

JRPP No	2011SYE068
DA No	DA11/0541
LGA	Sutherland Shire
Proposed Development:	Demolition of an Existing Dwelling and Construction of a Three (3) Storey Residential Flat Building Containing Three (3) Apartments Over a Single Level Basement Car Park
Site/Street Address	16 Arthur Avenue, Cronulla (Lot 18 DP 7402)
Applicant	Innovative Architects
Submissions	20
Recommendation	Approval
Report By	Luke Murtas – Environmental Assessment Officer (Planner) Sutherland Shire Council

Assessment Report and Recommendation

1.0 EXECUTIVE SUMMARY

1.1 Reason for Report

Pursuant to the requirements of State Environmental Planning Policy (Major Development) 2005, this application is referred to the Joint Regional Planning Panel as the proposed development exceeds 13m in height and Council's height control of a maximum of three (3) storeys on a site within the Coastal Zone.

1.2 Proposal

The proposal is for the demolition of the existing buildings on the site and construction of a new three (3) storey residential flat building with basement parking. There will be one (1) apartment per floor, making three (3) in total.

1.3 The Site

The subject site is located off the eastern side of Arthur Avenue in Cronulla and also has a frontage to an ocean front public walkway known as The Esplanade. The site is within the 'Multiple Dwelling B' zone under the Sutherland Shire Local Environmental Plan 2006 (SSLEP 2006).

The land has a regular shape and an area of approximately 880m², with a frontage of approximately 15.1m to Arthur Avenue and The Esplanade and a depth of approximately 58m. The site contains a detached single storey brick dwelling, with a freestanding garage located at the Arthur Avenue frontage.

1.4 Issues

The main issues identified are as follows:

- Building design, bulk and scale;

- Impact on views;
- Solar access; and
- Landscaping.

1.5 Conclusion

Following detailed assessment of the proposed development, the application is considered to have merit and is recommended for approval, subject to conditions.

Recommended conditions of note require:

- A revision to the design of the basement entry and associated amendments to the levels above.
- A revised landscaping scheme with reduced retaining wall heights.
- The partial glazing of the proposed solid blade wall to the balconies.

Draft conditions of consent are attached to this report in Appendix "A".

2.0 DESCRIPTION OF PROPOSAL

A development application has been received for a residential development at the above property. The proposal is for the demolition of the existing buildings on the site and construction of a new three (3) storey residential flat building over a single level of basement. The scheme includes:

- three (3) large residential apartments (one on each floor of the building), each containing three (3) bedrooms and with large open terrace balconies to the eastern side;
- a pedestrian entry path along the southern boundary leading to a central lobby with a lift and common stair core at the middle section of the southern side of the building;
- a basement level that contains three (3) triple garages, storage space, a garbage room and lift lobby; and
- landscaping.

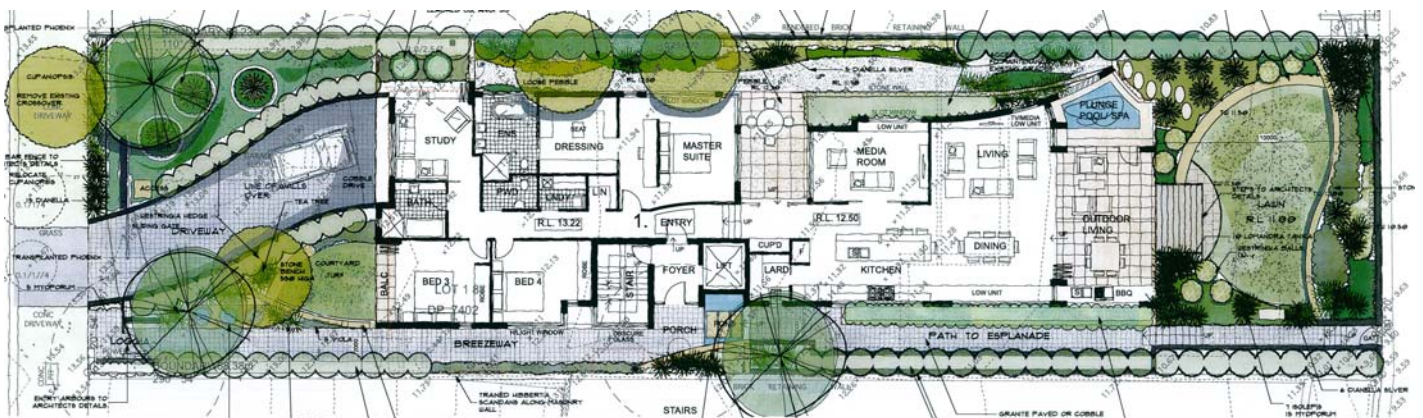


Figure 1: Indicative Site Plan with ground floor layout and landscaping shown (Arthur Avenue is to the left of the diagram and The Esplanade is to the right).

3.0 SITE DESCRIPTION AND LOCALITY

The subject site is located off the eastern side of Arthur Avenue in Cronulla, north of Ingalara Avenue. The site has a frontage to The Esplanade and has an easterly outlook towards Blackwoods Beach, the 'Nun's Pool' and the Pacific Ocean. The site is within Zone 6 - Multiple Dwelling B under the Sutherland Shire Local Environmental Plan 2006 (SSLEP 2006).

The land has a regular shape, with a frontage of approximately 15.1m to Arthur Avenue, a depth of approximately 58.3m and an area of approximately 880m². The land falls approximately 3.4m from the street boundary (west) to The Esplanade boundary (east).

The site currently contains a detached single storey brick dwelling, with a freestanding garage located at the Arthur Avenue frontage. The existing dwelling is set back approximately 30m from Arthur Avenue and approximately 5m from The Esplanade. To the east of the site across The Esplanade is a largely 'natural' setting, with a landscaped verge, rock cliffs and an ocean beach beyond. The surrounding land uses to the north, south and west are predominantly of a medium-density, residential character.

To the immediate south of the site is a nine (9) storey residential flat building known as *Ki Ewa*, with a group of two (2) storey townhouses and the *Stella Maris* nursing home further to the south, fronting Ingalara Avenue. Opposite the site on the western side of Arthur Avenue, three (3) and four (4) storey residential flat buildings prevail up until Arthur Walk, a pedestrian lane between Ewos Parade and The Esplanade. To the north of the site is a pair of three (3) storey residential flat buildings known as *South Reef* and *North Reef*. Beyond these buildings to the north and across Arthur Walk is a heritage listed cottage. Further north is a nine (9) storey residential flat building known as *Rugby*.

The Esplanade is also identified as a heritage item under SSLEP 2006 and incorporates a sealed walking path from Cronulla 'Alley' to the southern end of the Cronulla peninsula. The Esplanade is set against a natural landscape of coastal vegetation, cliffs and beaches.

The nearest non-residential land uses are located approximately 120m to the west and include a small group of neighbourhood shops fronting Ewos Parade. The Shelly Beach reserve, which includes a public park and ocean pool, is located approximately 300m to the south of the site. Cronulla railway station is located approximately 650m to the north-west.



Figure 2: The site in local context.



Figure 3: Aerial photograph of site and immediate surrounds.

