaping. Following the submission of the revised design the new proposal, together with some of this additional information, was forwarded to the RFS on 24 August 2001. To date a response has not yet been provided.

### **9.2 Police**

The original proposal was referred to the Police Department for comment on the 10 February 2011. No response has been provided.

### **9.3 Architectural Review Advisory Panel**

An Architectural Review Advisory Panel (ARAP) discussion was held on 17 February 2011. A full copy of the advice provided to the Applicant is contained within Appendix "C" of this report and the main points contained in this letter are as follows:

- Concern with the height.
- Concern with scale.
- Concern with the amenity of the courtyard space.
- Concern regarding the lack of reasonable landscaping features.

An informal review by the Architectural Review Advisory Panel (ARAP) was held on 11 August 2011 regarding the revised design. This information was issued to the Applicant on 22 August 2011 for their consideration. A full copy of the advice provided to the Applicant is contained within Appendix "D" of this report and the main points are as follows:

- Concern with the amenity of the courtyard.
- Concern with safety and security around the ground level open accessway.
- Concern regarding the lack of reasonable landscape information.
- Concern regarding lack of information about the design of the façade.

#### 9.4 Engineering

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

#### 9.5 Traffic

Council's traffic engineer has undertaken an assessment of the application and advised that onstreet car parking should be prohibited along the western side of Hobart Place from its intersection with Fowler Road down to the proposed location of the new driveway of the proposed basement carpark. This was due to the steep fall in the roadway and the curvature of the road affecting sight distances for motorists.

Consequently it was recommended that 'No Stopping' signs be installed along this section of the Hobart Place roadway. This would also provide adequate turning space for the buses that travel along Hobart Place.

#### 9.6 Building

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

#### 9.7 Landscaping

Council's landscape assessment officer has undertaken an assessment of the application and recommended that the trees located on Council's road reserve be retained and that the hard pavement areas be deleted from the footpath. A more detailed set of landscape plans should be submitted to fully explain the proposed landscape scheme.

(Revised landscape concept documents for the JRPP's consideration were submitted to Council at 4.30 pm on 13 September 2011.)

#### 9.8 Health

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

## 9.9 Community Services

Council's community services officer has undertaken an assessment of the application and advised that no objection is raised to the proposal, subject to suitable conditions of development 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 in the assessment of this application.

### 10.1 Zone Objectives - Zone 9 – Local Centre

Clause 11 of the SSLEP 2006 states the objectives for the subject site zoning as follows:-

*“(a) to identify appropriate land for the provision of a wide range of retail, business and professional activities,  
(b) to promote viable, small, local and specialty shops to support the needs of the local community and provide local employment,  
(c) to provide for a mix of commercial, office, retail and residential buildings,  
(d) to create attractive, vibrant and safe establishments and facilities as a focus for community spirit.”*

The subject site is one (1) of two (2) individual adjoining allotments that comprise the total Zone 9 planning area within this locality.

Collectively, the two (2) sites would provide a mix of commercial, office, retail and residential buildings - individually, they do not.

Residential flat building developments are a permissible use within the zone amongst a large list of other development use types that include retail, commercial, educational, recreational, community and transport purposes.

There is no requirement within Council's development controls or standards to provide any particular quantity of these uses within the zone, with the exception of 'mixed use premises'. As defined in SSLEP 2006 'mixed use premises' means a building that is used both for a land use having a residential purpose and for another non-residential land use that is permissible with or without consent.

The existing development on the adjoining site does not provide any 'mixed use premise' use nor will the proposed development on the subject site. Therefore, under SSLEP 2006 provisions neither site is required to provide any particular proportions of the uses that currently exist or are proposed on the subject site. However, from the standpoint of satisfying objective (c) of the zone it is considered that the proposed residential use on the subject site adds the missing use in the desired mix of use for this zone.



Objective (b) of this zone can be quite dependent on the economic viability of these activities within the locality. This is reinforced within SSDCP 2006 considerations for floor space mix which states:

*“As market forces change Local Centre Zones need to respond to best meet the needs of the retail and commercial providers while also accommodating the requirements of occupants and visitors. By allowing for flexibility, Local Centre Zones will continue to supply various types of floor space to meet the demands of businesses, occupants and visitors. Flexibility also allows for variations over time in the exact make-up of the floor space to satisfy changing needs and trends.”*

Informal discussions with the owner/operators of the existing and adjoining retail/commercial development site suggest that the current capacity of these uses are at a viable economic level in that there have been difficulties in maintaining a full occupancy of the available space. It was suggested that any competition created through additional commercial floor area on the subject site would be very detrimental to the operational feasibility of the existing centre.

