

JRPP No:	2011SYE036
DA No:	DA.114/11
PROPOSED DEVELOPMENT	Demolition of part of existing structures including three dwellings and construction of a new dwelling over 3 levels including basement garage with car lift, inclinator and landscaping at 16–20 Lodge Road Cremorne
APPLICANT:	Leda Holdings Pty Ltd
REPORT BY:	Geoff Mossemeneer, Executive Planner, North Sydney Council

Assessment Report and Recommendation

EXECUTIVE SUMMARY

This development application seeks approval to demolish part of existing structures including three dwellings and construction of a new dwelling over 3 levels including basement garage with car lift, inclinator and landscaping.

A development application was lodged in 2010 (2010SYE078) for the subject site seeking to demolish the majority of existing structures and erect a large dwelling to be constructed over four levels, with a tennis court on the top level. The application also sought approval for the construction of entry structures, garaging and a car lift at the street frontage, providing access via a tunnel to an underground car park.

The application was considered by the Joint Regional Planning Panel at its meeting of 2 February 2011, where the Panel resolved as follows:

- 1) The Panel resolves unanimously to accept the recommendation of the planning assessment report to refuse the application for the reasons mentioned in the report.*
- 2) The Panel believes that the following amendments would be required to make the proposal acceptable:*
 - a) delete the tennis court and adjoining entertainment area; roof to be nontrafficable;*
 - b) maintain the view of the water/land interface from the middle (living room) level of 22 Lodge Road;*
 - c) move inclinator at least 2m away from 22 Lodge Road and provide landscaping between;*
 - d) relocate or delete spa as per Drawing No SK235 provided by the applicant; and*
 - e) keep the lower height proposed in SK243 provided by the applicant.*
- 4) The Panel supports the applicant's proposal to reduce the length of the car lift and relocate the stairs on the western side of the car lift.*

This current application seeks to satisfy all of the above suggestions made by the Joint Regional Planning Panel.

The application was considered by Council's Design Excellence Panel at its meeting of 14 April 2011. The Panel considered the proposal to be generally acceptable and felt that some additional lower scale landscaping would be beneficial in the foreshore area along the edge of the canal subject to the landscaping not affecting the view lines sought by the JRPP. The proposed materials and finishes were considered satisfactory. The Panel suggested that the roof detailing would be improved with the eaves overhang being increased to 500 - 600mm.

Council's notification of the proposal has attracted 5 submissions raising particular concerns about scale and bulk, landscape area, height, building height plane, view impacts and construction activity.

Following assessment of new application, the development application is recommended for **approval**.

DESCRIPTION OF PROPOSAL

Demolition of part of the existing structures on the site including the three dwellings and the construction of a new dwelling over 3 levels including basement garage with car lift, inclinor and landscaping.

The dwelling to be constructed over three levels as follows:

Garden Level

This level is to be constructed at RL 2.2 (due to the need to ensure the dwelling is constructed above the 1:100 year level in relation to flooding and given the need for a tolerance for sea level rise). This level is to contain a guest suite, home theatre, gym, billiards room, rumpus/entertainment room, bunk room, bathroom caretakers store room and pool equipment room. A partially covered terrace leads off the rumpus/entertainment room.

Level 1

This level is to be constructed at RL 5.5 and contains the main living areas of the dwelling, including the family living area, kitchen, lounge/dining room, powder room, garbage room, laundry, WC, cellar, store room and data & services room. This level also contains a two storey high entrance hall area (with the entrance to the dwelling at Level 2) and an indoor lap pool (along the western side). A partially covered terrace opens off the family living and lounge rooms and wraps around the indoor pool.

Level 2

This level is to be constructed at RL 9.295 and contains the bedroom area of the dwelling, including the master bedroom with bathroom and walk-in robe, study, 5 bedrooms with ensuites, guest room with ensuite, laundries and storage rooms, separated from the eastern "wing" by a two storey entrance hall. The eastern "wing" contains an office, meeting room, bathroom and lobby room and a guest suite. A partially covered terrace is proposed to the north of this floor, projecting forward in the centre to provide articulation to the northern facade. To the south of the floor is a garden courtyard off the bedrooms. Also at this level is the proposed 6 car garage to be used to store the owner's car collection, which is accessed by the proposed car lift and tunnel. The main entrance to the dwelling occurs at this level, with a secondary entrance provided to the office area of the dwelling.

Vehicular access to the site is retained to the retained double garage on No. 16 Lodge Road and a new vehicular access to the basement garage is to be via a car lift located approximately 5.5m from the eastern boundary with No. 22 Lodge Road. The lift is located behind a proposed access courtyard and beside the bin and bicycle/equipment storage area, which is provided in the converted garage of No. 18 Lodge Road. The lift

will provide access to a proposed tunnel that will access the aforementioned 6 car garage.

Immediately adjoining the eastern side of the car lift is a set of stairs providing pedestrian access to the dwelling and then a rail glider inclinator to travel upon a railway line which is to be elevated over a landscaped garden. A landscaped setback (approximately 2m clear width) adjoins the boundary with No. 22 Lodge Road, other than for a length of approximately 4m, where the meter room is to be located.

The site is to be extensively landscaped in accordance with the proposed landscape plans, including the provision of a deep soil landscaped treatment over the proposed car tunnel and garage, with a depth of soil over of up to 5.6m.

STATUTORY CONTROLS

North Sydney LEP 2001

- Zoning – Residential A1
- Item of Heritage - No
- In Vicinity of Item of Heritage - No
- Conservation Area - No

Environmental Planning & Assessment Act 1979

SEPP 1 Objection

SEPP 55 - Contaminated Lands

SREP (2005)

Local Development

POLICY CONTROLS

DCP 2002

CONSENT AUTHORITY

As this proposal has a Capital Investment Value (CIV) of greater than \$10 million the consent authority for the development application is the Joint Regional Planning Panel, Sydney East Region (JRPP).

DESCRIPTION OF LOCALITY

The site, known as 16-20 Lodge Road, Cremorne, is located on the northern side of Lodge Road, being the low side located off the northern loop road portion of Lodge Road and has frontage to Willoughby Bay. The site is comprised of four allotments, which are described as follows:

No.16 Lodge Road is an elongated, irregular rectangle shaped lot which has frontage to Lodge Road of 6.85m, frontage to Willoughby Bay of 19.81m and side boundaries of 92.44m (western) and 103.76m (eastern), with an area of 1,180m². The property is very steep, dropping approximately 24m from the street to Willoughby Bay. No.16 Lodge Road is currently developed with a series of buildings and structures, stepped down the slope, with a double garage located at, and occupying most of, the street frontage. The dwelling is located approximately 31m from the street and has no streetscape presentation to the street, with the ridge being approximately 4m below street level. The

dwelling is a three level rendered dwelling with a tiled roof and is located forward of the dwelling at No.14 Lodge Road and behind that at No.18 Lodge Road. To the rear is a fibro and tiled roof granny flat/boat shed with a concrete boat ramp behind and an in-ground swimming pool.

No.18 Lodge Road is an elongated, irregular rectangle shaped lot which has frontage to Lodge Road of 6.61m, frontage to Willoughby Bay of 3.05m and side boundaries of 103.76m (western) and an irregular side boundary of 110.405m (eastern), with an area of 907m². The property is very steep, dropping approximately 25m from the street to Willoughby Bay. No.18 Lodge Road is currently developed with a series of buildings and structures, stepped down the slope, with a two storey (at the rear) double stacked garage located at and occupying half of the street frontage. The dwelling is located approximately 14m from the street and has no streetscape presentation to the street, with the ridge being approximately 1m below street level. The dwelling is a three level rendered dwelling with a tiled roof and is located well forward of the dwellings at Nos.16 and 20 Lodge Road. To the rear is an in-ground swimming pool and a rendered boat house which has a concrete ramp behind

No.20 Lodge Road is an elongated, irregular wedge shaped lot which has frontage to Lodge Road of 7.175m and does not have a frontage to Willoughby Bay. The property has a western side boundary of 96.98m, an irregular eastern side boundary of 68.515m and a rear boundary of 49.49m, with an area of 1,629m². The property is very steep, dropping approximately 25m from the street to the rear. No.20 Lodge Road is currently developed with a series of buildings and structures, stepped down the slope, with a partially elevated double garage located at and occupying most of the street frontage. The dwelling is located approximately 33m from the street and has no streetscape presentation to the street with the ridge being approximately 9m below street level. The dwelling is a two level rendered dwelling with a tiled roof and is located well behind of the dwellings at Nos.18 and 22 Lodge Road. To the rear is an in-ground swimming pool and a series of metal and fibro shed with the largest shed having an awning.

