

## JOINT REGIONAL PLANNING PANEL (Sydney East Region)

<b>JRPP No:</b>	<b>2015SYE156</b>
<b>DA No:</b>	<b>DA15/1325</b>
<b>Local Government Area:</b>	<b>Sutherland Shire</b>
<b>Proposed Development:</b>	<b>Construction of mixed use development including 116 residential apartments with a ground floor commercial tenancy and basement car parking</b>
<b>Street Address:</b>	<b>1085, 1081 &amp; 1091A Old Princes Highway, Engadine</b>
<b>Applicant/Owner:</b>	<b>Regent Pacific Capital</b>
<b>Number of Submissions:</b>	<b>Eight</b>
<b>Regional Development Criteria (Schedule 4A of the Act)</b>	<b>General Development over \$20 million</b>
<b>List of All Relevant s79C(1)(a) Matters</b>	<ul style="list-style-type: none"> <li>• <b>State Environmental Planning Policy No. 65 – Design Quality of Residential Flat Development</b></li> <li>• <b>Apartment Design Guide</b></li> <li>• <b>State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004</b></li> <li>• <b>Greater Metropolitan Regional Environmental Plan No. 2 – Georges River Catchment</b></li> <li>• <b>Sutherland Shire Local Environmental Plan 2015</b></li> <li>• <b>Draft Sutherland Shire Development Control Plan 2015</b></li> <li>• <b>Council's Section 94 Contribution Plans</b></li> </ul>
<b>Recommendation:</b>	<b>Refusal</b>
<b>Report By:</b>	<b>Kylie Rourke Planner- Sutherland Shire Council</b>

## **1.0 EXECUTIVE SUMMARY**

### **1.1 Reason for Report**

This development application (DA) is referred to the Joint Regional Planning Panel (JRPP) pursuant to Schedule 4A of the Environmental Planning and Assessment Act 1979 (the Act) as the development has a stated capital investment value of \$33,510,700.00, which exceeds the \$20,000,000 threshold.

### **1.2 Proposal**

The application is for the construction of 116 residential apartments and two commercial tenancies within three separate buildings over a two level basement.

### **1.3 The Site**

The site is located on the western side of the Old Princes Highway, approximately 180m south of the intersection with Waratah Road. It is located towards the southern edge of the land zoned B3 'Commercial Core' within the Engadine Town Centre.

### **1.4 The Issues**

The main issues identified are as follows:

- Inadequate information to complete detailed assessment
- Site Suitability- Contamination
- Building Density
  - Building separation, setbacks and amenity
  - Pedestrian access and public domain connectivity
  - Landscaping
  - Consistency with Engadine Centre Strategy

The applicant has filed a "deemed refusal" appeal in the Land and Environment Court, which is listed for a section 34 conciliation conference on 12 July 2016.

### **1.5 Conclusion**

Despite Councils requests, the application remains unchanged from the scheme presented at the Panel briefing and a number of issues remain unresolved. Following detailed assessment the application is not considered worthy of support, and should be refused for the reasons outlined in this report.

## **2.0 DESCRIPTION OF PROPOSAL**

The proposal is for a mixed use development in a series of 3 detached buildings over a common basement. The building fronting the Old Princes Highway is 6 storeys (building 3) and accommodates commercial space on the ground floor and residential units above. The remaining buildings are located

within the central (building 2) and rear (building 1) portions of the site and comprise 5 storeys. Details of the proposal include:

- Demolition of all existing buildings and structures
- Construction of 116 residential apartments within three separate building comprising:
  - 1 x one bedroom apartment
  - 107 x two bedroom apartments
  - 8 x three bedroom apartments
- Retail- 513m<sup>2</sup> of floor space
- Car Parking- 143 car spaces
- Bicycle -12 spaces, and Motorbike Parking- 7 spaces

The basement covers almost the entire site.

Vehicular access to the site for residents and visitors to the basement parking is proposed via the creation of a new right of carriageway over part of Council's Car Park at 1-9 Miyal Place. This is subject to a future agreement with Council's properties unit but has been notionally supported by the elected Council subject to detailed commercial negotiation. The proposed loading dock is accessed from the Old Princes Hwy frontage via the existing right of way over the adjoining site.

A site plan for the proposal is provided below.

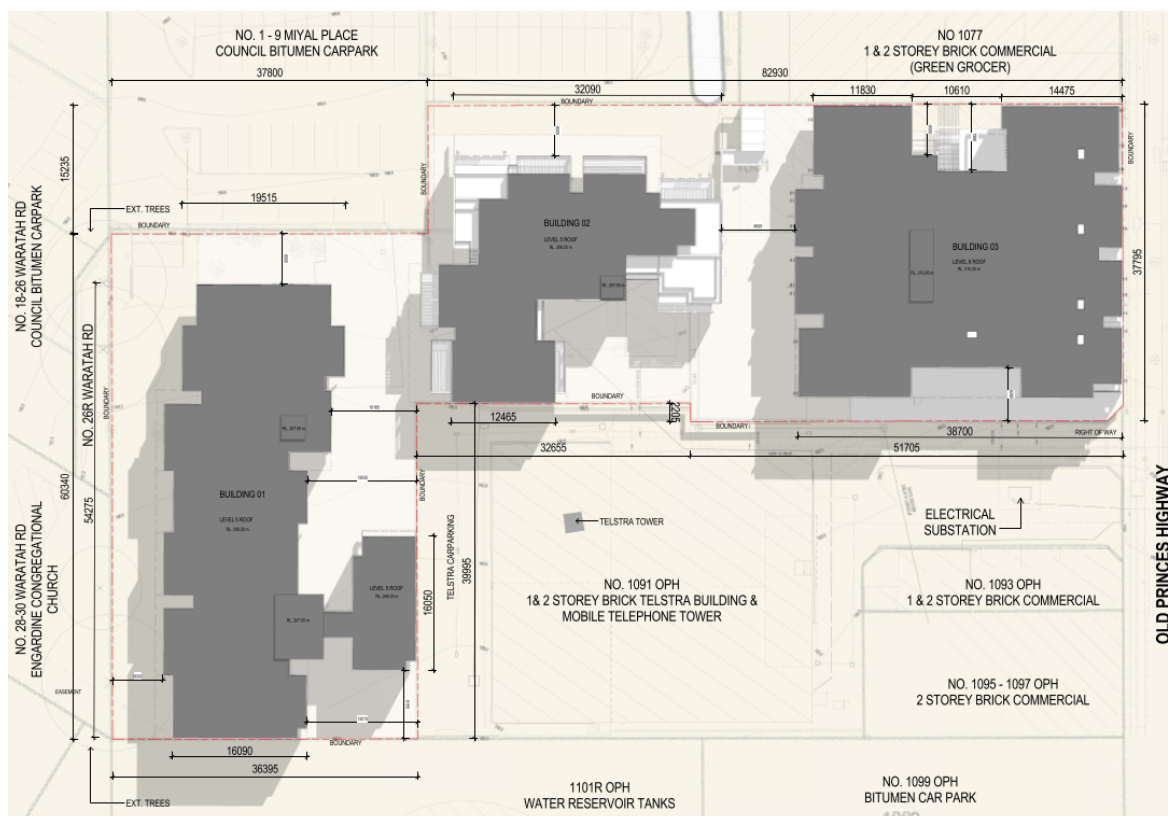


Figure 1: Site Plan.