However, there has been no economic analysis made available for consideration which might substantiate this viewpoint.

In consideration of objective (d), it is arguable that the population increase created by the proposal may generate a complementary patronage to the existing shopping centre thereby encouraging better services which benefit the whole local community. This could flow on to other incidental activities and services such as transport, club and local community groups where a higher demand stimulates their vibrancy and attractiveness.

## 10.2 Height

Clause 33(8)(b)(ii) of SSLEP 2006 stipulates a maximum height for the development as three (3) storeys.

The development proposes four (4) storeys across a portion of the proposed development and to support this variation to the development standard the applicant has lodged an Objection pursuant to the requirements of SEPP 1. It is important to note that a small portion of the proposal is five (5) storeys by definition. The south-eastern corner of the four (4) storey separate internal block of units is above the basement carpark levels and this portion is 1.280 metres above existing ground level. The definition of a storey within SSLEP 2006 includes any basement area that is above the 1.0 metre height. The SEPP No. 1 Objection has not addressed this issue.

The full submission is in Appendix “E” of this report and the most relevant section is reproduced below:

*“Compliance with the Building Height development standard is considered unreasonable or unnecessary in the circumstances of the case for the following reasons:*

- Strict compliance with the three storey height limit is considered to be unnecessary and unreasonable given the scale and form of commercial development on surrounding properties, which is consistent or compatible with the proposed building height. The height of the building is visually reduced through stepping of the building and variations in architectural treatment of the building to reduce apparent bulk and scale. In addition, the building FSR is significantly less than the permitted maximum and boundary setbacks greater than the minimum required.*
- A building with compliant height of three (3) storeys throughout would not achieve a superior built outcome as the amenity of apartments would be compromised (reduced solar access, reduced cross ventilation and lower percentage of apartments would capture views). Given that the proposed development is consistent with existing and future scale of development in the locality, that it does not achieve the maximum permitted FSR and that the current LEC approval for the site is for a four (4) storey building, there is no reasonable justification or compelling reason for pursuing a building with compliant height.*
- 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 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 proposed technical non-compliance with three (3) storey maximum height development standard occurs within a limited portion of the proposed building footprint, being more obvious from viewpoints close to the intersection of Fowler Road and the Hobart Place street area. These non-compliances are as a measure from the existing ground levels that will be altered by the proposal, resulting in a four (4) storey built form that also ‘appears’ to be more than three (3) storeys in height. Across the lower level of the site the finished development will be interpreted as four (4) storeys.

Compared to the shopping centre structure at the western boundary of the site, the proposal will be 1.835m lower than the neighbouring building when viewed from the Hobart Place roadway. In comparison to the existing building height of the shopping centre, the proposal will be 2.4m lower than that building’s roof ridge level when viewed from the Fowler Road frontage.

However, the contour falls significantly from this point and whilst the upper level at that point may be lower, the development is exposed as the street falls away from this point. Therefore, the finished development will present a greater height and built form above the ground level.

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 No. 1 Objection. An assessment of the SEPP No. 1 Objection in accordance with this convention has been undertaken below.

(a) Is the Requirement a Development Standard?

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

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

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.”*

(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 aims of the Policy are:-

*“To provide flexibility in the application of planning controls operating by virtue of development standards in circumstances where strict compliance with those standards would, in any particular case, be unreasonable or unnecessary or tend to hinder the attainment of the objects specified in section 5 (a) (i) and (ii) of the 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.*

The granting of development consent would be inconsistent with the aims of SEPP1 as compliance with the standard is not considered unreasonable or unnecessary.

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

No, compliance is not unreasonable or unnecessary in the circumstances of the case.