Adjoining the north-eastern (rear) boundary of No.20 Lodge Road is a Council owned drainage reserve approximately 3m wide, however only part of the drainage reserve contains the constructed concrete drainage channel. The property is burdened by a right-of-footway 1m wide along the top half of the eastern boundary.

The final property does not have a street address being a land locked block of irregular shape and does not have a frontage to Willoughby Bay. The property has a north-western side boundary of 30.005m, a north-eastern side boundary of 31.99m, a south-eastern side boundary of 22.65m and a south-western side boundary of 27.65m, with an area of 681.9m². The property is very steep, dropping approximately 16m from the southern corner to the northern corner. The property is currently undeveloped and is burdened by an easement to drain water 0.9m wide running along the south-western boundary.

The site as a whole is an irregular shaped lot which has frontage to Lodge Road of 20.635m, frontage to Willoughby Bay of 22.86m, a western side boundary of 92.44m and a highly irregular eastern side boundary of 170.29m, with an area of 4,397.9m². The locality is residential in character, with the northern side of Lodge Road characterised by elongated, narrow, steeply falling properties with frontages to

Willoughby Bay. The dwellings on these properties typically cannot be seen from Lodge Road and the streetscape presentation of this part of Lodge Road is largely one of garages.

The properties to the east of the site either have frontage to the eastern side of Lodge Road (No. 22 Lodge Road) and are not as steep or have frontage to Shellbank Parade and generally also have frontage to Willoughby Bay, but are not as steep.

Immediately to the west of the subject site is No.14 Lodge Road, an elongated, narrow lot with a narrow frontage to Lodge Road and Willoughby Bay, containing a double garage setback approximately 15m from Lodge Road and a dwelling constructed over 3 levels located roughly centrally on the site. The dwelling is setback approximately 1.4m from the boundary with the subject site and an elevated inclinor runs down the side setback.

Further to the west is another relatively recently constructed dwelling at No.12 Lodge Road, which is also of three storey construction and is located roughly centrally on the block.

Immediately to the east of the frontage of the site is No.22 Lodge Road, which fronts the eastern side of Lodge Road and is an irregular shaped lot. The property has a double garage on a small setback from the eastern side of Lodge Road, with the dwelling located behind the garage and constructed over three levels.

To the east of the bottom half and central portion of the subject site is No.2 Shellbank Parade, which is comprised of three allotments. This property has a large building constructed over it containing a three storey portion at the rear fronting Willoughby Bay with two levels of north facing terraces, separated by a courtyard from the front three storey portion located closer to Shellbank Parade containing two accommodation levels and one level (upper) of parking and access driveways thereto, with west facing terraces.

Location of Subject Site



RELEVANT HISTORY

The applicant had a pre lodgement meeting with Council staff on 10 June 2010.

A development application was lodged in 2010 (2010SYE078) for the subject site seeking to demolish the majority of existing structures and erect a large dwelling to be constructed over four levels, with a tennis court on the top level. The application also sought approval for the construction of entry structures, garaging and a car lift at the street frontage, providing access via a tunnel to an underground car park.

The application was considered by the Joint Regional Planning Panel at its meeting of 2 February 2011, where the Panel resolved as follows:

- 1) The Panel resolves unanimously to accept the recommendation of the planning assessment report to refuse the application for the reasons mentioned in the report.*
- 2) The Panel believes that the following amendments would be required to make the proposal acceptable:*
 - a) delete the tennis court and adjoining entertainment area; roof to be nontrafficable;*
 - b) maintain the view of the water/land interface from the middle (living room) level of 22 Lodge Road;*
 - c) move inclinor at least 2m away from 22 Lodge Road and provide landscaping between;*
 - d) relocate or delete spa as per Drawing No SK235 provided by the applicant; and*
 - e) keep the lower height proposed in SK243 provided by the applicant.*
- 4) The Panel supports the applicant's proposal to reduce the length of the car lift and relocate the stairs on the western side of the car lift.*

This current application seeks to satisfy all of the above suggestions made by the Joint Regional Planning Panel.

The proposal is amended in the following ways to address the points raised by the Joint Regional Planning Panel:

- Finished level of the Garden Level dropped from RL 2.5 to RL 2.2 to assist in lowering the height of the dwelling
- Finished level of Level 1 dropped from RL 5.8 to RL 5.5 to assist in lowering the height of the dwelling
- The spa area is removed from the indoor pool area adjacent to the western boundary – reducing the length of the building along that boundary by 6.7m, with the area replaced by a terrace (constructed to a similar height as the adjoining pool deck terrace at No. 14 Lodge Road)
- Finished level of Level 2 dropped from RL 9.595 to RL 9.295 to assist in lowering the height of the dwelling
- Relocation of the garage and tunnel access towards the west by approximately 1m and 2m, respectively (which in conjunction with relocating the lift allows for landscaping adjacent to No. 22 Lodge Road)
- Deletion of Level 3 which previously comprised of a tennis court and entertainment rooms, with planter boxes around the edge, to be replaced by a low pitched roof

- Proposed car lift and entry courtyard relocated 2.5m westward and the lift relocated 1.5m closer to the street
- Relocation of stairs and inclinator to a minimum of 2m from the boundary with No. 22 Lodge Road and provision of a landscaped buffer strip
- Provision of articulation to the northern façade to “break” the façade into three elements to be sympathetic with the modulation of facades fronting the waterway

The impact of the above changes is to reduce view loss to No. 14 Lodge Road and No. 22 Lodge Road and to allow for a landscaped buffer adjacent to No. 22 Lodge Road. The changes are all consistent with the requirements of the Joint Regional Planning Panel.

REFERRALS

Building

The application has not been assessed specifically in terms of compliance with the Building Code of Australia (BCA). It is intended that if approved, Council's standard condition relating to compliance with the BCA be imposed and should amendments be necessary to any approved plans to ensure compliance with the BCA, then a Section 96 application to modify the consent may be required.

Engineering/Stormwater Drainage/Geotechnical

Council's Development Engineer (T Ahal) assessed the proposed development and advised that the proposed development can be supported subject to imposition of a number of standard and site specific conditions relating to damage bonds, excavation, dilapidation reports of adjoining properties, construction management plan, vehicular crossing requirements and stormwater management. These conditions of consent should be imposed should the development application be approved.

Landscaping

Council's Landscape Development Officer (B Smith) provided the following comments with regard to the previous application:

“It is advised that I have inspected the three subject properties intended for consolidation into a single property, the demolition of the existing houses and construction of a substantial family home.

I had the benefit of the submitted Landscape Plans, Arborist's Report and was accompanied by the Landscape Architect and Mr. Graham Boyes representing the owner.

In summary the sites are quite similar and could be described in the following terms.

- The topography is very steep and is approximately 25 metres from street level to the ground level at the foreshore. Given the approximate length of the properties being 90 metres, the slope represents an average of 25% across the properties.
- The way each of the properties has been developed is to erect tiered dwellings, generally across the width of the properties.

- Access is a combination of inclinators and series of stairs and landings leading down either side of the dwellings down to foreshore areas of the properties that are currently the only large flat areas of the properties with genuine passive recreational values.

- Garden plantings have been primarily restricted to a series of planter beds, terraced gardens and rockeries adjacent to the access stairs, paths and landings.

- There are quite a number of trees, shrubs and groundcovers that have been planted on each of the properties, without great horticultural knowledge in terms of species selection.

- It is apparent that for quite some time the maintenance of the garden areas of the properties has been minimal and consequently the garden areas are somewhat unkempt and consequently many colonizing weed species and undesirable species have invaded the existing garden areas of the properties.

