

2018SSH036 - 11-13 Pinnacle Street &  
678-682 Kingsway, Miranda

DA18/9884

## ASSESSMENT REPORT APPENDICES

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**DRAFT CONDITIONS OF CONSENT**  
**Development Application No. 18/0884**

**1. Approved Plans and Documents**

The development must be undertaken substantially in accordance with the BASIX certificate, details and specifications set out on the following approved plans:

Plan number	Reference	Prepared by	Date
DA-001-001 Revision D	Title Sheet & Drawing List	Turner	08.02.19
DA-100-020 Revision D	Site Plan	Turner	08.02.19
DA-110-006 Revision E	Basement 02	Turner	08.02.19
DA-110-007 Revision E	Basement 01	Turner	08.02.19
DA-110-008 Revision F	Ground Level	Turner	08.02.19
DA-110-010 Revision F	Level 01	Turner	08.02.19
DA-110-020 Revision F	Level 02	Turner	08.02.19
DA-110-030 Revision F	Level 03	Turner	08.02.19
DA-110-040 Revision F	Level 04	Turner	08.02.19
DA-110-050 Revision F	Level 05	Turner	08.02.19
DA-110-060 Revision F	Level 06	Turner	08.02.19
DA-110-070 Revision F	Level 07	Turner	08.02.19
DA-110-080 Revision F	Level 08	Turner	08.02.19
DA-110-090 Revision F	Level 09	Turner	08.02.19
DA-250-001 Revision E	North Elevation	Turner	08.02.19
DA-250-101 Revision F	East Elevation	Turner	08.02.19
DA-250-201 Revision E	South Elevation	Turner	08.02.19
DA-250-301 Revision E	West Elevation	Turner	08.02.19
DA-350-001 Revision D	Section AA	Turner	08.02.19
DA-350-101 Revision D	Section BB	Turner	08.02.19
DA-350-201 Revision D	Section CC	Turner	08.02.19
DA-350-301 Revision D	Detailed Façade Section	Turner	08.02.19
DA-810-001 Revision C	Adaptable Apartments 01	Turner	08.02.19
DA-810-002 Revision A	Adaptable Apartments 02	Turner	08.02.19
DA-810-010 Revision C	Livable Apartments	Turner	08.02.19
DA-860-001 Revision A	Hydrant Booster Details	Turner	08.02.19
DA-990-001 Revision B	Materials and Finishes	Turner	08.02.19
Project 18018 Revision A	Construction Management Plan	Turner	16.07.18

000 - Issue D	Coversheet	Site Image	30.01.19
001 - Issue D	Plant Schedule	Site Image	30.01.19
101 - Issue D	Landscape Plan Ground Floor & Level 1	Site Image	30.01.19
102 - Issue D	Landscape Plan Level 1 & 2	Site Image	30.01.19
103 - Issue D	Landscape Plan Level 3	Site Image	30.01.19
104 - Issue D	Landscape Plan Level 4	Site Image	30.01.19
105 - Issue D	Landscape Plan Level 5	Site Image	30.01.19
106 - Issue D	Landscape Plan Level 6	Site Image	30.01.19
107 - Issue D	Landscape Plan Level 7	Site Image	30.01.19
108 - Issue D	Landscape Plan Level 8	Site Image	30.01.19
501 - Issue C	Landscape Details	Site Image	12.07.18
502 - Issue D	Landscape Details	Site Image	30.01.19
601 - Issue D	Landscape Sections	Site Image	30.01.19
C101 - Issue D	Colour Landscape Plan Ground Floor & Level 1	Site Image	30.01.19
C108 - Issue D	Colour Landscape Plan Level 8	Site Image	30.01.19
C005 - Revision C	Level 8 Drainage Plan	K.F. Williams & Associates	12.02.19
C006 - Revision C	Level 7 Drainage Plan	K.F. Williams & Associates	12.02.19
C008 - Revision C	Basement 1 Drainage Plan	K.F. Williams & Associates	12.02.19
C009 - Revision C	Basement 2 Drainage Plan	K.F. Williams & Associates	12.02.19
C010 - Revision C	Ground Drainage Plan	K.F. Williams & Associates	12.02.19
C011 - Revision C	Level 1 Drainage Plan	K.F. Williams & Associates	12.02.19
Sheets 1 - 8 Issue B	Draft Plans of Subdivision	K.F. Williams & Associates	20.02.19

and any details on the application form and on any supporting information received with the application except as amended by the following conditions.

Note: The following must be submitted to Sutherland Shire Council prior to the commencement of any building work.

- i) A Construction Certificate.

- ii) Notification of the appointment of a Principal Certifying Authority and a letter of acceptance from that Principal Certifying Authority.
- iii) Notification of the commencement of building works with a minimum of 2 days' notice of such commencement.

## **2. Design Changes Required**

### **A. Before Construction**

The following design changes must be implemented:

- i) Building B - Residential Level 7 is to be deleted and the Level 8 Communal space and associated lift / stair and plant shall be provided at Level 7. The floor to floor dimension between Level 4 to 5 shall be reduced from 3.2m to 3.1m. The floor to roof height at the new COS level 7 (including associated screen enclosure around the lobby, lift, fire stair, plant rooms, toilet etc.) shall be reduced from 3.4m to 2.4m. The lift over-run shall be reduced in height by 1m equally.
- ii) Building A - The floor to floor dimension between Level 3 to 4, and Level 6 to 7 shall be reduced from 3.2m to 3.1m. The floor to roof height at the ninth level / COS access level (including associated screen enclosure around the lobby, lift, fire stair, plant rooms, toilet etc.) shall be reduced from 3.4m to 2.4m. The lift over-run shall be reduced in height by 1m equally.
- iii) The hydrant boosters and meters must be fully enclosed as depicted on the approved plans. Alternatively the hydrant boosters and meters must be incorporated within the building fabric to avoid the need for any radiant heat shield wall. Front fencing - all fencing forward of the building line must be no greater in height than 1.5m (including retaining any retaining wall component) and be open form. Privacy is to be achieved through the provision of screen planting.
- iv) Delete retained planters along the eastern boundary and maintain existing grades. Provide screening planting adjacent to exposed basement/retaining walls
- v) Provide shade structure (maximum dimension 4mx6m, maximum height 2.1m) over BBQ and seating areas to rooftop communal open spaces.
- vi) Driveway walls adjacent to the entrance of a basement car park are to be treated in a high quality finish so that the appearance is consistent with the external finish of the building.

Details of these design changes must be included in documentation submitted with the application for a Construction Certificate.

## **3. Requirements from Other Authorities**

### **A. Requirements from Other Authorities**

The development must be undertaken in accordance with the requirements of:

- NSW Police

A copy of the Requirements of the Approval Authority(s) are attached to this development consent. These requirements must be incorporated in the application for a Construction Certificate and where required, relevant approvals must be obtained prior to the release of the Construction Certificate.

#### **4. Affordable Rental Housing - Restriction as to User**

##### **A. Before Occupation**

A Restriction as to User must be registered against the title of the property in accordance with section 88E of the Conveyancing Act 1919. This restriction must be registered, before the date of the issue of the Occupation Certificate, against the title of the property on which development is to be carried out. This restriction is to ensure that apartments within Building B are provided as affordable rental housing as defined by State Environmental Planning Policy (Affordable Rental Housing) 2009. The restriction shall contain the following wording:

Clause 17(1) of the State Environmental Planning Policy (Affordable Rental Housing) 2009 entitled 'Must be used for affordable housing for 10 years' states:

(1)(a) for 10 years from the date of the issue of the occupation certificate:

- (i) the dwellings proposed to be used for the purposes of affordable housing will be used for the purposes of affordable housing, and
- (ii) all accommodation that is used for affordable housing will be managed by a registered community housing provider.

##### **B. Ongoing**

That the Restriction as to User require the dwellings, for a period of 10 years from the date of issue of an Occupation Certificate, to be Affordable Housing as defined by State Environmental Planning Policy (Affordable Rental Housing) 2009, namely:

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

#### **5. Public Place Environmental, Damage & Performance Security Bond**

##### **A. Before Issuing of any Construction Certificate**

Prior to the issue of a Construction Certificate or the commencement of any works on site, whichever occurs first, the person acting on this consent must provide security to Sutherland Shire Council against damage that may be caused to any Council property and/or the environment as a consequence of the implementation of this consent. The security may be provided by way of a deposit with Council or a bank guarantee. A non-refundable inspection/administration fee is included in the bond value.

It is the responsibility of the person acting on this consent to notify Sutherland Shire Council of any existing damage to public areas in the vicinity of the development site by the submission of a current dilapidation report supported by photographs. This information must be submitted to Council at least 2 days prior to the commencement of works.

In the event that the dilapidation report is not submitted 2 days prior to commencement and the public area sustains damage the person acting on this consent may be held liable.

Should any public property and/or the environment sustain damage as a result of the works associated with this consent, or if the works put Council's assets or the environment at risk, Council may carry out any works necessary to repair the damage and/or remove the risk. The costs incurred must be deducted from the bond.

The value of the bond is \$20,200.00.

Note: Bond amount includes a non-refundable administration fee which must be paid separately if security is provided by way of a deposit with Council or a bank guarantee.

Use of Bank Guarantee - As bond releases may occur under different timeframes only one bond amount/bond purpose is permitted on a Bank Guarantee. Multiple bonds will require multiple bank guarantees to be lodged.

#### **B. After Occupation**

A request for release of the bond may be made to Sutherland Shire Council after all works relating to this consent have been completed. Such a request must be submitted to Council on the 'Bond Release Request Form' signed by the owner or any person entitled to act on the consent and must be accompanied by a current dilapidation report including photographs.

### **SECTION 94 CONTRIBUTIONS**

The following dedication of land and/or monetary contributions have been levied in relation to the proposed development pursuant to Section 94 of the Environmental Planning and Assessment Act 1979.

#### **6. Section 7.11 Contributions - S94 2016 Contributions Plan - Miranda Centre Precinct**

##### **A. Before Construction**

Pursuant to Section 7.11 of the Environmental Planning and Assessment Act 1979 and Sutherland Shire Council Section 94 Development Contributions Plan 2016, a total monetary contribution of \$2,040,000.00 must be paid to Sutherland Shire Council toward the cost of regional and local public domain works contained in the Works Programme of the Development Contributions Plan.

This contribution has been assessed and calculated in accordance with the Development Contributions Plan on the basis of 107 proposed Residential Flat Units, Apartments etc, with a concession for 5 existing allotments .

<b>Infrastructure &amp; Facilities</b>	<b>Contribution Required</b>
Local open space and public domain works	\$1,491,829.70
Regional open space	\$548,170.30

The contribution will be indexed on 1 July in each year in accordance with the Consumer Price Index (All Groups Index) for Sydney.

The formula to index a contribution rate is:

$$\text{New Contribution Rate} = \text{Current Contribution Rate} \times \frac{\text{Current CPI}}{\text{Previous year's CPI}}$$

Payment must be made prior to the issue of the Construction Certificate.

Council may accept an offer by the applicant to satisfy the contribution, or a portion of the contribution, by carrying out works in kind, in accordance with the applicable Section 7.11 Development Contribution Plan 2016. Council will only accept such an offer where the works are constructed by the developer to the Council's standards and then transferred to Council. Works-in-kind should facilitate items which are included in the works schedule. Should Council accept works in kind in lieu of a contribution, this consent must be modified in accordance with section 4.55 of the EP&AA Act.

## **7. Approvals Required under Roads Act or Local Government Act**

### **A. Before Construction**

No occupation or works are to be carried out on public land (including a road or footpath) or access provided over a public reserve adjacent to the development site without approval being obtained from Sutherland Shire Council and the necessary fee paid under the Roads Act 1993 and/or the Local Government Act 1993. These approvals must be to the satisfaction of Council for the required development works and may include but are not limited to the following:

- Frontage works including construction of a driveway, footpath, etc.
- Road openings and restoration to provide services to the development.
- Work Zones and hoardings.
- Skip bins.
- Shoring / anchoring.
- Standing of cranes, concrete pumps, etc.

Note: All Plans and Permits are required to be on site, at all times and may be requested by Council officers at any time.

**Note: Approval under the Roads Act or Local Government Act cannot be granted by a Principal Certifying Authority or by a Private Certifier. Failure to obtain approval may result in fines or prosecution.**

## **8. Design and Construction of Works in Road Reserve - Pinnacle Street**

### **A. Design**

Council has determined that the proposed development generates a need for the following works to be undertaken by the applicant in the road reserve. To this end a Detailed Frontage Works application under the Roads Act 1993 must be submitted to Sutherland Shire Council, prior to the release of the Construction Certificate.

This design will generally comply with the approved architectural design drawings and the current website version of Council's Public Domain Design Manual (PDDM) and Public Domain Technical Manual (PDTM) except where modified by/or addressing the following:

- i) Establish the property alignment/ boundary levels and crossing profiles.
- ii) Regrade footpath verge to final design levels including topsoil, turf and all associated soft landscaping.
- iii) Construct vehicle crossing.
- iv) Construct a footpath pavement along full frontage of site.
- v) Ensure there are adequate transitions between newly constructed and existing infrastructure as required.
- vi) Construct road carriageway pavement as required.
- vii) Construct kerb and gutter.
- xiii) Alter existing and/or install new street signage as required.
- ix) Install street trees / shrubs.
- x) Provide replacement of existing local distribution power lines and other overhead utilities with subsurface utilities.
- xi) Install new street lighting in conjunction with the undergrounding of local distribution power lines and other utilities as required.
- xii) Adjust public services infrastructure as required.



## **B. Before Construction**

- i) Prior to the release of the Construction Certificate property alignment levels and crossing profiles must be obtained from Sutherland Shire Council.
- ii) Evidence of the lodgement of this application must be provided to the PCA prior to the release of the Construction Certificate.

## **C. Before Occupation**

Prior to the occupation of the building or the issue of an Occupation/Subdivision Certificate the following certification must be provided to Sutherland Shire Council:

- i) The supervising engineer must certify that the road frontage works were constructed in accordance with the development consent and associated approval under the Roads Act 1993 including the approved drawings and specification.

**Note 1:** The form is available on Council's website. A fee applies for the relevant inspections, assessment, coordination, creation of design brief and the issue of permits providing consent to undertake frontage works. The design will be quoted separately by Council's Design Services unit.

**Note 2:** The Australian Government has issued a new policy on the provision of telecommunication infrastructure in new developments. The policy is effective from 1 March 2015. Developers are responsible for providing telecommunications infrastructure in their developments. To provide this infrastructure, developers need to contract a carrier to install and operate a telecommunications network. NBN is the IPOLR (infrastructure provider of last resort) in developments of 100 lots or more within its fixed-line footprint and in new development where its fixed-line network is available, or the NBN rollout has been announced ([www.nbnco.com.au/learn-about-the-nbn/rollout-map.html](http://www.nbnco.com.au/learn-about-the-nbn/rollout-map.html) <<http://www.nbnco.com.au/learn-about-the-nbn/rollout-map.html>>). If you use NBN, you will need to provide six months' notice before your network needs to be available.

## **9. Site Management Plan**

### **A. Before Commencement of Works including Demolition**

An Environmental Site Management Plan must accompany the Construction Certificate. If demolition is to commence prior to the issue of a Construction Certificate the applicant must submit to Sutherland Shire Council a separate Demolition Site Management Plan. These plans must satisfy the Objectives and Controls of Sutherland Shire Development Control Plan 2015 relating to environmental site management and must incorporate the following throughout demolition and construction:

- i) Safe access to and from the site during construction and demolition.
- ii) Safety and security of the site, road and footpath area including details of proposed fencing, hoarding and lighting.

- iii) Method of loading and unloading excavation machines, building materials.
- iv) How and where, construction materials, excavated and waste materials will be stored.
- v) Methods to prevent material being tracked off the site onto surrounding roadways.
- vi) Erosion and sediment control measures.
- vii) All trees and their protection zones on and around the site identified for retention are to be protected according to Australian Standard AS 4970 - 2009 Protection of Trees on Development Sites using the methods outlined in that Standard.

## **B. During Works**

The site management measures set out in the above plan must remain in place and be maintained throughout the period of works and until the site has been stabilised and landscaped.

## **10. Pre-commencement Inspection**

### **A. Before Works**

A Pre-commencement Inspection/meeting is to be convened by the Applicant on-site a minimum 5 days prior to any demolition and/or construction activity and between the hours of 8.00 am and 4.30 pm Monday to Friday. The meeting must be attended by a representative of Council's Public Domain Assets Branch, the Principal Certifying Authority, the builder/site manager of the building/civil construction company and where necessary the supervising engineer. The attendance of the owner is required when it is intended to use more than one builder/principal contractor throughout the course of construction.

The purpose of the meeting is to:

- i) Ensure safe passage for pedestrians, Work and Hoarded Zones are maintained in accordance with Council requirements.
- ii) Check the installation and adequacy of all traffic management devices.
- iii) Confirm that the supervising engineer has a copy of Council's Specification for Civil Works Associated with Subdivisions and Developments.

**Note:** An inspection fee must be paid to Council prior to the lodgement of the Notice of Commencement. Please refer to Sutherland Shire Council's Adopted Schedule of Fees and Charges.

## **11. Supervising Engineer**

### **A. Before Construction**

The applicant must engage an Accredited Certifier in civil engineering works or a Chartered Civil Engineer to supervise construction of any:

- i) Road frontage works.

