2011SYE034 – 321-327A Woolooware Road, Burraneer DA11/0218

ASSESSMENT REPORT APPENDICES

Appendix	Α	Pre-Application Discussion Letter to Applicant - dated
		25 October 2010

- B Correspondence from Applicant re Amended Driveway Plan dated 30 June 2011
- C Architectural Review Advisory Panel report of 14 April 2011
- D SEPP No. 1 Objection Density
- E SEPP No. 1 Objection Landscaped Area



Chris Greig - 9710 0195 File Ref: PAD10/0100

25 October 2010

Stephen Shelley 14 Castlereagh Crescent SYLVANIA WATERS NSW 2224 Appendix A

Administration Centre 4-20 Eton Street, Sutherland NSW 2232 Australia

Please reply to: General Manager, Locked Bag 17, Sutherland NSW 1499 Australia

Tel 02 9710 0333 Fax 02 9710 0265 DX4511 SUTHERLAND Email ssc@ssc.nsw.gov.au www.sutherland.nsw.gov.au ABN 52 018 204 808

Office Hours 8.30am to 4.30pm Monday to Friday

Dear Sir

Pre-Application Discussion No. PAD10/0100

Proposal: Consolidate three lots, demolish the current dwellings, garages and tennis court and construct a new dwelling and swimming pool, renovate/restore a heritage item on foreshore

Site: 321, 325 and 327A Woolooware Road Burraneer

I refer to the pre-application discussion held on 11 Oct 2010 regarding the above premises. The following is a summary of the matters addressed at the meeting. The contents of this letter do not bind Council to granting consent for the proposed development if and when an application is made for such a proposal.

Description of Site and Proposal:

The site comprises Lot 2 in DP 600577, Lot 9A in DP 307110 and Lot 2 in DP 562829. Nos. 321 and 327A are internal lots and are accessed via Rights of Carriageway. No. 325 is approximately 138 metres from the street boundary to the Mean High Water Mark (MHWM). Nos. 321 and 327A are approximately 80 and 72 metres respectively from the MHWM to their respective eastern common boundaries. Upon consolidation the combined site area will be 4,376sq.m.

All three lots have deep water frontage onto the eastern shore of Burraneer Bay. The area below the Mean High Water Mark (MHWM) of No.321 includes Attwells boat brokerage/chandlery. This building is listed as an item of local heritage significance within the Sutherland Shire Local Environmental Plan 2006 (SSLEP 2006). Below the MHWM of No.325 is a reclamation, cottage and watercraft facilities. Below the MHWM of No.327A is a reclamation and pool.

There is parking for Attwells as well as a tennis court upon No.321. Access is via a Right of Carriageway (RoC) over the northern portion of No.323. There is a dwelling standing approximately midway along No.325 and this property runs from street to water. There is an existing dwelling, apparently above the Foreshore Building Line (FBL), upon No.327A and vehicular access is gained via a RoC over the northern portion of No.327.

Trees upon the properties can largely be grouped in to two areas. Firstly those below the FBL and which appear to be generally unaffected by the new development and secondly those which are above the FBL and which will mostly be removed.

Pursuant to SSLEP 2006:-

- all three properties are zoned Zone 2 Environmental Housing (Scenic Quality)
- all three properties are affected by a 20 metre Foreshore Building Line (FBL)
- the land below the MHWM is zoned Zone 16 Environmental Protection (Waterways)

In very general terms the proposal is to:-

- remove the existing structures which are located above the FBL
- excavate a new internal driveway tunnel to access resident and personal visitor parking on two levels below ground
- construct a new three level dwelling, including a mostly separate guest pavilion to the north of the dwelling.
- provide an entry 'pavilion' and a port cochere at a fourth and uppermost level.
 Visitor parking and the main visitor entry to the dwelling would be at this level.
 There would also be five (5) parking spaces allocated for use by Attwells and storage for Attwells under. Pedestrian access to Attwells would remain via steps along the northern side boundary
- restore the Attwells building and convert the use of the first floor of that building to guest accommodation.
- carry out works upon the existing cottage over the MHWM of No.325

Comments on the Proposal:

Issue 1: Means of vehicular access and car parking

The proposal is to provide essentially two separated means of vehicular access and parking comprised of an upper level at grade area for general visitors and Attwells, and a separate subsurface tunnel for personal visitors and residents of the dwelling. The upper level would be via a one-way looped vehicular access entering westbound along the RoC over No.323, then southbound through the property with parking off this portion, and exiting the site eastbound via the RoC over 327.

The access to the underground car park would be excavated, built and then filled and landscaped over. This would present as a tunnel when viewed from the east and would have its entrance set some 16 metres from the front boundary. The tunnel would lead to five (5) car spaces generally at the guest and children's bedroom level. A further subsurface ramp then provides access to another three (3) car spaces at the main bedroom and living area level.

Whilst not dismissing this arrangement, it is very unusual and would appear a costly design solution. Consideration should be given to the feasibility of a ramp down from the main port cochere area to reduce the extent of excavation, or the use of a car lift in place of the proposed tunnel. Having suggested this, Council also appreciates the constraints of such a ramp in regard to grades, radii and the like. An alternative

arrangement such as this would free up the eastern portion of the proposed tunnel for deep soil landscaping and reduce the non-compliance with the landscaped area standard.

The change in levels from proposed RL18.50 in the port cochere up to the existing RoC level upon No.327 would mean a sharp rise of around 1400mm. There does not appear to be a ramp shown on drawings submitted. Any work on the RoC would have to have the consent of the owner of that land.

In addition to visitors from the new dwelling and vehicles from Attwells would leave the site in this direction, rather than driving back eastwards along the RoC over No.323 as they currently do. This may generate adverse impacts upon the occupants of No.323 by way of increased traffic, noise, and headlight glare.

Issue 2: Landscaped area

The figures provided to Council indicate that the landscaped area would not be compliant with Clause 36 of SSLEP 2006 in that an area of 48% of the site area would be provided instead of the required minimum 62.64%.

Council has not made its own calculation, however, the area occupied by the driveway, surface parking, the tunnel and subsurface parking must all taken to be 'built upon area' for the purpose of assessing landscaped area. Whilst some landscaping can be provided over the tunnel, that landscaping would not be deep soil area in accordance with the SSLEP2006 definition.

The area below the MHWM is not taken as part of the site area for the purpose of calculating landscaped area, as it is under separate ownership, is not part of the title of the three existing properties and, more importantly, is not so zoned so as to permit a dwelling.

If the landscaped area is not compliant with the provisions of SSLEP 2006, an Objection would have to be made pursuant to State Environmental Planning Policy No.1 – Development Standards (SEPP1). The unusually large consolidated site area and the 'sliding scale' provisions of Clause 36 may warrant Council giving some favourable consideration to a variation so long as it could be demonstrated that the objectives of the clause were satisfied.

At the meeting it was correctly stated that the 'sliding scale' control was not written with a lot as large as that proposed in mind, and that that proposal is disadvantaged as a result. Calculations were presented showing the amount of landscaping that would be required if the site was developed as 4 separate dwelling house lots.

Lots in the order of 2000sq.m are reasonably common around the waterfront, and it would therefore be of assistance to provide comparative calculations of landscaped area requirements showing the outcome if the consolidated lot was developed as two separate dwelling house sites.

Issue 3: Building Density - Floor Space Ratio (FSR)

The compliance table provided to Council indicates that the FSR would not be compliant with Clause 35 of SSLEP 2006 in that the FSR would be 0.31:1 rather than a maximum of 0.26:1. For the same reasons outlined above in relation to landscaped area, the area below the MHWM is not taken as part of the site for the purposes of calculating floor area.

If the FSR is not compliant with the provisions SSLEP 2006, an Objection would have to be made pursuant to State Environmental Planning Policy No.1 – Development Standards (SEPP1). The objection could include comment upon the 'countable' areas that are below ground level and arguably do not add to building bulk or impact neighbours.

It is noted from the calculations that were provided that there are significant areas that have not been taken to be gross floor area for the purposes of calculating FSR. These areas generally comprise of 'service areas' rather than habitable areas. Final calculations must ensure that rooms/areas have been counted or excluded strictly in accordance with the definitions in SSLEP 2006.

Similar to the comments in Issue 2 above, the unusually large consolidated site area and the 'sliding scale' provisions of Clause 35 may warrant Council giving some favourable consideration to a variation, so long as it could be demonstrated that the objectives of the clause were satisfied.

As above, comparative calculations based on development of the site as two separate dwelling house lots may be helpful.

Issue 4: Building Height

It was noted at the meeting that the building very slightly encroaches above the 7.2 metre and 9.0 metre height controls contained with Clause 33 of SSLEP 2006. It was also noted by Cameron Jones that with some minor revisions these two development standards for height could be wholly complied with. It is recommended that these adjustments be made to eliminate the need for a further SEPP 1 Objection.