### 3.0 SITE DESCRIPTION AND LOCALITY

The land to which the proposal relates is known as 1081, 1085 and 1091A Old Princes Highway Engadine. The site comprises four allotments, legally described as Lot A DP 361561, Lot 4 DP 380139, Lot B DP 388724, and Lot 102 DP 166927.

The site is an irregular “L” shaped parcel of land, comprising a total combined area of approximately 5281.4m<sup>2</sup> by DP. The site reads as two separate “front” and “rear” parcels of land. The front portion of the site aligns perpendicular to the Old Princes Highway with a street frontage of 35.9m. The centre of the site steps in to a 20m width, before opening up to the rear portion of the lot, which runs parallel to the street and contains the rear boundary length of 60.3m. The rear portion of the lot is essentially landlocked.

The site falls by approximately 3m from south to north, particularly in the rear portion, from RL193.42 to RL190.41. Along the street boundary, levels run from approximately RL192 (south) to RL190.4 (north).

The parts of the site fronting the Old Princes Highway (Nos. 1081 and 1085) contain commercial premises including a discount variety store, barber and beauty salon, pathology centre and takeaway food premises. The rear of the site (No. 1091A) is vacant, and was more recently subdivided out of the unused portion of the adjoining Telstra exchange.

The site is located on the western side of the Old Princes Highway, approximately 180m south of the intersection with Waratah Road. It is located towards the southern edge of the land zoned B3 ‘Commercial Core’ within the Engadine Town Centre, approximately 300m from Engadine Train Station.



Figure 2: Location Plan (Source: Applicants SEE)

The land is located adjacent to a telecommunications exchange and two water towers which are subject to an Infrastructure zoning (until recently, the rear portion of the site was also subject to an Infrastructure zoning). It has a boundary with a Council car park which services shops within the Engadine Town Centre, including the Coles supermarket. Other supermarkets, restaurants and local services are nearby.

To the east of the site are mainly smaller apartment developments within an R4 high density residential zone. To the south and west are lower density single dwellings and townhouses in lower density residential zones, moving away from the centre and the railway station. To the north are predominantly commercial uses within the Engadine town centre, including a licensed hotel, and a six-storey residential aged care facility.

The site is burdened by various easements including a Sydney Water Sewer Main which transects the central portion of the site, a stormwater easement, and an easement enabling access to Telstra over the western portion of the site. A covenant for the transmission of telecommunication signals over lot 102 DP 1166927 restricts the maximum height of the rear portion of the subject site to RL207m (approximately five storeys from existing ground level).

#### **4.0 BACKGROUND**

A history of the development proposal is as follows:

- The applicant met with Council (3 August 2015), and the Architectural Review and Advisory Panel (ARAP) (13 August 2015) prior to the submission of the development application. Neither Council nor ARAP were supportive of the scheme as presented.
- The subject Development Application was submitted on 29 October 2015, with little substantive change from the Pre-DA scheme.
- The Development Application was placed on exhibition, seven submissions were received.
- An Information Session was held on 2 December 2015 and five people attended.
- Council officers sent a letter requesting amendments on 15 February 2016, and had multiple discussions with the applicant confirming Council's expectations for the modified plans and additional information. No additional information was submitted to Council.
- On 1 April 2015 the applicant filed a Class 1 ("deemed refusal") appeal with the Land and Environment Court. The matter is listed for a section 34 conciliation conference on 12 July 2016.

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

Insufficient information has been submitted to enable a proper assessment of the application to be carried out. The application is deficient for the following reasons:

- A detailed contamination assessment has not been submitted and is required before consent could be granted. In accordance with the requirements of SEPP55.

- The Old Princes Highway loading bay does not appear to be capable of handling waste vehicles, in terms of swept vehicle paths and overhead clearances. This matter remains unresolved, and it is not known how waste will be brought to the loading bay from the basement.
- RLs for existing ground levels are not provided on any elevation or section drawings provided. These are necessary to assess compliance with height limits and compare heights to neighbouring development.

## **6.0PUBLIC PARTICIPATION**

The application was advertised in accordance with the provisions of draft Sutherland Shire Development Control Plan 2015. 151 owners of properties were notified of the application. The application was also advertised in the local press (the *Leader*). A Public Information Session was held on 2 December 2015 and five persons attended.

A total of eight written submissions were received. These raise various issues, including parking and traffic, privacy, overshadowing, view loss, character, construction impacts, and strains on existing infrastructure and amenities. The issues are considered to be reasonable, and reinforce the planning merits deficiencies which are discussed in further detail in the assessment section of this report.

## **7.0STATUTORY CONSIDERATIONS**

The following environmental planning instruments apply:

- Sutherland Shire Local Environmental Plan 2015 (SSLEP2015)
- State Environmental Planning Policy 65 – Design Quality of Residential Flat Development (SEPP 65)
- State Environmental Planning Policy 55 – Remediation of Land (SEPP 55)
- State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004
- Greater Metropolitan Regional Environmental Plan No.2 (Georges River Catchment)

The following policies and codes also apply:

- Apartment Design Guide (ADG)
- Sutherland Shire Council's Section 94 Contribution Plans
- Draft Sutherland Shire Development Control Plan 2015 (the draft DCP)

The proposed development, being a residential flat building and commercial premises are permissible land uses within the B3 – Commercial Core zone with development consent from Council.

## 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  
State Environmental Planning Policy No. 65 – Design Quality of Residential Flat Development (SEPP 65) and the accompanying Apartment Design Guide (ADG) seek to improve the design quality of residential flat development through the application of a series of 10 design principles. A brief assessment of the proposal having regard to the design quality principles of SEPP 65 is set out below:

Design Quality Principles	Assessment
Principle 1: Context & Neighbourhood Character	The street frontages in the context of the site are typically formed by street wall buildings, with the central areas occupied by infrastructure and at-grade parking. The proposal seeks to disrupt this arrangement, by introducing new residential units into hidden, inaccessible mid block areas that lack any real connection to the street and open space network. The proposal disconnects residential uses from the Engadine Town Centre and public domain, which is a poor response to its existing social and built context.
Principle 2: Built Form & Scale	The proposed buildings are not in keeping with the gross floor area (GFA) parameters set by SSLEP2015, the ADG building separation recommendations. The buildings are substantially varied from the scale of buildings in the immediate locality of the existing Centre. For these reasons, the development is not consistent with the desired future built character of the Engadine Town Centre envisaged under SSLEP2015 or the ADG. The mass of the buildings is pushed against the side boundaries within the site which not only reduces internal amenity but will affect the redevelopment potential of adjoining land.
Principle 3: Density	In general terms the site is large and under-utilised and has good access to local shops, facilities and public transport. The density of the proposal is however beyond the SSLEP2015 maximum density, and the deficient building separation has consequent impacts on residential amenity. The proposal is therefore not the appropriate response to the new development Floor Space Ratio development standards that apply to the Engadine Town Centre under SSLEP2015. The density needs to be better calibrated to the zone interfaces and unique internalised nature of the site.
Principle 4: Sustainability	Apartments do not receive adequate solar access and cross ventilation so as to enhance energy efficiency and to provide suitable amenity to the building's future occupants. There is little evidence that orientation has driven the plan layout. The aspect of apartments could be substantially improved with redesign.
Principle 5: Landscape	The lack of deep soil planting, particularly at the edges of the development limits the amenity and fit of the new development into its landscaped context. It is unlikely trees on adjoining sites would be able to be retained given the proposed works within critical tree protection zones.
Principle 6: Amenity	The proposal does not satisfy the ADG recommendations in terms of residential amenity, including solar access and natural cross ventilation. The amenity of common areas is poor, particularly the convoluted entry sequence and there is need for further resolution of the interface between the development and the Council car park.
Principle 7: Safety	Wayfinding within the site is convoluted, residential entry and lobby areas are concealed with no passive surveillance, and access within the site is essentially unrestricted. The pedestrian entry point to the

	building is a fully enclosed 37m long corridor with no passive surveillance. The proposal is inconsistent with Crime Prevention Through Environmental Design (CPTED) principles.
Principle 8: Housing Diversity & Social Interaction	Only a single 1 bedroom unit and 8 x three bedroom units are proposed, with the remaining 107 units (92%) comprising two bedroom units. The proposal does not provide a good mix of apartment types, to encourage a social mix or a reasonable housing choice in the centre.
Principle 9: Aesthetics	Further design attention needs to be given to the plan form and elevation treatment of apartments with significantly different aspects. The individual buildings do not have a distinct identity of address within the overall development.