4.0 BACKGROUND

A history of the development proposal is as follows:

- A pre-application discussion (PAD) was held on 19 April 2011. A full copy of the advice provided to the Applicant is contained within **Appendix “B”** of this report. The main points contained in this letter are as follows:
 - The proposed building, as presented to Council, was in excess of the permissible FSR for the site, and the size of the land was less than the required minimum lot size.
 - The landscaped area should be confirmed as compliant.
 - The proposed variation to side setback controls would need to be well justified in terms of impacts on neighbouring properties.
 - The final application should comprehensively address view loss, overshadowing and privacy.
 - SEPP 65 does not apply as the building does not contain four (4) or more apartments, but the design quality principles and ‘rules of thumb’ under the SEPP should still be considered.
 - The building should be set back further to the west (away from The Esplanade) so as to align with the average setback of the neighbouring buildings.
- The current application was submitted on 09 June 2011.
- The application was placed on exhibition, with the last date for public submissions being 08 July 2011. Twenty (20) submissions were received. These were mostly from the owners and occupiers of the immediately adjacent buildings.
- An Information Session for the public was held on 29 June 2011. Nine (9) persons attended.
- Council contacted the Applicant on 28 July and requested that design issues, including the issues raised by Council’s Architectural Review and Advisory Panel (ARAP), be addressed. Matters raised included view impacts, materials selection, calculation of the landscaped area and further detail in terms of section plans.
- Amended plans were submitted by the applicant on 19 August 2011.

5.0 ADEQUACY OF APPLICANT’S SUBMISSION

The Statement of Environmental Effects, plans, SEPP 1 Objections (requesting variations to the floor space ratio and building height development standards) and other documentation submitted with the application, or after a request from Council, were generally adequate to enable a detailed assessment of the proposal to be undertaken.

It is apparent that the submitted plans contain a drafting error which indicates the ‘pitching point’ of the driveway as being outside of the site boundary (i.e. within the road reserve). By relocating the graded section of the driveway wholly within the site, the planned levels of the basement and the floors above

are required to be lifted. This has implications for the overall height of the building, as discussed in detail in the 'Assessment' section of this report.

6.0 PUBLIC PARTICIPATION

The application was advertised in accordance with the provisions of Chapter 12 of Sutherland Shire Development Control Plan 2006 (SSDCP 2006) and Council's policy on extended exhibition for applications to be determined by the JRPP. The application was publicly exhibited until 08 July 2011. In addition, Council conducted a public information session, which was attended by nine (9) neighbouring residents.

Ten (10) neighbouring properties were notified of the proposal. All are multi-unit strata-titled buildings, resulting in a total of 180 individual owner/occupiers being notified. Twenty (20) submissions have been received as a result. Submissions were received from the following properties:

Address	Number of Individual Submissions	Issues (Refer to Discussion Below)
18-20 Arthur Avenue	11	1, 2, 3, 4, 5, 6, 7 and 9
14 Arthur Avenue	4	1, 4, 5 and 9
9-11 Arthur Avenue	3	1, 4, 5 and 6
13 Arthur Avenue	1	1, 4 and 9
20 Ewos Parade	1	1, 2, 6 and 8

The properties that generated the bulk of the submissions are the immediately adjacent properties to the south (No. 18-20 Arthur Avenue) and north (No. 14). One (1) submission from No. 14 Arthur Avenue expressed general support for the proposal but raised incidental design concerns.

The issues raised in the submissions are as follows:

6.1 Issue 1 – View Loss

Owners and occupiers of neighbouring properties were concerned with view loss, an issue which was raised (explicitly or implicitly) in all objections received.

Comment: This matter is discussed in detail below in the "Assessment" section of this report.

6.2 Issue 2 – Solar Access

Owners and occupiers of the neighbouring property to the south were concerned with increased overshadowing, both to lower-level apartments and also to the substantial tract of landscaped area surrounding their building.

Comment: This matter is discussed in detail below in the "Assessment" section of this report.

6.3 Issue 3 – Visual and Acoustic Privacy

Residents of the immediately adjacent buildings raised concerns in relation to visual and acoustic privacy.

Comment: Subject to the imposition of consent conditions requiring privacy screening at appropriate locations, the proposal will not result in unacceptable privacy impacts.

6.4 Issue 4 – Compliance with Council Controls (Particularly Height and Floor Space Ratio)

It was noted by many objectors that the proposed building exceeds the permissible height and floor space ratio controls, and is proposed upon an undersized lot.

Comment: These matters are discussed in detail below in the “Assessment” section of this report.

6.5 Issue 5 – Building Design, Set-out and Alignment

Many residents of the immediately adjacent properties requested that the building be set back further from The Esplanade, in order to facilitate view sharing and reduce dominance issues. Some residents also raised concerns in relation to the proposed side setbacks and the architectural detail of the building (including rooftop plant).

Comment: The building has been set further back from The Esplanade than the minimum required by Council. In light of the slope and dimensions of the site, any further shifting of the building away from The Esplanade will push the building further ‘out of the ground’ than is currently proposed, potentially increasing view loss and solar access impacts. These matters are discussed in detail below in the “Assessment” section of this report.

6.6 Issue 6 – Traffic & Parking Impacts

It was suggested that on-street parking is at a premium in the immediate area, particularly when visitors park in the street to access the beach and The Esplanade. It was suggested that the development provides inadequate on-site parking and that increased density would lead to increased traffic congestion.

Comment: The proposal provides three triple garages (9 spaces) on-site, which include two (2) resident spaces and one (1) visitor space per apartment. The proposal satisfies Council’s minimum requirement of six (6) resident spaces and exceeds Council’s minimum requirement of one (1) visitor space per four (4) dwellings. The proposed development, consisting of three (3) residential apartments, is not of a scale that would result in a significant adverse impact on the local traffic network or require the capacity of local streets to be upgraded.

Issue 7 – Construction Impacts & Damage to Neighbouring Properties

Neighbours were concerned that construction activity, particularly the extensive basement excavation proposed along the southern boundary of the site, may cause damage to adjacent properties.

Comment: The applicant has supplied a preliminary geotechnical investigation, which indicates the basement can be constructed as proposed without causing damage to neighbouring properties.

This matter can also be addressed by the imposition of a condition requiring a dilapidation report to be undertaken by an Engineer. Any repair work subsequently required would be a matter to be resolved between the private land owners. Other construction-phase impacts can be effectively mitigated by the imposition of Council's standard construction management conditions.

6.7 Issue 8 – Stormwater & Runoff

One neighbour suggested that existing stormwater infrastructure is inadequate and that increased stormwater runoff from the development will cause coastal erosion and damage coastal vegetation.

Comment: Council's Engineer is satisfied that the stormwater system can be adequately upgraded and that the development can connect to recently upgraded Council stormwater infrastructure (a new gross pollutant trap), thereby reducing the environmental impact of stormwater runoff. In addition, the proposal will provide on-site rainwater harvesting and re-use, whereas the existing building does not provide for this.

6.8 Issue 9 – Landscaping

Neighbours on the northern side suggested that the proposed landscaping should be augmented to provide visual relief and privacy. Conversely, neighbours to the west were concerned that the proposed landscaping would exacerbate view loss impacts.

Comment: Council's Landscape Architect and the ARAP were satisfied that the proposed scheme of landscaping is appropriate, subject to minor modifications in terms of species selection and set-out.