Issue 5: Massing

The proposal combines three sites to create a total site area of about 4376sqm to accommodate a single dwelling. It is noted that a more traditional development pattern for these sites would be to develop three or four separate dwellings.

The proposal is well articulated and the general aesthetics' are well considered. The level of amenity provided for future occupants is excellent.

The proposal raises concerns regarding the distribution of the built form on the site. The eastern half of No.325 would, in a more typical development pattern, be subdivided off and then contain a dwelling. However with this proposal, this potential lot is void of any significant built form. This results in all the permissible FSR for the site being focused into a single building form on what is essentially the three water front lots.

The eastern half of No.325 facing the street will be void of built form with the exception of a large entry ramp, and the lots facing the water will contain a building form significantly larger than surrounding buildings. Consideration will need to be given as to how this arrangement fits with the character of the area.

At the meeting it was explained that the building had been designed as a number of smaller elements to reduce the overall perceived mass, which is a positive design principle. Further development is required to ensure that this is achieved and that the building does not appear monolithic from the water compared to the finer grain that generally exists.

It is suggested that the building form be developed to read as two distinct pavilions when viewed from the water, with a third pavilion being the guest pavilion as is currently shown. As the photo montage provided is from the water level it does not clearly show the western elevation and importantly how the house is broken up so as not to appear as one very wide building. Council acknowledges that there is some relief on the floor plans between the (southern) bedroom wing and the (northern) living area wing, however, this does not show clearly on the western elevation. Council would happily provide further comment on this aspect if further detail were to be provided.

It is suggested that a visible pedestrian entrance that is emphasised with landscaping is developed to address the street. Further contextual studies should be undertaken to aid the meaningful development of the proposal and demonstrate the proposal's impact on its immediate surroundings.

Issue 6: Excavation

Chapter 3, Clause 6, of the Sutherland Shire Development Control Plan 2006 (SSDCP 2006) provides objectives and numeric controls which effectively limit the extent of excavation and recognise the importance of maintaining landforms.

It appears that to assist designing the roof and ceiling planes within the applicable height controls of SSLEP 2006 and to provide parking, the dwelling has been substantially excavated into the ground, albeit with the driveway tunnel and parking mostly backfilled and landscaped over. The extent of excavation required for the parking, tunnel and to bring the building heights down so as to be compliant should not dictate a variation to the extent and depth of permitted excavation.

The design process should start with a site analysis and the design should respond to the constraints and opportunities identified, such as the slope of the land, in the interests of environmental sustainability. This matter ought to be addressed in any application submitted.

Issue 7: The Attwell's building

It was raised at the meeting that Attwells boatshed is upon a permissive occupancy and that there is a related agreement or lease that provides long term tenure for the boatshed operator. It was also raised that the existing underground fuel tanks serving the boatshed operations installed upon No.321 will be removed as part of the proposal and would not be replaced. In this regard, the area of the fuel storage tanks would need to be decontaminated and remediated. A report detailing the remediation works required prepared by a suitably qualified environmental consultant would need to be submitted as part of the development application.

The Attwells building is listed within schedule 6 of SSLEP 2006 as a heritage item of local significance. Clause 54 of SSLEP 2006 is of particular relevance and permits Council to more liberally view works to heritage items.

Over many years the building has undergone alterations which are not at all sympathetic to its heritage. A Statement of Heritage Impact prepared by NBRS and Partners was provided at the meeting. This statement details significant rectification works which would generally return the building to its former state, circa 1920's. Such works would be strongly supported by Council.

The upper level is to contain what is essentially a two bedroom dwelling, as it once did. It is understood that this will be used as guest accommodation rather than as a second dwelling. If it were to be used as a separate dwelling then the future development application would need to describe the development as a dual occupancy. Council would be more supportive of the works on the building if it were to be used as guest accommodation, particularly given the original or earlier use of the upper level was for a residential purpose.

A Conservation Management Plan would need to be submitted with the future development application. This would be assessed by Councils Heritage Officer.

Issue 8: Existing non-permissible buildings below the FBL and MHWM
The provisions of Clauses 17 and 18 of SSLEP 2006 apply to the works below the FBL and MHWM. These clauses generally require removal of non-permissible works from below the FBL and MHWM. In this instance, the cottage and reclamation below the MHWM of No.325 and the reclamation and pool below the MHWM of No.327A are not permissible within the zone.

There are no elevations or plans of what is proposed to be carried out on the cottage which stands approximately 90% below the MHWM of No.325. However, some major modifications are evident in the photo montages that have been provided. Such works include a new roof, openings, etc, and it appears that the modifications are would ultimately provide a building to match the new main dwelling.

A substantial rebuilding of this cottage would not achieve the objectives of Clauses 17 and 18 or of the Waterways zone. There are also provisions in SSDCP2006 that describe the desired character of waterside structures, which need to be taken into account. The heritage provisions of SSLEP 2006 do not apply to this building as they do for Attwells boatshed.

In the first instance a strong case would need to be put to Council demonstrating that retention of the cottage satisfies the objectives of Clauses 17 and 18, and

subsequently, that the proposed works were actually permissible in the Waterways zone.

If the building were to be used as a dwelling then the future development application would need to be for a dual occupancy development. Dual occupancy is a form of development separately defined, but which in any event is not permissible within the Waterways zone. If Council were to accept that the building could be retained it would need to be satisfied that the new use was permissible within the Waterways zone.

In respect to the pool and reclamation below No.327A, it is unlikely that Council would seek their removal. However, Council would seek to have the seawall faced in a more natural material which was sympathetic with the natural attributes of the foreshore, eg natural or reconstituted sandstone.

Issue 9: Foreshore Building Line

A 20 metre FBL applies. It is noted that the north western part of the dwelling encroaches below this line and that the swimming pool exceeds 300mm above ground. For Council to permit any part of the dwelling to be built below the FBL it would need to be satisfied that it was not reasonable to build wholly above that line. It would be very difficult, if not impossible, to put forward a convincing argument for this to occur on a site of this area with expansive areas above the FBL.

For the swimming pool to be permitted in the location shown it would need to be substantially lowered. Such lowering would mean that the pool would not relate well to the floor levels of the dwelling. The pool would need to be lowered so as to be not more than 300mm above ground level or be the shape modified so as to be wholly above the FBL.

The steps that flow downwards from the "outdoor living terrace" would be permissible below the FBL as they are works to enable pedestrian access.

Conclusion:

The proposal is an interesting concept and one for which there is no precedent to date in the Sutherland Shire. In some ways Councils planning controls, in numeric terms, were not framed with sites of this area and proposals of this scale in mind. Sound arguments will have to be made to justify the several numerically large variations being sought and to demonstrate that the cumulative impact of those variations is acceptable.

There is some scope for variation of those controls, however, the extent of those variations will rely heavily on the argument put forward, demonstration that the objectives of those controls has been met and demonstration that the impact upon neighbours in particular is minimal. There will also need to be a detailed explanation as to how the building has been designed to integrate with the character of the area.

Given the extent of the variations that are likely to be sought, the size and scale of the development, and the works upon the heritage item, the future development

application will be referred to Council for decision (via the Independent Hearing and Advisory Panel - IHAP) rather than under delegated authority by Council staff.

The above information is based on a meeting with Council's Peter Barber, Chris Greig and David Jarvis as well as your consultants Cameron Jones, David Crane and Lyndall Wynne and Ronald Brown on 11 Oct 2010 and the details presented in that discussion.

The information provided is in accordance with the environmental planning instruments, development control plans and codes that were current at the time of the meeting. It is the applicant's responsibility to check whether there have been any amendments, repeals or alternatively if any new instruments or policies have been adopted by the date of lodgement of the development application.

Should you consider the information to be inaccurate, it is the applicant's responsibility to contact Council for further clarification. Council reserves the right to request further information during the assessment of the development, should such information be considered necessary for assessment purposes.

Prior to preparing a development application you are advised to refer to Council's "DA Guide" and other information provided regarding submission requirements.

Council's Development Enquiry Officers are also available to assist. Incomplete applications will not be accepted and will result in delays.

It is hoped that this information is of assistance to you in the preparation of your development application. Should you require additional information please do not hesitate in contacting Chris Greig during normal business hours on 9710 0195.

Yours faithfully

Peter Barber Manager – Coastal Environmental Assessment Team for J W Rayner General Manager PTY. LIMITED. A.B.N.87818961246 A.C.N.069236871

Planning, Development & Building Consultants

30 June 2011

The General Manager Sutherland Shire Council Locked Bag 17 Sutherland NSW 1499

Attention: Luke Murtas

Dear Luke.

Re: Submission of Amended Driveway Plan

Development Application DA 11/0218

Description: Demolition of existing dwellings, construction of a dwelling,

swimming pool and removal of a fuel tank

Property: 321, 325 and 327A Woolooware Rd Burraneer

Applicant: Innovative Architects Pty Ltd

I refer to our discussions on Monday 27th June 2011, your recent conversations with Cameron Jones of Innovative Architects and your letter dated 21st April 2011 in relation to the above application. We understand that the application is scheduled for a Joint Regional Planning Panel meeting in July 2011 pending our response on vehicular access (ROC) arrangements. Our response to this issue is outlined below.