## 8.2 Apartment Design Guide

The ADG is akin to a DCP and complements SEPP 65. The Code gives more detailed guidelines in respect of the general design quality principles set out in the SEPP. The ADG illustrates good practice, though is not a statutory instrument. The following table contains an assessment of the proposal against key controls of the ADG. Refer to the Assessment section of this report for further details with respect to performance of the proposal against the ADG.

<b>Apartment Design Guide –Building Key Design Criteria</b>			
<i>Objective</i>	<i>Design Criteria</i>	<i>Proposal</i>	<i>Complies</i>
Building Separation from buildings to side and rear boundaries	Up to 12m (4 storeys)= 6m (habitable rooms/ balconies)	<b>Up to 12m</b> Southern =Nil Eastern = Nil Western =6m Northern=6m	No No Yes Yes
Building 1 (at rear)	Up to 25m (5-8 Storeys)= 9m (habitable rooms / balconies)  For retail, office spaces and commercial balconies, use the habitable room distance- 9m.	<b>Up to 25m</b> Southern =Nil Eastern = Nil Western =6m Northern=6m	No No No No
Building Separation from buildings to side and rear boundaries	Up to 12m (4 storey's) = 6m (habitable rooms / balconies)	<b>Up to 12m</b> Southern =Nil Northern=3.6m	No No
Building 2 (at centre)	Up to 25m (5-8 Storey's) 9m (habitable rooms / balconies) 4.5m (non habitable rooms)	<b>Up to 25m</b> Southern =Nil Northern=6m	No No



<p>Building Separation from buildings to side and rear boundaries</p> <p>Building 3 (at street)</p>	<p>Up to 12m (4 storey's) = 6m (habitable rooms / balconies)</p> <p>Up to 25m (5-8 Storey's) 9m (habitable rooms / balconies) 4.5m (non habitable rooms)</p> <p>No building separation is necessary where building types incorporate blank party walls. Typically this occurs along a main street or at podium levels within centres.</p>	<p><b>Up to 12m</b> Southern =3m Northern=GF= 4m, above=nil.</p> <p><b>Up to 25m</b> Southern =3m Northern=Nil</p> <p>Front portion of building 3 forms the street wall. Rear portion of building however does not and should comply with min. habitable room setback.</p>	No
<p>Building Separation: Between buildings</p>	<p>Minimum separation between buildings on the same site should combine required building separation:</p> <p><u>L1-4</u> 12m between buildings</p> <p><u>L5 &amp; 6</u> 18m between buildings</p>	<p>Between: <u>Building 1 &amp; Building 2</u> Level 1-4=10.2m</p> <p>Level 5=9m</p> <p><u>Building 2 &amp; Building 3</u> Level 1-4= 8.7m</p> <p>Level 5= 8.7m</p> <p>Minimum separation provided within dwellings in building 3 = 1.8m, and within building 1=6.8m.</p>	<p>No</p> <p>No</p> <p>No</p> <p>No</p>
<p>Communal Open Space</p>	<p>Communal open space has a minimum area equal to 25% of the site.</p> <p>Developments achieve a minimum of 50% direct sunlight to the principal usable part of the communal open space for a minimum of 2 hours between 9 am and 3 pm on 21 June (mid winter)</p>	<p>Area COS=11.5% of the site.</p> <p>The plans are unclear with regard to the solar access to the usable part of the communal open space, however its location in an undercroft, would make it difficult to comply with solar access.</p>	No
<p>Solar access</p>	<p>Living rooms and private open spaces of at least 70% of apartments in a building receive a minimum of 2 hours direct sunlight between 9 am and 3 pm at mid winter</p> <p>A maximum of 15% of apartments in a building receive no direct sunlight between 9 am and 3 pm at mid winter</p>	<p>68% or 79 units receive minimum solar access.</p> <p>13 units or 15% receive no direct sunlight.</p>	<p>No (3 units short)</p> <p>Yes</p>
<p>Natural ventilation</p>	<p>At least 60% of apartments (70 units) are naturally cross ventilated.</p> <p>Overall depth of a cross-over or cross-through apartment does not exceed 18m, measured glass line to glass line</p>	<p>48% of units (56 units) are naturally cross ventilated.</p> <p>Max depth cross through units= 11.3m</p>	<p>No (14 units short)</p> <p>Yes</p>
<p>Ceiling heights</p>	<p>Habitable rooms 2.7m</p>	<p>2.7m</p>	<p>Yes</p>

Apartment Size	1br bedroom – 50m <sup>2</sup> 2br Bedroom – 70m <sup>2</sup> 3br Bedroom 90m <sup>2</sup>	Min 55m <sup>2</sup> Min 71m <sup>2</sup> Min 95m <sup>2</sup>	Yes
Room Depth	In open plan layouts (where the living, dining and kitchen are combined) the maximum habitable room depth is 8m from a window.	9.7m	No
Room Design	Master bedrooms = 10m <sup>2</sup> Other Bedrooms = 9m <sup>2</sup> Minimum Dimension = 3m	>10m <sup>2</sup> Min 9m <sup>2</sup> Min 3m	Yes
	A window should be visible from any point in a habitable room	Snorkel windows do not meet this requirement.	No
Primary Balconies	1br = 8m <sup>2</sup> / depth 2m 2br = 10m <sup>2</sup> / depth 2m 3br = 12m <sup>2</sup> / depth 2.4m	Provided.	Yes
Common circulation	Max number of apartments off a circulation core= 8 Daylight and natural ventilation should be provided to all common circulation spaces that are above ground.	Building 3 contains 11 apartments off a circulation core, and no daylight or natural ventilation.	No
Storage	1br apartment = 6m <sup>3</sup> 2br apartment = 8m <sup>3</sup> 3br apartment = 10m <sup>3</sup>  At least 50% of storage to be located within the apartments	No storage provided in units. Allocation of storage areas in basement unclear.	No
Deep Soil Zones	For sites greater than 1,500m <sup>2</sup> 15% = 792.2m <sup>2</sup> .	441m <sup>2</sup> = 8% site area.	No
	Minimum dimension 6m	5.1m	No

### 8.3 Greater Metropolitan Regional Environmental Plan No. 2 – Georges River Catchment

The Greater Metropolitan Regional Environmental Plan No. 2- Georges River Catchment (GMREP2) includes a number of aims and objectives for the environment and water quality within the catchment. Appropriate stormwater management and water quality measures are proposed and there are minimal likely adverse impacts on existing riparian processes are anticipated. Council is of the view that if the proposal was deemed worthy of support, the proposal would be consistent with the aims and objectives of GMREP2, subject to the implementation of conditions of consent.