To break up the side elevations of the building, it is considered reasonable to impose a condition requiring landscape features to be added in a similar fashion to the recently constructed 'Coast' development further along The Esplanade.

View loss is discussed in detail below.

7.0 STATUTORY CONSIDERATIONS

The subject land is located within Zone 6 – 'Multiple Dwelling B' pursuant to the Sutherland Shire Local Environmental Plan 2006 (SLEP 2006). The proposed development, being a residential flat building, is a permissible land use within the zone, subject to obtaining development consent.

The following Environmental Planning Instruments (EPI's), Development Control Plan (DCP) and policies are relevant to this application:

- State Environmental Planning Policy No. 1 – Development Standards (SEPP 1)
- State Environmental Planning Policy No. 71 – Coastal Protection (SEPP 71)
- State Environmental Planning Policy (Major Development) 2005 (MD SEPP)
- State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 (BASIX SEPP)
- Sutherland Shire Local Environmental Plan 2006 (SSLEP 2006)
- Sutherland Shire Development Control Plan 2006 (SSDCP 2006)

In addition, Council's Section 94 Contribution Plans for open space and for community facilities apply.

8.0 STATEMENT OF COMPLIANCE

The statement of compliance below contains a summary of applicable development standards and controls and a compliance checklist relative to these:

Standard/Control	Required	Proposed	Complies? (% Variation)
Sutherland Shire Local Environmental Plan 2006			
Clause 17(3)(b)(ii) Foreshore Setback	Minimum 7.5m from waterfront reserve	10m	Yes
Clause 33(14)(b) – Building Height	Maximum 3 storeys	4 storeys (due to basement partially projecting >1m above ground)	No 33% variation (see discussion below)
Clause 35(9)(b)(i) – Building Density	Maximum Floor Space Ratio (FSR) of 0.7:1	Stated FSR of 0.92:1 with measured FSR of 0.9:1	No 28.5% variation (see discussion below)
Clause 36(5)(h) – Landscaped Area	Minimum 40% of site area	Stated at 40.1% of site area, measured at 38%	No – ~5% variation (see discussion below)
Clause 41(5) – Minimum Lot Size and Dimensions	Minimum 1800m ² / 30m width	880m ² / 15m wide	No, but existing and permitted under Cl. 41(6)
Clause 54 Heritage (The Esplanade is identified as a heritage item in SSLEP 2006)	Heritage significance conserved, including fabric, setting and views	No conservation works proposed, but works do not affect item; building set back beyond minimum requirement from The Esplanade	Yes, subject to design conditions

Sutherland Shire Development Control Plan 2006			
Clause 3.2.b.2 – Street Setbacks	Minimum 7.5m	12.75m	Yes
Clause 3.3.b.9 – Boundary Setbacks	Minimum 4m side setback	Basement: nil (south side) – 2.5m (north side); Above ground: 1.2m (point encroachment at north) – 3.8m	No, but does not unduly impact on neighbours. No (see discussion below)
	4m min rear setback	10m (to Esplanade)	Yes
Clause 3.4.b.1 – Site Coverage (building footprint)	Not to exceed 40% of site	Site coverage 40%	Yes
Clause 3.6.b.3 Landform	Natural contours 'not unduly' altered	Excavation generally limited to basement area; prevailing landform maintained	Yes
Clause 3.6.b.6 External Stairs	Stairs visible from public land not more than 1.2m wide	External stairs ~3m wide	No – see discussion in Assessment section of report.
Clause 3.7.b.4 Communal Open Space	Minimum 100m ² area provided with minimum 10m dimension	2 x irregular areas of 6 x 10m provided, i.e. 60 m ² each	No
Clause 3.7.b.4 Open Space – Balconies	Minimum 12m ² balcony with min. 2.5m dimension per unit; Secondary balconies encouraged	Each unit has 4.5 x 6m balcony plus a 3 x 3m terrace	Yes
Clause 3.7.b.4 Building Depth	Maximum plan depth of 18m	Building >30m 'deep'	No, but acceptable given single-unit-per-floor layout
Clause 3.7.b.4 Dwelling Design	Min. floor-to-ceiling height of 2.7m	Internal heights of 3-3.9m provided	Yes
Clause 3.7.b.4 Dwelling Design	Minimum bedroom dimension of 3m	Bedrooms etc. min 3.5m wide	Yes
Clause 3.7.b.4 Natural Ventilation	60% of dwellings cross-ventilated, 25% of kitchens naturally ventilated	All apartments are cross ventilated All kitchens are naturally ventilated	Yes Yes

Clause 3.12.b.1 Landscape	Canopy trees of min. 8m mature height provided/ Side & rear screen planting of min 3m height provided	Canopy trees up to 20m/ Height of screen planting not shown	Yes Able to comply subject to condition
Clause 3.7.b.13 Privacy	Living area windows within 9m of neighbours offset or obscured	Designed to comply	Yes (condition recommended to introduce louvres – see below)
Clause 3.14.b.1 Daylight Access	At least 10m ² of private open space to receive 4 hours sunlight between 9am-3pm midwinter Must not reduce midwinter sun to open space/ living areas of neighbouring properties by more than $\frac{1}{3}$	In combination, the courtyards, balconies and terraces for each unit are exposed to >4hrs midwinter sun Shadow impacts isolated to ground, first and second floors of southern neighbour, generally in the morning	Yes Yes – for the neighbouring site overall– see discussion in Assessment section of report.
Clause 3.15.b.1 Views	Impacts minimised and view sharing encouraged by reducing building height, 'stepping', and breaking up building mass	View analysis undertaken – Tenacity principles applied.	Acceptable – see discussion in Assessment section of report.
Clause 3.17.b.2 Adaptable Housing	At least one dwelling in the development is to be adaptable	Second floor dwelling designed to be adaptable	Yes
Chapter 4 Natural Resource Management	Waterways and vegetation protected appropriately	See Landscape Architect/ Environmental Scientist's advice	Yes, subject to conditions
Clause 7.2.b.3 Driveway	Driveway minimum 5.5m wide	Proposed driveway 4.8m wide	No, but considered acceptable given low potential traffic volume
Clause 7.1.b.5 Car Parking	2 spaces per 3-bedroom dwelling 1 visitor space per 4 dwellings (or part thereof)	6 resident spaces provided 3 visitor spaces provided	Complies Exceeds requirement (reduces on-street parking demand)

Chapter 8 Ecologically Sustainable Development	Development adopts ESD principles, manages waste, groundwater and stormwater effectively	See Engineering/ Environmental Scientist's advice below	Yes, subject to conditions
State Environmental Planning Policy No. 71 – Coastal Protection			
Clause 8 Matters for Consideration	See discussion below	Satisfactory, subject to conditions	Yes
Clause 14 Public Access	Development not to impede or diminish public access to foreshore	Current access maintained	Yes
Clause 16 Stormwater	Development must not discharge 'untreated' stormwater into waterway or onto rock platform	Not specified	Able to comply, subject to conditions

9.0 SPECIALIST COMMENTS AND EXTERNAL REFERRALS

The application was referred to the following internal and external specialists for assessment and the following comments were received:

9.1. External Referrals

The proposal was referred to the NSW Department of Planning for comment as it lies within the Coastal Zone. No response has been received by Council at the time of reporting.

9.2. Architectural Review and Advisory Panel (ARAP)

The proposal was reviewed by Council's ARAP on 07 July 2011. A full copy of the ARAP report is contained within **Appendix "C"** of this report. The main observations/recommendations of ARAP include:

- The proposal was '*considered to be of an appropriate scale and appears to relate to its immediate context in a reasonable manner*' and '*of an appropriate scale and density*'.
- A more detailed treatment should be given to the interface[s] between public, communal and private spaces;
- Additional sections through the building (to more clearly demonstrate how the proposal relates to its immediate context and to clarify detail treatment of the proposed façade) were requested.
- Further rationalisation/development of the aesthetic treatment of the building, in particular the side elevations and the roof, privacy screening and landscape design was recommended.

In addition, Council's urban design assessment officer reviewed the proposed development and generally agreed with ARAP's assessment.

9.3. Engineering

Council's Development Assessment Team Engineer has undertaken an assessment of the application. He noted that the driveway/basement entry ramp has not been designed in accordance with the relevant Australian Standards or Council's specification. The applicant has incorrectly plotted the front boundary in section showing the driveway and the proposed driveway begins ramping down into the site from within the road reserve.

The amendments required to accommodate a correctly plotted and designed driveway would require the building to be lifted by approximately 650mm within the basement and (at least) on the ground floor level. However, and as discussed below, the proposed building already exceeds the maximum permitted height control and as such an overall uplift of the building would be unacceptable.

To mitigate this issue, a draft condition has been included to require the building to be redesigned to accommodate raising the basement floor level without increasing the overall height of the building. One plausible design solution would remove some floor space from the western edge of the ground floor unit (to allow compliant clearance for the basement below) and incorporate relatively small reductions in the floor-to-ceiling heights of the levels above.

The engineer did not raise any other significant objection to other aspects proposal and supports the proposal subject to the imposition of appropriate conditions.

9.4. Landscape Architect

Council's Landscape Architect inspected the site and reviewed the proposed landscaping scheme. No objection was raised, subject to the imposition of appropriate conditions in respect of the new planting and the protection or replacement of existing street trees.

9.5. Environmental Scientist

Council's Environmental Scientist inspected the site and advised that the proposal was acceptable, subject to the imposition of standard conditions in relation to stormwater and environmental management.

10.0 ASSESSMENT

Following a detailed assessment of the application having regard to the Heads of Consideration under Section 79C(1) of the Environmental Planning and Assessment Act 1979, the following matters are considered important to this application:

10.1 Building Bulk and Scale

As noted above, the proposed development exceeds SSLEP 2006 controls for building height (maximum 3 storeys) and building density (maximum floor space ratio allowed is 0.7:1).

The development site is also under the minimum area required for a new residential flat building, however, the provisions of SSLEP make allowances for undersized sites where Council is satisfied that amalgamation with adjacent lots is not feasible or the proposed development achieves the 'orderly and economic' use of the land. It is noted that the application achieves the minimum required landscaped area for the site, despite the site being undersized in area.

The applicant has submitted Objections pursuant to State Environmental Planning Policy No. 1 (SEPP 1) in respect of the proposed variations. The merits of each are discussed in detail below.

The key impacts typically associated with bulk and scale are solar access, privacy and view loss. Preceding the analysis of the SEPP 1 Objections is an assessment of solar access and privacy impacts. The issue of view loss is covered separately in section 10.2 below.

10.1.1 Solar Access and Privacy Impacts

In terms of solar access, it is acknowledged that the proposed building envelope will cast an increased shadow onto the property to the south.

In relation to solar access, SSDCP 2006 requires that:

'New development must not eliminate more than one third of the existing sunlight, to useable private open space and windows of living areas, of an adjoining property measured at 9am and 3pm on 21 June'.

The proposed building will affect the morning sun enjoyed by the north facing apartments at the first and second floors of the building to the south (four (4) apartments in total). The applicant's shadow analysis shows that the impact would be most pronounced at (and before) 9am on the winter solstice. This is when direct solar access to the living areas and balconies of these apartments would be relatively severely affected. The easternmost second floor apartment would still receive partial, although reduced, sun to its principal living areas at this time.

By 10am on the winter solstice, the impact is isolated to the two north-side apartments at first floor level only and by 11am these apartments would be receiving partial solar access to critical areas. Solar loss to all apartments would cease by midday, and in this aspect, the proposal satisfies the residential flat building specific DCP control that provides:

‘Living rooms and private open spaces for at least 70 percent of apartments in a development should receive a minimum of three hours direct sunlight between 9am and 3pm in mid winter’.

It is noted that the proposed building will significantly reduce solar access to the area of lawn at the northern side of the property to the south. Although this area is substantial and the residents of the neighbouring building indicate that it is well utilised, the majority of the affected section of lawn is located on a relatively shallow layer of soil over a basement car park. This area could not be used to support significant vegetation due to the soil depth and could be resurfaced (if the lawn were to fail) and still provide the same utility. It is noted that the affected area would still receive substantial sunlight at either the equinox and during summer.

Further, it is unlikely that a fully-compliant building envelope on the subject site would have less of an impact on solar access to the neighbouring lawn area. Even by increasing the setback of the proposed building, only the shadow to the wall of the neighbouring building would be appreciably reduced. The limited width of the subject site does not allow for side boundary setbacks to be increased enough to eliminate overshadowing of the lawn area without effectively sterilising the subject site.

The proposed building height does not result in unacceptable impacts in terms of solar access to the public domain. This is largely by virtue of the scale of the proposed building and the greater than required setback from the eastern boundary. The proposed building will cast a shadow across The Esplanade late in the afternoon, but any reasonable redevelopment of the site would have the same effect. The length of the afternoon shadow cast by the proposed building would be significantly shorter than the shadow cast by the neighbouring building at Nos.18-20 and in the same range as the shadows cast by No.14 Arthur Avenue.

Selections of the applicant’s 3D modelling of the proposed building bulk are provided below, with current satellite imagery of the surrounding development for comparison.





Figures 5-8: Applicant's model of the proposed building and comparative satellite photography of the surrounding built form (source: NearMap)

In terms of the relationship with neighbouring buildings, it is noted that the proposed bulk could be 'driving' the non-compliant side boundary setbacks. The applicant contends that privacy impacts resulting from the reduced setbacks are minimised by virtue of the existing setbacks on neighbouring sites. Whilst the building is mostly set back between 2.4 and 3.5m from the northern boundary, the building to the north is set mostly 8m away from the boundary, apart from the western end where the setback is 3m. Likewise, whilst the building is set back between 2 and 3m from the southern boundary, the building to the south is set an average of 8.5m away from the boundary.

In effect, the proposed building is generally set 10m away from neighbouring buildings, apart from the western end of the building at the northern side. There is little practical possibility of either neighbouring site being redeveloped in the foreseeable future, as the sites contain a relatively significant number of direct ocean-front residential apartments, all held in held in separate ownership. In light of this and given the relatively narrow breadth of the subject site, some variation to the required side setback is justified.