The Original Proposal for Vehicular Access

The original plans submitted with the application provide three vehicular access points to the property being:

- a driveway at the frontage to No 325 Woolooware Road leading to a tunnel and an underground garage and storage area;
- · ongoing use of the existing northern ROC for the Attwells Boatshed use; and
- one way use of the southern right of carriageway for residents and visitors entering the site and arriving at the porte cochere (allowing cars and pedestrians to traverse from the ROC over 327 and on to No 325 where the porte cochere is located).

Legal Issue

We understand Council's internal legal advice indicates the above access proposal cannot be supported unless the terms of the easement over No 327 are modified to specifically benefit the other parts of the subject site (no's 321 and/or 325 Woolooware Road).

The owner of the subject property, Steve Shelly, has undertaken considerable negotiations with both neighbours (at 327 and 323) regarding access. The owners of the site to the south (No 327), Mr Daniel and Mrs Fi Spagnolo, have now agreed, in principle, to the use of the ROC over their property for two way access to the adjoining property (no 325) owned by Mr Shelley. This would enable Mr Shelley and his invitees, to use the driveway to access the area in front of the porte cochere. Mr Spagnolo has agreed to send an email to you advising you of his decision, which we trust you have already received today. Following development consent, the terms of the agreement will be formally made in an amended 88B instrument.

Accordingly, we now believe that Council's concerns regarding the terms of the easement over 327a have now been resolved.

Notwithstanding the above agreement in principle between Mr Shelley and his neighbours, it is also noted that we have sought our own legal advice on the matters raised by Council regarding easement access to the subject property. We include it for your consideration as Attachment A. The advice indicates that the ROC over the property at No 327 Woolooware Road can be used without need for formal amendment, by Mr Shelley and his invitees, to access, by vehicle or by foot, all parts of his property. This means that, in our opinion, a driveway extending from the ROC over No 327 on to No 325 is legally acceptable in principle, even without formal agreement from Mr Shelley's neighbours. However, a formal agreement will provide certainty.

Amended Plans

Amended plans are submitted with this letter to (a) provide a fixed fence between the Atwells car park and the porte cochere area (b) make the driveway 2 way and (c) change the corner design slightly. The changes are explained below:

Fixed Fence:

Introduce a fixed fence between the Attwels car park and the southern driveway and porte cochere to prevent cars crossing from one area to the other.

· Two way access:

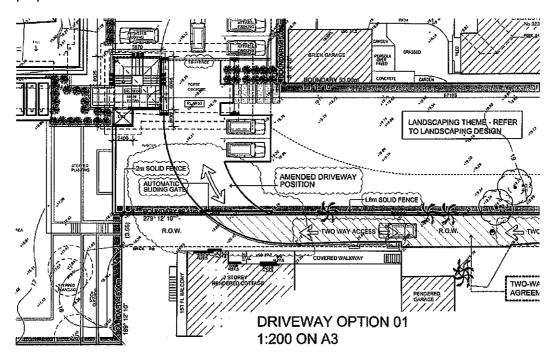
The access to the southern driveway will be two way (as is currently used by the residents at No 327a) rather than one way (as originally proposed); and

Corner curve:

The driveway has been curved slightly where it intersects with the southern ROC over No 327. This will ensure that headlights from exiting cars do not provide nuisance to the adjoining dwelling to the south at no 327 Woolooware Road.

- Construction of a 2m high solid fence along part of the boundary between 327 and 325
 - A small length of wall will be constructed along a section of the boundary to prevent any potential headlight glare causing nuisance to the dwelling at No 327.
- Installation of an automatic sliding gate along the boundary of 327 and 325 and construction of a 1.8m high dividing fence along the remaining boundary

The plan extract below (also refer Attachment B) shows the amended access proposal



Consideration of All Dwelling Access Via No 325

The potential to consolidate the access to the subject dwelling to one driveway off No 325 has also been canvassed. Under this option the southern ROC driveway would not be used by the subject property and the existing Attwels ROC arrangement would remain in the north. The underground parking arrangements for the residents of the dwelling would remain as proposed with the following options for the relocated 2 visitor spaces:

- Remove them entirely and make all visitors park on the street; or
- Locate them above ground close to the street, making them highly visible; or;
- Put two spaces underground off the proposed tunnel.

All of these options using No 325 only for the driveway access to the new dwelling are considered to be far inferior to the amended plan, as proposed, for the following main reasons:

- It is not reasonable to expect all visitors to park on the street for a property of this size, particularly when they need to walk over 80m from the front of the site to the dwelling entry. People likely to use the porte cochere entry would include friends and family and people such as pizza delivery, removalists, gardening staff and other maintenance people. It would be far more convenient to enable them to drive up right next to the dwelling entry. In this regard it is noted that the underground option would require visitors to exit their cars, walk out to the front of the site and up to the porte cocher entry. This is considered to be unnecessarily cumbersome.
- None of the above visitor vehicle entry options using just No 325 provide a
 "sense of arrival" as does the currently proposed plan. While the house itself
 will provide an "arrival experience" for all visitors once inside, our client is
 keen to ensure that the experience starts in the drive up to the porte cochere.
- Any above ground vehicular spaces close to the street frontage are considered to have a potentially negative visual impact on the property from the street. Creating a parklike environment from the street frontage has been of prime importance in the design of the landscaped street frontage and such a proposal could compromise the potential to achieve this outcome;
- Appropriate signage will be installed to ensure that the visitor parking for the
 dwelling is clear and can easily be found. The southern ROC is likely to be
 resurfaced, with the agreement of the landowner, and this, together, with the
 design overall, will enable the work to have a consistent and clear
 appearance. Conversely, some visitors may be apprehensive entering an
 underground tunnel on a single dwelling site as it is likely to feel like a private
 space. This option therefore has the potential to be more confusing to visitors
 than clearly assigned visitor spaces;
- The project architect has advised that underground visitor spaces would be very difficult to achieve, if not impossible, on the site, without unnecessarily compromising (a) landscaping any excavated area may not be calculable landscaped area and may therefore result in a shortfall, (b) security the underground car park has been designed to provide a secure entrance to the site for the Shelley family. Additional, visitor parking spaces would necessitate additional, and unnecessary secure gates etc. (c) manoeuvrability many service vehicles would not be able to manoeuvre in and out of 2 small underground spaces parking spaces and the associated driveway.
- The driveway to No 327a will remain to access No 327, even if it were not to be used by the Shelley residence. Accordingly, there is no streetscape gain by proposing the 325 consolidated access in terms of reducing the total number of driveways onto the street.

We trust this now resolves the above access issue and will enable the development to the approved.

Should you have any queries or wish to discuss the issues further please do not hesitate to call me on 0419 967 746.

Yours Faithfully

David V. Crane

David Crane

Attachment A – Legal Advice

MEMORANDUM OF ADVICE

Easement issues associated with DA 11/0218 for construction of new dwelling Property: 321, 325 and 327A Woolooware Rd Burraneer

To

Cameron Jones
Innovative Architects

BY EMAIL: cameron@innovate.com.au

Justin Doyle Barrister

Frederick Jordan Chambers Level 2, 53 Martin Place Sydney NSW 2000 Ph: 9229 7326 Email: jdoyle@fjc.net.au

30 June 2011

Disputes/5076_1

EASEMENT ISSUES ASSOCIATED WITH DA 11/0218 FOR CONSTRUCTION OF NEW DWELLING PROPERTY: 321, 325 AND 327A WOOLOOWARE RD BURRANEER

I understand that Innovative Architects has been engaged by Mr Steven Shelley to prepare a design for a new residence proposed to be constructed on an amalgamation of three existing alotments at 321, 325 and 327A Woolooware Rd Burraneer.

An issue has arisen in relation to access to the new residence when constructed, and particularly, whether Mr Shelley is able to utilise a right of carriageway registered to benefit no. 327A, burdening no 327 which is in separate ownership.

The problem as I understand it is that both Council and the owner of 327 have queried whether the scope of the right of carriageway extends to permit Mr Shelley and his invitees to use the driveway already constructed over no 327.

I have now had the opportunity to inspect a copy of the instrument executed under Section 88B of the *Conveyancing Act 1919* to create the right of carriageway, a copy of which is attached together with DP 562829 which it accompanied.

It is important to observe that the right of carriageway easement described in that Section 88B instrument departs significantly from the standard text prescribed by Schedule 8 of the Conveyancing Act for rights of carriageway (by force of Section 181A(1) of that Act).

Section 181A reads as follows:

Schedule 8(1)

In an instrument executed or made after 1 January 1931 (the commencement of the Conveyancing (Amendment) Act 1930) and purporting to create a right-of-way the expressions "right of carriage way" and "right of footway" have the same effect as if there had been inserted in

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lieu thereof respectively the words contained in Part 1 or Part 2 of Schedule 8...