The Objection fails to demonstrate how the variation to the standard is consistent with the objectives of the height standards as follows:

Objective (a)

*To ensure the scale of buildings is consistent with the desired scale and character of the street and locality in which the buildings are located.*

The desired character is that of development that is a two (2) storey residential scale in the adjoining and surrounding zone and three (3) storeys on the subject site. The desired character is not for four (4) storey development. This character is existing. Four (4) storey residential flat buildings do not make up the existing character, nor are they identified as *desired*, particularly as the development standards clearly limit development to three (3) storeys.

The SEPP No. 1 Objection relies on the height of the adjoining commercial building and argues that the proposal will not be any higher (it is lower) than this structure. Whilst this is true in considering the RLs, it is not the case when the contour is taken into consideration. It is simply a case of a taller building located further down the hill. It is also apparent that the area of three (3) storey technical compliance will be interpreted in Hobart Place as four (4) storeys. This is evident in the elevations and sections. The SEPP No. 1 Objection does not demonstrate how this proposed residential building is compatible with *the scale and character* of other residential buildings in the street. The existing and desired character is also reflected in the *locality*. In this circumstance the locality is not limited to the local centre zone, but also the residential zone that surrounds it.

Objective (b)

*To allow reasonable daylight access to all buildings and public domain.*

Objective (c)

*To minimise the impacts of new buildings on adjoining or nearby properties from loss of views, loss of privacy, overshadowing or visual intrusion.*

The SEPP No. 1 Objection fails to address the overshadowing of the adjoining community centre. The shadow diagrams indicate this area is overshadowed during mid-winter. The shadow is caused by an area of non-compliance. The impact would be reduced with a compliant building. This objective is not satisfied.

**Objective (d)**

*To ensure that the visual impact of buildings is minimised when viewed from adjoining properties, the street and public reserves*

The height of the building will be most apparent from Hobart Place and from the corner of Fowler Road. Its four (4) storey presentation will be visible from the *street and public reserves*. To ensure visual impact is *minimised*, height standards should not be breached.

It is concluded that the variation to the standard is not consistent with the objectives of the height standard. On this basis the SEPP No. 1 Objection cannot be supported.

**(e) Is the Objection Well Founded?**

The Objection seeking this variation does not satisfy the objectives of the standard and the proposal fails to adequately respond to the zone interface of Hobart Place in respect to the expected scale and density of development within the locality.

Having regard to the objects and the purpose of the standard for maximum building height it is considered that given the complete redevelopment of the site, there are no site constraints apparent that would necessitate a non complying development, particularly given its low density context.



**Figure 4 – View from waterway towards the subject site**

**10.3 Development Control Plan 2006 - Streetscape**

There is a concern with the height of the proposal, particularly when viewed from Hobart Place. Clause 11.b.1.6 in Chapter 3 of SSDCP 2006 states:

*“The height of the development must not dominate or detract from the natural landform, especially on steep or sloping sites. On sloping sites, the development must not appear to be taller than the maximum permissible height, and must not exceed the maximum permissible height at any one point.”*



**Figure 5 – View from the NW corner of the subject site along Hobart Place**

Clause 11.c.1 in Chapter 3 of SSDCP 2006 states that in assessing the compatibility of a proposed development with the existing streetscape, Council will consider:

- “a) Whether the proposal’s physical impacts on surrounding development are acceptable.***
  - b) Whether the proposal’s appearance is in harmony with the buildings around it and the character of the street (visual impact).***
- 1. The physical impact will be determined by consideration of noise, overlooking and overshadowing.”**

Comment:

Noise

The likely expected impacts of noise resulting through the proposed residential use would not be unreasonable and in regard to an alternative retail/commercial activity use it is possible it may have a reduced effect.

Overlooking

Overlooking of any of the existing residential properties is only possible towards the dwellings located on the opposite side of Hobart Place. The extent of any impact is significantly reduced due to the screen of existing trees in the road reserve; the separation between dwellings and the location of private spaces of the existing dwellings in Hobart Place. Overlooking of the existing commercial/retail areas from the residential spaces of the proposal is negligible and not considered an issue.



### Overshadowing

The shadow diagrams indicate that the adjoining community centre to the south of the site will be overshadowed by the proposal for the morning period in mid winter. This centre includes a north facing outdoor area.

### View Loss

Any impacts upon views only affect the existing commercial/community building located along the adjoining south-western boundary. These buildings have minimal window openings that may have glimpses of the distant waterway vista. The previously mentioned north facing outdoor area is currently underutilised as there is minimal occupation of this particular community space as other competing areas fulfil the current community needs. Any development on the subject site would result in some view loss impact under the current allowable development standards.