In terms of architectural relief, the expanse of the proposed building is articulated at either side with varied wall lines. The form is broken near the centre with the entry lobby and lift shaft at the southern side and terrace balconies to the north.

The applicant also argues that principal living areas and balconies have been located or screened to mitigate the privacy impacts associated with reduced side boundary setbacks. This argument is considered to have merit as the location and orientation of the principal living areas will ensure that they do not create significant privacy impacts.

At one critical point, however, where the north-western corner of the proposed building projects close to the balcony and living room of the neighbouring building to the north, no screening has been provided to the northern windows. Whilst this is the section that demonstrates the worst of the reduced setback, impacts can be addressed by a condition which requires the northern window of the proposed 'study' to be frosted or screened (see draft Condition 9(f)).

A condition requiring the edge of the northern terraces to be finished with a planter bed is also recommended in order to reduce visual and acoustic privacy impacts. Despite the reduced side setbacks proposed, the building exhibits an acceptable relationship with neighbouring buildings, subject to the imposition of appropriate conditions.

10.1.2 Building Height

Clause 33(14) of SSLEP 2006 provides a maximum building height of three (3) storeys. For the majority of the development, the proposed building does not exceed three (3) storeys and the building generally reads as three (3) storeys from the public domain. However, at two points (in the central northern section of the building and at the eastern end of the building) the basement level projects more than one (1) metre above ground. At these

points and in accordance with the SSLEP 2006 definition of storey, the basement is counted as a storey and the building therefore does not comply with the maximum height standard.

It is noted that the building as originally proposed at pre-DA stage did not include this non-compliance. The applicant argues that the basement encroachment occurs as a result of an amendment to accommodate an increased setback from The Esplanade, which was requested by Council. The intent of the increased setback is to promote view sharing between properties and to reduce the intrusiveness of the proposed building upon The Esplanade.

Whilst the height control is expressed as a numeric maximum, the appropriateness of the proposed height must also be assessed with regard to the objectives of SSLEP 2006 for building height. These include:

- Ensuring the scale of new buildings is in keeping with the desired scale and character of the neighbourhood and compliments any natural landscape setting;
- Minimising impacts in terms of view loss, privacy, overshadowing and visual intrusiveness; and
- Minimising visual impact on public and private land.

View loss is discussed in detail in Section 10.2 below. That discussion has regard to Council's controls and the *Tenacity* case planning principles. Whilst some individual apartments in neighbouring buildings will experience moderately significant view loss as a result of the proposal, the overall view loss impact is relatively low. In addition, the proposed building envelope does not entail view loss impacts that are significantly worse than would be presented by a fully compliant building envelope.

As discussed above, the proposed building does not present unacceptable overshadowing or privacy impacts.

In support of the proposed variation to the building height development standard, the applicant has lodged an Objection under *State Environmental Planning Policy No. 1 – Development Standards* (SEPP 1). The full submission is in **Appendix "D"** of this report.

The applicant argues that compliance with the standard is unreasonable or unnecessary in the circumstances of the case, on the following grounds:

- *The proposed non-compliance is of a 'technical' nature;*
- *The non-compliance affects only a small section of the overall building;*
- *The non-compliance occurs as a response to Council's pre-lodgement advice; and*
- *Whilst not achieving numerical compliance, the proposed development satisfies the objectives of the standard.*

In *Winten Property Group Limited v North Sydney Council* [2001] NSWLEC 46, Lloyd J established a set of five (5) questions which now are an accepted convention for assessing a SEPP 1 Objection. An assessment of the SEPP 1 Objection in accordance with this convention has been undertaken below.

(a) Is the Requirement a Development Standard?

Clause 33(14) of SSLEP 2006 stipulates a numerical maximum building height of three (3) storeys for residential flat buildings.

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

SSLEP 2006 sets out the following objectives for the building height development standard:

- (a) *to ensure that the scale of buildings is consistent with the desired scale and character of the street and locality in which the buildings are located; and complements the natural landscaped setting of the buildings;*
- (b) *to allow reasonable daylight access to all buildings and the public domain;*
- (c) *to minimise the impact of new buildings on adjoining or nearby properties from loss of views, loss of privacy, overshadowing or visual intrusion;*
- (d) *to ensure that the visual impacts of buildings is minimised when viewed from adjoining properties, the street, waterways and public reserves; and*
- (e) *to ensure, where possible, that the height of non-residential buildings in residential zones is compatible with the scale of residential buildings on land in those zones...*

It is noted that objective (e) is not relevant to the application.

(c) Is compliance with the development standard consistent with the aims of the Policy, and in particular does compliance with the development standard tend to hinder the attainment of the objects specified in section 5(a)(i) and (ii) of the *Environmental Planning & Assessment Act*?

SEPP 1 aims to provide '*flexibility in the application of planning controls operating by virtue of development standards in circumstances where strict compliance with those standards would, in any particular case, be unreasonable or unnecessary or tend to hinder the attainment of the objects specified in section 5 (a) (i) and (ii) of the Act*'.

The relevant objects of the Act are:

- 5(a)(i) - *to encourage the proper management, development and conservation of natural and man-made resources, including agricultural land, natural areas, forests, minerals, water, cities, towns and villages for the purpose of promoting the social and economic welfare of the community and a better environment.*
- 5(a)(ii) - *to encourage the promotion and coordination of the orderly and economic use and development of land.*

The reasonableness and necessity of strict adherence to the height standard is discussed in (d) below. In this case, the proposed development is not considered to be contrary to the objects of the Act or the aims of SEPP 1. Allowing a variation to the height standard in this case is considered to facilitate the orderly and economic use of land by allowing for the otherwise appropriate redevelopment of an underutilised site.

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

The non-compliance occurs due to a section of basement which protrudes more than 1m above ground level. It is acknowledged that this non-compliance is 'technical' in nature as the height control is expressed in storeys and not metres. The building could potentially be taller than proposed and still comply if the partial basement projection was to be eliminated.

This projection occurs as a result of Council's requested amendment to the original design. This sets the proposed building further back from The Esplanade, improving view sharing and reducing the visual intrusiveness of the building from the public domain. On balance, these benefits outweigh the necessity of strict compliance with the building height development standard.

However, and as discussed below in relation to floor space ratio, the eastern 'plinth' adds to the visual bulk and intrusiveness of the building and a condition requiring the basement projection to be reduced is recommended to be imposed.

Further, it is considered that the proposed building satisfies the objectives of the development standard. The scale of the building is consistent with the current and desired future scale of the surrounding development. In fact, the building is of a lower scale than many surrounding buildings, which are unlikely to be redeveloped in the near future as they comprise multi-unit strata titled apartments. Subject to the imposition of appropriate conditions relating to landscaping design, the proposed building will not detract from the natural setting of the site.

It is agreed that compliance with the development standard is unnecessary in the circumstances of the case. The applicant has satisfactorily demonstrated that the variation will not result in unacceptable impacts on the natural environment or on the amenity of neighbouring properties and that the objectives of the standard are achieved.

(e) Is the Objection Well Founded?

Yes. The SEPP 1 Objection demonstrates that compliance with the standard is unnecessary in the circumstances of the case as the objectives of the standard are achieved and the variation will not result in unacceptable impacts on the natural environment or on the amenity of neighbouring properties.

SEPP 1 Conclusion:

Having regard to the objectives of the standard for maximum building height it is considered that:

- (i) The SEPP 1 Objection is well founded and demonstrates that compliance with the development standard is unnecessary;
- (ii) The granting of consent would not be inconsistent with the aims of SEPP 1, the objects of the Act or the relevant objectives of the SSLEP 2006.

In light of the above analysis, the proposed variation to the development standard for building height contained within Clause 33(14) of SSLEP 2006 is considered acceptable in the circumstances and the SEPP 1 Objection is supported.

10.1.3 Building Density (Floor Space Ratio)

Clause 35(9)(b)(i) of SSLEP 2006 prescribes a maximum permissible floor space ratio (FSR) for the site of 0.7:1. The quoted gross floor area (GFA) for the proposal is 812m². This provides an FSR of 0.92:1. Council's calculation of the FSR is slightly less than the applicant's, at 0.9:1. This equates to a variation of approximately 28.5%.

A little over half the excess floor space is located in the basement in the form of parking spaces that exceed Council's requirements. As discussed in this report, parking in this locality is in high demand at certain times and the provision of additional parking is considered positive. This component of the excess floor space is also under the ground and has no physical impact.

The amendment required to correct the issue with the car park ramp will result in a small reduction in floor space from the ground floor unit. As a consequence the component of the excess floor space located above ground (i.e. excluding the excess space in the basement) will be in the order of 70m² or 0.08:1.

As discussed above, the bulk of the proposed building does not result in unacceptable impacts in terms of view loss or solar access. The building has been located further back from The Esplanade than the minimum requirement to allow for better view sharing between properties and reduce visual intrusiveness on the public domain. Despite this resulting in an increase in overall building height, on balance the general bulk and massing of the proposed building are considered acceptable.

Whilst FSR is primarily a mechanism for controlling building bulk, it also dictates the intensity of development on a site. The proposed building contains only three (3) units. Despite the proposed variation to the FSR, the development will not generate (for example) the same volume of traffic as would a complex of six (6) apartments within the same building envelope. The reduced number of units also allows balconies and principal living areas to be reduced in number and concentrated in areas which have less impact in terms of visual and acoustic privacy.

In support of the proposed variation to the development standard, the applicant has lodged an Objection under SEPP 1. The full submission is in **Appendix “E”** of this report.

The applicant argues that compliance with the standard is unreasonable or unnecessary in the circumstances of the case, on the following grounds:

- *A significant portion of the additional floor space is contained within the basement;*
- *The surrounding development includes a number of residential apartment buildings which would exceed the 0.7:1 FSR control;*
- *The proposed building provides a ‘transition’ in density between the 9-storey building at 18-20 Arthur Avenue and the twin 3 storey buildings at 12 and 14 Arthur Avenue;*
- *The proposal maintains compliance with Council’s (deep soil) landscaping requirement;*
- *The additional floor space does not result in significant adverse impacts on neighbouring properties; and*
- *Whilst not achieving numerical compliance, the proposed development satisfies the objectives of the standard.*

An assessment of the SEPP 1 Objection in accordance with the *Winten* test has been undertaken below.

(a) Is the Requirement a Development Standard?

Yes, Clause 35(9) of SSLEP 2006 sets out a numerical maximum floor space ratio of 0.7:1 for the site.

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

SSLEP 2006 sets out the following objectives for the density development standard:

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

It is noted that objective (d) is not relevant to the application.

(c) Is compliance with the development standard consistent with the aims of the Policy, and in particular does compliance with the development standard tend to hinder the attainment of the objects specified in section 5(a)(i) and (ii) of the *Environmental Planning & Assessment Act*?

SEPP 1 aims to provide *'flexibility in the application of planning controls operating by virtue of development standards in circumstances where strict compliance with those standards would, in any particular case, be unreasonable or unnecessary or tend to hinder the attainment of the objects specified in section 5 (a) (i) and (ii) of the Act'*.

The relevant objects of the Act are:

- 5(a)(i) - to encourage the proper management, development and conservation of natural and man-made resources, including agricultural land, natural areas, forests, minerals, water, cities, towns and villages for the purpose of promoting the social and economic welfare of the community and a better environment.*
- 5(a)(ii) - to encourage the promotion and coordination of the orderly and economic use and development of land.*

The reasonableness and necessity of strict adherence to the floor space ratio development standard is discussed in (d) below. In this case, the proposed development is not considered to be contrary to the objects of the Act or the aims of SEPP 1.

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

The applicant has not demonstrated that compliance with the development standard for building density would be unreasonable. The development could potentially proceed with reduced floor plates (for example, by reducing the number of bedrooms) and still achieve compliance.

However, it is considered that compliance with the development standard is unnecessary in the circumstances of the case as the applicant has satisfactorily demonstrated that the variation will not result in unacceptable impacts on the natural environment or the amenity of neighbouring properties.

In addition, it is considered that the proposed building satisfies the objectives of the development standard. The general bulk and massing of the proposed building are in keeping with the surrounding development. In fact, the proposal is of a lower density than a number of surrounding buildings and also provides a more significant proportion and quality of landscaped area than much of the surrounding development.

Council's ARAP considered that the general bulk and massing of the building was appropriate in terms of its relationship with the neighbouring buildings and the streetscape. The ARAP also agreed that the building provided an appropriate transition, in terms of height and bulk, between the varied scale of neighbouring buildings.

In addition, the modifications required to overcome the issue of driveway access to the basement are likely to require the loss of the ground floor study, which will reduce the overall FSR (albeit by a small amount). This

modification will bring the proposal closer to compliance with the development standard.

On balance, the general bulk and massing of the proposed building are considered acceptable.

Subject to the imposition of appropriate conditions relating to landscaping design, the proposed building will not detract from the natural setting of the site. Specific to the bulk of the building, it is the height of the proposed curved stone wall in the eastern courtyard which presents the most significant impact, rather than the building itself. It is recommended that the height of this wall be reduced, as discussed below in the section regarding landscaping.

(e) Is the Objection Well Founded?

Yes. The SEPP 1 Objection demonstrates that compliance with the standard is unnecessary in the circumstances of the case as the objectives of the standard are achieved and the variation will not result in unacceptable impacts on the natural environment or on the amenity of neighbouring properties.

SEPP 1 Conclusion:

Having regard to the objectives of the standard for maximum building density it is considered that:

- (iii) The SEPP 1 Objection is well founded and demonstrates that compliance with the development standard is unnecessary
- (iv) The granting of consent would not be inconsistent with the aims of SEPP1, the objects of the Act or the relevant objectives of the SSLEP 2006.

In light of the above analysis, the proposed variation to the development standard for building density contained within Clause 35(9) of SSLEP 2006 is considered acceptable in the circumstances and the SEPP 1 Objection is supported.

10.2 View Loss

A significant point of concern for the residents of neighbouring properties is the impact on views as a result of the bulk of the proposed building.

At present, properties to the west of the site enjoy ocean views over the site in light of the low scale of the existing cottage. The apartments on the northern side of the neighbouring building to the south enjoy water, The Esplanade and distant landscape views over the subject site. The reverse applies to the apartments in the property to the immediate north of the site.

The proposed building is set back further from the northern, southern and eastern boundaries than the current cottage, but has a significantly deeper footprint and is much taller than the cottage.

SSDCP 2006 adopts the '*Tenacity*' case planning principles for assessment of view impacts. This assessment includes four main considerations, as

discussed below:

1. Assessment of the views to be affected:

The view to be affected includes components of varying significance.

The views enjoyed by the properties across Arthur Avenue to the west are water (ocean) views that do not include the land-water interface and that are disrupted by other tall buildings fronting The Esplanade. Although these views are the most significant enjoyed by the affected properties, they do not take in iconic features or a comprehensive vista of the land-water interface.

The views enjoyed by the apartment buildings to the immediate north and south are more significant as they include the land-water interface, iconic natural features such as Shark Island, the Kurnell 'heritage dune' and Cape Solander, as well as Shelly Park, Windy Point and Jibbon Head to the south.

2. Consideration from what part of the property the views are obtained:

From the properties to the west, the view is obtained across the side and rear boundaries of the subject site and adjacent sites. This factor is recognised in SSDCP 2006 and the *Tenacity* principles as making the view more difficult (and in some cases unrealistic) to protect.

A portion of the views enjoyed by the properties to the immediate north and south of the site are obtained across the side boundaries of the subject site. For the apartment building to the south in particular, it is northward and north-easterly views across the side boundary that raise most concern for residents.

Views impacted from the bulk of the affected properties can generally be seen from both a standing and sitting position from within principal living areas. However, some of the affected buildings to the west enjoy views from a very limited aperture and from secondary rooms.

3. Assessment of the extent of the impact:

Some properties to the west of the site will experience relatively severe view loss as a result of the proposed building envelope. However, these properties currently only enjoy limited pockets of view and any reasonable redevelopment of the site would generate such an impact. Residents of those properties should have been anticipating the redevelopment of the subject site at some time and a consequential significant impact on their views.

From Nos. 18-20 Arthur Avenue (the southern neighbour) view losses to the first and second floor apartments at the north-western corner will be in the moderate to severe range. For these apartments in particular, northward views to Shark Island and the coastline across the side boundary of the subject site will be lost, but the eastward ocean and The Esplanade views will be maintained.

For the lower-level apartments at the eastern side of the building, a section of northward views will be lost, but in terms of extent, this represents a small portion of the overall views enjoyed from these apartments. In the principal

living areas, which are all located on the eastern side of the building, views to Shark Island and Cape Solander will still be visible and the current north-eastern, eastern, south-eastern and southern views, which are expansive and significant, will be unaffected. This loss is considered to be in the low-moderate range.

From a whole-of-property perspective for the southern neighbour, the view loss cannot be considered severe. Out of 24 apartments in the building, 18 will experience no view loss as they either sit above the proposed building or do not enjoy an aspect across the subject site. Out of the six (6) affected apartments, four (4) will experience a partial view loss but maintain significant views. The remaining two (2) apartments, at the western end of the lower levels, will lose significant components of their views but maintain an easterly (never-to-be-built-out) view corridor across The Esplanade to the ocean. Overall, the view impact on the property at Nos. 18-20 Arthur Avenue is considered to be low.

Although the building is configured differently and is of a different scale to Nos. 18-20 Arthur Avenue, for No. 14 Arthur Avenue (the northern neighbour) the view loss impacts are of a similar nature. The building at No. 14 contains twelve (12) apartments (six (6) per floor) over a storey of above-ground garaging. Two (16%) of these are located on the northern side and will not be affected by the proposal.

In terms of views, the apartments most affected by the proposed building will generally be the apartments at the lower level toward the western end of the building. Similar to Nos.18-20, the two westernmost apartments will lose a substantial portion of the views enjoyed from balconies and living areas towards the south, but will maintain an easterly (never-to-be-built-out) view corridor across The Esplanade to the ocean. The impact on these apartments is less than for their equivalent at Nos. 18-20 as a wider and more direct view corridor will be maintained. The extent of view loss in this case is moderate.

The two easternmost apartments will lose a section of southward view, but the remainder of their direct eastward and northward view will be maintained. The view loss impact on these apartments is minor.

The view loss to the two middle apartments on each level at No. 14 will be relatively significant. Current partial views to Windy Point and beyond would be lost to these units, although a narrowed corridor of eastward (ocean and The Esplanade) views will remain. Southward views from No. 14 are already significantly affected by the nine (9) storey neighbour at Nos.18-20. It is also noteworthy that these apartments are dual-aspect, so current views and light from the north will be unaffected by the proposal.

From a whole-of-property perspective for the northern neighbour, the view loss is considered to be in the moderate range. Out of twelve (12) apartments in the building, two (2) will experience no view loss, two (2) will experience a partial view loss but maintain significant views and six (6) will experience a relatively significant loss of their southward views. The remaining two (2)

apartments, at the western end of the building, will lose a significant portion of their current views but maintain an easterly view corridor across The Esplanade to the ocean. Overall, the view impact on the property at No. 14 Arthur Avenue can be classified as moderate.

4. Reasonableness of the proposal that is causing the impact:

The proposed building does not comply with Council's height, floor space or setback controls and is proposed to be erected upon an undersized lot. On face value, these non-compliances reduce the reasonableness of the proposal. However, a compliant building envelope would not have a lesser effect on views and may in fact have a more substantial impact on the critical views enjoyed by the neighbours to the immediate north and south of the site.

Most importantly, the proposed building is set back 10m from The Esplanade. This is 2.5m more than required under SSLEP 2006. The eastward extent of the building could therefore be more intrusive and still comply with Council's controls.

The applicant has re-sited the building following pre-lodgement discussions with Council. This redesign was requested by Council to allow for increased view sharing with neighbours. However, the further westwards on the site the building is moved, the further out-of-the-ground the building is required to project (so as to allow for compliant driveway grades).

In terms of the overall height of the proposal, it is noted (as discussed in detail above) that the building does not comply with Council's height control by virtue of a 'technicality'. The building generally complies with Council's three (3) storey height control, but is classified as four (4) storeys in light of two points where the basement level projects more than one (1) metre above ground level. This projection above ground is also a result of the shifting of the building bulk further westward on the site than the applicant had originally planned.

In terms of floor space, the majority of the non-compliance arises from the excess provision of parking in the basement. This component of the excess floor space has no impact on view loss.

The setback non-compliances are essentially a product of the site being developed as an isolated, undersized lot. A building that complied with the minimum side setback controls would be impractically narrow. Increased side setbacks would not result in much improvement in the view loss from the most affected units, which are located adjacent the street frontages of the adjoining buildings and would marginally reduce view loss for some of the units.

The setback from The Esplanade has the most profound impact on view loss from adjacent units. As noted above, this setback is 10m, whereas the minimum required is 7.5m.

One small opportunity to increase the permeability of the building in terms of views and its visual mass from The Esplanade is apparent. It is

recommended that the virtually solid section of blade wall extending from the southern edge of the balconies be glazed above balustrade height.

Conclusion on View Loss:

The SSDCP 2006 and the *Tenacity* principles seek to minimise unacceptable view loss impacts and facilitate view sharing.