### 8.4 Local Controls

The proposal is located in B3- Commercial Core under SSLEP2015. The objectives of the zone are as follows:

#### **Zone B3 Commercial Core**

##### **1 Objectives of zone**

- To provide a wide range of retail, business, office, entertainment, community and other suitable land uses that serve the needs of the local and wider community.
- To encourage appropriate employment opportunities in accessible locations.
- To maximise public transport patronage and encourage walking and cycling.

- To strengthen the viability of existing commercial centres through increased economic activity, employment and resident population.
- To create an attractive, vibrant and safe public domain with a high standard of urban design and public amenity.
- To enhance commercial centres by encouraging incidental public domain areas that have a community focus and facilitate interaction, outdoor eating or landscaping.
- To provide for pedestrian-friendly and safe shopping designed to cater for the needs of all ages and abilities.

Council does not consider the proposal to be consistent with the objectives of the zone, for the following reasons:

- The proposal has not been designed to a high standard of urban design and does not reasonably respond to the public domain, as evidenced by its inconsistency with the SEPP65 design quality principles and the Engadine Centre Strategy.
- The proposal does not facilitate “incidental public domain areas” despite being of a size and location which would be capable of accommodating this.
- The main commercial tenancy in the development is set well above street level for the most part, limiting pedestrian connectivity with the street.

These matters are discussed further in the “assessment” section of this report.

The compliance table below contains a summary of the applicable development controls:

Clause	Control	Required	Provided	Complies
<b>Sutherland Shire Local Environmental Plan 2015</b>				
4.3	Building Height	20m	20m- however plans unclear.	<b>Clarification required</b>
4.4	Floor Space Ratio	Max. 2:1 10562.8m <sup>2</sup>	FSR=2.17:1 Total GFA=11467.61m <sup>2</sup>	<b>No</b> (+904.81m <sup>2</sup> )
<b>Draft Sutherland Shire Development Control Plan 2015</b>				
4.6	Basement/ podiums	To be integrated into the design of the building.	The basement car park has been set out of natural ground level toward the rear of the site and results in a poor relationship with surrounding properties.	No
5.1	Street setbacks	First two storey's should have nil setback.  Upper levels 2m setback	Provided.  Nil setback provided to balcony.	Yes  No
6.2	Active street frontage	Must be at footpath level along full length of building frontage.	With the exception of the southern part of the commercial unit, the proposed levels to the commercial component don't connect with the existing footpath level.	No

		Continuous awning to be provided.	Provided.	Yes
		Vehicle entrances and service areas are not to be located in active street frontages. Vehicular access not permitted from OPH.	Loading bay access provided off OPH.	No
11	Dwelling types	Variety of dwelling types should be provided.	1 x 1 br dwellings (0.8%) 107 x 2 br dwellings (92%) 8 x 3 bed dwellings (7%)	No
12	Adaptable/ Livable housing	20% adaptable 10% livable	33% adaptable provided.	Yes
9.2	Lot width	20m	37m	Yes
15.2	Car Parking Residential	Residential: Min. 1 space, Max. 2 space per unit= 116-232 Commercial: 1 space per 30m@513m <sup>2</sup> = 17 spaces Total required=133	Total of 143 spaces provided	Yes
15.2.3	Motor Cycle	1 per 25 car spaces=5 spaces	7 motorcycle spaces	Yes
15.2.4	Bicycle Spaces	1 space per 10 car spaces	12 spaces	Yes
18.2.1	Waste storage	Waste storage area to be provided	3 x waste storage areas provided at basement 01.	Yes
18.2.14	Waste collection	For greater than 50 dwellings waste to be collected by private contractor.	Main storage area located adjacent to service lift, which provides access to loading dock for private bin collection service.	Yes, however further operational details required.

## 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

Council engages an independent panel for review of medium to large projects. The ARAP considered this application on 3 December 2015. The Panel provided the following comments about the proposed development:

- The Panel is concerned about the consequences of the convoluted, dog-legged pedestrian access into the site and the measures of access control. The hierarchy of entries and access

is unresolved and pedestrian access to the middle and rear buildings are long and circuitous. The rear and middle buildings need a more legible connection to the street.

- While the built form in detail has integrity, internal circulation and building orientation/ footprint, particularly of the middle building, is flawed
- The zero setback of the middle building to the Telstra building should be increased and it should form an L-shaped courtyard to the north allowing more solar access to the rear of the street building.
- Visual impact on public open space should be mitigated by minimising the protrusion of car parking above ground level or setting back the basement further to allow for planting.
- There is a need for further resolution of the interface between the development and the Council car park given the proposed level changes between the raised ground floor of the development and the Council car park.
- The top level apartments have non-complying separation according to the ADG.
- Further design attention needs to be given to the plan form and elevation treatment of apartments with significantly different aspects.

A full copy of the ARAP report is attached at **Appendix A**.

#### 9.2. NSW Police

The proposal was referred to the NSW Police for comment. Recommendations were provided to Council with regard to Crime Prevention Through Environmental Design (CPTED) principles including building design, surveillance, lighting, traffic impacts and access to and within the development. A further discussion of CPTED can be found in the “Assessment” section of this report.

#### 9.3. Sydney Water

Sydney Water have provided comments on the development advising that amplification of the water main may be required to service the site, and, given the development site is traversed by a number of wastewater mains, additional works may be required to facilitate the development and protect the wastewater main. Should the proposal be deemed worthy of support, detailed requirements will be required to be provided as part of a future section 73 application.

#### 9.4. Engineering

Council’s Engineers have provided comment regarding the impact of the development on existing road infrastructure, car parking and stormwater management. The following issues were raised:

- The functionality of the loading dock including turning swept paths and overhead clearances for the loading dock such that all service vehicles can enter and exit the site in a forward direction and load/unload therein and how are goods waste transferred to and from the dock to the commercial premises and waste storage facilities respectively.
- The practical use of the commercial parking spaces located in the basement
- The safety and amenity of the pedestrian access from Myal Place car park.

The applicant was requested to respond to these issues, and no response was provided.

#### 9.5. Landscape Architect

Council's Landscape Architect has undertaken an assessment of the application. A number of items were unable to be confirmed due to the lack of base information on the landscape and architectural plans. The following comments were provided based on the information before Council:

- The sections indicate a large amount of fill to be placed over the tree protection zone of some trees in addition to a 2m high stone wall falling directly across the structural root zones of others. This will affect the long term viability of these trees.
- The strategy for B3 Commercial Core Engadine is to pull the surrounding bushland into the centre. The planting scheme is not consistent with this aim.
- The planting beds located under crofts will be extremely high maintenance, especially for those located on the southern side of the building where solar access is limited.
- The amount of decking shown would be very high maintenance and expensive in the long run.
- More detail is required to show details of the interface between the western strip of vegetation and the ground floor private open spaces and also the 1.8m high retaining wall on the northern boundary and the car park.

The applicant was requested to respond to these issues, and no response was provided to Council.

#### 9.6. Environmental Health

Council's Environmental Health Officer has reviewed the proposal and made recommendations on acoustic attenuation measures. These recommendations, in addition to appropriate car park and the commercial premises ventilation measures, can be adopted as conditions of consent, should the proposal be deemed worthy of support.

#### 9.7. Environmental Science

Council's Environmental Scientist reviewed the proposal and recommended that the applicant undertake additional contamination investigations that include a detailed site investigation that includes soil and groundwater sampling. The applicant was requested to provide this report, however at the time of writing, it had not been submitted. Contamination is a critical issue for the application, given the obligations required under SEPP55 prohibit the consent authority from issuing a consent unless the SEPP55 criteria are satisfied. Contamination is discussed further in the assessment section of this report.