The Schedule relevantly then says that the following words are implied into a right of carriageway:

Part 1 - Right of carriage way

Full and free right for every person who is at any time entitled to an estate or interest in possession in the land herein indicated as the dominant tenement or any part thereof with which the right shall be capable of enjoyment, and every person authorised by that person, to go, pass and repass at all times and for all purposes with or without animals or vehicles or both to and from the said dominant tenement or any such part thereof. (My emphasis)

That wording is different and may be contrasted withfrom the Section 88B instrument which reads:

Full and free right for every person who is at any time entitled to an estate or interest in possession in the land herein indicated as the dominant tenement or any part thereof in whose favour this easement is created and every person authorised by him, to go, pass and repass at all times and for all purposes with or without animals or vehicles or both over the land indicated as the servient tenement.

The easement registered appurtenant to Mr Shelley's land does not contain any words to the effect of those quoted in bold above which purports to limit permissible journeys over the servient tenement to travel "to and from the said dominant tenement".

Mr Shelley is clearly a person "entitled to an estate or interest in possession in the land herein indicated as the dominant tenement" and on its face the right of carriageway created by the Section 88B instrument therefore bestows upon him and his invitees a right to travel over the area of the easement "for all purposes".

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I can see nothing in the terms of the easement which suggests that the journey is only lawful if it terminates on the land benefitted provided that it is otherwise consistent with the terms of the instrument.

The starting point for consideration of the rights bestowed by a grant of easement must be the plain meaning of the grant itself. Hodgson JA recently expressed the unanimous view of the Court of Appeal on that point in the case of *Perpetual Trustee Company Limited v Westfield Management Limited* [2006] NSW CA 245 as follows:

"[26] In my opinion, there is just one question, what does the grant authorise; and that question is to be determined by construing the grant. One way of posing the question is to ask, what use was intended to be authorised by the grant; but no separate investigation into the use contemplated by the parties is either necessary or permissible."

That decision was affirmed by the High Court in Westfield Management Ltd v Perpetual Trustee Co Ltd, 233 CLR 528 in which the inclusion of the words "to and from" in the instrument there considered were held to be important to the Court's limitation of the scope of the easement created.

In this case, the facts relevant to the construction of the grant would seem to be:

- (a) The purpose of the right of footway and right of carriageway that may be inferred from the immediate geography was to facilitate access from Woolooware Road.
- (b) Given the locality and the development on the properties, it might be argued that the purpose of the right of way was to afford access to a single residence only.
- (c) The instrument adopts much of the default statutory definition of a right of carriageway, but notably omits the requirement that the journey be 'to and from the said dominant tenement or any such part thereof'.

Applying the Court of Appeal's and High Court's decision in the Perpetual Trustee case, the

scope of the grants must be interpreted having regard to those facts.

It is in my view reasonable if not necessary to conclude that the scope of the grant

imposes some limit on the use of the right of carriageway in terms of its use to facilitate a

single residential development.

There is however in my view a strong argument that usage of the right of way was not

intended to be limited to access to a residence located entirely within the lot benefitted

alone.

As I understand matters, Mr Shelley proposes a new residence over several alottments of

which, only Lot 2 DP 562829 (327A Woolooware Road) has the benefit of the right of

carriageway with its particular wording. Parking and access to the new residence will

principally be achieved by other means, with the right of carriageway only proposed to be

used on a limited basis for ancillary parking. The new residence will be at least partly

constructed over Lot 2.

It is my view that in those circumstances the existing registered instrument is likely to be

adequate, provided that the traffic over the right of carriageway is associated with a single

residence only and will not increase significantly.

If the proposal changes in the future such that there will be a substantial increase in traffic

from that reasonably anticipated when the easement was created, it may be necessary to

reconsider the issue.

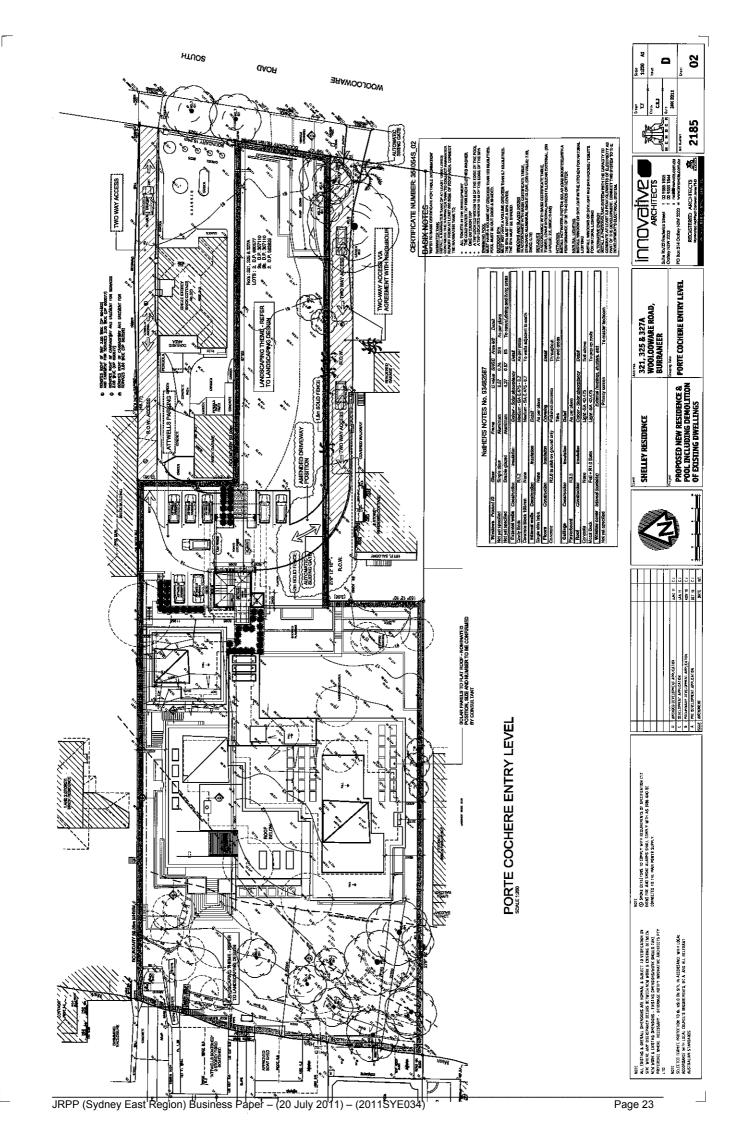
I so advise.

Justin Doyle

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Fredrick Jordan Chambers 30 June 2011

Attachment B - Amended Driveway Plan



Proposal:

Demolition of Existing Dwellings, Construction of a Dwelling, Swimming Pool, Front Fence and Removal of a Fuel Tank

Property:

321, 325 & 327A Woolooware Road BURRANEER NSW 2230

Applicant:

Innovative Architects Pty Ltd

File Number: DA11/0218

The following is the report of the Architectural Review Advisory Panel Meeting held on 14 April 2010 at the Administration Centre, Sutherland Shire Council, Eton Street, Sutherland. The report documents the Panel's consideration of the proposed development described above.

"2. Consideration of Development Application No. 11/0218 – Dwelling at 321, 325 and 327A Woolooware Road, Burraneer

Council's Luke Murtas and Chris Greig outlined the proposal, including providing details of Council's relevant planning instruments, codes and policies.

Cameron Jones, David Crane, Lyndall Wynne and Brandon Wallis addressed the Panel regarding the aims of the proposal and the constraints of the site.

Description of JRPP

The Chairman advised that a development application has been received and will be referred to the Joint Regional Planning Panel for determination. In this case the Joint Regional Planning Panel (JRPP) will receive the planning report from Council's planning officer, including a separate report from the Architectural Review Advisory Panel. This report will be compiled from comments from individual Panel members and the format of the report will be based on the ten (10) design quality principles set out in the Residential Flat Design Code.

These reports will then be considered by the JRPP.

Description of the Site

During the site inspection it was observed that the subject site consists of an amalgamation of three lots, with a total area of 4,376 square metres. The site includes an eastern (street) boundary of approximately 15.7 metres, as well as two rights of way along the northern and southern sides.

The site falls towards the western boundary, which adjoins Burraneer Bay, with an overall fall of 13 metres.

The site is heavily vegetated, especially towards the western end.

Presently located on the site are an existing dwelling, tennis court and associated outbuildings as well as a fuel tank associated with the existing boatshed business. These items are proposed for removal.

A heritage item, "Attwells Boatshed", is located below the foreshore building line at 321 Woolooware Road.

Information was supplied by Council Officers explaining that the site is within Zone 2 - Environmental Housing (Scenic Quality) under SSLEP 2006. This zoning allows for residential uses and this proposal is permissible with development consent.