- Of the trees on the existing properties proposed for re-development there are only three trees out of forty seven that are actually covered by Councils Tree Preservation Order. They are trees numbers 2 and 3 and 23 as indicated in the Arborist's Report. Two of the trees (no:s 2 and 3) are growing at the upper levels of no: 16 in between the existing garage and the existing house. Whilst they are quite healthy, they are not particularly good specimens and given that they are growing in very confined rockery gardens and posing a threat to the integrity of the rockeries that they are growing in, permission would be granted for their removal if an application were to be made under the T.P.O

The third tree is an Alexander Palm (no:23) is growing at the lower part of number 16, near the foreshore and its retention is feasible by way of either a fairly minor amendment to the design or by way of relocating it to an area nearby.

- There are two trees included in the report that are covered by Councils Tree Preservation Order, i.e.: trees 37(Angophora) and 38(Spotted Gum), however both trees are on the adjoining property at no: 22 Lodge Road and are not threatened by the proposal.

In relation to the above information, it should be recognised that whilst the existing Port Jackson Fig at no:16 is a large tree, it appears to have died from natural causes. As it is dead it is not covered by the TPO.

The only healthy tree providing genuine amenity values to the subject and neighbouring properties is tree no:30 which is growing about half way along the eastern boundary of no:18, and about 5 metres in from the boundary. The tree has been identified as a *Stenocarpus*, but is actually a *Brachychiton acerifolius* (Illiliwarra Flame). The tree is not covered by Councils T.P.O as it is only 9 metres tall. Furthermore it is growing in a very precarious location at the edge of an informal retaining and at some stage its removal would be necessary anyway.

It should be noted that whilst the Arborist has failed to accurately identify the proper species for the above mentioned tree, all other trees have been identified correctly. Furthermore the identification of the sizes and condition of all other trees are accurate.

In conclusion whilst it is acceptable to remove all the trees, other than the above mentioned Alexander Palm, it is also incumbent on the applicant to provide a satisfactory reinstatement of lost greenery and the amenity values the existing vegetation offers the property itself, neighbouring properties as well as from the harbour itself.

The submitted Landscape Plan has improved the passive recreational values of the properties by way of providing more usable pockets of flat spaces in the upper and mid portions of the properties, and better relating the dwelling to those spaces.

In term of the proposed new planting scheme, it has generally addressed the lost amenity provided by the existing greenery. However there is one failing in the proposed planting scheme ie:

- The provision of large open habited native trees, and Palm Trees to break the bulk and scale of the main building itself from the harbour itself.

I made the above mentioned parties representing the owner of all of the above observations and indicated that they should address my only real concerns with the proposal.

They consider maybe relocating a couple of the useful species of Palms on the property not covered by Councils T.P.O to the foreshore area and further embellish the planting with a few Angophoras or the like.

I note that an amended Landscape Plan has now been submitted by the applicant to address the abovementioned concerns. However they have only provided for one extra Palm and one Angophora. The Angophora provided has been shown at 45 litre in size, this is likely to be tree less than two metres tall and with a trunk about 30 millimetres thick.

I do not believe this to be a satisfactory response to the concerns raised.

I think there should the inclusion of some further Angophoras', appropriately located and the proposed sizes should be increased to say a minimum of 100 litres.

In conclusion I could only support the application if the abovementioned concerns were to be addressed by the inclusion of new plantings as suggested."

Planning Comment:

The Design Excellence Panel has commented on landscaping in the foreshore area and this can be conditioned.

DESIGN EXCELLENCE PANEL

The application was referred to Council's Design Excellence Panel at its meeting of 14 April 2011. The minutes are reproduced as follows:

'PROPERTY: **16-20 Lodge Road Cremorne**

DATE: 14 April 2011 @ 2.30 pm

ATTENDANCE: Panel Members: Phillip Graus; Peter Webber; Russell Olsson; apology from David Chesterman.

Council staff: Geoff Mossemeneer (chair)

Proponents: Graeme Boys (consultant to applicant)

There was a previous application by the applicant that was before the Panel at its meeting of 13 October 2010. A site inspection was carried out by the Panel and proponent prior to that meeting.

This proposal is an application to be determined by the Joint Regional Planning Panel.

The Proposal:

The proposed development is summarised as demolition of part of existing structures including three dwellings and construction of a new dwelling over 4 levels including basement garage with car lift, inclinor and landscaping.

With regard to the previous application considered last October, the Panel did not discuss any breaches of the controls with regard to height or building height plane other than to comment that the height and setbacks were in context with surrounding development. The main issue related to the appearance from the foreshore/water. The Panel recommended some additional landscaping of the foreshore area including the retention of the stand of palm trees to the south of the outdoor pool; more planting north of the north east corner of the dwelling and more planting north of the north west corner of the dwelling. The Panel recommended the use of Angophora, Eucalyptus trees or other large open canopy species indigenous to the locality in the foreshore area. The long unrelieved horizontal form of the building was inconsistent with all the foreshore buildings within its visual catchment. The Panel considered that its scale would be improved by clear articulation of its northern facade into three parts that would be consistent with the widths and scale of the existing dwellings along the foreshore.

The previous application was refused by the Joint Regional Planning Panel at its meeting of 2 February 2011. The application was considered unsatisfactory with regard to the breach of the development controls that adversely impacted on adjacent owners. The JRPP identified a number of changes considered necessary to resolve the adverse impacts:

- delete the tennis court and adjoining entertainment area;
- roof to be non trafficable;
- maintain the view of the water/land interface from the middle (living room) level of 22 Lodge Road;
- move inclinator at least 2m away from 22 Lodge Road and provide landscaping between;
- relocate or delete spa as per Drawing No SK235 provided by the applicant; and
- keep the lower height proposed in SK243 provided by the applicant.

The new application incorporates all of the changes suggested by the JRPP.

Panel Comments:

The Panel felt that the scheme was generally sympathetic to its surrounds in that it is located to the centre of the site at the base of the steep slope opening to the level foreshore area.

The Panel was satisfied with the amended design and the further articulation of the northern façade. The Panel felt that some additional lower scale landscaping would be beneficial in the foreshore area along the edge of the canal subject to the landscaping not affecting the view lines sought by the JRPP. The proposed materials and finishes were considered satisfactory. The Panel suggested that the roof detailing would be improved with the eaves overhang being increased to 500 - 600mm.

Conclusion:

In summary, the Panel considered the proposal to be generally acceptable subject to the above matters being resolved by the applicant."

External Referrals

Foreshores and Waterways Planning and Development Advisory Committee

The previous application was considered by the Committee at meeting of 4 November 2010. The Committee recommends that the consent authority satisfies itself that:

- The height, bulk, scale, materials, finishes and landscaping features of the proposal will be generally sympathetic with its surrounds so as not to detrimentally impact on foreshores and waterways.

- The removal of the gully vegetation is not excessive so that the abovementioned requirements of the Sydney Harbour Foreshores & Waterways Area DCP 2005 are met.

The current application was again referred to the Committee. The above comments are still relevant to the current proposal.

NSW Office of Water

No Controlled Activity Approval is required as there are no changes to the previous proposal affecting the watercourse.

