

<b>JRPP No:</b>	<b>2011SYE090</b>
<b>DA No:</b>	<b>DA11/0763</b>
<b>LGA:</b>	<b>Sutherland Shire</b>
<b>Proposed Development:</b>	<b>Demolition of Existing Buildings and Construction of a Nine (9) Storey Mixed Use Development Comprising 27 Residential Apartments Above Ground Floor Retail/ Restaurant Tenancies &amp; Three (3) Level Basement</b>
<b>Site/Street Address:</b>	<b>Nos. 19 and 21 Gerrale Street, Cronulla Part Lot 21 DP 4759 and Whole of SP394</b>
<b>Applicant:</b>	<b>Sammut Developments</b>
<b>Submissions:</b>	<b>212 (87 objections, 125 in support)</b>
<b>Recommendation:</b>	<b>Deferral of Decision</b>
<b>Report By:</b>	<b>Luke Murtas, Acting Team Leader Sutherland Shire Council</b>

## Assessment Report and Recommendation

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### 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 (JRPP) as the development has a capital investment value of \$22,392,219.00.

#### 1.2 Background and Current Position

As the development application is dependent on a concurrent Planning Proposal, the JRPP directed Council officers to delay reporting the application to the JRPP until there was a reasonable degree of certainty that the Planning Proposal would be supported by Council.

Council resolved on 14 November to support the Planning Proposal, allowing nine (9) storeys on the site and a floor space ratio (FSR) of 3:1. The JRPP was subsequently advised and it was considered appropriate to report the development application to the 15 December meeting of the JRPP.

Subsequently, a Notice of Alteration in relation to Council's decision on the Planning Proposal was considered at Council's meeting of 5 December and in summary, Council resolved to reduce the floor space ratio from 3:1 down to 2.7:1.

On 6 December, a rescission motion was submitted seeking to rescind the decision to apply a floor space ratio of 2.7:1. The rescission motion will not be decided until Council next meets on 30 January 2012, unless an extraordinary meeting is called beforehand.

Upon being consulted, the JRPP directed that the application still be reported to the 15 December meeting despite the level of certainty in relation to FSR being eroded. A more complete explanation of events is contained in section 3.0 of this report.

### 1.3 Proposal

The application is for the demolition of an existing residential flat building and a two (2) storey brick building understood to contain commercial uses and construction of a nine (9) storey mixed use building with a three (3) level basement at the above property.

### 1.4 The Site

The subject site is located on the western side of Gerrale Street, between Surf Road and Ocean Grove Avenue, in central Cronulla. It comprises two (2) adjoining lots and has an area of approximately 1710m<sup>2</sup>.

### 1.5 The Issues

The main issues identified are as follows:

- Urban design – building bulk and scale and streetscape impacts.
- Residential amenity – both for existing occupants of neighbouring buildings and future occupants of the proposed building.

### 1.6 Conclusion

The proposed development does not comply with a number of controls currently applicable to the site, including SSLEP 2006 (LEP) height and floor space ratio limits and SSDCP 2006 (DCP) building envelope, setback and parking controls. The proposed development also fails to satisfy a number of the recommendations of the Residential Flat Design Code (RFDC).

However, Council recently resolved to amend the LEP and DCP for the subject site to facilitate the proposed development under the “Planning Proposal” process. If the Planning Proposal is gazetted by the Minister for Planning with a floor space ratio of 3:1, the proposed development would be essentially compliant with relevant Council controls for the site.

On the assumption that this occurs, the application would be recommended for approval, subject to a number of relatively minor amendments that would bring the proposed building closer to compliance with the recommendations of the RFDC.

In particular, conditions are recommended which require:

- An increased setback at the south-western corner of the site, or some other acceptable measure to protect existing trees.
- Setting balcony edges (including slab) further back from the neighbouring property than proposed at Levels 1-6 and the introduction of other incidental privacy measures.

- Reductions in the visual mass of the building by integrating the central 'seam' in the building into the roof form and deleting or modifying the sheer skin on the southern elevation.
- The provision of a traffic calming device on Surf Lane and a 'break-through panel' within the proposed basement to address traffic impacts and future parking issues.

However, should the recently adopted floor space ratio of 2.7:1 be gazetted as the control applicable to the site, it would be recommended that the application be refused on the basis that an 11% variation to a newly gazetted, site specific floor space ratio control could not be justified.

## **2.0 DESCRIPTION OF PROPOSAL**

The proposal is for the demolition of the existing buildings on the site and construction of a new nine (9) storey mixed use building over three (3) levels of basement. The scheme includes:

- Three (3) basement parking levels containing 68 car parking spaces.
- Retail tenancies, a residential lobby and entry area at ground floor, with a loading dock and six (6) retail parking spaces accessed from Surf Lane.
- Eight (8) storeys of residential apartments above, with five (5) being 'full' floor plates and then the footprint of each floor reducing for each level above the sixth floor underneath a sweeping chamfered roof. The building features a single penthouse-level apartment and the overall total number of apartments proposed is 27.

The ground floor of the proposed building has a nil setback to the northern boundary and slightly less than 4m to the south, with a 4m covered setback to the Gerrale Street (east) boundary. The proposal includes the dedication of a 3m-wide section of land along the western boundary of the site to facilitate the widening of Surf Lane.

The upper levels are to be set back a minimum of 8m from the street (east) and 4m from the side and rear boundaries. At the southern side, the setbacks gradually increase from the sixth floor upward, from 6m at the sixth floor up to 14m from the boundary at ninth floor.

The building has been designed to tier toward the north at these upper levels to provide solar access to the neighbouring residential flat building. The form of the main roof seeks to maintain a particular solar access plane to the neighbouring building, as discussed in the assessment section of this report.



*Figure 1: Indicative montage of the main street frontage of the proposed building as viewed from the east.*

### **3.0 SITE DESCRIPTION AND LOCALITY**

The subject site comprises two (2) adjacent allotments located on the western side of Gerrale Street in the Cronulla centre, between Surf Road and Ocean Grove Avenue. The site has a secondary frontage to Surf Lane. The site is located within Zone 8 *Urban Centre* under the *Sutherland Shire Local Environmental Plan 2006* (SSLEP 2006) and the proposed uses are permissible in the zone with development consent.

The land has a regular shape, with a combined frontage of approximately 37.8m to the street and a depth of approximately 45.7m. The overall site area is approximately 1710m<sup>2</sup>. The primary vehicular access to both sites is provided via Surf Lane.

The northern lot (No. 19) contains a two storey brick building understood to contain commercial uses. The southern site (No. 21) contains a three (3) storey brick 'walk-up' residential apartment building, which contains 15 apartments. The land is generally flat, with little appreciable change in level and there is no significant vegetation on the site.

The surrounding built form is made up predominantly of medium and (relatively) high density, mixed use development. To the immediate south of the site is a nine (9) storey mixed use building known as *Belgrave*, which contains eight (8) storeys of residential apartments over a retail ground floor. Beyond this is a pair of three (3) storey residential flat buildings that make up the southern 'bookend' of the block.

There is a café with shop-top commercial uses above located on the street corner to the north, with similar buildings continuing along the Ocean Grove

Avenue frontage on the block to the north of the site. Adjacent to the north-western corner of the site is an electricity substation and utilities building. Further to the north across Ocean Grove Avenue is a seven (7) storey mixed use building on the street corner with Gerrale Street.

Across Gerrale Street to the east are a two (2) storey residential apartment building and a four (4) storey mixed use building. To the south-east is a 14 storey development known as *The Cecil*, which contains 13 storeys of residential apartments over a retail ground floor. To the north-east is a recently completed six (6) storey residential flat building known as *Drift*, which was constructed by the same developer as the subject proposal.

Across Surf Lane to the west are the service areas of retail and commercial developments fronting Cronulla Street. These include shops, cafes, banks and a Woolworths' supermarket. The Commonwealth bank building located to the west of the site at 66-70 Cronulla Street is identified as a heritage item in the SSLEP 2006.

Further beyond to the north-west is the pedestrian-only section of Cronulla Mall, which contains numerous retail and commercial uses in buildings of a predominantly two (2) storey scale. The Cronulla railway station is located approximately 220m to the south-west (or 300m direct walking distance).







*Figures 2 and 3: The site in immediate and local context.*

#### **4.0 BACKGROUND AND CURRENT POSITION**

The JRPP was briefed on the application on 21 September 2011. As the development application is travelling alongside and is dependent on a Planning Proposal (to amend height and floor space controls), the JRPP directed Council officers to delay reporting the application to the Panel until there was a reasonable degree of certainty that the Planning Proposal would be supported by Council.

Following public exhibition of the Planning Proposal, Council resolved on 14 November to support the Planning Proposal allowing nine (9) storeys and a floor space ratio (FSR) of 3:1 on the site. A number of amendments to Council's Development Control Plan to facilitate the proposal were also adopted for public exhibition.

The JRPP was subsequently advised and it was considered appropriate in view of Council's decision to proceed to report the development application to the 15 December meeting of the JRPP. A full assessment of the application was undertaken and a final draft of this report prepared.

A Notice of Alteration in relation to Council's decision on the Planning Proposal was considered at Council's meeting of 5 December. At that meeting Council resolved, inter alia, to advise the Department of Planning and Infrastructure and the JRPP that it would support redevelopment of the site at a floor space ratio of 2.7:1.

A previously adopted amendment to Council's DCP to lower the solar access standard from 3hrs of sun to 2hrs (by declaring the locality to be a 'dense urban area') in mid winter was also reversed through the Notice of Alteration.