Proposal

The applicant advised that the following three (3) principles have been incorporated into the design of the proposal for a new single dwelling and associated uses of the site:

- 1) Reducing the bulk of the house by excavating and "burying" the house and associated service areas.
- 2) Working with the existing landscape.
- 3) Considering the interface between the proposed dwelling and its neighbours.

Vehicular access to the site is provided by three (3) driveways as follows:

- 1) Porte cochere entry level separate in/out access for boatshed customers and visitors (including maintenance staff) to the dwelling.
- 2) The upper court level boat storage and general storage.
- 3) Mid level two (2) car parking spaces associated with the proposed dwelling.

The two latter uses are to be accessed by a tunnel. Pedestrian access from the street will be across the front lawn without a paved path.

The Attwells boatshed and other waterfront uses are an integral part of the overall scheme however the restoration of the heritage listed boatshed has not been included in the present development application.

Considerable time was spent by the Panel attempting to comprehend the design philosophy and the basis for the various design decisions. Some elements within the development appear to be an attempt to overcome fundamental shortcomings. However, without adequate documentation the Panel was not able to identify whether an alternative solution could produce a superior result.

Context

The Panel noted that this is a site with great opportunities and exceptional landscape, located in a sensitive waterfront zone which also includes heritage issues. For these reasons it is considered that, following the site analysis, a master plan for the site should have been prepared. If it has been prepared, it should have been submitted with the application.

It is noted that whilst the application includes a lift and tunnel linking the house to the water within the foreshore building line, all information on the connection of this tunnel

with the waterfront and any of the waterfront structures, sea walls, pools it is designed to access, is omitted.

Within the Port Hacking bays there are still remnants of the natural landscape along the waterfront. Along the ridges, the canopy of tall trees defines the skyline. Retaining links between these elements is important. On a large site such as this there is the opportunity to reinforce this landscape attribute. The landscape context could be improved by reinforcing the existing ridgeline silhouette in terms of both the size and species of trees.

As the proposal is set back a considerable distance from the street, careful attention needs to be given to its access and street address, not only to identify the proposal's entry path and front door, but also to provide some form of address to its very large front garden and streetscape beyond.

Scale

The Panel noted that the proposal's height is within the relevant Council controls and is compatible with surrounding development and needs to be assessed against the future desired character of the area.

The Panel discussed the impact of the horizontal scale on the landscape and noted that the building reads more as a single mass, rather than as "limbs of a tree."

With little more than a narrow single storey entry room expressed, the scale of the proposal is greatly reduced on the street side. Compared to the proposed vehicular driveways and expansive front garden, the proposed scale of the entry appears to downgrade the importance of the proposal's street address, which is unfortunate. Not only does this make the entry less clear from the street, it also contributes to the ponderous nature of the garden and driveways referred to below.

There are landscape opportunities to provide continuity between the foreshore planting and ridge using large specimens of local trees. This would also help to create a strong visual framework for the house.

Built Form

The Panel agreed with the conceptual direction of the project and agreed that the integration of the building into the site is a positive feature.

It is noted that the two tower roof forms will not be visible from the street, although the building's location along a ridge line means that the building form would be read from both nearby and distant viewpoints. It is suggested that the presence of the entry and its address to the front garden be enhanced either through scale, an increased entry loggia or some other formal means.

Density

The Panel noted that the proposed floor space ratio is greater than permissible and the additional proposed car parking is to be included in these calculations. Numerical compliance in this case is considered to be less of an issue than the arrangements of the car parking (and associated driveways).

Resource, Energy and Water Efficiency

The applicant advised that the proposal met BASIX requirements and that various features such as solar hot water and photovoltaic panels have been included. In the Panel's view the proportional areas of the plant room and roof mounted panels indicate a low level of sustainability for the proposal.

Despite an explanation, the Panel could not understand why the basement plant room was not located away from the northern elevation to allow better solar access to the living areas on this level.

Landscape

At present, the landscape resources of the site do not seem to be generating the design. The Panel is concerned about the large amount of demolition, site clearing and excavation required for this design solution. There is no evidence that the design has been generated in response to the landscape.

The potential contribution offered by the existing palm grove above the tennis court has been ignored and this landscape element could be included by the relocation of the guest wing.

The treatment of the site from waterline to ridge is considered to be crucial and the use of local species to improve biodiversity is recommended, particularly in the front garden.

Amenity

The access arrangements to the site lack clarity and the entry to the dwelling is not well considered or resolved. It is felt that a more intelligible solution for public and private access for cars and pedestrians should be developed.

The pedestrian entry path is vague. The experience of visitors when entering and moving through the site (either on foot or by vehicle) could be reconsidered to heighten this experience.

Safety and Security

The Panel considered that the relationship between the public (for example Attwells boatshed and associated car parking) and the private spaces contained within the proposal is unclear and this may lead to security issues, particularly in the public driveway from the street.

Social Dimensions

Car entry points dominate the street frontage with three (3) driveways and it is considered that this could be better handled in the design.

<u>Aesthetics</u>

The separation of smooth finished horizontal "floating" concrete planes and textured vertical stone walls is considered to be very successful. The use of local sandstone is considered to be more appropriate in this context than the proposed imported grey stone and would weather in appearance to a similar grey colour over time.

The extent of the stonework could be increased, particularly where the dwelling meets the site's ground plane.

The pitch of the skylight roofs should be reconsidered to be a more cohesive element in this composition.

Recommendation/ Conclusion:

The Panel is concerned regarding the lack of drawn information, resulting in the scheme being difficult to interpret. Some aspects of the design, such as vehicular access and the division between public and private space, are unclear and do not seem to be adequately resolved. Options have been considered but the Panel was not convinced that the most appropriate solution has been adopted.

In this case a master plan would aid both the design and assessment process by clearly presenting the applicant's intent and commitment for all aspects of the site and adjacent uses under the applicant's control, both initially and in the future.

Non compliances for the development standards of landscaped area and floor space ratio could be considered on a merits basis.

The overall design of the house is supported by the Panel, however the integration of the house with the site's existing palm grove (above the tennis court) and the provision of northern light to the entertainment area on the lower floor could be better considered. Additional large tree plantings in the upper eastern portion of the site should be considered."

Colleen Baker ARAP Coordinator

04 May 2011

SEPP 1 OBJECTION - DENSITY

PROPOSED SINGLE DWELLING - 321, 325 & 327a Woolooware Road, Burraneer.

1. INTRODUCTION

This SEPP No.1 objection addresses a development standard relating to the maximum permissible floor space ratio under Clause 35 of the SSLEP 2006.

While the development will not comply with the numerical standard, the development is on any view of a low density which is well within the built form character of the area in terms of site coverage and apparent scale. The numerical non-compliance arises from the fact that the size of the consolidated allotment is well above that characteristic to the area, and was therefore not considered in the preparation of the standard.

"State Environmental Planning Policy No.1 – Development Standards" (SEPP1) was introduced to permit flexibility in the application of development standards where it can be shown that strict compliance with a numerical standard is unreasonable or unnecessary in the circumstances of the case, or would tend to hinder the attainment of the objects of the Act as specified in Section 5(a) (i) and (ii) of the EP&A Act 1979.

SEPP 1 requires that a development application be supported by a written objection, outlining the grounds for objection to the particular standard. In order to grant concurrence Council must be must be satisfied that:

- The objectives of SEPP 1 can be satisfied. i.e. that "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 "non-compliance with the development standard [does not raise] any matter of significance for State or regional environmental planning" and
- there is no loss of "public benefit" that would otherwise be obtained if the "planning controls adopted by the environmental planning instrument" were maintained.
- The above matters are addressed in the following discussion.

2. MAXIMUM DENSITY DEVELOPMENT STANDARD AND EXTENT OF NON COMPLIANCE

In accordance with the provisions contained under Clause 35 - Building Density of SSLEP 2006, the site is subject to a maximum permissible floor area of 1110.20m² or 0.25:1 when expressed as a ratio. The floor area of the proposed development is indicated below:

Porte cohere entry level – 12.0m²
Bedroom/Upper court level – 418.0m²
Living/Entry level – 571.0m²
Lower Entertainment level – 303.0m²

Total Floor Area = 1304.0m²

Proposed Floor Space Ratio = 0.29:1

These figures are indicative of a non-compliant FSR in accordance with the provisions of Clause 35 of SSLEP 2006 and therefore a SEPP 1 objection is required.

Clause 35 of SLEP defines "floor Space ratio" as follows (adopting the definition from the Standard Instrument):

"floor space ratio" means the ratio of the gross floor area of all buildings on a site to the area of the site.

"Gross floor area" is defined in the dictionary to exclude "any area for common vertical circulation, such as lifts and stairs".

Council staff have advised informally that even though "stairs" are given in the definition as an example of an "area for common vertical circulation" which would therefore to be excluded from gross floor area on a plain reading of the definition, they are nonetheless to be included in the calculation.

The Applicant has sought clarification from the Department of Planning of what the expression used in the Standard Instrument was intended to mean. In anticipation of receipt of that clarification, the Applicant has excluded stairs from the calculation of gross floor area in its calculations contained in this SEPP 1 Objection and in the DA.