The site is adjacent to the Telstra Engadine Telephone Exchange, and the maximum height of the rear portion of the subject site is restricted on title to accommodate the transmission of telecommunication signals. Council's Environmental Scientist has reviewed the Environmental EME Report (21 October 2015) submitted by the applicant regarding potential risks from Electro Magnetic Radiation. The information was deemed satisfactory.

### 9.8. Properties

No legal access currently exists to the proposed basement entry point. Council's Property Services division were consulted regarding the right of carriageway sought by the applicant over Council land (the public carpark) to provide access to the basement. At the time of writing, no agreement had been reached between the parties. Council's properties division has requested that the creation of the easement be resolved prior to the activation of the consent. Council requested that the plans be amended to indicate the area of land under negotiation between the applicant and Council, or at least, the proposed Right of Way. The applicant failed to provide this information.

## 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 Contamination

The applicant has failed to establish that the site is suitable for the proposed use having regard to potential contamination arising from previous uses and the proposed residential use.

The Phase 1 Contamination Assessment (Coffey, October 2015) submitted with the application was a desktop review only. No sampling was undertaken and the report has indicated that further investigation is required as the presence of fuel-related infrastructure (underground storage tanks) cannot be discounted. Additional investigation by means of a detailed site investigation that includes soil and groundwater sampling is required.

A Phase 1 & 2 Contamination Assessment (S & G, 31 October 2008), was also submitted with the application. This report is now dated (relevant guidelines were amended in 2013) and importantly also states that subsurface fuel tanks & infrastructure were likely to be onsite and encountered during development.

SEPP 55 sets out that the consent authority cannot grant consent to residential development unless it is satisfied that either:

- i. The land is not contaminated; or
- ii. That the land is contaminated, but is suitable for the purpose proposed (presumably if the contamination falls below a set threshold); or
- iii. That the land is contaminated, but can be adequately remediated prior to the use.

The contamination assessment provided to Council does not adequately establish that the site is safe for the purposes of SEPP 55. The findings of the Phase 1 assessment,

Coffey considers that there is a *medium to high likelihood* for localised land contamination to be present on the site. The report concludes that further intrusive site investigations and, potentially, remedial works, are required to confirm that the site can be made suitable for the proposed redevelopment from a contamination perspective. Without the outcome of the further investigations being known, Council cannot be satisfied that the provisions of SEPP55 have been met.

The application also fails the site suitability criterion in s79C(c) of the Act in this respect.

## 10.2 Bulk & Scale

The proposal does not comply with the maximum FSR of 2:1 permitted on the site.

The application has been prepared with reference to a site area of 5,311m<sup>2</sup>, when by title the site area is 5,281.4m<sup>2</sup>. Corridors within the residential apartment buildings have been excluded from the Gross Floor Area calculations, despite not being *bona fide* 'breezeways'. The majority of the breezeways are essentially "enclosed" by either the inclusion of screens, or having only a small element of the corridor as genuinely "open". They also turn corners. The provision of breezeways is also challenged for its practicality and safety, failing to provide a reasonable level of amenity and access control to units, particularly those on the ground level.

The application purports to provide an FSR of the maximum allowable 2:1 under Council's recently gazetted SSLEP2015. Given the site area and corridor discrepancies however, the actual FSR will be closer to 2.17:1 (over by more than 900m<sup>2</sup>) and no Clause 4.6 variation statement has been submitted in support of this variation.

The inclusion of the 'breezeways' within the development increases the mass of all the buildings, resulting in a development that is visually bulkier than that anticipated by the development controls. The consequence is a scheme which struggles to 'fit' within its boundaries and still provide adequate amenity to occupants and treatment to its edges. The buildings at the rear of the site are set against side boundaries, and do not respect the existing, or desired future pattern of development in the Engadine Centre.

## 10.3 Building Separation

The building separation from the proposed buildings, to the boundaries and also within the development do not respect the building separation guidelines set out in the ADG under SEPP 65.

### Side Boundary Setbacks

The bulky rear buildings have nil side setbacks and the awkward shape of the site will mean that blank walls are presented to the rear and side boundaries of neighbouring properties. High, featureless walls will be seen 'in the round' from public reserves and streets within the Engadine Centre and from nearby low density residential land. Nil setbacks are acceptable at the street in an urban centre



setting, where another building is likely to 'couple' with the development. However, in a mid-block or facing onto another zone (as in this case) they are not sustainable.

The fact that there are sites zoned 'Infrastructure' to the south of the site does nothing to diminish this. The site itself was until ten months ago zoned in the same way – it cannot be argued that sites zoned Infrastructure are incapable of residential redevelopment. A scheme that is FSR compliant is less likely to need to 'build to the boundary' and would also go some way to resolving Council's access, landscaping and amenity concerns. Setbacks should be informed by the ADG.

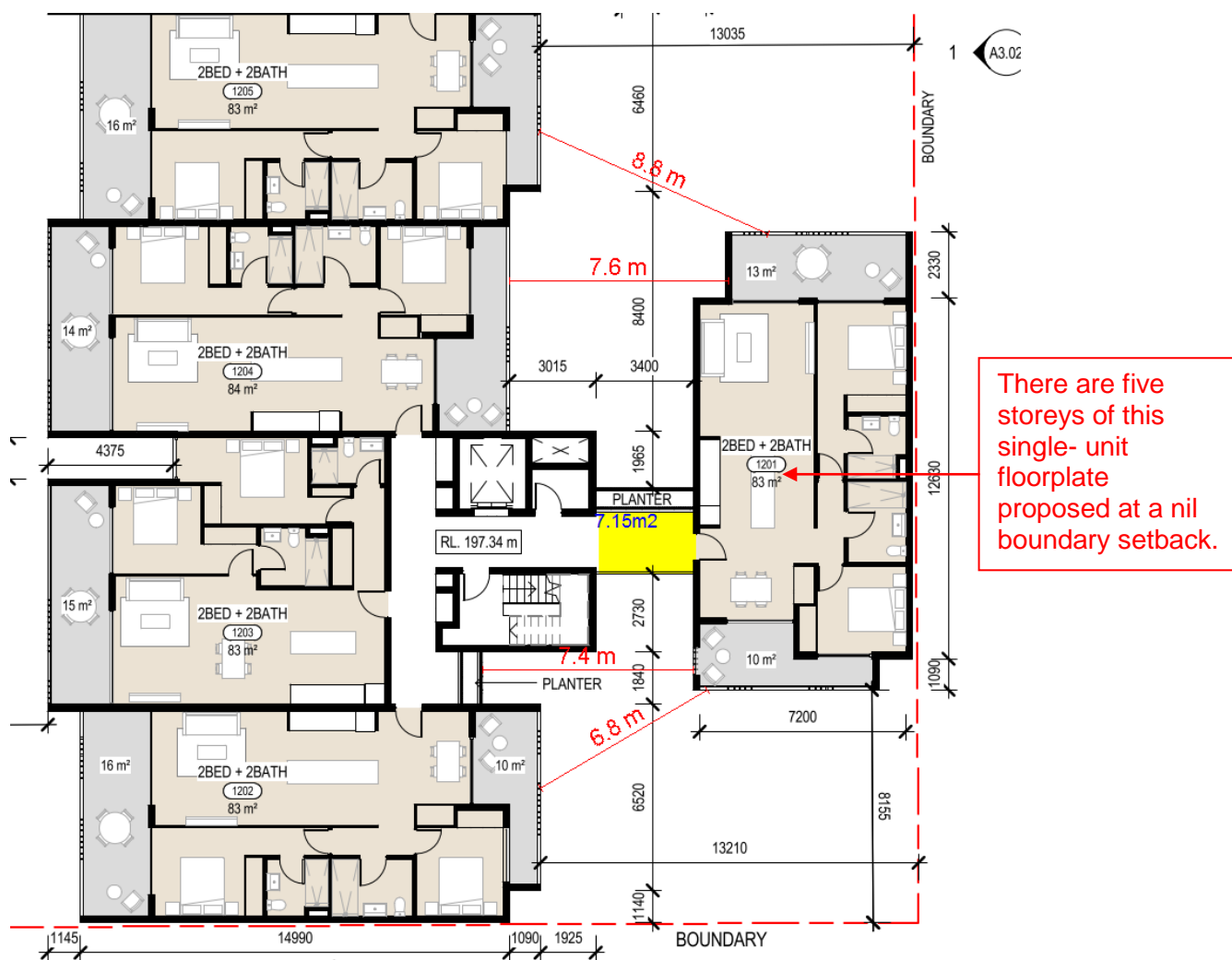
The site is too complex and awkward for traditional street responses. With a site area of this size, with the exception of street wall situations, there should be no zero boundary situations, especially at the scale proposed.