On 6 December a rescission motion was submitted seeking to rescind the 5 December decision that supported a floor space ratio of 2.7:1. The rescission motion will not be debated and decided until Council next meets on 30 January 2012, unless an extraordinary meeting is called beforehand.

Council officers advised the JRPP of the chain of events above. Officers expressed the view that there is no longer sufficient certainty about the Planning Proposal to enable meaningful consideration of the development application at the 15 December JRPP meeting, and that the matter should perhaps be put off until a later date. The JRPP Secretariat advised that as all of the arrangements were in place for the matter to be heard by the JRPP, the application would proceed to the 15 December JRPP meeting.

Following that direction, this report has been modified. In essence the report says that if a floor space ratio of 3:1 eventuates for the site, the application could be supported. However, if a floor space ratio of 2.7:1 is applied and the solar access requirements remain at 3hrs in mid winter, the application should be refused on the basis that significant variations to new, site specific planning controls could not reasonably be justified.

A detailed history of the progression of this site and development proposal is as follows:

- In 2002 the NSW Land and Environment Court refused consent for the redevelopment of the northern half of the site (No. 19 Gerrale Street) on the basis that the development proposal did not address Council's site amalgamation requirements.
- On 27 August 2004 the NSW Land and Environment Court dismissed an appeal against the deemed refusal of a proposal for a seven (7) storey mixed-use building on the subject site (19 and 21 Gerrale Street) with a floor space ratio of more than 2.5:1 (*Thiessen Architects v Sutherland Shire Council* [2004] NSWLEC 480). That proposal included a licensed hotel on the ground floor, offices on the first floor and five (5) levels of residential apartments above. The Court's decision was that the non-compliance with Council's height and floor space ratio controls (at the time six (6) storeys and 2:1) and the use of the ground floor of the hotel were unacceptable.
- On 15 October 2008 Council approved a six (6) storey mixed use building on the northern half of the site (No. 19 Gerrale Street) under DA07/1430. This building contained two (2) levels of basement parking,

retail uses and parking at ground floor, commercial floor space at Levels 1-3, with residential above. The residential levels of that building were set flush against the boundary between Nos. 19 and 21 Gerrale Street (to allow for a future 'mirrored' redevelopment of No. 21) and 4m from the northern side boundary. The approved building was taller than a typical six-storey residential building in light of the higher proportion of commercial storeys.

- The current application was lodged on 12 August 2011. It was lodged concurrently with a Planning Proposal to amend the LEP and DCP controls applying to the subject site, which had been already granted a 'gateway' determination by the (then) Department of Planning.
- Council contacted the applicant on 18 August 2011 and requested that discrepancies in the information submitted (generally related to the floor space ratio calculations) be reconciled. A geotechnical assessment, a section drawing of the residential lobbies and clarification as to de-watering were also requested.
- The application was placed on public exhibition between 23 August and 27 September 2011. A total of 212 submissions were received, with 87 in objection and 155 in support. These were considered by Council's Submissions Review Panel and it was determined that there was substance to a number of the objections and also to a number of the supporting comments.
- An Information Session was held on 07 September 2011 and twenty three (23) people, a mixture of supporters and objectors, attended.
- The application was considered by Council's Architectural Review Advisory Panel (ARAP) on 01 September 2011. The applicant requested that a second ARAP be convened and the application was presented to the Panel again on 05 October 2011. The advice and recommendations of the ARAP are discussed in detail below.
- The JRPP was briefed on the proposal on 21 September 2011. The Panel expressed a strong view that the proposal ought to comply strictly with all new LEP and DCP controls and that the areas within the residential lobbies ought to be counted as gross floor area. The applicant was advised of the Panel's views on 23 September.
- Following the public exhibition and the deliberations of the ARAP, Council wrote to the Applicant on 21 October 2011 and raised the following issues:
  - That the floor space ratio of the proposed development had been calculated by Council to be greater than both the 2.9:1 quoted in the application and the 3:1 sought under the Planning Proposal. This was due to the applicant discounting excess car parking and the lobbies at each residential level.
  - That the officer's preliminary assessment was that the proposed building separation, particularly to the neighbouring building to the south, was inadequate and should be increased. Non-compliance with the Residential Flat Design Code in this regard was also noted.
  - That solar access to the neighbouring apartments and to the southern apartments in the proposed building was less than



optimal and that if the bulk of the building were reduced to address the previous points, an opportunity to improve solar access would arise.

- It was requested that the applicant provide a response to the ARAP's commentary, which was critical of some aspects of the scheme and recommended a reduced building bulk, increased side setbacks and the introduction of a section of deep soil setback at the south-western corner of the site (to protect the existing mature trees on the neighbouring property).
  - That any revised submission should also clarify the various inconsistencies in the information originally submitted. It was specifically requested that the applicant supply A1 size plans and that SEPP 1 Objections be tendered in respect of the building height and floor space development standards if the applicant was seeking a conclusive determination from the JRPP.
- Amended plans and a revised Statement of Environmental Effects were lodged on 08 November 2011. The overall bulk and scale of the building were not reduced but aspects of the proposal were refined.
  - At the time of writing, the applicant has not provided SEPP 1 Objections, a groundwater assessment nor plans at A1 size/1:100 scale.

## **5.0 ADEQUACY OF APPLICANT'S SUBMISSION**

In general terms, the information submitted by the applicant was adequate to allow an assessment of the proposed building and its impacts to be undertaken. However, there are two noteworthy omissions from the applicant's submission:

- The proposal exceeds current SSLEP 2006 development standards in respect of building height and building density. No Objection under *State Environmental Planning Policy No. 1 – Development Standards* has been submitted in support of either variation. As discussed below, a Planning Proposal seeking to amend these standards is well advanced and the proposed building would comply with the amended LEP in terms of height and floor space if the changes are gazetted. In any case, the merits of the proposed height and floor space are able to be assessed and are discussed in detail below.
- The applicant was asked to confirm that the proposed development would not entail de-watering at a very early stage of the assessment. If the development requires dewatering it would become Integrated Development and would need to be subject to General Terms of Approval supplied by the NSW Office of Water. The applicant suggests that the development would not require de-watering, relying on local development experience and a desktop geotechnical assessment for a neighbouring site to substantiate this position. If it is resolved to support the application, in the absence of specific confirmation that de-watering is not required, any consent should include a condition that does not allow de-watering. If de-watering is required, the applicant would need to lodge another application for Integrated Development.

- Although it is not critical to the assessment of the proposal, it should be noted that the applicant has refused to supply plans at 1:100/A1 paper size, despite Council requests to do so. This request was made as 1:100 is industry standard and the larger scale is easier to read and assess.

## 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).

A total of 16 neighbouring properties, including a large number of individual strata-titled units were notified of the proposal and 212 submissions were received as a result. Of these, 87 were in objection to the proposal or raised concerns, whilst 125 were in support of the proposal.

A full list of the locations of those who made submissions, the date/s of their letter/s and the issue/s raised is contained within **Appendix "A"** of this report. It is noted that the applicant commissioned their own consultant to conduct public consultation at the same time as Council's process was underway.

In the interest of conciseness, the submissions are summarised in general terms in this report. The issues raised in these submissions include:

### 6.1 Traffic and Parking Impacts

The majority of objectors were concerned that the proposed development will generate additional traffic in central Cronulla and will increase demand for on-street parking, which is already at a premium.

The proposal includes 27 apartments and approximately 600m<sup>2</sup> of shop tenancies. On-site parking for a maximum of 74 vehicles is proposed, with a significant proportion of these allocated as resident spaces. In addition, a loading bay, car wash bay and motorcycle and bicycle parking are proposed.

By contrast, there are currently 15 parking spaces available on the site, servicing 15 apartments and approximately 1000m<sup>2</sup> of commercial floor space. There is no loading bay, motorcycle or bicycle parking at present.

The on-site parking proposed is a marked proportionate improvement on the existing conditions and will mitigate increased demand for on-street parking. Council's recent review of the parking controls for the Cronulla Centre found that it was more appropriate to supply ample on-site parking rather than apply maximum parking rates, which are more appropriate in centres without such a high visitor parking demand.

In terms of traffic generation, there is nothing to suggest that the local road network could not cope with the relatively minor additional number of cars and vehicle movements generated by the proposal. Cars

exiting the site would have a relatively short and easy run to either the Kingsway or to Captain Cook Drive, both of which are major distributor roads. The site is well serviced by public transport and is within easy walking distance of local shops, schools, supermarkets, services such as libraries, places of worship, private recreation such as clubs and restaurants and public amenities such as the nearby South Cronulla Park and the beach.

A condition requiring traffic calming devices to be installed is recommended should the application be considered to be worthy of support. Such a measure would be useful in Surf Lane where traffic volumes would increase alongside increased pedestrian patronage, which might result from the laneway widening. Near the northern end of the lane, where all of the development's vehicular traffic would discharge, there is a children's playground, which might also necessitate the installation of a traffic calming device.

## 6.2 Amenity Impacts on Neighbouring Properties

Objection was raised to the impact on neighbouring properties, mainly (but not solely) the *Belgrave* apartments to the immediate south. Impacts of primary concern are solar access, visual and acoustic privacy and view loss. Issues in respect of the impact on existing trees, building separation, glare and light spill were also raised.

It is agreed that the proposal will entail some detrimental effect on the residential amenity of neighbouring properties, particularly the *Belgrave*. The applicant made revisions to the proposal to ameliorate some of these impacts and if the application is to be approved, impacts could be further reduced by the imposition of appropriate conditions.