SUBMISSIONS

The application was notified to surrounding owners and residents and the Willoughby Bay Precinct from 1 April to 3 May 2011. Five (5) submissions were received with the main issues raised being summarised as follows:-

Address of Submitter	Basis of Submissions
22 Lodge Road	<ul style="list-style-type: none"> • Scale and bulk • Landscape area • Building height plane • Height • View impacts • Car lift impacts • Privacy • Construction activity • Pitched roof, lift motor room and raised glass canopy should be deleted • Car lift to be moved further west or roof and walls to lift be removed
14 Lodge Road	<ul style="list-style-type: none"> • Building height plane • Height • Views • Solar access • Pools • Slipway application
12 Lodge Road	<ul style="list-style-type: none"> • Breach of controls • Too big • Out of context and scale
30 Ryries Parade	<ul style="list-style-type: none"> • Out of context • Construction impacts
4 Lodge Road	<ul style="list-style-type: none"> • Removal of trees • Construction impacts on local roads • Can material be removed by water • Where will construction zones be established

The applicant's Planning Consultant has responded to the submissions in the following terms:

We have reviewed the submissions received in response to the notification of the application and we are of the opinion that our amended design is a suitable form of development on the site which balances the development rights of the owner with the rights of the neighbours to have a reasonable level of amenity maintained to their properties. As such, we will not be submitting a detailed response to the submissions as we feel the Statement of Environmental Effects and view diagrams, together with the SEPP 1 objections, adequately respond to the concerns raised. In summary we make the following points:

1. The proposal has wholly addressed the concerns raised by the JPRR in refusing our previous application and, indeed, provides for an increased setback to the car lift from No. 22 Lodge Road, than was considered acceptable by the JRPP.
2. The breaches of the BHP and height control do not result in material additional impacts upon views or shadowing over those that would occur with a compliant development (in this regard I refer you to previous discussions of a compliant development located closer to the foreshore which would have greater view impacts than the proposal). I also note that any assessment that a change in a view from a vegetated foreground then a land/water interface view to a view over the top of a building to a land/water interface view is an unreasonable impact would prevent any reasonable form of development on the subject site. In this regard, properties that do not have a direct water frontage cannot expect to retain land/water interface views in any other form than by viewing them over the top of other buildings.
3. The issue raised of the "de facto building line" has no basis as the proposal is well clear of the foreshore building line and the "de facto building line" suggested, even were one to be applied, would not be an appropriate line as it does not take into consideration the change in direction of the foreshore, nor the location of dwellings in Shellbank Avenue. It is also noted that the Court's planning principles requires the view impact of a proposal to be considered from all places within a property from which views are available and also requires an assessment of the vulnerability of a viewing position. It specifically states that views across side boundaries are vulnerable and cannot be expected to be retained.
4. The issue raised in relation to an application for a slipway is not relevant to the assessment of this application.
5. Issues related to construction management are appropriately dealt with by conditions of consent requiring the provision of a construction management plan (which we have previously offered to prepare).

CONSIDERATION

The relevant matters for consideration under Section 79C of the *Environmental Planning and Assessment Act 1979*, are assessed under the following headings:

The application has been assessed against the relevant numeric controls in NSLEP 2001 and DCP 2002 as indicated in the following compliance tables. More detailed comments with regard to the major issues are provided later in this report.

Compliance Table

STATUTORY CONTROL – North Sydney Local Environmental Plan 2001				
Site Area – 4321m ²	Existing	Proposed	Control	Complies
Residential				
Building Height (Cl. 17) (max)	NA	13.855m	8.5m	NO

		(east side roof ridge)		
Building Height Plane (Cl.18)				
• Nth Elevation	NA	Nil	45° height	YES
• Sth Elevation	NA	0.45m (garage)	plane @	NO
• East Elevation	NA	5.895m (northern side of eaves)	1.8m above	NO
• West Elevation	NA	1.38m (pool room)	each boundary	NO
		3.26m (south end of eaves)		
Landscape Area (Cl. 20) (min)	NA	56%	60%	NO
Foreshore Building Line (Cl. 38)	NA	73m from street	79.1m from street between 14 & 16	YES

DCP 2002 Compliance Table

DEVELOPMENT CONTROL PLAN 2002		
	<i>complies</i>	<i>Comments</i>
7.1 Function		
Maintaining residential accommodation	No	Proposal involves decrease from 3 dwellings to one. Although scale of development equivalent to more than 3 dwellings. Minor reduction in dwellings acceptable. More of an issue with affordable housing
7.2 Environmental criteria		
Topography	No	Acceptable. See comments under Excavation. Amount of excavation considered appropriate for site having regard to slope.
Properties with a foreshore building line	Yes	Proposal is clear of foreshore building line by at least 6m
Views	Yes	The proposal has been designed to have regard to a reasonable view sharing. See detailed comments
Solar access	Yes	<p>9.00am and 3.00pm) in midwinter.</p> <p>Given the orientation and topography of the site, only the dwellings at Nos. 14 and 22 Lodge Road and No. 2 Shellbank Parade can potentially be shadowed by the proposed dwelling and garage structures. The shadow diagrams provided with the application show that the proposal will have the following shadow impacts:</p> <p>9am The proposal will result in shadowing of the front two (closest to the street) side windows at the lowest level of No. 14 Lodge Road, approximately ¼ of the middle level rear floor to ceiling window and approximately 1/2 the middle two windows on the middle level, but will remove the existing shadowing of the front window at the top two levels (middle level shadowing 1/2 removed).</p> <p>Noon All shadows from the proposed dwelling</p>

		<p>fall within the site and from the garage fall within Lodge Road</p> <p>3pm Shadows from the proposed dwelling fall largely within the site and the adjoining drainage reserve. Shadows from the proposed car lift will fall on the blank western wall of No. 22 Lodge Road</p>
Visual privacy	Yes	<p>No.14 Lodge Road</p> <p>The proposed dwelling is designed to have no west facing windows adjoining the boundary of No. 14 Lodge Road and as such affords no opportunity to overlook the adjoining dwelling from windows.</p> <p>The balcony forward of the pool at the ground level is increased in size with the removal of the spa. There will be some possible overlooking from this terrace onto the adjoining pool. It is noted that this balcony will be overlooked by the neighbour from the various terrace levels at No.14. Privacy screens could be imposed but they are likely to block views. It is common place in foreshore locations that to maintain view lines across properties, total privacy cannot be achieved.</p> <p>No.2 Shellbank Parade</p> <p>East facing windows provided at the garden level, however all such windows are well below the height of the existing windows in No.2 Shellbank Parade.</p> <p>At the first level the proposed dwelling provides no window facing No. 2 Shellbank parade and whilst a terrace area off the lounge room is located opposite the dwelling, it is separated from the dwelling by approximately 8m to the nearest window and 10m to the elevated courtyard of that dwelling. Between the two dwellings is an extensive area of existing landscaping which is to be retained and which will afford a level of privacy between the two properties.</p> <p>At the second level no windows face the dwelling at No. 2 Shellbank Parade and only the edge of a balcony faces that property, having a separation distance over 10m from the nearest window which is offset from the edge of the balcony. Given the distance separation and the extensive area of existing landscaping which is to be retained between the dwellings, a reasonable level of privacy will be retained between the dwellings.</p> <p>No.22 Lodge Road</p> <p>The entire proposed dwelling is located forward of the dwelling on No.22 Lodge Road and as such should not result in privacy impacts, with a separation distance of over 32m between the dwellings. Some impacts from inclinator but landscape screening is provided.</p>
7.3 Quality Built Form		

Context	Yes	Height and bulk when viewed from harbour, not visible from other public spaces. The building is in context with foreshore development with sufficient articulation
Streetscape	Yes	Not much change. Dwellings in the locality do not contribute to streetscape. Mainly access and single storey garages to street.
Subdivision pattern	No	The consolidation of three properties will affect the subdivision pattern of the area. The dwelling has articulation into 3 segments (accepted as satisfactory by DEP).
Siting	Yes	The siting is appropriate for the topography of the site to restrict excavation and still have regard to sea level constraints on the foreshore area
Form, massing & scale	Yes	Consistent with surrounds
Dwelling entry	Yes	Visible entry from street. Topography does not permit direct access to front of dwelling
Roofs	Yes	Low pitched roof proposed to share views.
Colours and materials	Yes	Natural and muted tones proposed. Glass is recessed behind balconies to reduce their dominance.
7.4 Quality urban environment		
High quality residential accommodation	Yes	Cross ventilation provided with ceiling heights exceeding 2.7m. Spacious rooms provided throughout the dwelling.
Car parking	No	Parking for 6 spaces proposed exceeds maximum of 2 spaces permitted under DCP although applicant has collection of cars requiring secure storage. Entry and egress from parking will be in forward direction and the parking will not impact on the street. Acceptable under circumstances. Noted that the 3 current dwellings could have 2 spaces each.
Location of car parking	No	Underground parking not usually accepted for single dwellings. Acceptable under circumstances due to limited street frontage and slope of site. Vehicles able to manoeuvre on site and leave site in forward direction that is not available to other properties in street
Landscaped area	No	See comments on SEPP 1 under landscaped area
Landscaping	Yes	Soft landscaping in excess of 80% requirement. See comments from Landscape Officer
Swimming pools	Yes	External pool existing and compliant. Internal pool is fully enclosed within building.
Garbage storage	Yes	Adequate and at street level
7.5 Efficient use of resources		
Energy efficiency	Yes	Basix certificate submitted.