There have been no submissions in regard the impact on existing views provided from any of the users within these buildings. In consideration of these issues it is concluded that view loss would be unavoidable but would have minimal effect on existing surrounding development.

***“2. The visual impact of development will be determined by the following considerations –***

***“a. The extent to which the new development responds to the essential elements that comprise the streetscape.”***

### Comment:

The proposal responds adequately to the existing essential elements surrounding the subject site in that the existing screen of trees will be retained and the height of the proposed building form will be below the immediate building forms of the existing shopping centre. However, the four (4) storey elevation presented to Hobart Place does not provide a sympathetic transition to the lower scale residential development on the lower contour opposite the site. Whilst the retention of trees greatly assists the presentation, the development presents a clearly ‘urban’ edge to a ‘suburban’ locality.

***“b. The height of the building does not have to be consistent with the height of existing buildings in the street to be compatible, even where most existing buildings are of the same height. Any change in height should be gradual rather than abrupt.”***

### Comment:

The design proposes a built form which reflects a gradual reduction in overall height from the existing adjoining centre development. However, given the topography and zone interface it is unable to relate its four (4) storey presentation to the residential scale of development opposite the site in Hobart Place.

***“c. Where the size of a development is much greater than the other buildings in the street, it should be visually broken up so that it does not***

***appear as one building. This can be achieved by generous breaks between buildings or sections of a building and landscaping.”***

Comment:

The design proposes a façade treatment that has a reasonable percentage of its area articulated with stepped and recessed wall forms, which will assist the proposal as does the stepping of the upper level. However, it is unlikely it will not be interpreted as a singular form.

***“d. Preservation of existing characteristics (including topography and existing vegetation) assists in reducing the visual dominance of development.”***

Comment:

There are no existing characteristics within the area of the subject site that would assist in reducing a development of visual dominance. Its contour exposes the built form however the existing trees serve to provide some softening of the presentation. Furthermore, the existing terraced land levels are higher than the general street level within Hobart Place.

***“e. Where canopy trees define the character, new developments must provide opportunities for planting canopy trees.”***

Comment:

Canopy trees are an important characteristic of the locality. The proposal relies on the existing trees within the public way and will have opportunities to provide additional plantings. The extent of additional planting is indicated on the revised landscape concept documents submitted to Council on 13 September 2011.

***“f. Building forms and materials should be compatible with the building forms and materials of other buildings in the street when these are of high quality. New materials and building forms should be introduced with care and sensitivity to enhance the streetscape.”***

Comment:

The design and the proposed finishes have been considered under the principles of SEPP 65 as being appropriate and of high quality. However, the form in terms of height has difficulty in demonstrating ‘care and sensitivity’ to Hobart Place.

***“g. Front setbacks and the way they are treated are an important element of urban character. Where there is a uniform building line, even small differences can destroy the unity.”***

Comment:

The required distance of front setbacks within this zone is minimal however a 7.5 metre setback is required for residential development in Hobart Place opposite. The setbacks proposed comply with the standard for this zone but are exacerbated by the scale of the development fronting Hobart Place.

Whilst landscaping serves as a desirable buffer, the setback and landscaping will have difficulty in counteracting the scale and height of the proposal.

***“h. Side setbacks determine the rhythm of building and void. While it may not be possible to reproduce the rhythm exactly, new development should strive to reflect it in some way.”***

Comment:

The proposed side setbacks for this site are most relevant to the impact upon the Hobart Place boundary alignment. In this respect there will be a generous and dimensional compliant portion of land preserved for landscaping. The building form proposed along this boundary will be stepped and segmented to address the curve boundary alignment, which would create a development with an interesting and visual attractive rhythm.



**Figure 6 – View of the site from the intersection of Fowler Road & Hobart Place**

Additionally, the applicant has submitted a report from an Urban Design Consultant who has analysed the impact of the proposal within this particular context. The full submission is in Appendix “F” of this report and a summary of their conclusion is as follows:

*“The proposed urban design response combined with the minimal amenity and visual impacts on the surrounding areas render the proposal a reasonable built form response to the prevailing character of the street and surrounding area. The proposal provides a compatible built form outcome that addresses both the adjoining Illawong Village Shopping Centre and adjacent residential development in the manner conducive to the site’s location at the zone interface.”*



**Figure 7 – View from waterway towards the subject site**

#### 10.4 SEPP No. 65

The proposed development has been assessed having regard to the design principles and provisions of SEPP No. 65 and the Residential Flat Design Code (RFDC).