Residential amenity, both for future residents of the site and for occupants of neighbouring properties is a critical aspect of the application and is discussed in detail in the assessment section of this report.

## 6.3 Built Form, Streetscape, Bulk and Scale

Many objections were raised in respect of the apparent height and bulk of the building and its compatibility with the character of surrounding development. Objections were also raised in respect of the materials selection and architectural appointment of the building.

Whilst it is considered that the building has considerable architectural merit, it is agreed that its proportions are relatively broad and that there are impacts associated with the proposed bulk. The proposal has the benefit of soon to be made site specific controls that may permit a building of this height and floor space ratio regardless.

In addition to the measures discussed above, it is recommended that the perceived mass of the building is broken into two more slender

elements by amending the roof form. This issue is discussed in detail below.

#### 6.4 Other Points of Objection

The application was exhibited concurrently with a Planning Proposal to amend the applicable planning controls at the direction of the Department of Planning & Infrastructure. As a consequence, many of the objections received were made against the general principle of 'spot rezoning'. Regardless of their merit, such objections relate to the strategic planning process and are immaterial to the assessment of the development application.

It is not intended to provide a commentary on the strategic planning underpinning the applicable planning controls, or critique the controls themselves. This process has already been undertaken by Council in its assessment of the Planning Proposal.

Council has resolved to support a revised planning framework for the site which would largely facilitate the development in the form proposed if a floor space ratio of 3:1 is gazetted. This report is an assessment of the environmental impacts of the proposal and recommends measures to ameliorate these within the confines of the new framework of controls for the site. If a floor space ratio of 2.7:1 is ultimately applied to the site, the proposal would presumably be amended and re-assessed.

Other points of objection are similarly beyond the scope of this assessment. Some neighbouring property owners raised concerns and cited anecdotal evidence that the development would decrease the value of their properties. By contrast, many of the submissions in support of the application anticipated that the development would stimulate the Cronulla property market and improve the value of surrounding properties.

The *Environmental Planning and Assessment Act* 1979 does make provision for the assessment of economic impacts of development of this type. However, no compelling evidence (such as the opinion of a qualified valuer) has been supplied in support of either position in respect of property values.

In addition to the above, it is noted that a significant number (and the greater proportion) of submissions were made in support of the proposal. Some of these are again tangential to the merits of the development application. For example, a number of supporters felt that 'this may be the only chance' to redevelop the site. Again, for the sake of conciseness, submissions made in support are summarised in general terms only, and include:

#### 6.5 The proposed building will improve the streetscape (both by virtue of its design quality and by removing two older, less attractive buildings)

Comment: It is agreed that a modern, well designed building would improve the appearance of the Gerrale Street streetscape and the overall building quality of the Cronulla Centre.

6.6 The developer has completed other high-quality projects in the area previously

Comment: It is agreed that the particular developer involved in this project has completed high quality projects in the Sutherland Shire previously, including a recently completed project to the east of the subject site. However, this submission is immaterial to the merits of the current proposal, as these previous buildings are not being assessed and the proposed building could potentially be delivered by another developer as the consent attaches to the land, which could be sold on at any time.

6.7 The development will bring economic benefits in terms of increased employment and improved housing in the Sutherland Shire

Comment: It is agreed that the proposal entails economic benefit in terms of investment, employment and housing supply in the local area. The proposal would also potentially expand the Cronulla dining strip and form a connection between the retailing uses in the mall and those on the eastern side of Gerrale Street.

It is considered that the development would also bring social benefit in terms of increased housing choice for lifestyle retirees, which Council's Environmental Planning team has identified as a key driver of housing demand in Cronulla.

6.8 The site is well located in relation to public transport, local shops and recreational facilities

Comment: It is acknowledged that the site is well located. The site is within walking distance of the Cronulla railway station, parks, the beach, clubs/restaurants, commercial services, shops/supermarkets, churches, schools, cinemas and library. The provision of on-site parking will offset demand on local public parking.

## **7.0 STATUTORY CONSIDERATIONS**

The subject land is located within Zone 8 – Urban Centre under the *Sutherland Shire Local Environmental Plan 2006*. The proposed development, being a mixed use development containing residential apartments over retail/restaurant tenancies, is permissible within the zone with development consent.

The following Environmental Planning Instruments (EPIs), Development Control Plans (DCP's), Codes or Policies are relevant to this application:



- State Environmental Planning Policy No. 1 – Development Standards (SEPP 1)
- State Environmental Planning Policy No. 65 – Design Quality of Residential Flat Development (SEPP 65)
- State Environmental Planning Policy (Major Development) 2005
- State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004
- Sutherland Shire Local Environmental Plan 2006 (SSLEP 2006)
- Sutherland Shire Development Control Plan 2006 (SSDCP 2006)
- Cronulla Centre Section 94A Levy Plan

#### 7.1 Status of Applicable Local Planning Controls

The LEP and DCP planning controls for the entire Cronulla Centre are currently under review. The current application is being assessed alongside a site-specific Planning Proposal to amend SSLEP 2006 and SSDCP 2006. The Planning Proposal is reasonably well advanced.

At present the LEP allows a maximum height of six (6) storeys and a maximum floor space ratio of 2:1. The Planning Proposal would amend the LEP to allow a maximum height of nine (9) storeys and a maximum floor space ratio of 3:1 for the subject site as exhibited, or 2.7:1 if Council's most recent decision is not rescinded (see section 3.0 of this report for more information).

The Planning Proposal also includes amendments to Council's DCP that identify the site as being within a 'dense urban area' (allowing concessions in relation to solar access) and includes a site-specific building envelope control in line with the building proposed under the current development application. Council resolved to endorse these amendments at its meeting of 14 November 2011.

At its meeting of 5 December Council reversed its position on the area being declared a 'dense urban area', meaning minimum solar access requirements would not be reduced from 3hrs to 2hrs in mid winter. This decision is the subject of a rescission motion that had not been heard at the time this report was finalised.

It was also resolved to exhibit further amendments to the DCP in relation to the proposal in respect of site amalgamation, car parking requirements and land use mix. Should the Council resolve to support these changes after the public exhibition period, the proposal would essentially comply with all of Council's core development controls that apply to the site.

It should be noted that aspects of the amended planning controls endorsed by Council for the site result in the proposed building failing to comply with the recommendations of the Residential Flat Design Code in respect of solar access and building separation. Compliance with current controls (and draft controls, where relevant), together with the overall merit of the proposal, are discussed in detail below.

## 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:

### 8.1 State Environmental Planning Policy No. 65 – Design Quality of Residential Flat Development – Design Quality Principles

Design Quality Principles	Assessment
Principle 1: Context	<p>The proposal involves a nine (9) storey building, with eight (8) storeys of residential apartments over a ground floor of retail tenancies and three (3) levels of basement parking. The proposal is in keeping with the character of the surrounding development. There are many buildings of a similar or greater scale in the Cronulla centre and Council has recently resolved to support a building of the scale proposed on the site.</p> <p>The application does not provide an appropriate response to the natural context of the site. Although it is acknowledged that Council's planning controls do not require deep soil planting on sites within Urban Centres, this does not prevent the retention of trees on adjacent sites, especially where those trees have amenity benefits. This matter is discussed in the assessment section below.</p>
Principle 2: Scale	<p>The proposed building is in keeping with the height of surrounding larger buildings. It is also acknowledged that the proposed building is in keeping with Council's recently adopted increased height control for the site and is therefore consistent with the desired future character for the Cronulla Centre in terms of scale.</p>
Principle 3: Built Form	<p>The proposed built form is in keeping with Council's recently exhibited increased floor space ratio control for the site and must therefore be considered consistent with the desired future character of the locality in terms of overall building bulk. If the lower floor space ratio of 2.7:1 is adopted, the building would not be consistent with the desired future character.</p> <p>The proposed built form has been designed to minimise impacts on neighbouring properties in terms of solar access. The application has been modified recently to improve privacy for the neighbouring building to the south.</p> <p>A 'technical' component of the floor space ratio has been removed from the proposed building by deleting the enclosure of the residential lobbies, which serve to break up the building bulk somewhat. However, it still reads as one large mass, rather than two slender forms, side-by-side.</p>