3. SEPP 1 CONSIDERATIONS

In the case of Winton Property Group V. North Sydney Council (2001) 130 LGERA 79 at 89, Lloyd J posed five questions to be addressed in SEPP 1 objections:

- 1. Is the Planning Control a Development Standard?
- What is the underlying object or purpose of the standard?
- 3. 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 Environmental Planning and Assessment Act?
- 4. Is compliance with the development standard unreasonable or unnecessary in the circumstances of the case?
- 5. Is the objection well founded?

These questions are addressed below.

3.1 Is the planning control a development standard?

In the case of Strathfield Municipal Council v Poynting (2001) 116 LGERA 319, the Court of Appeal considered when a control is a development standard. This judgment indicated that the following questions must be answered in the consideration of a SEPP No.1 objection:

1. What is the nature of the development proposed?

The nature of the development proposed is a new single dwelling, spa and swimming pool.

2. Does the relevant environmental planning instrument:-

(a) prohibit such development under any circumstances?

SSLEP 2006 does not prohibit such development on the site.

(b) specify a requirement or fix a standard in relation to such a development?

Clause 33(4) of SSLEP 2006 indicates that a maximum density equating to a floor space ratio of 0.25:1 applies to the development. This standard can be varied under SEPP No.1.

3.2 What is the underlying object or purpose of the standard?

The stated objectives of Clause 35 of the SSLEP 2006 are as follows:

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

Section 5 (a) (i) and (ii) of the Environmental Planning and Assessment Act specifies the objects of the Act as follows:

- a) "to encourage:-
 - (i) the proper management, development and conservation of natural and artificial resources, including agricultural land, natural areas, forests, minerals, water, cities, towns and villages for promoting the social and economic welfare of the community and a better environment;
 - (ii) the promotion and co-ordination of the orderly and economic use and development of land."

It is considered that strict compliance with the standard in respect to the maximum floor space ratio will tend to hinder the attainment of the objects of the Act because:

The residential dwelling development, as proposed, is compatible in character, design, height, scale, bulk and built form with existing and proposed built form in the street and is well located in terms of local services and facilities. The development has also been designed to be environmentally responsive. As such, prohibiting its development due to a non compliance with respect to the maximum permissible floor space ratio would not promote the "social and economic welfare of the community and a better environment" as it would prevent the construction of a well designed, contextually responsive and environmentally sustainable dwelling house on the site.

Accordingly the "co-ordination of the orderly and economic use and development of land" would be discouraged as it would prevent the construction of a well designed residential building on the site.

3.4 is compliance with the development standard unreasonable or unnecessary in the circumstances of the case?

The tests for determining whether a development standard should be varied for a particular development and whether they can be considered to be "unreasonable or unnecessary in the circumstances of the case" involve addressing the underlying objectives and intent of the standard and the broader planning objectives for the locality.

The objectives of the maximum permissible floor space ratio development standard are stated in Clause 35(2).

The objectives of Zone 2 – Environmental Housing (Scenic Quality) as stated under Clause 11 of SSLEP 2006 are:

- "(a) to allow development that complements the predominantly urban landscape setting of the zone, characterised by dwelling houses on single lots of land,
- (b) to ensure the character of the zone, as one comprised predominantly of dwelling houses, is not diminished by the cumulative impacts of development,
- (c) to allow development that is of a scale and nature that is consistent with the urban surroundings of the zone, while retaining or restoring natural features,
- (d) to protect existing vegetation and other natural features of the zone and encourage appropriate bushland restoration.
- (e) to minimise the risk to life, property and the environment by restricting the type, or level and intensity, of development on land that is subject to either natural or manmade hazards,
- (f) to minimise the impacts of development in the vicinity of heritage items.
- (g) to allow the subdivision of land only where the size of the resulting lots makes them capable of development that retains or restores natural features, while allowing a sufficient area for building footprints,
- (h) to ensure sharing of waterfront views between occupiers and users of new and existing buildings".

Compliance with the maximum density (FSR) in accordance with the provisions of Clause 35 of the SSLEP 2006 is both unnecessary and unreasonable in the circumstances of this case, for the following reasons:

 The sliding scale formula for calculating the density (FSR) requirement did not anticipate very large single dwelling residential sites In recent meetings Sutherland Council planning officers have expressed agreement with the applicant team that the sliding scale controls for density in SSLEP 2006 did not fully anticipate very large amalgamated sites such as the subject site. The result of the application of the sliding scale to the amalgamated subject site is that the maximum permissible FSR on the site is very substantially reduced compared to the same land area if it was to be redeveloped for (say) 4 compliant dwellings. Refer table below. Accordingly it is noted that the development as a whole would easily comply with the density (FSR) requirements had the proposal been for a redevelopment of the site for 2,3 or 4 lots. It is therefore clearly consistent with the overall bulk and scale being sought for the site overall.

4		Development as proposed Consolidated single lot	requirement (overall) Potential Development	requirement (oversit) Potential Signit	LEP requirement (overall) Potential 4 or Development
Mex	1,110.2 m ²	1,304 m² 0,29:1 or 1,109m² 0,25:1 (if all of the habitable basement spaces are excluded see note 2 splow)	1,407.9 m²	1,623.05 m²	1,778.2 m ²
FBR	0.25:1		0.32:1	0.37: 1	0.41:1

 If habitable basement areas are excluded from the calculations the proposed GFA would comply with the sliding scale requirement.

The GFA definition in SSLEP 2006 requires that all habitable spaces within a basement be calculated as floor space, regardless of the fact that they do not contribute to the bulk and scale of the dwelling. If habitable basement areas are excluded from the calculations the proposed GFA would comply with the maximum sliding scale requirement under SSLEP 2006. Refer discussion, tables and calculation diagrams in section 3 of this report.

- The waterfront impact of a 4 lot development could be greater than the proposed development. Innovative architects have produced a model of the potential building bulk if 4 houses were developed on site. This is shown below in Figure 17 in section 3. It demonstrates that a 4 lot redevelopment could result in buildings along the water frontage that potentially provide a much larger area of western facing façade overall than the dwelling as proposed.
- The excavated GFA area will assist in reducing the visual impact of the additional FSR. As discussed throughout this report, the proposed development involves significant excavation so as to provide a large area of floor space (lower entertainment level) below existing natural ground level. This will reduce an appreciable portion of the buildings potential

visual bulk and scale and will assist in offsetting any unnecessary overshadowing impacts to adjoining properties.

- The FSR non compliance will have no streetscape implications. The
 exceedence of the FSR control will not have a negative impact on the
 streetscape as the dwelling will be virtually unseen from the street and will
 be well screened by a substantial area of landscaping.
- There will be no unreasonable amenity impacts on adjoining properties. The building incorporates some interesting design elements and will contribute positively to the visual amenity and character of the area without resulting in any significant adverse amenity impacts to neighbouring properties. This is particularly the case given that some generous setbacks have been implemented into the design and the fact that the extent of floor area is spread over such an extensive area as a result of combining the three (3) subject allotments.
- The proposal will be consistent with the Zone 2 objectives in clause 11 as discussed below:
 - "to allow development that complements the predominantly urban landscape setting of the zone, characterised by dwelling houses on single lots of land". At present the site comprises 3 allotments. These allotments are proposed to be consolidated and therefore ultimately the development will comprise a single dwelling on a single allotment of land. The house has been designed to be set well back from the water, to nestle into the existing landform and will be well screened by vegetation and other existing buildings. Almost all of the proposed dwelling will not be visible from the road and the view of the new dwelling from the waterway will be in character with the visual scale of other nearby and surrounding waterfront dwellings. This is illustrated in the photomontages submitted with the application, one of which is shown below.



"to ensure the character of the zone, as one comprised predominantly of dwelling houses, is not diminished by the cumulative impacts of development". This objective is directed at developments that increase the number of dwellings on allotments, such as dual occupancies. As mentioned above, the proposed development will be replacing two existing single dwellings with one larger dwelling over three large allotments. The new dwelling will have significantly more landscaping and significantly less FSR than the overall site would have had if each

of the allotments were to be redeveloped for single dwellings or 3 dual occupancy developments. The net effect of the proposed development is therefore likely to be reduced cumulative impacts for the local area, particularly in terms of likely traffic and parking generation.