The principal matters relating to design quality of the proposal as qualified within the SEPP and RFDC were addressed through the review undertaken by Council's Architectural Review Advisory Panel (ARAP).

The Panel's conclusion stated:

*"The proposal has developed significantly to address many of the concerns raised at the previous ARAP review. In particular, the increased setback from Hobart Place and the reduced mass (from 85 units to 70 units) are commendable developments.*

*Recognising the zoning and the location of the development within the centre, the proposal is considered to be of an appropriate scale, provides a good level of amenity to its future occupants and relates to its immediate context in an acceptable manner.*

*However, further consideration of the Fowler Road access lane is recommended to provide a safer, more people friendly environment.*

*Further information documenting the detail treatment of the facades and landscaping illustrating how the design intent of the proposal will be realised should be provided for consideration by the Joint Regional Planning Panel."*

These reflect a general satisfaction with the overall configuration, size, aesthetic and contextual relationship of the proposal with the exception of some minor detail aspects.

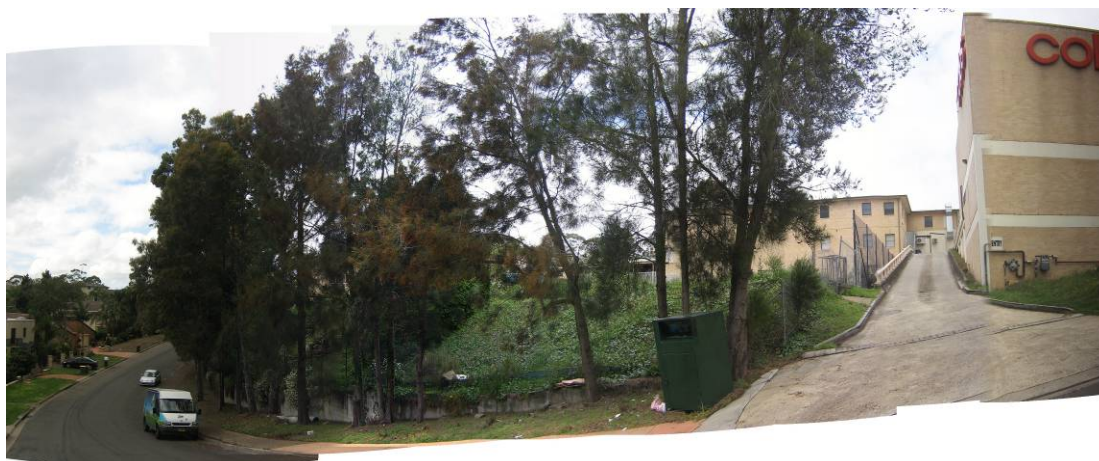
In regard to further consideration of the Fowler Road access lane the suggestion of ARAP was to widen the passageway, however, the effect of this would create a void space that could appear to be a public access when it is not. To address the recommendation of providing a safer, more people friendly environment the space can be controlled through security gates.

Concept façade treatment details have been provided, which illustrate that an acceptable standard and quality of design can be achieved.

## 10.5 Setbacks

### 10.5.1 Rear Setback

The proposal is non-compliant with the required 4.0m setback to the rear boundary having a nil setback. This boundary of the site abuts the adjoining loading ramp driveway that services the supermarket development on the adjoining shopping centre site. Compliance is not considered essential in this situation as it would be of little benefit either to the proposed development or to a softening of the visual impact from the street. This is due to the western orientation of the site, which will not be beneficial to future residents of the proposed development nor with the outlook towards the blank wall facade of the existing retail building. Views from the street are already screened by existing canopy trees within the public way.