	<p>It is also considered that the proposed building separation to the southern neighbour is inadequate. However, Council has recently resolved to accept reduced building separation on this site. Some privacy and dominance issues can be addressed by way of conditions requiring relatively minor amendments to the proposal.</p>
Principle 4: Density	<p>In general terms the site is large and under-utilised, with good access to local shops, facilities and public transport and the site is capable of sustaining increased density. The proposal is consistent with Council's recently exhibited increased floor space ratio control of 3:1 for the site and is therefore considered consistent with the desired future character for the locality. If the lower floor space ratio of 2.7:1 is gazetted, the proposal would not be consistent with the desired future character of the area.</p> <p>Regardless, the density of the scheme submitted results in impacts on neighbouring properties in terms of privacy, solar access and being overbearing. It is acknowledged that Council had resolved to treat the site as being in a 'dense urban area' and therefore it is able to satisfy a lower threshold in terms of privacy and solar access. With this caveat, subject to conditions requiring relatively minor amendments to the proposal, the proposed density is deemed acceptable. If this amendment to the DCP does not succeed, the proposal would fail on this ground.</p>
Principle 5: Resource, Energy & Water Efficiency	<p>The proposed development incorporates BASIX requirements and other sustainability measures into its design, including:</p> <ul style="list-style-type: none"> <li>• Most apartments designed to maximise solar access and cross-ventilation, but allowing for passive 'climate control' by way of external louvers where appropriate;</li> <li>• roof water harvesting for grey water use; and</li> <li>• an extensive array of photovoltaic cells on the roof.</li> </ul>
Principle 6: Landscape	<p>The proposed development does not make any significant contribution to the natural landscape of the Cronulla Centre, but it is not required to under Council's controls.</p> <p>Four (4) street trees are proposed in the Gerrale Street frontage of the site and trees on the neighbouring property could be maintained, subject to the imposition of specific conditions.</p>
Principle 7: Amenity	<p>The proposal does not fully satisfy the provisions of the Residential Flat Design Code in terms of residential amenity, including solar access, cross-ventilation and visual and acoustic privacy. These guidelines are not satisfied for the future occupants of the site as detailed below.</p> <p>The applicant has made revisions to the original scheme to reduce impacts on the amenity of adjoining properties in relation to visual and acoustic privacy. A slight increase in</p>

	solar access to the neighbouring property to the south could be gained by conditions requiring relatively minor amendments to the proposal.
Principle 8: Safety and Security	<p>The Proponent considered Crime Prevention Through Environmental Design (CPTED) Principles in the design of the project. The proposal provides increased activation and passive surveillance of the street and private open space areas on the site. Residential entry and lobby areas are to be secured and well lit.</p> <p>The provision of active shopfronts along Gerrale Street and the widening of Surf Lane will also contribute to safety and security around the site. However, it is considered that the alcove to the lane should be redesigned to improve safety.</p>
Principle 9: Social Dimensions & Housing Affordability	<p>The proposal provides a mix of apartment types which would encourage diversity in the future occupation of the development in terms of social mix.</p> <p>Affordable housing is not proposed as part of this development however, the mix of apartment types and the inclusion of adaptable apartments have merit. All apartments are expected to be positioned in the premium end of the market.</p>
Principle 10: Aesthetics	<p>The building is generally well-designed and presents a significant improvement in the visual appeal of the subject site. However, it is considered that the breadth of the building and its visual impact could be reduced if a 'break' were introduced into the over-sailing roof. This would give the building a more slender appearance and can be resolved by the imposition of an appropriate condition.</p>

## 8.2 Residential Flat Design Code (RFDC) – Detailed Guidelines

The RFDC is akin to a DCP that complements SEPP 65. The Code gives more detailed guidelines in respect of the general design quality principles set out in the SEPP. The RFDC illustrates good practice, though is not a statutory instrument. Its controls are largely replicated in SSDCP 2006 and need not be mentioned twice (a full DCP compliance table is below).

The proposed apartments easily comply with the minimum internal and open space areas recommended in the RFDC. The Code's internal circulation, accessibility and adaptability requirements are also satisfied.

As discussed below, the proposal does not comply with the Code's solar access requirements for the proposed building (70% of apartments receiving 3hrs between 9am-3pm at midwinter), but would satisfy the 'dense urban areas' requirement of only 2hrs midwinter sunlight.

The critical control from the RFDC that the proposal does not satisfy is building separation. The Code recommends the following building separation distances in order to maximise privacy between residential flat buildings:

Buildings up to 4 storeys/12m high:

- 12 metres is required between habitable rooms and balconies;
- 9 metres between habitable rooms/balconies and non-habitable rooms; and
- 6 metres between non-habitable rooms.

Buildings between 5 to 8 storeys/up to 25m high:

- 18 metres is required between habitable rooms and balconies;
- 13 metres between habitable rooms/balconies and non-habitable rooms; and
- 9 metres between non-habitable rooms.

Buildings of 9 storeys or more/over 25m:

- 24 metres is required between habitable rooms and balconies;
- 18 metres between habitable rooms/balconies and non-habitable rooms; and
- 12 metres between non-habitable rooms.

The existing nine-storey *Belgrave* apartment building has two apartments per floor facing the common boundary between the sites (apart from the penthouse level, which only has one north-facing apartment). The north-facing balconies of the *Belgrave* project to within 5.8m of the boundary between the sites, except for the Level 1 (over podium) communal terrace, which comes within 3m of the boundary. The glass line of the north-facing living areas is located between 7.8-8.8m from the boundary. The form of the building is a vertical tower and the setbacks do not increase with height as envisaged by the RFDC (although the building obviously predates the Code).

The bedrooms to the southern side of the proposed building at Levels 1-5 are located between 4-5.4m from the common boundary, whilst the balconies terminate (with balustrades, not slab edge) at 5.2m from the boundary, except for Level 1 (over podium) where the terrace balcony comes to 1m from the boundary. The slab edge and outer 'skin' of shutters on the southern side of the proposed building are at 4m setback from the boundary at levels 1-5. The south-facing bedroom and living room walls on these levels have been amended to sit at oblique angles to the boundary and the windows have been amended to face east and west at the revealed edge of these walls.

At Level 6 of the proposed building the apartment's outer skin and the balcony balustrade are set back to 4m from the boundary. At Level 7 the apartment wall and balcony edge are set at 10.5m from the boundary and at Level 8 (the uppermost floor) the apartment and balcony are more than 20m away from the boundary.

At the closest point (at the Level 1 podium-top terraces) the balconies are only 4m apart, with only 1m of setback provided on the subject site. Above that level, balconies come within 9.8m of habitable rooms up to the fourth storey (where 12m separation is recommended), with only 4m of this provided on the subject site.

At the fifth and sixth floors, balconies also come within 9.8m of habitable rooms, with as little as 4m setback provided on the subject site, despite the RFDC recommending an 18m separation at this point.



At the seventh floor, a 16.3m separation is provided, which is still short of the RFDC recommendations, but a substantial proportion of the overall setback is by now accommodated on the subject site. This tendency continues as the proposed building slopes further away from the boundary whilst the *Belgrave* does not.

The merits of the proposed building separation are discussed in detail below.

### 8.3 Local Controls - SSLEP

The controls below are the current controls, keeping in mind that Council has resolved to amend them (see further below).

<b><i>Sutherland Shire Local Environmental Plan 2006</i></b>			
<b>Standard/Control</b>	<b>Required</b>	<b>Proposed</b>	<b>Complies? (% Variation)</b>
Clause 33(8) – Building Height	Maximum 6 storeys	9 storeys	No – 50% variation (see assessment section)
Clause 35(11) – Building Density	Maximum Floor Space Ratio (FSR) of 2:1	FSR of 2.96:1 excluding ‘breezeways’ (with breezeways, FSR would be ~3.15:1)	No – at least 50% variation (see assessment section)

Unlike other parts of the Shire, sites in the Urban Centre zone do not have minimum lot sizes and dimensions, or minimum landscaped area (deep soil) requirements prescribed by the LEP.

Compliance with applicable draft LEP controls is set out below:

<b><i>Sutherland Shire Local Environmental Plan 2006: Draft Amendment No. 11</i></b>			
<b>Standard/Control</b>	<b>Required</b>	<b>Proposed</b>	<b>Complies? (% Variation)</b>
Clause 33(8) – Building Height	Maximum 9 storeys	9 storeys	Yes (see assessment section)
Clause 35(11) – Building Density	Maximum Floor Space Ratio (FSR) of 3:1, now altered to 2.7:1	FSR of 2.96:1 excluding ‘breezeways’ (with breezeways, FSR would be ~3.15:1)	Depends on which standard is finally gazetted

### 8.3 Local Controls - SSDCP

The table below details the application’s compliance with the SSDCP 2006. Draft DCP amendments prescribing a building envelope matching the proposal and allowing for ‘dense urban areas’ solar access concessions have been recently exhibited by Council and further draft amendments in relation to site amalgamation, floor space mix and car parking are currently on exhibition. The decision to apply the ‘dense urban areas’ concession was recently overturned, though is now the subject of an outstanding rescission motion (see section 3.0 of this report for further explanation).

Where the current controls are proposed to be amended, a comment is included in the “Compliance?” column of the table.

<b>Sutherland Shire Development Control Plan 2006 (as current at the time of writing)</b>			
<b>Control</b>	<b>Requirement</b>	<b>Proposal</b>	<b>Compliance?</b>
Clause 1.2.b – Submission Requirements	Massing model required to be submitted for residential flat buildings	No physical model provided. No comprehensive electronic model provided.	No
Clause 2.5.b – Specific Aims for Cronulla Centre	1. Connectivity improved 2. Streetscapes and public areas improved 3. Art Deco style reiterated 4. Prominent corners 5. Public Art 6. (Public) Views	1. Laneway widening dedicated 2. Laneway dedication and Gerrale St embellished 3. Contemporary architectural style 4. Not applicable 5. None required 6. Not applicable	Yes  Yes, and s94  No, but acceptable  Private views discussed below
Clauses 3.1a-c Amalgamation	Must amalgamate with sites to the north, unless adaptive reuse proposed or amalgamation objectives achieved	Only 2 out of required 5 sites to be amalgamated (but largest 2 sites)	No, but acceptable in light of draft DCP and Court ruling
Clause 3.2.b.8 – Street Setbacks	Widening dedication to Surf Lane Nil setback to Surf Lane for ground & 1 <sup>st</sup> floor 4m to Surf Lane from 2 <sup>nd</sup> floor upward 4m to Gerrale St for ground & 1 <sup>st</sup> floor 8m to Gerrale St from 2 <sup>nd</sup> floor upward Trees every 10m of frontage	3m wide laneway widening dedicated Nil setback beyond widening area 4-10m above 2 <sup>nd</sup> floor  4m setback to ground floor 8m setback to 1 <sup>st</sup> floor 8-11m above 2 <sup>nd</sup> floor  4 trees shown at even spacing within ~37m frontage	Yes  Yes  Yes Yes Yes  Yes
Clause 3.3.b.9, 11 and 12 – Boundary Setbacks	Nil setbacks for ground floor uses permissible  Minimum 4m side setback for residential flat buildings	Ground floor: nil setback Basement: nil setback at either side  Above ground: 4-10m	Yes No - and will impact on veg. (see report) Yes (see report)
Clause 3.5 – Building Envelope	As set out in Cronulla Centre maps	Main massing and articulation contained within prescribed envelope	Yes per draft DCP
Clause 3.6.b.1 Landform	Natural contours 'not unduly' altered, basement parking excavation does not exceed building footprint	Excavation generally limited to basement area; prevailing landform not noticeably altered	Yes