NORTH SYDNEY LEP 2001

Zoning

The provisions of Sydney Regional Environmental Plan Sydney Harbour Catchment (SREP -Sydney Harbour Catchment) apply to the site and the waterway adjoining the site is zoned W7 Scenic Waters Casual Use.

The subject site is zoned Residential A1 under the provisions of North Sydney Local Environmental Plan 2002 (NSLEP 2002) and demolition and erection of a dwelling is permissible with the consent of Council. The proposed office and meeting room would have to satisfy the definition of a Home Occupation (ie. no employees on site that are not residents). The site is not located within a Conservation Area and is not within

proximity of any Items of Heritage.

Residential AI Zone objectives

*"(a) maintain lower scale residential neighbourhoods of mainly detached housing, and
(b) assist in the conservation of heritage and other sensitive areas, and
(c) minimise the impact of non-residential uses and ensure these are in character with the zone."*

The proposed dwelling maintains a lower scale residential density, satisfying objective (a). The site is not in a conservation area, does not contain an item of heritage and is not in the vicinity of an item of heritage, nor does the proposal impact on sensitive areas, satisfying objective (b). Objective (c) does not apply to the proposal. Therefore, the proposal is consistent with the objectives for the Residential AI zone.

Residential Objectives

The objectives of the Residential zones as are outlined in Clause 16, which are relevant to the application, are stated below:

- (a) a range of dwelling types, which includes;*
 - (i) Dwelling-houses, each being a detached house and garden, providing accommodation for a range of household and, in particular, households with children, and....*
- (b) amenity for residents of new and existing dwellings;*
- (c) building which are compatible with their immediate context;*
- (d) development that promotes the character of the neighbourhood; and*
- (e) to avoid carriage development.*

The proposal provides for the erection of a detached dwelling in a garden setting that provides suitable accommodation for a household with children, satisfying objective (a)(i).

The proposal has an appearance consistent with the character of the area and as such satisfies objectives (c) and (d).

The amenity impacts of the proposal are considered to be acceptable and therefore consistent with the requirements of objective (b). Objective (e) is not relevant to the application. The proposal is consistent with all of the objectives for the Residential zones.

Building Height

Clause 17 sets a maximum height of 8.5m. The proposed dwelling has a maximum height of 13.885m and as such is reliant on a SEPP 1 objection being considered and supported.

The parts of the dwelling that breach the height control are the eastern side of the façade facing the waterfront at the top level (by up to 2.405m), the eastern side facing the street at the top level (by up to 1.955m) and the roof ridge (by up to 1.455m at the western side and 5.355m at the eastern side). There is also a minor breach of the control at the waterfront side of the bicycle/equipment store (of 0.23m), however this

breach exists. As such the breaches of the height control relate to the cross slope on the site and the steep slope from the street to the waterfront and the need to elevate the dwelling above the future 1:100 year inundation level. The amended design results in reductions in the height of various elements of the building of between 0.3m and 3.4m from the previously proposed dwelling and reduces the dwelling by an entire storey. The height control is shown as a heavy line on the sections below to demonstrate the areas in breach.



The objectives for this control seek to either limit the height of dwellings to one storey at the street where that is the characteristic building height, limit the height to the same or similar to the characteristic building heights, or if neither apply to limit the height to two storeys or three storeys for apartment buildings in the Residential C zone.

The adjoining buildings are all more than single storey. As such the first objective is not applicable. The second objective seeks for heights to be the same or similar to the characteristic building heights and this is the relevant objective for consideration in assessment of the application, it being noted that the immediately adjoining dwellings, and several others in the area, are in excess of 2 storeys in height. The two immediately adjoining dwellings have a visual presentation to the waterway of three storeys (No. 2 Shellbank Parade) and an elevated three storeys (No. 14 Lodge Road).

The applicant provided a SEPP No.1 objection to seek a variation to the building height control. The proposed breaches have been assessed against the performance criteria of Clause 17(1) and the following objectives of the control:

- (a) *Limit the height of buildings in residential zones to heights which are the same or similar to the characteristic building heights*

- (b) Promote gabled and hipped roofs in all residential zones*
- (c) Promote the retention of and if appropriate, sharing of existing views*
- (d) Maintain solar access to new and existing dwellings, public reserves and streets and promote solar access to new buildings*
- (e) Maintain privacy for residents of existing dwellings and promote privacy for residents of the new buildings*
- (f) Prevent excavation of sites for building works*

The number of storeys is consistent with surrounding development. The height is not the result of the excessive excavation on site. A low pitched roof is proposed to minimise impacts. Overshadowing is not an issue with the height. The only objective that remains to be addressed relates to the *retention and sharing of existing views*.

A submission was received from neighbours to the south of the site at 22 Lodge Road concerning view loss. The property is a three storey dwelling with terraces on each level, the upper level consists of bedrooms and study, the mid level is the main living area and lower level is a family area opening onto a pool. The Panel visited this site with the previous application to have regard to the view. In refusing the previous proposal (in part on the basis of view loss), the JRPP advised the applicant that they need to: *maintain the view of the water/land interface from the middle (living room) level of 22 Lodge Road*

The Panel is reminded of the 4 step procedure to consider view sharing established in *Tenacity Consulting v Warringah Council [2004] NSWLEC 140* ("Tenacity") to be applied in assessing whether the breach of the height control is acceptable and the SEPP 1 objection can subsequently be supported.

The 4 steps from Tenacity are reproduced as follows:

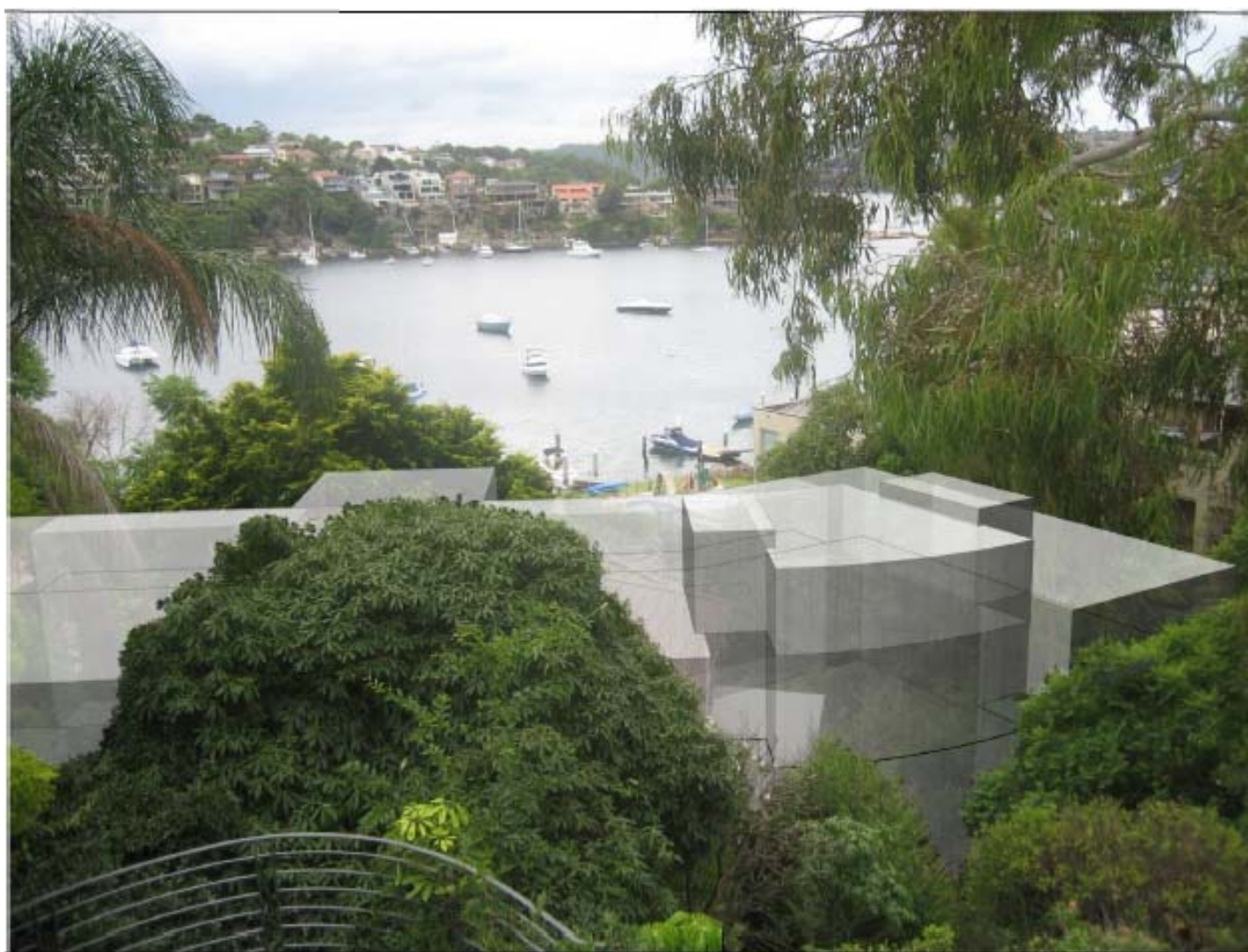
The first step is the assessment of views to be affected. Water views are valued more highly than land views. Iconic views (eg of the Opera House, the Harbour Bridge or North Head) are valued more highly than views without icons. Whole views are valued more highly than partial views, eg a water view in which the interface between land and water is visible, is more valuable than one in which it is obscure.

