

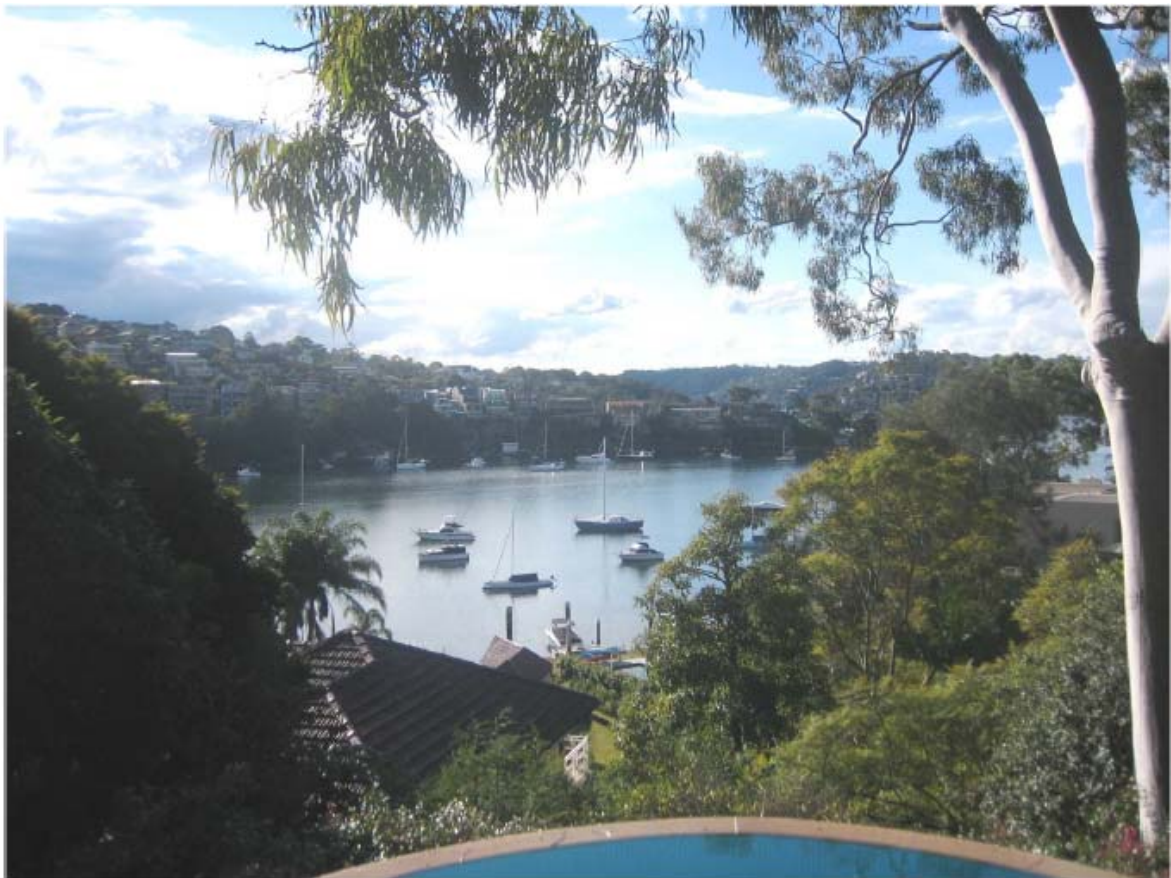
JRPP No:	2011SYE036
DA No:	DA.114/11
PROPOSED DEVELOPMENT	Demolition of part of existing structures including three dwellings and construction of a new dwelling over 3 levels including basement garage with car lift, inclinor and landscaping at 16–20 Lodge Road Cremorne
APPLICANT:	Leda Holdings Pty Ltd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

Addendum Report

This development application was considered by the Joint Regional Planning Panel at its meeting of 6 July 2011 when the Panel resolved:

- 1. The Panel resolves unanimously that it is in favour of accepting the recommendation of the planning assessment report to approve the application, although it is uncertain at this stage whether it should require an amendment to change the hipped roof to a flat roof.*
- 2. The Panel therefore requests the applicant to provide a view analysis from several points on the pool terrace of 22 Lodge Road, comparing the impact of the proposed hipped roof with that of a flat roof. The view analysis is to compare the existing view to the proposed view with a hipped roof and the proposed view with a flat roof. If the hipped roof has no material impact, the Panel prefers it because it looks better from the water and guarantees that there will be no trafficable use on it. If it does have a material impact, the Panel will impose a condition requiring a flat roof.*
- 3. The Panel will impose a condition that prohibits the use of privacy screens on the site, whether made of material or plants.*
- 4. In relation to the objectors' comments on the variation of height controls under SEPP 1, the Panel notes that the site is very steep and strict compliance with the height control would be difficult. It also notes that existing development around the site breaches the height control.*
- 5. The Panel requests the applicant to submit the view analysis indicated above on or before 22 July 2011. The analysis should be provided also to the owners of 22 Lodge Road, which is the property affected by the shape of the roof. The Panel requests the owners of 22 Lodge Road to comment on the view analysis on or before 29 July 2011. The Panel requests the council's planning assessment officer to report on the view analysis on or before 5 August 2011, after which the Panel will determine the application by communicating by electronic means.*

As requested, the applicant provided a view analysis for consideration. Six points were chosen on the pool terrace as follows:



EXISTING VIEW FROM VIEWPOINT 1.



EXISTING VIEW FROM VIEWPOINT 2.



EXISTING VIEW FROM VIEWPOINT 3.



EXISTING VIEW FROM VIEWPOINT 4.

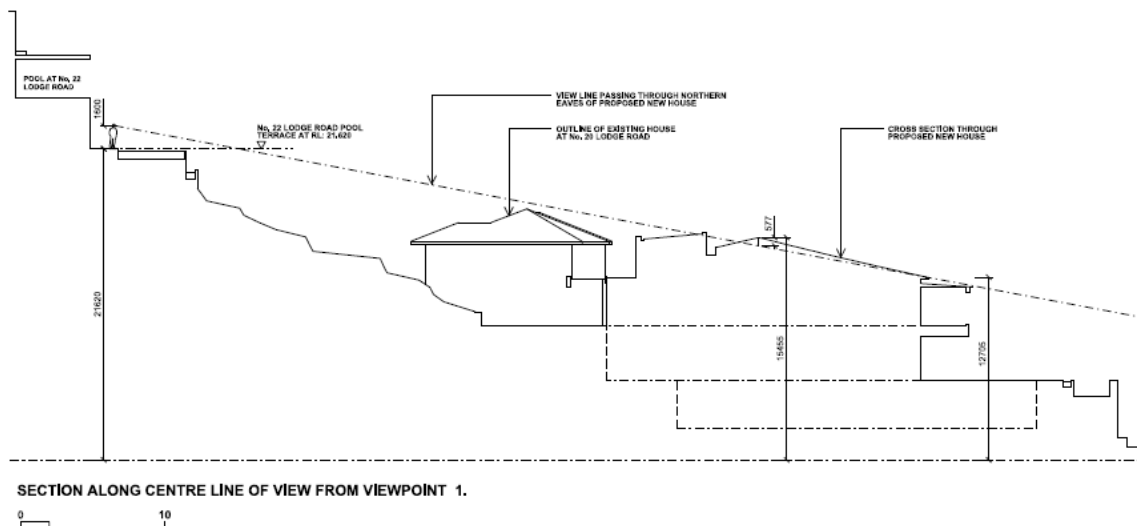


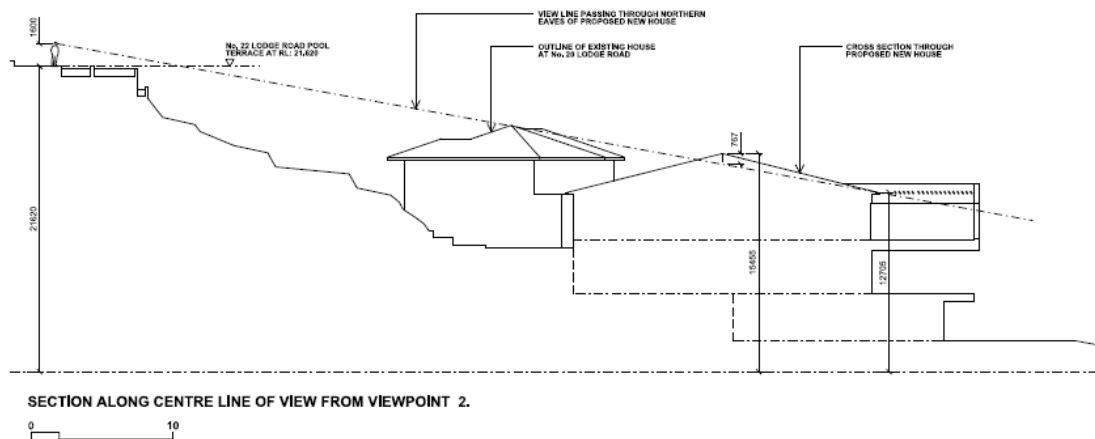
EXISTING VIEW FROM VIEWPOINT 5.



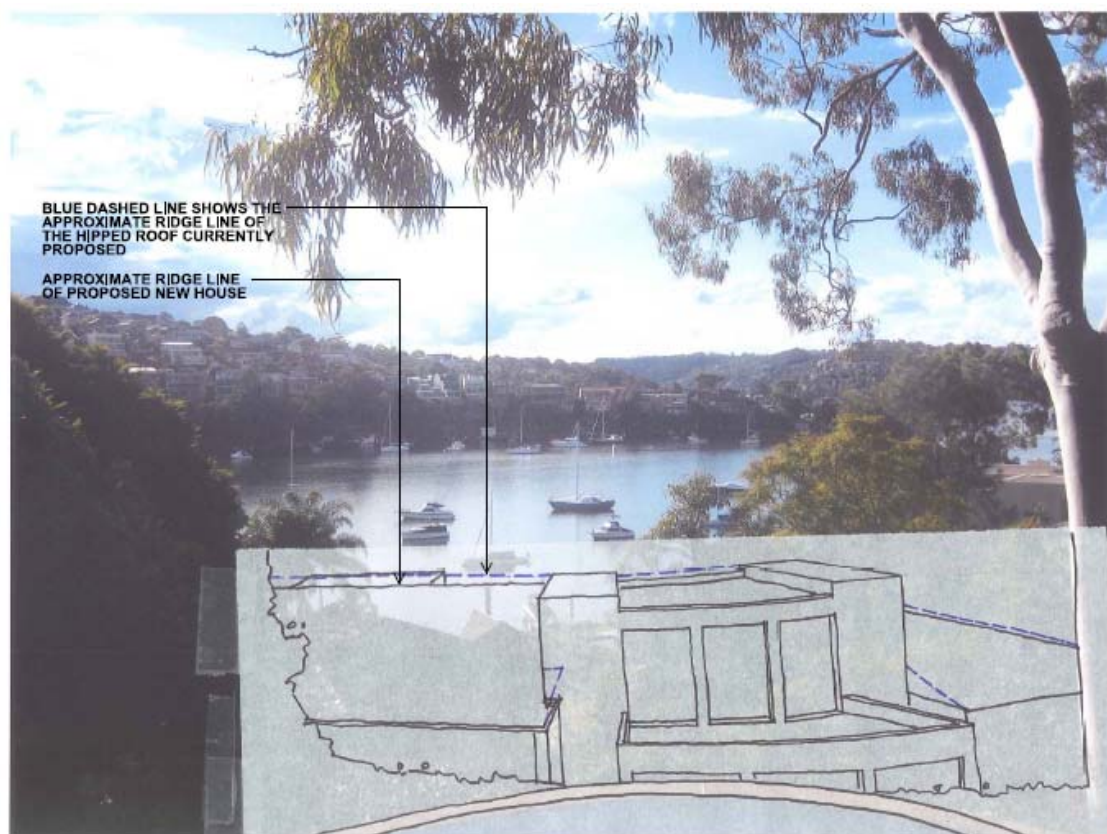
EXISTING VIEW FROM VIEWPOINT 6,

The applicant considered that viewpoint 1 and 2 provided the most expansive views and concentrated the modeling on those points. The applicant provided the following sections through the viewpoints:

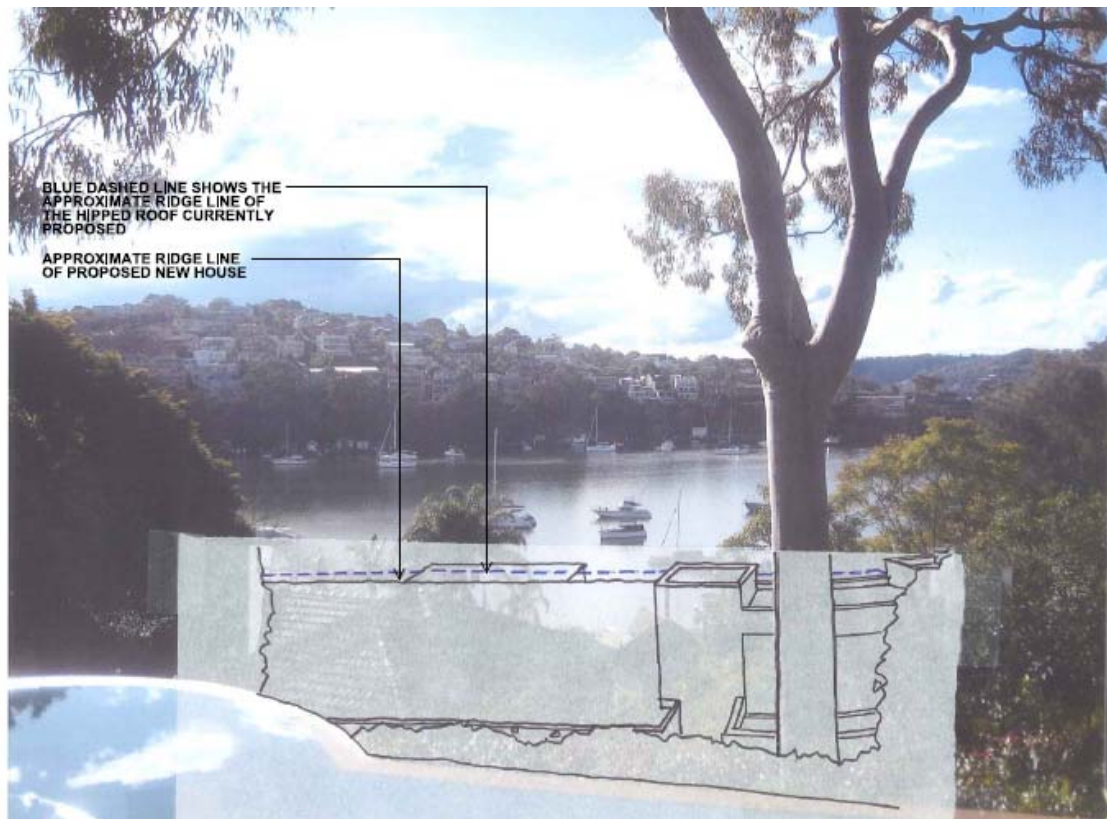




The applicant provided the following overlays showing the difference in a flat roof to the proposed pitch roof. The dashed blue line shows the ridge line as proposed.



SKETCH OVERLAY SHOWING APPROXIMATE IMPACT OF A FLAT ROOF FORM ON VIEW FROM VIEWPOINT 1.



SKETCH OVERLAY SHOWING APPROXIMATE IMPACT OF A FLAT ROOF FORM ON VIEW FROM VIEWPOINT 2.

Comments from owners of 22 Lodge Road:

The applicant provided the analysis to the owners of 22 Lodge Road for comment. The owners raised a number of concerns with the plans and provided further marked up plans and photos in response. The applicant responded to the owners' comments in letter dated 28 July 2011. Having viewed and considered all the information and responses, I am satisfied that the above overlays are reasonably accurate for assessment purposes of material impacts. The owners' comments are reproduced as follows:

".....Now that we have had the benefit of Drawings SK-281 and SK-282 from the developer, which show clearly the relationship between the revised development and the living areas of our home at 22 Lodge Rd, we are now able to demonstrate graphically that which we have previously submitted in our written and oral objections, namely, that the breach of the 8.5m height control has a significant adverse impact on our views. Consequently, as a matter of law, the SEPP 1 objection simply cannot establish that, notwithstanding non-compliance with the height control, the development nevertheless meets the objectives of that control, in particular, objective "17 (1)(c) promote the retention of and, if appropriate, sharing of existing views".

The principle stated by the Chief Judge in Wehbe v Pittwater Council in relation to the application of SEPP 1 simply cannot be met. The objective is to promote the retention of views, so that a compliant development essentially retains the existing views from neighbouring properties. 'Sharing of existing views' is not 'appropriate' in this case because the

developer already has unobstructed water views. Accordingly, it is clearly inappropriate to breach the height control.

As the then Senior Commissioner said in Tenacity Consulting:

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.

As our drawings demonstrate, the adverse impact of non-compliance at the northern edge of the proposed development with the 8.5m height control is significant, not moderate. The adverse impact is greatest for our lower level terrace. However, it is also apparent that a complying development would have no adverse impact on our view amenity from either the pool terrace level or the mid-level balcony.

Even the difference between the pitched roof view line and the flat roof view line is significant, or at the very least 'moderate', in terms of reducing the close water views from the pool terrace level of 22 Lodge Rd.

Drawing SK-281_A also shows the additional adverse impact of the lift motor room, entrance hall roof and service store compared to the proposed pitched roof. If consent is to be granted to a non-complying three level development, then a condition should be imposed that those elements not extend above the roof line, whether the roof line is pitched or flat."

The assessment relates to the loss of water or water/land interface views. It is noted that a fully compliant development *with the building in the same location* would not impact on the water views. It is also noted that the proposal is sited approximately 20 – 30m behind the foreshore building line and a compliant building built to the FBL would block out much more of the water view.

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 on the eastern side.

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). No.22 Lodge Road has three storeys.

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*.

The view loss issue relates to the property at No.22 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 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 proposal as submitted is definitely acceptable from the upper two levels of 22 Lodge Road with regard to view impact. The middle living area level is acceptable and in accordance with the Panel's previous resolution for the first proposal. The neighbours are concerned with the views from the lowest level from the pool terrace. The overlays above indicate a loss of the foreshore

area that was partly visible and some water close to the foreshore. The majority of the water view is retained along with the moored boats and the opposite foreshore. The view is across the length of the site and from a lower level that is not considered the principal living area. The view impact is considered minor.

The parts of the building that affect the view are the northern eave of the roof, the ridge of the roof, the vergola roof over the balcony, the lift overrun/plant room/entrance foyer. All of these elements can be lowered/modified to minimise the impact to about half of that shown on the overlays and then the view impact would be classified as negligible:

- The northern eave of the roof to be lowered by 400mm to RL 12.3
- The ridge of the roof to be lowered by 1.167m (being 767mm from section for viewpoint 2 plus 400mm for lowering of roof eave) to RL 14.288 (this still allows a pitch of around 7-8° that is suitable for a metal/copper roof)
- The vergola roof over the northern balcony on level 3 being setback in line with the rest of the balcony and the height of the roof not to exceed RL 12.3 – The column detail to remain to provide some articulation to northern façade
- The lift overrun/plant room/entrance foyer roof not exceeding the ridge height of RL 14.288

The objective uses the words “promote the retention of existing views” rather than to maintain existing views. It is considered that a 3 storey building is in context with all the adjacent development. The substantial setback from the foreshore building line of a three storey building has resulted in only some minor view loss as shown in the overlays. The view loss can be minimised with the above modifications should the Panel consider them necessary.

The changes can be achieved by condition. The Panel resolved to include a condition prohibiting screens on the western side that would impact on view loss from No.14 Lodge Road. The following conditions would be appropriate in addition to the conditions provided to the Panel at its meeting of 6 July 2011:

Privacy Screens

12. No privacy screens (whether materials or plants) shall be provided on the western side of the terraces and balconies. Any landscaping along the western boundary adjacent to the level 1 terrace shall not exceed the floor level of the level 1 terrace.

(Reason: To ensure that views across the site from No.14 Lodge Road are not blocked by screening – view sharing)

Modification to plans

- C31. The plans shall be modified to incorporate the following amendments:

- The northern eave of the roof to be lowered by 400mm to RL 12.3
- The ridge of the roof to be lowered by 1.167m to RL 14.288
- The vergola roof over the northern balcony on level 3 being setback in line with the rest of the balcony and the height of the roof not to exceed RL 12.3 – The column detail to remain to provide some articulation to northern façade
- The lift overrun/plant room/entrance foyer roof not exceeding the ridge height of RL 14.288

Details of the modifications shall be shown on plans submitted and approved with the Construction Certificate.

(Reason: To modify the proposal to reduce view impacts at 22 Lodge Road)

Geoff Mossemeneer
Executive Planner
2 August 2011