The most significant view loss caused would be to the buildings on the immediate north and south of the subject site. Even the worst-affected individual apartments within these buildings will maintain pleasant easterly (ocean) views and overall the impact on these buildings is moderate at worst. The buildings across Arthur Avenue to the west will lose a significant corridor of view over the subject site, but any reasonable redevelopment of the site would impact on these properties in the same way.

Although the proposed building marginally exceeds Council's building height control in terms of number of storeys and floor space control, it has been situated to allow for a degree of view sharing greater than would be offered by a setback compliant building. The height non-compliance arises as a result of the selective location of the building. In any case, a building on the site could be height-compliant without reducing its vertical projection as the height control is expressed in storeys, not metres.

Generally speaking, any reasonable redevelopment of the site would have similar impacts on the views enjoyed by neighbouring properties. In fact, a compliant building envelope may well entail more severe view loss impacts than the proposal as a compliant envelope could maintain the same overall height but be located closer to The Esplanade.

Nonetheless, there is a small opportunity to reduce the visual bulk and intrusiveness of the proposed building. A condition requiring the proposed virtually solid section of blade wall extending from the southern edge of the balconies to be glazed above balustrade height is recommended. This will allow for increased view sharing and reduce the apparent mass of the building as perceived from The Esplanade.

10.3 Landscaping/ Visual Impact on The Esplanade

Council disputed the applicant's original landscaped area calculation, which was described in the application as being exactly compliant at 40% of the site area. SSLEP 2006 defines 'landscaped area' as *'that part of a site that is used for growing plants, grasses or trees (including bushland), but does not include any building, structure, hard paved area, driveway, garbage storage area or swimming pool, or any planting over a basement, on a podium or roof top or within a planter box'*. The definition can be regarded as similar to a 'deep soil' requirement.

The area of pathways, paved areas and the like were included in the submitted calculation. Council's calculation indicated that the proposed landscaped area would in fact be 38% of the site area. In light of this, the

applicant has revised the proposal and the landscape area now complies, with slightly more than 40% of the site provided as 'deep soil'.

Species selection and planting location are considered to be appropriate. The proposal has been amended in respect of ARAP recommendations relating to landscaping, in particular to relocate, rather than remove, existing trees.

However, at the critical interface to The Esplanade, the landscape scheme includes a 1m-high retaining wall at the eastern boundary and then another 1.6m high wall a further 1.5m within the property. That is, at the most prominent point, the proposal presents a 2.6m-high wall to The Esplanade. Whilst retaining walls, such as the proposed initial 1m wall, are common along The Esplanade, taller structures are less common and detract from the visual appeal and open character of The Esplanade.

It is noted that the neighbouring property to the south (Nos. 18-20) has a wall at The Esplanade of approximately 1.8m in height. However, this is an anomaly and the visual impact of the wall is offset by the large and open grounds surrounding the building. In any case, the wall around Nos. 18-20 is over 40 years old and would be unlikely to be approved under Council's current urban design controls.

To mitigate this visual encroachment, a condition requiring the height of the wall to be reduced to no more than 500mm above the extent of the proposed boundary wall is recommended. If the wall is intended as a privacy feature, it could be replaced by hedge planting or some form of less visually intrusive screen.

Further within the site, the ground floor level of the proposed building is set at RL12.50, which is 1.5m higher than the eastern courtyard level and around 2.8m higher than the level of The Esplanade. The applicant revised the proposal to delete a set of basement access stairs in favour of a set of stairs linking to the terrace of the ground floor apartment.

The original scheme exaggerated the visual bulk of the building at this point. The revised stairs and surrounding landscaping provide an effective transition between the ground floor level and the courtyard level as viewed from the public domain.

Council's controls normally require stairs which are '*visible from the public domain or a waterway*' to be no more than 1.2m wide in order to reduce their visual intrusiveness. In principle, the proposed stairs are considered acceptable as their true visual impact is relatively low. They would be partly obscured by the eastern walls and landscaping and there is only a limited perspective to that section of the site from The Esplanade.

To reduce the prominence of the stairs, a condition requiring the landscape plan to be augmented by providing a medium-height shrub on either side of the stairs is recommended.

In addition, it is recommended that further landscaping (in the form of planter boxes) be added to the terraces at the first and second floors. This relatively minor amendment will provide an additional privacy buffer between the proposed building and the neighbouring property to the north.

11.0 SECTION 94 CONTRIBUTIONS

In accordance with Council's development contributions plans, the proposed development generates a requirement for Section 94 contributions. The contribution requirement is reflected in the recommended conditions of consent.

12.0 DECLARATION OF AFFILIATION

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

13.0 CONCLUSION

The site is located within Zone 6 – Multiple Dwelling B under the Sutherland Shire Local Environmental Plan 2006. The proposed development is permissible within this zone.

Twenty (20) submissions were received in response to public exhibition of the proposal. The matters raised in these submissions include view loss, visual and acoustic privacy, overshadowing, solar access, compliance with planning controls and the general bulk and design of the building.

The proposed building is considered to be a high quality, architecturally appropriate response to the surrounding context and is in keeping with the character and scale of the neighbouring development. Although the proposal exceeds Council's height and floor space ratio controls, it does not result in unacceptable impacts on neighbouring properties or the natural environment. Whilst some view loss and overshadowing will occur as a result of the proposal, these impacts are very similar to what might be expected with a fully compliant scheme.

The building has been located further back from The Esplanade than required under SSLEP 2006 in order to facilitate view sharing and reduce its visual effect on the heritage-listed Esplanade. This is a substantial concession by the applicant and sacrifices some of the views the building would otherwise enjoy. Relatively minor design changes can be incorporated into the conditions so as to allow for further improved view sharing and privacy for the neighbouring buildings.

Although the building does not comply with the required side boundary setbacks, privacy impacts have been adequately addressed. The proposed building is a reasonable and quality redevelopment of a relatively small site and the reduced setbacks are considered acceptable as adequate building separation is permitted by the location of neighbouring buildings.

The application has been assessed having regard to the Heads of Consideration under Section 79C of the Environmental Planning and Assessment Act 1979. Following detailed assessment it is considered that Development Application No. 11/0541 is worthy of support, subject to the imposition of appropriate conditions.

14.0 RECOMMENDATION

- 14.1 That pursuant to the provisions of Clause 6 of State Environmental Planning Policy No. 1 (SEPP 1), the Objection submitted in relation to the requested variation of the maximum three (3) storey building height development standard under Clause 33(14) of Sutherland Shire Local Environmental Plan is well founded and is therefore supported. Accordingly, the provisions of SEPP No. 1 are invoked and this development standard is varied to four (4) storeys in respect to this development application.
- 14.2 That pursuant to the provisions of Clause 6 of State Environmental Planning Policy No. 1 (SEPP 1), the Objection submitted in relation to the requested variation of the building density development standard under Clause 35(9) of Sutherland Shire Local Environmental Plan is well founded and is therefore supported. Accordingly, the provisions of SEPP No. 1 are invoked and this development standard is varied to 0.9:1 in respect to this development application.
- 14.3 That Development Application No. 11/0541 for Demolition of a Single Dwelling and Construction of a Three (3) Storey Residential Flat Building Over a Basement Level at Lot 18 DP 7402 (No. 16) Arthur Avenue, Cronulla be approved, subject to the imposition of the recommended conditions set out in Appendix "A of this report.