- ii) Construction / installation of stormwater drainage.
- iii) Rainwater harvesting and reuse.
- iv) All other works that form part of a subdivision.

The PCA must be informed of the supervising engineer's name and contact details, in writing, prior to the commencement of any construction works.

## **B. During Construction**

The engineer must supervise the works as listed above to ensure compliance with:

- i) All relevant conditions of development consent.
- ii) Any Consent issued under the Roads Act for this development.

## **C. Before Occupation**

The supervising engineer must certify the works required in A. above were undertaken and completed in accordance with the requirements of this Development Consent and to their satisfaction.

# **12. Vehicle Access-way and Manoeuvring**

## **A. Design**

The internal driveway profile, parking and manoeuvring areas must be designed in accordance with the approved architectural plans except where modified by the following:

- i) Align with Access and Alignment levels issued by Council's Public Domain Unit.
- ii) The proposed loading and delivery area must be clearly defined with suitable signposting and pavement markings.
- iii) The driveway and basement ramp, external to the footprint of the basement, must be paved or concreted and must be finished in materials other than plain or exposed aggregate concrete. That part of the driveway and loading dock hard stand area, that does not form part of the main vehicular access-way to the basement car park shall be paved or concreted and must be finished in materials other than plain or exposed aggregate concrete and must be a different colour and or texture and or treatment to the finishes of the aforementioned main driveway to the basement.
- iv) Provide adequate sight distance for the safety of pedestrians using the footpath area.
- v) Provide a maximum grade of 5% for the first 3 metres inside the property boundary.
- vi) The truck loading area and access to this area must comply with AS2890.2:2002 in relation to the design of vehicular access, parking and general manoeuvring for the heavy rigid vehicle.
- vii) The maximum longitudinal grade of the driveway must not exceed 25%.

## **B. Construction**

Certification from an appropriately qualified engineer to the effect that the design requirements of A. above have been met must accompany the Construction Certificate.

## **C. Occupation**

Prior to the occupation of the development or the issue of any occupation certificate a suitably qualified engineer must certify that the works required in A. above were undertaken and completed to their satisfaction and in accordance with the requirements of this Development Consent. This certification must be provided to the PCA and a copy also provided to Council.

## **D. On-going**

The approved parking must be used exclusively for car parking as approved for the life of the development.

# **13. Basement Car Park Design and Construction**

## **A. Design**

The basement car park must be designed in accordance with the approved architectural drawings, subject to the following modifications:

- i) A minimum headroom of 2.2m measured from the parking floor to the underside of any beam, ventilation duct or service conduit, or to the underside of any door including a security door and fittings when those doors are in an open position in accordance with clause 5.3 of AS2890.1:2004.
- ii) Parking bays must not be enclosed, caged or a door provided.
- iii) All car parking bays and associated shared zones must be line marked.
- iv) All traffic aisles in the car parking area must be clearly identified by pavement direction markings.
- v) All standard parking bays must provide a minimum clear parking envelop in accordance with figure 5.2 of AS2890.1:2004.
- vi) All standard visitor parking bays shall comply with AS2890.1:2004 user class 2, in relation to the design of vehicular access, parking and general manoeuvring for the B85 vehicle.
- vii) All standard residential parking bays shall comply with AS2890.1:2004 user class 1A, in relation to the design of vehicular access, parking and general manoeuvring for the B85 vehicle.
- viii) Parking bays provided for “adaptable” dwellings must have the minimum clear dimensions of 3.8m wide by 5.4m long by 2.5m high or comply with AS2890.6:2009.
- ix) Parking bays provided for “liveable” dwellings must have the minimum clear width of 3.2m or comply with AS2890.6:2009.
- x) Where shared zones are required adjacent to “disable” or “liveable”, in accordance with AS2890.6:2009. The shared zone must be clear and free of all restrictions except for the required bollard and the shared zone cannot be located within an aisle.

- xi) The security door fitted to the car parking area entrance must be independently mounted on rubber pads to prevent vibration noise transmission through the concrete walls and / or columns.
- xii) The blind aisles must be clearly defined with suitable signposting and pavement markings.

#### **B. Prior to Construction**

Certification from a Chartered Civil Engineer or a Registered Surveyor, to the effect that the car park layout and vehicle access-way design has been prepared in accordance with A above must accompany the Construction Certificate.

#### **C. Occupation**

Prior to the occupation of the development or the issue of any Occupation Certificate a Chartered Civil Engineer or a Registered Surveyor must certify that the works required in "A" above have been completed to their satisfaction and in accordance with the requirements of this Development Consent. This certification must be provided to the PCA and a copy provided to Council.

#### **D. On-going**

The approved parking must be used exclusively for car parking for the life of the development.

### **14. Stormwater Drainage**

#### **A. Design**

The stormwater drainage system must be designed in accordance with the approved stormwater drainage design drawing; Australian Standard AS3500.3:2015 and the BASIX Certificate issued for this development. Except where modified by the following:

- i) A layout of the drainage system showing existing and proposed pipe sizes, type, class, grades, lengths, invert levels, finished surface levels and location of all pipes with levels reduced to Australian Height Datum. Impacts on existing trees must be indicated on the plan.
- ii) A longitudinal section of the pipeline within the road reserve including existing natural surface levels, design surface levels, design invert levels of the proposed pipeline and the location, size and reduced level of all services to AHD where those services cross the proposed drainage line.
- iii) Water from pathways and access driveways shall be prevented from entering the road reserve as surface flow. This can be achieved by constructing a box drain at the boundary equipped with a 300mm wide grate and frame to collect the flow or directing the flow to a sag pit within the property.
- iv) The rate of discharge of stormwater from the site to a drainage system under Council's control must be controlled so that it does not exceed the pre-development rate of discharge. Any required on-site detention facility must be designed to cater for all storm events up to the Recurrence Interval of 1 in 100 years.
- v) All levels reduced to Australian Height Datum.

- vi) The pipeline within the footpath verge, connecting to the street pits, must be a hot dipped galvanised steel hollow section with a minimum wall thickness of 4.0 millimetres.
- vii) OSD vessel one must be located under the footprint of approved pedestrian pavements / stairway, centrally sited between grid lines “F” & “E”. OSD vessel two must be located under the footprint of approved pedestrian pavements / stairway, in close proximity to the south eastern corner of the court yard to dwelling “A.1.9”.

## **B. Before Construction**

- i) Certification from an Accredited Certifier in Civil Engineering or a Chartered Civil Engineer, to the effect that the drainage design is to their satisfaction and satisfies the design requirements in A. above must accompany the application for a Construction Certificate.
- ii) Certification from an Accredited Certifier for stormwater design or a Chartered Civil Engineer, to the effect that the basement pump-out system has been prepared having regard to Sections 5 and 9 and Appendix L of AS/NZS3500.3:2003, shall accompany the application for the Construction Certificate.

## **C. Before Occupation**

Prior to the issue of an Occupation Certificate:

- i) A Works-As-Executed drawing (WAED) of the stormwater drainage system must be prepared by a Registered Surveyor. This drawing must detail the alignment of pipelines, pits, the rainwater tanks, basement pump-out facility and the detention facilities. An original or a colour copy must be submitted to Sutherland Shire Council.
- ii) The supervising engineer must certify the WAED of the stormwater drainage system that the stormwater drainage works and basement pump-out facility were constructed to their satisfaction and in accordance with the Development Consent, and Public Domain Technical Manual. Prior to the occupation or use of the building the Applicant / Owner must submit to Council a copy of the aforementioned letter of certification.

## **D. Ongoing**

- i) The operation of all devices or appliances installed within the development approved by this consent as required by conditions pertinent to rainwater harvesting and rainwater reuse must be maintained in good operating order at all times.
- ii) The stormwater detention / absorption facility must be:
  - Kept clean and free from silt, rubbish and debris.
  - Be maintained so that it functions in a safe and efficient manner.
  - Not be altered without prior consent in writing of the Council.

**Note:** Upon submission of the Works-As-Executed drawing for the stormwater drainage system a notation will be added to the Section 10.7 certificate advising future owners that their property is burdened by a stormwater detention facility.

## **15. Damage to Adjoining Properties**

### **A. Before Works**

To minimise vibration damage and loss of support to buildings / structures and properties in close proximity to the development site, a Geotechnical Engineer's Report must be prepared detailing constraints to be placed on earth moving and building plant and equipment and the method of excavation, shoring, underpinning and support. This report must be provided to the person undertaking the excavation and the Principal Certifying Authority.

### **B. During Works**

The constraints and recommendations of the Geotechnical Engineers Report must be implemented.

## **16. Public Utilities**

This condition is imposed to facilitate the provision of services to the development and reduce conflicts between services and lot boundaries, buildings or associated facilities.

### **A. Before Construction**

Suitable arrangements must be made with all relevant utility service providers to ensure the development is appropriately serviced by electricity, gas, telecommunications (including NBN) and the like, and any necessary underground conduits are provided. The Australian Government has issued a new policy on the provision of telecommunications infrastructure in new development. This policy is effective from 1 March 2015. Developers are responsible for providing telecommunications infrastructure in their developments. To provide this infrastructure, developers need to contract a carrier to install and operate a telecommunications network. NBN is the IPOLR (infrastructure provider of last resort). NBN require 6 months' notice in order to make the network available.

A copy of the agreements/contracts with the utility providers must form part of the supporting construction certificate documentation.

### **B. Before Occupation/Subdivision**

Prior to issue of any Occupation/Subdivision certificate, certification must be provided from each utility service provider/approved agent to the effect that each lot has been serviced to their satisfaction.

Prior to the issue of any Occupation/Subdivision certificate, evidence satisfactory to the Certifying Authority that arrangements have been made for:

- i) The installation of fibre-ready facilities (conduits and pits) to all individual lots and/or premises/dwelling to enable fibre to be readily connected to any premises that is being or may be constructed on those lots. Certification from each carrier/provider must be provided to the PCA that they are satisfied that the fibre ready facilities are fit for purpose.
- ii) The provision of fixed-line telecommunications infrastructure (cables) in the fibre-ready facilities to all individual lots and/or premises/dwellings must be installed and certification from the carrier/provider must be provided to the PCA stating that the infrastructure has been provided and to their satisfaction.
- iii) Installation of gas and/or electricity must be constructed/installed by the utility service provider/approved agent to each allotment. Certification must be provided from each provider/agent stating that all allotments have been serviced to their satisfaction.
- iv) WAE drawings must to be prepared by a registered surveyor detailing location and depth of conduits/pits and connection points/ties within allotments. A copy of the WAE drawings must form part of any Occupation/Subdivision certificate documentation.

Note: Should these requirements result in any significant change to the approved design an application must be made to modify the consent under s.4.55 of the Environmental Planning and Assessment Act.

## **17. Plan of Subdivision to conform with Development Consent**

### **A. Before Subdivision**

The Plan of Subdivision must conform with this Development Consent. All works required by this development consent must be completed prior to the release of a Subdivision Certificate.

## **18. Demolition & Bulk Earthworks Security Bond**

### **A. Before Construction**

At least two days prior to the commencement of demolition works the applicant shall provide security to Council to the value of \$100,000 against damage caused as a consequence of demolition and / or bulk excavation works. The security may be provided by way of a deposit or bank guarantee with the Council. Should neighbouring property sustain damage as a result of the demolition and / or bulk excavation works Council may carry out any works necessary to stabilise the damage and the cost of these works will be deducted from the security.

This bond will be released upon satisfactory completion of the demolition, the bulk excavation and construction of the basement levels sufficient to ensure stability of the surrounding ground. Such request shall be submitted to Council on the '*Bond Release Request Form*' signed by the owner or any person entitled to act on the consent, together with Certification from an Accredited Certifier or a Chartered Structural Engineer, to the effect that the aforementioned works were completed to their satisfaction.



## **19. Endorsement of Plan of Consolidation & Subdivision**

### **A. Construction**

- i) Prior to the issue of any Construction Certificate a Plan of Subdivision for the Consolidation of Lot 1, Lot 2, Lot 3, Lot 4 in Deposited Plan No.23978 and Lot A in Deposited Plan No.404350, must be registered with NSW Land and Property Information.
- ii) Release Strata Plan No.30837.
- iii) The consolidated real property shall be known as No.11 Pinnacle Street Miranda.

### **B. Occupation**

- i) The Stratum Lot created over Tower A (Kingsway frontage) shall be known as No.680 Kingsway Miranda.
- ii) The Stratum Lot created over Tower B (Pinnacle Street frontage) shall be known as No.11 Pinnacle Street Miranda.
- iii) Create all required rights-of-carriageway, rights-of-pedestrian and easement for services, on the Stratum Plan of Subdivision.

## **20. Design and Construction of Works in Road Reserve - Kingsway**

### **A. Design**

Council has determined that the proposed development generates a need for the following works to be undertaken by the applicant in the road reserve. To this end a Detailed Frontage Works application under the Roads Act 1993 must be submitted to Sutherland Shire Council, prior to the release of the Construction Certificate.

This design will generally comply with the approved architectural design drawings and the current website version of Council's Public Domain Design Manual (PDDM) and Public Domain Technical Manual (PDTM) except where modified by/or addressing the following:

- i) Establish the property alignment/ boundary levels and crossing profiles.
- ii) Regrade footpath verge to final design levels including topsoil, turf and all associated soft landscaping.
- iii) Construct a footpath pavement along full frontage of site.
- iv) Ensure there are adequate transitions between newly constructed and existing infrastructure as required.
- v) Construct road carriageway pavement adjacent to all new gutters.
- vi) Alter existing and/or install new street signage as required.
- vii) Install street trees / shrubs.
- viii) Provide replacement of existing local distribution power lines and other overhead utilities with subsurface utilities.

- ix) Install new street lighting in conjunction with the undergrounding of local distribution power lines and other utilities as required.
- x) Adjust public services infrastructure as required.
- xi) Remove redundant laybacks and vehicle crossings and replace with kerb and gutter (including associated road reconstruction works).
- xii) Construct new pit over Council's stormwater drainage pipeline, as shown in the approved stormwater drainage design drawings.

#### **B. Before Construction**

- i) Prior to the release of the Construction Certificate property alignment levels and crossing profiles must be obtained from Sutherland Shire Council.
- ii) Evidence of the lodgement of this application must be provided to the PCA prior to the release of the Construction Certificate.

#### **C. Before Occupation**

Prior to the occupation of the building or the issue of an Occupation/Subdivision Certificate the following certification must be provided to Sutherland Shire Council:

- i) The supervising engineer must certify that the road frontage works were constructed in accordance with the development consent and associated approval under the Roads Act 1993 including the approved drawings and specification.

**Note 1:** The form is available on Council's website. A fee applies for the relevant inspections, assessment, coordination, creation of design brief and the issue of permits providing consent to undertake frontage works. The design will be quoted separately by Council's Design Services unit.

**Note 2:** The Australian Government has issued a new policy on the provision of telecommunication infrastructure in new developments. The policy is effective from 1 March 2015. Developers are responsible for providing telecommunications infrastructure in their developments. To provide this infrastructure, developers need to contract a carrier to install and operate a telecommunications network. NBN is the IPOLR (infrastructure provider of last resort) in developments of 100 lots or more within its fixed-line footprint and in new development where its fixed-line network is available, or the NBN rollout has been announced ([www.nbnco.com.au/learn-about-the-nbn/rollout-map.html](http://www.nbnco.com.au/learn-about-the-nbn/rollout-map.html) ~~<http://www.nbnco.com.au/learn-about-the-nbn/rollout-map.html>~~). If you use NBN, you will need to provide six months' notice before your network needs to be available.

## **21. Design and Construction of Works in Road Reserve - Council Reserve**

### **A. Design**

Council has determined that the proposed development generates a need for the following works to be undertaken by the applicant in the road reserve. To this end a Detailed Frontage Works application under the Local Government Act must be submitted to Sutherland Shire Council, prior to the release of the Construction Certificate.

This design will generally comply with the approved architectural design drawings and the current website version of Council's Public Domain Design Manual (PDDM) and Public Domain Technical Manual (PDTM) except where modified by/or addressing the following:

- i) Establish the property alignment/ boundary levels and crossing profiles.
- ii) Regrade footpath verge to final design levels including topsoil, turf and all associated soft landscaping.
- iii) Construct a footpath pavement along full frontage of site.
- iv) Ensure there are adequate transitions between newly constructed and existing infrastructure as required.
- v) Install new street lighting in conjunction with the undergrounding of local distribution power lines and other utilities as required.
- vi) Adjust public services infrastructure as required.
- vii) Provide replacement of existing local distribution power lines and other overhead utilities with subsurface utilities.

### **B. Before Construction**

- i) Prior to the release of the Construction Certificate property alignment levels and crossing profiles must be obtained from Sutherland Shire Council.
- ii) Evidence of the lodgement of this application must be provided to the PCA prior to the release of the Construction Certificate.

### **C. Before Occupation**

Prior to the occupation of the building or the issue of an Occupation/Subdivision Certificate the following certification must be provided to Sutherland Shire Council:

- i) The supervising engineer must certify that the road frontage works were constructed in accordance with the development consent and associated approval under the Local Government Act including the approved drawings and specification.

**Note 1:** The form is available on Council's website. A fee applies for the relevant inspections, assessment, coordination, creation of design brief and the issue of permits providing consent to undertake frontage works. The design will be quoted separately by Council's Design Services unit.

**Note 2:** The Australian Government has issued a new policy on the provision of telecommunication infrastructure in new developments. The policy is effective from 1 March 2015. Developers are responsible for providing telecommunications infrastructure in their developments. To provide this infrastructure, developers need to contract a carrier to install and operate a telecommunications network. NBN is the IPOLR (infrastructure provider of last resort) in developments of 100 lots or more within its fixed-line footprint and in new development where its fixed-line network is available, or the NBN rollout has been announced ([www.nbnco.com.au/learn-about-the-nbn/rollout-map.html](http://www.nbnco.com.au/learn-about-the-nbn/rollout-map.html) ~~<http://www.nbnco.com.au/learn-about-the-nbn/rollout-map.html>~~). If you use NBN, you will need to provide six months' notice before your network needs to be available.

## **22. Landscaping Adjacent to Public Pedestrian Access-way - Covenant**

### **A. Design**

- i) Create a Covenant over the proposed 1.5m wide corridor adjacent to the full length of the western boundary.
- ii) This corridor must be full landscaped as per the approved landscape drawings, except for where the pedestrian linkage pathways are proposed.
- iii) The Covenant must state that a fence cannot be erected along the northern, southern and western boundaries of the corridor.
- iv) The Covenant must state that Sutherland Shire Council is the only party who can release vary or modify the terms of the Covenant.

### **B. Occupation**

Create the aforementioned Covenant.

## **23. ENV2005 Landscaping Works**

### **A. Design**

The landscaping works must be designed in accordance with the approved Landscape Plan except where modified by the following:

- i) Amend the landscape plan in accordance with the approved architectural plans.
- ii) Undertake the following as shown on 'Attachment A\_Landscape Amendments dated 08/04/19':
  - Substitute the six *Waterhousia floribunda* proposed within the southern front setback with a mixture of *Syzigium paniculatum* (Magenta Lily Pily) and *Glochidion ferdinandi* (Cheese Tree).

- Delete retained planters along the eastern boundary and maintain existing grades. Provide screening planting adjacent to exposed basement/retaining walls and plant an additional five *Glochidion ferdinandi* (Cheese Tree) or *Syzigium paniculatum* (Magenta Lily Pily) along the eastern boundary.
  - Plant one additional *Glochidion ferdinandi* (Cheese Tree) immediately west of unit A.G.04.
  - Plant one additional *Glochidion ferdinandi* (Cheese Tree) immediately west of Building A's entry.
  - Provide street trees to Kingsway road reserve in accordance with Sutherland Shire Council's Public Domain Design Manual
  - Plant an additional three *Syncarpia glomulifera* (Turpentine) intermittently along the planting 1500mm wide planting strip east of the 'Council reserve'.
  - Substitute *Waterhousia floribunda* west of Unit B.1.02 patio with *Syncarpia glomulifera* (Turpentine)
  - Provide shade structure (minimum 4x6m) over BBQ and seating areas to rooftop communal open space
- iii) Clearly show on plan existing trees to be removed /retained including tree numbering in accordance with the arborist report OR provide a separate existing tree plan and schedule.
- iv) Tree Protection Zones (TPZ) / the location of tree protective fencing must be shown on plan for all existing trees and/or natural site features to be retained and protected.
- v) Provide minimum soil depths in planter boxes as follows:
- 1200mm for large trees.
  - 900mm for small trees and tall shrubs.
  - 600mm low shrubs.
  - 450mm grass and ground covers.
- vi) All landscape retaining walls and planter boxes must be constructed in masonry, stone or gabions. Timber is not acceptable.
- vii) Each ground floor unit must be provided with a clothes line easily accessible from the laundry. Each unit above the ground floor must be provided with a clothes line on a balcony. Ensure that clothes lines are not visible above the balustrade.
- viii) Front fencing - all fencing forward of the building line must be no greater in height than 1.5m (including retaining any retaining wall component) and be open form. Privacy is to be achieved through the provision of screen planting.
- ix) All landscaped areas must be provided with a water-efficient irrigation system and taps at 25m centres, connected to a pump and the rainwater tank, to enable effective landscape maintenance.
- x) The private open space of each ground floor dwelling must be provided with one tap, connected to mains water.
- xi) Provide screen planting of mixed indigenous or native species to a height of 2m along the side and rear boundaries.

- xii) To improve coverage and reduce weeds and maintenance, planting densities in all planting areas including planter boxes must achieve a minimum of 4 plants per square metre.
- xiii) To reduce long term maintenance of planting beds turf species must be native grass such as *Zoysia macrantha* 'Nara' or Buffalo grass varieties.
- xiv) As the subject site is identified as being within a Greenweb Restoration area, all new tree plantings must be indigenous species and 50% of understorey plants must be indigenous species. All indigenous species must be selected from Council's 'Native Plant Selector' available on Council's website ([www.sutherlandshire.nsw.gov.au](http://www.sutherlandshire.nsw.gov.au) and search for Native Plant Selector).

The applicant must engage a suitably qualified Landscape Designer or Landscape Architect to oversee any design changes to the approved Landscape Plan and amendments required above. Details of these design changes must be included in the documentation submitted with the application for a Construction Certificate.

**Notes:**

A Landscape Designer is a person eligible for membership of the Australian Landscape Designers and Managers and a Landscape Architect is a person eligible for membership of the Australian Institute of Landscape Architects as a Registered Landscape Architect.

If demolition works to occur prior to the Construction Certificate being issued, tree protection measures must be installed prior to commencement of demolition.

**B. Prior to Occupation/Occupation Certificate**

The landscape works must be completed in accordance with the approved Landscape Plan and amendments required by 'A' above by persons with a minimum AQF Level III certification in Horticulture or Landscape Construction.. A Final Landscape Inspection must be carried out and a certificate issued by Council's landscape officer prior to occupation or the issue of an Occupation Certificate. This certificate is required to ensure that all tree protection measures, landscaping works, replacement tree planting and the deep soil percentage requirements have been carried out in accordance with 'A' above and other conditions within this consent, and that all new indigenous plants on the site and within the road reserve are the correct species.

To arrange a Final Landscape Inspection please phone 9710-0333 a minimum of 48 hours prior to the required inspection date. An inspection fee will be charged in accordance with the current schedule of rates listed on Council's website. Any secondary inspections will incur a reinspection fee.

**C. Ongoing**

All landscaping works required by 'A' above must be maintained for 12 months following the final landscape inspection date. Trees required by this condition must be maintained and protected until they are covered by Council's Controls for Preservation of Trees and Bushland Vegetation (SSCDP 2015 Chapter 38).

Any plants found faulty, damaged, diseased or dead shall be replaced with the same species in the same sized container within one month with all costs borne by the owner.

**Note:** If difficulty is experienced sourcing suitable indigenous plants from other suppliers, plants grown from locally provenance seed may be available from:

Sutherland Shire Council Nursery  
345 The Boulevard, Gympie  
Ph: 02 9524 5672

#### **24. Tree Removal on Private and Council Land (Projects Dual Occupancies and Larger)**

The removal of the following trees is approved:

- i) All trees except 10, 11 and 15 shown on Appendix C of the Arboricultural Impact Assessment Report prepared by TALC dated 19<sup>th</sup> July, 2018.
- ii) Any declared noxious plant. The applicant is to ensure that all noxious plants are properly identified and controlled/removed.
- iii) Any tree species exempted by the Sutherland Shire Local Environmental Plan 2015.

All other vegetation that would require approval to be removed must be protected.

##### **A. Tree Replacement**

- i) Fourteen (14) trees are approved for removal as part of this consent. Where trees are proposed to be removed Sutherland Shire Council requires indigenous replacement canopy tree planting at a ratio of 8:1 on private land (dual occ / medium / high density) and 4:1 on Council land (Council Resolution EHR003-17 of 18 July 2016).
- ii) **In determining this application, the extent of compensatory planting has been reduced as the development has been sensitively designed to maintain existing bush land or trees such that it makes a positive contribution to the local landscape character.**  
Fifty six (56) replacement trees are required.
- iii) A minimum number of fifty six (56) indigenous trees must be planted on the site and/or the street. Replacement trees within the site must be planted within 3m of the front or rear setback of the subject property and not within 4m of an existing or approved building or swimming pool.
- iv) Trees must have a minimum container size of 5 litres.

## **B. Tree Removal on Council Land**

Council has preferred supplier agreements in place with arborists who are approved to carry out arbor works on Council land. Removal / pruning of the tree/s listed below must only be undertaken using Council's preferred supplier at the applicant's expense. The applicant is responsible for contract management and payment of the arborist prior to works being undertaken.

Alternatively, if Council's Contractor is unavailable, the applicant may engage their own contractor with appropriate qualifications, licences and insurances and forward their name and details to Council prior to the commencement of work. This information will be kept on record in the event of any reportable incidents. The applicant is responsible for contract management and payment of the Arborist. Any contractor used must undertake all work according to the Australian Standard for Amenity Pruning (AS4373).

Select from Council's list of preferred suppliers listed on Council's website: <http://www.sutherlandshire.nsw.gov.au/Residents/Trees/Trees-on-Council-or-Public-Land>. Payment of the quoted amount provided must be made prior to any works commencing on site.

## **C. Prior to Occupation/Occupation Certificate**

The replacement tree planting must be completed in accordance with the approved Landscape Plan/ required street tree planting. Certification will be provided as part of the Final Landscape Inspection by Council's landscape officer (refer Condition - Approved Landscape Plan).

## **D. Ongoing**

Trees required by this condition must be maintained and protected until they are covered by Council's Controls for Preservation of Trees and Bushland Vegetation (SSCDP2015 Chapter 39). Any replacement trees found damaged, dying or dead must be replaced with the same species in the same container size within one month with all costs to be borne by the owner.

**Note:** If you have difficulty sourcing suitable indigenous plants from other suppliers, plants grown from local provenance seed may be available from:

Sutherland Shire Council Nursery

345 The Boulevard, Gympie

Ph: 02 9524 5672

Opening hours - Monday to Friday 7.00am-3.00pm (excluding public holidays).

## **25. Tree Retention and Protection**

The following condition applies to all trees on the subject site, trees on the adjoining sites (which are potentially affected by the development works), as well as trees on the adjoining Council land that are not approved for removal.



## **A. Before Works**

Prior to the commencement of any demolition, excavation or construction works on site the applicant must engage a suitably qualified and experienced Supervising Consulting Arborist to oversee the measures for the protection of existing trees as listed below.

**Note:** A Consulting Arborist is a person with a current membership of the Institute of Australian Consulting Arboriculturalists (IACA) or alternatively a person who has obtained an Australian Qualifications Framework AQF Level 5 in Arboriculture.

All trees not approved for removal must be protected by the following measures:

- i) Protective fencing constructed of 1.8m high chain wire mesh supported by robust posts must be installed in accordance with the Arborist report prepared by TALC dated 19<sup>th</sup> July, 2018. Signage must be erected on the fence with the following words clearly displayed "TREE PROTECTION ZONE, DO NOT ENTER".
- ii) The tree protection zone within the protective fencing must be mulched with a maximum depth 75mm of suitable organic mulch (woodchips or composted leaf chip mulch) and kept regularly watered for the duration of the works subject to this consent.
- iii) No development or associated activity is permitted within the fenced tree protection zone for the duration of works subject to this consent. This includes vehicular or pedestrian access, sheds, washout areas, excavations, backfilling, installation of services (including stormwater), removal of top soil, stockpiling of soil or building materials.
- iv) Where site access/egress is required over the roots of trees identified for retention and protection, provide hardwood rumble boards over a 200mm thick layer of wood chip.
- v) Where it is impossible to install protection fencing to the full extent of the specified Tree Protection Zone- install trunk and branch boarding protection as shown in Figure 4 of the Australian Standards AS4970- Protection of Trees on Development Sites (Page 17).

## **B. During Works**

- i) The tree protection measures detailed in 'A' above must be maintained during construction.
- ii) The supervising Consulting Arborist must be present during any approved hand excavation or under boring works within the Tree Protection Zone (TPZ) of any tree identified for retention and protection and have the authority to direct works to ensure the trees long term preservation.
- iii) The supervising Consulting Arborist must strictly supervise that there is no disturbance or severing of roots greater than 50mm diameter and to cleanly cut those roots between 10-50mm in diameter.

- iv) If the tree/s identified for retention in 'A' above are damaged or destabilised during construction then works must cease and Council's Tree Assessment Officer (ph. 9710 0333) must be contacted to assess the tree/s and recommend action to be taken.

Hold Point	Task	Responsibility	Certification	Timing of Inspection	Sign/Date
1.	Indicate clearly with spray paint trees approval for removal only	Principal Contractor	Supervising Arborist	Prior to demolition and site establishment	
2.	Establishment of tree protection fencing	Principal Contractor	Supervising Arborist	Prior to demolition and site establishment	
3.	Supervise all excavation works proposed within the TPZ	Principal Contractor	Supervising Arborist	As required prior to the works proceeding adjacent to the tree	
4.	Inspection of trees by Project Arborist	Principal Contractor	Supervising Arborist	Bi-monthly during construction period	
5.	Final inspection of trees by project Arborist	Principal Contractor	Supervising Arborist	Prior to issue of interim/final Occupation Certificate	

- v) Ensure each hold point outlined below within the Tree Protection Schedule is signed off and dated progressively by the Consulting Arborist throughout the various development stages, including preconstruction, construction and post construction. Photographic evidence must also be provided.

### C. Before Occupation

Prior to the issue of an Occupation Certificate the Supervising Arborist's signed and dated checkpoint list and photographic evidence must be provided to both the Private Certifying Authority and Council's Landscape Officer at the time of the final landscape inspection.

## 26. Tree Retention and Protection

The following condition applies to all trees on the subject site, trees on the adjoining sites (which are potentially affected by the development works), as well as trees on the adjoining Council land that are not approved for removal.

## **A. Before Works**

Prior to the commencement of any demolition, excavation or construction works on site, the following tree protection measures must be put in place and maintained during the course of construction to prevent damage to trees.

- i) Protective fencing constructed of 1.8m high chain wire mesh supported by robust posts must be installed at the distance required by Australian Standards AS4970- Protection of Trees on Development Sites. Signage must be erected on the fence with the following words clearly displayed "TREE PROTECTION ZONE, DO NOT ENTER".
- ii) The tree protection zone within the protective fencing must be mulched with a maximum depth 75mm of suitable organic mulch (woodchips or composted leaf chip mulch) and kept regularly watered for the duration of the works subject to this consent.
- iii) No development or associated activity is permitted within the fenced tree protection zone for the duration of works subject to this consent. This includes vehicular or pedestrian access, sheds, washout areas, excavations, backfilling, installation of services (including stormwater), removal of top soil, stockpiling of soil or building materials.
- iv) Where site access/egress is required over the roots of trees identified for retention and protection, provide hardwood rumble boards over a 200mm thick layer of wood chip.

## **B. During Construction**

- i) The tree protection measures detailed in 'A' above must be maintained during construction.
- ii) A supervising Arborist must be present during any approved hand excavation or under boring works within the Tree Protection Zone (TPZ) of any tree identified for retention and protection and have the authority to direct works to ensure the trees long term preservation;
- iii) A supervising Arborist must strictly supervise that there is no disturbance or severing of roots greater than 30mm diameter and to cleanly cut those roots between 10-30mm in diameter.
- iv) If the tree/s identified for retention in 'A' above are damaged or destabilised during construction then works must cease and Council's Tree Assessment Officer (ph. 9710 0333) must be contacted to assess the tree/s and recommend action to be taken.

## **27. Car Wash Bays**

To prevent contamination of the stormwater drainage system a car-wash bay must be provided on site:

### **A. Design**

The wash-bay must be graded to an internal drainage point and connected to the sewer.

### **B. Before Construction**

Details of the design satisfying 'A' above must accompany the application for a Construction Certificate.

### **C. Before Occupation**

The Principal Certifying Authority must be satisfied that

- i) 'A' above has been complied with and
- ii) any discharge to the sewer from the premises is in accordance with the requirements of Sydney Water.

### **D. Ongoing**

All car-wash, engine degreasing and steam cleaning must be conducted in the wash-bay detailed in 'A' above. Wastewater must be treated in accordance with the requirements of Sydney Water.

## **28. Garbage, Recycling and Green-waste Storage Area**

To ensure the proper storage of waste from the premises:

### **A. Design**

The garbage and recycling storage area must have a smooth impervious floor that is graded to a floor waste. A tap and hose must be provided to facilitate regular cleaning of the bins and all waste water must be discharged to the sewer in accordance with the requirements of Sydney Water. Garbage bins must be designed to prevent the escape of any liquid leachate and must be fitted with a lid to prevent the entry of vermin.

### **B. Before Construction**

Details of compliance with 'A' above must form part of the documentation accompanying the applications for a Construction Certificate.

### **C. Before Occupation**

The works must be completed prior to the issue of any Occupation Certificate.

### **D. Ongoing**

All waste and recycling bins must be stored wholly within the approved waste storage area. The bins must only be put out for collection from the waste loading area in the evening prior to pick-up and returned to the storage area as soon as possible after pick-up.

## **29. External Lighting - (Amenity)**

To ensure that any lighting on the site does not cause a nuisance to neighbours or motorists on nearby roads:

### **A. Design**

All lighting must be designed in accordance with Australian Standard AS4282 - Control of the Obtrusive Effects of Outdoor Lighting.

### **B. Ongoing**

All lighting must be operated and maintained in accordance with the Standard above.

## **30. Noise Control - Residential Air Conditioning Unit / Heat Pump Water Heater / Any other Pump**

To minimise the noise impact on the surrounding environment:

### **A. Design**

The equipment must be located, designed and/or acoustically attenuated so that noise emitted does not exceed a sound pressure level of 5dB LAeq (15 minute) above the ambient background level when measured on or within any other residential property boundary.

### **B. Before Occupation**

The equipment must be installed in accordance with the manufacturer's specification and all required noise attenuation measures implemented to ensure that the equipment complies with "A" above.

### **C. Ongoing**

i) All equipment must be operated in accordance with 'A' above.

ii) For air conditioning units / heat pump water heaters:

Between the hours of 10.00pm and 8.00am on weekends and public holidays and 10.00pm and 7.00am any other day, noise emitted must not be heard within any residence with its windows and/or doors open or closed.

iii) For any other pump:

Between the hours of 8.00pm and 8.00am on weekends and public holidays and 8.00pm and 7.00am any other day, noise emitted must not be heard within any residence with its windows and/or doors open or closed.

- iv) Receipt of a noise complaint from the operation of this equipment will result in the requirement for certification from an acoustic engineer that the equipment is operating in accordance with the requirements of this condition. If the acoustic assessment reveals that the equipment is not operating in accordance with the consent it must make recommendations on what remediation measures are required to bring the equipment into compliance.

NB. Any other pump includes a swimming pool pump, a spa pump, a sump pump, a water cooler that uses a pump any other apparatus or machine for raising, driving, exhausting or compressing fluid by means of a piston, plunger or rotating vanes.

### **31. Noise Control - Design and Operation (General Use)**

To minimise the impact of noise from the development, the use of the premises and all sound producing plant, equipment, machinery, mechanical ventilation system or refrigeration systems:

#### **A. Design**

The use of the premises and all plant and equipment must be designed and / or located so that the noise emitted does not exceed an LAeq sound pressure level of 5dB above the ambient background level when measured at the most affected point on or within any residential property boundary.

**Note:** The method of measurement of sound must be carried out in accordance with Australian Standard 1055.1.

#### **B. Before Occupation**

Prior to the occupation of the development or the issue of any Occupation Certificate certification must be provided by a qualified acoustic engineer that all work associated with the installation of the acoustic measures has been carried out in accordance with 'A' above.

#### **C. Ongoing**

All plant and equipment must be operated and maintained in accordance with 'A' above.

### **32. Noise Control - Design of Plant and Equipment (HLT4015)**

To minimise the impact on the surrounding residents, all sound producing plant, equipment, machinery, mechanical ventilation systems or refrigeration systems:

#### **A. Design**

All plant and equipment must be acoustically attenuated so that the noise emitted

- before 8am or after 10pm on any Saturday, Sunday or public holiday, or
- before 7am or after 10pm on any other day

- i) does not exceed an LAeq sound pressure level of 5dB above the ambient background noise level when measured
  - a) at the most effected point on or within any residential property boundary or
  - b) at the external edge of any sole occupancy unit balcony within the premises itself at any time the units operate.
- ii) cannot be heard within a habitable room in any sole occupancy unit\* or other residential premises (regardless of whether any door or window to that room is open).

\* As defined in the Building Code of Australia

**Note:** Noise measurement must be carried out in accordance with Australian Standard 1055.1.

#### **B. Before Construction**

Acoustic attenuation required to comply with 'A' above, must be prepared by a qualified acoustic engineer. These details must accompany the application for a Construction Certificate.

#### **C. Before Occupation**

Certification must be provided by a qualified acoustic engineer that all work associated with the installation of the acoustic measures has been carried out in accordance with 'A' above.

#### **D. Ongoing**

All plant and equipment must be operated and maintained in accordance with 'A' above.

### **33. Design Requirements for Adaptable Housing & Livable Housing**

#### **A. Design**

A report prepared by a suitably qualified Adaptable Housing Specialist must be submitted with the Construction Certificate, demonstrating that the apartments nominated in the approved plans as Adaptable comply with the requirements of AS4299 - Adaptable Housing. The report must contain a completed checklist (Appendix A - AS4299) demonstrating compliance with the requirements of a Class C Adaptable House.

The apartments nominated as 'Livable Housing' apartments are to be designed to the 'Silver Standard' as outlined in the Livable Housing Design Guidelines (prepared by Livable Housing Australia).

#### **B. Before Occupation**

Prior to the occupation of the development, or this issue of any Occupation Certificate, a suitably qualified Adaptable Housing Specialist must certify that the Adaptable apartments in the development have been constructed in accordance with the requirements of "A" above. A copy of the above certification along with certification as to the design and construction of the Livable apartments must accompany the Occupation Certificate.

### **34. Verification of Design for Construction - SEPP 65**

#### **A. Design**

Design verification must be provided by a registered Architect pursuant to SEPP 65 stating that the design intent approved by the Development Consent has been maintained in the building / architectural plans submitted with the Construction Certificate. This must accompany the application for a Construction Certificate.

#### **B. During Construction**

The registered Architect must be engaged to undertake regular site inspections to ensure the design intent is being maintained during construction.

#### **C. Before Occupation**

Prior to the issue of the final Occupation Certificate design verification must be provided in accordance with SEPP 65. This includes verification that external finishes have been carried out in accordance with the approved schedule.

Prior to any changes to external materials and/or details separate approval from Council is required.

### **35. External Walls and Cladding Flammability**

#### **A. Design**

The external walls of the building, including attachments, must comply with the relevant requirements of the *National Construction Code (NCC)*. This includes the products and systems proposed for use or used in the construction of external walls including finishes and claddings such as synthetic or aluminium composite panels

#### **B. Before Construction**

Details of compliance with "A" above must form part of the application for a Construction Certificate.

#### **C. Before Occupation**

Prior to the occupation of the development, or the issue of any Occupation Certificate, certification, including an appropriate level of detail to demonstrate compliance with the NCC as built, must be provided to the PC by an appropriately accredited professional that external finishes of the building complies with "A" above.

### **36. Certification Requirement of Levels**

#### **A. During Construction**

At the following stages of construction:

- i) Prior to the pouring of each floor or roof slab,
- ii) Upon completion of the roof frame.



A registered surveyor must provide the Principal Certifying Authority with Certification that the stage of structure complies with the development consent in respect of levels.

#### **B. Before Occupation**

The certification referred to above must form part of the application for an Occupation Certificate.

### **37. Sydney Water Requirements & Section 73 Compliance Certificate (for Dual Occs)**

#### **A. Before Any Works**

Prior to the commencement of any works on site, including demolition or excavation, the plans approved as part of the Construction Certificate must also be approved by Sydney Water. This allows Sydney Water to determine if sewer, water or stormwater mains or easements will be affected by any part of your development. Customers will receive an approval receipt which must be included in the Construction Certificate documentation.

Please refer to the web site [www.sydneywater.com.au](http://www.sydneywater.com.au).

#### **B. Before Occupation / Subdivision Certificate**

Prior to the issue of an Occupation Certificate or a Subdivision Certificate a Compliance Certificate under Section 73 of the Sydney Water Act, 1994, must be submitted to Council by the Principal Certifying Authority. Sydney Water may require the construction of works and/or the payment of developer charges. This assessment will determine the availability of water and sewer services, which may require extension, adjustment or connection to the mains.

#### **Sydney Water Advice on Compliance Certificates:**

Sydney Water will assess the development and if required will issue a Notice of Requirements letter detailing all requirements that must be met. Applications can be made either directly to Sydney Water or through a Sydney Water accredited Water Servicing Coordinator. Please make early contact with the Coordinator, since building of water / sewer extensions can be time-consuming and may impact on other services as well as building, driveway or landscaping design.

Go to [www.sydneywater.com.au/section73](http://www.sydneywater.com.au/section73) or call 1300 082 746 to learn more about applying through an authorised WSC or Sydney Water.

### **38. Dial Before You Dig**

#### **A. Before Construction**

Underground assets may exist in the area that is subject to your application. In the interests of health and safety and in order to protect damage to third party assets please contact Dial Before You Dig at [www.1100.com.au](http://www.1100.com.au) or telephone on 1100 before excavating or erecting structures (this is the law in NSW).

It is the individual's responsibility to anticipate and request the nominal location of plant or assets on the relevant property via contacting the Dial before you dig service in advance of any construction or planning activities.

### **39. Noise Control and Permitted Hours for Building and Demolition Work**

#### **A. During Works**

To minimise the noise impact on the surrounding environment:

- i) The LAeq sound pressure level measured over a period of 15 minutes when the construction or demolition site is in operation, must not exceed the ambient background level (LA90 15min) by more than 10dB(A) when measured at the nearest affected premises.
- ii) All building and demolition work must be carried out only between the hours of 7.00am and 6.00pm Monday to Friday inclusive, 8.00am and 3.00pm Saturdays. No work must be carried out on Sundays and Public Holidays.

### **40. Toilet Facilities**

#### **A. During Works**

Toilet facilities must be available or provided at the work site at a ratio of one toilet plus one additional toilet for every 20 persons employed at the site before works begin and must be maintained until the works are completed.

Each toilet must:

- i) be a standard flushing toilet connected to a public sewer, or
- ii) have an on-site effluent disposal system approved under the Local Government Act 1993, or
- iii) be a temporary chemical closet approved under the Local Government Act 1993.

### **41. Street Numbering and Provision of Letter Box Facilities**

#### **A. Before Occupation**

- i) Street / unit / shop numbers must be clearly displayed.
- ii) Suitable letterbox facilities must be provided in accordance with Australia Post specifications.
- iii) The dwellings must have the following street address format: proposed dwelling A.G.01 shall be No.G01/680 Kingsway Miranda, proposed dwelling A.1.02 shall be No.102/680 Kingsway Miranda, proposed dwelling A.4.05 shall be No.405/680 Kingsway Miranda, proposed dwelling B.1.07 shall be No.G07/11 Pinnacle Street Miranda, proposed dwelling B.2.11 shall be No.111/11 Pinnacle Street Miranda and proposed dwelling B.4.10 shall be No.310/11 Pinnacle Street Miranda

## **42. Hours of Use - Rooftop Terraces**

### **A. On-Going**

To minimise the impact of the proposed communal roof terrace/ garden area on the amenity of surrounding residential properties, the use of this space must not begin before 6am on any day, and end no later than 9pm Sundays-Wednesdays (inclusive) or 10pm Thursdays-Saturdays (inclusive). Further, the terrace shall be restricted to resident use only and there shall be no amplified music played at any time. Signage shall be clearly placed advising residents of these restrictions.

## **43. Safety and Security**

### **A. Design & On-Going**

- i) All security and access control devices installed should meet or exceed Australian Standard 4806. Access to the lift shall be limited to residents / tenants only, and patrons to the commercial tenancies shall be restricted.
- ii) Security systems and CCTV cameras must be installed in and around the property particularly at all entry / exit points by a licensed security professional, and suitable sign posting shall be placed to deter potential offenders. The security gate fitted to the basement entry must be closed with secure access for resident vehicles.
- iii) All levels of the car park, pedestrian routes, communal areas and entry and exit points must be adequately lit to meet Australian Standard 1158.3.1.
- iv) Lighting must be compatible with the CCTV system.
- v) Exterior fixtures and fittings must be made from robust and vandal resistant materials.
- vi) All graffiti is to be removed within 7 days.
- vii) Emergency evacuation plans shall be implemented and maintained to assist residents and emergency services in the event of an emergency. This plan shall be prominently displayed.

## **44. Car Parking Allocation**

### **A. Before Subdivision**

Car parking must be allocated to individual dwellings as part of their unit entitlement. The visitor parking facilities and car wash bay must be designated as common property on any strata plan.

Parking for Tower A (SSDCP2015 compliant) must be allocated on the following basis:

- Dwellings with three bedrooms: 2 parking bays
- Dwellings with two bedrooms: 2 (max) & 1 (min) parking bays
- Dwellings with one bedroom: 1 parking bay
- Car wash bay: 1 facility
- Total number: 74 (min) residential parking bays
- Total number: 22 (min) visitor parking bays
- Each set of tandem parking bays must be allocated to a single Dwelling

Parking for Tower B (SEPP compliant) must be allocated on the following basis:

- Dwellings with three bedrooms: 2 (max) & 1 (min) parking bays
- Dwellings with two bedrooms: 1 parking bay
- Dwellings with one bedroom: 1 (max) parking bay
- Total number: 46 (min) parking bays
- Each set of tandem parking bays must be allocated to a single Dwelling

#### **B. Ongoing**

The car-parking provided must only be used in conjunction with the dwellings and / or tenancies contained within the development and not for any other purpose.

### **45. Noise from Road and / or Rail**

To minimise the impact of noise from the adjoining major road and / or rail corridor on the occupants:

#### **A. Design**

The building design must be in accordance with the recommendations of the acoustic report by Renzo Tonin & Associates dated 8 June 2018 approved as part of this application.

#### **B. Before Construction**

Details of the acoustic attenuation treatment must accompany the documentation forming part of the Construction Certificate.

#### **C. Before Occupation**

Details of the acoustic attenuation treatment must accompany the application for a Construction Certificate in accordance with 'A' above and must include all post construction validation test results.

### **46. Noise and Vibration Control - Residential Car Park**

To minimise noise and vibration from use of the security door in the car park:

#### **A. Design**

The proposed security door fitted to the car parking area entrance must be independently mounted on rubber pads or otherwise installed to prevent vibration noise transmission through the concrete walls and / or columns.

#### **B. Before Occupation**

The Principal Certifier must be satisfied that 'A' above has been complied with.

### **47. Building Ventilation**

To ensure adequate ventilation for the building:

#### **A. Design**

The building mechanical and / or natural ventilation systems must be designed, in accordance with the provisions of:

- i) The Building Code of Australia;
- ii) AS 1668.1 2015;
- iii) AS 1668.2 2012;
- iv) The Public Health Act - 2010;
- v) The Public Health Regulation 2012;
- vi) AS 3666.1 -2011;
- vii) AS 3666.2 -2011; and
- viii) AS 3666.3 -2011.

#### **B. Before Construction**

Details of compliance with “A” above must form part of the documentation accompanying the application for a Construction Certificate.

#### **C. Before Occupation**

- i) Prior to the occupation of the building or the issue of any Occupation Certificate certification must be provided by a qualified mechanical ventilation engineer that the installation of the ventilation system has been carried out in accordance with ‘A’ above.
- ii) Occupation of the premises must not occur until a registration application has been submitted to Council's Environment and Health Regulation Department for any cooling tower / warm water system

#### **D. Ongoing**

The ventilation system must be operated and maintained in accordance with ‘A’ above.

### **48. Car Park Ventilation - Alternate System**

To ensure adequate ventilation for the car park:

#### **A. Design**

As the basement car-park does not appear to comply with the natural ventilation requirements of Section 4 of Australian Standards AS1668.2 -2012, the car-park must be either mechanically ventilated by a system complying with AS1668.2 -2012 or alternatively, the natural ventilation system must be certified by a qualified mechanical ventilation engineer to the effect that the system is adequate. The certification shall confirm that the system will protect the health of occupants of the car park at any time it is used and satisfies the atmospheric contaminate exposure rates specified in the Worksafe Australia document: Workplace Exposure Standards for Airborne Contaminants.

## **B. Before Construction**

Details of compliance with 'A' above must form part of the application for a Construction Certificate.

## **C. Before Occupation**

Prior to the occupation of the building or the issue of any Occupation Certificate certification must be provided by a qualified mechanical ventilation engineer that the installation of the ventilation system has been carried out in accordance with 'A' above.

## **D. Ongoing**

The ventilation system must be operated and maintained in accordance with 'A' above.

# **49. Demolition Work**

To ensure that demolition of structures is carried out in an environmentally acceptable and safe manner:

## **A. Before Commencement**

If works involve the removal of more than 10 square metres of asbestos material, a bonded asbestos licence is required. A friable asbestos licence is required to remove, repair or disturb any amount of friable asbestos. For further information contact SafeWork NSW.

## **B. During Works**

- i) The demolition of the existing building must be carried out strictly in accordance with Australian Standard 2601 - The Demolition of Structures.
- ii) The applicant must ensure that the demolition contractor has a current public risk insurance coverage for a minimum of \$5 million. A copy of the Policy must be submitted to the Council prior to demolition.

To ensure that the removal and transportation of any asbestos material, regardless of the quantity, is carried out in an environmentally acceptable and safe manner, all work must comply with the following:

- a) Work Health and Safety Act 2011;
- b) Work Health and Safety Regulation 2017;
- c) Safe Work Australia Code of Practice - How to Manage and Control Asbestos in the Workplace;
- d) Safe Work Australia Code of Practice - How to Safely Remove Asbestos;
- e) Protection of the Environment Operations Act 1997; and
- f) Protection of the Environment Operations (Waste) Regulation 2014.

Asbestos waste in any form must be disposed of at a waste facility licensed by the NSW EPA to accept asbestos waste. Any asbestos waste load over 100kg (including asbestos contaminated soil) or 10m<sup>2</sup> or more of asbestos sheeting must be registered with the EPA on-line reporting tool WasteLocate. More information can be found at <https://wastelocate.epa.nsw.gov.au>.

#### **END OF CONDITIONS**

**Appendix B****Submissions**

<b>Address</b>	<b>Date</b>	<b>Summary of Main Issues Raised</b>
No Address	20 August 2018	<ul style="list-style-type: none"> <li>Retention of pedestrian lane access between Pinnacle street &amp; Kingsway during the demolition &amp; construction</li> </ul>
Owner of 10 Pinnacle Street Miranda	20 August 2018 & 6 September 2018	<ul style="list-style-type: none"> <li>Non-compliance with building height and DCP Pinnacle Street Precinct Plan</li> <li>Buildings not stepped from boundaries above levels 4 as per DCP Envelope Plan.</li> <li>Impact of 8 storey development on the Pinnacle Street frontage in terms of overshadowing of north facing units at 10 Pinnacle Street Miranda in winter ( approx. 36 apartments in building A), and public domain.</li> <li>Insufficient parking provision.</li> <li>Waste servicing including unsightly view of bins and impacts associated with on street collection.</li> <li>Social impacts, crime and antisocial behaviour associated with affordable housing occupants.</li> </ul>
Corner of Pinnacle St. and Sylvania Rd	23 August 2018	<ul style="list-style-type: none"> <li>Traffic impacts including adequacy of parking provision and external street parking to accommodate additional units in precinct.</li> <li>Impact of waste collection on road network.</li> <li>Impacts during construction works</li> </ul>
22 Monro Ave, Kirrawee	24 August 2018 & 28 August 2018	<ul style="list-style-type: none"> <li>The presence of affordable housing will improve amenity.</li> <li>Traffic impact, road congestion and adequacy of surrounding infrastructure.</li> </ul>
No Address	29 August 2018	<ul style="list-style-type: none"> <li>Retention of pedestrian lane access between Pinnacle street &amp; Kingsway during the demolition &amp; construction</li> </ul>
51 Bellingara Road , Sylvania 2224	27 August 2018	<ul style="list-style-type: none"> <li>Traffic impact, road congestion and adequacy of surrounding infrastructure.</li> <li>Suitability of site location for future occupants eligible for affordable housing.</li> </ul>
20 Violet Street, Miranda	24 August 2018	<ul style="list-style-type: none"> <li>Suitability of site location for affordable housing.</li> </ul>



No Address	3 September 2018	<ul style="list-style-type: none"> <li>• Impacts from construction, excavation and demolition including dust and rubbish from builders.</li> <li>• Traffic management during construction including restricting access to properties within precinct.</li> <li>• Impact on property prices as a result of oversupply of units in locality.</li> </ul>
Neighbouring Property (Address not specified)	11 September 2018	<ul style="list-style-type: none"> <li>• Non-compliance with building height and DCP Pinnacle Street Precinct Plan</li> <li>• Buildings not setback from boundaries above levels 4 as per DCP Envelope Plan.</li> <li>• Privacy and overlooking impacts to neighbouring property.</li> </ul>
Neighbouring Property (Address not specified)	11 September 2018	<ul style="list-style-type: none"> <li>• Non-compliance with building height and DCP Pinnacle Street Precinct Plan</li> <li>• Buildings not setback from boundaries above levels 4 as per DCP Envelope Plan.</li> <li>• Privacy and overlooking impacts to neighbouring property.</li> </ul>

## Report and Recommendations of the Design Review Forum Panel

### Sutherland Shire Council 27 September 2018

Panel Members: Brendan Randles (Chair), Linda Gosling & Peter Brooker

Council Staff: Evan Phillips (ROFF)  
 Luke Murtas (Team Leader)  
 Stevie Medcalf (Landscape)

Applicant Team: Joseph Ahaka (Applicant)  
 Nick Murdoch (Project Manager)  
 Angles Koepp (Urban Designer)  
 Ben Black (Planner)  
 James McCarthy (Architect)  
 James Lauman (Architect)  
 Nick Metcalf (Landscape)

DA/ARAP No: DA18/0884

PAD No: NIL

Proposal: Demolition of existing structures, construction of 2 residential flat buildings containing 114 units under the Affordable Rental Housing SEPP and 2 lot stratum subdivision

Project Address: **9 - 13 Pinnacle St & 678 – 682 Kingsway, Miranda NSW 2228**

## PREAMBLE

The site was visited by the Panel members prior to the meeting.

The proposal has been considered in relation to the Design Quality Principles of SEPP 65. Detail matters relating to Principle 5 (Landscape) are not covered by the Panel and will be separately reported by Council Officers.

Issues to be considered to be relevant to the proposal are noted below.

## COMMENTS

The Panel makes the following comments on the proposal:

1. Though the application of the Affordable Rental Housing SEPP allows a bonus FSR, the proposal needs to meet a local area character test, which the Panel considers is not achieved by the proposal in its current form. This is reflected by the proposal's failure to conform to a streetscape scale commensurate with the Pinnacle Street Precinct master plan (DCP Chapter 8, SSDCP 2015), which has guided the scale and character of the built form of adjoining developments - some currently nearing completion.
2. The Panel supports the proposed built form layout, its massing, open space strategy and scale to the Kingsway. However, the eight storey massing (plus lift and servicing overrun) proposed for Pinnacle Street is not supported. To address the four to six storey streetscape currently emerging in the Pinnacle Street context, the southern building should be reduced to six stories. In addition, the Pinnacle Street elevation should be modulated and articulated to further reduce apparent scale.
3. Levels above four storeys in both buildings do not meet the ADG's building separation requirements at side boundaries. While it appears that the defensive design strategies proposed will contain any adverse privacy impacts of units protruding into this setback, shadow impacts and the impacts of scale on adjoining properties and streetscape warrant greater prudence and care.
4. There may be opportunities to relocate some of the floor area from the southern building's top levels to other parts of the site. However, it appears unlikely that the bonus FSR allowed by the Affordable Rental Housing SEPP can be achieved in its entirety.
5. The amenity of apartments, including entry, circulation, layout, solar access and natural ventilation for both buildings is commendable, as is the general aesthetic expression of the building.
6. Partitions within the proposed studios appear to create non-compliant habitable spaces without windows. More detail must be provided to illustrate that these spaces are not in fact discrete rooms and that these studios are not undersized one bedroom units...
7. Separating Building B's services plant to create a northerly aspect could significantly improve the roof terrace's solar access, outlook and spatial configuration. An adaptable unisex WC, kitchen, storage space and sun shading is recommended for each communal terrace.

8. The combined driveway and servicing area proposed is excessively wide and liable to adversely impact on the visual amenity of Pinnacle Street. It is recommended that the loading bay is better incorporated into the landscape using a well considered permeable textured surface.
9. In general, as much care should be taken in the detail and quality of built elements at the street frontages as is invested in the buildings. The aim should be to present a well-mannered, high quality interface with the street, incorporating any required services enclosures. Details of all fencing, walls, planter beds on podium, and other built elements should be provided, and the architectural drawings should be co-ordinated with the landscape drawings so that the relationship between the interior and exterior spaces at ground level can be fully understood. Larger scale landscape sections are needed.
10. A number of detail issues should be resolved in principle and shown on drawings at DA stage so as not to compromise amenity, built form and aesthetics at a later stage:
  - Wall mounted equipment (e.g. instantaneous gas hot water heaters) and associated pipework should be concealed into wall cabinets and ducts.
  - The above items should be positioned so that they are not visible from common areas or the public domain adjacent to the development.
  - If equipment is located on private balconies, additional area above ADG minimums should be provided.
  - Rainwater downpipes should be thoughtfully designed, integrated into the building fabric and co-ordinated with stormwater drawings.
  - any required services enclosure along the street frontage should be discreetly integrated into the frontage design

## **RECOMMENDATIONS**

While an appropriate strategy has been proposed, the Panel does not support the proposal in its current form. Further design development should be undertaken to respond to the issues noted above.

Brendan Randles

DRF Chair

## Appendix D

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

Design Quality Principles	Assessment
Principle 1: Context and neighbourhood character	The site is located within the Miranda Pinnacle Street Precinct and is earmarked for 'high density' development given its proximity to public transport and civic services. The proposal departs from Council's local amalgamation controls however is not anticipated to hinder the strategic imperatives of precinct which seeks to consolidate large key development sites or hinder development on the remaining lots to the east. As further discussed, the height of Building B is not in keeping with the character and desired future context of the precinct.
Principle 2: Built form and scale	With the exception of Building B which is recommended to be resolved with the imposition of a condition of development consent removing the uppermost residential level, the proposed built form and scale is generally in keeping with the desired future character of development within the land and Pinnacle Street Precinct.
Principle 3: Density	The site is earmarked as a 'high density' area undergoing renewal from a low density state. The density exceeds the LEP permitted in the zone however benefits from bonus floor space under the ARHSEPP. As a consequence, the bonus GFA has been distributed to Building B on the Pinnacle Street frontage resulting in a building of a density which is not of character desired in the streetscape.
Principle 4: Sustainability	Ecologically Sustainable Development principles are incorporated into the design and the proposed development satisfies the minimum BASIX requirements.
Principle 5: Landscape	Landscaping along the sites street frontages, adjoining the pedestrian laneway (1.5m dedicated landscape strip) and within communal space areas is provided. Subject to conditions, the landscape design is appropriate and provides for practical and usable spaces, as well as enhancing amenity, streetscape and the relationship between adjoining properties.
Principle 6: Amenities	The proposal generally satisfies the design criteria of the ADG in terms of apartment design / layout to enable reasonable residential amenity for future occupants.
Principle 7: Safety	Crime Prevention Through Environmental Design (CPTED) principles have been considered in the design of the project. The common areas are generally well activated and residential areas (including parking / lobby areas) are secured. The development activates the frontages and adjoining lane / pedestrian pathway to the west promoting opportunity for both active and passive surveillance. As part of the precinct works / strategy, the lane will be subject to upgrade by Council. Lighting will

	also be considered on the final design. Additional conditions are recommended to enhance safety and security around the site.
Principle 8: Housing diversity / social interaction	The proposal provides a mix of apartment types encouraging diversity and social mix (including affordable, adaptable and liveable housing apartments). The mix of affordable apartments within the development is discussed in further detail in the assessment component of the report. The development includes facilities to encourage social interaction including commercial spaces, communal open space areas.
Principle 9: Aesthetics	The development incorporates a modern and acceptable aesthetic which is generally consistent with the changing character of the Pinnacle Street Precinct where a number of apartment buildings have been recently constructed.

## Appendix E

### Apartment Design Guide (ADG)

Apartment Design Guide (ADG) –Building Key Design Criteria			
Objective	Design Criteria	Proposal	Complies
3D-1 Communal Open Space (COS)	<p>COS has a minimum area equal to 25% of the site.</p> <p>A minimum of 50% direct sunlight to the principal usable part of COS for a minimum of 2 hours between 9am and 3pm on 21 June (mid-winter).</p>	<p>1012m<sup>2</sup> = 25.5%</p> <p>594m<sup>2</sup> = 58.7%</p>	<p>Acceptable (refer to assessment)</p> <p>Yes</p>
3E-1 Deep Soil Zones	<p>Deep soil zones are to meet the following minimum requirements.</p> <p>Where the site area is 650m<sup>2</sup>-1500m<sup>2</sup> = min. 3m dimension; and, min. 7% of the site area.</p>	<p>22% (875m<sup>2</sup>)</p> <p>Min dimension 3m</p>	<p>Yes</p>
3F-1 Visual Privacy	<p>Minimum required separation distances from buildings to the side and rear boundaries:</p> <p>Up to 12m (4 storeys)</p> <ul style="list-style-type: none"> <li>6m habitable rooms/balconies</li> <li>3m non-habitable rooms</li> </ul> <p>Up to 25m (5-8 storeys)</p> <ul style="list-style-type: none"> <li>9m habitable rooms/balconies</li> <li>4.5m non-habitable rooms</li> </ul> <p>Over 25m (9+Storeys)</p> <ul style="list-style-type: none"> <li>12m habitable rooms / balconies</li> <li>6m non-habitable rooms</li> </ul>	<p>Building A (west and east)–</p> <p>6m - 4 storeys</p> <p>4.2m - 9m to 8 storeys</p> <p>Building B</p> <p>6m - 4 storeys</p> <p>9m - 7 storeys</p>	<p>Yes</p> <p>No – refer to assessment discussion</p> <p>Yes</p> <p>No – refer to assessment discussion</p>
3J-1 Car Parking	<p>Sites:</p> <ul style="list-style-type: none"> <li>Within 800m to railway in metropolitan area or</li> <li>Within 400m of zone B3 or B4 in nominated regional centre</li> </ul> <p>The minimum car parking rates set out in Guide to Traffic Generating Development or the requirement prescribed by the Council whichever is lesser.</p>	<p>Sutherland Shire does not have any Metropolitan Regional (CBD) Centres or Metropolitan Sub-Regional Centres</p> <p>SSDCP2015 rates apply (refer below)</p>	<p>N/A</p> <p>ARHSEPP rates applicable</p>

4A-1 Solar and Daylight Access	Living rooms and private open spaces of at least 70% of apartments in a building receive a minimum of 2 hours direct sunlight between 9am and 3pm at mid-winter.	80 of 107 apartments (74%)	Yes
	A maximum of 15% of apartments in a building receive no direct sunlight between 9am and 3pm at mid-winter.	16 of 107 apartments (14.95%)	Yes
4B-3 Natural ventilation	At least 60% of apartments are naturally cross ventilated in the first nine storeys.	66 of 107 apartments (61.6%)	Yes
	Overall depth of cross-over or cross-through apartment does not exceed 18m, measured glass line to glass line.	<18m	Yes
4C-1 Ceiling heights	Measured from finished floor to finished ceiling level, minimum heights are;		
	<ul style="list-style-type: none"> <li>Habitable rooms = 2.7m</li> <li>Non-habitable rooms = 2.4m</li> </ul>	Min 2.7m Min 2.4m	Yes Yes
4D-1 Apartment Size & Layout	Minimum internal areas of;		
	<ul style="list-style-type: none"> <li>Studio = 35m<sup>2</sup></li> </ul>	= / > 35m <sup>2</sup>	Yes
	<ul style="list-style-type: none"> <li>1 bedroom = 50m<sup>2</sup></li> </ul>	= / > 50m <sup>2</sup>	Yes
	<ul style="list-style-type: none"> <li>2 bedroom = 70m<sup>2</sup> (+5m<sup>2</sup> with 2 bathrooms)</li> <li>3 bedroom = 90m<sup>2</sup></li> </ul>	= / > 75m <sup>2</sup>	Yes
	Habitable rooms to have window with area not less than 10% of floor area	= / > 96m <sup>2</sup> Not < 10%	Yes Yes
4D-2 Room Depth	Habitable room depths are limited to maximum 2.5 x the ceiling height	Generally 2.5m x ceiling.	Yes
	In open plan layouts (where the living, dining and kitchen are combined) the maximum habitable room depth is 8m from a window	>8m in some instances	Yes - Acceptable
4D-3 Room Dimensions	Master bedrooms - min area of 10m <sup>2</sup>	Min 10m <sup>2</sup>	Yes
	other bedrooms 9m <sup>2</sup> (excluding wardrobe space)	Min 9m <sup>2</sup>	Yes
	Bedrooms to have min dimension of 3m.	Min 3m	Yes
	Living rooms or combined living/dining rooms have a min width of:		
	<ul style="list-style-type: none"> <li>3.6m for 1 bedroom</li> </ul>	Min 3.6m	Yes



	<ul style="list-style-type: none"> <li>4m for 2 and 3 bedroom</li> </ul> <p>Width of cross-over or cross through apartments are a least 4m internally to avoid deep narrow layout.</p>	Min 4m	Yes
		Min 4m	Yes
4E-1 Private Open Spaces / Balconies	<p>All apartments are required to have a primary balcony as follows;</p> <ul style="list-style-type: none"> <li>1 bedroom = 8m<sup>2</sup> (depth of 2m)</li> <li>2 bedroom = 10m<sup>2</sup> (depth of 2m)</li> <li>3+ bedroom = 12m<sup>2</sup> (depth of 2.4m)</li> </ul> <p>Ground Level / Podium apartments = 15m<sup>2</sup> (depth of 3m)</p>	<p>Min 8m<sup>2</sup> / 2m</p> <p>Min 10m<sup>2</sup> / 2m</p> <p>Min 12m<sup>2</sup> / 2.4m</p> <p>Min 15m<sup>2</sup> / 3m</p>	<p>Yes</p> <p>Yes</p> <p>Yes</p> <p>Yes</p>
4F-1 Common Circulation	Maximum apartments of single circulation core 8	<p>Building A – 6</p> <p>Building B - 11</p>	<p>Yes</p> <p>No – consistent with Design Guidance of ADG as on single level</p>
4G-1 Storage	<p>In addition to storage in kitchens, bathrooms and bedrooms the following storage is provided</p> <ul style="list-style-type: none"> <li>1 bedroom = 6m<sup>3</sup></li> <li>2 bedroom = 8m<sup>3</sup></li> <li>3 bedroom = 10m<sup>3</sup></li> </ul> <p>At least 50% of the required storage is to be located within the apartment.</p>	Sufficient storage provided / min 50% available within apartment	Yes

## Appendix F

### Sutherland Shire Development Control Plan 2015

Standard/Control	Required	Proposed	Compliance
<b>Sutherland Shire Development Control Plan 2015</b>			
<b>Chapter 8 – R4 Pinnacle Street Precinct</b>			
5.2 Amalgamation	Site 2	Site 2 and additional site to east	Acceptable Refer to assessment
6.2 Building envelopes	Consistent with Miranda Pinnacle Street Precinct Plan – 8 storeys Kingsway / 4 Storeys Pinnacle Street	8 storeys (9 <sup>th</sup> level / storey COS) Kingsway 7 storeys (8 <sup>th</sup> level / storey COS)	No – Refer to assessment
8.2 Streetscape and built form	Clearly identifiable entry	Building A and B entries clearly identifiable	Yes
	Ground floor apartments have street access	Ground floor apartments have street access.	Yes
	Articulate large expanses of unbroken wall	Built form articulated with balconies and the use of different materials and colours.	Yes
	Parking in the basement	All parking is provided within the basement.	Yes
	The finished roof level of the basement are to be located at or near ground level	Located at/ near ground level	Yes
	Basement roof and walls and vehicle entries must not dominate the overall design of the building or streetscape	Basement does not dominate the overall design if the building or streetscape.	
	Lift overruns concealed within well designed architectural elements.	Lift overruns centralised so they are not visible from the street/immediate public domain.	Yes
	1m landscape setback to neighbouring properties is to be provided along the driveway to basement car park	Min 1m	Yes
	Driveway walls adjacent to the entrance of a basement car park are to be treated so that the	Painted render to match the building.	Yes

Standard/Control	Required	Proposed	Compliance
	appearance is consistent with the external finish of the building		
	Any additional building services must be resolved at design stage (substation or fire service facilities)	Hydrant incorporated into the building design. Substation incorporated into the landscape design.	Yes
	Frontage works and replacement existing local powerlines and other utilities with subsurface utilities and provide new street lighting to meet the requirements of the SSC Public Domain Design Manual	A condition of consent is recommended in line with SSC Public Domain Design Manual	Yes
9.2 Street Setbacks	Minimum 7.5m from Kingsway	7.5m	Yes
	Building elements may encroach 1.5m into the front setback for a maximum of one third of the area of the façade, forming an articulation zone	Elements encroach within articulation zone to max one third	Yes
	Minimum 6m street setback from Pinnacle Street	Minimum 6m	Yes
	Basements permitted in articulation zone	Basement outside of articulation zone	Yes
	Where private courtyards are located in the front setback, - must not compromise indigenous trees - privacy to courtyards is achieved through the use of open form fencing and vegetation.	Courtyards within front setback and landscape adequately resolved	Yes
10.2 Side & Rear Setbacks	Minimum / as per Precinct Building Envelope Plan / ADG if greater. West) 6m to 4 storeys – 8m to 8 storeys East) 6m to 4 storeys – 12m to 8	Building A (west and east)– 6m - 4 storeys 4.2m - 9m to 8 storeys  Building B 6m - 4 storeys	No – Refer to assessment

Standard/Control	Required	Proposed	Compliance
	storeys	9m - 7 storeys	
	Walls are to be articulated to prevent continuous linear walls	Walls adequately articulated	Yes
	Basement 3m	Min 3m	Yes
11.2 Landscape Design	Deep soil landscape min 3m of side setback	Min 3m	Yes
	Site design must incorporate canopy trees that will attain a min 8m height, Where setbacks allow, trees should be planted 3m from adjoining structures.	Provided and reaffirmed with condition of consent	Yes
	Min street tree planting = 2 native trees every 10m of frontage. Must be planted at least 1m from kerb or footpath.	Appropriate street trees recommended by Landscape Architect.	Yes
	A minimum rear boundary indigenous tree planting rate is set at 2 trees for every 15m of linear boundary	Adequate trees to be provided.	Yes
	Landscaping in the vicinity of a driveway entrance should not obstruct visibility for the safe ingress and egress of vehicles and pedestrians	Low lying planting nearby driveway.	Yes
	Any privacy fencing design and materials must carefully resolved so as to not detract from the architectural quality of the building	Appropriate fence design	Yes
	Communal open space should have a minimum area equal to 25% of the site. Communal open space should have a minimum dimension of 3m, and larger developments should consider greater dimensions	25% of the site is communal open space.  >3m dimension	Acceptable Refer to assessment  Yes
	A communal rainwater tank and pump should be located underground in common open	Communal rainwater tank provided	Yes

Standard/Control	Required	Proposed	Compliance
	space. Each private open space must be provided with a tap connected to the rainwater tank	Condition location of taps.	
	An external energy efficient lighting system is to be provided for pedestrian access and driveways located within communal open space	A condition of consent is recommended to ensure appropriate lighting of common spaces.	Yes
12.2 Building layout and POS	Suitable clothes drying facilities shall be provided which are not visible from a public place and have access to sunlight.	Clothes drying racks will be provided on balconies.	Yes
	Access to all levels of the development, including the basement, must be made available by a lift in order to facilitate access by people with disabilities.	Lift cores access all areas of the building.	Yes
13.2 Solar Access	New buildings sites to maximise direct sunlight to north facing living areas, communal and POS	Apartments and COS adequately maximises orientation.	Yes
	Living rooms and POS for at least 70% of residential apartments receive 2hrs of direct sunlight between 9am and 3pm midwinter	> 70% (refer to ADG)	Yes
	Direct sunlight to north facing windows of habitable rooms and 10m <sup>2</sup> of useable POS of adjacent dwellings should be reduced to less than 2 hrs between 9am and 3pm midwinter	2 hours achieved to adjoining properties.	Yes
14.2 Visual and Acoustic Privacy	Locate orientate and design development to maximise the provision of visual privacy	Visual privacy acceptable. Refer to setback / ADG discussion in assessment.	Yes
	Noise generating equipment must not exceed an LAeq(15m)	A condition of consent is recommended to limit noise	Yes

Standard/Control	Required	Proposed	Compliance
	of 5db(A) above background noise at the property boundary.	generating equipment.	
	Development adjacent to a rail corridor as identified on the Road and Rail Noise Buffer Map should be sited and designed to include noise and vibration attenuation measures to minimise noise and vibration impacts.	A condition of consent is recommended for the building to comply with the Infrastructure SEPP.	Yes
15.2 / 15.3 Adaptable and Living Housing	20% of dwellings adaptable (comply with the relevant Aus Standards)	22 of 107 (20%)	Yes
	10% liveable dwellings (incorporate the Liveable Housing Design Guidelines)	22 of 107 (20%)	Yes
16.2 Safety & Security	Development is to incorporate Crime Prevention Through Environmental Design Principles  Incorporate / enhance surveillance.	Acceptable subject to conditions	Yes
17.2 Car Parking	Car parking shall be provided in accordance with the following :  <ul style="list-style-type: none"> <li>• A minimum of 1 space per 1 bed</li> <li>• 1.5 spaces per 2 bed</li> <li>• 2 spaces per 3 bed</li> </ul> 74 parking spaces.  <ul style="list-style-type: none"> <li>• Plus 1 visitor space per 4 units</li> </ul> 13 parking spaces	Building A  22 x 1 bedroom 13 x 2 bedroom 16 x 3 bedroom apartments  75 parking spaces  22 parking spaces (inclusive of allocation of 10 spaces to Building B)	Yes          Acceptable
	Carwash Bay (1 per 20 dwellings) 3m x 7.6m	1 provided	No - acceptable
	Minimum combined crossing width 5.5m	> 5.5m	Yes
	The design of vehicle access ways shall enable all vehicles to	Vehicles can enter and exit the site in a forward direction.	Yes

Standard/Control	Required	Proposed	Compliance
	enter and leave the site in a forward direction.		
18.2 Waste Management Requirements	Waste management, including storage areas, separation of waste from recyclables, collection areas and the like must be in accordance with Sutherland Shire Council's "Waste Collection Policy for Multi-Unit Dwellings and Residential Flat Buildings	Waste provisions provided on site, including collection by a HRV in accordance with Council's policy.	Yes





# NSW POLICE FORCE

Sutherland Shire Police Local Area  
Command

113 – 121 Flora Street  
Sutherland NSW 2232

Tel: 02 9542 0899  
Facsimile 02 9542 0708  
Ref.No. DA 18/0884



10 September 2018

General Manager,  
Sutherland Shire Council  
Locked Bag 17,  
Sutherland NSW 1449

RE: Development Application DA 18/0884  
Demolition of existing structure and constructing of new residential flat, building.  
11 & 12 Pinnacle Road Miranda 680,682-678 Kingsway Miranda.

In line with the Crime Prevention Guidelines of the New South Wales Environmental Planning and Assessment Act, 1979, Section 79C, Sutherland Local Area Command has conducted a *Safer by Design Crime Risk Evaluation* as requested by Sutherland Shire Council, on the proposed development relating to the existing structures, for Demolition of existing structure and construction of new residential buildings.

The proposed development may introduce new (potential) victims, crime opportunities and offenders to the development site and its surroundings. It is possible, therefore, that reported crime will increase in the future.

Crime Prevention Through Environmental Design (CPTED) treatment options should be considered for the proposed development in order to reduce opportunities for crime.

Yours sincerely,

Superintendent Jason Box  
Sutherland Local Area Commander



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## Safer by Design



*Architectural impression of proposed structures for DA17/1626*

### ***Crime Risk Evaluation: Demolition of existing structure and construction of a new residential flat buildings***

***Property: 680, 682 & 678 Kingsway, Miranda and 11 & 13  
Pinnacle Road, Miranda  
DA 18/0884***

a report prepared for  
Sutherland Shire Council

By

NSW Police Force  
Crime Management Unit  
113-121 Flora Street, Sutherland

Telephone 9542 0899  
Facsimile 9542 0854  
Email [shad1chr@police.nsw.police.gov.au](mailto:shad1chr@police.nsw.police.gov.au)

August 2018

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### **Disclaimer**

New South Wales Police has a vital interest in ensuring the safety of members of the community and their property. By using the recommendations contained in this evaluation, any person who does so acknowledges that:

1. It is not possible to make areas evaluated by NSW Police absolutely safe for members of the community or their property;
2. It is based upon the information provided to NSW Police at the time the evaluation was made;
3. The evaluation is a confidential document and is for use by the consent authority referred to on page 1 only;
4. The contents of this evaluation are not to be copied or circulated other than for the purposes of the consent authority referred to on page 2.

NSW Police hopes that by using the recommendations contained in this document criminal activity will be reduced and the safety of members of the community and their property will be increased. However, it does not guarantee that all risks have been identified, or that the area evaluated will be free from criminal activity if its recommendations are followed.

## ***Section 79C of the Environmental Planning and Assessment Act and Crime Prevention***

In April 2001, the NSW Minister for Planning Introduced Crime Prevention Guidelines to S79C of the Environmental Planning and Assessment Act, 1979. These guidelines require consent authorities to ensure that development provides safety and security to users and the community. "If a development presents a crime risk, the guidelines can be used to justify modification of the development to minimise crime risk, or, refusal of the development on the grounds that crime risk cannot be appropriately minimised".

The Guidelines contain two parts. "Part A details the need for a formal crime risk assessment (Safer by Design Evaluation) to be done in conjunction with trained police, and Part B outlines basic Crime Prevention through Environmental Design (CPTED) principles and strategies that can be used by consent authorities to justify the modification of proposals to minimise risk" (DUAP 2001:2).

### ***Crime Prevention through Environmental Design***

Crime Prevention through Environmental Design (CPTED) is a crime prevention strategy that focuses on the planning, design and structure of cities and neighbourhoods. It reduces opportunities for crime by using design and place-management principles that reduce the likelihood of essential crime ingredients from intersecting in time and space.

Predatory offenders often make cost-benefit assessments of potential victims and locations before committing crime. CPTED aims to create the reality (or perception) that the costs of committing crime are greater than the likely benefits. This is achieved by creating environmental and social conditions that:

- Maximise risk to offenders (increasing the likelihood of detection, challenge and apprehension);
- Maximise the effort required to commit crime (increasing the time, energy and resources required to commit crime);
- Minimise the actual and perceived benefits of crime (removing, minimising or concealing crime attractors and rewards); and



- Minimise excuse-making opportunities (removing conditions that facilitate the rationalisation of inappropriate behaviour).

CPTED employs four key strategies. These are Surveillance, Access Control, Territorial Reinforcement and Space/Activity Management.

### ***Surveillance***

*Natural surveillance (NS)* is achieved when normal space users can see and be seen by others. NS highlights the importance of building layout, orientation and location; the strategic use of street design; landscaping and lighting. NS is a by-product of well-planned, well-designed and well-used space. *Formal (or Organised) Surveillance (FS)*, is achieved through the tactical positioning of guardians. An example would be the use of supervisors on station platforms, or the placement of a taxi rank within eyesight of a station entry. *Technical Surveillance (TS)* is achieved through mechanical/electronic measures such as CCTV, help-phones and mirrored building panels. TS is commonly used as a "patch" to supervise isolated, higher-risk locations.

There is a proven correlation between poor lighting, fear of crime, the avoidance of public places and crime opportunity (Painter, 1997). Australia and New Zealand Pedestrian Lighting Standard 1158.3.1 requires lighting engineers and designers to factor in crime risk and fear when selecting lamps and lighting levels.

### ***Access Control***

Access control measures restrict, channel and encourage people, bicycles and motor vehicles into, out of and around targeted sites. Wayfinding, desire-lines and formal/informal routes are important crime prevention considerations.

Access control is used to increase the time and effort required to commit a crime and to increase the risk to criminals. *Natural Access Control (NAC)* includes tactical use of landform and waterways, design measures including building configuration; formal and informal pathways, landscaping, fencing and gardens. *Mechanical/Electronic Access Control (MEAC)* includes the employment of security hardware and *Formal (or Organised) Access Control (FAC)* includes on-site guardians such as employed security personnel.

### ***Territorial Reinforcement***

Criminals rarely commit crime in areas where the risk of detection and challenge are high. People who have guardianship or ownership of areas are more likely to provide effective supervision and to intervene in crime than passing strangers. Effective guardians are often ordinary people who are spatially 'connected' to a place and feel an association with, or responsibility for it. *Territorial Reinforcement (TR)* uses actual and symbolic boundary markers, spatial legibility and environmental cues to 'connect' people with space, to encourage communal responsibility for public areas and facilities, and to communicate to people where they should/should not be and what types of behaviour are appropriate.

### ***Space and Activity Management***

Space and activity management strategies are an important way to develop and maintain *natural* community control. Space management involves the formal supervision, control and care of the public domain. All space, even well-planned and well-designed areas need to be effectively used and maintained to maximise community safety. Places that are infrequently used are commonly abused. There is a high correlation between urban decay, fear of crime and avoidance behaviour.

### ***Evaluation***

This evaluation was requested by Sutherland Shire Council for DA 16/1626 will be the demolition of existing structures and construction of a new residential flat building at 89-91 Willarong Road, Caringbah. The development is described as a 5-storey structure containing 46 apartments consisting of 14 x 1 bedroom, 29 x 2 bedroom and 3 x 3 bedroom units. There are 2 underground parking levels for 64 vehicles which includes 7 visitor parking spaces and 4 designated disabled spaces which 'appears to be adequate for this development.

Primary focus areas include:

- Design detail;
- Pedestrian access (internal and external); and
- Place management.

### ***Sutherland Shire Police Area Command (PAC)***

On 18 January 2018 Sutherland LAC and Miranda LAC merged as one command to create the **Sutherland Shire Police Area Command**.

The Sutherland Shire Police Area Command (PAC) is on the southern fringes of Sydney, between Sydney and Wollongong. Geographically the command is the largest in the Central Metropolitan Region being 370 square kilometres in size. A large part of the PAC consists of the Royal National Park. The major suburbs are Cronulla, Caringbah, Miranda, Kurnell, Sutherland, Menai, Engadine and Gymea. There are a total of 42 suburbs within the command. Adjoining Sutherland PAC includes, Wollongong PAC to the south, Liverpool PAC to the west, Bankstown PAC to the north-west and St George PAC to the north. Sutherland LAC is situated within the Sutherland Shire and is a major thoroughfare for motorists and commuters travelling between Sydney and Wollongong.

The Sutherland Shire has almost 80 schools within the area, indicating a high percentage of juveniles living and visiting the area. Overall population is in excess of 225,070 (ABS 2014).

Miranda CBD is a central location of the Shire which connects visitors travelling through the area to the Cronulla beaches and the surrounding suburbs east of Miranda such as Woolooware, Lilli Pilli and Kurnell. A bus service operates the eastern part of the Sutherland Shire which is the only form of public transport within that area. The Sutherland Railway Station is the main transit line with railway stations to Kirrawee, Miranda, Caringbah, Woolooware and Cronulla, therefore is popular during warm summer months with visitor's external to the region.

The proposed development site is situated on the Kingsway and Pinnacle Road, Miranda, The Kingsway which is a main through fare which runs in a east/west direction from The Princes Highway to Cronulla Beach. Miranda CBD is considered a major shopping hub with Westfields and numerous external business that run along the Kingsway and consists of

cafes, restaurants, pharmacies, supermarkets, several licensed premises (including bottle shops), a registered club, medical building and several churches.

### **Crime Ratings**

Reported crime statistics have been used to help identify 'crime likelihood'. These statistics are based on raw data. More accurate statistics can be acquired by the Bureau of Crime Statistics.

In NSW, crime statistics are gathered and analysed in geographical areas referred to as Police Local Area Commands (LACs). This development is located within Sutherland Local Area Command and the following incident categories and ratings have been identified for the Local Area Command in which the development is located:

Incident	Likelihood Values based from Raw Data Statistics				
	Highly Likely	Likely	Moderate	Unlikely	Not assessed
Malicious damage			X		
Stolen M/Vehicle				X	
Assault				X	
Break & enter				X	
Stealing				X	
Robbery				X	

The statistics provided relate to a nearby development by the Sutherland PAC Intelligence Unit has revealed the above crime types occurred within a 200-metre radius of the proposed location. All crime that has occurred along the length of that street will be included in this report. It should be noted this property is within close proximity to a number of major arterial roads.

The statistics are based on raw data between a 12-month period, being 1<sup>st</sup> March 2017 to 28<sup>th</sup> February 2018. There was a total of 52 reported incidents and are categorised as follows:

- Assault – 50
- Break & Enter – 10
- Malicious damage – 51
- Robbery – 2
- Stealing – 301
- Stolen vehicle – 4



These figures consider the proximity of the Westfield Miranda which is the major shopping complex and several licensed premises along the retail strip on the Kingsway.

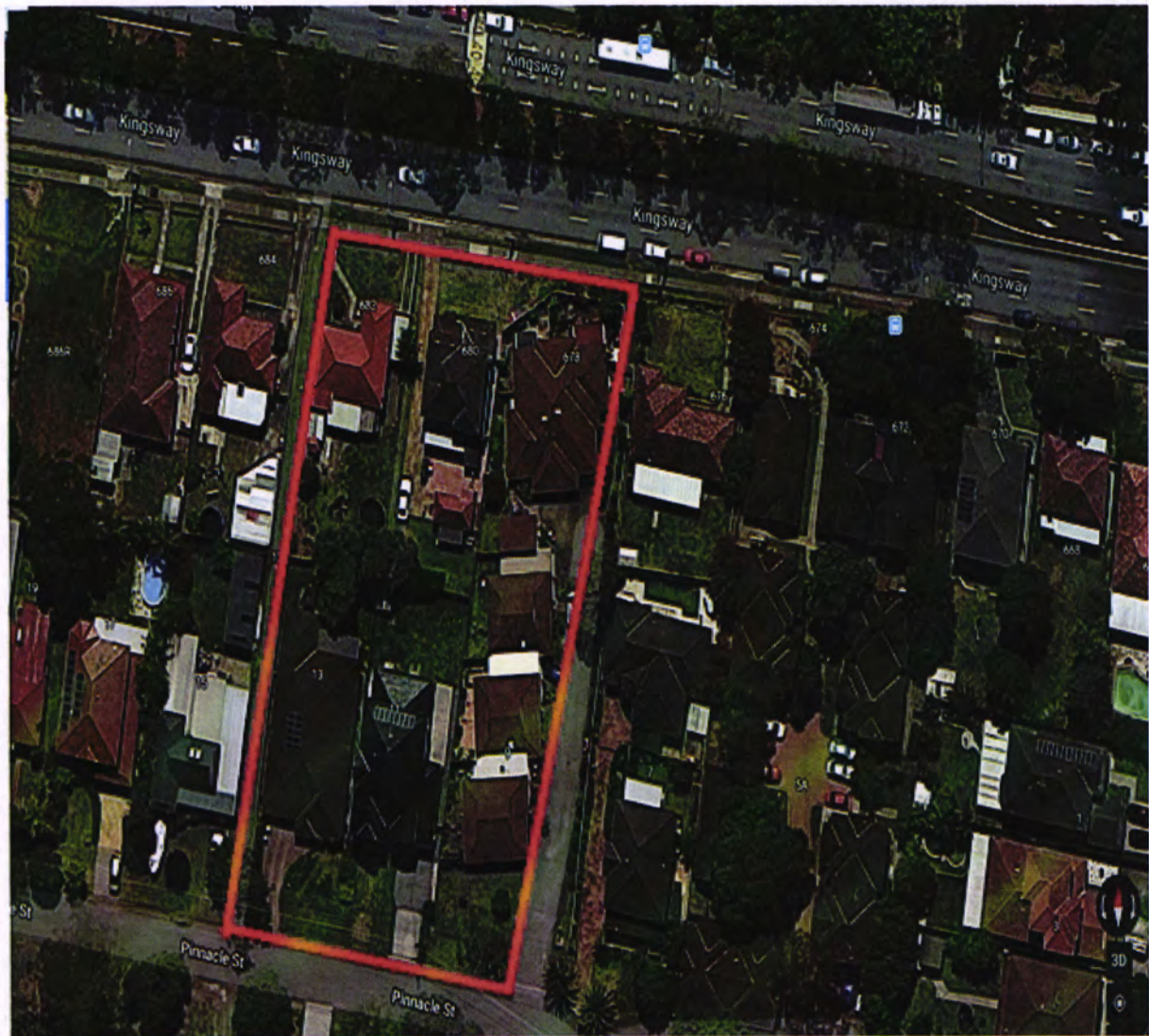
### ***Evaluation Rating***

After conducting a Safer by Design Crime Risk Evaluation for the proposed development the crime risk rating has been identified as **LOW**. This is on a sliding scale of low, medium and high.

View of proposed area







## ***Issues and Recommendations***

Working through the preliminary drawings, a number of areas of concern have been identified for attention and review.

Clear sight lines provide a higher level of safety through natural surveillance. This may come at the expense of some privacy on all levels.

Illegible boundary markers and confusing spatial definition make it easy for criminals to make excuses for being in restricted areas. The proposed development application requires good use of perimeter barriers while operating to designate access control.

During construction, fencing must be used to reduce the likelihood of person/s gaining entry into the restricted zone. Signage must also be installed, marking the area as restricted.

It is recommended that anti-graffiti film is used on all building materials to reduce the likelihood of graffiti type incidents.

As this proposal is located on a main arterial road, there requires added security via lighting to surround the property. Appropriate lighting should be installed around the premises to illuminate all areas, including hidden pockets, particularly access points for visitors/residents.

Clear signage, markings and lighting should be used along the footpath indicating the width of the footpath and safe walkway.

### ***Car Park Area***

- Consideration should be given to access control methods to resident carparks, by use of garage doors or other devices to reduce the likelihood of unauthorised access and possible damage.
- The proposed basement car park accommodates vehicles below street level, therefore, there is an increased risk for public safety, due to the seclusion of the area.
- The area needs to be marked clearly with good visibility for patrons entering and exiting the car park and provide good natural surveillance into the car park. Any opportunities for concealment located within the car park area in void spaces require being identified.
- Police recommend that each unit is allocated a lockable garage. A two-point lockable garage door should be installed for each garage.
- Clear signage and markings should indicate the pedestrian crossing areas within the car park.
- Resident only access should be restricted by the installation of security shutters on the residential basement levels. The timing of the shutter should only permit one vehicle at a time to enter/exit and should not be opened for any longer than necessary.
- Clear signage needs to be in place throughout the car park to indicate exit and emergency exit routes, no parking areas, direction to facilities and disabled car spaces to minimise the risk of antisocial behaviour and use of the car park for skateboarding, burnouts, illegal parking, etc.
- Skateboarders can adversely affect the reputation of areas if not controlled. As a result of this, residents could live in fear of their safety and no longer use certain areas of the basement parking facilities. Smooth, large concreted areas are enjoyed by skateboarders who generally enjoy smooth downhill descents. Skateboarders generally congregate in large numbers and some skateboarding communities within the Sutherland Shire are known to commit graffiti attacks. As a result, the area may be avoided by pedestrian traffic



and the risk of crime could rise, and may increase noise associated complaints. To reduce the area for the potential of skateboarders attributing to noise and crime, Police highly recommend the use of ribbed or waffle concrete, particularly on general parking areas and access/egress ramps.

- Many graffiti vandals favour porous building surfaces, as 'tags' are difficult to remove. Often a ghost image will remain even after cleaning. Easily damaged building materials may be less expensive to purchase initially, but their susceptibility to vandalism can make them a costly proposition in the long term, particularly in at-risk areas. This should be considered when selecting materials for construction. Police recommend painting walls with an anti-graffiti type commercial grade paint or substance.
- The Store Room area is identified as isolated. This area should be under CCTV monitoring, be well lit at all times and access should be restricted with a lock and key.
- Police recommend that the underground car parking areas be painted white to greatly assist reflecting light. Painted facilities not only look larger and more spacious than unpainted car parks, but can greatly reduce the number of lights required to illuminate the car park and on-going energy costs.
- Mirrors should be installed at the entry/exit of the car park to minimise the risk of collisions.

## **Additional Information**

### ***Warning Signs***

- Effective signage and/or directional signs should be installed to provide guidance to visitors in prohibited areas etc as well as areas of interest such as visitor, disabled parking, exit/entry areas, car parking etc.
- Warning Signs can assist in controlling activities and movements throughout the premises and car park.
- Install warning signs around the perimeter of the premises to warn possible intruders of what security treatments have been implemented to reduce opportunities for crime.
  - *Warning. Trespassers will be prosecuted.*
  - *Warning. This property is under electronic surveillance.*
  - *All property has been marked for Police identification.*

### ***Landscaping***

- Keeping trees & shrubs trimmed can reduce concealment opportunities and increase visibility within the property.

- Remove obstacles & rubbish from property boundaries, footpaths, driveways, car parks & buildings to restrict concealment & prevent offenders scaling the boundary fence.

### *Security Lighting*

- Install security lighting in and around your property, particularly over entry/exit points to create an even distribution of light with no glare, e.g. sensor lighting or floodlighting.
- Leave a limited amount of internal lighting on at night to enable patrolling Police, security or passing people to monitor activities within and around the premise.

### *Letter Boxes*

- Mail/identity theft costs the community millions of dollars annually and thieves thrive off residents leaving their letter box unlocked. It is highly recommended the letter boxes are constructed of quality material and be fitted with quality and robust locks.
- Letter boxes that are positioned on the outside of the complex are easily accessible by offenders using master keys and residents leaving letter boxes unlocked, therefore access to the complex letter boxes should be in a separate secure room located in the foyer area of the entrance.
- A security swipe card system or similar would ensure only resident access to this area would reduce mail theft. It is strongly recommended that CCTV cameras be installed to cover the entry into this area which will be an additional deterrent for thieves.

### *Building Design*

- Maintain clear sightlines between the street, neighboring property and the buildings.
- A minimum six-foot fence should be installed to reduce the likelihood of any intruder gaining entry from the rear or side of the yards.
- Limit the number of entry/exit points to restrict potential unauthorised access.
- Security screen mesh doors should be installed for each residential unit.
- Solid wooden doors should be installed for each external door within the Australian Standards for Fire rated doors.
- Security fencing and security gates should be installed at entry points with a video link intercom system.
- Unit occupant's mail collection area should be positioned in an area which restricts general public access. The area should contain secure and lockable letterboxes for the prevention of mail theft. Consultation in planning should be carried out with Australia Post, whereby a cyber-lock key system can be constructed and installed.

## *Surveillance Equipment*

- Police suggest the use of CCTV to monitor the common areas to ensure resident safety and reduce the likelihood of robbery/assault type incidents.
- Surveillance equipment can enhance the physical security of your premise and assist in the identification of people involved in anti-social or criminal behavior.
- CCTV should be installed in and around the property to maximise surveillance opportunities. Best practice is to minimize any 'blackspots' for potential hiding opportunities of offender/s.
- Digital or video technology should be used to record images from the cameras.
- Recording equipment should be installed in a lockable, restricted area where person/s cannot tamper with the equipment.
- Videotapes/DVD's need to be replaced quarterly to maintain quality images.
- Installed surveillance equipment should be maintained in working order and regularly tested.
- If the surveillance system is installed, use it.
- Strata members should be trained in the correct use of the system.
- Any surveillance system should be manufactured and installed by a qualified and reputable company and regularly function tested.
- Ensure that the requirements of the Surveillance, Telecommunications and Privacy and any other applicable Act are adhered to.

## *General*

- Computer passwords should be changed regularly to restrict access to avoid misuse by past and present members of staff.
- Emergency evacuation plans should be implemented and maintained by the strata to assist residents and Emergency Services in the event of an emergency. This plan should be prominently displayed.
- Residents should be suitably trained in evacuation procedures.
- Police strongly recommend the use of a reputable security company to monitor the property.

NSW Police hopes that by using the recommendations contained within this report, criminal activity will be reduced and the safety of residents or tenants and their property will be increased. However, it does not guarantee that all risks have been identified, or that the area evaluated will be free from criminal activity if its recommendations are followed.

NSW Police would like to thank you for your interest in improving the security of your property and in preventing crime in our community. Should you require any further

information please contact Senior Constable Mary Portelli Shade at Sutherland Shire Police Area Command on 9542 0899.

Regards,

A handwritten signature in black ink, appearing to read 'Mary', with a long horizontal flourish extending to the right.

Mary Portelli

Senior Constable

Crime Prevention Officer

Sutherland Shire Police Area Command



## CLAUSE 4.6 VARIATION STATEMENT

### MAXIMUM BUILDING HEIGHT – CL 4.3 OF SUTHERLAND SHIRE LEP 2015

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Demolition of existing structures and construction of a residential flat development comprising 107 apartments

678-682 Kingsway and 9-13 Pinnacle Street  
Miranda

Prepared for: Murdoch Projects Pty Ltd and Altis Property Partners Pty Ltd

REF: M180114

DATE: 13 February 2019







# Clause 4.6 Variation Statement – Height of Buildings (Clause 4.3)

## 1. INTRODUCTION

This Variation Statement has been prepared in accordance with Clause 4.6 of Sutherland Shire Local Environmental Planning Plan 2015 to accompany Development Application No. 18/0884. The application seeks consent to demolish the existing structures to enable the construction of two residential flat buildings at Nos. 678-682 Kingsway and 9-13 Pinnacle Street, Miranda ('the site').

## 2. PROPOSED VARIATION

Clause 4.3 of SSLEP 2015 prescribes the maximum building height for the site and refers to the *Height of Buildings Map*. The relevant map indicates that the maximum building height permitted at the subject site is 25m. Building height is defined as:

“ **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..”*

The maximum height control is a “development standard” to which exceptions can be granted pursuant to clause 4.6 of the LEP.

As indicated in the elevation included in Figure 1 below, the proposed roof slab of Building A breaches the maximum height limit. The roof slab height breach is a maximum of 500mm at the north eastern corner of Building A. The proposal also involves the encroachment into the building height by non-habitable structures on both Buildings A and B, being the lift cores, plantrooms, AC condensers and fire stairs. These structures encroach the maximum building height by 5.1m on Building A and 3.02m on Building B. Notably, the structures are setback from the edges of the buildings.

An exception is requested to the maximum building height standard (Building A – 5.1m and Building B – 3.02m) under Clause 4.6 of the SEPP.



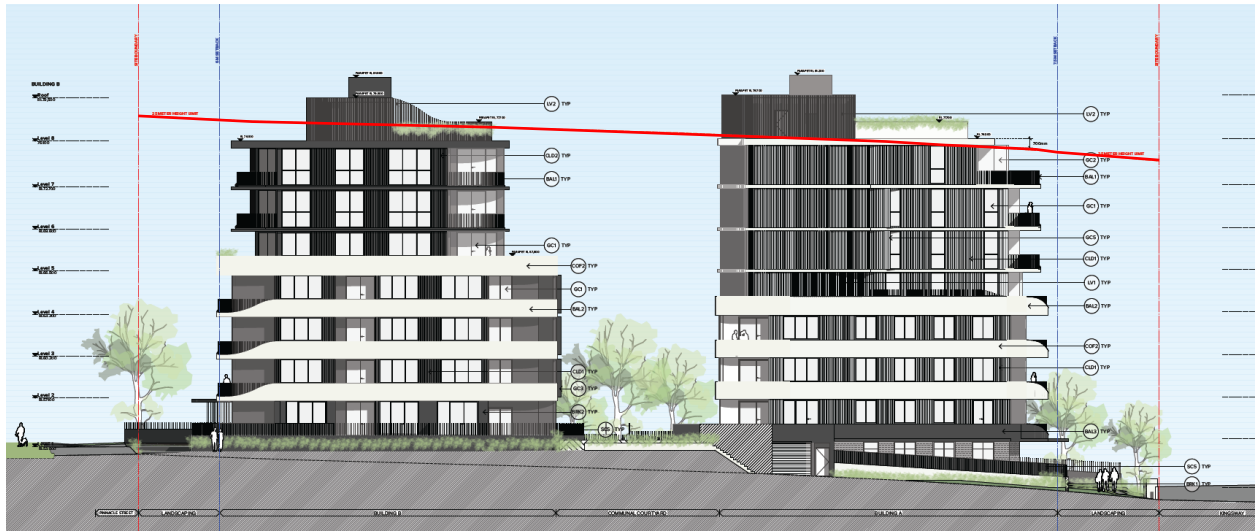


Figure 1 Eastern Elevation showing Building Height Exceedance (25m height line shown red)

### 3. OBJECTIVES AND PROVISIONS OF CLAUSE 4.6

The objectives and provisions of Clause 4.6 are as follows:

#### ***“4.6 Exceptions to development standards***

(1) *The objectives of this clause are as follows:*

- (a) *to provide an appropriate degree of flexibility in applying certain development standards to particular development,*
- (b) *to achieve better outcomes for and from development by allowing flexibility in particular circumstances.*

(2) *Development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.*

(3) *Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:*

- (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.*

(4) *Development consent must not be granted for development that contravenes a development standard unless:*

(a) *the consent authority is satisfied that:*

- (i) *the applicant’s written request has adequately addressed the matters required to be demonstrated by subclause (3), and*



- (ii) *the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and*
  - (b) *the concurrence of the Secretary has been obtained.*
- (5) *In deciding whether to grant concurrence, the Secretary must consider:*
  - (a) *whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and*
  - (b) *the public benefit of maintaining the development standard, and*
  - (c) *any other matters required to be taken into consideration by the Secretary before granting concurrence.*
- (6) *Development consent must not be granted under this clause for a subdivision of land in Zone RU1 Primary Production, Zone RU2 Rural Landscape, Zone RU3 Forestry, Zone RU4 Primary Production Small Lots, Zone RU6 Transition, Zone R5 Large Lot Residential, Zone E2 Environmental Conservation, Zone E3 Environmental Management or Zone E4 Environmental Living if:*
  - (a) *the subdivision will result in 2 or more lots of less than the minimum area specified for such lots by a development standard, or*
  - (b) *the subdivision will result in at least one lot that is less than 90% of the minimum area specified for such a lot by a development standard.*
- (7) *After determining a development application made pursuant to this clause, the consent authority must keep a record of its assessment of the factors required to be addressed in the applicant's written request referred to in subclause (3).*
- (8) *This clause does not allow development consent to be granted for development that would contravene any of the following:*
  - (a) *a development standard for complying development,*
  - (b) *a development standard that arises, under the regulations under the Act, in connection with a commitment set out in a BASIX certificate for a building to which State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 applies or for the land on which such a building is situated,*
  - (c) *clause 5.4."*

The development standards in clause 4.3 are not "expressly excluded" from the operation of clause 4.6.

Objective 1(a) of Clause 4.6 is satisfied by the discretion granted to a consent authority by virtue of Subclause 4.6(2) and the limitations to that discretion contained in subclauses (3) to (8). This submission will address the requirements of Subclauses 4.6(3) & (4) in order to demonstrate to the consent authority that the exception sought is consistent with the exercise of "an appropriate degree of flexibility" in applying the development standard, and is therefore consistent with objective 1(a). In this regard, the extent of the discretion afforded by Subclause 4.6(2) is not numerically limited, in contrast with the development standards referred to in, Subclause 4.6(6).



#### 4. THAT COMPLIANCE WITH THE DEVELOPMENT STANDARD IS UNREASONABLE OR UNNECESSARY IN THE CIRCUMSTANCES OF THE CASE (CLAUSE 4.6(3)(a))

In *Wehbe v Pittwater Council* (2007) NSW LEC 827 Preston CJ sets out ways of establishing that compliance with a development standard is unreasonable or unnecessary. This list is not exhaustive. It states, inter alia:

*"An objection under SEPP 1 may be well founded and be consistent with the aims set out in clause 3 of the Policy in a variety of ways. The most commonly invoked way is to establish that compliance with the development standard is unreasonable or unnecessary because the objectives of the development standard are achieved notwithstanding non-compliance with the standard."*

The judgement goes on to state that:

*"The rationale is that development standards are not ends in themselves but means of achieving ends. The ends are environmental or planning objectives. Compliance with a development standard is fixed as the usual means by which the relevant environmental or planning objective is able to be achieved. However, if the proposed development proffers an alternative means of achieving the objective strict compliance with the standard would be unnecessary (it is achieved anyway) and unreasonable (no purpose would be served)."*

Preston CJ in the judgement then expressed the view that there are 5 different ways in which an objection may be well founded and that approval of the objection may be consistent with the aims of the policy, as follows (with emphasis placed on number 1 for the purposes of this Clause 4.6 variation [our underline]):

1. The objectives of the standard are achieved notwithstanding non-compliance with the standard;
2. The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary;
3. The underlying object or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable;
4. The development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable;
5. The zoning of the particular land is unreasonable or inappropriate so that a development standard appropriate for that zoning is also unreasonable and unnecessary as it applies to the land and compliance with the standard that would be unreasonable or unnecessary. That is, the particular parcel of land should not have been included in the particular zone.

Relevantly, in *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118 (paragraph 16), Preston CJ makes reference to *Wehbe* and states:

*"...Although that was said in the context of an objection under State Environmental Planning Policy No 1 – Development Standards to compliance with a development standard, the discussion is equally applicable to a written request under cl 4.6 demonstrating that compliance with a development standard is unreasonable or unnecessary."*

Compliance with the maximum building height development standard is considered to be unreasonable and unnecessary as the objectives of that standard are achieved for the reasons set out in Section 7 of this statement. For the same reasons, the objection is considered to be well-founded as per the first method underlined above.

Notably, under Clause 4.6(4)(a)(ii) a consent authority must now be satisfied that the contravention of a development standard will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out. Clause 4.6(4)(a)(ii) is addressed in Section 6 below.

## 5. SUFFICIENT ENVIRONMENTAL PLANNING GROUNDS (CLAUSE 4.6(3)(b))

Having regard to Clause 4.6(3)(b) and the need to demonstrate that there are sufficient environmental planning grounds to justify contravening the development standard, the following planning grounds are submitted to justify contravening the maximum building height:

1. It is a superior outcome to provide AC condensers of the roofs of the buildings than locating them on balconies of units where they impact on street presentation and available private open space for residents. Additionally, placing units at ground level impacts on available deep soil landscaping, pathways and communal open space.
2. The proposal provides rooftop communal open space areas which provide high quality outdoor communal open space for residents having excellent solar access and regional views. The lift overrun and fire stairs are required to provide access to these spaces.
3. The non-complaint structures (lift overruns, fire stairs, plant rooms and AC condenser rooms are setback from the edges of the building (over 14m from the eastern and western boundaries). As the buildings are 7 - 8 storeys high, the structures are not highly visible from the surrounding streets and public domain and the impacts to the adjoining properties are negligible.
4. Except for this minor area of non-compliance for the lift overrun, fires stairs and plan rooms, the buildings themselves meet the 25m maximum height limit (with exception to an encroachment of 500mm to the roof slab of Building A). The result of this is that the vast majority of the bulk of the building sits well below the height limit.
5. The additional shadowing that will be caused by the height non-compliance is negligible, the minor portion of shadows for the subject roof structures over the height limit are insignificant and acceptable.
6. The breach will not result in any adverse impacts on neighbouring properties in relation to privacy as the portion of the building over the height limit will not enable overlooking.
7. Despite the minor non-compliance, the objectives of the building height clause have been achieved as demonstrated below.
8. It is considered that the height is massed across the development to ensure a positive streetscape outcome at each frontage. The non-compliance is limited to the rooftop terraces and lift overruns and provides a suitable transition to the adjoining properties likely to undergo a similar transition to higher density development in the future.
9. The variation to building height does not impact on views or outlook, the streetscape appearance is not adversely impacted by the variation and does not result in any adverse impacts to neighbouring properties beyond that which is otherwise permissible under the controls.
10. Lowering the buildings below natural ground level would result in poor solar amenity to ground floor units, accessibility non-compliance and poor streetscape presentation.
11. To insist on strict compliance would thwart and preclude the redevelopment of the land to a reasonable standard, and not allow the site to reach its full development potential, and reduce the availability of affordable housing in the area.
12. The proposed development achieves the objects in Section 1.3 of the EPA Act, specifically:
  - a. The proposal will deliver affordable housing (1.3d);
  - b. The proposal promotes the orderly and economic use and development of land through the redevelopment of an underutilised site for residential uses(1.3c);
  - c. The proposed developed promotes good design and amenity of the built environment through a well considered design which is responsive to its setting and context.

It is noted that in *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118, Preston CJ clarified what items a Clause 4.6 does and does not need to satisfy. Importantly, there does not need to be a "better" planning outcome:

86. *The second way is in an error because it finds no basis in cl 4.6. Clause 4.6 does not directly or indirectly establish a test that the non-compliant development should have a neutral or beneficial effect relative to a compliant development. This test is also inconsistent with objective (d) of the height development standard in cl 4.3(1) of minimising the impacts of new development on adjoining or nearby properties from disruption of views or visual intrusion. Compliance with the height development standard might be unreasonable or unnecessary if the non-compliant development achieves this objective of minimising view loss or visual intrusion. It is not necessary, contrary to what the Commissioner held, that the non-compliant development have no view loss or less view loss than a compliant development.*

87. *The second matter was in cl 4.6(3)(b). I find that the Commissioner applied the wrong test in considering this matter by requiring that the development, which contravened the height development standard, result in a "better environmental planning outcome for the site" relative to a development that complies with the height development standard (in [141] and [142] of the judgment). Clause 4.6 does not directly or indirectly establish this test. The requirement in cl 4.6(3)(b) is that there are sufficient environmental planning grounds to justify contravening the development standard, not that the development that contravenes the development standard have a better environmental planning outcome than a development that complies with the development standard.*

As outlined above, it is considered that in many respects, the proposal will provide for a better planning outcome than a strictly compliant development. At the very least, there are sufficient environmental planning grounds to justify contravening the development standard.

## 6. CLAUSE 4.6(4)(a)

Preston CJ in *Initial Action Pty Ltd v Woollahra Municipal Council* details how Clause 4.6(4)(a) needs to be addressed (paragraphs 15 and 26 are rephrased below):

The first opinion of satisfaction, in clause 4.6(4)(a)(i), is that a written request seeking to justify the contravention of the development standard has adequately addressed the matters required to be demonstrated by clause 4.6(3). These matters are twofold: first, that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case (clause 4.6(3)(a)) and, secondly, that there are sufficient environmental planning grounds to justify contravening the development standard (clause 4.6(3)(b)). This written request has addressed Clause 4.6(3)(a) in Section 4 above (and furthermore in terms of meeting the objectives of the development standard, this is addressed in 7a below). Clause 4.6(3)(b) is addressed in Section 5 above.

The second opinion of satisfaction, in clause 4.6(4)(a)(ii), is that the proposed development will be in the public interest because it is consistent with the objectives of the particular development standard that is contravened and the objectives for development for the zone in which the development is proposed to be carried out. The second opinion of satisfaction under cl 4.6(4)(a)(ii) differs from the first opinion of satisfaction under clause 4.6(4)(a)(i) in that the consent authority, or the Court on appeal, must be directly satisfied about the matter in clause 4.6(4)(a)(ii), not indirectly satisfied that the applicant's written request has adequately addressed the matter in clause 4.6(4)(a)(ii). The matters in Clause 4.6(4)(a)(ii) are addressed in Section 7 below.





**7. THE PROPOSED DEVELOPMENT WILL BE IN THE PUBLIC INTEREST BECAUSE IT IS CONSISTENT WITH THE OBJECTIVES OF THE PARTICULAR STANDARD AND THE OBJECTIVES FOR DEVELOPMENT WITHIN THE ZONE IN WHICH THE DEVELOPMENT IS PROPOSED TO BE CARRIED OUT (CLAUSE 4.6(4)(a)(ii))**

**7a. Objectives of Development Standard**

The objectives of Clause 4.3 are as follows:

The objectives of clause 4.3 height of buildings 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 (e) and (f) are not relevant to the proposal.

In order to address the requirements of subclause 4.6(4)(a)(ii), the relevant objectives of clause 4.3 are addressed in turn below.

**OBJECTIVE (A)**

Objective (a) refers to being “compatible” with adjoining development. It is considered that “compatible” does not promote “sameness” in built form but rather requires that development fits comfortably with its urban context. Of relevance to this assessment are the comments of Roseth SC in *Project Venture Developments Pty Ltd v Pittwater Council* [2005] NSWLEC 191:

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

The siting and scale of the proposed development has been designed to distribute building mass in a manner that best minimises impact on adjoining development and achieves good levels of solar access and separation from neighbouring dwellings. The overall building heights will be perceived as 8 storeys (Building A) and 7 storeys (Building B) which is the typical type and scale of building emerging in the area and anticipated by the building height control. It will therefore be a built form which is reasonably anticipated in the locality.





The proposed development is in line with the desired future character of the locality and provides high quality residential accommodation that responds to the site topography. The desired future character can also be gleaned from the suite of built form controls that apply under the LEP and DCP 2015 and from the zone objectives. In this regard, the zone objectives promote the provision dwellings in a high density residential area. The proposed development is a high quality, well designed scheme sited within in a landscaped setting and is thus consistent with the vision for development in the R4 zone.

Accordingly, it is considered that the scale of the buildings is compatible with the desired future character of the locality and the site context. The height breach does not offend this compatibility in any noticeable way. The proposal therefore satisfies Objective (a).

**OBJECTIVE (B):**

Objective (b) seeks to allow reasonable levels of solar access to all buildings and the public domain.

In terms of daylight access to buildings and the public domain, the proposed height non-compliance does not contribute towards any significant additional overshadowing of adjoining development. The site has a north-south orientation and as such, the majority of shadows fall within the site and to the south, south-west and south-east. The shadow diagrams provided with the plans demonstrate compliance with the DCP controls for solar access. The small portion of the buildings which are non-compliant with the height control does not result in overshadowing of surrounding residential properties beyond a compliant building given the site orientation.

**OBJECTIVE (C):**

Objective (c) seeks to protect the views, privacy and solar access and visual impact of neighbours. In terms of views, the height of the building will not result in any significant additional view loss compared with a compliant building due to the location of height breach located centrally within the buildings.

In terms of privacy, the non-compliance will not have any additional impacts on adjoining properties as the bulk of the non-compliance relates to the lift overruns, plant rooms and fire stairs. The communal open space areas on each rooftop are oriented to the Kingsway and Pinnacle Street and contain landscaped planter edges to reduce overlooking to the sides.

The proposal will not compromise the use and enjoyment of neighbouring properties. The examination of the proposal in this report demonstrates that there will be no unreasonable detrimental impact to privacy and daylight access for neighbouring properties as a result of the non-compliant part of the building, nor will it be noticeable from any public space.

In relation to solar access, this has been addressed in relation to Objective (b) above.

**OBJECTIVE (D):**

Objective (d) seeks to ensure the visual impact of buildings is minimised. Matters of visual bulk have largely been addressed in relation to Objective (a). In essence, it is considered that the architectural treatment of the buildings in terms of setbacks, materials and viewing points from which the non-compliances would be seen, visual impacts will be minimal. The proposed development provides for a floor space ratio that complies with the maximum allowed under the SEPP and provides setbacks to side boundaries that generally comply with the ADG controls. Furthermore, the scale of the buildings are consistent with emerging built form in the Precinct. Accordingly, the proposal satisfies Objective (d).

The proposed development is therefore consistent with the objectives for maximum height, despite the numeric non-compliance.





## 7b. Objectives of the Zone

Clause 4.6(4)(a)(ii) also requires that the consent authority be satisfied that the development is in the public interest because it is consistent with relevant zone objectives. The objectives of Zone R4 are as follows:

- “
- *To provide for the housing needs of the community within a high density residential environment.*
  - *To provide a variety of housing types within a high density residential environment.*
  - *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*
  - *To encourage the supply of housing that meets the needs of the Sutherland Shire's population, particularly housing for older people and people with a disability.*
  - *To promote a high standard of urban design and residential amenity in a high quality landscape setting that is compatible with natural features.*
  - *To minimise the fragmentation of land that would prevent the achievement of high density residential development.”*

The proposed development is demonstrably consistent with the relevant zone objectives in that it provides a mix of Studio, 1, 2 and 3 bedroom apartments, including the provision of 56 affordable rental units, within a high quality development envisaged by the controls for the R4 High Density Residential zone.

For these reasons the development proposal meets the objectives for development in Zone R4.

The height variation is not antipathetic to the objectives for the zone and for that reason the proposed variation is acceptable.

## 8. THE CONCURRENCE OF THE SECRETARY HAS BEEN OBTAINED (CLAUSE 4.6(4)(b))

The second precondition in cl 4.6(4) that must be satisfied before the consent authority can exercise the power to grant development consent for development that contravenes the development standard is that the concurrence of the Secretary (of the Department of Planning and the Environment) has been obtained (cl 4.6(4)(b)). Under cl 64 of the Environmental Planning and Assessment Regulation 2000, the Secretary has given written notice dated 21 February 2018, attached to the Planning Circular PS 18-003 issued on 21 February 2018, to each consent authority, that it may assume the Secretary's concurrence for exceptions to development standards in respect of applications made under cl 4.6, subject to the conditions in the table in the notice.

## 9. WHETHER CONTRAVENTION OF THE DEVELOPMENT STANDARD RAISES ANY MATTER OF SIGNIFICANCE FOR STATE OR REGIONAL ENVIRONMENTAL PLANNING (CLAUSE 4.6(5)(a))

Contravention of the maximum height development standard proposed by this application does not raise any matter of significance for State or regional environmental planning.

## 10. THE PUBLIC BENEFIT OF MAINTAINING THE DEVELOPMENT STANDARD (CLAUSE 4.6(5)(b))

As detailed in this submission there are no unreasonable impacts that will result from the proposed variation to the maximum building height. As such there is no public benefit in maintaining strict compliance with the development standard. Whilst the proposed buildings (primarily the roof structures) exceeds the maximum permitted on the site, the proposed development is consistent with the objectives of the development standard and the objectives for development of the zone in which the development is proposed to be carried out. It is the proposed development's consistency with the objectives of the development standard and the objectives of the zone that make the proposed development in the public interest.



## 11. CONCLUSION

Having regard to all of the above, it is our opinion that compliance with the maximum height development standard is unreasonable and unnecessary in the circumstances of this case as the development meets the objectives of that standard and the zone objectives. The proposal has also demonstrated sufficient environmental planning grounds to support the breach.

Therefore, insistence upon strict compliance with that standard would be unreasonable. On this basis, the requirements of Clause 4.6(3) are satisfied and the variation supported.