	Earthworks to minimise impacts on vegetation	Basement will impact negatively on health of trees on adjacent site	No, but can be addressed (see report)
Clause 3.7.b.4 Communal Open Space	Minimum 100m <sup>2</sup> area provided with minimum 10m dimension	None provided	No, but acceptable in context
Open Space – Balconies	Minimum 12m <sup>2</sup> balcony with min. 2.5m dimension per unit; Secondary balconies encouraged	Balconies range from 25-90m <sup>2</sup> in total area but not all satisfy min. 2.5m dimension requirement	Areas comply Widths – No, but acceptable to maintain neighbours' privacy
Building Depth	Maximum plan depth of 18m	Building has a square floorplate of ~30x30m	No (see report)
Apartment Mix	Mix of 1, 2 and 3+ bedroom apartments	2, 3 and 3+ bedroom apartments provided	No, but acceptable
Clause 3.7.b.4 Dwelling Design	Min. floor-to-ceiling height of 2.7m	Not dimensioned, but plans scale to 2780mm	Yes
	Minimum bedroom dimension of 3m	Not dimensioned, but plans indicate bedrooms on southern side <3m; all other rooms comply	No Yes
Clause 3.7.b.4 Natural Ventilation	60% of dwellings cross-ventilated,	17 of 27 (63%) apartments cross-ventilated, others rely on 'breezeways'	Yes, and can be improved by condition (see report)
	25% of kitchens directly naturally ventilated	10 of 27 (37%) kitchens are naturally ventilated	Yes
Clause 3.9.b.1 Floor Space Mix	60% of floor space in Urban Centres to be retail/commercial	~670m <sup>2</sup> out of ~4922m <sup>2</sup> (13.5%) dedicated to non-residential uses	No, but complies with draft DCP
Clause 3.10.b.1 Ancillary facilities	All dwellings to have external clothes drying areas of at least 5lin.m; with solar access	None provided	No – internal only
	Storage of 6m <sup>3</sup> (min. dimension 1m <sup>2</sup> ) per dwelling set aside in basement	Storage of at least 6m <sup>3</sup> and min dimension 1m <sup>2</sup> per dwelling provided in basement	Yes
	Master antenna/satellite dish provided and located so not visible from public domain	Not detailed	No, but readily addressed by condition
Clause 3.11.b.1, 2, 5, 6 and 11	Must have clearly identifiable entry	Residential and retail entry point well defined	Yes

Streetscape and Building Form	Bulk visually reduced; large and unbroken expanses of roof to be avoided	'Seam' in building reduces visual bulk; but large, unbroken over-sailing roof detracts from this effect	Yes  No, but condition recommended (see report)
	Basement not to project more than 1m above ground level	Basement wholly underground	Yes
	Highly reflective materials not to be used	Zinc roofing and silver powder-coated aluminium external 'blinds' proposed	Able to comply, subject to condition
	Design makes distinction between uses legible	Discrete uses/ areas are able to be read	Yes
	Continuous awnings provided across shopfronts etc.	Single awning across entire frontage	Yes
	Incorporate Art-Deco style features	Not adopted	No, but acceptable in street context
	Non-residential facades at least 75% glazed	~90% of ground floor street frontage glazed	Yes
Clause 3.12.b.2 and 4 Landscape	Existing canopy trees in the vicinity of side, rear and front setbacks must be retained	Canopy trees to the south not adequately protected	No (see report)
	At least 25% of unbuilt-upon podium to be landscaped	~35% of unbuilt-upon podium landscaped	Yes
Clause 3.13 Privacy	Buildings designed to maximise privacy (various controls)	Design modified to improve privacy for neighbouring properties	Able to comply subject to conditions (assessed in detail in report)
Clause 3.14 Daylight Access	New development not to reduce midwinter sunlight to open space/ living areas of neighbouring properties by more than $\frac{1}{3}$ between 9am-3pm	A number of apartments in the neighbouring Belgrave will lose more than $\frac{1}{3}$ of existing sun	No (assessed in detail in report)
	At least 70% of apartments to receive 3hrs direct sunlight between 9am-3pm at	15 of 27 proposed apartments (56%) receive >3hrs sunlight between 9am-3pm on midwinter	No (assessed in detail in report)

	midwinter (may be relaxed to 2hrs in 'dense urban areas')	21 of 27 apartments (78%) receive >2hrs between 9am-3pm on midwinter	Yes, if relaxed draft DCP controls accepted
	No more than 10% of apartments to have a SW-SE orientation	12 out of 27 apartments (44%) have southerly aspect	No (assessed in detail in report)
Clause 3.15.b.1 Views	Impacts minimised and view sharing encouraged by reducing building height, 'stepping', and breaking up building mass	No comprehensive view analysis undertaken for DA – supplied with Planning Proposal	No, but compliant with amended DCP controls (assessed in detail in report)
Clause 3.17.b.2 Adaptable Housing	20% of apartments are to be adaptable	6 out of 27 (22%) of apartments designed for adaptability.	Yes
Clause 3.17 Safety and Security	CPTED and 'Safer by Design' principles to be adopted	Building provides appropriate balance between physical security and passive measures	Yes
Chapter 4 Natural Resource Management	Vegetation (among other things) protected appropriately	Development likely to have an adverse effect on trees on neighbouring site	No, but able to be addressed by condition
Clause 7.2.b.3 Driveway	Driveway minimum 5.5m wide	Proposed driveway 5.8m wide	Yes
Clause 7.1.b.5 Car Parking	Maximum 1.5 spaces per apartment (41 spaces) 1 visitor space per 5 dwellings (6 spaces)  1 motorcycle per 25 car spaces (3 spaces)  1 car wash bay  1 space per 30m <sup>2</sup> of retail/ restaurant GFA (23 spaces required)  1 bicycle space per 5 dwellings + 1 visitor bicycle space per 10 dwellings (9 spaces)	68 resident spaces provided (assumed based on original plans) 0 visitor spaces provided  1 motorcycle space provided  1 car wash bay provided  6 commercial spaces provided  8 spaces provided	No, but acceptable (see report)  No  Yes  No (see report)  No
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

## 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. Architectural Review Advisory Panel (ARAP)

The application has been reviewed twice by Council's ARAP. The Panel also provided advice to Council on the draft amendments to the LEP and DCP in respect of the subject site. Copies of the ARAP's reports are attached in **Appendix "B"** of this report.

In general terms, although the ARAP recognised architectural merit in the design of the proposed building, the proposal was not supported. Among other things, it was specifically recommended that the side setbacks be increased to 6m from northern and southern boundaries; that the floor space ratio of the building be reduced; and that areas at the northern and southern edges of the site be amended to accommodate existing or new vegetation.

#### 9.2. Engineering

Council's Engineer has undertaken an assessment of the application and did not raise an objection to the proposal in principle, subject to the imposition of appropriate conditions.

Redevelopment of the site (compared to an amalgamated site) will place a constraint the neighbouring sites in relation to them being able to provide vehicle access to any new basement for parking. To address this, a condition is recommended that requires a 'breakthrough panel' to be constructed in the basement of the proposed building. This will allow the vehicular ramp on the subject site to be used to access any future basement on the adjoining site to the north.

#### 9.3. Environmental Scientist

Council's Environmental Scientist recommended that the applicant provide a groundwater assessment, which would allow Council to assess the need for, and the impacts of any de-watering. As mentioned above, this has not been forthcoming though can be resolved by way of condition. The Scientist did not raise any further objection to the proposal in principle, subject to the imposition of appropriate conditions.

#### 9.4. External Referrals

In accordance with Council's Crime Prevention through Environmental Design protocol, the application was referred to the NSW Police Service for comment. A submission has not been received from the Police at the time of reporting.

### **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 and the provisions of relevant environmental planning instruments, development control plans, codes and policies, the following matters are considered important to this application.

### 10.1 Building Height and Density

As discussed above, the proposed development exceeds current SSLEP 2006 controls for building height (maximum six (6) storeys) and building density (maximum floor space ratio allowed is 2:1) by 50%. However, the proposal complies with the exhibited draft building height (nine (9) storeys) and density controls (3:1) recently endorsed by Council and forwarded to the Department of Planning and Infrastructure for gazettal.

The proposal does not comply with the most recently adopted floor space ratio control of 2.7:1, which is the subject of a rescission motion (see section 3.0 of this report for further explanation). The floor space ratio control ultimately applied to the site will be the outcome of a rigorous, site specific planning exercise, endorsed by the Minister for Planning. If the 2.7:1 floor space ratio control is gazetted, there could be no reasonable argument to allow it to be varied and the application should be refused.