The second step is to consider from what part of the property the views are obtained. For example the protection of views across side boundaries is more difficult than the protection of views from front and rear boundaries. In addition, whether the view is enjoyed from a standing or sitting position may also be relevant. Sitting views are more difficult to protect than standing views. The expectation to retain side views and sitting views is often unrealistic.

The third step is to assess the extent of the impact. This should be done for the whole of the property, not just for the view that is affected. The impact on views from living areas is more significant than from bedrooms or service areas (though views from kitchens are highly valued because people spend so much time in them). The impact may be assessed quantitatively, but in many cases this can be meaningless. For example, it is unhelpful to say that the view loss is 20% if it includes one of the sails of the Opera House. It is usually more useful to assess the view loss qualitatively as negligible, minor, moderate, severe or devastating.

The fourth step is to assess the reasonableness of the proposal that is causing the impact. A development that complies with all planning controls would be considered more reasonable than one that breaches them. Where an impact on views arises as a result of non-compliance with one or more planning controls, even a moderate impact may be considered unreasonable. With a complying proposal, the question should be asked whether a more skilful design could provide the applicant with the same development potential and amenity and reduce the impact on the views of neighbours. If the answer to that question is no, then the view impact of a complying development would probably be considered acceptable and the view sharing reasonable.

The photo below was taken from the middle level terrace from a standing position. The applicant has located the proposed building in the photo



BLOCK MODEL OVERLAID ON EXISTING VIEW

The photo below shows the building with landscaping to be removed in front of the building and proposed landscaping to the south of the building.



ARTIST'S IMPRESSION OF EXPANDED VIEW ACROSS SITE WITH PROPOSED NEW LANDSCAPING INCLUDED

The terrace enjoy a water view in which the interface between land and water is visible that is generally considered to be a more valuable view. The view is also from the main living areas of the dwelling. Of additional interest is the activity on the foreshore at the jetty. These views will now not be obstructed with the new dwelling. My opinion is that the impact could be classified as minor only and adequate view sharing has been achieved when compared to the existing view below.



It is noted that due to the slope of the site and the low level of the foreshore area, the applicant has pushed the building well behind the Foreshore Building Line. A building compliant with the height control moved to the FBL would not allow for the same amount of view sharing as the proposal now achieves. Having regard to the photos above, the view has been retained if not improved. This satisfies objective (c). The proposal satisfies all the objectives of the control and accordingly the SEPP 1 objection is well founded and can be supported.

Building Height Plane

Clause 18 sets a building height plane for residential development in the Residential A1 zone at 1.8m measured from the existing ground level at each boundary. The compliance of the proposed dwelling in relation to the building height plane is identified as follows, with the dimensions being the maximum breach of the control at the specified location:

Western facade dwelling	bunk room	0.7 m
	pool room	1.38m
	southern end of eaves	3.26m
Eastern façade dwelling	garden store room	comply
	northern side of eaves	5.895m
Southern facade garage	western side	0.45m
	eastern side	comply

It is noted that the site is separated on the eastern boundary with a drainage reserve. If the BHP was measured from the boundary of the adjoining dwelling then the northern side eaves breach would be 2.72m.

It is also noted that all surrounding sites built close to their side boundaries (No.14 and No.22 Lodge Road and No.2 Shellbank) would have breaches similar or worse than the proposal.

The breaches of the building height plane are a direct result of the slope of the site and in particular of the cross fall of the site, and of the need to raise the ground level to ensure the dwelling is above the predicted future rise in sea level, ensuring it will not flood in high tide events.

The breaching elements of the buildings do not result in any material impacts with regard to loss of ventilation or access to daylight, overshadowing, loss of privacy. The separation of the dwellings is considered appropriate notwithstanding the breach.

The bulk and scale of the dwelling is appropriate to the location and in context with dwellings in the locality.

The breaching elements of the garage/entrance structure are commensurate with the existing breaching garages on the site and will result in no substantial change to the streetscape and no material additional impacts.

Given the extreme slope of the site and the large cross fall, requiring strict compliance with the control would constrain reasonable redevelopment of the site and would be contrary to the objects of the Act. It would also require more of the bulk of the building to be located centrally within the site and closer to the foreshore, significantly reducing views from No. 22 Lodge Road and No.14 Lodge Road.

The applicant provided a SEPP 1 Objection to seek a variation to the building height plane control. The proposed breaches have been assessed against the performance criteria set out in Clause 18 (5) and the objectives of the control. These matters have been considered below:-

a) Overshadow any existing or new property- The shadow diagrams submitted with the application show that the shadow impact of the proposal as a whole is minimal. Further, the breaching elements do not materially increase the shadow impact of the proposal.

b) Reduce the level of privacy to any existing or new property- The breaching elements of the buildings do not result in any material privacy impacts over that created by the complying elements and as has been discussed in the compliance table above, the privacy impacts of the dwellings as a whole are minimal.

c) Obstruct views from any existing or new property- The breaches on the eastern boundary will not impact on the views from No.22 Lodge Road (those views are affected by the height breach as discussed above). The view line is not directly over the edge of the building where the breach is located. The view from the lower level of the dwelling would be impacted by a building compliant with the height control and building height plane control. The views from the upper level would be better than those retained from the middle level. Having regard to the location of No.22 looking across the subject property's length to gain a water view, a material impact would be defined as loss of a view that could reasonably be expected to be retained. Retention of views across another site from the lower level (not being the main living area) would not be reasonable. The Tenacity Planning Principle is considered to be an appropriate guide to view impact. A severe impact on a view could be material. In this case the view is retained (and enhanced) and not considered to be severe. View impacts from the breach on the eastern elevation are not considered to be material.

A submission was also received from neighbours to the west of the site concerning view loss (No.14 Lodge Road). The property is a three storey dwelling with terraces on each level, the upper level consists of bedrooms and study, the mid level is the main living area and lower level is a family area opening onto a pool. The owners are concerned with the loss of views from the mid level as well as the lower level. The owners are also concerned with the height of the blank wall and the minimal setback of the wall.

Applying the Tenacity Principle, the water and foreshore views are retained from both terrace levels. It is noted that the eave height of the proposal at the north west corner closest to No.14 Lodge Road is RL 12.7 and the floor level of the living area (where the large side windows are located) is RL 11.68 so that viewing across the corner from inside the dwelling is possible. View impacts from the breach on the western elevation are not considered to be material.

