

JOINT REGIONAL PLANNING PANEL (Sydney East)

JRPP No	2011SYE039
DA Number	64/2011
Local Government Area	Manly
Proposed Development	Demolition of the existing structures, consolidation of three (3) lots, construction of two (2) residential flat buildings containing a total of seventeen (17) dwellings of affordable and other housing above two (2) levels of basement car parking containing twenty-seven (27) spaces, three (3) visitor car parking spaces, swimming pools, plant rooms and landscaping.
Street Address	23 Beatrice Street, Clontarf
Applicant/Owner	McKees Legal Solutions / Vumbaca Brother's Pty Ltd
Number of Submissions	Two Hundred and Seventy Six Submissions (276) during initial notification period. One hundred and forty five (145) Submissions during the subsequent notification period.
Recommendation	Refusal
Report by	External Consultant Planner – Manly Council



Report for the Joint Regional Planning Panel
27 July 2011

DA #	64/2011
Site Address	23 Beatrice Street, Clontarf
Proposal	Development consent is sought for the demolition of the existing structures, consolidation of three (3) lots, construction of two (2) residential flat buildings containing a total of seventeen (17) dwellings of affordable and other housing above two (2) levels of basement car parking containing twenty-seven (27) spaces, three (3) visitor car parking spaces, swimming pools, plant rooms and landscaping.
Officer	External Consultant for Manly Council

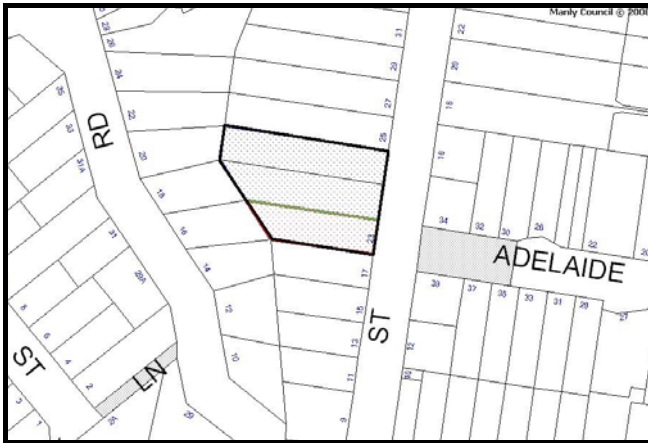
Application Lodged: 23 March 2011
Applicant: McKees Legal Solutions
Owner: Vumbaca Brother's Pty Ltd
Capital Investment Value: \$12.8 million
Zoning: Manly Local Environmental Plan, 1988 - Residential
Surrounding Development: Predominately single detached dwellings of various scales
Heritage: Nil

SUMMARY:

1. DEVELOPMENT CONSENT IS SOUGHT FOR THE DEMOLITION OF THE EXISTING STRUCTURES, CONSOLIDATION OF THREE (3) LOTS, CONSTRUCTION OF TWO (2) RESIDENTIAL FLAT BUILDINGS CONTAINING A TOTAL OF SEVENTEEN (17) DWELLINGS OF AFFORDABLE AND OTHER HOUSING ABOVE TWO (2) LEVELS OF BASEMENT CAR PARKING CONTAINING TWENTY-SEVEN (27) SPACES, THREE (3) VISITOR CAR PARKING SPACES, SWIMMING POOLS, PLANT ROOMS AND LANDSCAPING.
2. THE ORIGINAL DEVELOPMENT APPLICATION WAS NOTIFIED TO ALL ADJOINING AND NEARBY PROPERTY OWNERS IN ACCORDANCE WITH COUNCIL'S DEVELOPMENT CONTROL PLAN AND 276 SUBMISSIONS WERE RECEIVED.
3. THE AMENDED PLANS WERE NOTIFIED TO ALL ADJOINING AND NEARBY PROPERTY OWNERS AND 145 SUBMISSIONS WERE RECEIVED.
4. THE APPLICATION WAS REFERRED TO THE CLONTARF PRECINCT COMMUNITY FORUM WHO RAISED CONCERN WITH THE PROPOSED DEVELOPMENT FOR REASONS DISCUSSED IN THIS REPORT.
5. SITE INSPECTION IS RECOMMENDED.
6. THE APPLICATION IS RECOMMENDED FOR **REFUSAL**.

LOCALITY PLAN

Shaded area is subject site.



Introduction

Subject Site

The subject site is known as 23 Beatrice Street, Clontarf and is legally described as Lots 74, 75 and 76 in Deposited Plan 9517. According to Council's records there is an easement affecting the subject site however this easement does not appear to have been registered.

The subject site is located on the western side of Beatrice Street. The site is regular in shape with a frontage of approximately 45.72m and a length of 72.69m along the northern boundary. The estimated area of the property is 2910sqm and the site has a significant slope from the street boundary to the rear of the site.

The site currently accommodates an existing two (2) storey dwelling at the end of the existing curved driveway leading from Beatrice Street.

The characteristics of the surrounding development are dominated by detached dwellings of varying heights and scales which have substantial setbacks and landscaping.

Description of the Development

Demolition of the existing structures, consolidation of three (3) lots, construction of two (2) residential flat buildings.

The first residential flat building contains nine (9) apartments dedicated for the use of affordable housing in accordance with State Environmental Planning Policy (Affordable Rental Housing) 2011.

The second residential flat building contains eight (8) residential apartments.

There are two (2) levels of basement car parking connecting the two (2) residential flat buildings. These basements are accessed via two (2) car lifts and contain twenty-seven (27) spaces. Three (3) visitor car parking spaces are provided at grade level.

The Development Application also proposes three (3) swimming pools, plant rooms, storage areas and landscaping.

Application History

Date	Action
23 March 2011	Development Application No. 64/2011 lodged with Council.
29 March 2011	Development Application notified to adjoining and nearby property owners in accordance with Council's Development Control Plan. A total of two hundred and seventy-six (276) submissions were received during the notification period.
18 April 2011	Development Application deferred by Council for the submission of additional information to address concerns relating to: <ul style="list-style-type: none">- Description of the Development- State Environmental Planning Policy (Affordable Rental Housing) 2009- Building Design- Building Height- Number of Storeys- Front Setback- Side Boundary Setbacks- Private Open Space- Bicycle Parking- Views- Solar Access- Front Fence- Geotechnical Report Findings- Tree Preservation- Adaptable Housing- Car Parking.
16 May 2011	The Applicant provided additional information in response to Council's concerns dated 18 April 2011.
20 May 2011	State Environmental Planning Policy (Affordable Rental Housing) 2009 was amended.
26 May 2011	Meeting held with the Applicant to discuss the additional information submitted on 16 May 2011 and the Applicant's response to the amendments made to State Environmental Planning Policy (Affordable Rental Housing) 2009.
7 June 2011	The Applicant made an additional submission to Council including amended plans. The additional submission includes an assessment against Clause 54(3) of State Environmental Planning Policy (Affordable Rental Housing) 2009 being the "character test" and amended plans with a reduction in floor space to achieve a Floor Space Ratio of 0.7:1.
9 June 2011	Joint Regional Planning Panel briefing on the Development Application.
10 June 2011	Amended plans notified to adjoining and nearby property owners in accordance with Council's Development Control Plan. A total of 145 submissions were received during the notification period.
27 June 2011	Meeting held with the Applicant to discuss the briefing with the Joint Regional Planning Panel and tentative recommendation of refusal of the Development Application.

Precinct Community Forum Comments

The Development Application was discussed at the Clontarf Precinct Community Forum in April 2011. The following minutes were taken at this meeting:

Discussion: *This development covers 3 blocks of land and there has been a thorough examination by the developers. The affordable component is 44% in 18 units. There were concerns about the impact of such a development from the foreshore and harbour. It was noted that contact with the Harbour and Foreshore Authorities should be made.*

Motion: *"This Precinct strongly disapproves of the overdevelopment of this residential site and strongly believes this site is totally unsuitable for the development of the 18 units and basement construction."*

Vote: In favour: 46; Against nil; Abstain; nil. **Motion carried.**

Strategies to be carried out by Precinct to oppose Development 64/2011

- *As many people as possible to lodge objections to Council and use the appropriate wordings provided by residents.*
- *As many people as possible to attend the developers and their lawyers meeting to be held on site 14th April at 4.30pm.*
- *A sub-committee of Community Leaders who are informed and committed, to be formed to drive the campaign. The task of the Precinct will be to co-ordinate this sub-committee and add out voices to strengthen the objections.*
- *Individual letters are to be submitted to the Manly Daily.*
- *Individuals to fill in the "Online Polls" in any articles appearing in the Manly Daily.*
- *Focus to be made on the approval process where we have the opportunity to object.*

Exhibition Period: *It is important that technical issues that need to be raised to Council officers, is at this time. Recommendations for refusal by Council are made if they are in the public interest.*

Environmental Assessment: Section 79C. Some aspects discussed by the meeting for consideration

- *The unsuitability of the site because it is too steep.*
- *In an affluent area, the development of affordable housing is not suitable.*
- *The unsuitability of access for disabled people.*
- *There are Public Health and Safety issues for egress from the site into Beatrice Street.*
- *It is against the Council's DCP and Density Policy.*
- *There is insufficient parking in the building plans.*
- *It is an abuse of the SEPP code, as only 10% is affordable housing.*
- *The Density Ratio is out of context with the vicinity as it exists.*
- *The proposed development is un-aesthetic when viewed from the harbour.*
- *This area is not zoned for units.*
- *It is totally out of character with the area.*
- *The affordable housing component of the development is relinquished in 10 years.*
- *The road is too narrow to cope with the extra development.*
- *The shops are too far away.*
- *Public transport is inadequate for affordable housing residents.*
- *The Mayor and Councillors have agreed that the Council will take the case to the Land and Environment Court.*

Further minutes were received from the Clontarf Precinct Community Forum from their meeting held in July 2011. The minutes are as follows:

A letter was received by the Precinct from McKees Legal Solutions; Local Government, Planning & Environmental Law. The letter was tabled and it was noted that the purpose of the letter was to draw attention of the Council that: **1.** "These amended plans for are set out to respond to the Affordable Rental Housing SEPP ("ARP SEPP") gazetted on 20 May 2011; **2.** "The applicant seeks to formally amend the development application to rely on those plans and **3.** Respond to issues raised by the community. The letter quoted changes to the SEPP and quoted Clause 54A(3) which "retrospectively requires all applications existing (that is, those made before the amendments) to be subject to a character test. The character test is set out in that Clause as follows:-

"...the consent authority must not consent to the development unless it has taken into consideration whether the design of the development is compatible with the character of the local area."

In response to the Council's request that the applicant address the provisions of the Clause 54A(3), the applicant claims to have ensured the **retention of 6 angophora trees and the existing access way from Beatrice Street.**

They have now claimed to have **reduced the FSR from 0.75:1 to 0.7:1** as the amended ARH SEPP has substituted "number of dwellings to be rented for 10 years" to "...the gross floor area of the development."

The developers "have achieved reduction in total gross floor area from 1643m² to 1426m². This has been achieved by the deletion of Unit 5 and a smaller reduction in size of Unit 1 & 7 predominantly. The affordable units 1,2,3,7 & 8 have been increased in area."

They claim that deletion of Unit 5 creates a 14.8m separation between the western and eastern building, increasing the opportunity for landscaping & the separation between these unit blocks by 2.8 m.

There are references to **overshadowing of 17 Beatrice St and solar access** and to excavation for basement car parking.

There are no concessions made in regard to the **traffic concern and parking** stating that "vehicles will have to wait for a suitable gap before entering the street" and that pedestrians "will be able to take due care in crossing the road to the footpath on the eastern side of Beatrice Street."

There are other references to **the bulk and scale** of the building in this area and the applicants claim to be within the guidelines of this aspect of community concern. They claim the proposed design is "harmonious with the existing local character of the area" and that "any change in character will be minor and in harmony with existing structures."

There are references to **Drainage/ Geotechnical** concerns which the community regards as significant but which the applicant "relies on its Geotechnical report and notes that while there is significant amount of excavation, there is nothing in the report which cannot be dealt with by the conditions of consent." The meeting expressed real concern about the impact that such a large excavation would have on the hillside.

Garbage collection is answered by "the applicant proposes all garbage to be serviced by an independent contractor."

Amenity of noise and quiet enjoyment was only addressed by stating the design of masonry wing walls to minimise acoustic impact."

The Precinct meeting remains very concerned and opposed to this development and regarded the amended plans as very minor and not a significant response to the overall difficulties this large development poses for the character of this tranquil and residential area.

Discussion regarding the upcoming JRPP Hearing on 27th July at 11am at the Balgowlah RSL Club was had and it was decided that a notice to all residents of Clontarf and Balgowlah Heights should be printed and distributed to alert interested people to attend the Hearing to support the representatives of the Clontarf Residents Action Group and The Clontarf Community Precinct in their submissions to the Panel. As well as letterbox drops of a notice of the Hearing, emails would be sent out and a notice in the Manly Daily would be placed.

The Panel puts great weight on the number of people who attend the Hearing of the application, so residents are encouraged to diarise this date and to attend.

It was noted by the Chairman that the original objections put forward to the Council would be lodged with the JRPP and would be accepted.

New South Wales Maritime

In accordance with the Environmental Planning and Assessment Act, 1979, the Development Application was referred to the Foreshores and Waterways Planning and Development Advisory Committee for comment.

On 25 May 2011, New South Wales Maritime responded to the Development Application with the following:

The terms of reference and business arrangements for the Committee have been under review for a number of months. Meetings of the Committee have been deferred while this process has been underway and as a result there will be a backlog of referrals to be dealt with then it reconvenes.

In an effort to minimise further delays as a result of the backlog, the Committee members from NSW Department of Planning and Infrastructure and NSW Maritime have reviewed the referrals that are on hand with a view to dealing with straightforward applications that have not yet been determined, out of session with the following recommendation:

The committee recommends that the consent authority take into consideration the relevant matters as prescribed in the Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005 (deemed SEPP) along with the Sydney Harbour Foreshores and Waterways Area Development Control Plan for SREP (Sydney Harbour Catchment) 2005. The Committee has no additional matters to raise in respect to the proposed development.

Note:

An assessment of the Development Application against the Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005 (deemed SEPP) and accompanying Development Control Plan is provided later in this report.

Manly Council Access Committee

Council's Access Committee assessed the original Development Application and raised initial concerns regarding circulation and the design of the adaptable units.

The Applicant responded to these concerns with the submission of an additional Access Report. This report outlined the specific design solutions to the circulation issues raised particularly in the areas relating to bathrooms, lift doorways, evacuation for people who use a wheelchair and the location of accessible parking. This report concluded that:

The development will provide appropriate internal design of adaptable dwellings, lift access, evacuation opportunities and accessible parking consistent with Council's Access DCP and related Standards.

This report was again referred to the Access Committee who has reiterated its concerns with the development and has advised that the following issues are outstanding:

- The access provision to the adaptable unit is not appropriate for safety reasons (the only access to the adaptable units 2 and 6 is via lift).
- Ensure the ramps between the visitor car parking and block A are changed to 1:19 according to new Standard (shown 1:14 on the plans).
- The garbage room should have a swing door since it is not accessible from inside.
- Access to the letterboxes needs review.
- The fire authorities need to know where the adaptable units are in the event of a fire. To identify the adaptable units in the plan, as well on a notice sign at the building to alert the Fire Brigade. To advise the Fire Brigade to do annual checks, particularly for the adaptable units.

Drainage Engineers Comments

The Development Application was referred to Council's Drainage Engineer for comment and no objection was raised to the development subject to the imposition of conditions on the notice of determination.

Driveway Engineers Comments

The Development Application was referred to Council's Driveway Engineer for comment. Initial concerns regarding the gradient, turning circles and manoeuvrability within the basement were raised with the applicant. These issues have been addressed and Council's Driveway Engineer have raised no objection to the development subject to the imposition of Council's standard conditions on the notice of determination.