#### 10.1.1 Building Envelope

Council has also resolved to adopt an amendment to the SSDCP which sets a site-specific building envelope, which the proposed building fits within. In that sense, the bulk and scale of the building can be considered to be consistent with the desired future character of the site. However, there are identifiable impacts associated with the bulk of the building that go to the merits of the proposal despite the recently endorsed planning controls. In any case, the draft controls for the site are expressed as maximums and not 'as of right' entitlements.

The issue of building bulk is also intrinsically linked to the residential amenity issues discussed further below. Although Council has recently resolved to permit the general envelope of the proposed building, relatively minor reductions in the building envelope will provide gains in terms of solar access, views and privacy for neighbouring properties.

Recommendations made below to reduce the bulk of the building are not for the sake of numerical compliance. Rather, a balance is sought between the applicant's legitimate expectation to realise a building envisaged by Council's recently endorsed controls and protecting the amenity of future residents and neighbouring properties.

It is considered that opportunities exist to reduce the overall perceived bulk of the proposed building without resulting in a substantial loss of yield for the developer. Council officers did not request that the floor space ratio be reduced for the sake of compliance alone, although it would be reasonable to expect that a development designed to fit such recently endorsed controls would be compliant. The proposed building will result in a tangible loss of sunlight and will result in privacy and visual bulk impacts to the neighbouring property to the south of the site.

It is also worth noting that the application, as originally submitted, included the enclosure of the eastern and western ends of the residential lobbies on each

floor with glass louvres. The lobbies have a total area of approximately 515m<sup>2</sup>. In its preliminary assessment, Council formed the view that these areas were 'gross floor area' as defined in the SSLEP 2006. If the lobbies are included as floor space, the floor space ratio of the proposal would be in the order of 3.15:1, in excess of the recently endorsed 3:1 and more recent 2.7:1 control for the site.

The applicant sought legal advice on this matter and, based on this advice, removed all of the glass louvres, keeping the lobbies literally open to the air and secured at either end only by balustrades. Without counting the lobbies, the floor space ratio of the proposed building is 2.96:1.

Whether or not the lobbies (or 'breezeways') now constitute gross floor area is questionable, as the lobbies are still enclosed by walls for the vast majority of their perimeter, are completely enclosed by floor and ceiling slabs and are more akin to corridors or lobbies than an open walkway or the like.

Regardless, the lobbies are centrally located within the building and the simple removal of the glazing does not equate to any reduction in the building's overall mass. The result of the amendment is that the building may now technically comply, but still maintains the same bulk as originally proposed, which is visually greater than a floor space ratio of 3:1.

The breezeways contribute to the building's breadth, but at the same time they create a visual separation between two halves of the building, which is relatively visually permeable. This presents an opportunity to reduce the overall visual bulk of the building. It is considered that the large, prominent over-sailing roof form disrupts this natural break in the building by spanning the entire mass. A condition requiring the 'seam' to be carried up into the roof form by introducing a physical or visual break in its span is recommended.

Given the prevailing weather conditions in Cronulla, having the lobbies open at each end will create windy and at times cold, unpleasant conditions for residents of the building. Given this and the expected value of the apartments, it is anticipated that future residents (or the developer prior to selling the units) will seek to amend the plans to enclose the open ends of the lobbies, and thereby increase the floor space ratio to 3.15:1.

#### 10.1.2 Building Separation

The building does not comply with the building separation distances recommended by the RFDC. The extent of the proposed variation is detailed above, however in summary the building setback would need to be increased by a minimum of 2m on the southern side and at some points by up to 8m to comply.

The applicant argued that the separation distances between buildings in the RFDC were only intended to apply to new buildings being developed on the same site rather than between new buildings and existing buildings on neighbouring sites. The language used in the RFDC and an analysis of how

the RFDC has been consistently administered across Sydney since its introduction clearly shows that this interpretation is incorrect.

It is considered that the potential privacy impacts associated with the southern bedrooms and living rooms due to the non-compliant setback are mitigated by the applicant's revisions, which include the splaying of walls and re-orientation of windows towards the front and rear of the site.

However, the balconies are not shielded in the same fashion. Although the setback of the balustrade line has been increased, there is no justification offered as to why they should encroach on the RFDC recommended separation. It is accepted that much of the *Belgrave* would not comply with the RFDC either, but in relation to the balconies, the greatest extent of variation is within the proposed development, not on the side of the existing neighbour.

To address this issue, a condition requiring that the balconies at Levels 1-5 be set back an additional metre from the southern boundary is recommended should the application be considered worthy of support. Further, a condition requiring the larger balconies at Level 6 to be set back a further 4m is recommended should the application be considered worthy of support. At the levels where the majority of the separation is provided by the proposal on the subject site, no increase is recommended.

In addition to these recommendations, it is also considered that the reduction in the extent of the balconies presents an opportunity to drop bulk at the corners of the building, which would allow for some additional solar access to the *Belgrave*. A condition requiring that the balcony slabs (not just the balustrade line) be taken back to the same level as set by the conditions above is recommended to realise this opportunity.

The inadequate building separation would also lead to issues of dominance or 'overbearing' on the *Belgrave*. This is in contrast to the relatively open aspect that the *Belgrave* currently enjoys across the subject site. The recommended increases in setback and reductions in building bulk will go some way to mitigating this impact. However, the proposed building would still present a 25m-wide expanse of zinc metal cladding to the south (best illustrated in the southern elevation supplied by the applicant).

The cladding originally offered privacy benefit, but is no longer required for this purpose in the revised design. Deleting or substantially reducing the extent of the cladding would allow the development and the neighbour to take advantage of the relief provided by the increase in setback and the inset areas created by the revised bedroom wall line. A condition to this effect is recommended should the application be considered worthy of support.

### 10.1.3 Existing Trees

Although it does not relate directly to building bulk, an issue arises in respect of the existing trees on the neighbouring property. These trees provide a significant benefit to the current residents of the *Belgrave* in terms of summer

shade and will continue to provide this benefit if retained. In addition, if and when the proposed building is constructed, the trees would provide an additional visual and acoustic buffer between the two buildings.

It is acknowledged that the Cronulla Centre controls do not require any deep soil landscaping or significant tree planting on the site. It is not suggested, although it may be desirable, that the applicant augment the current vegetation with planting on the subject site.

However, the absence of a landscaping requirement does not entitle the applicant to affect the health of trees on neighbouring land, particularly where these trees have a substantial amenity benefit and could offset non-compliances (such as inadequate building separation) in the proposal.

The advice of the ARAP landscape architect was that a building setback of 2m for approximately 22m from the western boundary (most importantly below ground) should be provided to protect the trees. A condition to this effect is recommended should the application be considered worthy of support.

Although this would entail a significant design amendment to the basement levels, the applicant has not addressed this issue in their response to Council's concerns and amending the basement is the most logical way to resolve the issue. The trees may be able to be protected by some other means and the recommended condition could be worded to allow some flexibility to address this particular issue.

## 10.2 Residential Amenity

The SSDCP 2006 makes a point that is particularly relevant to the current proposal: *'good architectural design does not exempt a building from being assessed for its impact on neighbours'*. The proposal results in impacts on neighbouring properties – some relatively significant – which need to be addressed.

At the same time, one of the most significant merits of the proposal is the architectural quality of the building. With this in mind, care has been taken not to recommend unnecessary design amendments to address the impacts of the proposal.

### 10.2.1 Solar Access

In relation to solar access, both SSDCP 2006 and the Residential Flat Design Code require that living rooms and private open spaces for at least 70% of apartments in a development receive a minimum of three (3) hours direct sunlight between 9am and 3pm in midwinter. Both policies also allow a concession to reduce this requirement to two (2) hours for 'dense urban areas'.

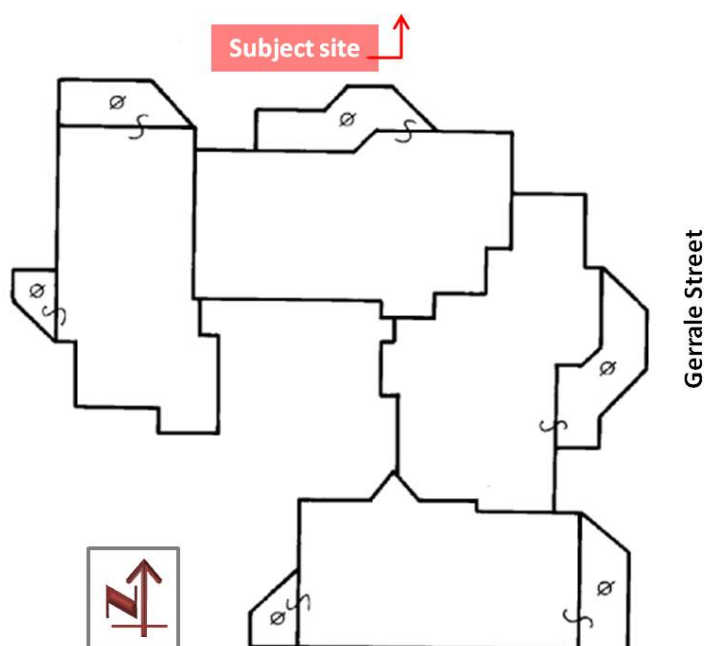
Council has initially resolved to revise the DCP to reflect the view that the subject site is within such an area and therefore reduce the solar access requirement to two (2) hours at midwinter between 9am and 3pm. More



recently, this decision has been reversed however this decision is now the subject of an outstanding rescission motion.