- "to allow development that is of a scale and nature that is consistent with the urban surroundings of the zone, while retaining or restoring natural features". The combination of the positioning of the development on the site, the decision to locate some of the (calculable) floorspace below ground, the sensitive architectural design and the large areas of existing and proposed landscaping around the waterfront make this development one which will visually sit very comfortably within, (and will not dominate), its waterfront and streetscape context. Also refer comments above.
- "to protect existing vegetation and other natural features of the zone and encourage appropriate bushland restoration". See point above. Much of the existing vegetation on site, particularly below the FBL will be retained. This will assist in providing an instant attractive setting for the new building.
- "to minimise the risk to life, property and the environment by restricting the type, or level and intensity, of development on land that is subject to either natural or man-made hazards". The proposed development is not envisaged to present any risk to life as it is a single dwelling. It is also noted that the existing underground fuel tanks will be removed as part of this proposal. This will reduce any existing environmental risk on site.
- "to minimise the impacts of development in the vicinity of heritage items". The site contains a heritage item under SSLEP 2006 Attwells boatshed. As discussed throughout this report this item will be maintained in its current state as part of this application. Works to upgrade the heritage item may be undertaken as part of a future development application. The proposed new dwelling (the subject of this application) will however not have any negative implications for the objective to "conserve natural, indigenous and built heritage sites throughout Sutherland Shire". Refer HIS submitted under separate cover and comments in section 4.6.2 of this report.
- "to allow the subdivision of land only where the size of the resulting lots makes them capable of development that retains or restores natural features, while allowing a sufficient area for building footprints". The proposed development does not involve subdivision. It is however proposed that the sites be consolidated which does not require development consent.
- "ensure sharing of waterfront views between occupiers and users of new and existing buildings". The proposed development will benefit from water views whilst maintaining predominant view corridors from other existing buildings. This matter is discussed in more detail later in this report.

- The proposal will be consistent with the objectives in clause 35 as discussed below:
 - Objective (a) "to ensure that development is in keeping with the characteristics of the site and the local area" and Objective (b) "to provide a degree of consistency in the bulk and scale of new buildings that relates to the context and environmental qualities of the locality" As discussed above, the architectural design has sought to ensure that the building moulds in well with the surroundings.
 - Objective(c) "to minimise the impact of buildings on the amenity of adjoining residential properties." An appreciable portion of the floor area contributing to the proposed FSR is located below ground where it does not add to the buildings visual bulk and scale or to any overshadowing or privacy impacts towards adjoining property neighbours.
 - Objective (d) "to ensure, where possible, that non-residential buildings in residential zones are compatible with the scale and character of residential buildings on land in those zones."
 Not relevant.

3.5 Is the objection well founded?

It is considered that the objection to the maximum permissible FSR development standard is well founded because it will achieve the stated objectives of the relevant clause and broader zoning objectives even though the proposal will not strictly comply with part of the standard. Also, as discussed above strict compliance with the standard would tend to hinder the attainment of the objects of the Act. Accordingly, it is considered that strict compliance with the development standard would be both unreasonable and unnecessary.

4. CONCLUSION

Although the proposed development does not comply with the maximum permissible density development standard contained in Clause 35 of the Sutherland LEP 2006 it satisfies the relevant objectives of the development standard and the broader planning and zoning objectives for the locality. Furthermore, it will not result in any detrimental impacts upon the streetscape or adjoining properties as a result of the non-compliance and the design, height, scale, bulk and setbacks of the proposal are compatible with nearby residential housing forms in the surrounding locality. The proposed development also satisfies the five SEPP No.1 questions established by the Land and Environment Court and is consistent with the objects of the Environmental Planning and Assessment Act, 1979. Finally, the proposed development will not result in any unreasonable or unacceptable amenity impacts to neighbouring properties in terms of overshadowing, overlooking, loss of privacy, views, or visual bulk and scale.

Compliance with the maximum permissible density development standard is therefore considered to be both unnecessary and unreasonable in the circumstances of the case. Accordingly refusal of the development application on this ground is not warranted.

SEPP 1 OBJECTION - LANDSCAPED AREA

PROPOSED SINGLE DWELLING - 321, 325 & 327a Woolooware Road, Burraneer.

1. INTRODUCTION

This SEPP No.1 objection addresses a development standard relating to landscaped area under Clause 36 of the SSLEP 2006.

While the development will not comply with the numerical standard, on any view it will be characterised by a high proportion of landscaped area with abundant provision for deep soil planting. The numerical non-compliance arises from the fact that the size of the consolidated allotment is well above that characteristic to the area, and was therefore not considered in the preparation of the standard.

"State Environmental Planning Policy No.1 – Development Standards" (SEPP1) was introduced to permit flexibility in the application of development standards where it can be shown that strict compliance with a numerical standard is unreasonable or unnecessary in the circumstances of the case, or would tend to hinder the attainment of the objects of the Act as specified in Section 5(a) (i) and (ii) of the EP&A Act 1979.

SEPP 1 requires that a development application be supported by a written objection, outlining the grounds for objection to the particular standard. In order to grant concurrence Council must be must be satisfied that:

- The objectives of SEPP 1 can be satisfied. i.e. that "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 "non-compliance with the development standard [does not raise] any matter of significance for State or regional environmental planning" and
- there is no loss of "public benefit" that would otherwise be obtained if the "planning controls adopted by the environmental planning instrument" were maintained.
- The above matters are addressed in the following discussion.

2. LANDSCAPED AREA DEVELOPMENT STANDARD AND EXTENT OF NON COMPLIANCE

Clause 36(3) of SSLEP 2006 identifies the required amount of deep soil landscaping for the purposes of this development application. This equates to 2,741sq.m. or 62.62% of the site.

An issue arises however as to whether landscaping to a depth in excess of one metre over a tunnelled access drive is technically to be counted as landscaping or not. If the tunnelled access way is considered to be a "basement" within the definition of landscaping (and the Applicant says it could not correctly be so described), then it must be included in the calculation. If the tunnelled access way is not a "basement" then it is to be excluded. While the Applicant is of the view that a tunnelled accessway is not a basement, the calculations in this objection, and in the Statement

of Environmental Effects have however excluded the accessway from the area of landscaping for abundant caution.

The area above the tunnelled accessway will however be indistinguishable from other landscaped areas and can be planted out with substantial trees as appropriate.

The proposed development incorporates a total of 2,208m² or 50% of the site area as deep soil landscaping. Accordingly there is a shortfall of 12.64% or 533.2m² and as such, a SEPP 1 variation is required.

The area above the accessway is 218 m². Excluding that area, the shortfall is only 5.76% or 252m².

3. SEPP 1 CONSIDERATIONS

In the case of *Winton Property Group V. North Sydney Council* (2001) 130 LGERA 79 at 89, Lloyd J posed five questions to be addressed in SEPP 1 objections:

- 1. Is the Planning Control a Development Standard?
- 2. What is the underlying object or purpose of the standard?
- 3. 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 Environmental Planning and Assessment Act?
- 4. Is compliance with the development standard unreasonable or unnecessary in the circumstances of the case?
- 5. Is the objection well founded?

These questions are addressed below.

3.1 Is the planning control a development standard?

In the case of **Strathfield Municipal Council v Poynting** (2001) 116 LGERA 319, the Court of Appeal considered when a control is a development standard. This judgment indicated that the following questions must be answered in the consideration of a SEPP No.1 objection:

1. What is the nature of the development proposed?

The nature of the development proposed is a new single dwelling and swimming pool.

- 2. Does the relevant environmental planning instrument:-
- (a) prohibit such development under any circumstances?

SSLEP 2006 does not prohibit such development on the site.

(b) specify a requirement or fix a standard in relation to such a development?

Clause 36(3) of SSLEP 2006 indicates that development on land with a site area of 4336m² is required to provide a total of 2,741.2m² of landscaped area or 62.64% of the site area. This standard can be varied under SEPP No.1.

3.2 What is the underlying object or purpose of the standard?

The stated objectives of Clause 36 of the SSLEP 2006 are as follows:

- "(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,
- (e) (Repealed)
- (f) to ensure that landscaping carried out in connection with development on land in Zone 11—Employment is sufficient to complement the scale of buildings, provide shade, screen parking areas and enhance workforce amenities".
- 3.3 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 Environmental Planning and Assessment Act?

Section 5 (a) (i) and (ii) of the Environmental Planning and Assessment Act specifies the objects of the Act as follows:

- a) "to encourage:-
 - the proper management, development and conservation of natural and artificial resources, including agricultural land, natural areas, forests, minerals, water, cities, towns and villages for promoting the social and economic welfare of the community and a better environment;
 - (ii) the promotion and co-ordination of the orderly and economic use and development of land."

It is considered that strict compliance with the standard in respect to the required landscaped area will tend to hinder the attainment of the objects of the Act because:

• The residential dwelling development, as proposed, is compatible in character, design, height, scale, bulk and built form with existing and proposed built form in the street and is well located in terms of local services and facilities. The development has also been designed to be environmentally responsive. As such, prohibiting its development due to a non compliance with respect to landscaped area would not promote the "social and economic welfare of the community and a better environment" as it would prevent the construction of a well designed, contextually responsive and environmentally sustainable dwelling house on the site.

Accordingly the "co-ordination of the orderly and economic use and development of land" would be discouraged as it would prevent the construction of a well designed residential building on the site.

3.4 is compliance with the development standard unreasonable or unnecessary in the circumstances of the case?