Traffic Engineers Comments

Council's Traffic Engineer assessed the original Development Application and raised the following concerns:

Sight Distance

- Safe Intersection Sight Distance (SISD) should be considered as the minimum acceptable sight distance required at the entrance because the access will be used by significantly more vehicles than a single domestic dwelling. The access should therefore be designed to have SISD suitable for a design speed of 50km/h on Beatrice Street at the exit / egress point to the proposed development. The stopping sight distance for a design speed of 50km/h is 45m. The following sight distance requirements should be satisfied for vehicles at the entry/exit point to the proposed development and at both approaches of the major road (Beatrice Street):
 - Stopping sight distance should be available on each approach of the intersection for a design speed of 50km/h;
 - A driver stopped at the exit/entry point to the proposed development should have sufficient sight distance to react to an acceptable gap, start up and enter or cross the major traffic stream (along Beatrice Street), without causing major disruption; and
 - Vehicles in the major road (Beatrice Street) should have sufficient sight distance to observe a vehicle from the exit / entry point to the proposed development to move into the intersection, and in the event of a stall, be able to decelerate to a stop prior to collision.

- The driveway will frequently be used by more than one vehicle wishing to exist to Beatrice Street and queuing of vehicles along the driveway may occur. Approach sight distance at the exit / entry point to the proposed development should therefore be suitable for at least a 10km/h design speed. The driver approaching the intersection at the entry / exit point to the proposed development must be able to appreciate the intersection geometry and pavement markings and/or a car stopped at the intersection in order to negotiate the intersection or stop if necessary. The approach sight distance for the exit / entry point will be based on the difference in grade at the entry / exit point, the approach speed, stopping sight and braking distance, reaction time and the length of the vertical curve.

Accessibility to services and sustainable transport infrastructure

Part of the rationale for the provision of affordable housing is to work towards integrated and sustainable communities that function in a way that benefits the whole community. Factors, such as, distance from employment hubs and the lack of developed transport infrastructure are important since not all residents of affordable housing can be expected to own or have access to a car. Easy and convenient access to more sustainable modes of transport is therefore critical.

Public transport provision at the proposed development

Bus services on Beatrice Street provide a good connection with Manly and the City during the day, however there are no late night services. Details regarding these services are:

- Route 132 runs every half hour – hour between Manly and Warringah Mall throughout the day. The last service operates at 7pm and there are no late night services available.
- Route E71 operates 4 services during the AM peak hour and 9 services during the PM peak between Manly and the City.
- Route 171 operates 5 services during the AM peak only and runs between Manly and the City.

There are no late night public transport options provided in proximity to the proposed development. Services to and from the City are limited to AM and PM peak hours only.

Provision of walking and cycling facilities at the proposed development

- Residents of affordable housing need to have easy access to services such as shops, medical centres and employment without having to entirely rely on a car as a mode of transport. The nearest shopping hub is located at New Street in Balgowlah Heights, approximately 800m from the proposed development. Although this is considered to be within acceptable walking distance, the footpath infrastructure along Beatrice Street is minimal and there are no formal crossing points. There is no footpath located at the western side of Beatrice Street outside the proposed development and there are no formalised pedestrian crossing opportunities in proximity of the proposed development. The existing pedestrian facilities are not considered to be sufficient for easy pedestrian access to services and public transport in the area.
- There are currently no cycling facilities located along Beatrice Street and the topography of the street discourages cycling as a mode of transported.

It is recommended that consideration is given to whether contribution should be provided by the applicant to upgrade pedestrian facilities outside the proposed development in order to increase accessibility for residents and to cater for increased pedestrian activity.

The subsequent amended plans and additional information were reviewed by Council's Traffic Engineers on 17 June 2011 and it was advised that the above concerns were not resolved.

Building Comments

The Development Application was referred to Council's Building Surveyor who raised no objection was raised to the proposed development subject to the imposition of Council's standard conditions on the notice of determination.

Landscape Architects Comments

The Development Application was referred to Council's Parks and Reserves Manager who raised the following issues:

1. Cross section drawings have been received and would seem to comply.
2. Driveway in the vicinity of 1, 6, 14, 15 construction and cantilever or supported on piers is supported in order to preserve trees.
3. Structural engineers design should be forwarded to Council for assessment.
4. Tree 3 excavation effects this is noted this has been addressed in DA 34 revision Section J at tree 3, the 5m distance is acceptable in this regard.
5. Root investigation results documentation of root mapping sent to Council.
6. Irrigation system should address the change in ground water levels.
7. Tree protections must be installed prior to construction and trees numbered and photographed.
8. The elevated driveway construction is suitable in terms of tree protection and longevity, driveway finished width should not impair future growth of tree trunk in anyway.
9. Tree 5 car parking construction in steel grid construction will allow for the ongoing longevity of this tree.
10. Agreed as long as the retained trees are protected during the course of the constructions and that excavation is only carried out at the prescribed distance from trunks in accordance with AS4970.

Council's Landscape Architect raised no objection was raised to the proposed development subject to the imposition of Council's Standard conditions on the notice of determination and the following specific conditions:

01. Trees nominated in the Tree Schedule table on Plan LP01/A March 2011 by Botanica are to be retained and protected during construction and assessed during the development by a suitable qualified Arborist. The trees are as follows:

Tree #	Botanical Name	Common Name	Approximate Height	Spread	Effect
1	Angophora costata	Sydney Red Gum	18m	16m	Retain
2	Angophora costata	Sydney Red Gum	18m	18m	Retain
3.	Angophora costata	Sydney Red Gum	15m	13m	Retain
4.	Angophora costata	Sydney Red Gum	15m	15m	Remove
5.	Angophora costata	Sydney Red Gum	18m	18m	Retain

Tree #	Botanical Name	Common Name	Approximate Height	Spread	Effect
6.	Angophora costata	Sydney Red Gum	15m	10m	Retain
7.	Chamaecyparis obtuse	Hinoki False Cypress	10m	6m	Retain
8.	Chamaecyparis obtuse	Hinoki False Cypress	10m	6m	Retain
9-13.	Chamaecyparis obtuse	Hinoki False Cypress	10m	6m	Remove
14.	Angophora costata	Sydney Red Gum	20,	15m	Retain
15.	Angophora costata	Sydney Red Gum	18m	12m	Retain
16.	Angophora costata	Sydney Red Gum	10m	8m	Retain
17-25.	Chamaecyparis obtuse	Hinoki False Cypress	8m	5m	Remove
26	Cedrus deodara	Himalayan Cedar	10m	5m	Remove

02. All landscape and construction works are to be in accordance with Australian Standard 4970 Standard Protection of trees on Development Sites.

The above conditions will involve a major redesign of the proposal, as the Development Application seeks approval to remove Tree No. 2. This differs from Council's recommendation that Tree No. 2 be retained.

The Applicant's Arborist report prepared by Treescan Urban Forest Management provides the following description of Tree No. 2:

Tree 2 is a large and appealing specimen in good health and condition with a widely spreading crown, but is proposed for removal to allow reasonable use of the land and thereby enabling the entire northeast area including the Angophora group to be excluded from the development.

This tree is located towards the southeast corner of the site and is approximately 7.5m from the southern property boundary and 13.2m from the eastern property boundary. This location is such that it conflicts with the proposed location of the affordable housing component of the development.

While this tree is isolated on the site and not part of a dominate grouping, the tree is considered to be healthy and contributes to the landscape setting, the neighbourhood and the escarpment. The canopy of the tree is visible from Beatrice Street and it provides visual amenity from the northern elevation of 17 Beatrice Street.

Environmental Health Comments

Council's Environmental Health Officer raised no objection to the proposed development subject to the imposition of Council's standard conditions on the notice of determination and the following specific conditions:

01. Prior to the issue of Occupation Certificate, the owner(s) of the premises must provide evidence of a contract with a licensed contractor to collect residential general waste, paper and bottle recycling. A contractor must be provide at all times for the adequate collection of waste and recycling.

Reason: Responsible disposal management of residential waste and recycling.

02. General Waste and Recycling collection from the premises is restricted to weekdays only and between 7.00am and 10.00pm Monday to Friday. No waste service collections are to occur prior to 7.00am by a licensed contractor under any circumstance.
Reason: To minimise noise disturbance to neighbouring residential properties.

Heritage Comments

Concern was raised that the existing rock outcrops on the site may contain archaeological artefacts or evidence of Aboriginal communities in the locality. This issue was raised with the applicant who submitted Aboriginal Heritage Advice, which concludes that:

There is limited and low potential for Aboriginal objects or sites to survive at much of the site due to its existing development (house footprint, driveway, landscaping and services). However, it cannot be concluded definitively at this stage that there would be no Aboriginal cultural material under the fill and vegetation that obscures the surfaces of the rock outcrops.

Further and more detailed Aboriginal heritage advice or assessment at this stage is unlikely to provide a clearer indication of Aboriginal heritage potential. This could only be provided once the vegetation and significant soil has been cleared and the rock outcrop surfaces exposed.

In the event that the Development Application is approved, consideration is to be given to the imposition of a condition on the notice of determination requesting that the construction and particularly the clearing of the rock outcrop be supervised by a relevant expert so that work is immediately halted should evidence of Aboriginal heritage be exposed.

Waste Officer

The Development Application was referred to Council's Waste Officer for comment. No objection was raised to the development subject to the imposition of Council's Standard conditions on the notice of determination.

Planning Comments

Environmental Planning and Assessment Act 1979 – Section 79(C)(1)

In determining a development application, a consent authority is to take into consideration such of the following matters as are of relevance to the development the subject of the development application:

- (a) ***the provisions of:***
(i) ***any environmental planning instrument, and***

State Environmental Planning Policy (Major Development) 2005

Referral to Joint Regional Planning Panel

State Environmental Planning Policy (Major Development) 2005 requires developments with capital investment value exceeding \$10 million or affordable housing developments with a capital investment value exceeding \$5 million be referred to the Joint Regional Planning Panel for determination.

The applicant has indicated to Council that the capital investment value of the proposed development is \$12.8 million. Therefore, the Development Application is referred to the Sydney East Joint Regional Planning Panel for determination.

State Environmental Planning Policy (Affordable Rental Housing) 2009

State Environmental Planning Policy (Affordable Rental Housing) Amendment 2011

Amendments to State Environmental Planning Policy (Affordable Rental Housing)

At the date when the subject Development Application was lodged, State Environmental Planning Policy (Affordable Rental Housing) 2009 applied.

The intention of the State Environmental Planning Policy is to provide planning initiatives to encourage the development of affordable rental low-rise in-fill housing, residential flat buildings, secondary dwellings, boarding houses and social housing.

The 2009 version of the Policy allowed affordable housing developments up to 8.5m in height in all urban residential zones in the Sydney region provided the proposal is in close proximity to public transport and contains 50% or more affordable housing for a period of ten (10) years.

State Environmental Planning Policy (Affordable Rental Housing) Amendment 2011 was gazetted on 20 May 2011. This amendment incorporates the following revisions:

- Villa, townhouse and residential flat developments by the private sector will no longer be allowed in low density residential areas.
- Existing applications lodged before the changes to the State Environmental Planning Policy took effect may be assessed under the repealed and amended provisions subject to being compatible with the new local character provisions. The character provisions specifically state that *the consent authority must not consent to the development unless it has taken into consideration whether the design of the development is compatible with the character of the local area.*

The transitional provisions of the SEPP state that:

54A(2) If a development application (an existing application) has been made before the commencement of the amending SEPP in relation to development to which this SEPP applied before that commencement, the application may be determined as if the amending SEPP had not been made.

Based on the above, Council has the discretion to apply the provisions of the un-amended State Environmental Planning Policy to the current Development Application.

Assessment of Development Application against relevant clauses of State Environmental Planning Policy (Affordable Rental Housing)

Clause 6 – Affordable Housing

The Environmental Planning and Assessment Act, 1979 defines *Affordable Housing* as:

housing for very low income households, low income households or moderate income households, being such households as are prescribed by the regulations or as are provided for in an environmental planning instrument.

Clause 6 of State Environmental Planning Policy (Affordable Rental Housing) reads as:

- (1) *In this Policy, a household is taken to be a very low income household, low income household or moderate income household if the household:*
 - (a) *has a gross income that is less than 120 percent of the median household income for the time being for the Sydney Statistical Division (according to the Australian Bureau of Statistics) and pays no more than 30 per cent of that gross income in rent, or*

- (b) is eligible to occupy rental accommodation under the National Rental Affordability Scheme and pays no more rent than that which would be charged if the household were to occupy rental accommodation under that scheme.*

In order to understand the need for affordable housing within the Clontarf area and to determine the suitability of the site for affordable housing, Council commissioned consultants Judith Stubbs and Associates to undertake research. This research was in regards to affordable housing in the Manly Local Government Area and to assess the social implications of the proposed development.

The following is an extract of the Executive Summary of the final report:

The development complies with the requirements of SEPPARH and uses the concessions in SEPPARH to provide affordable dwellings (within the definition of SEPPARH) with funding of those dwellings appearing to take advantage of site bonuses available under SEPPARH being used for the construction of luxury units in a high amenity location.

However, it does not provide housing that will be affordable to the vast majority of those who need affordable housing in Manly LGA according to relevant benchmarks, and is likely to provide genuinely affordable to only a narrow range of those who need such accommodation (around 8% of very low, low and moderate income earners in rental stress in Manly LGA), and specifically those at the top end of the moderate income range). In contrast, a strong majority of those who need affordable housing in the LGA are very low and low income earners, with a high proportion younger and needing smaller accommodation.

A positive aspect of the proposal is the provision of smaller dwellings, however moderate income earners are somewhat more likely than very low and low income earners to need larger 2 or 3 bedroom accommodation, so that the development should be reconfigured to provide for two more such affordable units.

It is also noted that the development is likely to be unsustainable when considered as affordable housing provided at higher densities. It is poorly located with respect to transport and services, and does not otherwise comply with accessibility provisions of SEPP (Housing for Seniors or People with a Disability) 2004 (SEPPSL). This is important as very low and low income renters in the LGA are far more likely to have a disability, and to need well-located housing. Similarly, it is highly desirable that higher density dwellings be well-located and walkable to transport and services that renters will reasonably require. It is also likely that a higher proportion of those on the waiting list of a local community housing provider will have a disability, and be older or less mobile.

A further sustainability consideration is whether the housing will be affordable in the long-term (after the 10 years required by SEPPARH) for relevant target groups in the LGA. Although it may remain in affordable rental, it appears likely that the dwellings will be sold at the end of 10 years for a substantial profit due to the high amenity of the site. If they remain in rental, the amenity of the area also indicates that they may not remain rented for an 'affordable' price, though the limited local data available indicates that again they may be affordable for a very narrow range of renters at the upper end of the moderate-income band.

It is noted in this regard that rents have been assessed using rental data for Manly LGA and postcode 2093, and sale prices have been assessed using data for postcode 2093. There is no data to form a view with regard to the rental and sales premium arising from the Clontarf location, with high amenity arising from Harbour views. As such, it may be that the 'affordable rental' dwellings created on this site obtain higher rentals and sales prices than those for the LGA and postcode on average, so that the assessment of the groups for whom these dwellings will ultimately be affordable (after the required 10 years) may be optimistic.

Of relevance to considerations under s 79C(1)(b), the assessment indicates that there will be very limited benefit arising from the proposed development as affordable housing for those in the LGA who need. As such, it is unlikely to offset any negative impacts of the proposal that

may be identified in the course of a s 79C assessment.

The consultants report goes on to suggest that there were four (4) matters to be considered and that these considerations relate to the broader social impacts in the locality and the likely benefit of the proposed development in this context.

A summary of the findings arising from these considerations are discussed in the following:

Who is the proposed affordable housing 'affordable' to?

The proposed affordable housing meets a need for affordable housing for sole person and couple only family households in the upper end of the moderate income band for the first ten (10) years. These households are estimated to comprise no more than 120 of the 1,500 households in rental stress in Manly. Accordingly, the development provides affordable housing suitable for around 8% of households in rental stress in Manly Local Government Area.

The greatest need for affordable rental housing in Manly Local Government Area comes from very low income households, comprising approximately 600 households (or 40% of renting households in housing stress). Such households in rental stress are predominately lone person households in the 20-29 age bracket. The proposed affordable housing does not meet the needs of this group.

There are 380 moderate income renting households in housing stress, and these make up one-quarter of renters in housing stress in the Local Government Area. As noted above, the proposal would cater to the needs of 120 of these renting households at the top end of the moderate income band (or around 30% of such households). Of the 380 moderate income renting households in housing stress, 30% are couple families without children (90 households), 40% are families with children (110 households), and about 30% are lone person households (75 households). Of the nine (9) proposed affordable dwellings, two (2) or 22% are suitable for families, and the other seven (7) are suitable for one (1) person and couple family households, so that proportionally, more could be provided to this target group.

Low income earners make up the balance of the 1,500 renting households in housing stress in Manly Local Government Area (around 520 households or 35% of renting households in housing stress).

Does the proposed affordable housing meet the primary need for affordable rental housing in Manly LGA with respect to price and type of housing?

In total there are approximately 5,000 renting households in Manly Local Government Area, 830 (16%) of which are in moderate housing stress and 670 (13%) are in severe housing stress, giving approximately 1,500 (30%) renting households in Manly Local Government Area in housing stress. Of these renting households in housing stress:

- Approximately 40% earn a very low income (less than \$575 per week gross), one-third earn a low income (between \$575 and \$919 per week gross), and one-quarter earn a moderate income (between \$920 and \$1,399 per week gross).
- Approximately half are lone person households, one-third are two person households, and only 6% have four or more persons usually resident.
- 18% are single parent families, 16% are couple families without children and 12% are couple families with children.
- Excluding residents aged 0-19 years, approximately 40% of residents are aged 20-29 years, one-third are aged 30-39 years, one quarter are aged 40-59 years and 3% are aged 60 years or over.
- 30% of working residents are managers and professionals, 17% are community and personal service workers, 14% are technicians and trades workers and 14% are clerical and administrative workers.

In terms of homebuyers, there are approximately 3,500 households in Manly Local Government Area purchasing their homes, 170 (5%) of whom are in moderate mortgage stress and 260 (7%) of whom are in severe mortgage stress, giving approximately 430 (12%) home-buying in Manly Local Government Area in housing stress. Of these home buying households in housing stress:

- Approximately one-quarter earn a very low income, one-quarter earn a low income and half earn a moderate income.
- Approximately one-third are lone person households, 40% are 2-3 person households and 20% are four or more person households.
- 29% are couple families with children, 20% are single parent families, and 13% are couple families without children.
- Excluding residents aged 0-19 years, 16% of residents are aged 20-29 years, 24% are aged 30-39 years, half are aged 40-59 years and 10% are aged 60 years and over.
- 36% of working residents are managers and professionals, 19% are clerical and administrative workers, 15% are technicians and trades workers, and 11% are sales workers.

In Manly Local Government Area, there are approximately 380 moderate income households in rental stress. Approximately 180 (50%) of these are two (2) person households, 75 (20%) are lone person households, 75 (20%) are three (3) person households, and 40 (10%) are four (4) person households. In terms of household composition, 90 (30%) are couple families without children, 70 (25%) are couple families with children, and 40 (15%) are single parent families.

Will the proposed affordable housing meet a need for affordable rental and purchase housing in Manly Local Government Area with respect to price and type of housing after the ten-year period in the Policy?

If the apartments continue to be rented at the end of the ten (10) year period in the State Environmental Planning Policy, it is estimated that the studio apartments will be affordable to those in the top half of the moderate income band, the one (1) bedroom apartments will be affordable to those in the top tenth of the moderate income band and that the two (2) bedroom apartments will not be affordable. The dwellings are unlikely to be affordable for purchase by moderate income households. None of the dwellings will be affordable for rental or purchase by very low and low income households.

It is noted that this assessment is based on sales and rental data for Manly Local Government Area as a whole, with few comparable properties of similar amenity included in the data. As such, the assessment may be optimistic given the amenity of the subject site.

Is the proposed affordable housing suitable for aged and disabled people?

The proposed is unlikely to be suitable for aged and disabled people using the criteria in State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004 due to the steepness of, and lack of appropriate footpaths in Beatrice Street. It is likely that some internal architectural redesign would also be required to meet the internal circulation requirements of the State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004.

Although the development is not required to comply with State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004, a basic accessibility assessment has been provided as a relatively high proportion of very low and low income earners are likely to have some form of disability, particularly if they are housed off the waiting list of a community housing provider. This becomes a less pressing consideration where the target group will be younger and at the upper end of the moderate income spectrum in the short-term, but is still an important consideration for the sustainability of the development if it is to continue to meet the needs of those in the Local Government Area who need affordable housing in the longer term.

The same considerations apply to the location of medium density or higher accommodation. Like affordable housing (including for a diversity of ages and abilities), it would be highly desirable that higher density development is well-located in terms of services, shops and public transport, and that the site be walkable to key services. The proposed development may thus be regarded as unsustainable on these grounds.

Clause 10 - Infill Affordable Housing

This clause in the State Environmental Planning Policy (Affordable Rental Housing) 2009 requires the development to be within a residential zone and within 400m of a bus stop or 800m of a train station. This clause also allowed for residential flat buildings in residential zones even when a Local Environmental Plan may have prohibited residential flat buildings.

As the site is located within 400m of a bus stop and the development seeks approval for a residential flat building in a residential zone, the proposed development complies with the requirements of this clause.

Clause 11 - Provision of affordable housing

Under State Environmental Planning Policy (Affordable Rental Housing) 2009 this clause outlines which developments the provisions for infill housing apply. These developments include dual occupancies, multi dwelling housing and residential flat buildings where at least 50% of the dwellings will be used for affordable housing.

Under clause 11, residential flat buildings are permissible in zones where they would not normally be permitted under a Local Environmental Plan provided they allocated at least 50% of the units within the development for affordable housing purposes. It is noted that State Environmental Planning Policy (Affordable Rental Housing) 2011 has deleted this clause, thereby removing the ability to construct residential flat buildings in zones where they would otherwise be prohibited under Local Environmental Plans.

In the case of the proposed development, the site is zoned Residential under the Manly Local Environmental Plan 1988 and residential flat buildings are permissible in this zone subject to development consent.

Clause 14 - Standards that cannot be used to refuse consent

(1)(a) Maximum floor space ratio.

Under State Environmental Planning Policy (Affordable Rental Housing) 2009 the maximum floor space ratio of the proposed development is 0.75:1. The Development Application (as amended) proposes a floor space ratio of 0.7:1.

State Environmental Planning Policy (Affordable Rental Housing) 2011 deletes this clause and replaced it with amendments to Clause 13. These amendments result in the maximum floor space ratio for the proposed development being 0.4:1 in accordance with Council's Development Plan for the Residential Zone. The development does not comply with the floor space ratio of Council's Development Control Plan.

(1)(b) Minimum site area is 450sqm

The area of the subject site is 2910sqm.

(1)(c) Minimum landscape area is 30% of the site area

The Development Application dedicates 37% to landscaping.

(1)(d) Minimum deep soil zone is 15% of the site area with a minimum dimension of 3m provided preferably to the rear of the site

Approximately 23% of the site area is dedicated to soft landscaping with a minimum dimension of 3m. The majority of the soft landscaping is provided in the central common open space area and in the front and rear setbacks.

(1)(e) *Living rooms and private open spaces for a minimum of 70% of the units to receive a minimum of 3 hours direct sunlight between 9am and 3pm in midwinter.*

The following analysis of overshadowing is provided:

Apartment	Solar Access	Complies
A1	Less than 3 hours	No
A2	3 hours	Yes
A3	3 hours	Yes
A4	Less than 3 hours	No
A5	3 hours	Yes
A6	3 hours	Yes
A7	3 hours	Yes
A8	3 hours	Yes
A9	3 hours	Yes
1	3 hours	Yes
2	3+ hours	Yes
3	3 hours	Yes
4	3 hours	Yes
6	3 hours	Yes
7	3 hours	Yes
8	Less than 3 hours	No
9	Less than 3 hours	No

Four (4) of the seventeen (17) apartments received less than three (3) hours of direct sunlight in midwinter. This equates to 22% of the affordable housing component and 25% of the other apartments. Overall, 76% of the apartments receive compliant solar access.

(2)(a) *Car parking is provided at the rate of 0.5 spaces per dwelling*

Under State Environmental Planning Policy (Affordable Rental Housing) 2009, car parking is to be provided at the rate of 0.5 spaces per dwelling. In accordance with this formula, the Development Application is required to provide 8.5 car parking spaces. The Development Application proposes thirty (30) car parking spaces for the development.

Nineteen (19) of these car parking spaces are located on level 1 of the development and are accessed via two (2) car lifts connecting the basement area with the driveway. Of these nineteen (19) spaces; four (4) including one (1) disabled space are provided in a stacked parking arrangement. This disabled space is accessed directly by apartment No. 9 which is a nominated “adaptable” unit. There is one (1) other disabled space which is centrally located within the basement and is not located within direct convenience of the lifts providing access to the units above.

Eight (8) car parking spaces are located on level 2 of the development and are accessed via the same two (2) car lifts connecting the basement area with the driveway. Three (3) are allocated as disabled spaces, two (2) of which are not located within direct convenience of the lifts providing access to the units above nor apartment 6 which is a nominated “adaptable” unit which is accessed directly from this level.

Three (3) car parking spaces are located on level 4 (ground level) of the development and are accessed via the main driveway. These spaces are located outside and do not have any weather protection. These spaces are dedicated for visitor purposes.

(2)(b) *The minimum gross floor area for each unit shall be 35sqm in the case of a bedsitter or studio, 50sqm for one bedroom units, 70sqm for two bedroom unit and 95sqm for three bedroom units.*

The size of each unit within the development is summarised in the following table:

Apartment	Number of bedrooms	Gross Floor Area	Complies
A1	Studio	61sqm	Yes
A2	1 bedroom + study	63sqm	No*
A3	Studio	60sqm	Yes
A4	Studio	53sqm	Yes
A5	1 bedroom	52sqm	Yes
A6	Studio	53sqm	Yes
A7	2 bedroom	74sqm	Yes
A8	2 bedroom	79sqm	Yes
A9	1 bedroom	61sqm	Yes
1	3 bedroom + study	200sqm	Yes
2	3 bedroom + study	158sqm	Yes
3	3 bedroom + media	158sqm	Yes
4	3 bedroom	147sqm	Yes
6	3 bedroom + study + media	158sqm	Yes
7	3 bedroom + media	152sqm	Yes
8	3 bedroom	148sqm	Yes
9	3 bedroom	158sqm	Yes

Apartment A2 has been provided as a one (1) bedroom apartment plus a study. The plans approximate the floor area of the study to be 6sqm and show a desk space. Council is unable to monitor the use of this space as a study for the duration of the development and given it's configuration there exists an opportunity to convert this space into a small bedroom. For this reason, apartment A2 is considered to be a two (2) bedroom unit and therefore does not comply with the minimum floor space requirements of the State Environmental Planning Policy.

Clause 16A – Character of local area

This clause was introduced with State Environmental Planning Policy (Affordable Rental Housing) 2011 and requires the consent authority to take into consideration whether the design of the development is compatible with the character of the local area. This clause is also to be read in conjunction with the savings provision contained in clause 54A(3).

Even though the requirement to take compatibility with local character into account is new in the context of State Environmental Planning Policy (Affordable Rental Housing) there are similar requirements contained in the various iterations of State Environmental Planning Policy (Seniors Living). Also, the Land and Environment Court often consider the compatibility of new developments with the local character of the area.

In the case of this development, there is a clear parallel between what is allowed by State Environmental Planning Policy (Seniors Living) and State Environmental Planning Policy (Affordable Rental Housing) in that both instruments permit a higher density of development (including floor space concessions) than would otherwise be considered on a subject site.

A Planning Principle was established in the case of GPC No 5 (Wombarra) Pty Ltd v Wollongong City Council (2003) NSWLEC 268. This planning principle was for the assessment of a Seniors Living Proposal and its compatibility with the character of the local area. It is considered that these principles are translatable to the requisite consideration under State Environmental Planning Policy (Affordable Rental Housing) 2011. In this case, the Senior Commissioner set out the following principles:

“The issue of compatibility between a SEPP 5 development and the surroundings low-density zones arises in the majority of SEPP 5 applications. This is because the Policy allows development with different physical characteristics to what is permissible under the zoning. It is therefore useful to state some planning principles for assessing compatibility.

The first principle is that buildings in a SEPP 5 development do not have to be single-storey to be compatible with the streetscape even where most existing buildings are single storey. The principle does not apply to conservation areas where single storey dwellings are likely to be the major reason for conservation.

The second principle is that where the size of a SEPP 5 development is much greater than the other buildings in the street, it should be visually broken up so that it does not appear as one building. Sections of a building, or separate buildings should be separated by generous breaks and landscaping.

The third principle is that where a site has existing characteristics that assist in reducing the visual dominance of development, these characteristics should be preserved. Topography that makes development appear smaller should not be modified. It is preferable to preserve existing vegetation around a site's edges to destroying it and planting new vegetation.

The fourth principle is that a SEPP 5 development should aim to reflect the materials and building forms of other buildings in the street. This is not to say that new materials and forms can never be introduced only that their introduction should be done with care and sensitivity.

The planning principals set out by the Senior Commissioner in GPC No. 5 were further developed in *Project Venture Developments v Pittwater Council* (2005) NSWLEC 191 in the context of a residential flat building seeking to rely on existing use rights. Again, the considerations are also relevant to the consideration required under State Environmental Planning Policy (Affordable Rental Housing). The Senior Commissioner set out the following principals:

"There are many dictionary definitions of compatible. The most apposite meaning in an urban design context is capable of existing together in harmony. Compatibility is thus different from sameness. It is generally accepted that buildings can exist together in harmony without having the same density, scale or appearance, though as the difference in these attributes increases, harmony is harder to achieve.

It should be noted that compatibility between proposed and existing is not always desirable. There are situations where extreme differences in scale and appearance produce great urban design involving landmark buildings. There are situations where the planning controls envisage a change of character, in which case compatibility with the future character is more appropriate than with the existing. Finally, there are urban environments that are so unattractive that it is best not to reproduce them.

Where compatibility between a building and its surroundings is desirable, its two major aspects are physical impact and visual impact. In order to test whether a proposal is compatible with its context, two questions should be asked:

- Are the proposal's physical impacts on surrounding development acceptable? The physical impacts include constraints on the development potential of surrounding sites.*
- Is the proposal's appearance in harmony with the buildings around it and the character of the street?*

The physical impacts, such as noise, overlooking, overshadowing and constraining development potential, can be assessed with relative objectivity. In contrast, to decide whether or not a new building appears to be in harmony with its surroundings is a more subjective task. Analysing the existing context and then testing the proposal against it can, however, reduce the degree of subjectivity.

For a new development to be visually compatible with its context, it should contain, or at least respond to, the essential elements that make up the character of the surrounding urban environment. In some areas, planning instruments or urban design studies have already described the urban character. In others (the majority of cases), the character needs to be

defined as part of a proposal's assessment. The most important contributor to urban character is the relationship of built form to surrounding space, a relationship that is created by building height, setbacks, landscaping. In special areas, such as conservation areas, architectural style and materials are also contributors to character.

Buildings do not have to be the same height to be compatible. Where there are significant differences in height, it is easier to achieve compatibility when the change is gradual rather than abrupt. The extent to which height differences are acceptable depends also on the consistency of height in the existing streetscape.

Front setbacks and the way they are treated are an important element of urban character. Where there is a uniform building line, even small differences can destroy the unity. Setbacks from side boundaries determine the rhythm of building and void. While it may not be possible to reproduce the rhythm exactly, new development should strive to reflect it in some way.

Landscaping is also an important contributor to urban character. In some areas landscape dominates buildings, in others buildings dominate the landscape. Where canopy trees define the character, the new developments must provide opportunities for planting canopy trees.

Conservation areas are usually selected because they exhibit consistency of scale, style or material. In conservation areas, a higher level of similarity between the proposed and the existing is expected than elsewhere. The similarity may extend to architectural style expressed through roof form, fenestration and materials.

Identified Character of Clontarf and within the Immediate Vicinity of the Subject Site

A repealed version of Council's Development Control Plan for the Residential Zone 1986, Amendment 3, provided streetscape and locality statements for the individual suburbs of Manly. The following statement was provided for the areas known as the *harbour front, areas of Seaforth West, The Bluff and Clontarf.*

These are very environmentally sensitive areas, dominated by large single dwellings, extensively viewed from the Harbour.

The majority of houses are on very steep sites with highly visible car access from the street and from the Harbour.

Most, or all, buildings date from the post-war period and are not well-related to the topography due to excessively visible bulk or height when viewed from Middle Harbour.

There is generally, a predominance of landscape and extensive space around buildings, a quality, which must be provided in new buildings.

Stylistically, many buildings are quite diverse and of variable quality, very few offering a design style to be followed. New buildings must therefore, be responsible to the slope in minimising their apparent height and bulk from the water.

The key challenge here is to relate well to the topography and to achieve attractive and sensitive car access from the road.

Also, the applicant has submitted a detailed Urban Design Report, which provides the following statements in regards to site context:

Streetscape character and topography

The context surrounding the site is residential detached dwellings. These dwellings are considerable in their scale and size due to the topography, which sees the dwellings cascade down the site and the height of the dwellings seeking to capture the water views available from the surrounding area.

Beatrice Street is contained by development and landscaped retaining walls to the eastern side with a 2-4 storey scale with low side lots to the western side and varying scales of development visible. On some lots the roofs and carports are visible from the street where as others are well below street level.

Generally the western side is more heavily landscaped than the eastern side of the street. The steep topography means that the dwellings and lots to the eastern side of the street often allow water glimpses over their roofs when seen from the road standing in their driveways. This is an important urban design outcome as it allows view sharing for pedestrians using the roadway when they are able to walk on the eastern side. Sadly much of this side of the street is not accessible due to barricades for traffic.

Built Form

The dwellings on the slope (generally east of Beatrice Street and between Beatrice Street and Amiens Road) have a different development form and site coverage to those on the flatter land on the top of the rise and the lower land closer to the sea level. The houses on the slope tend to be taller and to step down the slope resulting in a higher site coverage and overall scale than the 2 storey dwelling houses on flatter land.

This creates a distinctive character to the slopes when viewed across the bay and is part of the characteristic of the area. These houses are often quite close together at the side boundary and have roof decks and terraces at upper levels with views shared across terraces. Landscape tends to be located to the rear of the lots or at the street only.

The result from the street is that one side of the street is often more dominated by built form than the other. The eastern side of Beatrice Street appears more built up than the western side. The same result occurs on Amiens Street where the high side lots which are directly below the subject site appear far bulkier than those on the western side. This significant change in topography also means that the dwellings to the eastern side of Beatrice Street are not even visible from the lower street.

The architectural character of the street and local area is varied. It contains older dwellings with pitched roof forms and rendered facades through to more recent contemporary developments of various merit, many of which have a more boxy form and flat roofs often in softer hues with painted render to blend into the slope. Adjacent to the site the dwellings are predominately flat roofed with large window areas and expressed balconies with colours ranging from whites and creams through to darker greys and browns.

Views

The site can however be seen as part of the broader context when looking across from the Spit. The view is able to be seen from the approach to the Spit Bridge and public areas adjacent to the water on the eastern side of the peninsular. The location of the site means that there is actually not a particularly high visibility towards this slope from other headlands. Due to street patterns and slope the only close viewing area is actually the Spit Bridge Peninsula and the bay of water in between.

The built form is seen as a layering of houses upon each other interspersed with concentrated pockets of landscaping which are seen to the foreshore and towards the midpoint below Beatrice Street to the north of the site. This landscape band tapers out north of the site and does not continue to the south.

The balance of built form to vegetation on the slope is part of its character. Generally for this slope a line of cascading built form occurs almost as though representing the contour and then vegetation occurs in a line below it representing the rear gardens of the sloping blocks. The built form can be seen as having a scale to the water in the order of 3-5 storeys with the

most common scale around 4 storeys due to the staggering of the building form and topography. There is little landscape evident for the most part between the dwellings with it concentrated mainly above and below the dwelling forms.

Adjacent Lots

The lots to either side of the subject site are occupied by single dwelling houses, which are oriented to an outlook to the west.

It can be seen that the house on the 3 lots is an anomaly in the area with most lots developed for a dwelling per lot and that more recent development seen to the north of the site occupies a considerable extent of the available land with houses in very closest proximity. The setback from the rear also varies between the dwellings with some dwellings forward of each other containing many views to being directly in front of the house rather than shared oblique views to the north. The dwellings adjacent to this site extend the furthest to the west particularly considering the pool structure.

To the south the dwelling are on shorter lots with the dwellings located closer to the street than to the north. This sees the built form alignment further to the east than seen on the northern lots. Any development on this site will need to be responsive to the position of built form on both lots relative to both boundaries.

The Urban Design Report goes on to list key considerations that any development on the site needs to consider. These considerations along with the Planning Principles from the Land and Environment Court will assist in the assessment of local area character compatibility of proposed development.

Assessment Against Land and Environment Court Planning Principles

Where the size of a development is much greater than the other buildings in the street, it should be visually broken up so that it does not appear as one building.

The subject site consists of three (3) separate allotments. The Development Application seeks to consolidate these allotments and construct two (2) residential flat buildings on the site. The bulk and massing of the developments is greater than other buildings in the street. In particular, the development presents as three (3) separate buildings including:

- A four (4) storey residential flat building (above two levels of basement parking) in the south east corner of the site. This building is setback 5m from the front property boundary and its location is similar to the established building pattern along Beatrice Street. The footprint of this building is approximately 225sqm and its width is such that it occupies two (2) of the existing three (3) lots of the site. The shape of the building is regular.
- A four (4) storey residential flat building (above two levels of basement parking) located adjacent to the northern boundary and towards the centre of the site. The location of this building is inconsistent with the established building pattern. The building is setback 35m from the front property boundary and extends beyond the rear building alignment of the adjoining properties. The footprint of this building is approximately 530sqm and its width is such that it occupies all three (3) of the lots on the site. The building is longer across the site.
- A car lift structure with roof above. This has a footprint of approximately 47sqm.

The orientation, massing and location of the buildings on the site are uncharacteristic of the established building and subdivision pattern within the locality and will adversely impact the visual amenity of the site and surrounding area when viewed from neighbouring properties and other vantage points in Clontarf.

Where a site has existing characteristics that assist in reducing the visual dominance of development, these characteristics should be preserved. Topography that makes development appear smaller should not be modified. It is preferable to preserve existing vegetation around a site's edges to destroying it and planting new vegetation.

The Development Application seeks approval for extensive excavation on the site. The finished floor level of the lowest level of the basement car park is RL 40. The current natural ground level above this area to be excavated is varied, the site will be excavated up to a depth of 10.5m. The Development Application was accompanied by a Geotechnical Assessment, which concludes that excavation can occur subject to the implementation of safe work practices during construction.

However, in the context of this Planning Principle, the application seeks such excavation to provide for basement car parking and to maximise floor space. In comparison, excavations that have occurred on adjoining and nearby properties facilitate the provision of additional floor area and/or amenity for single dwellings. In this instance, the applicant is able to provide for additional floor area to accommodate additional dwellings on the site, thereby, increasing the density and occupancy of the site.

In addition, the Development Application seeks approval for the removal of a number of significant trees from the site. Council has assessed the request to remove a number of the trees and agrees to the majority of the requests with the exception of Tree No. 2. Tree No. 2 is isolated on the site and not part of a dominate grouping. However, the tree is healthy and contributes to the landscape setting of the site, the neighbourhood and the escarpment. The canopy of the tree is visible from Beatrice Street and it provides visual amenity from the northern elevation of 17 Beatrice Street.

Developments should aim to reflect the materials and building forms of other buildings in the street.

The materials and finishes proposed with the development are contemporary and modern and are consistent with materials and finishes of buildings in the locality.

The building form is not similar, nor consistent with other building forms in the locality. The development proposes residential flat buildings with larger building footprints and site coverage when compared to the dominant single dwelling character of the locality.

Are the proposal's physical impacts on surrounding development acceptable? Including noise, overlooking, overshadowing and development potential.

The physical impacts of the development are unsatisfactory. Even though the development proposes a residential land use, the density and occupancy rates imply that the noise impacts will be higher to that of a single dwelling. Such noise impacts would result from the increased traffic movements along the driveway and pedestrian activity throughout the site.

The privacy impact of the development is also unsatisfactory. The development proposes a number of windows servicing living area as well as bedrooms and bathrooms along the side elevations (northern and southern) of the development. The outlook from these windows is towards the adjoining properties. Also of concern are the elevated terraces facing the western property boundaries and the outlook into private open space areas of adjoining dwellings. It is noted that these terraces will also benefit from water views. The siting of the northern residential flat building contributes to the privacy concerns, given that its rear alignment extends beyond the neighbouring dwelling.

Is the proposal's appearance in harmony with the buildings around it and the character of the street? This includes considerations of the relationship of built form to surrounding space, a relationship that is created by building height, setbacks, landscaping.

The building form of the development is not in harmony with the character of the street. The orientation of the built form differs from the adjoining properties. The building massing is across the site (north to south) rather than down the site, similar to the adjoining and surrounding properties.

This is more visually intrusive and presents a bulkier appearance when viewed from the harbour foreshore areas.

The building height and setbacks of the development are also inconsistent with the surrounding locality. The development is up to four (4) storeys in appearance (above basement car parking which is concealed below ground) and a portion of this height is visible from Beatrice Street. The height of the development may not be dissimilar to other buildings in the locality, however the extensive site coverage and bulk of the development is significantly different to these buildings.

Also, as demonstrated later in this report, the extent of open space provided for the development significantly differs to that which would be required for detached dwellings, which are the dominate form of development in the area. This inconsistency in open space provision is by virtue of the floor space concession granted to the proposed development under State Environmental Planning Policy (Affordable Rental Housing) 2009.

Developments should contain, or at least respond to, the essential elements that make up the character of the surrounding urban environment.

The essential elements that make up the character of the surrounding area include built form, landscape setting and amenity. It is believed that the development is inconsistent with these elements. The issues surrounding built form including setbacks, building orientation, the siting of the building and site coverage have been mentioned previously and are further assessed in this report.

The issues surrounding landscape setting refer to the existence of significant vegetation in the local area and the visual amenity it provides to the locality and the escarpment of Clontarf. The development seeks to maintain a portion of the significant vegetation on the site, with the exception of Tree No. 2 which Council requests be retained. However, the location of building towards the rear of the site disrupts the natural landscape corridor that occurs at the rear of the properties along Beatrice Street and Amiens Road. Therefore, the continuity of vegetation and deep soil landscaping along this corridor is disturbed.

The last of the essential elements relates to the amenity impacts arising from the intended use of the site. The Development Application seeks to significantly increase the density and occupancy of the site and with this change comes a range of amenity impacts including visual and acoustic privacy and traffic and parking. Issues relating to visual and acoustic privacy result from the number of windows and balconies of various apartments that may overlook into adjoining properties and the number of residents and visitors to the site now that there will be seventeen (17) households.

With regards to traffic and parking, the development proposes thirty (30) on site car parking spaces with the basement car park being accessed by a car lift. The existing driveway will be upgraded, however this driveway was previously used to service a single dwelling and will now be the subject of a significant increase in usage. The topography of the site and the design of the driveway is such that the sight distances when exiting the property is potentially dangerous. This issue has not been resolved to the satisfaction of Council.

Assessment Against Applicant's Urban Design Report Considerations

Strong band of landscaping to the front and rear of the site, particularly close to Beatrice Street to maintain the green edges to the site when viewed from the street and from the water and the Spit.

The development proposes landscaping along the front property boundary with the retention of significant vegetation and trees. Landscaping along the rear property boundary is hindered by the topography and natural features of the site and the reduced rear setback proposed with the development.

Built form pockets interspersed with landscape pockets as viewed across the water bodies

It is suggested that the resultant built form of the development does not allow for landscape pockets. The built form is concentrated in the centre of the site and the most significant form of landscaping is provided along the street frontage.

Close proximity of built form adjacent to side boundaries which reduces the contribution of side boundaries to the landscape character and sees the built form close together when views from a distance

The development has been designed so that one elevation of each of the residential flat buildings is in close proximity to a side boundary.

Cascading development form presenting a much taller scale to street and water than traditionally seen in a residential area with detached dwellings due to the topography with a scale of 3-5 storeys when viewed from the water and quite long banks of development created by the combined impact of a number of houses adjacent to each other.

The development presents as a cascading form down the escarpment, however a significant amount of excavation is required to achieve this cascading form and to accommodate car parking underneath. The development presents as four (4) storeys when viewed from a distance. The distinguishing feature of this development when compared to the other surrounding developments is the lack of visual relief between buildings that can be achieved by single dwellings on single allotments of land. In this case, the built form accommodates three (3) allotments with little visual relief to delineate the existing subdivision pattern.

A range of either vertical or horizontal architectural emphasis where some dwellings are tall and narrow and others have a greater horizontal character generally on the wider lots.

The proposed development contains both horizontal and vertical architectural elements achieved in design and the use of materials and finishes.

From Beatrice Street little awareness of low side lot built form

The topography of the area limits the awareness of the built form along the low side of Beatrice Street. A portion of the development does extend above Beatrice Street and will be visible.

View glimpses across the tops of dwellings to the water from Beatrice Street

It appears that there are also opportunities to achieve glimpses of the water from the public domain of Beatrice Street. The potential view loss impact resulting from the height of the development is not detailed in the application and an accurate assessment has not been undertaken. Therefore, the development could potentially impact on the existence of views from Beatrice Street.

Access to dwelling lower than the street level and long driveways or raised car parking visible from the street

The proposed development provides dwellings that are lower than the street level and the amenity of these dwellings is assessed later in this report. The existing driveway is to be upgraded to accommodate the development. There is no car parking that is directly visible from the street, however this is considered to be a positive of the proposed design.

Differing locations of dwellings relative to the street and to rear boundaries with a variety of setbacks and built form relationships with many views contained to directly ahead of the lot rather than oblique but views to the south more far ranging to the south.

The development proposes a front setback that is consistent with 17 Beatrice Street however the rear setback of the proposal extends beyond the rear alignment of the adjoining properties and as a result extends the built form down into the site and into an established but informal rear setback zone as created by the surrounding properties in the locality.

All of the apartments are designed with a westerly outlook to take advantage of the water views that are available. This is a consistent design trait of the surrounding developments.

A range of architectural approaches both contemporary with flat roofs and older pitched roof houses.

The development proposes a flat roof, which is consistent and compatible with the surrounding locality.

A range of dwelling types and sizes from concentrations of quite large and wide residential development to finer grain narrower buildings.

The built form of the development does not respond well to the locality. The development has been designed to occupy three (3) individual allotments giving it a unique characteristic when compared to the neighbouring properties. However, the bulk, massing and location of this built form are uncharacteristic of the area and is unsatisfactory.

Side boundary over viewing is possible from both 17 and 25 Beatrice Street as adjoining properties.

The topography of the site is such that there is visual privacy issues inherit on the site. However, additional privacy issue arise from side setback non-compliances and the location of terraces and balconies.

View impacts are only likely from 25 Beatrice Street as existing vegetation and the dwelling already obscure the view across the site for No. 17.

A view loss assessment has been completed and it is considered that the view loss impact from 25 Beatrice Street and 17 Beatrice Street is minor.

The adjacent houses are both 3-3.5 storeys when viewed from the distance.

The proposed development gives the appearance of a four (4) storey structures when viewed from the distance.

Summary of Character Assessment

In summarising the character assessment of the development in the context of the Land and Environment Court Planning Principles and the considerations provided in the Urban Design Study provided by the applicant, it is concluded that the proposal is incompatible with the surrounding locality.

The built form is incompatible with the site coverage, thereby impacting on landscaping and open space provision. The bulk and scale; orientation and deviation from the established subdivision pattern of the area also add to the not development not being visually compatible and in harmony with the surrounding developments.

The use of the site for residential flat buildings increases the density of the site and the number of people occupying the site. The associated impacts with such an increase in density include acoustic and visual privacy; and traffic generation and parking. These impacts are uncharacteristic of the immediate locality surrounding the subject site.

Therefore the development is not compatible with the character of the locality with regards to subdivision pattern, built form, site coverage, massing, height, setbacks, orientation, potential view loss, visual and acoustic privacy, open space provision, extent of excavation, tree removal, landscaping and traffic and parking.

Clause 17 – Must be used for affordable housing for 10 years

This clause provides a condition that must be imposed by the consent authority should the Development Application be approved. This condition requires that the affordable housing component must remain as affordable housing for a period no less than ten (10) years. This condition reads as:

For ten (10) years from the date of the issue of the occupation certificate:

- (i) the dwelling proposed to be used for the purposes of affordable housing will be used for the purposes of affordable housing and*
- (ii) all accommodation that is used for affordable housing will be managed by a registered community housing provider, and*
- (iii) a restriction will be registered, before the date of the issue of the occupation certificate, against the title of the property on which development is to be carried out, in accordance with Section 88E of the Conveyancing Act 1919, to ensure that the requirements of paragraphs (i) and (ii) are met.*

State Environmental Planning Policy No. 55 – Remediation of Land

Clause 7(1) of State Environmental Planning Policy No. 55 – Remediation of Land is relevant to the assessment of this Development Application.

Clause 7(1) requires that consent not be granted until Council has considered whether the land is contaminated. If the land is contaminated, the Council needs to be satisfied that the land is suitable in its contaminated state (or will be suitable, after remediation) for the purpose for which the development is to be carried out.

In this instance, the subject site has been used for residential purposes for its extended history and it is unlikely that there are any contaminants present that would require remediation in order to make the site suitable for its proposed use.

State Environmental Planning Policy No. 65 – Residential Flat Development

State Environmental Planning Policy No. 65 applies to the Development Application as the proposal includes the construction of residential flat buildings. The following is an assessment against the principles listed in State Environmental Planning Policy 65:

Principle 1 – Context

Good design responds and contributes to its context. Context can be defined as the key natural and built features of an area. Responding to context involves identifying the desirable elements of a location's current character or, in the case of precincts undergoing a transition, the desired future character as stated in planning and design policies. New buildings will thereby contribute to the quality and identity of the area.

As demonstrated in the above character assessment under State Environmental Planning Policy (Affordable Rental Housing) 2011, the proposed development does not respond nor contribute to its context. The development proposes extensive excavation in order to provide for a two (2) level basement to accommodate car parking. The built form of the development is uncharacteristic of the established subdivision pattern and it results in unacceptable bulk and scale impacts. Also, the introduction of a residential flat development into a typically low-density residential area will result in other amenity impacts including privacy and increased traffic.

In addition to the design and land use considerations, the issue of context can also be considered with the provision of affordable housing in the area. As demonstrated previously in this report, Council's consultant has suggested that the development does not provide housing that will be

affordable to the vast majority of those who need affordable housing in Manly Local Government Area and that the affordable housing component may be unsustainable.

Principle 2 – Scale

Good design provides an appropriate scale in terms of the bulk and height that suits the scale of the street and the surrounding buildings. Establishing an appropriate scale requires a considered response to the scale of existing development. In precincts undergoing a transition, proposed bulk and height needs to achieve the scale identified for the desired future character of the area.

The scale of the development is unsuitable in relation to the street and the surrounding buildings. The height of the development may be similar to that of surrounding developments, however the bulk and massing is uncharacteristic. This bulk and massing is the result of the size of the allotment when compared to the adjoining properties and the floor space ratio concessions granted under State Environmental Planning Policy (Affordable Rental Housing) 2009.

Principle 3 – Built Form

Good design achieves an appropriate built form for a site and the building's purpose, in terms of building alignment, proportions, building type and the manipulation of building elements. Appropriate built form defines the public domain, contributes to the character of streetscapes and parks, including their views and vistas, and provides internal amenity and outlook.

As discussed throughout this report, the built form of the development is unacceptable. The built form is typical of a residential flat building but it does not respond to the public domain, views and vistas, internal amenity and outlook and is not compatible with the character of the surrounding area.

Principle 4 – Density

Good design has a density appropriate for a site and its context, in terms of floor space yields (or number of units or residents). Appropriate densities are sustainable and consistent with the existing density in an area, or in precincts undergoing a transition, are consistent with the stated desired future density. Sustainable densities respond to the regional context, availability of infrastructure, public transport, community facilities and environmental quality.

The proposed development complies with the floor space ratio provisions of State Environmental Planning Policy (Affordable Rental Housing) 2009. However, this density is uncharacteristic of the local area and the desired future character of the area.

Principle 5 – Resource, energy and water efficiency

Good design makes efficient use of natural resources, energy and water throughout its full life cycle, including construction. Sustainability is integral to the design process. Aspects include demolition of existing structures, recycling of materials, selection of appropriate and sustainable materials, adaptability and reuse of buildings, layouts and built form, passive solar design principles, efficient appliances and mechanical services, soil zones for vegetation and reuse of water.

The Development Application was accompanied with a BASIX Certificate in accordance with State Environmental Planning Policy (BASIX) 2004. The Development Application has since been amended and a revised BASIX Certificate has not been provided. This could be imposed as a condition on the notice of determination should the Development Application be approved.

Principle 6 – Landscape

Good design recognises that together landscape and buildings operate as an integrated and sustainable system, resulting in greater aesthetic quality and amenity for both occupants and that adjoining public domain. Landscape design builds on the existing site's natural and cultural features in responsible and creative ways. It enhances that development's natural environmental performance by co-ordinating water and soil management, solar access, micro-climate, tree canopy and habitat values.

It contributes to the positive image and contextual fit of development through respect for streetscape and neighbourhood character, or desired future character. Landscape design should optimise useability, privacy and social opportunity, equitable access and respect for neighbours' amenity and provide for practical establishment and long term management.

The Development Application complies with the numerical provision of landscaping and deep soil zones. In addition, the Development Application has been assessed by Council and is considered to be satisfactory subject to the imposition of conditions on the notice of determination.

However, the siting and location of the northern residential flat building imposes on the established rear setback areas and informal landscape corridor that runs along the rear of the properties along Beatrice Street and Amiens Road.

In addition, Council has requested that Tree No. 2 be retained given its health, maturity and visual contribution to the streetscape and amenity of the area. The retention of this tree would require the redesign of the development as it would impact on the location of the "affordable housing" residential flat building.

Principle 7 - Amenity

Good design provides amenity through the physical, spatial and environmental quality of a development. Optimising amenity requires appropriate room dimensions and shapes, access to sunlight, natural ventilation, visual and acoustic privacy, storage, indoor and outdoor space, efficient payouts and service areas, outlook and ease of access for all age groups and degrees of mobility.

As discussed throughout the assessment contained in this report, the amenity of the development does not meet Council's requirements in regards to ventilation, visual privacy and storage areas. In particular, the natural ventilation opportunities of the single aspect units is restricted and the development has potential privacy impacts on the adjoining properties over the side and rear boundaries. The development does provide storage areas but the convenience of these storage areas does not meet the objectives of the Residential Flat Design Code.

Principle 8 – Safety and Security

Good design optimises safety and security, both internal to the development and for the public domain. This is achieved by maximising overlooking of public domain and communal spaces while maintaining internal privacy, avoiding dark and non-visible areas, maximising activity on streets, providing clear, safe access points, providing quality public spaces that cater for desired recreational uses, providing lighting appropriate to the location and desired activities, and clear definition between public and private spaces.

The development does not maximise the overlooking of the public domain areas. In particular, the development does not provide a built form along the street frontage and therefore does not provide a street presence due to the topography of the site.

Pedestrian access within the development is provided using a network of stairs, lifts, pathways, ramps and corridors. The access infrastructure is provided in response to the topography of the site combined with the provision of disabled access. These areas are overlooked during the day-time from adjoining apartments and provided that these areas are suitably lit and visible during the night time safe access across the site can be achieved.

Vehicle access is via a steep driveway from Beatrice Street. The vehicle access arrangements have been assessed by Council's engineers and there are on going concerns regarding sight distances at the entry / exit point of the development.

There is no pedestrian footpath located along the frontage of the site and therefore there is no buffer between the driveway and roadway intersection. Also, the gradient of the driveway, which restricts sight distances when exiting the site is of concern and so is the increase in usage of the

driveway given that it will now service seventeen (17) apartments and thirty (30) car parking spaces. The applicant has not yet resolved these issues.

Principle 9 – Social Dimensions

Good design responds to the social context and needs of the local community in terms of lifestyles, affordability, and access to social facilities. New developments should optimise the provision of housing to suit the social mix and needs in the neighbourhood or, in the case of precincts undergoing transition, provide for the desired future community.

The proposed development is proposed as “affordable housing” in accordance with the State Environmental Planning Policy (Affordable Rental Housing). As summarised in the report prepared by Judith Stubbs and Associates, the proposed development does not provide housing that will be affordable to the vast majority of those who need affordable housing in Manly Local Government Area and that the development may be unsustainable as affordable housing in the future. On this basis, the development does not respond to the purpose for which it is proposed.

Principle 10 – Aesthetics

Quality aesthetics require the appropriate composition of building elements, textures, materials and colours and reflect the use, internal design and structure of the development. Aesthetics should respond to the environment and context, particularly to desirable elements of the streetscape or, in precincts undergoing transition contribute to the desired future character of the area.

The materials and finishes of the development are considered to be satisfactory and are consistent with material used in many of the contemporary developments within the locality.

The following is an assessment of the proposed development against the Residential Flat Design Code in accordance with the requirements of State Environmental Planning Policy No. 65 – Residential Flat Development.

Residential Flat Design Code

Site Area: 2910sqm	<u>Permitted/ Required</u>	<u>Proposed</u>	<u>Complies Yes/No</u>
Building Depth	Single Aspect – 8m Dual Aspect – 10 - 18m	Apartments A1, A2 and A5 are single aspect and have building depths in excess of 8m	No
Street Setbacks	Consistent with existing	According to the survey plan: 17 Beatrice Street – 5.1m 25 Beatrice Street – 12.3m Proposed development seeks minimum 5m setback in the area closest to 17 Beatrice Street	Yes
Side and Rear Setbacks	Consistent with existing streetscape patterns	According to the survey plan: 17 Beatrice Street – 2m 17 Beatrice Street – 16m to pool (rear) 25 Beatrice Street – 1.5m 25 Beatrice Street – 27.5m (rear) 16 Amiens Street – 9.5m (rear) 18 Amiens Street – 11m (rear) 20 Amiens Street – 20m (rear) Proposal seeks minimum 2m setback to the boundary shared with 17 Beatrice Street	No

Site Area: 2910sqm	<u>Permitted/ Required</u>	<u>Proposed</u>	<u>Complies Yes/No</u>
		<p>Minimum 1.5m setback to the boundary shared with 25 Beatrice Street</p> <p>Minimum 2.5m setback between rear property boundary and outdoor terrace areas at ground floor level and 3.4m setback to first floor terrace areas</p>	
Deep Soil Zones	Min 25% of open space	Approximately 50% of the open space area (at ground level) is provided as deep soil zone	Yes
Fences and Walls	Consistent with existing streetscape	The front fence contains letterboxes and an entry statement. There is no established theme of fences along the Beatrice Street streetscape	N/A
Landscape Design	Improve amenity, streetscape and energy efficiency	The submitted landscape plan was assessed by Council's Landscape Officer and is satisfactory subject to conditions	Yes
Open Space	<p>Between 20-30% of site area</p> <p>Private Open Space to be min 25sqm and min dimension of 4m</p> <p>Balconies 2m depth minimum</p>	<p>Approximately 23% of the site area is provided as open space</p> <p>Private open space areas exceed 25sqm and the minimum dimension of 4m</p> <p>All balconies have a minimum depth of 2m</p>	Yes
Building Entry	<p>Provide physical and visual connection between building and street</p> <p>Provide safe entrance</p> <p>Provide equitable entrance</p>	<p>The connect between the building and the street is restricted</p> <p>All entrances to the buildings are safe and equitable</p>	Yes
Parking	<p>Provide underground car parking where possible</p> <p>Provide bicycle parking</p>	<p>All resident car parking spaces are provided in the two (2) levels of basement. Three (3) visitor spaces are located at ground level</p> <p>Thirty (30) bike racks are provided in a designated storage area in the basement</p>	Yes
Pedestrian Access	Barrier free access to at least 20% of dwellings	All of the dwellings have barrier free access due to the provision of lifts and ramps. However, the convenience of this access is discussed below	Yes

Apartment Layout	Min apartment size: 1 bed – 50sqm 2 bed – 70sqm 3 bed – 95sqm	As discussed previously, Apartment A2 is considered to be a 2 bedroom apartment and does not comply with the minimum floor area requirements	No
Apartment Mix	Provide an apartment mix	The apartment mix is not integrated into both aspects (affordable and non affordable) of the development	No
Building Configuration	Ceiling Heights 2.7m habitable 2.4 non habitable Storage Studio – 6m ³ 1 bed – 6m ³ 2 bed – 8m ³ 3 bed – 10m ³	Ceiling height is 2.7m Development is required to provide 140m ³ of designated storage space. Only 75m ³ is provided	Yes No
Acoustic Privacy	Like rooms together	The development does not propose like rooms of adjoining apartments together	No
Daylight Access	70% of units to receive 3 hours between 9am – 3pm Single aspect units limited to 10% of total	76% of apartments receive 3 or more hours of direct sunlight in midwinter 5 apartments of the development have a single aspect. This represents 30% of the development	Yes No
Natural Ventilation	60% of units to be naturally crossed ventilated	70% of the units are cross ventilated	Yes

Building Depth and Single Aspect Apartments

Apartments A1, A2, A5, 3 and 7 have a single aspect to the west. Apartments A1, A2 and A5 also have building depths that exceed the maximum of the Residential Flat Design Code. The common objective of the building depth and single aspect requirements is to provide for adequate amenity for building occupants in terms of solar access and natural ventilation. In this regard, apartment A1 does not have sufficient solar access and neither of the apartments in question provide for good cross ventilation.

Rear Setback

The objectives of a rear setback include:

- *to maintain deep soil zones to maximise natural site drainage and protect the water table.*
- *to maximise the opportunity to retain and reinforce mature vegetation.*
- *to optimise the use of land at the rear*
- *to maximise building separation to provide visual and acoustic privacy*

The topography of the site is significant in the consideration of rear setbacks as the properties adjoining the rear boundary are substantially lower than the subject site, which increases the potential for overlooking and visual and acoustic privacy impacts. Of particular concern is the proximity of the terrace and swimming pool areas of apartments 6, 7 and 9 of the development and the terrace of apartment 8. Although, some existing landscaping provides a visual buffer between the development and the adjoining properties, the proximity of the development and the uses of the spaces would impact on the current amenity enjoyed by the neighbouring properties.

In addition, the rear setback of the development extends beyond the established rear building line as averaged by the two adjoining properties and that provided by the existing dwelling. This contributes to the visual bulk and scale of the development and is inconsistent with the established character within the immediate locality of the subject site. In particular, the built form of the proposal does not align (or is even close to) the existing built form on 25 Beatrice Street. Instead, the development extends beyond the rear alignment of 25 Beatrice Street and results in significant visual impact.

Physical and Visual Connection to the Street

The opportunities physical and visual connection between the development and the street frontage are limited on the site due to its topography. The existing streetscape of the western side of Beatrice Street is varied and consists of front fences, dwelling entrances and garages.

In this instance, the development entrance is characterised by the driveway and front fence, which contains letterboxes.

Concern was initially raised with the applicant over the proposed front fence and its heights. The applicant responded to these concerns with the following:

- *There is no opportunity for passive surveillance on the low side due to the topography so solid walls are not an issue.*
- *The extent of the wall for the mail boxes is very small – it is only 8m long in a boundary that is some 45m long – that is roughly 17% of the boundary frontage that is affected by the wall leaving some 37m clear of any obstruction other than vegetation at the street frontage.*
- *Relative to the level of the street the post box wall has a height of 1.2m which is well below the eye line of a pedestrian and is an appropriate scale for the post box wall given the treatment seen elsewhere in the street.*
- *The frontage is in fact dominated by landscape rather than a wall and the traffic fence that currently exists will be reinstated. The result will be totally in keeping with the character of the steeper part of Beatrice Street and will blend well into the environment.*
- *The solution proposed is far better than the recent development to the north of the street with blank walls and garages well which create exactly the issues described above but are still a precedent in the street.*

Based on the applicant's justification and the topography of the site, it is considered that the design solution proposed to the site entrance is appropriate.

Adaptable Housing

The development provides for five (5) adaptable housing apartments. Council's Access Committee have assessed these apartments and concerns regarding access and compliance with the new gradient requirements have been raised. These concerns have been reiterated in the report prepared by Judith Stubbs and Associates who advises that the proposed development is unlikely to be suitable for aged and disabled people.

Minimum Floor Area

As discussed previously, Apartment A2 of the proposed development is considered to be a two (2) bedroom apartment given that the proposed study could be converted into a small bedroom. This apartment has a floor area of 63sqm and does not comply with the minimum 70sqm requirement as required by the Residential Flat Design Code.

Apartment Mix

The Residential Flat Design Code suggests the provisions of various sized apartments. Overall the development provides a mix of studio, one bedroom, two bedroom and three bedroom apartments. However, when looked at in isolation, the smaller apartments are allocated as “affordable housing” and the larger apartments dominate the remainder of the apartments. The mix of units provided for the “affordable housing” component consist of studio apartments, one (1) bedroom apartments and two (2) bedroom apartments. However, as demonstrated elsewhere on the site, the development is capable of accommodating a substantial number of three (3) bedroom apartments as well.

Given that the development is likely to attract moderate income earners to its affordable housing component and that *moderate income earners are somewhat more likely than very low and low income earners to need larger 2 or 3 bedroom accommodation*, the allocation of apartments and their sizes to the affordable housing component of the development is questionable.

Storage

In accordance with the Residential Flat Design Code, at least 140m³ of designated storage space is to be provided and allocated to the respective units. In this case, the development proposes a 38m³ storage space, two (2) 9m³ storage spaces, a 10m³ storage space and a storeroom for apartment 7. These areas equate to approximately 75m³, and therefore do not meet the minimum requirement.

It is noted that the floor plans of the apartments indicate storage areas within living rooms and hallways, but the location, convenience and size of these storage areas do not satisfy the objectives of providing sporting, leisure, fitness and hobby equipment.

Acoustic Privacy

In order to enhance acoustic privacy it is preferred that like rooms of adjoining apartments are located adjacent to each other. This does not occur in the proposed development in the following circumstances:

- Living room of apartment A1 is adjacent to a bedroom within apartment A2;
- Living room of apartment A4 is adjacent to a bedroom within apartment A5;
- Bedroom of apartment A8 is adjacent to the living room of apartment A7
- Living room of apartment 2 is adjacent to the bedroom of apartment 3;
- Bedroom of apartment 3 is adjacent to the living room of apartment 4;
- Living room of apartment 6 is adjacent to the bedroom of apartment 7;
- Bedroom of apartment 7 is adjacent to the living room of apartment 8;
- Rumpus room of apartment 7 is adjacent to the bedroom of unit 9.

The applicant has responded to this issue by stating that:

At the time the code was written there were major acoustic problems with development constructed by a poor quality developer in the CBD. This consideration was included to encourage improvement to the acoustic standards for all apartments due to the proliferation of this developer's product. Since that time however the BCA has required higher standards to address this concern.

Given the design of the units which are generally wide fronted corner or two storey units, it would be difficult to avoid the living to bedroom arrangement or it was avoided it would internalise many of the bathrooms. Many of the living areas occupy the entire width of the unit and the design of the unit frontages has been arranged to allow view sharing from the majority of the habitable rooms. As there are often living areas on both sides of a centrally located apartment the bedroom definition must be adjacent to one of them.

Given the current construction standards we do not consider that this is an area of concern or determinative.

Based on the above justification provided by the applicant, the current standards of the Building Code of Australia and the assessment by Council's Building Surveyor, the proposed layout is considered to be satisfactory.

Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005 (deemed SEPP)

The subject site is located within the Foreshores and Waterways area as outlined in the Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005. As such, the following planning principles apply:

- (a) *development should protect, maintain and enhance the natural assets and unique environmental qualities of Sydney Harbour and its islands and foreshores,*

The proposed development seeks significant excavation of the natural escarpment of the site. This includes the disturbance of natural site features include rock outcrops and some tree removal. The development will be visible from the water and along the escarpment.

- (b) *public access to and along the foreshore should be increased, maintained and improved, while minimising its impact on watercourses, wetlands, riparian lands and remnant vegetation,*

The proposed development does not impede or restrict existing public access to the foreshore.

- (c) *access to and from the waterways should be increased, maintained and improved for public recreational purposes (such as swimming, fishing and boating), while minimising its impact on watercourses, wetlands, riparian lands and remnant vegetation.*

The use of the site as public access to the foreshore would not be advantageous as sufficient access is made available with existing walkways, footpaths and the provision of public parking opposite the subject site (between the site and the foreshore area).

- (d) *development along the foreshore and waterways should maintain, protect and enhance the unique visual qualities of Sydney Harbour and its islands and foreshores,*

The proposed development will be visible from the harbour foreshore. As stated earlier, the shape and form of the development differs to the existing style that dominates the locality and this may impact on visual qualities of the Clontarf escarpment.

- (e) *adequate provision should be made for the retention of foreshore land to meet existing and future demand for working harbour uses,*

The Development Application does not seek to remove foreshore land.

- (f) *public access along foreshore land should be provided on land used for industrial or commercial maritime purposes where such access does not interfere with the use of the land for those purposes,*

The subject site is located away from the direct foreshore and interface between the land and the harbour. Therefore this principle does not apply.

- (g) *the use of foreshore land adjacent to land used for industrial or commercial maritime purposes should be compatible with those purposes,*

The subject site is located away from the direct foreshore and interface between the land and the harbour. Therefore this principle does not apply.

- (h) *water-based public transport (such as ferries) should be encouraged to link with land-based public transport (such as buses and trains) at appropriate public spaces along the waterfront,*

The above principle is beyond the scope of the Development Application being considered.

- (i) *the provision and use of public boating facilities along the waterfront should be encouraged*

The subject site is not located on the waterfront and therefore boating facilities are not provided as part of the application, nor does the application seek to impact or impede access to existing public boating facilities.

State Environmental Planning Policy (Building Sustainability Index – BASIX) 2004

The Development Application was accompanied with a BASIX Certificate in accordance with State Environmental Planning Policy (BASIX) 2004. The Development Application has since been

amended and a revised BASIX Certificate has not been provided. This could be imposed as a condition on the notice of determination should the Development Application be approved.

Manly Local Environmental Plan 1988:

The site is in zone No 2 – The Residential Zone which permits residential flat buildings with the consent of Council. The following is an assessment of the proposed development against the relevant clauses and objectives of the Manly Local Environmental Plan 1988.

Clause 10 Objectives

The following comments are made in regard to the objectives for the Residential Zone as stated in Clause 10 of the Manly Local Environmental Plan 1988;

(a) *to set aside land to be used for purposes of housing and associated facilities;*

The land is residential and no change is proposed to this use.

(b) *to delineate, by means of development control in the supporting material, the nature and intended future of the residential areas within the Municipality;*

The proposed development is located within the Residential Zone and considered under the Development Control Plan for Residential Zone in this report which concludes that the objectives of that the Development Control Plan are not satisfactorily addressed and that the form of development proposed is contrary to the desired future character of the locality.

(c) *to allow a variety of housing types while maintaining the existing character of residential areas throughout the Manly Council area;*

The proposed development seeks to add to the variety of housing types within the Clontarf area, however as demonstrated earlier in this report, the form of development is not compatible with the existing character of the surrounding residential area.

(d) *to ensure that building form, including alterations and additions, does not degrade the amenity of surrounding residents or the existing quality of the environment;*

As demonstrated in the assessment of this Development Application against the provisions of State Environmental Planning Policy (Affordable Rental Housing) 2011, State Environmental Planning Policy No. 65 – Design Quality of Residential Flat Development and Council's Development Control Plan for Residential Development, the proposal results in adverse amenity impacts on the surrounding residents and reduces the existing quality of the environment.

(e) *to improve the quality of the residential areas by encouraging landscaping and permitting greater flexibility of design in both new development and renovations;*

The proposed development provides unsatisfactory landscaping of the site, with the removal of Tree No. 2 and the encroachment into the established rear setback corridor, as discussed earlier in this report. Also the development does provide for greater flexibility in the design of the development.

(f) *to allow development for purposes other than housing within the zone only if it is compatible with the character and amenity of the locality;*

The above objective is not applicable to this assessment.

- (g) *to ensure full and efficient use of existing social and physical infrastructure and the future provisions of service and facilities to meet any increased demand;*

Sufficient social and physical infrastructure is available to the proposed development and but there are inadequate services and facilities, including public transport, to meet the development.

- (h) *to encourage the revitalisation of residential areas by rehabilitation and suitable redevelopment.*

The subject site consists of three (3) individual allotments, which are to be consolidated under this Development Application. The existing situation of one (1) single dwelling over the three (3) allotments is unusual for the area and suggests that the site may be suitable for redevelopment and revitalisation. However, concern is raised that the proposed development is not a suitable form of redevelopment as it represents an overdevelopment of the site.

- (i) *to encourage the provision and retention of tourist accommodation that enhances the role of Manly as an international tourist destination, and particularly in relation to the land to which Manly Local Environmental Plan 1988 (Amendment No 57) applies.*

The above objective is not relevant to this assessment as the subject site is not within the Tourist Area.

Clause 17 – Visual and aesthetic protection of certain land

The subject site is located within the Foreshore Scenic Protection Area and the applicant has suggested that *the proposal will appear as part of the Clontarf amphitheatre of residential development, which overlooks The Spit and Spit Bridge. As the tree canopy on the site is largely retained, and as the development is almost wholly below the crown of Beatrice Street, and given that the site is not on nor interrupts a ridgeline, the proposal will have no significant impact when viewed from the water and foreshores.*

A montage provided with the application illustrates the visual impact of the proposal on the escarpment of Clontarf. This montage illustrates that the majority of the tree canopy is retained but that the built form of the development is obviously different to the surrounding properties. In this regard, the development presents as a long built form along the escarpment whereas the surrounding dwellings are more slender in shape.

Clause 33 – Acid Sulphate Soils Planning Map

The subject site is located within Class 5 Acid Sulphate Soils. No further assessment is required, as the development is not within 500 metres of adjacent Class 1, 2, 3 or 4 land and the works are not likely to lower the water table below one (1) metre.

79C(1)(a)(ii) - any draft environmental planning instrument that is or has been placed on public exhibition and details of which have been notified to the consent authority (unless the Director-General has notified the consent authority that the making of the draft instrument has been deferred indefinitely or has not been approved), and

There is no draft environmental planning instrument that requires further consideration in the assessment of this Development Application.

79C(1)(a)(iii) - any development control plan, and

Sydney Harbour Foreshores and Waterways Area Development Control Plan

The proposed development has been assessed against the relevant provisions of the Sydney Harbour Foreshore and Waterways Development Control Plan and is considered to be contrary to the requirements relating to built form and visual impact as the development presents to the harbour.

Mainly Development Control Plan for the Residential Zone 2007 Amendment 1:

The following is an assessment of the proposal's compliance with the numerical standards of the Development Control Plan. Where a variation is proposed to the standards an assessment is included in the Planning Comments.

Site Area: 2910m ²	Permitted/ Required	Proposed	Complies Yes/No
Density - Sub Zone 7	1 dwelling per 1150sqm	1 dwelling per 171sqm	No
Floor space ratio	0.4:1	0.7:1	No
Floor space ratio - existing	0.4:1	0.13:1	Yes
Wall height Northern boundary South boundary	8m 8m	8m potentially up to 11m	Yes No
Roof height	3m	Flat roof proposed	No
Fence height	1m or 1.5m with 30% transparency	Greater than 1m with no transparency	No
Setback Front	6.0m or streetscape	5m consistent with streetscape	Yes
Setback Rear	8.0m	3.4m	No
Northern setback side	3m	1.6m – 3m	No
Southern setback side	3m – 3.7m	2m – 3m	No
Pools - Side and Rear	1m	Greater than 1m	Yes
Open space	60%	23%	No
Open space - total	1746sqm	1056qm	No
Open space - soft	698sqm	335sqm	No
Open space -above ground	698sqm max	390sqm	No
Number of Endemic Trees	4 trees	At least 4 trees provided	Yes
Private Open Space	12sqm	8sqm – 156sqm +	No
Car Parking – Residents	22 spaces	27 spaces	Yes
Car Parking - Visitors	5 spaces	3 spaces	No
Shadow adjacent open space adjoining EW orientation	Remove no less than 1/3 2 hours in midwinter	No less than 1/3 removed At least 2 hours provided	Yes Yes

<u>Issues</u>	<u>Applicable</u>	<u>Not Applicable</u>
Views	Refer to assessment below	
Privacy	Refer to assessment below	
Heritage – Actual Property		Not Applicable
Heritage – In Vicinity		Not Applicable
Threatened Species		Not Applicable
Foreshore Scenic Protection Area	Refer to assessment below	
Excavation	Refer to assessment below	
Landslip and Subsidence	Refer to assessment below	

Comment:

Density and Floor Space Ratio

The non compliance with the dwelling density maximum and floor space ratio are the due to the form of development proposed and the concessions granted under State Environmental Planning Policy (Affordable Rental Housing) 2009. As discussed earlier in this report, the proposed development is not compatible with the character of the area by virtue of the built form, bulk and scale of the development.

Wall Height and Roof Height

The maximum wall height permitted under Council's Development Control Plan is 8m. The proposed development seeks to vary this requirement for the "affordable housing" residential flat building. In particular, apartment 9 and portions of apartments 7 and 8 appear to extend above the maximum 8m wall height limit. The applicant has clarified that the sections submitted with the Development Application depict the height limit as it is at the boundary rather than accurately depicting the height limit at the direct point where the section is taken. However, based on the survey plan, it appears that a noncompliance still exists.

The applicant has also made reference to the roof height limit, which allows for an additional height above the wall of 3m. The development has been designed with a flat roof and therefore, the additional height that Council would normally consider for a roof structure is being used as floor area for the development.

In this regard, the Development Control Plan states:

Habitable rooms situated substantially above the maximum allowable wall height and/or within the roof structure shall only be permitted in buildings which existed prior to the operative date of this Plan and where it can be demonstrated that they do not detract from the character nor the integrity of the roof structure and will not adversely impact on the amenity of adjacent and nearby properties and the streetscape.

The proposal is for the redevelopment of the site and is not an alteration to an existing building. The additional floor space is used for apartment 9 and is visible from Beatrice Street. Although, it is partly screened by the front fence / letterbox structure.

The amenity impacts arising from the floor area that breaches the 8m height limit include potential view loss from the public domain (being Beatrice Street). The potential view loss impact is assessed in the following.

View Loss

The Development Application was accompanied with a view loss assessment and perspective drawings. It appears that the location of the development on the site has been done in consideration of the potential view loss impacts from the adjoining properties. As a consequence the view loss from the adjoining properties is minor.

Of more concern, is the potential water view loss from the public domain of Beatrice Street, particularly given the height of the development. This issue has not been resolved and is still outstanding.

Front Fence

The Development Control Plan limits the height of front fences to 1m maximum or 1.5m provided 30% of the fence is transparent. The Development Application proposes a front fence, which contains letterboxes for the respective units and an entrance statement. The fence exceeds 1m in height and does not provide any transparent elements. This issue was raised with the applicant who provided the following justification:

The design offered by the site is appropriate for the following reasons:

- *There is no opportunity for passive surveillance on the low side due to the topography so solid walls are not an issue.*
- *The extent of the wall for the mail boxes is very small – it is only 8m long in a boundary that is some 45m long – that is roughly 17% of the boundary frontage that is affected by the wall leaving some 37m clear of any obstruction other than vegetation at the street frontage.*
- *Relative to the level of the street the post box wall has a height of 1.2m which is well below the eye line of a pedestrian and is an appropriate scale for the post box wall given the treatment seen elsewhere in the street.*
- *The frontage is in fact dominated by landscape rather than a wall and the traffic fence that currently exists will be reinstated. The result will be totally in keeping with the character of the steeper part of Beatrice Street and will blend well into the environment.*
- *The solution proposed is far better than the recent development to the north of the street with black walls and garages well which create exactly the issues described above but are still a precedent in the street.*

The above justification is acceptable on the grounds of appearance and streetscape. However, as discussed previously in this report, the view loss impact arising from the height of the residential flat building behind the front wall is unclear. While it is unexpected that the front wall will have a significant impact on view loss from the public domain, the actual impact has not been accurately assessed.

Rear Setback

As mentioned in the assessment against the Residential Flat Design Code, the topography of the site is significant in the consideration of rear setbacks given the potential for overlooking and visual and acoustic privacy impacts. Also, the rear setback of the development extends beyond the established rear building line and this contributes to the visual bulk and scale of the development and is inconsistent with the established character within the immediate locality of the subject site.

Side Setbacks

In accordance with the Development Control Plan the proposed development is to be setback 3m from the northern property boundary and up to 3.7m along the southern boundary.

The majority of the development complies with the northern boundary side setback with the exception of the media room for apartment 6 on level 2. The media room is only setback 1.6m from

the adjoining property boundary. This setback variation is satisfactory as the variation is limited to a length of 3.9m and does not result in any adverse privacy or amenity impacts.

The variation along the southern property boundary is more significant. The basement of the development extends to within 2m of the southern boundary and the apartments above are setback 3m. Although this setback increases up to 5m on level 5. The proximity of the development to the adjoining property boundary is unsatisfactory given the extent of excavation proposed, the bulk and scale of the development at this location.

Open Space

The proposed development does not comply with the minimum open space requirements of Council's Development Control Plan. In particular the amount of open space, area available for deep soil planting and the minimum area requirements of balconies has not been complied with. The open space requirements of the Development Control Plan are specific to this locality and density sub-zone. Given that the surrounding locality is dominated by single detached dwellings compliance with the open space requirements is not difficult to achieve.

However, in this instance, the applicant has the benefit of additional floor space as provided under State Environmental Planning Policy (Affordable Rental Housing) 2009 and therefore, the site coverage of the development is much greater than a development that has a compliant floor space ratio under Council's Development Control Plan. The non-compliance with Council's open space requirements indicates that the proposal is inconsistent with the character of the local area. When compared to a single dwelling, compliance with the open space requirements could possibly be achieved in a form of development that is more consistent with the local area.

In addition, the balcony sizes of the designated "affordable housing" apartments is unsatisfactory. The dimension may comply with the standards of the residential flat design codes, however a total area of 12sqm is preferred to enable sufficient outdoor and entertaining space for each unit.

Visitor Car Parking

Council's Development Control Plan requires the provision of five (5) visitor car parking spaces. The development does not comply with this however, the a variation to this requirement is justified. Overall, the development proposes thirty (30) car parking spaces of which twenty-seven (27) will be available in the basement for the use of residents and three (3) are visitor spaces outside of the basement. The total amount of car parking exceeds the requirements of the Development Control Plan it is the distribution of these spaces that does not comply.

State Environmental Planning Policy (Affordable Rental Housing) 2011 provides that only 8.5 car parking spaces are required for the development. Given that the requirements under the Policy supersede Council's requirements and that compliance with the Policy cannot be used as ground for refusal, the variation to car parking is acceptable.

Privacy

As mentioned previously in this report, concern is raised over the setbacks and the potential visual privacy impacts on the adjoining properties.

Foreshore Protection Area

Council's Development Control Plan requires that any development within the Foreshore Scenic Protection Area minimise the contrast between the built environment and the natural environment and also maintain the visual dominance of the natural environment. In this regard, Council is concerned with the visual impact of the development along the Clontarf escarpment given that its appearance is contrary to similar built forms in the vicinity. Council has also requested that Tree No. 2 be retained given its health, maturity and visual aspect.

Excavation and Landslip

As mentioned previously in this report, the Development Application is seeking to extensively excavate the site (up to 10.5m) in order to accommodate two (2) levels of basement car parking. In this regard, the Development Application was accompanied by a Geotechnical Investigation, which makes recommendations relating to excavation design, excavation equipment and vibration, excavation support, foundations, retaining walls and drainage. A number of these recommendations have been clarified during the assessment of the Development Application. The report makes the following conclusions:

The site investigation has identified a relatively shallow profile of fill and sandy soils overlying medium to high strength sandstone bedrock at < 2.5m depth. There were no signs of existing impending instability within the site however the cliff to the south-west contains several overhangs and sections of rock which are considered of limited natural long term stability. Provided the proposed development, which is located well away from the western cliff, is undertaken as per the recommendations of this report and under geotechnical supervision then the site is considered suitable for the proposed development.

The site has been assessed using the Australian Geomechanics Society paper titled "Landslide Risk Management Concepts and Guidelines" May 2002, Vol. 37, No. 2 and the March 2007, publication titled "Landslide Risk Management" Volume: 42, No. 1, as having an "Acceptable" risk to property and persons on site and adjacent properties at present. Provided the above recommendations are followed during and after construction then this risk level should remain "Acceptable."

79C(1)(a)(iia)- any planning agreement that has been entered into under section 93F, or any draft planning agreement that a developer has offered to enter into under section 93F, and
No such agreement has been proposed as part of this application.

79C(1)(a) (iv)- the regulations

The Environmental Planning and Assessment Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia. Accordingly, appropriate conditions of consent are recommended for imposition should this application be considered worthy of approval.

79C(1) (b)- the likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality

As demonstrated in the above assessment, the proposed development is likely to have an adverse impact on the natural and built environments as well as the social characteristics of the locality.

79C(1) (c)- the suitability of the site for the development,

There are no burdens or constraints that would preclude residential development on this site. However, the form to which the development is proposed and the associated impacts as discussed in this report render the site unsuitable. In addition, the use of the site as "affordable housing" is also considered to be unsuitable given that there will be very limited benefit arising from the proposed development as affordable housing for those in the Manly Local Government Area who need it.

79C(1) (d)- any submissions made in accordance with this Act or the regulations

The initial Development Application was notification and subsequent amended plans were renotified. The notification included notification to nearby and adjoining property owners in accordance with Council's Notification Policy. The following is a summary of the issues raised in the submissions received during both notification periods:

Affordable Housing

Not in the spirit of what the guidelines for Affordable housing intended and failure to meeting the aims of the State Environmental Planning Policy

Council is obliged to assess the Development Application as it is presented and lodged with Council and is to consider the development proposal on its merits. In this instance, Council is recommending refusal of the Development Application based on a number of grounds, including failure to provide a development that is compatible with the character of the locality as required under State Environmental Planning Policy (Affordable Rental Housing). Also of relevant is the point raised by Judith Stubbs and Associates, Council's consultant Social Planner which state:

Of relevance to considerations under s 79C(1)(b), the assessment indicates that there will be very limited benefit arising from the proposed development as affordable housing for those in the LGA who need. As such, it is unlikely to offset any negative impacts of the proposal that may be identified in the course of a s 79C assessment.

Out of context and character with the surrounding locality

It has been suggested that the proposed development is out of context and character with the surrounding environment. This issue has been assessed previously in this report, and Council concurs that the development is not compatible with the character of the surrounding locality.

Life of the Affordable Housing Component beyond the 10 year period

As stated in the report prepared by Judith Stubbs and Associates:

Although it may remain in affordable rental, it appears likely that the dwellings will be sold at the end of 10 years for a substantial profit due to the high amenity of the site. If they remain in rental, the amenity of the area also indicates that they may not remain rented for an 'affordable' price, though the limited local data available indicates that again they may be affordable for a very narrow range of renters at the upper end of the moderate-income band.

Failure to integrate the affordable component within the overall development

The provision of an affordable housing component within the development does not imply a requirement to incorporate the affordable component throughout the development. The housing component of the development is very much separate with the provision of on residential flat building for "affordable housing" and a separate building for the remainder of the apartments. However, the overall development does share facilities and services such as car parking, waste disposal areas and common open space.

No evidence the owner has involved a community housing association in the process

The applicant has not provided evidence of a community housing provider to be engaged to manage the affordable housing component of the development.

Not a full time bus service or public transport in the area

The proposed development complies with the requirement to be in close proximity to public transport in accordance with the State Environmental Planning Policy (Affordable Rental Housing), however, as demonstrated in research conducted by Judith Stubbs and Associates and Council's Traffic Engineer the public transport services are less than desirable to service the proposed development.

How can affordable rents be achieved in this area?

The Development Application is likely to provide genuinely affordable to only a narrow range of those who need such accommodation (around 8% of very low, low and moderate income earners in rental stress and those at the top end of the moderate income range). In contrast, a strong majority of those who need affordable housing in the Local Government Area are very low and low income earners, with a high proportion younger and needing smaller accommodation.

Proposal seeks maximum affordable housing component

The proposed development complies with the requirements of State Environmental Planning Policy (Affordable Rental Housing) in relation to the provision of affordable housing and the quantity of that proposed.

The affordable housing component has less amenity

It has been suggested that the affordable housing component of the development has less amenity when compared to the remaining apartments. The issue of amenity is open to interpretation. When comparing the facilities and aspect of the affordable apartments with the remaining apartments of the development then there are differences. Such differences include the size, view opportunities, provision of large living spaces including outdoor entertaining spaces (including swimming pools). However, the internal amenity of the apartments is similar, in that cross ventilation is achieved for the majority of the apartments, solar access opportunities is similar and car parking will be available.

The apartment mix is polarised with only studios and one bedroom units provided for the affordable housing component

This issue was mentioned in the assessment of the Development Application. Technically speaking, the apartment mix proposed with the Development Application complies with the requirements of the Residential Flat Design Code, however when specifically looking at the affordable housing component of the development there is an obvious lack of larger style of apartments.

The lack of larger style apartments has to also be looked at in the context of the report prepared by Judith Stubbs and Associates, as this report suggested that the development is likely to attract moderate income earners to its affordable housing component and that *moderate income earners are somewhat more likely than very low and low income earners to need larger 2 or 3 bedroom accommodation*.

Limited work opportunities in the area

The site is located within a residential area and is not located within walking distance of any large employment centres. Most employment centres would be accessed via public transport or private vehicle.

No shops in the vicinity

There is a neighbourhood shopping centre located within approximately 800m of the subject site. This distance could be considered as walking distance.

No wheelchair access as there is no footpath along Beatrice Street

This issue has arisen during the assessment of the Development Application. As the Development Application provides adaptable housing components and there are some concerns regarding access and circulation within the development, however it is acknowledged that access to the site is also problematic given the lack of a footpath along the frontage.

Compliance with other Environmental Planning Instruments

Manly Local Environmental Plan

A number of the submissions received expressed concern that the proposed development sought approval for a residential flat building within a zone that they thought was limited to low density housing. The Manly Local Environmental Plan permits residential flat development within its residential zone provided the objectives of the zone are satisfied. In this regard, the assessment of the Development Application revealed that the proposed development does not satisfy the objectives of the residential zone and this forms part of the reasons of refusal for the Development Application.

In addition, a number of the submission received also express concern over the developments failure to comply with the Foreshore Scenic Protection Area requirements. Council agrees that the development is undesirable in relation to the Foreshore Scenic Protection Area.

Built Form and Associated Impacts

Density of the Development

Concern has been raised over the non-compliance with Council's dwelling density and floor space ratio controls required under Council's Development Control Plan. As explained in the planning assessment section of this report, the floor space ratio control contained within the Development Control Plan is superseded by the floor space ratio control within State Environmental Planning Policy (Affordable Rental Housing) in this instance. The applicant obtains this benefit by providing an affordable housing component to the development. However, as detailed in the assessment, Council does not agree that the development is compatible with the existing character and the desired future character of the area and is therefore recommending that the Development Application be refused on these grounds.

Bulk and Scale

It has been suggested that the development is unsatisfactory with regards to bulk and scale, particularly in comparison with surrounding development. In response to these concerns, Council agrees that the bulk and scale of the development is unsatisfactory and uncharacteristic when compared with the local area. The bulk and scale of the development arises from the additional floor space that is granted under State Environmental Planning Policy (Affordable Rental Housing).

Building Height

Concern has been raised that the proposed building height is excessive and does not comply with Council's requirements. Council's Development Control Plan does suggest that the building height should be limited to two (2) storeys. However, given the context of the site and the site's topography and surrounding developments, a proposal in excess of two storeys in height may be considered on merit. However, as it is currently proposed, the development exceeds the wall height requirement of Council's Development Control Plan. Overall, the form and massing of the proposal is uncharacteristic of the local area and this renders the overall appearance of the development unsatisfactory.

Development presents as a partial storey to Beatrice Street even though the existing dwelling can not be seen

The reason why the development is partially visible from Beatrice Street is that the development seeks approval for a 5m front setback for a portion of the development. Council has raised concern with the wall height of the development and this includes the portion of the development that is visible from Beatrice Street.

Nearby dwellings are located on the flatter parts of the site.

The proposed development does seek to located a substantial portion of the development on a section of the site where the topography is not as severe. However, the floor space sought with this application requires the applicant to distribute the floor space to other portions of the site. The consequence of this is that the site will need to undergo excavation in order to provide for the floor space and car parking areas sought.

Front setback is inconsistent with the adjoining properties

The proposed development seeks to provide a 5m setback to Beatrice Street. The portion of the development that has this setback is the "affordable housing" residential flat building. This front setback has been assessed and is considered to be satisfactory given its proximity to the adjoining dwelling at 17 Beatrice Street, Clontarf. The development is designed with an increased setback for the remaining portion of the development so as to accommodate the existing driveway and existing tree grouping located along the street frontage.

Side setback breaches

As detailed in the assessment of the Development Application, the proposed development does seek to vary the side setback requirements of Council's Development Control Plan. The variations to the side setbacks are unsatisfactory and form one of the reasons for the refusal of the Development Application.

Impact of garbage on the street

A number of the submissions raised concerns regarding waste disposal and management of the development. The waste storage area is located within the basement of the development and the applicant has indicated that the collection will be coordinated by a private contractor rather than utilizing Council's service. Council's Environmental Health Officer and Waste Management Officer and consider this arrangement to be satisfactory.

View from the Spit

It has been suggested that the proposed development will have an adverse impact on the Clontarf escarpment, particularly when viewed from the Spit. As detailed in the assessment of the Development Application, Council is concerned that the appearance of the development along the escarpment is inconsistent with the surrounding properties. In particular, the massing and form of the development differs and does not reflect the subdivision pattern that is evident from a distance.

Amenity Impacts

View loss and view sharing from the public domain

The Development Application has been assessed for view loss from the neighbouring properties. The development has obviously been designed taking into account the current view and aspect enjoyed by the neighbouring properties and has responded accordingly. The assessment of view loss has revealed that the view impact is minor.

In regards to the potential view loss from the public domain, Council has also raised concerns in relation to this issue and these concerns have not been resolved.

Noise pollution

It has been suggested that the noise pollution will increase as a result of the proposed development. It is expected that the noise generated from the development will increase in comparison to that which may be experienced by a single dwelling. This increase in noise will still be of a domestic residential scale but will be different to the existing levels due to the increase in occupancy on the site and the increased traffic movements entering and leaving the site.

Loss of visual privacy

The issue of visual privacy and particularly the impact on adjoining property owners has been assessed earlier in the report and is an outstanding issue with the Development Application.

Overshadowing

The solar access impact of the development has been assessed in accordance with the relevant State Environmental Planning Policies and Development Control Plan. The proposed development is considered to be satisfactory in relation to solar access as the numerical requirements for solar access for within the development and to the adjoining properties is compliant.

Environmental Impacts

Tree Removal

Concern has been raised over the extent of vegetation removal sought with the proposed development. In this regard, the Development Application seeks approval for the removal of five (5) trees. Council's Landscape Assessment Officer has assessed this request from the applicant and has agreed to the removal of the trees subject to the retention of Tree No. 2. The retention of this tree would require the redesign of the development as it is in the same location as the "affordable

housing” residential flat building. The removal of the other trees has been agreed to subject to conditions and the implementation of the landscape plan.

Extent of excavation

Concern has been raised over the extent of excavation and other earthworks proposed with the Development Application. In this regard, the development is seeking to excavated up to 10.5m of the site. Council is concerned with the extent of excavation on the site.

The Development Application was accompanied with a Geotechnical Assessment. Clarification of some of the recommendations of this report was sought from the applicant and these issues have since been resolved. In the event that the Development Application is approved, it is required that the recommendations of the report be incorporated as conditions on the notice of determination to ensure that the excavation and earth work activities are carried out and completed in a professional and safe manner.

Geological impacts

It has been questioned whether the site can tolerate a building of this scale on the site and if future landslip has been considered. The submitted Geotechnical Assessment has made recommendations relating to the construction methods and footings to be used for the development to ensure that the site and the finalized development is stable.

One of the submissions received provided evidence that Beatrice Street has been the subject of partial collapse in the past and that Council was required to reinstate the road and make it stable. In the case of this Development Application, Council has relied upon the findings of the applicant’s Geotechnical Assessment which suggests that the site is suitable for the development.

Drainage impacts

Reference has been made in a number of the submissions, that the site is subjected to an existing drainage easement. An easement is shown on the historical data for the site, but it appears that this easement was never registered and is not in use.

Concern has been raised over the stormwater drainage from the development and the impact on downstream properties including contributing to the potential future flooding of Allenby Road and Homes Street and middle harbour. In response to these concerns, Council’s Drainage Engineer assessed the Development Application and determined that the proposed stormwater drainage design and supporting documentation submitted with the Development Application was appropriate. Council’s Drainage Engineer has subsequently raised no objection to the development subject to the imposition of standard conditions on the notice of determination.

Impact on existing infrastructure

It has been suggested that the existing infrastructure surrounding and servicing the subject site cannot support the proposed development. In this regard, the Development Application has been assessed and is considered to be satisfactory, with the exception of traffic and parking facilities. Should the Development Application be approved, then Council would impose it standard conditions to ensure that supporting infrastructure is provided and/or upgraded to meet the requirements of the development without adversely impact on the services provided to the surrounding locality.

Traffic and Parking Impacts

Congestion in Beatrice Street

A significant number of submissions received have suggested that the development will add to an already congested Beatrice Street. It is also suggested that Beatrice Street is a major thoroughfare through Clontarf and that the narrowness of the street, the existing traffic combined with the traffic generated from the development, combined with the bus route and on street car parking add to the congestion of the street.

In response to these concerns, Council is mostly concerned with the safe ingress and egress into the site. It is considered that Beatrice Street has the capacity to absorb the traffic generated by the

proposed development and that there are sufficient car parking spaces provided on the site. However, the ability for vehicles to enter and leave the site in a safe manner without presenting a risk to other motorists and pedestrians is something which has not yet been resolved by the applicant.

Pedestrian safety and the local school

Arising from the issue above is the potential safety risk to pedestrians of Beatrice Street and particularly children walking to and from the nearby school. As mentioned in the above, Council is concerned with the safety of pedestrians along Beatrice Street, particularly directly in front of the subject site. There is no footpath located on the western side of Beatrice Street and therefore no visual buffer or relief is provided for vehicles exiting the site before entering the thoroughfare along Beatrice Street. Under these circumstances, the provision of a footpath is preferable as it improves the sight distances for drivers before entering the traffic and it alerts the drivers to the potential of pedestrian activity.

The issue of pedestrian safety along the frontage of the site and the provision of adequate sight distances for drivers has not been resolved and is considered to be a significant consideration in the determination of this Development Application.

Poor Street Lighting

It has been suggested that the existing street lighting along Beatrice Street is poor. This issue is beyond the scope of this Development Application and can be referred to the relevant energy provider should the Development Application be approved.

Lack of car parking

It has been suggested that the proposed development does not provide sufficient car parking for the development. The number of car parking spaces provided exceed the minimum requirements of State Environmental Planning Policy (Affordable Rental Housing) and Council's Development Control Plan and therefore it is considered that sufficient car parking is provided.

Increased pressure for on-street car parking

In conjunction with the concern raised in the above, it is suggested that the visitor car parking on the site will not be utilised and that the car lift will be inconvenient for residents. As a result, it is suggested that residents and visitors will prefer to park along Beatrice Street and will therefore contribute to the lack of available on street car parking and will also add to the congestion of Beatrice Street.

As discussed below, it is considered that the convenience of weather protected, safe and available car parking spaces will encourage residents to park in the basement. With regards to visitor car parking, Council will impose a condition on the notice of determination requiring the placement of sign at the entrance to the site advising of the availability of visitor car parking should the Development Application be approved.

Operation of the car lift

A number of the submissions received raise concern over the operation of the car lift. This concerns raised include the noise generated by the car lift and the convenience of the lift and whether it will actually be utilised. Also, a number of submission suggest that the car lift will be inconvenient and therefore, cars will park on the street.

With regards to the noise generated by the car lift, this will be conditioned by Council to comply with the relevant noise guidelines and Australian Standards should the Development Application be approved.

In relation to the convenience of the car lift, it is something which Council is unable to predict. Given the topography of the site, the weather protection that is provided to people and vehicles who do access the basement, and the safety and security of having the car in the basement. It would appear that the benefits of using the car lift would outweigh parking a vehicle on the street.

Basement is not contained within the building footprint

Concern has been raised that the proposed basement car park is not contained within the building footprint of the buildings above. This is correct as the additional area in the basement is required to provide sufficient manoeuvring space and car parking spaces to support the development. The extension of the basement beyond the building footprint does impact on the provision of deep soil landscaping available for the site.

Other Issues

Impact on property values in the local area

A number of the submissions received suggested that the proposed development would have a negative impact on the property values in the local area. The impact on property values is not a planning consideration and has not been taken into account in the assessment of the Development Application and the final recommendation.

Precedent for similar developments

It has been suggested that the proposed development will set a precedent for similar developments in the local area. The creation of a precedent is unknown, as every Development Application is assessed against the relevant planning controls and Council policies taking into consideration the merits of the proposal.

Improper notification

One (1) submission suggested that the notification of the Development Application was improper. The notification of the Development Application was carried out in accordance with Council's Development Control Plan.

Inflated Capital Investment Cost

A number of submissions suggested that the applicant had inflated the Capital Investment Value of the development. Council raised this issue with the applicant early in the assessment of the Development Application. This issue was resolved with the applicant submitted a revised Capital Investment Value accompanied with a quantity surveyors report.

Construction Impacts on local street and school

Concern has been raised over the potential impacts and disruption to the local area include the local school during the construction phase of the development. In response to these concerns, Council will impose its standard construction management conditions which require the site and surrounding areas to be appropriately managed in a professional and safe manner, on the notice of determination should the Development Application be approved.

Construction Period

Concern has been raised over the duration of the construction period should the Development Application be approved. Once a Development Application is approved, the applicant has five (5) years to commence works. Once the works have commenced, the applicant can finish the development at their convenience.

Incomplete information

It has been suggested that the Development Application was incomplete. Council has assessed the Development Application based on the information provided by the applicant and has determined that there is a suitable amount of information to complete an assessment and to formulate a recommendation.

Confirm concerns raised during the initial notification period

A number of the submissions received during the second notification period stated that their concerns raised in their original submissions had not been addressed in the amended plans and they wanted to pursue their original objections.

Submission from State Member for Manly – 1 July 2011

The following submission was received from the State Member for Manly.

I am writing to express my continued strong objection to the development proposal at 23 Beatrice Street, Clontarf made under the affordable rental housing State Environmental Planning Policy (SEPP) in light of the amended plans.

I understand the widespread concern in the community that this development provoked still exists as the amendments to the plans do not deal with the issues raised previously. Essentially, this development fails to comply with the spirit of the legislation under which it is proposed.

I understand the development still:

- *Does not provide a maximum component of affordable housing – the majority of dwellings are large three bedroom apartments with views and three have their own swimming pool.*
- *Does not provide equal access to amenities for all dwellings – the affordable housing dwellings are studios or one bedroom apartments at the rear with no access to landscaping, no views and no pool.*
- *Does not provide any evidence that a community housing provider has been approached to secure tenants for the affordable dwellings.*

The developer has continued to use the guise of affordable housing to push through a bulk and scale far in excess of Council guidelines.

I have asked the Minister for Planning, Mr Brad Hazzard, to investigate the options available to him in relation to this development.

79C(1) (e) the public interest.

The public interest is served through the detailed assessment of this Development Application under the relevant legislation, environmental planning instruments and consideration of any submissions received relating to it by Council. As a consequence of this assessment, the Development Application is considered to be contrary to the public interest.

CONCLUSION:

As detailed in this report, the Development Application has been assessed having regard to Section 79C of the Environmental Planning and Assessment Act 1979. As a result of this assessment, the Development Application fails to satisfactorily address the relevant Environmental Planning Instruments and Development Control Plans. Also, the development results in adverse impacts on the locality and it is not suitable for the subject site. In addition, the development is not considered to be in the public interest. Subsequently recommended for **Refusal**.

RECOMMENDATION

That Development Application No. 64/2011 for Development consent is sought for the demolition of the existing structures, consolidation of three (3) lots, construction of two (2) residential flat buildings containing a total of seventeen (17) dwellings of affordable and other housing above two (2) levels of basement car parking containing twenty-seven (27) spaces, three (3) visitor car parking spaces, swimming pools, plant rooms and landscaping at 23 Beatrice Street, Clontarf be **Refused** for the following reasons:

1. Pursuant to Section 79C of the Environmental Planning and Assessment Act, 1979 and based on the current information available with the Development Application, the proposal fails to satisfy the provisions of State Environmental Planning Policy (Affordable Rental Housing) 2011:
 - (a) There will be very limited social benefit arising from the proposed development as affordable housing is not designed primarily for those categories of people that most need it.
 - (b) The development is poorly located with respect to transport and services.
 - (c) Apartment A2 is a two (2) bedroom apartment and does not comply with the minimum floor space requirements.
 - (d) The development is not compatible with the character of the locality with regards to subdivision pattern, built form, site coverage, massing, height, setbacks, orientation, potential view loss, visual and acoustic privacy, open space provision, extent of excavation, tree removal, landscaping and traffic and parking.
 - (e) The size of the development is much greater than the other buildings in the street and it appears as one building when viewed from a distance.
2. Pursuant to Section 79C of the Environmental Planning and Assessment Act, 1979 and based on the current information available with the Development Application, the proposal fails to satisfy the provisions of State Environmental Planning Policy No. 65 – Residential Flat Development:
 - (a) The proposed development does not respond nor contribute to its context.
 - (b) The scale of the development is unsuitable in relation to the street and the surrounding buildings.
 - (c) The built form of the development is unacceptable.
 - (d) The density of the development is uncharacteristic of the local area and the desired future character of the area.
 - (e) The amenity of the development does not meet Council's requirements.
 - (f) The safety and security of the development is unsatisfactory with regards to disabled access, vehicle access and egress and pedestrian safety.
 - (g) The social dimension aspect of the proposal is unsatisfactory in that the development does not respond to the affordable housing purpose for which it is proposed.
 - (h) Failure to comply with the criteria contained within the Residential Flat Design Code as it relates to building depth, single aspect apartments, rear setback, acoustic and visual privacy, apartment mix, minimum floor area and storage.
3. Pursuant to Section 79C of the Environmental Planning and Assessment Act, 1979 and based on the current information available with the Development Application, the proposal fails to satisfy the provisions of Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005 (deemed SEPP):
 - (a) The extent of excavation of the escarpment of the site and disturbance of natural site features include rock outcrops and some tree removal.

- (b) The development will have a visual impact when viewed from the water and along the escarpment.
4. Pursuant to Section 79C of the Environmental Planning and Assessment Act, 1979 and based on the current information available with the Development Application, the proposal fails to satisfy the objectives of the Manly Local Environmental Plan 1988:
- (a) The form of development proposed is contrary to the desired future character of the locality.
 - (b) The form of development is not compatible with the existing character of the surrounding residential area.
 - (c) The proposal results in adverse amenity impacts on the surrounding residents and reduces the existing quality of the environment.
 - (d) The proposed development provides unsatisfactory landscaping of the site.
 - (e) The availability of inadequate services and facilities, including public transport, to meet the development.
 - (f) The proposed development is not a suitable form of redevelopment as it represents an overdevelopment of the site.
 - (g) Adverse impacts associated with the development on the Foreshore Scenic Protection Area and resulting from the visual impact of the proposal on the escarpment of Clontarf.
5. Pursuant to Section 79C of the Environmental Planning and Assessment Act, 1979 and based on the current information available with the Development Application, the proposal fails to satisfy the Sydney Harbour Foreshores and Waterways Area Development Control Plan with regard to built form and visual impact.
6. Pursuant to Section 79C of the Environmental Planning and Assessment Act, 1979 and based on the current information available with the Development Application, the proposal fails to satisfy the following requirements of Manly Development Control Plan for the Residential Zone 2007, Amendment 1:
- (a) The dwelling density and floor space ratio of the proposal fail to comply resulting in an adverse built form.
 - (b) The wall height of the development exceeds the stipulated maximum contributing the bulk and scale and potential view loss resulting from the development.
 - (c) Failure to comply with the minimum requirements for side and rear setbacks impacting on the visual and acoustic privacy of adjoining developments and potential landscape areas of the site.
 - (d) The provision of open space for the development is uncharacteristic with surrounding developments and the sizes of balconies proposed for a portion of the apartments is inadequate.
 - (e) The visual impact on the Foreshore Scenic Protection Area is unsatisfactory.
7. Based on the assessment of the application and the above specific reasons for refusal, the proposed development is likely to have an adverse environmental impact on both the natural and built environments of the locality rendering the site unsuitable for the proposed development and would be contrary to the public interest. This is pursuant to Section 79C(b)(c)(e) of the Environmental Planning and Assessment Act, 1979.

ATTACHMENTS

There are no attachments for this report.