**Figure 8 – View along rear boundary of the subject site and adjoining shopping centre loading dock access ramp**

### 10.5.2 Side Setbacks

The proposal is non-compliant with the required 4.0m setback to the western side boundary adjoining the existing community building fronting Fowler Road. A 2.5m space has been proposed, which will serve as a general resident pedestrian access between the central communal area and Fowler Road. This area also provides a right of way for the users of the adjoining property and for services. This reduced setback will be adequate for all of these purposes as well as providing sufficient separation between the proposed and existing building forms.



## 10.6 Traffic

There has been significant resident concern about the impact of traffic that may be generated by the proposed development. It would be correct to assume that Council has considered the impact of traffic generation when allocating particular planning zones. In this respect the quantity of vehicle movements that would be expected if the whole Urban Centre zone for this locality were to be developed to its full capacity has been taken into account. Analysis suggests that the traffic generated by a residential use as proposed would be much less than a potential retail/commercial plus residential development, particularly having regard to the tidal flow of car movements associated with the residential activity as opposed to the continual movements associated with retail/commercial uses.

However, it is acknowledged that there will be an increase in residential traffic in Hobart Place with the new 70 apartments. Whilst the impact on the existing road system may be acceptable, there will be an increase in traffic movements in Hobart Place.

The proposal also seeks to provide 30 additional car parking spaces in excess of Council's requirements. Council's parking requirements within an Urban Centre zone assumes that there is an efficient public transport facility to service the area. In that this particular locality has some remoteness, transport by road is the only available option for residents. Subsequently the residents in this locality have a greater dependence on cars. This appears to be the current circumstance for existing residents within the locality as the regular bus services operates in peak hours only.

The applicant submitted a Traffic Consultant's report which relates to the original proposed development, a full copy of which is contained within Appendix "G" of this report. In that the original proposal accounted for a higher number of units, it could be expected that the impacts of the current proposal would be also reduced. A summary of the main points of that report are as follows:

- An actual reduction of traffic generation in comparison with the existing retail/commercial uses on the subject site.
- The proposed development will not have any unacceptable traffic implications in terms of road network capacity.
- The proposed development will not have any unacceptable parking implications.

The impacts of traffic that would result from the proposal were reviewed by Council's traffic engineer where it was noted that while the onstreet parking demand would likely increase, it was not considered an issue.

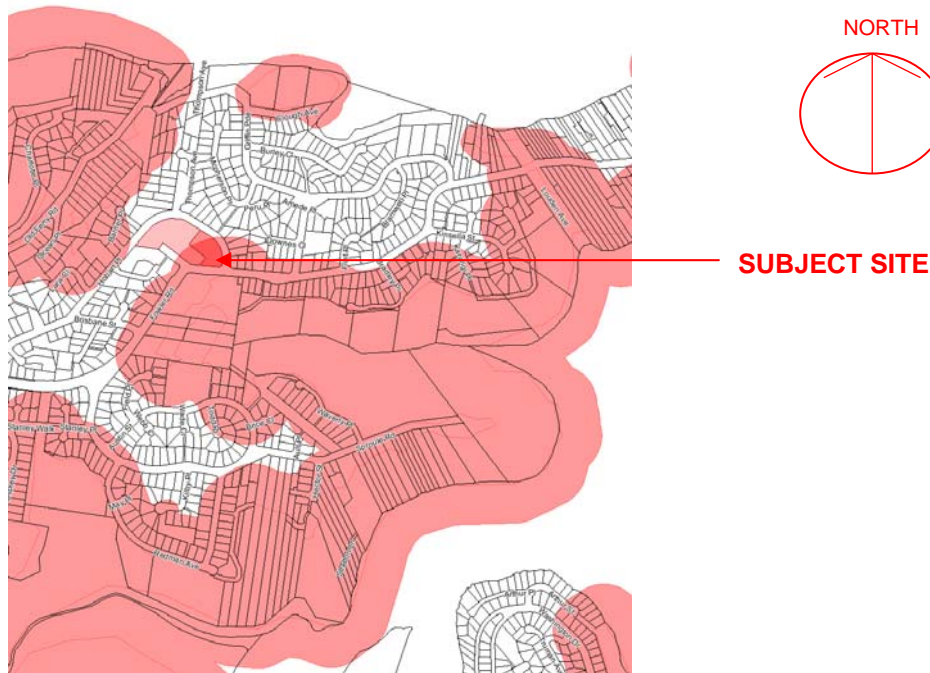
The traffic engineer's recommendation was to require that 'No Stopping' signs be installed along the western side of Hobart Place between the proposed driveway crossing point for the development and Fowler Road. This would ensure that there were adequate sight line distances as well as ensuring



adequate turning space for buses at the Fowler Road/Hobart Place intersection.

#### 10.7 Bushfire

The subject site is located within a nominated bushfire prone area and as such the design will be required to account for provisions that will reduce the impact of any potential bushfire emergency.



**Figure 9 – Bushfire Prone Land Map**

The applicant submitted a Bushfire Consultant report which relates to the original proposed development, a full copy of which is contained within Appendix “H” of this report. In that the original proposal accounted for a higher number of units, it could be expected that the impacts of the current proposal would be also reduced. The main points of that report are as follows:

- *“That the proposed building be constructed in accordance with ‘Planning for Bushfire Protection’ (2006).*
- *The whole site be managed as an inner protection area in accordance with ‘Planning for Bushfire Protection’ (2006).*
- *Any trees located within the envisaged asset protection zone are considered acceptable if the vegetation does not touch or overhang any dwelling. Any canopy must not be within 5.0m of any building.”*

The original proposal was referred to the Rural Fire Services (RFS) for comment. This resulted in the RFS requesting additional information in respect to the capacity of the road network and proposed landscaping. Following the submission of the revised design the new proposal, together with additional information regarding the impact of the development upon the

existing road network, has been forwarded to the RFS and final comment is expected.

Appropriate consent conditions could be incorporated to ensure that satisfactory bushfire control and protection measures will be incorporated into the proposed development when it was constructed if the application were to be supported.

## **11.0 SECTION 94 CONTRIBUTIONS**

In accordance with Council's development contributions plans, the proposed development generates a requirement for Section 94 contributions. Appropriate consent conditions could be incorporated if the application were to be supported.

## **12.0 DECLARATION OF AFFILIATION**

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

## **13.0 CONCLUSION**

The proposed development is for the demolition of the existing structures to provide for the construction of a new residential flat building consisting of 70 apartments over basement car parking and 70 lot strata subdivision at No. 273A Fowler Road, Illawong.

The subject land is located within Zone 9 – Local Centre 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.

The application was placed on public exhibition on two (2) separate occasions as a result of the applicant submitting a revised design proposal. In response to the most recent public exhibition, submissions were received from eight (8) households. The matters raised in these submissions have been discussed in this report and include height, traffic, out of character building form and privacy impacts.

It is concluded that:

- The proposed use is permissible within the zoning where the subject site located.
- The proposal is complementary to the existing uses within this zone.
- There is an adequate landscaping buffer being provided along the two (2) road frontage areas of the site, where there is no particular development standard that requires the provision of any landscaping within this zone.
- The development offers an alternative choice of accommodation and living styles for residents within the locality.

- The additional population created by the proposal would stimulate the retail/commercial activity of the existing adjoining shopping development.
- The additional population of the proposal would increase the demand upon public transport and community facilities. This may ultimately encourage an improvement in the provision of those services.
- The design of the proposal has been supported by the Architectural Review Advisory Panel as being of a reasonable and acceptable quality.

However, the application proposes variations to the three (3) storey height limit. The proposal is four (4) and five (5) storeys in height. The applicant has sought to justify the departure via a SEPP No. 1 Objection. An assessment of the SEPP No. 1 Objection concludes that it fails to demonstrate why compliance with the standard is unreasonable or unnecessary in the circumstances of the case. On this basis the application cannot be supported.

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. 11/0090 cannot be supported for the reasons outlined in this report.

#### **14.0 RECOMMENDATION**

That Development Application No. 11/0090 for the Demolition of Existing Structures; Construction of a Residential Flat Building Consisting of 70 Apartments Over Basement Parking and 70 Lot Strata Subdivision at Lot 11 DP 1107327 (No. 273A) Fowler Road, Illawong 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 in that the proposed development fails to comply with the development standard for building height contained in Clause 33(8)(ii) 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 building height established in Clause 33(8)(b)(ii) of Sutherland Shire Local Environmental Plan 2006 is not considered to be well founded as the applicant has not adequately demonstrated why, in the circumstances of the case of this application, compliance with this development standard is either unreasonable or unnecessary.