



## SUTHERLAND SHIRE COUNCIL ASSESSMENT REPORT

<b>Panel Reference</b>	PPSSSH-3
<b>DA Number</b>	19/0472
<b>LGA</b>	Sutherland Shire
<b>Proposed Development</b>	Demolition and excavation of existing Engadine Tavern carpark and construction of a residential flat building containing 64 units above a shared basement carpark comprising 80 residential spaces and 70 spaces to be used for the adjacent Engadine Tavern
<b>Street Address</b>	5 Preston Avenue, Engadine
<b>Applicant</b>	George Ajaka White and Partners
<b>Owner</b>	Engadine Tavern Development Sub Trust Sutherland Shire Council (partial land owner until land swap approved as part of DA19/0638 is enacted which will facilitate development subject of this application)
<b>Date of DA lodgement</b>	27 June 2019
<b>Number of Submissions</b>	Seven submissions from five properties during 1 <sup>st</sup> notification period Five submissions from five properties during 2 <sup>nd</sup> notification period
<b>Recommendation</b>	Approval
<b>Regional Development Criteria (Schedule 7 of the SEPP (State and Regional Development) 2011)</b>	The development involves Council land and has a capital investment of more than \$5 million.
<b>List of all relevant s4.15(1)(a) matters</b>	<ul style="list-style-type: none"> <li>• State Environmental Planning Policy (State and Regional Development) 2011</li> <li>• State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004.</li> <li>• State Environmental Planning Policy No. 65 – Design Quality of Residential Flat Development (SEPP 65).</li> <li>• Sutherland Shire Local Environmental Plan 2015 (SSLEP 2015)</li> <li>• Sutherland Shire Development Control Plan 2015 (SSDCP 2015)</li> <li>• Section 7.11 Development Contribution Plan 2016</li> </ul>
<b>List all documents submitted with this report for the Panel's consideration</b>	<ul style="list-style-type: none"> <li>• Recommended conditions of consent – Appendix A</li> <li>• Pre-DA letter (PAD18/0091) – Appendix B</li> <li>• List of public submissions – Appendix C</li> <li>• SEPP 65 Compliance Table – Appendix D</li> <li>• ADG Compliance Table – Appendix E</li> <li>• DCP Compliance Table – Appendix F</li> <li>• Clause 4.6 written request to vary floor space ratio development standard – Appendix G</li> <li>• View Loss Photos – Appendix H</li> <li>• Architectural plans, stormwater plans and supporting documentation – Appendix I</li> </ul>
<b>Report prepared by</b>	Lauren Franks - Environmental Assessment Officer Sutherland Shire Council
<b>Report date</b>	4 June 2020

**Summary of s4.15 matters**

Have all recommendations in relation to relevant s4.15 matters been summarised in the Executive Summary of the assessment report? **Yes**

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**Legislative clauses requiring consent authority satisfaction**

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

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

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**Clause 4.6 Exceptions to development standards**

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

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**Special Infrastructure Contributions**

Does the DA require Special Infrastructure Contributions conditions (S7.24)? **No**

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

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**Conditions**

Have draft conditions been provided to the applicant for comment? **No**

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

## REPORT SUMMARY

### REASON FOR THE REPORT

State Environmental Planning Policy (State and Regional Development) 2011 requires this application to be referred to the Sydney South Planning Panel (SSPP) as the development is proposed partly on Council land and has a capital investment value of more than \$5 million. The application submitted to Council nominates the value of the project as \$18,100,000.

### PROPOSAL

The application is for demolition and excavation of the existing Engadine Tavern carpark and construction of a residential flat building containing 64 units above a shared basement carpark comprising 80 residential spaces and 70 spaces to be used for the adjacent Engadine Tavern.

### THE SITE

The subject site is located on the south-western edge of the Engadine Town Centre on a corner allotment fronting Preston Avenue and Geebung Lane. The site is an irregular shaped lot that slopes moderately to the eastern corner of the site. The site does not contain any natural features due to its present use as a carpark.

### MAJOR ISSUES

The main issues identified are as follows:

- Isolation of No. 7 Preston Avenue;
- Distribution of building bulk across the site and setbacks; and
- Development's relationship with surrounding properties.

### ASSESSMENT OFFICER'S RECOMMENDATION

#### THAT:

- Pursuant to the provisions of Clause 4.6 of Sutherland Shire Local Environmental Plan 2015, the written submission in relation to the variation to Clause 4.4 Floor Space Ratio satisfies the relevant provisions of Clause 4.6 and is therefore supported. It is recommended that the provisions of Clause 4.6 be invoked and that the Clause 4.4 Floor Space Ratio development standard (2:1) be varied to 2.78:1, in respect to this application.
- That Development Application No. DA19/0472 for the demolition and excavation of existing tavern carpark and construction of a residential flat development containing 64 units above a shared basement carpark comprising 80 residential spaces and 70 spaces to be used for the adjacent Engadine Tavern at Lot 6 DP 232490 5 Preston Avenue, Engadine be approved, subject to the conditions contained in **Appendix A** of the report.

## ASSESSMENT OFFICER'S COMMENTARY

### 1.0 DESCRIPTION OF PROPOSAL

The proposal is for the demolition of the existing bitumen carpark and construction of a residential flat building containing 64 units. Specifically, the development will comprise:

- A unit mix of 1 x studio, 18 x 1 bedroom units, 38 x 2 bedroom units and 7 x 3 bedroom (including the provision of 12 adaptable units and 6 livable units);
- 149 car spaces included 80 residential car spaces (20 accessible car spaces) and 70 Tavern parking spaces (2 accessible spaces);
- Provision of common open space between Building 'A' and Building 'B' and wrapping partially along the southern side of Building 'A';
- