

SUTHERLAND SHIRE COUNCIL ASSESSMENT REPORT

Panel Reference	2017SSH033
DA Number	DA17/1144
LGA	Sutherland Shire
Proposed Development:	Construction of a seniors housing development comprising 5 apartment buildings, residential aged care facility and community and recreational facilities
Street Address:	Lot 4 DP 1222423 (No. 25) Bay Road, Taren Point
Applicant/Owner:	Anglican Community Services
Date of DA lodgement	25 August 2017
Number of Submissions:	1 individual submitter and 1 submitter on behalf of residents of an existing senior's housing development
Recommendation:	Approval
Regional Development Criteria (Schedule 7 of the SEPP (State and Regional Development) 2011	General development greater than \$30 million
List of all relevant s.4.15(1) matters	<ul style="list-style-type: none"> • Sutherland Shire Local Environmental Plan 2015 (SSLEP2015) • State Environmental Planning Policy (State and Regional Development) 2011 • State Environmental Planning Policy (Coastal Management) 2018 (Coastal Management SEPP) • State Environmental Planning Policy No. 55 – Remediation of Land (SEPP 55) • State Environmental Planning Policy No. 65 – Design Quality of Residential Flat Development (SEPP 65) • State Environmental Planning Policy (Infrastructure) 2007 (Infrastructure SEPP) • State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 • Apartment Design Guide (ADG) • Sutherland Shire Development Control Plan 2015 (SSDCP 2015)
List all documents submitted with this report for the Panel's consideration	<ul style="list-style-type: none"> • Draft Conditions of Development Consent • Pre-DA minutes PAD16/0036 and PAD17/0034 • List of Submitters • ADG Assessment Tables • LEP / DCP 2015 Assessment Tables • Architectural Review Advisory Panel (ARAP) comments • Applicant's Clause 4.6 – Building Height • Plans
Report prepared by:	Slavco Bujaroski – Development Assessment Officer Sutherland Shire Council
Report date	1 June 2018

Summary of s4.15 matters

Have all recommendations in relation to relevant s79C matters been summarised in the Executive Summary of the assessment report?

Yes

Legislative clauses requiring consent authority satisfaction

Have relevant clauses in all applicable environmental planning instruments where the consent authority must be satisfied about a particular matter been listed, and relevant recommendations summarized, in the Executive Summary of the assessment report?

Yes

e.g. Clause 7 of SEPP 55 - Remediation of Land, Clause 4.6(4) of the relevant LEP

Clause 4.6 Exceptions to development standards

If a written request for a contravention to a development standard (clause 4.6 of the LEP) has been received, has it been attached to the assessment report?

Yes

Special Infrastructure Contributions

Does the DA require Special Infrastructure Contributions conditions (S94EF)?

Not Applicable

Note: Certain DAs in the Western Sydney Growth Areas Special Contributions Area may require specific Special Infrastructure Contributions (SIC) conditions

Conditions

Have draft conditions been provided to the applicant for comment?

Yes

Note: in order to reduce delays in determinations, the Panel prefer that draft conditions, notwithstanding Council's recommendation, be provided to the applicant to enable any comments to be considered as part of the assessment report

REPORT SUMMARY

REASON FOR THE REPORT

Pursuant to the requirements of State Environmental Planning Policy (State and Regional Development) 2011, this application is referred to the Sydney South Planning Panel (SSPP) as the development has a capital investment of more than \$30,000,000. The application submitted to Council nominates the value of the project as \$189,614,865.

PROPOSAL

The application is for the construction of a seniors housing development comprising 5 apartment buildings, residential aged care facility and community and recreational facilities.

THE SITE

The subject site is accessed off the northern side of Bay Road via a right of carriageway. The entrance to the site at Bay Road is approximately 340m east of the intersection of Bay Road and Alexander Avenue and approximately 160m west of the intersection of Bay Road and Atkinson Road

ASSESSMENT OFFICER'S RECOMMENDATION

THAT:

1. That pursuant to the provisions of Clause 4.6 of Sutherland Shire Local Environmental Plan 2015, the written submission in relation to the variation to the maximum building height development standard satisfies the relevant provisions of Clause 4.6 and is therefore supported. It is recommended that the provisions of Clause 4.6 be invoked and that the 16m maximum building height development standard be varied to 22.2m, in respect to this application.
2. That Development Application No. 17/1144 for construction of a seniors housing development comprising 5 apartment buildings, residential aged care facility and community and recreational facilities at Lot 4 DP 1222423 (No. 25) Bay Road, Taren Point be approved, subject to the draft conditions of consent detailed in **Appendix "A"** of the Report.

ASSESSMENT OFFICER'S COMMENTARY

1.0 DESCRIPTION OF PROPOSAL

The proposal is best summarised as comprising 5 separate buildings comprising a total of 183 self-contained dwellings, a building containing 48 high care rooms and on-site parking for 244 cars.

The buildings proposed along the northern edge of the site each comprise 2 towers over a single storey podium level. The towers include 1, 2 and 3 bedroom self-contained dwellings over 4 and 5 storeys and are located over a podium level which comprises car parking and servicing areas. The amended plans remove the café from the north western corner of Block A and B and replace it with 3 ground level apartments. The towers are noted as Blocks A, B, C and D on the plans. Blocks A and B contain 78 units with 81 car spaces and Blocks C and D contain 63 units with 67 car spaces.

Block E has a similar configuration to Blocks A, B, C and D in that a 5 storey residential building is located over a podium level, however, it is 'L' shaped in plan rather than linear. The podium level is single storey and comprises car parking spaces, 2 ground floor dwellings, a craft room and a community centre. Block E contains 42 dwellings with 42 car spaces.

Block F comprises the residential aged care facility component of the development. This building contains 48 beds over 3 storeys sitting on a podium level comprising 16 car spaces and administration and support areas. Block E and Block F are arranged such that they wrap around a bowling green to the north.

An internal road is proposed which divides the site into two, intending to connect the existing retirement village to the west with the right of carriageway accessed off Bay Road. A total of 37 external car spaces are provided along this central road. A bridge over the drainage channel is proposed to connect the proposed development with the existing retirement village. The bridge proposal was part of a separate development application DA17/0048 approved in January 2017, however, a modification application has been lodged with Council and is currently under assessment.



Figure 1: Site Plan

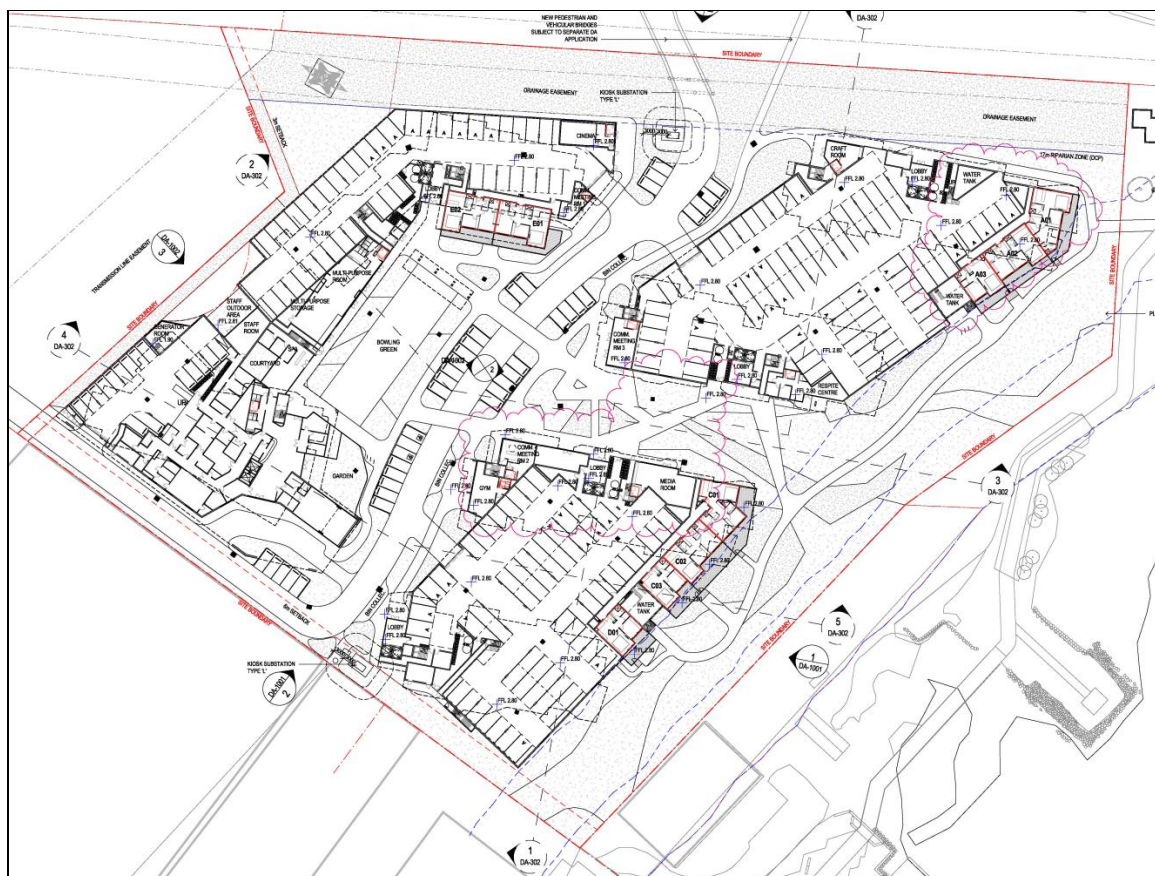


Figure 2: Ground Floor Plan

2.0 SITE DESCRIPTION AND LOCALITY

The site is an internal lot with an entrance located off the northern side of Bay Road and accessed via a right of carriageway. The entrance to the site at Bay Road is approximately 340m east of the intersection of Bay Road and Alexander Avenue and approximately 160m west of the intersection of Bay Road and Atkinson Road. The site is currently vacant.

The site is an irregular shaped allotment being a subdivided portion of a whole allotment comprising 31 Bay Road. The site is 31,790m² in area and is the result of a 4 lot subdivision approved by Council on 2 December 2014 (DA13/1086). The effective site area for the purposes of seniors housing is reduced to approximately 29,900m² as the area of the additional permitted use (seniors housing) does not cover the entire site.

A 30m wide transmission line easement partially extends into the subject site along the southern boundary. There is currently a proposed 4 storey storage facility building under assessment on the site to the south. The majority of the northern boundary adjoins a Council Reserve with part of the northern boundary adjoining a narrow strip of private land also zoned B7. On this strip of land, there is currently a warehouse type building which is 30m long and 5m in height along its eave and 9m in height along its ridge. Further to the north is Woollooware Bay. A recently completed shared path facility also adjoins the site to the north.

The land is generally flat at approximately 2m AHD, having minor falls to the northern and western boundaries. There is a drainage channel along the western boundary which has been populated with mangroves over time. There is no other significant vegetation on the site except along the north eastern corner adjacent to the boundaries. Adjoining the site to the south east are 2 industrial buildings approximately 5m and 11.5m in height and with a zero setback to the boundary.



Figure 3: Site Location

3.0 BACKGROUND

A history of the development proposal is as follows:

- A pre-application discussion (PAD16/0036) was held on 3 May 2016 regarding the development. A formal letter of response was issued by Council dated 9 June 2016. A full copy of the advice provided to the Applicant is contained within **Appendix “B”** of this report and the main points contained in this letter are as follows:
 - Advice to applicant that Seniors SEPP applies to the development
 - Concept plans indicate buildings would be approximately 3m above height limit requiring a cl.4.6 objection to be submitted
 - Location of the single storey residential aged care facility under utilises the site whereby building bulk could be distributed more effectively across the site
 - Western setbacks to be outside the 10m wide drainage easement
 - Northern setbacks to be outside the mapped riparian zone
 - Eastern boundary setback at 10m is reasonable
 - Bridge proposed over drainage channel connecting existing with new is reasonable subject to flood assessment
 - Ground floor levels to be raised to 3.1m AHD taking into account sea level rise
 - Development application will be integrated development requiring referral to Office of Water and Fisheries NSW
 - As the land is contaminated, it must be demonstrated that it can be made suitable for residential purposes in accordance with SEPP 55
 - Depth and volume of excavation a concern with regard to acid sulfate soils
 - Potential air quality concerns due to adjoining / nearby industrial uses
 - Potential impacts on migratory birds by way of noise and light spill during construction and during the ongoing operation
 - Access report required to demonstrate compliance with AS1428
 - CPTED (Crime Prevention Through Environmental Design) principles to be addressed
 - Options presented to the applicant with regard to s94 contributions
 - Potential link to Woollooware Bay shared pathway adjoining the site to the north
 - Landscape concept requirements regarding species, outdoor spaces and community gardens for resident use. Screen planting recommended along eastern boundary to soften the appearance of adjoining industrial buildings.
- A second pre-application discussion (PAD17/0034) was held on 2 May 2017 regarding the development. As a result of this, a formal letter of response was issued by Council dated 13 June 2017. A full copy of the advice provided to the Applicant is contained within **Appendix “C”** of this report and the main points contained in this letter are as follows:
 - Council concurs with applicant that the Seniors SEPP does not apply to the development as the land is environmentally sensitive and excluded in accordance with the SEPP
 - Facades to the parking level for Blocks A, B, C and D do not have any significant activation at ground level

- The plans indicate the building height now exceeds the maximum by 4.35m. In addition to a cl.4.6 objection, documentation must demonstrate that the additional height does not impact on the amenity of proposed dwellings
- Detail regarding room uses, facilities and detail at the edges of the site to be provided
- Car parking dimensions, floor levels to be consistent with flood report and servicing (both for waste and day to day operation) details
- Soil depths on podium courtyards a concern
- Landscape layout needs a strong programme to create useful, interesting spaces to support resident activity
- Recent contaminated land documentation to be submitted
- Acid sulfate soils concerns
- Potential impacts on migratory birds
- A social impact evaluation to be submitted.
- The current application was submitted on 25 August 2017.
- The application was placed on exhibition with the last date for public submissions being 3 November 2017. During the exhibition period, Council had concerns that the individual residents of the existing Woollooware Shores facility were not notified of the proposal as the letter was addressed to Anglicare only (the applicant). Additional letters were prepared and delivered to residents to ensure that the most affected neighbours of the development were notified of the proposed development. Two submissions were received.
- Two Information Sessions were held to ensure affected neighbours had an opportunity to discuss the proposal with Council officers. These were held on 18 October and 25 October 2017. One person attended the first information session and 5 people attended the second information session.
- The application was considered by the Design Review Forum (DRF) on 9 November 2017.
- On 15 December 2017, the applicant was advised by letter of Council officer's concerns with the application, namely;
 - Potential loss of amenity due to the extent of breach to the building height
 - Roof form unnecessarily extends to the edges of the buildings exacerbating their height
 - The scale of the top floor ceilings at 3.2m is excessive
 - Podium level is able to be reduced in height or alternatively incorporate planters / appropriate setbacks for planting
 - DRF comments to be addressed
 - Submitted solar access diagrams do not demonstrate that apartments receive required sunlight in accordance with ADG requirements. Sun-eye diagrams required.
 - Solar access diagrams required to demonstrate no loss of sunlight to existing Inlet building across the drainage channel
 - ADG natural cross ventilation requirements not satisfied
 - Minimum ADG required habitable room depths and heights not satisfied
 - Usable part of balconies not accessed from living rooms in some apartments
 - The large expanse of ground floor unbroken walls are defensive and unwelcoming and no materials / finishes have been proposed. Additional louvres / grills would improve ventilation, light and outlook from carpark.

- Additional apartments can be incorporated at ground level to activate the building and improve surveillance
- Further details required regarding contamination, groundwater and acid sulfate soils
- An audit of adjoining uses regarding potential air quality impacts on residents
- Concerns regarding noise and light spill impacts on the endangered Shorebird community.
- Arborist report required for existing trees
- Landscape plans are sketchy and simplistic requiring further detail
- Unacceptable flooding impacts off-site
- Concerns relating to stormwater discharge into the existing drainage channel
- Waste storage areas are deficient for the number of dwellings and details of waste collection is deficient
- Concerns regarding the increased traffic on Alexander Avenue requiring the installation of a roundabout and no stopping signs
- Headroom clearance for maximum sized truck is deficient
- Amended plans and documentation were lodged on 2 February 2018 and 7 February 2018.
- Following a review of the amended plans and additional information, Council officers still had concerns regarding the clarity of some of the information submitted. A letter was sent to the applicant with the following concerns;
 - Building height still a concern in terms of loss of amenity as a number of units do not satisfy ADG solar access requirements
 - Amendments to roof form and top floor ceiling height are likely required to improve visual qualities and reducing visual bulk when viewed internally
 - Podium level able to incorporate planters in a slab setdown
 - DRF comments to be addressed
 - Clarification required regarding natural ventilation report
 - Cross sections required to satisfy minimum habitable ceiling heights
 - Limited access from living rooms to usable part of balconies in certain units
 - Concerns regarding the ground floor interface with the car park. It was recommended that additional units in lieu of carparking would provide a better outcome
 - Environmental management measures to be provided for areas that do not include built form, i.e. excavation works, stormwater drainage
 - Detail design of proposed gas mitigation measures must be provided
 - Construction quality assurance plan to be prepared in accordance with relevant guidelines
 - Concerns regarding lighting impacts on Shorebird community
 - Concerns regarding pet ownership with regard to impacts on the wetlands and wading birds in the area
 - Landscape plans still sketchy and simplistic
 - Rainwater harvesting not considered by applicant
 - Cost breakdown of residential aged car facility required to accurately calculate s94A contributions
 - The requested additional information was lodged on 8 May 2018 and 18 May 2018.

4.0 ADEQUACY OF APPLICANT'S SUBMISSION

In relation to the Statement of Environmental Effects, plans and other documentation submitted with the application or after a request from Council, the applicant has provided adequate information to enable an assessment of this application, including a cl.4.6 Objection requesting a variation to the building height development standard. A copy of the applicant's cl.4.6 variation is contained in **Appendix "D"**.

5.0 PUBLIC PARTICIPATION

The application was advertised in accordance with the provisions of Chapter 12 of Sutherland Shire Development Control Plan 2006 (SSDCP 2006).

Two hundred and forty four (244) adjoining or affected owners were notified of the proposal and 2 submissions were received as a result. One submission was on behalf of a number of residents in the 'Inlet' building, being the closest building in the existing Woollooware Shores facility. Submissions were received from the following properties:

Address	Date of Letter/s	Issue No.s
No address supplied, however, existing resident	30/10/2017	1
No address supplied, however, existing resident	30/10/2017	2 and 3

6.0 MAJOR ISSUES

The main issues identified in the submissions are as follows:

- The submitted traffic study is incorrect and does not reflect current traffic conditions
- No construction vehicles to pass through existing village
- Height of buildings is unacceptable resulting in loss of views, loss of morning sun, loss of privacy and in terms of visual dominance when viewed from the waterfront.

The issues raised in these submissions are as follows:

Issue 1: The submitted traffic study is incorrect and based and does not reflect current traffic conditions

Comment: This submission relates to the concern that traffic conditions at the Alexander Road / Toorak Avenue intersection will be worsened by the significant increase in car numbers proposed on the site and the use of the Alexander Road entry / exit to the facility. This issue is recognised as a relevant concern and is addressed in the "Assessment" section of this report below.

Issue 2: No construction vehicles to pass through the existing village

Comment: This submission relates to the concern that construction vehicles will disrupt the existing facility to the west. Access to the subject site from the existing retirement village is dependent on the construction of the bridge across the drainage channel prior to the commencement of construction for this seniors housing development. There is a modification application currently being assessed by Council and construction works for the bridge have not commenced. Notwithstanding, a condition of consent is recommended to be imposed to ensure construction vehicles enter and exit the site from Bay Road (Condition No.10A(iii)).

Issue 3: Height of buildings is unacceptable resulting in loss of views, loss of morning sun, loss of privacy and in terms of visual dominance when viewed from the waterfront.

Comment: This submission relates to potential amenity impacts as a result of the breach to the building height in terms of view loss, loss of morning sun, loss of privacy. The issues raised are relevant and form part of the "Assessment" section of this report below.

Revised Plans

Revised plans were received on 2 occasions during the assessment process. Under the provisions of Chapter 42 of SSDCP 2015, the revised proposal was not intensified nor did it change the external impact of the development to an extent that neighbours need be re-notified.

7.0 STATUTORY CONSIDERATIONS

The site is located within Zone 'B7 Business Park' under the provisions of SSLEP 2015. While 'seniors housing' is not in the list of permissible uses in the land use table, the property has the benefit of an additional permitted use under Item 21 in Schedule 1 of SSLEP 2015 whereby 'seniors housing' is permissible on the land.

In terms of the Seniors SEPP, it does not apply to the proposal in this circumstance as the land is environmentally sensitive and therefore excluded under cl.1.4(6)(a) and Schedule 1 of the Seniors SEPP. The land is mapped under SSLEP 2015 as being environmentally sensitive land in terms of riparian land and in terms of biodiversity which satisfies the land exclusions outlined in cl.1.4(6)(a) of the Seniors SEPP. Notwithstanding, as Council does not have any other controls for seniors housing in its DCP, it will be guided by the provisions contained in the Seniors SEPP to the extent of any relevant measures or guiding principles and will use it in the assessment this development application.

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

- Sutherland Shire Local Environmental Plan 2015 (SSLEP2015)
- State Environmental Planning Policy No. 55 – Remediation of Land (SEPP 55)
- State Environmental Planning Policy No. 65 – Design Quality of Residential Flat Development (SEPP 65)

- State Environmental Planning Policy (Coastal Management) 2018 – (Coastal Management SEPP)
- State Environmental Planning Policy (State and Regional Development) 2011
- State Environmental Planning Policy (Housing for Seniors or People With a Disability) 2004 (Seniors SEPP)
- State Environmental Planning Policy (Infrastructure) 2007 (Infrastructure SEPP)
- State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004
- Greater Metropolitan Regional Environmental Plan No. 2 – Georges River Catchment
- Sutherland Shire Development Control Plan 2015 (SSDCP 2015)
- Section 7.12 Levy Plan

8.0 COMPLIANCE

8.1 State Environmental Planning Policy (State and Regional Development) 2011

Pursuant to Schedule 7 of State Environmental Planning Policy (State and Regional Development) 2011, the proposed development constitutes regionally significant development as it has a capital investment value of greater than \$30,000,000 (\$189,614,865). The proposal is required to be considered and determined by the Sydney South Regional Planning Panel (SSPP) pursuant to s.2.15(a) and s.4.5(b) of the Environmental Planning and Assessment Act, 1979.

8.2 State Environmental Planning Policy No. 55 (Remediation of Land) (SEPP 55)

State Environmental Planning Policy No. 55 - Remediation of Land (SEPP 55) requires a consent authority to consider whether the land is contaminated and, if so, whether the land will be remediated before the land is used for the intended purpose.

The site has a history of being filled with landfill material and uncontrolled fill comprising concrete, sandstone, metal, glass, fabric and plastic as well as contaminants. Additional information was requested from the applicant during the assessment which has satisfied Council in that the contaminated land will be made suitable for the intended purpose. This is discussed in greater detail in the “Assessment” section of the report below.

8.3 State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004

State Environmental Planning Policy (Building Sustainability Index) 2004 (BASIX) aims to establish a scheme to encourage sustainable residential development across New South Wales. BASIX certificates accompany the development application addressing the requirements for the proposed building. The proposal achieves the minimum performance levels / targets associated with water, energy and thermal efficiency.

8.4 State Environmental Planning Policy No. 65 – Design Quality of Residential Apartment Development – Design Quality Principles (SEPP 65)

State Environmental Planning Policy No. 65 – Design Quality of Residential Flat Development (SEPP 65) and the accompanying Apartment Design Guide (ADG) seeks to improve the design quality of residential flat development through the application of a series of 9 design principles. The proposal is

affected by SEPP 65. Sutherland Shire Council engages its Design Review Forum (DRF) to guide the refinement of development to ensure design quality is achieved in accordance with SEPP 65. DRF comments are included in **Appendix “E”** to this report.

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 and neighbourhood character	The proposal involves the construction of a seniors housing development on vacant land as an extension of the existing seniors housing development to the west. The built form outcome proposed is responsive to the site and its context as well as the existing neighbouring buildings and anticipated future context to the east and south. The proposal is in keeping with the desired future character established by SSLEP 2015 but varies from the building envelope in that it exceeds the maximum building height. The variation in built form is supported in this instance given it represents a design outcome which will achieve the objectives of the ADG.
Principle 2: Built Form and Scale	The scale of the proposed built form is significant but consistent with the anticipated building height established by SSLEP 2015. The scale of the building is appropriate when considered in the context of the site and the built form envisaged for this part of the waterfront.
Principle 3: Density	The density of the scheme submitted is consistent with the density standard enabled by SSLEP 2015.
Principle 4: Sustainability	The proposed development has been designed to make the most of the site's orientation and aspect. Apartment planning incorporates passive and active building systems. Minimum building depth enables dual aspect and corner apartments, shading to facades with louvres and performance glazing where required. The proposal satisfies the minimum BASIX requirements in respect to sustainability.
Principle 5: Landscape	The amended landscape concept plans provide appropriate communal landscaped areas, both on podium levels accessible by all residents, and at the ground level with the 'green corridor' between Buildings A/B and C/D. Significant planting is proposed at ground floor level along the riparian zone located along the northern and north eastern boundary. The landscape proposal will provide a high degree of amenity for future residents. This is a positive attribute of the proposed development.
Principle 6: Amenity	The proposal satisfies the 'rules of thumb' contained in the Apartment Design Guide in terms of residential amenity, including minimum unit sizes and private open space, solar access and natural cross ventilation. The proposal includes an increased provision of communal open space at ground level.

Principle 7: Safety	The applicant has considered Crime Prevention Through Environmental Design (CPTED) principles in the design of the project, and a CPTED report has been submitted with the application. The development provides increased activation and passive surveillance of the ground level 'public' domain with activated edges along the central communal space between Blocks A/B and Blocks C/D.
Principle 8: Housing Diversity and Social Interaction	The proposal provides a mix of apartment types (including 1, 2 and 3 bedroom units which will encourage diversity in the future occupation of the development. Given the nature of the intended residents, apartments have been designed with adaptable principles from the outset. The development also includes facilities to encourage social interaction including communal open space areas on podium levels and at ground level, which includes a bowling green and café. Community multi-purpose rooms are also proposed on the ground level of the development providing an alternative to the outdoor communal area.
Principle 9: Aesthetics	In general terms the building form, proportions and compositional strategies proposed for the development are of a good contemporary standard and will make a positive contribution to the locality.

8.5 Apartment Design Guide (ADG)

The applicable design guidelines for the proposed development are contained within the ADG, which is based on the 9 design quality principles set out in SEPP 65. A table with a compliance checklist of the proposal against the ADG design criteria is contained in **Appendix "F"**.

8.6 Local Controls – SSLEP 2015 and SSDCP 2015

The proposal has been assessed for compliance with SSLEP 2015 and SSDCP 2015. A compliance table with a summary of the applicable development controls is contained in **Appendix "G"**.

8.7 Controls related to Seniors Housing Development – Seniors SEPP

While the Seniors SEPP does not apply to the site, a compliance table with a summary of the applicable development controls is contained in **Appendix "H"**.

8.8 Coastal Management SEPP

The majority of the site is mapped as being within a 'Proximity area for coastal wetlands', 'Coastal Environment' area and 'Coastal Use' area with regard to the Coastal Management SEPP.

Section 21(1) of the Coastal Management SEPP includes a savings provision which states that the *"former planning provisions continue to apply (and this Policy does not apply) to a development application lodged, but not finally determined, immediately before the commencement of this Policy in relation to land to which this Policy applies."* This application was lodged on 25 August 2017 being prior to 3 April 2018 when the provisions of the Coastal Management SEPP commenced. In accordance with the above, the Coastal Management SEPP does not apply to the proposed development.

The 'former planning provisions' referenced in savings provisions include SEPP No.14 – Coastal Wetlands, SEPP No.26 – Littoral Rainforests, SEPP No.71 – Coastal Protection and SEPP Infrastructure. SEPP No.14, SEPP No.26 and SEPP No.71 do not apply to the site, however SEPP Infrastructure does (refer below).

8.9 SEPP Infrastructure

The matters relevant to the Infrastructure SEPP apply in so far as cl.104 and the table in Schedule 3 define the proposal as traffic generating development, i.e. more than parking for more than 200 cars is proposed with access from any road. Traffic generating development requires referral to the Roads and Maritime Services (RMS). This is discussed in Section 9.3 below.

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

This policy applies to the land and its aim is to maintain and improve water quality flows into the Georges River, to protect and enhance the environmental quality of the catchment, to ensure the principles of ecologically sustainable development is considered in assessments. Issues such as acid sulfate soils, groundwater quality, flooding, stormwater runoff, retention of vegetated buffer areas and water quality have been assessed in this development application and their management is considered acceptable.

8.11 Biodiversity Conservation Act 2016

This Act commenced on 25 August 2017, the same day as the lodgement of this application. A review of its contents concludes that this proposal does not trigger any of the thresholds that require the proposed development to be assessed under the Biodiversity Conservation Act 2016.

The ecological assessment report and vegetation management plan along with the additional information supplied, address the potential impacts on the surrounding area, including the protected Shorebird Community. These reports have concluded that the proposed development and the noise associated with its construction would not impact upon the Shorebird Community or the mangrove riparian channel adjacent to the site.

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. Department of Primary Industries – Water (DPI - Water)

The proposed development was referred to DPI-Water as the proposal is located within 40m of waterfront land and therefore triggers the requirements of a controlled activity approval in accordance with the Water Management Act. DPI-Water has supplied general terms of approval which will be attached to the conditions of consent (Condition No.3).

9.2. Department of Primary Industries – Fisheries

The proposal was referred to DPI – Fisheries as the development is in close proximity to mangroves which are aquatic habitat and their protection falls under the Fisheries Management Act 1994. DPI – Fisheries have provided general terms of approval which will be attached to the conditions of consent (Condition No.3).

9.3. NSW Transport - Roads and Maritime Services (RMS)

The proposal was referred to the RMS as the development is defined as traffic generating development in accordance with cl.104 and Schedule 3 of the Infrastructure SEPP. The proposal exceeds the threshold of a development providing parking for more than 200 cars accessed off any road. The RMS have recommended the following conditions:

1. The proposed new road and bridge across the existing drainage channel, as per DA17/0048 (approved 26 July 2017), shall be completed prior to Occupation Certificate.
2. The layout of car parking areas associated with the subject development (including, driveways, grades, turn paths, sight distance requirements in relation to landscaping and/or fencing, aisle widths, aisle lengths, and parking bay dimensions) shall be in accordance with AS 2890.1-2004, AS 2890.6-2009 and AS 2890.2-2002 for heavy vehicle usage.
3. All vehicles are to enter and exit the site in a forward direction.
4. All vehicles are to be wholly contained on site before being required to stop.
5. Bicycle parking associated with the subject development should be in accordance with AS 2890.3 (Bicycle Parking Facilities). Consideration should also be given to providing end-of-trip facilities for staff to support and encourage active transport to the subject development.

Comment: The bridge referred to in Item 1 is currently under assessment for a modification application. This is a reasonable requirement from the RMS and is included as a condition (Condition No.5). The requirements of Item 2 have been assessed by Council's Engineer and have been addressed by the proposal. Notwithstanding, Condition No.13A(viii) and (ix) is a custom condition recommended by Council's Engineer which includes a requirement to comply with AS2890. Items 3 and 4 are reasonable and will be included in the suite of conditions. In terms of Item 5, the plans indicate appropriate internal arrangements for staff lockers and amenities; however, no space has been allocated for bicycle parking. This requirement will be included as a condition of consent (Condition No.13A(xi)) as it is felt that there is sufficient space on the site to accommodate this requirement. This is discussed further in the "Assessment" section of the report.

9.4. Ausgrid

The proposal was referred to Ausgrid as the development is in close proximity to the electricity transmission line easement running parallel to the southern boundary. Ausgrid comments indicate that the 'as constructed' minimum clearances to the electricity infrastructure will not be encroached by the development. Ausgrid have recommended a number of conditions which will be included in suite of conditions as Condition No.4.

9.5. NSW Police

The DA was referred to the Miranda Local Area Command Crime Prevention Officer in accordance with Council's adopted policy for residential flat buildings over 50 units. NSW Police have advised that the proposal is acceptable with regard to crime risk and safety. No specific conditions were recommended.

9.6. Sydney Water

Sydney Water provided comments in relation to water supply and waste water and have advised that the development can be serviced by connecting to existing infrastructure on within the site. Formal servicing requirements for the development will be determined as part of a s.73 application. This requirement is included in the suite of conditions as Condition No.46.

9.7. Design Review Forum (DRF)

The application was considered by the DRF at its meeting held on 9 November 2017. A copy of the report is included in **Appendix "D"**. In summary, the DRF was supportive of the proposal, however, raised the following concerns:

- The above ground parking strategy dehumanises the site and therefore more has to be done to maintain and integrate a unified spatial domain between the buildings that is true to the original gesture of linking the whole suite of buildings to both themselves and the foreshore, through a common, landscaped people space; whilst being well connected to the existing village.
- More detail is required in the resolution of the ground plane including; building interfaces [especially with carparking conditions], site perimeters, the quality of the public domain and its integration with the podiums.
- Clearer assessment and justification of the general quality of the experience, along with the massing and materiality of the interstitial spaces between the main blocks, especially B and C.
- Consideration of the matters noted under landscape, including provision for cross-generational use.
- A detailed submission of both materials, key details and colours to be presented to ensure that a high quality built environment, as per the Anglicare long term vision, can be achieved."

Comment: The applicant has taken into account a number of the concerns raised by ARAP. Revisions include an improved built form and building design in terms of reduced bulk by recessing top level apartments between Block B and C; addition of ground level active uses which 'skin' the carpark and providing a better building interface; additional solar access analysis to confirm ADG compliance; improved ground and podium level landscape detail to ensure usability; additional cross-ventilation analysis and improved internal amenity for the proposed apartments. The amended proposal is considered to have responded well to DRF recommendations.

9.8. Engineering

Council's Development Assessment Engineer has undertaken an assessment of the application with regard to site management, Basix compliance, vehicle access and parking, stormwater management, waste management and pedestrian access and advised that no objection is raised to the proposal

subject to suitable conditions of development consent. A detailed discussion has been undertaken in the “Assessment” section of the report.

9.9. Building surveyor

Council’s Building Surveyor has undertaken an assessment of the application and has advised that the submitted BCA compliance report indicates that the proposal can comply with the BCA and that the access report indicates that the proposal can comply with access requirements for the disabled.

9.10. Environmental Scientist – Ecological

The application was referred to Council’s Ecological officer with regard to potential impacts on threatened species and in terms of plant species proposed on site. In terms of the Shorebird Community or other migratory and/or wading/wetland birds, it was considered that loud intermittent noise during the construction phase would have a significant impact and that domestic animals (if uncontrolled) could have an impact on the community. Condition No.24, No.33A(ii), No.48(ii) and Condition No.54 are included in this regard.

9.11. Environmental Scientist – Contaminated Land and Acid Sulfate Soils

The application was referred to Council’s Environmental Scientist with regard to potential contaminated land and acid sulfate soils. The applicant has submitted sufficient documentation for Council to be satisfied that the land can be made suitable for its intended purpose. This matter is discussed in further detail in the “Assessment” section of the report.

9.12. Environmental Scientist – Air Quality

The application was referred to Council’s Environmental Scientist who specialises in air quality as the use of seniors housing is considered a sensitive development and the site is located in close proximity to industrial type development which could have an adverse impact on air quality on the site. Council’s Environmental Scientist was satisfied that adverse air quality impacts from surrounding development is unlikely to cause an adverse health impact to residents at the development. Major sources of air pollution in the area were investigated and found to be located sufficiently away and or controlled to allow for the dispersion and appropriate management of air pollutants where they occurred.

The Unit blocks D and F are the most vulnerable to air pollution impacts from adjacent light industrial activity due to their close proximity. Generally the orientation of the units, window openings and separation between the adjacent sites is considered to be sufficient to allow potential air pollutants and odours to be appropriately addressed / dispersed.

9.13. Landscape Architect

The application was referred to Council’s Landscape Architect who had significant involvement in the development of the final landscape concept. Initially, the submitted documentation detailing the landscape concept was considered oversimplified and lacking a defined program of works for such a significant project. Amended plans have now been received providing appropriate details of material finishes, proposed levels, usable communal spaces both at ground and podium level and a more direct sequence of paths and access. Council’s Landscape Architect is now supportive of the proposal

as amended subject to appropriate conditions being imposed (Condition No.s 23, 25 and 26).

9.14. Environmental Health Officer

Council's Environmental Health officer has undertaken an assessment of the application and advised that no objection is raised subject to the inclusion of suitable conditions of development consent.

9.15. Community Development Officer

Council's Economic and Community Development Officer reviewed the proposed development and made comments specifically with regard to graffiti removal, potential vandalism, lighting and maximising opportunities for surveillance. These recommendations have been incorporated into consent conditions as Condition No.52.

9.16. Traffic Engineer

Council's Traffic Engineer reviewed the proposed development specifically with regard to the increase in vehicles on the site and any potential traffic concerns as a result. It was noted that the proposal will result in increased activity at the intersection of Alexander Avenue and Toorak Avenue. Existing traffic leaving the ARV development has difficulty turning right from Alexander into Toorak Avenue which is a potential safety issue. To mitigate the impact it is recommended that a condition of consent be imposed requiring the construction of a roundabout to Council's satisfaction at this intersection.

It was also noted that the raised pedestrian crossing in Alexander Avenue (constructed by ARV as a condition of previous consent) is not lit to standard. As a result, it was also recommended to impose a condition requiring that the street lighting be upgraded to bring the crossing up to standard (AS/NZS 1158 series).

In addition, some "No Parking" restrictions either side of the entry/exit to Bay Road should be installed for safety reasons, particularly in relation to sight lines when exiting the property. The applicant will be required to apply to Sutherland Shire Council to have the restrictions approved via the local traffic committee with the cost of implementing the restrictions to be borne by the applicant.

The above recommendations have been imposed as Condition No.9.

9.17. Stormwater Engineer - Flooding

The application was referred to Council's Stormwater Engineer with regard to flooding. Following the submission of additional detail and information, Council's Stormwater Engineer considered the proposal acceptable with regard to flood risk subject to the following being included as conditions of consent (Condition No.21):

- Prepare a site specific flood emergency response plan prior to issue an occupation certificate, building on details provided in section 2.5 of GHD's report.
- An engineer's report shall be provided to certify that the structure can withstand forces of floodwater, debris and buoyancy up to and including the PMF.
- Finished floor levels are constructed to a minimum level of 2.8m AHD.

- Car parking is to be constructed to existing ground level or greater. If any excavation is to be proposed during CC stage an engineer's report should be prepared confirming that no car spaces are located below the 1% AEP flood level.
- No excavation is permitted on the site apart from the proposed raingarden and bioretention swale.

9.18. Heritage Architect

Council's Heritage Architect reviewed the proposal in relation to the proximity of the proposal relative to the heritage item #2508, Oyster Jetty. The Heritage Officer has advised that impacts on the heritage item are minimal as there is no connection between the item, the setting, the waterviews, migratory birds and mangroves and the proposed development. The following condition was recommended in relation to unexpected finds during excavation works:

If any archaeological remains are uncovered during excavation, then works in the affected area must cease and NSW Office of Environment and Heritage is to be informed in accordance with the requirements of the Heritage Act 1977. Works cannot resume until permits or exemptions are in place. This recommendation has been included as Condition No.53.

10.0 ASSESSMENT

Following a detailed assessment of the application having regard to the Heads of Consideration under Section 4.15(1) of the Environmental Planning and Assessment Act 1979, the following matters are considered important to this application.

10.1 Environmental matters

The proposed development requires the consideration of various environmental matters which need to be satisfied in order to grant consent. The most significant is related to contaminated land and associated land gas concerns. In addition, acid sulfate soils will require management as well as groundwater. These matters have been assessed as follows:

10.1.1 Contaminated Land and Landfill Gas Management

This subject site was part of a larger parcel of land that extended to Bay Road to the south. Based on historical records, the site was initially in a semi-natural state until the 1950s when it was used for oyster farming and boat building until the approximately 1960.

Regional land filling was undertaken at the site between 1961 and 1970. There is no detail available regarding the commencement and finish date of land filling or any controls over the filling. The site was then owned and used by Toyota in the 1980s for car storage, with historical aerial photos from 1994 revealing the site appearing to be sealed and used for the storage of new cars. The site has been vacant since 2001.

Based on the previous land uses, contaminants of potential concern identified at the site include; heavy metals, total recoverable hydrocarbons (TRH), polycyclic aromatic hydrocarbons (PAH), volatile

organic compounds (VOC) and similar. Potential for landfill gases and potential acid sulfate soils are also identified.

Recent environmental site investigations identified fill material between the ground level and 3.3m below ground surface, containing a crushed sandstone layer and landfill material comprising glass, plastic, metal and construction wastes. Elevated concentrations of heavy metals, TRH, PAH and asbestos containing materials (ACM) were reported in the landfill. Arsenic, PAH and ammonia were recorded at elevated concentrations in the groundwater. Landfill gas, predominantly methane, was reported as presenting a moderate risk to the proposed development.

In terms of the works proposed, the whole site will be filled to an approximate level of 0.8m above existing levels. There will be excavation related to drainage works which will penetrate the existing ground and piling which will also pierce contaminated layers below ground level. The floor construction of each building is typically to be concrete slab on ground level.

The applicant has proposed landfill gas protection measures and a site specific Environmental Management Plan to address the risk associated with contaminated soil, landfill gas, groundwater and acid sulfate soil which is considered acceptable. A NSW EPA accredited site auditor has reviewed this documentation and has issued a Section B Site Audit Statement certifying that the site can be made suitable for the proposed seniors living facility provided that landfill gas protection measures are installed and managed in accordance with the Environmental Management Plan. This requirement is imposed as a condition of consent under Condition Nos. 27, 28, 29, 30 and 31.

10.1.2 Acid Sulfate Soils

The presence of acid sulfate soils was previously assessed and an acid sulfate soil management plan was prepared that covered the previous larger lot. For the subject site, potential acid sulfate soils have been identified within the natural soils on the site between 1.4m and 3.5m below ground level.

The applicant has suggested that the previous management plan can be relied upon to address potential acid sulfate soil conditions at the site. However, as the management plan is now dated (2011), and to ensure a site-specific outcome, a condition of consent is recommended to be imposed for a new acid sulfate soil management plan to be prepared and approved prior to any works onsite. Condition No.22 is imposed relative to this requirement.

10.1.3 Groundwater

The measured depth to groundwater ranges from 1.55m to 2.04m below ground level. The NSW EPA accredited site auditor has agreed with the environmental consultants that the reported concentrations of contaminants in groundwater (arsenic and ammonia) are not considered an unacceptable risk as groundwater abstraction is not proposed for the development. Further to this, management of the groundwater is covered in the site-specific environmental management plan which will be required to be complied with. Condition No.s 27, 28, 29, 30 and 31 are imposed relative to this requirement.

Council will also provide affectations on to the planning certificate in an effort to ensure future site users are aware that groundwater abstraction is not permissible at the site.

10.2 Building Height

Clause 4.3(2) of SSLEP 2015 stipulates a maximum height of 16m for the site. The amended proposal has a maximum building height of 22.2m. This exceeds the maximum building height development standard by 6.2m, representing a 39% variation.

Height of building is defined in SSLEP 2015 as follows:

building height (or height of building) means:

- (a) in relation to the height of a building in metres—the vertical distance from ground level (existing) to the highest point of the building, or*
- (b) in relation to the RL of a building—the vertical distance from the Australian Height Datum to the highest point of the building, including plant and lift overruns, but excluding communication devices, antennae, satellite dishes, masts, flagpoles, chimneys, flues and the like.*

All buildings within the proposed development breach the maximum building height by a varying degree depending on which building it is. The elements of the proposed buildings which exceed the control are described as follows:

- The entirety of Level 5 of Buildings A, B, C and E and extending to the top third of Level 4 of these buildings
- Approximately half of the height of Level 4 of Building D
- Lift over run only of Building F.

The diagram below relates to Building A and B and shows the extent of the breach.



It is noted that the land is flood prone and includes contaminated material which was capped during previous subdivision works. The matter of flooding requires a minimum habitable floor level to be

500mm above the 1% AEP flood level, and, in this circumstance, includes a factor relating to sea level rise up to the year 2100. In this regard, Council's Stormwater Engineers have determined that the minimum habitable floor level is to be 2.8m AHD which the proposal is compliant with. In terms of contaminated land, the applicant has chosen to build on top of the existing capped site rather than excavate the site for basement parking and services as usually proposed in other similar development.

The main consideration here from the point of view of the applicant is presumed to be the economic viability of the project. It is recognised, in the circumstances of this site, that remediation of the site relative to basement construction would involve significant resources in terms of; dewatering, removal of contaminated material and disposal off site (a transfer of environmental impacts), potential offsite groundwater impacts, reliance on active soil gas management (mechanical treatment) and generally greater energy usage. The alternative, as proposed, is to deal with the environmental issues in situ which provides for a more sustainable approach. The proposed remedial approach is considered as the most appropriate with regard to sustainability and minimising environmental impacts on or off site. There is an acceptance, therefore, that this approach will influence the out of ground extent of built form. Notwithstanding, the buildings as presented have been assessed on their merit having consideration of the height and zone objectives.

Clause 4.3(2) in relation to maximum building height is a 'development standard' to which exceptions can be granted pursuant to Clause 4.6(2) of SSLEP 2015.

Subject to Clause 4.6(3) development consent may be granted for development that contravenes a development standard but only on the basis of a written request from the applicant seeking to justify the contravention. The written request must demonstrate the following:

- (a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*
- (b) that there are sufficient environmental planning grounds to justify contravening the development standard.*

In terms of Clause 4.6(4) consent must not be granted for development that contravenes the standard unless the written request has adequately addressed the matters in subclause (3). Sub-clause (4) also requires that Council must be satisfied that the proposal is in the public interest because it is consistent with the objectives of the development standard and the objectives for development within the B7 Zone.

The applicant has lodged a written request in accordance with the requirements of clause 4.6 of SSLEP 2015. A full copy of this request is contained in **Appendix "D"**.

The objectives of the height of buildings development standard set out in clause 4.3(1) of SSLEP 2015 are as follows:

- (a) *to ensure that the scale of buildings:*
 - i) *is compatible with adjoining development, and*
 - ii) *is consistent with the desired scale and character of the street and locality in which the buildings are located or the desired future scale and character, and*
 - iii) *complements any natural landscape setting of the buildings,*
- (b) *to allow reasonable daylight access to all buildings and the public domain,*
- (c) *to minimise the impacts of new buildings on adjoining or nearby properties from loss of views, loss of privacy, overshadowing or visual intrusion,*
- (d) *to ensure that the visual impact of buildings is minimised when viewed from adjoining properties, the street, waterways and public reserves,*
- (e) *to ensure, where possible, that the height of non-residential buildings in residential zones is compatible with the scale of residential buildings in those zones,*
- (f) *to achieve transitions in building scale from higher intensity employment and retail centres to surrounding residential areas.*

Objectives (a), (b), (c), (d) and (f) are considered relevant to the proposal.

The subject site represents a large parcel of vacant land located between an existing seniors housing development to the west, industrial development to the east and industrial development to the south and south west. Its northern edge adjoins a public reserve, and, currently, a food processing business.

In terms of controls, SSLEP 2015 established greater building heights and densities than the previous SSLEP 2006 as well as a greater range of uses by rezoning the land to B7 Business Park from Zone 11 Employment. While the subject proposal does not represent a building form anticipated within the B7 zone, it is consistent with the building form of a residential building which is permissible on the land by way of the additional permitted use for seniors housing. Expected development in zone B7 includes; Garden centres; Hardware and building supplies; Light industries; Office premises; Passenger transport facilities; Self-storage units; Warehouse or distribution centres. These types of uses require larger floor plates with a potentially bulkier and more contiguous building form when taking into account the 1.5:1 floor space ratio and the height limit. The residential buildings proposed distribute the floor space across the site providing 'breathing room' between and around buildings whereas a bulkier building form would generally provide relief at its edges only.

In terms of the key objectives for building height such as compatibility with adjoining development, scale and character of the locality, the proposed development is of a larger scale than existing buildings within the immediate vicinity of the site. The following analysis of the existing built form and permissible planning controls contextualises the current and the likely future context of the immediate area.

1. The western side of the site contains the existing Woollooware Shores retirement village is established with its nearest building approximately 12m in height. This building is setback approximately 20m from the boundary of the subject site and approximately 38m from the nearest building in the development

2. To the east of the site is a tilt-up concrete warehouse building approximately 11.5m in height with a zero setback to the boundary. There is a smaller and older building to the north of this building. Future development on adjoining sites to the east can achieve a 16m height and a floor space ratio of 1.5:1 pursuant to SSLEP 2015 as it is also zoned B7
3. Development to the south of the site is slowly being developed with a 16m high storage facility currently under assessment. This building will be setback approximately 27m from the boundary with the subject site due to the location of the transmission line easement
4. Most of the existing development adjoining the site is inward looking into their site, i.e. blank walls extend to the limit of the site boundaries. The exception is the existing Woollooware Shores retirement village.

The diagram below indicates the building height control map for the locality.



The existing built form within the vicinity of the site is relatively consistent in terms of building height, being approximately 12m across all buildings. The exception is the future development to the south which proposes 16m, however, it is currently under assessment by Council.

The scale of buildings proposed respond appropriately to the current and anticipated context as there is a generous building separation of approximately 40m provided to current and future development to the west and south. This building separation allows for any impacts related to visual intrusion of building bulk to be minimised as well as allowing views to the sky and vistas beyond the site to be maintained. The proposed buildings along the eastern side of the site (Building D and F) step down from the maximum height proposed so that the transition to existing development is less abrupt. While still higher than adjoining buildings, this relationship is considered acceptable given the anticipated future built form on adjoining land and the building separation proposed.

The other key objectives of the building height development standard require the consideration of any loss of views, privacy, visual intrusion or loss of daylight as a result of the additional building height.

The most affected neighbour in this regard is 'The Inlet' building located in existing retirement village to the west. A more detailed discussion on potential view loss and overshadowing is included in Section 10.3 below. In short, the proposed building height does not contribute to any loss of views and in terms of overshadowing, acceptable solar access is maintained to adjoining apartments.

In terms of loss of privacy and visual intrusion, Building A is oriented in the same direction as 'The Inlet' building, i.e. apartments will be 'looking' at each other. Impacts related to these 2 considerations are minimised by the building separation proposed. A minimum distance of 38m will separate the buildings which is in excess of the requirements of the ADG. The ADG requires a separation distance of 18m between habitable rooms / balconies where buildings are 5 to 8 storeys in height so as to provide appropriate amenity for buildings and to provide for an appropriate urban form. A greater than 1:1 ratio of horizontal distance to building height as proposed is considered sufficient to alleviate concerns of loss of privacy and visual intrusion.

In terms of the visual impact of the development when viewed from the waterway, the proposal includes linear building forms arranged so that their narrow edge faces the water of Woollooware Bay. While their height will be visibly greater than existing development along this stretch of the waterfront, the impact of the additional height proposed is alleviated by the arrangement of the buildings on the site. The space between the 'fingers' of buildings provides relief to the building form when viewed from the water extending from approximately north to the north east of the site. In addition, the proposal is considered to be consistent with the anticipated future development along the waterfront.

The proposed development is located within Zone B7 Business Park. The objectives of this zone are as follows:

- *To provide a range of office and light industrial uses.*
- *To encourage employment opportunities.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of workers in the area.*
- *To prevent the fragmentation of large sites and to realise their economic strategic advantage.*
- *To provide opportunities for the erection of buildings requiring large floor areas and to discourage small-scale uses unless they are of an ancillary or service nature.*
- *To enhance the visual appearance of the employment area by ensuring new development achieves high architectural and landscape standards.*
- *To minimise the impact of development within the zone on areas of environmental or heritage significance.*

The zone objectives generally relate to land uses anticipated by the land use table and not to the use proposed. Notwithstanding, the last 2 objectives of the zone are applicable and considered to be satisfied by the development. The proposal is designed to a high architectural and landscape standard and will provide an appropriate interface with public reserves to the north and associated facilities. Impacts related to environmental matters (existing vegetation, the Shorebird Community) are

considered minimised and there is no impact on the heritage significance of the adjoining item to the north. The proposal is consistent with the relevant objectives of the B7 Business Park zone.

It is important to also consider whether the proposal is a better planning outcome relative to a compliant building form for a use that is anticipated in this zone. In order to assess this, an examination of applicable controls is required to be undertaken relative to potential land uses permissible on the land.

In terms of the applicable development standards, the maximum 1.5:1 floor space would ordinarily allow a total floor space of 47,685m² on the site, and, when considering the maximum building height of 16m (4 storeys for a commercial building), an area of approximately 11,900m² per floor is able to be achieved. The zone permits uses that are likely to be bulkier as a result of their requirements, i.e. office space, warehousing, industrial units, require large unencumbered open plans which generally translate to their external appearance as bulkier building forms. Controls related to residential amenity do not apply to such development which means that these buildings are also able to extend to the lot boundaries. Given the context of the site being effectively waterfront land, it is likely that a future building would take advantage of its position and be located along the northern edge of the site resulting in a continuous waterfront 'wall' similar to other waterfront development in the eastern parts of Taren Point. The height and breadth of potential commercial development on the land would result in a visually dominant built form when viewed from the water, having little interaction with the highly used public foreshore area.

The proposed development, in contrast, is under the maximum floor space ratio at 1.21:1 over the site where seniors housing is permissible, or a ratio of 1.14:1 over the whole site. This leaves approximately 8,500m² of floor space which is unused for this proposal. In addition to this, a significant proportion of the ground floor carparking areas have been included in the calculations (approximately 5,000m²) which ordinarily would not be included if contained in a basement. In simple terms, more than 1/3 of the available floor space is left unused for the main purpose of the development proposal, i.e. for dwellings. Transferring this area to the development would mean that the proposal would include another 2 levels across most of the buildings to achieve the maximum FSR. It is clear that, in the circumstances, the building height breach is not a grab for additional floor space as the floor space achieved confirms that it is underutilised.

Visually, the resulting building forms of this proposal would contrast sharply with the potential building form described for a commercial development. This proposal would provide opportunities for views through the site to and from the public domain. A more permeable and active "frontage" to the public foreshore will be achieved by the proposal which also has the benefit of increased surveillance of public and private areas. This interaction between building use and the public domain is a significant consideration in the context of this site, particularly with regard to recent upgrades and provision of public facilities along the Woollooware Bay foreshore.

The additional height is not an attempt by the applicant to achieve additional floor space. It is perhaps more a result of the applicable controls which allow this seniors housing development as an additional

permitted use with no adjustment to the controls that apply to this Business Park zoning. In this environmentally sensitive location, with a mix of residential, industrial and business park neighbours, the proposal is a better planning outcome than that could be achieved by a compliant building form anticipated in the zone.

The applicant's written submission demonstrates that compliance with the maximum building height development standard is unreasonable and unnecessary in the circumstances of the case. It also demonstrates sufficient environmental planning grounds to justify varying this development standard.

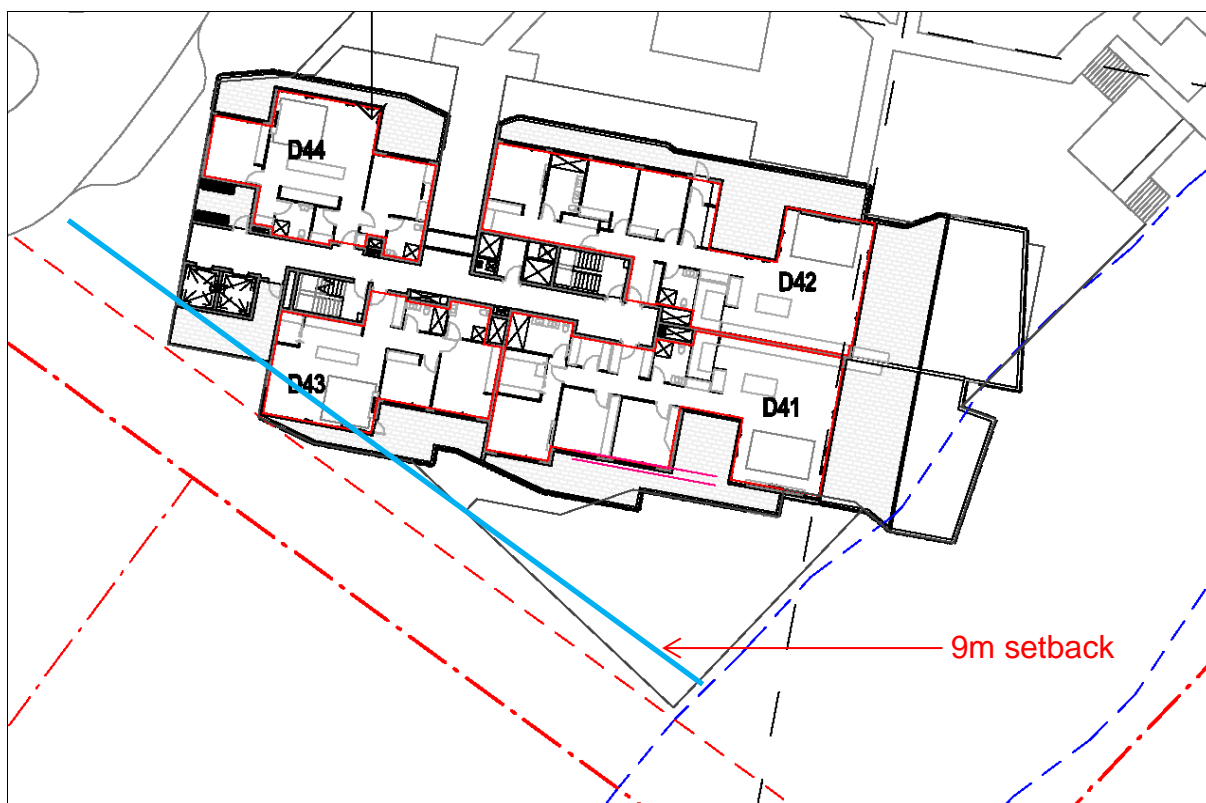
The proposed development complies with the objectives for both the building height development standard and the objectives of the B7 zone and will result in a development which contributes positively to the public domain and this part of the Woollooware Bay foreshore.

The proposed variation does not raise any matters of State or regional environmental planning significance. The building height development standard has local relevance only. As demonstrated above, the height breach relates to buildings which are appropriately setback from adjoining development and the public domain. In terms of visual impact from the public domain, no adverse impact is likely. The additional height results in no adverse view loss for the public or adjoining development or overshadowing and the resulting building form is a better environmental outcome in the circumstances.

In conclusion, the variation to the maximum building height development standard satisfies all relevant parts of clause 4.6 and the variation can be supported.

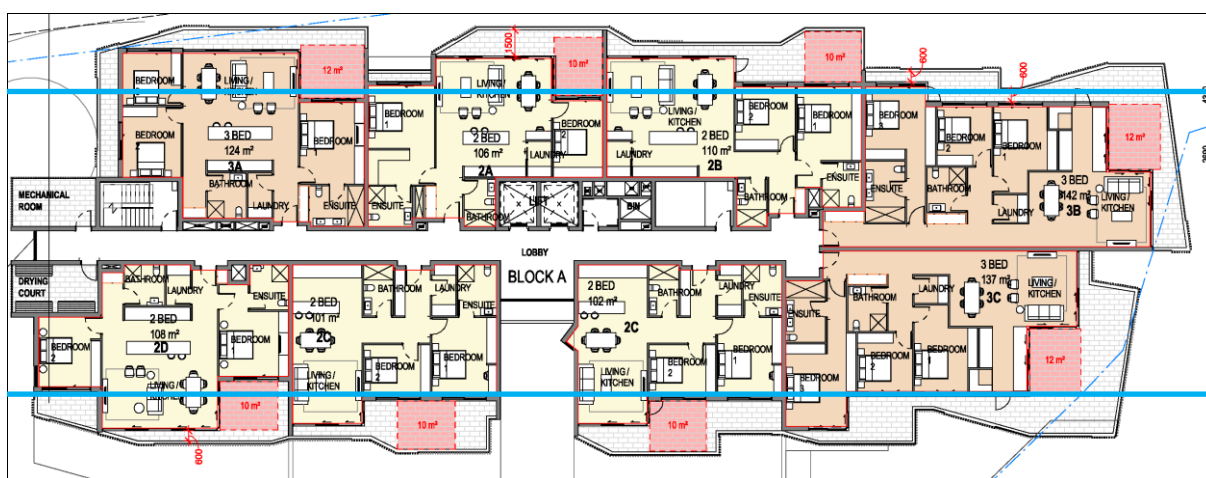
10.3 ADG Building Separation – Building D

Building D is 5 storeys and is located a minimum of 6m from the south eastern boundary which is less than the required distance of 9m recommended by the ADG. Building D is skewed to the boundary such that the 6m setback is the minimum setback with its furthest point being setback 25m from the boundary (refer to diagram below). On average, the building footprint exceeds the minimum requirement by a significant margin. The required setback of 9m assumes that the adjoining building is also residential and that habitable rooms / balconies face each other. Current development is low rise industrial on a zero boundary setback with future development likely to be commercial in nature, and, therefore, a different use and different built form. The encroaching portion of the building is minor in extent and does not introduce any significant amenity impacts on adjoining properties. This non-compliance is considered acceptable in the current and likely future context of the site.



10.4 ADG Building Depth

The maximum building depth of 18m under the ADG aims to ensure that the bulk of the development relates to the scale of the desired future context and to ensure that building depths support apartment layouts that meet the objectives, design criteria and design guidance within the ADG. While parts of Buildings A, B, C, D and E achieve a 23m building depth, they also achieve the relevant requirements in terms of solar access and natural cross ventilation. The building depth varies along each building and it is only in certain areas where the depth exceeds the 18m maximum width (refer to the diagram below which shows the 18m depth in blue). The articulated façade alleviates any bulk issues resulting in a building form that is in scale with the anticipated future context.



10.5 ADG Storage Requirements

The proposal has not indicated how the storage requirements of the ADG are to be met. The requirements are as follows and at least 50% of the requirement is to be included in the apartments.

6m³ per 1br apartment

8m³ per 2br apartment

10m³ per 3br+ apartment

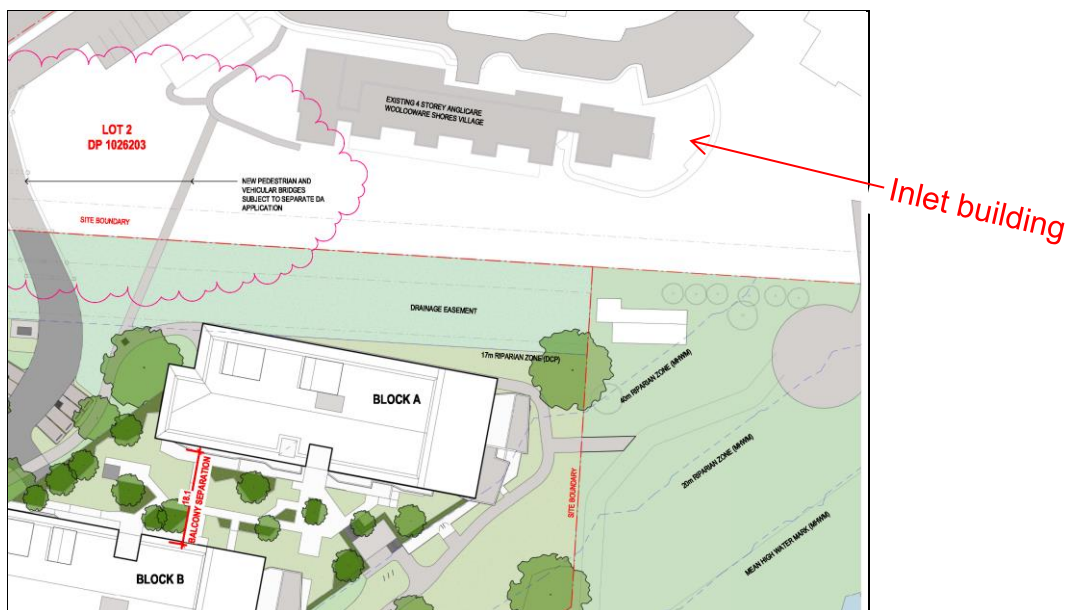
The individual apartments indicate cupboards that, in some cases, appear to be in addition to the typical linen cupboard or wardrobe. However, it does not appear that the full storage requirement is able to be met. In addition, the car parking level has not shown any dedicated storage for apartments. As the number of parking spaces proposed is well over the minimum required, there is the ability to provide the required storage, or part thereof, within the parking level. This requirement is included as a condition (Condition No.2A(v)).

10.6 Amenity impacts raised by adjoining residents

Submissions were received from occupants of the adjoining retirement village to the west whose dwellings are generally oriented to the east. These submissions were from residents of the Inlet building who raised the issue of building height and its impact on the amenity of their apartments with regard to view loss, overshadowing and privacy. The residents potentially affected by view loss reside on the top 2 levels of the building and residents potentially affected by overshadowing were located on the lowest 2 floors. Residents generally had concerns regarding privacy. These matters have been discussed in sequence as follows:

10.6.1 View loss

The issue of view loss has been raised by some of the owners of apartments within the adjoining Inlet building as shown below. Block A is the most relevant part of the development proposal which has the potential to affect resident amenity.



The following is an assessment of the view loss in accordance with the planning principle established by Senior Commissioner Roseth in *Tenacity Consulting v Waringah* [2004] NSWLEC 140.

Step 1 - Assessment of the views to be affected

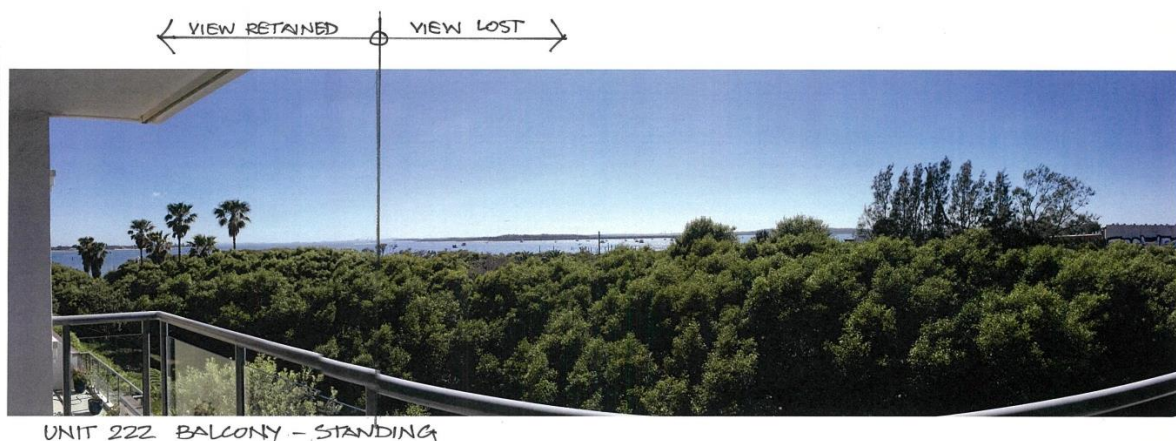
The view opportunities afforded to apartments on the top 2 floors of the inlet building (Level 2 and 3) are water views of Woollooware Bay extending from near to the waterfront to distant views of Botany Bay and Sydney Airport beyond. The width of the view generally extends approximately from a northerly direction extending to directly east of the building. The water views obtained from apartments on Level 2 become slightly hindered by existing vegetation and mangroves along the drainage channel.

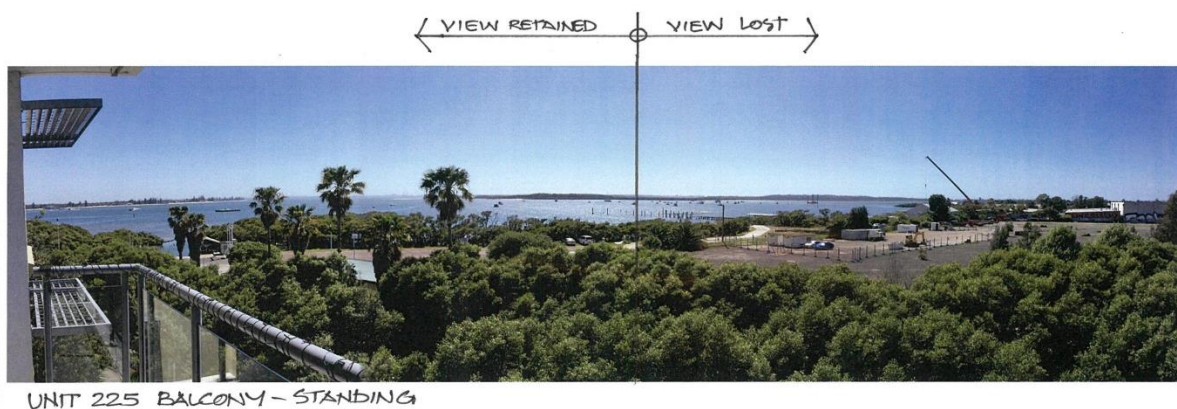
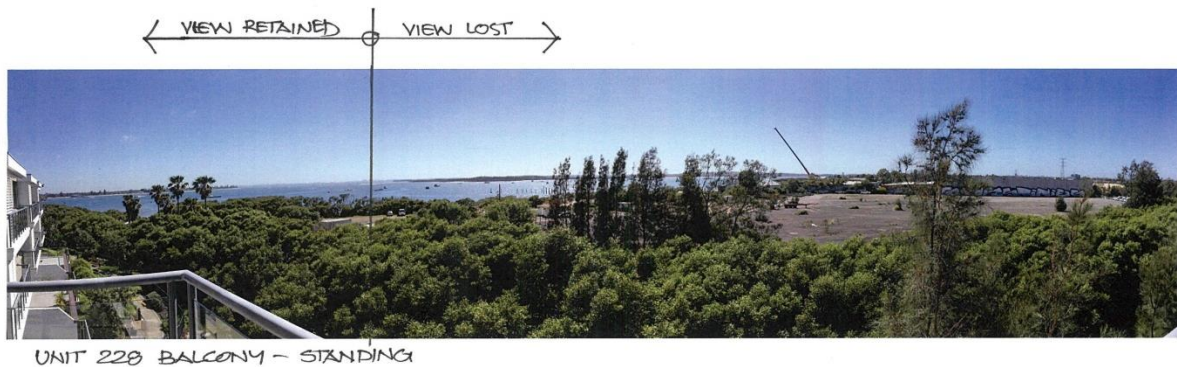
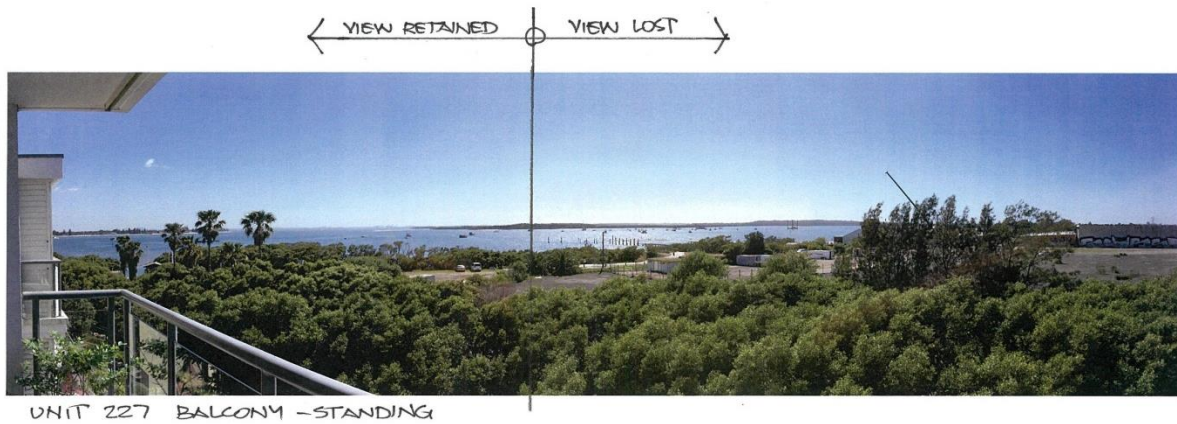
Step 2 – Assessment of where the views are obtained

The view afforded to apartments are largely obtained from a standing position on the private terrace area on the eastern side of the apartments and from the living rooms attached to this space. The views are more obtainable from the top floor (Level 3) as the effect of existing vegetation and mangroves is lessened.

Step 3 - Extent of the impact of the proposed development

The existing water views for all apartments on Level 2 and Level 3 of 'The Inlet' building will be impacted by the proposed development to varying degrees. The apartments located towards the southern end of the building will have a reduced field of view while the northern apartments are less impacted as they progressively move to the front of the site. In all cases, it is the width of the view that is impacted by Building A as it moves into view to the east. Quantitatively, approximately half of the width of view will be lost which would be described as a moderate impact. Diagrams below indicate the extent of view loss:





Step 4 – Reasonableness of the proposal

The subject proposal is compliant with Council's density control but exceeds the maximum height development standard. The height breach, however, does not impact on the extent of view loss for any of the adjoining apartments as the loss of view relates to the width of view rather than to the vertical extent of the view, i.e. reducing the height of Building A to be a compliant 16m height will have the same impact as that proposed as it is the location of the building along the field of view which is causing the impact.

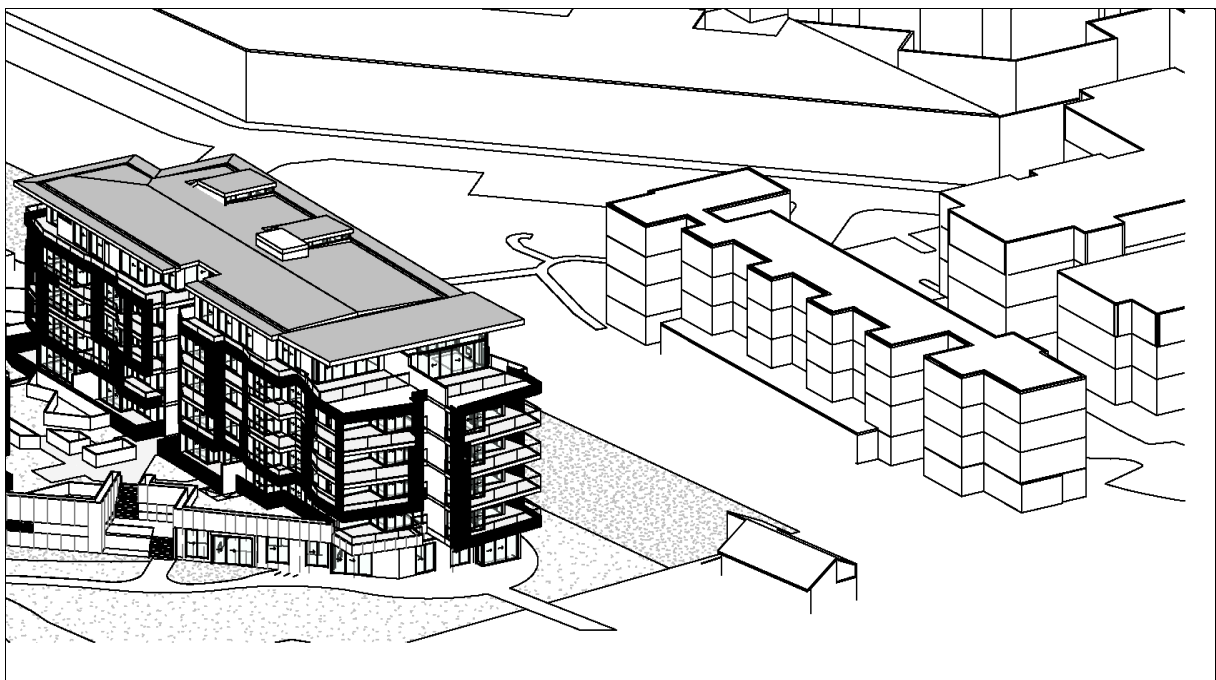
In terms of building envelope, the proposal is located with appropriate setbacks to the waterfront, being governed by a riparian zone. Similarly, the setback of Building A to 'The Inlet' building is dictated by natural features and drainage easements which provide a generous 38m minimum distance between buildings. The locations of buildings within the proposed development are reasonable with regard to being setback appropriately from adjoining development and the waterfront.

Conclusion:

The proposed development is reasonably located on the subject site being separated sufficiently between existing buildings to achieve an appropriate balance of open space and building form. While the width of the view is reduced, the depth of view from foreground to the horizon is maintained. Distant views of Botany Bay and Sydney airport are within the retained views. The proposed development does not result in unacceptable view loss and the view sharing principle is considered satisfied.

10.6.2 Overshadowing

Overshadowing was raised as a concern from residents of the inlet building. While the proposed development will remove early morning mid-winter sun, particularly for the lower level apartments, the impact is considered reasonable as the standard level of solar access is maintained. Controls within the ADG require that solar access be considered between 9am and 3pm in mid-winter (June 21). The diagram below is a suns-eye diagram at 9am on June 21 which indicates that all apartments in 'The Inlet' building are not affected at 9am. In addition to this, the applicant has indicated ground level apartments will receive sun from 8:30am.



10.6.3 Loss of privacy

The potential loss of privacy is largely associated with building separation. In the circumstances, a distance of 38m has been achieved between the new development (Building A) and 'The Inlet' building which is more than twice the distance required by the ADG for 5-8 storey buildings with habitable spaces (living rooms, balconies) facing each other. The minimum distance required is 18m in accordance with ADG. The proposed building separation affords an acceptable level of privacy between buildings.

10.7 Engineering matters

The proposed vehicular access-way and car park layout was tested against AS2890.1:2004, Chapter 36 of SSDCP2015 and the Seniors SEPP and in this regard the following comments are made below:

Compliance with the minimum requirements of user class 1a of AS2890.1 is deemed to be insufficient for the proposal, being a facility to cater for aged residents. Parking spaces have, however, been provided wider than the minimum 2.4m standard parking space (user class 1a requirement) at 3.2m. The proposal also includes 38 car spaces for independent living units as 'adaptable parking' at 3.8m width, with the remainder providing an oversized width of 3.2m x 6m in length.

Parking for seniors housing under the Seniors SEPP, requires parking that is not considered 'adaptable' is to be provided in accordance with the requirements of 'disabled parking' as per AS2890.6. This standard requires a 2.4m wide x 5.4m long car space with an equally sized shared space attached to it. In practice, the shared space can be utilised by 2 spaces. In this regard, the proposed parking spaces, that are not adaptable, do not comply. However, as an oversized 3.2m x 6m width has been provided, this is deemed a suitable outcome, considering compliance with the Seniors SEPP is not mandatory.

10.8 Stormwater Management

Clause 6.4 requires Council to be satisfied of certain matters in relation to stormwater management prior to development consent being granted. These matters include maximising permeable surfaces; on-site stormwater retention minimising the impacts on stormwater runoff. The amended proposal now incorporates rainwater tanks located throughout the buildings to a capacity of 300,000 litres water sustainable urban design principles. The tanks will be used for the irrigation of landscaping throughout the development.

Overall, the matters contained in Clause 6.4 have been addressed to Council's satisfaction subject to appropriate conditions of consent.

10.9 Earthworks

The proposal includes site excavation and earthworks which triggers Clause 6.2 of SSLEP 2015. Clause 6.2 requires certain matters to be considered in deciding whether to grant consent. These matters include impacts on drainage; future development; quality and source of fill; effect on adjoining properties; destination of excavated material; likely disturbance of relics; impacts on waterways; catchments and sensitive areas and measures to mitigate impacts.

All other relevant matters within Clause 6.2 have been considered and the application is acceptable subject to appropriate conditions of development consent.

11.0 SECTION 7.12 CONTRIBUTIONS

In terms of Section 7.12 contributions, Council's policy generally requires a levy to be paid based on development cost, i.e. a 1% levy applies to development costs above \$200,000. The policy allows for specific exemptions to be applied and there are 2 specific exemptions that apply in this circumstance. These are as follows:

- *Applications made under State Environmental Planning Policy (Housing for Seniors or People with a Disability) by a social housing provider as defined by that policy.*
- *Components of applications for Seniors Housing that include:*
 - *hostel,*
 - *residential care facilities, as defined under State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004.*

While Anglicare is considered a social housing provider, the development application is not made under the Seniors SEPP as it does not apply in the circumstances, and, therefore, no exemption applies to the development overall. The applicant has submitted that a Ministers Direction dated 14 September 2007 provides for an exemption, however, the direction relates to s94 contributions, not s94A contributions as apply in this case.

As there is a residential care facility component to the application, an exemption to this component would be applicable. The applicant has provided a breakdown of development costs separating the residential care facility costs from the remainder of the development for Council to determine the applicable levy amount. The residential care facility is indicated as costing \$25,173,627 while the whole development cost is \$189,614,865. The adjusted cost for the purposes of s.7.12 contribution calculations is \$164,441,238 resulting in a contribution of \$1,644,412.38.

12.0 DECLARATION OF AFFILIATION

Section 10.4 of the Environmental Planning and Assessment Act, 1979 requires the declaration of donations/gifts in excess of \$1000. In addition Council's development application form requires a general declaration of affiliation. In relation to this development application a declaration has been made that there is no affiliation.

13.0 CONCLUSION

The subject land is located within Zone B7 Business Park pursuant to the provisions of Sutherland Shire Local Environmental Plan 2015. The proposed development, being a seniors housing development, is a permissible land use on this site by virtue of an additional permitted use.

The application was placed on public exhibition and 2 submissions were received. The matters raised in these submissions have been addressed in detail in this report and, in the case of traffic concerns and potential construction impacts; have been dealt with by condition.

The proposal includes variations to the maximum building height development standard. This variation has been discussed in the report and is considered acceptable on the basis that the additional height does not result in visual intrusion, amenity impacts and is appropriate in the context of the site. The building forms proposed are considered to respond appropriately to its current and likely future context. Environmental constraints affecting the land related to contamination, acid sulfate soils, soil gas and groundwater are also considered to be managed appropriately in terms of ensuring the site is able to be made suitable for the intended residential use. Overall, the proposed development will result in a significantly enhanced waterfront and make a positive contribution to the built form in this part of Woollooware Bay.

The application has been assessed having regard to the Heads of Consideration under Section 4.15(1) of the Environmental Planning and Assessment Act 1979. Following detailed assessment it is considered that Development Application No. 17/1144 may be supported for the reasons outlined in this report.

RESPONSIBLE OFFICER

The officer responsible for the preparation of this Report is the Manager, Major Development Assessment (SBU).