The tests for determining whether a development standard should be varied for a particular development and whether they can be considered to be "unreasonable or unnecessary in the circumstances of the case" involve addressing the underlying objectives and intent of the standard and the broader planning objectives for the locality.

The objectives of the landscaped area development standard are stated in Clause 36(1).

The objectives of Zone 2 – Environmental Housing (Scenic Quality) as stated under Clause 11 of SSLEP 2006 are:

- "(a) to allow development that complements the predominantly urban landscape setting of the zone, characterised by dwelling houses on single lots of land.
- (b) to ensure the character of the zone, as one comprised predominantly of dwelling houses, is not diminished by the cumulative impacts of development.
- (c) to allow development that is of a scale and nature that is consistent with the urban surroundings of the zone, while retaining or restoring natural features,
- (d) to protect existing vegetation and other natural features of the zone and encourage appropriate bushland restoration,
- (e) to minimise the risk to life, property and the environment by restricting the type, or level and intensity, of development on land that is subject to either natural or manmade hazards.
- (f) to minimise the impacts of development in the vicinity of heritage items,
- (g) to allow the subdivision of land only where the size of the resulting lots makes them capable of development that retains or restores natural features, while allowing a sufficient area for building footprints,
- (h) to ensure sharing of waterfront views between occupiers and users of new and existing buildings".

Compliance with the minimum landscaped area standard in accordance with the provisions of Clause 36 of the SSLEP 2006 is both unnecessary and unreasonable in the circumstances of this case, for the following reasons:

 The sliding scale formula for calculating the landscaping requirement did not anticipate very large single dwelling residential sites

In recent meetings Sutherland Council planning officers have expressed agreement with the applicant team that the sliding scale controls for landscaped area in SSLEP 2006 did not fully anticipate very large amalgamated sites such as the subject site. The result of the application of the sliding scale to the amalgamated subject site is that the minimum

landscaped area requirement on the site is very substantially increased compared to the requirement if the site was to be redeveloped for (say) 4 dwellings. Refer table below. Accordingly it is noted that the development as a whole would easily comply with the landscaped area requirement had the proposal been for a redevelopment of the site for 3 or 4 lots. It is therefore clearly consistent with the overall landscaped area being sought for the site overall.

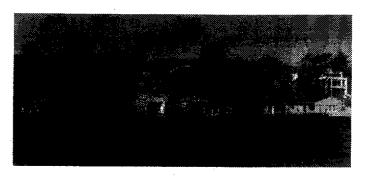
		Development as proposed Comsolidated alogie lot	LEP requirement (overall) Potential 2 Lot Development	LEP requirement (overall) Potential Lut Development	LEP requirement (overall) Potential 41.01 Development
Min Land- scape d area	2,741,2 m ² 62.54 %	2.208 m² 50.4% or 2.742 m² 62.6% (if all of the soft	2,419.2 m ² 55.28 %	2,154.4 m ² 49.23 %	1,980.8m² 45.26 %
		landscaped area is included - see note 1 below)			

 The proposed development will be providing substantially more landscaped area than currently exists on site.

By providing over 60% of the site as soft landscaping the project overall is assured of having an attractive leafy setting. Innovative Architects have demonstrated that there will be a significant increase in the total landscaped area provided on the site as compared to the existing landscaped area. Figure 15 in section 3 of this report shows the existing calculable landscaped area is 2,032.29m² and 46.4% of the site. Accordingly, the new development will be providing 703m² of additional landscaped area across the whole site when compared with the existing development.

- Many existing vagetated areas are to be maintained. It is noted that a significant portion of the existing deep soil landscaping currently along the waterfront is to remain as is as a result of the proposed development.
- The proposal will be consistent with the Zone 2 objectives in clause
 11 as discussed below:
 - "to allow development that complements the predominantly urban landscape setting of the zone, characterised by dwelling houses on single lots of land". At present the site comprises 3 allotments. These allotments are proposed to be consolidated and therefore ultimately the development will comprise a single dwelling on a single allotment of land. The house has been designed to be set well back from the water, to nestle into the existing landform and will be well screened by vegetation and other existing buildings. Almost all of the proposed dwelling will not be visible from the road and the view of the new dwelling from the waterway will be in

character with the visual scale of other nearby and surrounding waterfront dwellings. This is illustrated in the photomontages submitted with the application, one of which is shown below.



"to ensure the character of the zone, as one comprised predominantly of dwelling houses, is not diminished by the cumulative impacts of development". This objective is directed at developments that increase the number of dwellings on allotments, such as dual occupancies. As mentioned above, the proposed development will be replacing two existing single dwellings with one larger dwelling over three large allotments. The new dwelling will have significantly more landscaping and significantly less FSR than the overall site would have had if each of the allotments were to be redeveloped for single dwellings or 3 dual occupancy developments. The net effect of the proposed development is therefore likely to be reduced cumulative impacts for the local area, particularly in terms of likely traffic and parking generation.

"to allow development that is of a scale and nature that is consistent with the urban surroundings of the zone, while retaining or restoring natural features". The combination of the positioning of the development on the site, the decision to locate some of the (calculable) floorspace below ground, the sensitive architectural design and the large areas of existing and proposed landscaping around the waterfront make this development one which will visually sit very comfortably within, (and will not dominate), its waterfront and streetscape context. Also refer comments above.

"to protect existing vegetation and other natural features of the zone and encourage appropriate bushland restoration". See point above. Much of the existing vegetation on site, particularly below the FBL will be retained. This will assist in providing an instant attractive setting for the new building.

"to minimise the risk to life, property and the environment by restricting the type, or level and intensity, of development on land that is subject to either natural or man-made hazards". The proposed development is not envisaged to present any risk to life as it is a single dwelling. It is also noted that the existing underground fuel tanks will be removed as part of this proposal. This will reduce any existing environmental risk on site.

- "to minimise the impacts of development in the vicinity of heritage items". The site contains a heritage item under SSLEP 2006 Attwells boatshed. As discussed throughout this report this item will be maintained in its current state as part of this application. Works to upgrade the heritage item may be undertaken as part of a future development application. The proposed new dwelling (the subject of this application) will however not have any negative implications for the objective to "conserve natural, indigenous and built heritage sites throughout Sutherland Shire". Refer HIS submitted under separate cover and comments in section 4.6.2 of this report.
- "to allow the subdivision of land only where the size of the resulting lots makes them capable of development that retains or restores natural features, while allowing a sufficient area for building footprints". The proposed development does not involve subdivision. It is however proposed that the sites be consolidated which does not require development consent.
- "ensure sharing of waterfront views between occupiers and users
 of new and existing buildings". The proposed development will
 benefit from water views whilst maintaining predominant view
 corridors from other existing buildings. This matter is discussed in
 more detail later in this report.
- The proposal will be consistent with the objectives in clause 36 as discussed below:
 - "ensure adequate opportunities for tree retention and tree planting so as to preserve and enhance the tree canopy of Sutherland Shire" – The proposal retains many of the existing trees on site (particularly near the waterfront) and will result in a significant number of new trees being planted within a increased landscaped area. As such the tree canopy over the whole site will be improved;
 - "minimise urban run-off by maximising pervious areas on the sites of development" in that the size of the dwelling footprint has been minimised as evident through the compliant floor space ratio;
 - "ensure that the visual impact of development is minimised by appropriate landscaping and that the landscaping is maintained". In this regard it is noted that the proposed turfing within the front setback and the waterfront setback will assist to soften the appearance of the building as viewed from the street and the water;
 - to facilitate the provision of private open space for each dwelling, being private space that is useable and provides a reasonable level of privacy and access to sunlight." Attractive outdoor areas are encompassed in the proposed design.

3.5 Is the objection well founded?

It is considered that the objection to the landscaped area development standard is well founded because it will achieve the stated objectives of the relevant clause and broader zoning objectives even though the proposal will not strictly comply with part of the standard. Also, as discussed above strict compliance with the standard would tend to hinder the attainment of the objects of the Act. Accordingly, it is considered that strict compliance with the development standard would be both unreasonable and unnecessary.

4. CONCLUSION

Although the proposed development does not comply with the landscaped area development standard contained in Clause 36 of the Sutherland LEP 2006 it satisfies the relevant objectives of the development standard and the broader planning and zoning objectives for the locality. Furthermore, it will not result in any detrimental impacts upon the streetscape or adjoining properties as a result of the non-compliance and the design, height, scale, bulk and setbacks of the proposal are compatible with nearby residential housing forms in the surrounding locality. The proposed development also satisfies the five SEPP No.1 questions established by the Land and Environment Court and is consistent with the objects of the Environmental Planning and Assessment Act, 1979. Finally, the proposed development will not result in any unreasonable or unacceptable amenity impacts to neighbouring properties in terms of overshadowing, overlooking, loss of privacy, views, or visual bulk and scale.

Compliance with the landscaped area development standard is therefore considered to be both unnecessary and unreasonable in the circumstances of the case. Accordingly refusal of the development application on this ground is not warranted.