#### Separation within the development

The ADG recommends internal separation distances of 12m for levels 1-4 and 18m for levels 5-8.

#### *Building 1 (rear building)*

Building 1 comprises a main building which runs parallel to the western boundary, and a smaller building which contains a two bedroom unit at each level connected to the main building by a breezeway. The smaller building element incorporates nil boundary setbacks to the east, and a blank wall to the west. For the purpose of measuring privacy separation, the ADG recommends gallery access be treated as habitable space. As identified by the figure below, Building 1 falls short of the recommended setback distances when measured from balcony to balcony and from the balcony to the gallery access. The incorporation of blank walls to overcome more severe privacy implications has resulted in poor amenity outcomes for the two bedroom units within the smaller, isolated building.



#### Building 2 (centre building)

The building separation between building 2 to the other two buildings on site also falls short of the ADG recommendations. As with building 1, the proposal seeks to overcome the separation distance deficiencies by incorporating defensive design measures such as deleting (or providing hoods) to bathroom windows, providing bedroom windows at balcony under croft areas, and by providing solid walls to balcony edges. These design measures have obvious solar access and ventilation implications for the affected units, and also create unarticulated facades.

The privacy implications are most apparent between the central and front towers, at the fifth level. Here the ADG calls for an 18m separation. The proposal provides less than half (9.3m deficient) of this requirement.

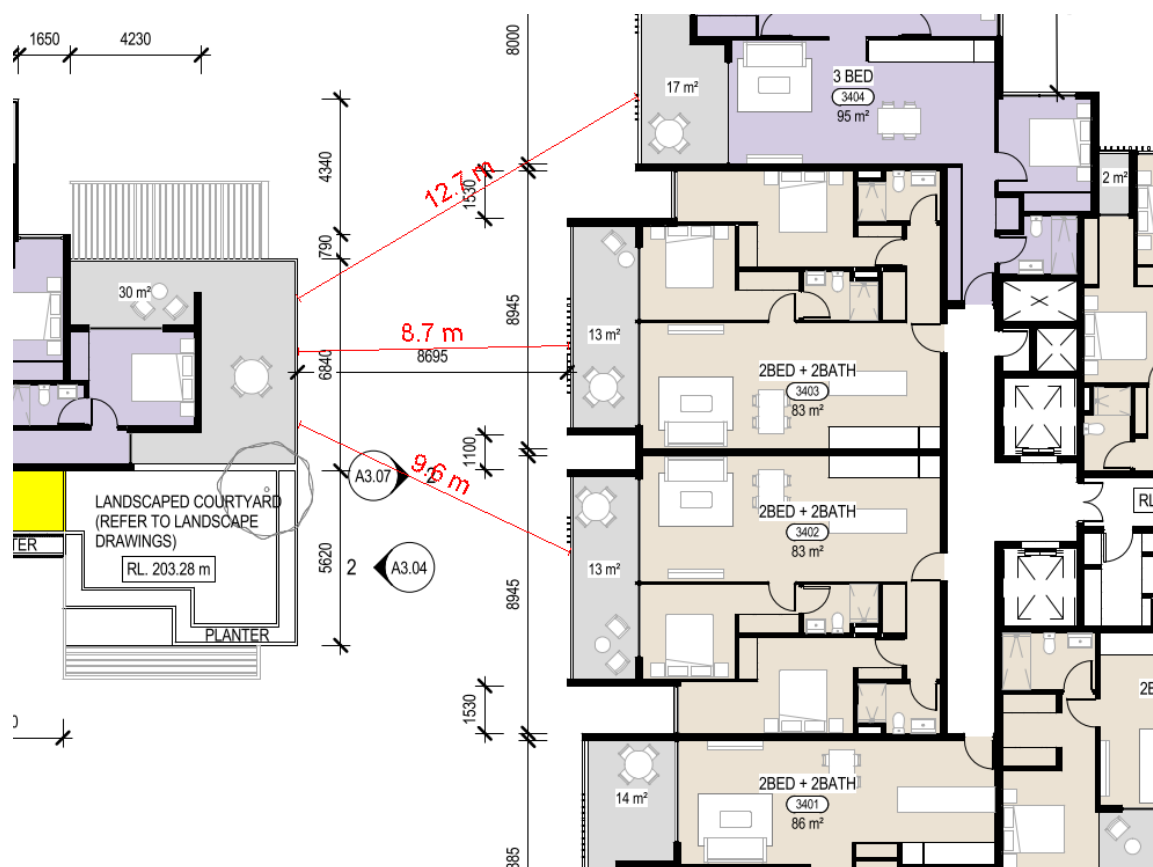


Figure 4: relationship between building 2 and building 3 (level 5).

#### Building 3 (street building)

Building 3 incorporates an indent at the northern boundary, overlooked by windows and balconies associated with three units on each level. At the ground floor, this space is enclosed by the wall of the adjoining building, which is positioned on a nil setback.

As illustrated by figure 5 below, the separation shortfalls of the building 3 design are most obvious on the second level, where the dining room servicing unit 3106 is separated from the balcony of unit 3105 by a 1.8m planter box, and separated from the bedroom of unit 3104 by a distance of 5.6m.

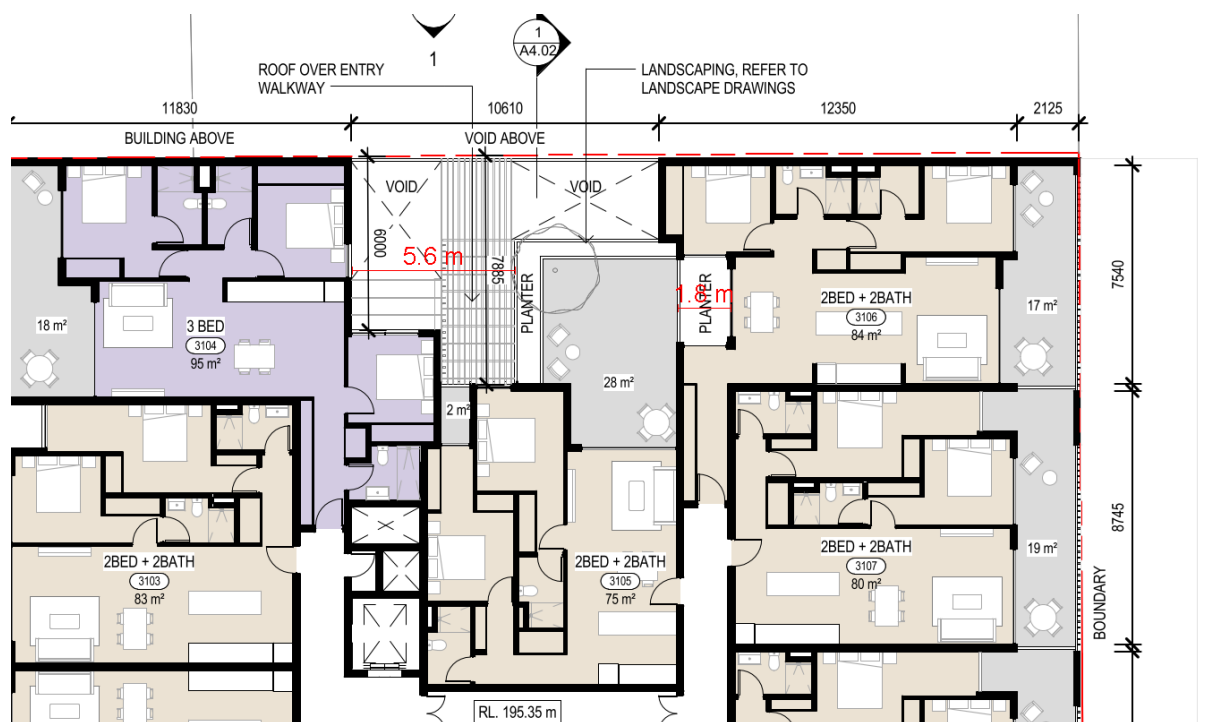


Figure 5: relationship within building 3- second level.

This is 10.2m-6.4m deviation from the 12m recommended by the ADG to achieve a reasonable level of visual privacy.

Above the second level, the separation remains deficient of the ADG recommendations, providing a separation 2.8m-7.1m between the apartment balconies.

The separation provided both within the development, and to adjoining properties is unsatisfactory. The consequence is that the development is unable to achieve a reasonable level of privacy for future occupants.

#### 10.4 Apartment Design and Residential Amenity

Council's DCP defers, for the most part, to the ADG in respect of unit design, and the development falls short of the ADG recommendations as follows:

- The development fails to satisfy the ADG requirement for solar access to apartments. Only 68% (70% required) achieve the bare minimum 2 hours of solar access at midwinter, and the site does not have any 'high density urban' buildings surrounding it which hamper solar access.
- The development fails to satisfy the ADG requirement for cross-ventilation. Only 48% (60% required) achieve natural cross-ventilation, which is well below the expected standard.
- The ADG limits the maximum depth of single-aspect apartments with open-plan layouts to 8m. The majority of units of this type within the development exceed the maximum depth.
- The proposal does not provide sufficient communal open space (COS) for a development in excess of 100 apartments, over 3 buildings in a mostly 'landlocked' configuration. The

proposal falls short of the 25% of site area requirement in the ADG for COS, and also of the requirements for solar access to this space. There is no individual COS for each building within the development.

- The development application does not detail sufficient storage space to satisfy the provisions of the ADG, either within the apartments or within the basement area.
- Many apartments have 'snorkel' windows despite their non-permissibility under the ADG.
- The corridors in building 3 (at street) exceed the maximum number of units to be serviced of a single corridor, and are not naturally lit or ventilated.

The inconsistencies with the ADG amenity design recommendations appear to be driven by the deficient building separation distances. The scheme aims to achieve privacy largely through the implementation of defensive design measures, such as the deletion of windows to bathrooms and providing bedroom windows as either narrow snorkels or positioned beneath balcony undercroft areas. The result is a proposal which is unacceptable with respect to the design of the new apartments, in particular the internal amenity which the future residents may enjoy. The site's large size is capable of accommodating a scheme consistent with the ADG; however, the proposal has failed to do so.

Although the Engadine Town Centre may one day become a 'dense urban area', the site is not set amongst dense urban buildings and, as such, there is no compelling reason why this proposal should provide apartments with compromised amenity. If the buildings at the rear of the site were not aligned at nil side setbacks and were better oriented, opportunities would exist to improve solar access and cross-ventilation and provide for a landscaped outlook.

#### 10.5 Front Setback Treatment

The site is identified in Council's DCP as requiring an active frontage to the main shopping street, being within the commercial core of the Engadine Town Centre. Continuity of internal and external floor levels is a critical element in the successful activation of the front setback area. The main commercial tenancy in the development is set well above street level for the most part, limiting connectivity with the street which fails to achieve this goal. This will significantly impact upon retail activity along the main street, and particularly inhibit uses such as outdoor dining, which Council seeks to encourage.

#### 10.6 Engadine Town Centre Strategy

Council's draft DCP contains site specific planning requirements for the site, being land within the Engadine Commercial Centre. Relevant to the proposal, maintaining the Centre's village atmosphere, and providing good pedestrian connectivity in addition to providing landscaped setbacks at the edges of the centre are key aims articulated by the DCP.

The size, shape and depth of the large urban block in which the site is located generates the key challenge for the project, which is its lack of obvious connection and interface with the Engadine Town

Centre public realm. The street frontages on the sites surrounding the subject site are typically formed by buildings, with the central areas given over to infrastructure and on-grade parking that services the large retail outlets around the edges. This proposal would disrupt this arrangement by introducing new residential buildings into inaccessible mid-block areas without any genuine connection to the main street.

Whilst existing and designed levels at the boundaries are not easily discernible from the drawings provided, it appears from the north elevation, that there is a large expanse of blank wall for the basement and retaining walls fronting the adjoining carpark. The surrounding car park is in effect, a public space, and an improved interface at these boundaries is required to reflect this. The residential component is essentially segregated from the public domain, which is inconsistent with the set strategy for the Engadine Centre.

The provision of buildings at a nil setback to the majority of the sites boundaries, and the deficient deep soil provision limits any genuine landscaping opportunities within the site to enable a sensitive transition to the adjoining land uses.

#### 10.7 Pedestrian Circulation

Relevant to the proposal, improving the amenity of the centre by enhancing pedestrian connectivity is a key aim articulated by the draft DCP.

The built form is conceived in a way that the entry to the residential component is not clearly identifiable, is a narrow 4m wide x 37m long entry tunnel, covered by multiple storeys of building above, adjoined by a wall to the north, and out at an edge of the site. This fails to satisfy the provisions of the ADG and Council's DCP in terms of building access.

Upon entering the site, visual and physical connectivity to the central and rear buildings is poor. There is no legible structure of open space, and way finding to the building entries within the site, particularly for the rear building, is neither clear nor safe. The pathways throughout the development are indirect, and again, often covered by buildings above. To access the very back building, visitors must walk under two tunnels created by alcoves associated with the front and middle buildings.

Given the location in the Engadine Town Centre, the size, and unique nature of the site, it is imperative that the pedestrian connectivity to the public domain and access within the development is of a high quality. Clear and safe connectivity is a key principle for all of the Shire's centres.

The ADG provides clear guidance where street frontage is limited and multiple buildings are located on the site. Under these circumstances the following design features are recommended:

- A primary street address is provided with clear sight lines and pathways to secondary building entries.