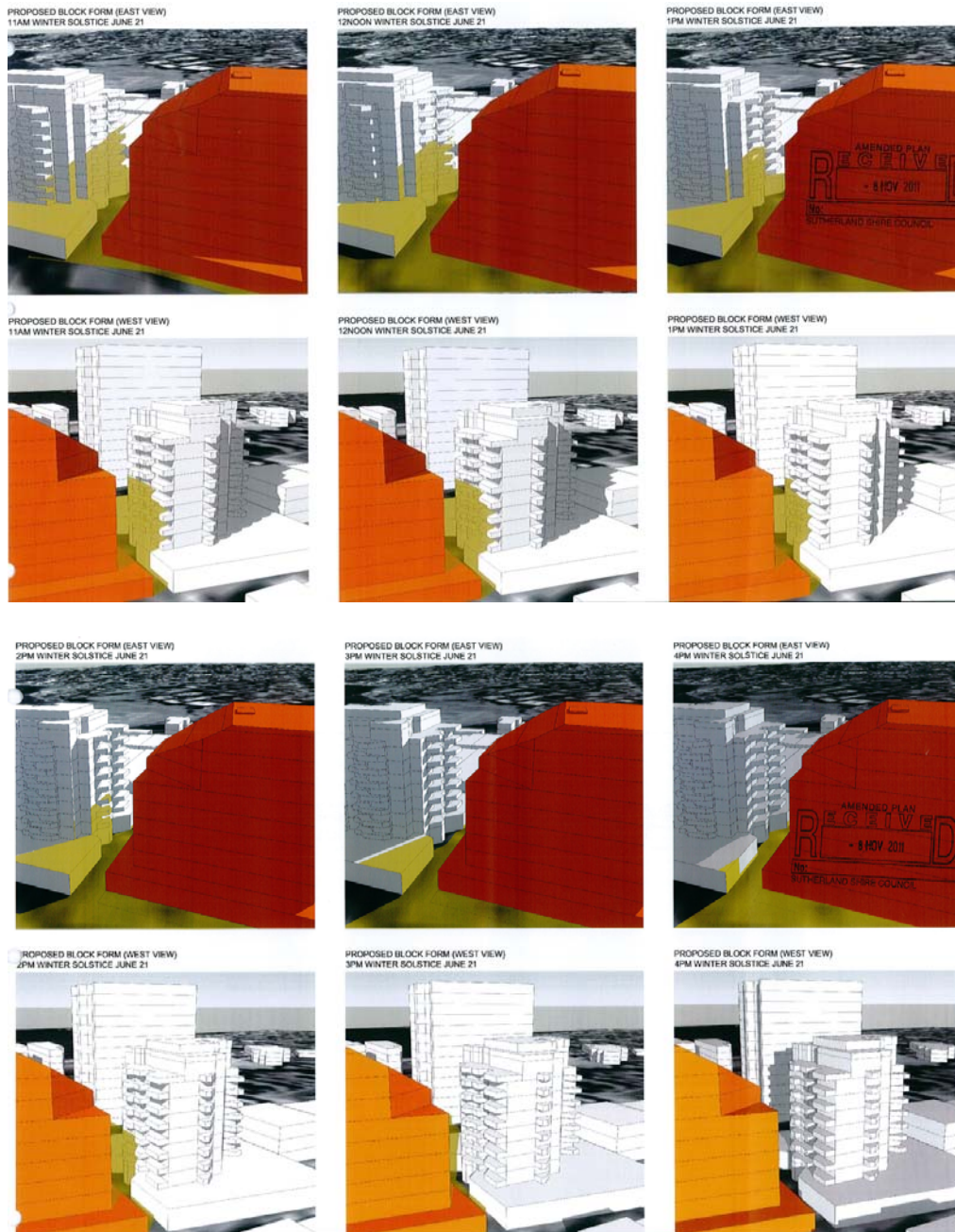
Internally, only 15 of 27 proposed apartments (56%) receive 3hrs or more of sunlight between 9am-3pm on midwinter. However, 21 of 27 apartments (78%) receive more than 2hrs of sunlight in the same period. This is not optimal for a new building on a relatively unconstrained site. Whether the building complies with the applicable standard will depend on whether the 2hr or the 3hr standard is ultimately adopted.

In the *Belgrave* adjoining to the south, 14 of the 29 apartments (2 each at Levels 1-6 and 1 each on Levels 7 and 8) face northward and have their balconies and living areas oriented north across the subject site. An indicative layout plan (taken from the strata plan) of Levels 1-6 is below:



*Figure 4: Typical floor plate, Belgrave Apartments.*

The applicant supplied a shadow analysis and excerpts are shown below:



*Figures 5 -7: 8am-4pm hourly midwinter shadow analysis supplied by the applicant (the top images show the impact looking from the east and the bottom images from the west).*

The proposed building will reduce the midwinter sun enjoyed by the north facing apartments at Levels 1-6 (12 of the 29 apartments) between 9am and 3pm and have a partial impact on the balconies of a further three (3) apartments facing Gerrale Street. The applicant's shadow analysis shows that this impact would be most pronounced in the mornings, when essentially all current sunlight enjoyed by the northern apartments in Levels 1-6 and on the communal podium open space is lost at 9am. This improves slightly by 10am, when Level 6 and the window line of Level 5 below receive some sunlight and the podium receives some sunlight. By 11am, Levels 5 and 6 would receive full sun, as would the communal podium area.

By midday, the window line of the eastern apartment in Level 4 would receive sun and the western apartment would regain full solar access. The western edge of the building (including the western half of all of the affected balconies) would receive some sun at this time also. That is, by the 'halfway point' in the measurement range, 5 of the 15 affected apartments are receiving full solar access and would comply with the '3 hours at midwinter' test.

By 1pm, all of the western apartments are receiving full solar access and the impact is isolated to the north-eastern apartments on Levels 1-3 and a section of the eastern Level 4 balcony. This leaves 4 apartments still affected, 3 completely and 1 only to a minor extent. By 2pm, only the eastern north-facing apartments on Levels 1 and 2 and the podium terrace are affected. By 3pm, the proposed building only affects the podium terrace. In the afternoon, the Gerrale Street apartments would have already lost their sun due to existing shadows.

On the Gerrale Street (eastern) side of the *Belgrave*, the proposal would result in a reduction in solar access to the balconies of the northern apartments at Levels 1-3 and on the podium terrace between 10am and 11am.

In summary, the overall midwinter solar access for the *Belgrave* between 9am and 3pm can be generally quantified as:

- The apartments at Levels 1-3 (3 in total) and the podium terrace at the northern side of the Gerrale Street frontage will lose most of the sunlight that they currently enjoy after 10am;
- The eastern north-facing apartments at Levels 1 and 2 (2 apartments) will receive full solar access only after 2pm;
- The other north-facing apartments at Levels 1-3 (4 apartments) will receive full solar access only after 1pm;
- The eastern north-facing apartment at Level 4 (1 apartment) will only receive solar access after midday and that is not full solar access;
- The northern apartments on Level 5 (2 apartments) will receive full solar access after 11am; and
- The northern apartments on Level 6 (2 apartments) will receive full solar access after 10am.

For the *Belgrave*, therefore, of the 15 affected apartments, only 5 would achieve the '3 hours at midwinter test', in addition to 3 other unaffected apartments on the upper levels. With only 8 out of 29 apartments receiving 3 hours at midwinter within the critical range, the *Belgrave* would fail to satisfy the 70% requirement.

If the 2 hours solar access at midwinter benchmark is used 14 (out of 29) apartments in the *Belgrave* would meet the standard. This would still not comply with the 70% requirement.

To a large extent this non-compliance is a result of the existing condition and orientation of the *Belgrave* itself. Any development on the subject site will not be able to resolve the existing solar shortfall to the south-eastern and eastern apartments in the *Belgrave*. These apartments make up 15 (more than half) of the apartments within the building and already do not receive compliant solar access.

In addition to the above control, SSDCP 2006 also 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 north-facing apartments in the *Belgrave* all currently enjoy solar access unimpeded by buildings between 9am and 3pm at midwinter. As a result of the proposal, 7 of the apartments (the north-facing apartments at Levels 1-4) will lose more than  $\frac{1}{3}$  of their existing sun. This equates to 24% of the apartments in the *Belgrave* overall. If the control is taken to apply to each individual apartment, then the proposal would not comply. However, if the control is taken to apply to the building as a whole, then the proposal could be considered to comply.

As discussed above, a number of minor amendments to the building are recommended. These are primarily concerned with reducing the bulk of the building and its impacts in terms of visual and physical intrusiveness. However, these amendments will have the added benefit of providing minor solar access gains to the *Belgrave*, and will therefore improve the relationship of the proposed building with its neighbours.

#### 10.2.2 Privacy

As discussed above, the proposal does not satisfy the building separation recommended under the RFDC. The most obvious impact associated with this non-compliance is reduced visual and acoustic privacy for neighbouring properties. Council's preliminary assessment of the proposal was that the proposed building did not provide sufficient privacy to the *Belgrave* in particular.

The applicant's response to Council's concerns regarding building separation reached the same conclusion, but offered a different solution to maintain privacy. The amended plans detail:

- A 'spine' of translucent glazing to the northern side of the building (bedroom windows) to maintain privacy in respect of a future redevelopment of the sites to the north (where compliant building separation will be highly unlikely to be achieved).
- The setting of the bedroom and living room walls on the southern side of the proposed building (which previously directly face the *Belgrave*) at oblique angles and the relocation of windows to these rooms at the newly created recesses, which do not directly face the *Belgrave*.
- Setting the balcony balustrades at the southern side at a further 1.2m from the boundary, thereby increasing the distance between the

proposed private open space and the existing neighbour's private open space, bedrooms and living rooms.