Adequate view sharing is achieved with the proposal that was not the case with the previous application.

d) Obstruct daylight or ventilation to any existing or new property – There will be no impact on the daylight or ventilation to any existing or new property as a result of the breaches of the BHP control.

The objectives of the control are assessed below:

a) Control the bulk and scale of buildings – The elements that breach the building height plane will not result in an inappropriate bulk and scale to the immediate neighbours. The proposal is considered acceptable in this regard.

(b) Provide separation between buildings - It is considered that there will be no adverse on the separation between dwellings in this instance.

(c) Preserve the amenity of existing dwellings - For reasons described above, it is considered that the amenity of existing dwellings will not be materially impacted.

The proposal satisfies all the objectives of the control and accordingly the SEPP 1 objection is well founded and can be supported.

Landscaped Area

The objective of the standard is contained within Clause 20 of LEP 2001 as follows:

- "(a) promote the character of the neighbourhood, and*
- (b) provide usable private open space for the enjoyment of residents, and*
- (c) provide a landscaped buffer between adjoining properties, and*
- (d) maximise retention and absorption of surface drainage water on site, and*
- (e) minimise obstruction to the underground flow of water, and*
- (f) promote substantial landscaping, including trees which will grow to a minimum height of 15 metres, and*
- (g) control site density, and*
- (h) minimise site disturbance.*

The provisions of clause 20 require a landscaped area of 60% of the site area to be provided for a site area in excess of 900m². The site area is 4,321.4m², a landscaped area of 2,592.8m² is required to be provided. The proposed landscaped area has been calculated by excluding the footprint of the dwelling, boat shed, pool and garages/driveway and has been calculated only having regard to the parts of the property that are included in the defined site area. This results in an area of the site that satisfies the definition of landscaped area of 2,419.6m², breaching the control by 173.2m².

Additional landscaped areas are proposed onsite which could satisfy the objectives of the landscape control notwithstanding they do not satisfy the definition of landscaped area. The area to be landscaped over the underground garage/tunnel (236.9m²) will have a soil depth of up to 5.6m and accordingly would provide the same level of amenity as deep soil landscaping, having a greater soil depth than most natural deep soil

landscaping in the area and on the site. The objectives of the control have been satisfied, the SEPP 1 objection is considered to be well founded and can be supported.

Excavation of Land

Clause 39 provides objectives and controls related to the excavation of land seeking the minimisation of adverse effects of excavation on the amenity of neighbouring properties, the minimisation of excavation and site disturbance to allow for the retention of natural features and to ensure land stability and natural drainage patterns are retained.

The area of the site most suitable for development, which would require the least amount of excavation is the flat section adjacent to Willoughby Bay, however development of this section of the site is inappropriate given the need to elevate the dwelling to ensure it is above the future sea level rises and due to the design criteria of minimising view impacts, which necessitates the dwelling being setback further than the foreshore building line, back onto the sloping part of the site.

The result of these requirements is that there is a need to carry out excavation for the purpose of the dwelling, which is a common occurrence in this area given the steep slope of the site. Further, excavation is proposed for the garage. This approach has been taken to minimise the impact upon the visual appearance of the site as viewed from the waterway as the provision of a long winding driveway down the site to a garage would have left a significant and unacceptable visual impact when viewed from the waterway. The technical reports supporting this application identify that the excavation works proposed are reasonable, having no unacceptable impacts in relation to the stability of the land or the drainage patterns.

Development within the Foreshore Building Area

Clause 38 sets a foreshore building line for the site which is shown on the architectural plans. The proposed dwelling is located wholly behind the foreshore building line.

Draft North Sydney Local Environmental Plan 2009

The Draft North Sydney Local Environmental Plan 2009 was on public exhibition from 20 January 2011 to 31 March 2011, following certification of the plan by the Director-General of the Department of Planning. It is therefore a matter for consideration under S.79C of the Environmental Planning and Assessment Act 1979. However at this stage limited weight can be given to the plan since the final adoption of the plan is neither imminent nor certain.

The provisions of the draft plan have been considered in relation to the subject application, Draft LEP 2009 is the comprehensive planning instrument for the whole of Council's area which has been prepared in response to the planning reforms initiated by the NSW state government.

The provisions of the Draft Plan largely reflect and carry over the existing planning objectives, strategies and controls in the current NSLEP 2001 in relation to this site.

The site is identified under Draft LEP 2009 as being included within the R2 low density

residential zone as are adjoining sites. The proposed development is permissible in the draft zone.

The development standards applicable to the site under the Draft LEP (DLEP) 2009 generally reflect those which currently apply to the site under the current North Sydney Local Environment Plan 2001 (NSLEP) 2001. The application is in accordance with the draft plan.

SEPP 55 and Contaminated Land Management Issues

The subject site has been considered in light of the Contaminated Lands Management Act and it is considered that as the site has been used for residential purposes for many years, contamination is unlikely.

SREP (Sydney Harbour Catchment) 2005

The provisions of Sydney Regional Environmental Plan Sydney Harbour Catchment (SREP — Sydney Harbour Catchment) apply to the site and the waterway adjoining the site is zoned W7 Scenic Waters Casual Use.

Zone Objectives

Clause 17 provides zone objectives for each zone of the waterways and as no development is proposed within the waterway zone, the objectives do not need to be considered.

Development Control in the Waterways

Clause 18 provides for permissible uses in each zone and no new uses are proposed within the W7 zone.

Matters for Consideration

Division 2 provides matters for consideration prior to the determination of development applications, the relevant ones of which are stated and addressed following:

Biodiversity, ecology and environmental protection

(a) development should have a neutral or beneficial effect on the quality of water entering the waterways,

It is proposed to drain the stormwater from the site into the waterway, which is the existing situation. The water quality dispersed into the waterway will be improved by the provision of two gross pollutant traps, one prior to water entering the stormwater channel and one prior to water entering the bay, which will remove gross pollutants prior to the stormwater entering the waterway.

(b) development should protect and enhance terrestrial and aquatic species, populations and ecological communities and, in particular, should avoid physical damage and shading of aquatic vegetation (such as seagrass, saltmarsh and algal and mangrove communities),

No development is proposed in the waterway and there will be no detrimental impact upon terrestrial or aquatic species or vegetation and the use of sedimentation protection devices during construction will ensure no sedimentation is deposited into the waterway. Therefore the proposal will not impact upon terrestrial or aquatic species, populations or communities.

(c) development should promote ecological connectivity between neighbouring areas of aquatic vegetation (such as seagrass, saltmarsh and algal and mangrove communities),
Opportunities to promote any connectivity between aquatic communities are unavailable due to the lack of such communities in the area and the existence of the sea wall.

(d) development should avoid indirect impacts on aquatic vegetation (such as changes to flow, current and wave action changes to water quality) as a result of increased access,

No increase in access is proposed and as such no indirect impacts will occur.

(e) development should protect and reinstate natural intertidal foreshore areas, natural landforms and native vegetation,

The existing sea wall and boat ramps are to be retained and as such there is no opportunity to reinstate a natural intertidal foreshore area.

(f) development should retain, rehabilitate and restore riparian land,

No opportunity exists on the site to rehabilitate or restore riparian land.

(g) development on land adjoining wetlands should maintain and enhance the ecological integrity of the wetlands and, where possible, should provide a vegetative buffer to protect the wetlands,

The site does not adjoin a wetland.

(h) the cumulative environmental impact of development,

The proposed works will not result in a detrimental cumulative impact.

Public access to, and use of, foreshore and waterways

(a) development should maintain and improve public access to and along the foreshore, without adversely impacting on watercourses, wetlands, riparian lands or remnant vegetation,

The site is zoned residential and no opportunity exists to provide public access to or along the foreshore, particularly given the existing boat ramps. It is noted that the DCP accompanying SREP - Sydney Harbour Catchment does not identify the site as a location for public access.

(b) development should maintain and improve public access to and from the waterways for recreational purposes (such as swimming, fishing and boating), without adversely impacting on watercourses, wetlands, riparian lands or remnant vegetation,

See comments in relation to (a) above.

(c) if foreshore land made available for public access is not in public ownership, development should provide appropriate tenure and management mechanisms to safeguard public access to, and public use of, that land,

N/A

(d) the undesirability of boardwalks as a means of access across or along land below the mean high water mark if adequate alternative public access can otherwise be provided,

N/A

(e) the need to minimise disturbance of contaminated sediments.

The proposal involves no disturbance of sediments.

Interrelationship of waterway and foreshore uses

(a) development should promote equitable use of the waterway, including use by passive recreation craft,

N/A

(b) development on foreshore land should minimise any adverse impact on the use of the waterway, including the use of the waterway for commercial and recreational uses,

The proposal will result in no detrimental impact upon the use of the waterway.

(c) development on foreshore land should minimise excessive congestion of traffic in the waterways or along the foreshore,

The proposal will not impact upon congestion of traffic in the waterway or along the foreshore.

(d) water-dependent land use should have priority over other uses,

The zoning of the site prevents the use of the site for a water-way dependent land use and as such the proposed residential use is appropriate.

(e) development should avoid conflict between the various uses in the waterways and along the foreshores.

The residential use is consistent with the adjoining uses and will not conflict with the uses of the adjoining waterway.

Foreshore and waterway scenic quality

(a) the scale, form, design and siting of any building should be based on an analysis of: the land on which it is to be erected, and the adjoining land, and the likely future character of the locality,

The proposed dwelling is generally of appropriate bulk, scale, form and siting, being consistent with the height, scale and location of the adjoining dwellings and the existing character of the area. Given several of the adjoining properties have been redeveloped recently and that the proposed dwelling is consistent with those dwellings, the proposal is also consistent with the desire future character of the locality. It is considered that a thorough analysis of adjoining land was carried out in designing the proposal.

(b) development should maintain, protect and enhance the unique visual qualities of Sydney Harbour and its islands, foreshores and tributaries,

The proposed dwelling is generally of appropriate bulk and scale.

(c) the cumulative impact of water-based development should not detract from the character of the waterways and adjoining foreshores.

The proposal does not seek approval for any water-based development.

Maintenance, protection and enhancement of views

(a) development should maintain, protect and enhance views (including night views) to and from Sydney Harbour,

The proposed design will not adversely impact on views of neighbours as discussed above. Views to the waterway from the raised grassed area adjacent to the northern end of Lodge Road will be retained, with the dwelling being located below the level of the road.

(b) development should minimise any adverse impacts on views and vistas to and from public places, landmarks and heritage items,

The proposal has no detrimental impacts upon any views from public places, landmarks or heritage items.

(c) the cumulative impact of development on views should be minimised.

The proposal minimise the impacts caused by breaches of the height and building height plane controls.

DEVELOPMENT CONTROL PLAN 2002

The site is contained within the Northern Foreshore Area of the North Cremorne Planning Area under the provisions of NSDCP 2002 and as such must be assessed under these area controls along with controls relating to residential development, car

parking, sedimentation and erosion and waste management.

Northern Foreshore Area

The controls within the Northern Foreshores Area seek to allow for dwelling houses and duplexes, with some attached dwellings and provide setback and form, massing and scale guidance, together with guidance on subdivision and foreshore locations. Views are to be retained from the Lodge Road Lookout (being the grassed area at the northern end of Lodge Road). Foreshore areas are to retain remnant natural shoreline along Willoughby Bay and controls are placed on boat sheds and boating activity. Setbacks are to be 3m to the front, 1m from the sides and 10m from the rear.

Building footprint is located to preserve natural features. Development is to use muted colours and non reflective materials.

The proposed dwelling does not result in any loss of views from the Lodge Road Lookout and does not seek to increase provisions for boat sheds or boating activities.

The dwelling is setback 35 - 45m from Lodge Road and 22 - 39m from Willoughby Bay satisfying the 3m and 10m setback controls, respectively. Minimum side setbacks are proposed of 1.2m (below ground level) and 1.5m (above ground level) from the western boundary and 2.8m-4.5m from the eastern boundary, satisfying the 1m setback control.

SECTION 94 CONTRIBUTIONS

No contribution is warranted as the proposal involves the replacement of three dwellings with one dwelling and the maximum contribution rate is for a 4 plus bedroom dwelling.

APPLICABLE REGULATIONS

Clauses 92-94 of the EPA Regulation 2000 require that Council take into consideration Australian standard AS 2601-1991: *the demolition of structures*, as in force at 1 July 1993. As demolition of the existing structures are proposed, a suitable condition should be imposed.

ALL LIKELY IMPACTS OF THE DEVELOPMENT

All likely impacts of the proposed development have been considered within the context of this report.

ENVIRONMENTAL APPRAISAL

CONSIDERED

- | | | |
|----|---|-----|
| 1. | Statutory Controls | Yes |
| 2. | Policy Controls | Yes |
| 3. | Design in relation to existing building and natural environment | Yes |
| 4. | Landscaping/Open Space Provision | Yes |

5.	Traffic generation and Carparking provision	Yes
6.	Loading and Servicing facilities	Yes
7.	Physical relationship to and impact upon adjoining development (Views, privacy, overshadowing, etc.)	Yes
8.	Site Management Issues	Yes
9.	All relevant S79C considerations of Environmental Planning and Assessment (Amendment) Act 1979	Yes

CLAUSE 14 NSLEP 2001

Consistency With The Aims Of Plan, Zone Objectives And Desired Character

The provisions of Clause 14 of NSLEP 2001 have been examined.

It is considered that the development is consistent with the specific aims of the plan and the objectives of the zone and the objectives of the controls.

As such, consent to the development may be granted.

SUBMITTORS CONCERNS

Five submissions were received in relation to the proposed development raising concerns including scale and bulk, landscape area, building height plane, view impacts, construction activity and a number of other issues. These issues have been mostly addressed within this report. Additional issues raised are addressed as follows:

Pitched roof, lift motor room and raised glass canopy should be deleted

The pitched roof has a low pitch and does not impact on the views. The lift motor room and raised glass canopy are also not within the view line and are considered to be acceptable.

Car lift to be moved further west or roof and walls to lift be removed

The carlift is now 5m from the boundary with landscape screening on the boundary. The scale of the structure is acceptable having regard to the landscaping and separation distance. Acoustic conditions can also be imposed to ensure minimum impacts. Removal of the walls and roof are not necessary to reduce the bulk as this would lead to possible weather proofing problems and increased noise.

Slipway application

This is not part of the current application and requires the consent of NSW Maritime. It would not alter impacts on views or the amount of landscaped area.

Landscaped area

The landscaped area is considered reasonable and the SEPP 1 objection can be supported.

Tree preservation

This has been addressed with the comments of Council's Landscape Development Officer. Most of the trees to be removed are not covered by Council's Tree Preservation Order.

Privacy

Privacy is considered to be acceptable.

Breach of controls

Discussed in detail above.

Excavation

The extent of excavation is considered reasonable. A Geotech report was submitted that makes many recommendations to minimize impacts. These recommendations would be included in the conditions should consent be granted.

Construction impacts

Road access is restricted and heavy machinery is required for the demolition and excavation stage as well as substantial truck movements to and from the site. A Construction Management Plan is required to be submitted and approved by the Local Traffic Committee. Any use of barges to move machinery or materials would require approval from NSW Maritime. Appropriate conditions can be imposed. Construction is likely to take a considerable time with impacts on the neighbours.

CONCLUSION

The application has been assessed against the relevant statutory controls. The proposal is in breach of all three development controls. The applicant has addressed the concerns raised with the previous unsuccessful application. The SEPP 1 objections with regard to landscaped area, height and building height plane are now considered well founded and can be supported.

Following assessment of new application, the development application is recommended for approval.

RECOMMENDATION

PURSUANT TO SECTION 80 OF ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979 (AS AMENDED)

THAT the Joint Regional Planning Panel, as the consent authority, assume the concurrence of the Director General of the Department of Planning and Infrastructure and invoke the provisions of SEPP 1 with regard to Clause 17, Clause 18 and Clause 20 and grant development consent to 2011SYE036 – North Sydney - Development Application No.114/11 subject to the attached conditions.

Geoff Mossemeneer
EXECUTIVE PLANNER

Stephen Beattie
MANAGER DEVELOPMENT SERVICES