- Building access areas including lift lobbies, stairwells and hallways are clearly visible from the public domain and communal spaces.
- Pedestrian links through sites facilitate direct connections to open space, main streets, centres and public transport.
- Pedestrian links should be direct, have clear sight lines, be overlooked by habitable rooms or private open spaces of dwellings, be well lit and contain active uses.

Maintaining clear sightlines between the street, neighbouring property and the buildings and providing good passive surveillance to congregation points, such as mail collection areas and communal spaces are key design strategies reinforced by Crime Prevention Through Urban Design (CPTED) guidelines, supported by the NSW Police recommendations.

The approach taken for the subject proposal is conceptually opposed to the ADG recommendations, and CPTED guidelines.

ARAP has identified pedestrian access as a significant shortfall for the proposal, and have provided specific guidance to the applicant on methods of resolving this matter i.e. the provision of clear sight lines and pathways to the building 1 and 2 entries, and building access areas or alternatively, the provision of multiple pedestrian entry points. Council has reinforced this advice to the applicant, however to date; no genuine attempt has been made to resolve this issue.

#### 10.8 Basement

The basement car park has been set out of natural ground level toward the rear of the site. This results in a poor relationship with surrounding properties, most notably with the interface to the car park to the north (which would become the secondary entry to the development) and to the private properties to the rear (west). Council's DCP requires development to relate to the natural levels of the site as closely as possible. There is no unusual topography which would make this particularly difficult in this instance.

#### 10.9 Traffic

Further clarification of the functionality of the loading dock is required including the provision of turning swept paths and overhead clearances for the loading dock to demonstrate that all service vehicles can enter and exit the site in a forward direction and load/unload therein. Clarification on how goods waste are transferred to and from the dock to the commercial premises and waste storage facilities respectively is also required. This information was requested of the applicant, but was not forthcoming.

#### 10.10 Landscaping

The site is located within an urban centre zone, which does not entail a deep soil development standard in Council's LEP. However, the ADG (which requires 15%) and Council's DCP contain provisions for landscaping in residential apartment development are relevant to the proposal.

Engadine is an area strongly characterised by stands of local gum trees and surrounded by national park. No trees are to be kept on the site in this development. The landscape plan nominated 4 trees to be retained but these are on a neighbouring site.

The civil drawings show a significant amount of fill and a 2m-high stone wall to be placed over the structural root zone of the trees to be retained. This would likely result in the loss of these trees (without the neighbour – their owner's – consent). The privacy within neighbouring properties will be unduly affected.

The remainder of the landscape scheme is internalised and does not address the edges of the site, mainly because there are buildings situated at nil setbacks for large sections of the boundaries. The proposed site layout, limits the incorporation of soft edges, capable of accommodating mature deep soil plantings, which would be more in keeping with the character of the area and improve the interface with neighbouring properties. The outlook of new apartments which face utilities such as the water towers or Telstra building, or onto the car park would also be improved with screen planting. The interface to the car park should also be planted out, particularly given that the basement projects out of ground and is unsightly at this boundary. These amendments were recommended to the applicant, who has failed to incorporate them in the proposal.

## **11.0 SECTION 94 CONTRIBUTIONS**

Should the development be deemed worthy of support, the works would trigger the payment of section 94 levies.

## **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 construction of 116 residential apartments and two commercial tenancies within three separate buildings over a two level basement at 1081, 1085 & 1091A Old Princes Highway Engadine.

The subject land is located within the B3 – Commercial Core zone, pursuant to the provisions of Sutherland Shire Local Environmental Plan 2015. The proposed development, being a residential flat building and commercial premises are permissible land uses in the zone.

Council itself seeks to maximise the development potential of sites within its Urban Centres. This is because it both generates economic activity and increases housing supply and reduces pressure on more sensitive suburban land. However, the Act places an onus on the proponent to demonstrate, and



the consent authority to be satisfied, that a site is suitable for the proposed development. In this instance, the applicant has not demonstrated that the site can sustain the proposed development in the specific manner that the buildings are massed. This is particularly relevant where the buildings are set at a nil alignment to side boundaries within the site and in the convoluted method of access to the site. The development has a poor relationship with the public domain and does not fit in well with the current of desired future character of the Engadine Town Centre.

Insufficient information has been provided to enable a proper assessment of the application. In the absence of a detailed contamination assessment, Council is not satisfied that the site is (or will be made) safe in respect of contamination. The criterion within SEPP55 therefore cannot be met, and the consent authority cannot grant consent to the proposal.

The proposal breaches the maximum permitted FSR, and no clause 4.6 variation has been submitted.

The separation of the buildings both to the site boundaries and within the development itself is inadequate and inconsistent with the minimum building separation distances recommended by the ADG. The design measures implemented to overcome the separation deficiencies and achieve some degree of visual privacy to units, has resulted in flow on effects for internal unit amenity.

Based on the information provided, Council is unable to confirm compliance with the maximum height limit, the level relationship of the development to adjoining (public and private) land and the impact the proposal will have on existing trees.

This site is a constrained urban infill site, and the provision of inadequate setbacks, solar access, cross ventilation, room depth, pedestrian circulation and landscaped communal spaces within the development would indicate that the proposal has not been appropriately designed to address these constraints, and that it is too big for the site. The impact on the amenity and safety of future occupants would be significant, and is unjustified.

A major flaw of the scheme is the lack of coherent site planning and response to the constraints of the site and surrounding land uses. A reduction in the overall massing and scale of the proposal, and a softer treatment of the edges of the development, having regard to the future development potential, but also the existing character of neighbouring sites is required.

The development fails to maintain and contribute to the Engadine “village” atmosphere and provide for good pedestrian connectivity to the commercial and retail elements of the development to the public domain.

The applicant has not yet demonstrated that the site is appropriate for a high density living environment and Council is not supportive of the scheme as submitted and neither is ARAP.

The application was advertised in accordance with the Draft DCP. 151 owners of properties were notified of the application, and a total of eight written submissions were received. The submissions raise various issues, including parking and traffic, privacy, overshadowing, view loss, character, construction impacts, and strains on existing infrastructure and amenities. The issues are considered to be generally reasonable, and reinforce the proposals shortcomings.

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 Sutherland Shire Local Environmental Plan and all relevant Council DCPs, Codes and Policies. Following detailed assessment it is considered that Development Application No. DA15/1325 should not be supported for the reasons outlined in this report.

The applicant has filed a deemed refusal appeal with the Land and Environment Court. The matter is listed for a section 34 conciliation conference following the JRPP meeting.

## **14.0 RECOMMENDATION**

14.1 That Development Application No. DA15/1325 for a residential flat building and commercial premises at 1081, 1085 & 1091A Old Princes Highway, Engadine be refused for the following reasons:

- a) The applicant has failed to establish that the site is suitable for the proposed use having regard to potential contamination arising from previous uses and the proposed residential use, in accordance with State Environmental Planning Policy 55- Remediation of Land.
- b) The application is considered unacceptable in that the proposed development fails to comply with the development standard for maximum floor space ratio set out in Council's LEP and the proposed building occupies too high a proportion of its site.
- c) The proposal fails to meet the design quality principles of SEPP65 and specific criteria of the Apartment Design Guide, and does not justify its failure to meet these criteria.
- d) The proposal is inconsistent with the Engadine Centre Strategy prescribed by Council's DCP, providing poor pedestrian connectivity to the public domain and within the development itself.
- e) In light of the above, the applicant has failed to demonstrate that the site can sustain a development of the bulk and mass proposed and, as such, has not demonstrated that the *site is suitable for the proposed development*.