In general terms, these amendments are considered to have merit as they will make improvements in terms of privacy. However, conditions requiring the following further amendments are recommended to improve privacy between the proposed building and its existing neighbours should the application be considered worthy of support:

- That the balcony line at Levels 4 and 5 is set back a further 2m and a further 3m at Level 6, to follow the intent of the RFDC in terms of gradually increasing building separation as building height increases.
- That the trafficable area of the terrace at Level 1 of the proposed building be set back 3m from the boundary to reduce privacy impacts on the neighbouring property.
- That nibs of wall be introduced in front of the recessed, angled windows on the southern elevation to prevent any direct overlooking of the neighbouring property.
- That the southern balcony balustrades be finished with translucent glass or some similar treatment at the southern edge to enhance privacy.
- That measures be taken to maintain the health of the existing trees on the neighbouring site, as these have benefits in terms of a privacy buffer between living areas in addition to their ecological benefits.

If these recommendations are applied, it is considered that the development will provide privacy levels generally acceptable in a 'dense urban area'. If the lower floor space ratio of 2.7:1 is adopted the building form would change and these amendments may not be necessary.

It is not considered necessary to treat the windows on the southern side of the building with translucent glazing above the fourth floor level, as this will disrupt the amenity of the proposed apartments without any privacy benefit for the property to the north.

Another privacy and amenity impact is presented by the ground floor open area at the northern side. It is envisaged that this area would eventually be attached to a café or restaurant tenancy and would provide 'open air' dining for patrons. Whilst no objection is raised to the provision of such a space in principle, it is located directly below the bedrooms and private open space of multiple apartments on the floors above. This matter is easily resolved by the imposition of a condition requiring the installation of a 2m-wide ( $\frac{1}{3}$  of the width of the space) solid awning capable of attenuating noise should the application be considered to be worthy of support.

### 10.3 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. The proposed building is significantly taller than the existing buildings on the site, but no taller than the *Belgrave* itself.

At present, north-facing apartments from Level 2 and above in the *Belgrave* enjoy ocean and district views northward over the subject site due to the low scale of the existing buildings. At lower levels of the building, these views are relatively limited, but become more expansive towards the upper levels. The upper-level apartments enjoy distant views to the city and Botany Bay.

The 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 immediate and most significant view loss impacts of the proposal are limited to apartments on the northern side of the *Belgrave*. There are two apartments facing north on Levels 1-6 of the *Belgrave* and one apartment on each of Levels 7 and 8 (14 apartments in total). It is these apartments' views to the north that would be most significantly affected by the proposal.

The views enjoyed by the lower levels of the *Belgrave* include relatively narrow water (ocean) views that are partially and irregularly disrupted by other tall buildings fronting in the Cronulla Centre. 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.

At the upper levels of the building, the views become more comprehensive and at the penthouse level were observed to include the land-water interface, iconic natural features such as the Kurnell 'heritage dune' and Cape Solander, as well as distant city skyline views.

These views are considered to be of a moderate to high level of significance. There is no doubt that they contribute to the amenity and appeal of the apartments in the *Belgrave* and, at least on the higher levels, they are quite expansive. That being said, even at the upper levels the views are disrupted by taller buildings in the Cronulla Centre, a number of which are taller than the nine (9) storeys proposed on the subject site. No apartment in the *Belgrave* would lose all of its views as a result of the proposal.

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

The views at issue are generally captured from the main balconies and living rooms of the affected apartments. That said, all of the affected apartments have secondary aspects (many have second balconies) to the east or west, many of which offer views of the ocean, the district and Gunnamatta Bay. The views at issue can generally be seen from both a standing and sitting position from within principal living areas and balconies.

It is also noteworthy that the views are taken directly across the side boundary of the subject site, in the logical 'zone' for a building to be developed. This factor is recognised in SSDCP 2006 and the *Tenacity* principles as making the view more difficult (and in some cases unrealistic) to protect.

### 3. *Assessment of the extent of the impact:*

Apartments at the lower levels of the *Belgrave* will experience fairly 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 be likely to have a severe impact.

At the upper levels, a significant aperture of view would be affected by the proposal, but similarly a more substantial proportion of the overall views enjoyed would be retained.

No individual apartment will lose all of its views as a result of the proposal. Residents of *Belgrave* would have anticipated the view loss impact associated with a six (6) storey building at a floor space ratio of 2:1 until Council recently resolved to increase the height and floor space ratio applying to the site.

It is considered that the aspect required to obtain the views (across the middle of the subject site and the site to the north of it again) reduces the practicality of preserving views somewhat.

From a whole-of-property perspective for the *Belgrave*, the view loss cannot be considered severe. Out of 29 apartments in the building, 15 will experience no view loss as they do not directly face the subject site and instead enjoy views to the east. Out of the 14 affected apartments, most will experience a fairly substantial view loss but maintain some views. The upper level apartments will lose significant components of their views but maintain a substantial view corridor and views to the east, north-east, north-west and west. Overall, the extent of the impact on the *Belgrave* can be best described as moderate.

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

The proposed building is compliant with Council's recently exhibited height, floor space and building envelope controls for the site. The proposal is therefore reasonable in terms of what may be expected on the neighbouring site, despite the fact that it may not have been expected until very recently. If the floor space ratio of 2.7:1 is finally applied, the view impacts would need to be reassessed.

The less reasonable aspects of the proposal (discussed above) include building separation and privacy impacts, which are not necessarily linked to view loss impacts. However, some of the recommended design modifications will entail minor reductions in the view loss cause by the proposal by reducing its bulk and proximity to the *Belgrave*.

### 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 apartments on the lower northern side of the *Belgrave*, which is located directly to the south of

the subject site. These apartments enjoy primary views over the side boundaries of the subject site at the central part of the site where a building would most logically be located. Any reasonable redevelopment of the subject site would affect these apartments in a similar way.

The upper levels of the Belgrave will also experience view loss, in areas which currently present the most attractive aspect. However, these apartments enjoy a panoramic view and will maintain a much larger proportion of their current view than the other affected apartments.

The view loss impacts of the proposal are mainly isolated to the north-facing half of the *Belgrave*. Overall, the magnitude of the view loss is only moderate and the development is reasonable in the circumstances. Generally speaking, any reasonable redevelopment of the site would have similar impacts on the views enjoyed by the *Belgrave*.

## **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 would be reflected in the recommended conditions of consent should the application be considered to be worthy of support.

## **12.0 DECLARATION OF AFFILIATION**

No gifts, donations or political affiliations were declared with the application.

## **13.0 CONCLUSION**

The proposed development is for the demolition of existing buildings and construction of a nine (9) storey mixed use development comprising 27 residential apartments above ground floor retail/restaurant tenancies and a three (3) level basement at 19 and 21 Gerrale Street, Cronulla.

The subject land is located within Zone 8 *Urban Centre*, pursuant to the provisions of *Sutherland Shire Local Environmental Plan 2006*. The proposed development, being a mixed use building, is a permissible land use within the zone with development consent.

The proposed development is largely compliant with the recently exhibited draft LEP height and density controls and draft DCP building envelope controls for the site, though does not comply with the recently adopted floor space ratio control of 2.7:1 or the recent decision to retain the 3hr solar access control. Depending on Council's resolution in respect of the further DCP amendments that are currently on public exhibition, the proposed scheme is likely to be essentially compliant with Council's controls for the site.

In response to public exhibition, 212 submissions were received, with 87 in objection and 125 in support. The objections relate to view loss, visual and acoustic privacy, solar access, traffic and parking issues, aesthetic impact,



property values, the principle of allowing a 'spot rezoning' and general concerns in respect of 'over development'. The points raised in support of the proposal are generally sound but are largely immaterial to the assessment of the application's environmental impact.

The matters raised in the objections have been dealt with by design changes or conditions of consent where appropriate to the extent possible given that the building is largely compliant. In particular, conditions requiring building separation to be increased and the bulk of the building to be reduced in a relatively minor way are recommended should the application be considered to be worthy of support. It is also recommended that measures are undertaken to protect the existing mature trees on the neighbouring site in light of their ecological and amenity benefits.

The suggested amendments are intended to achieve multiple benefits in an incoherent fashion, rather than resolve singular issues. Care has been taken not to recommend unnecessary 'tinkering' with the design, in order to maintain the architectural integrity of the building, which is one of the key qualities of the application. If the lower floor space ratio of 2.7:1 is applied, it is anticipated that the building form would change and these amendments may not be necessary.

The application has been assessed having regard to the Heads of Consideration under Section 79C (1) of the *Environmental Planning and Assessment Act* 1979 and the provisions of all relevant Environmental Planning Instruments, Development Control Plans, Codes and Policies. Following this assessment it is considered that DA11/0763 cannot be determined at this time due to a lack of certainty about the final outcome of the Planning Proposal and in particular the floor space ratio and solar access standards that will be applied to the site.

#### **14.0 RECOMMENDATION**

That the JRPP defer its decision on Development Application No. 11/0763 for Demolition of the Existing Buildings and Construction of a Nine (9) Storey Mixed Use Development Comprising 27 Residential Apartments Above Ground Floor Retail/Restaurant Tenancies and a Three (3) Level Basement at Part Lot 21 DP 4759 and Whole of SP394 (Nos. 19 and 21) Gerrale Street, Cronulla until such time as there is a greater level of certainty regarding the currently drafted Sutherland Shire Local Environmental Plan and Sutherland Shire Development Control Plan controls.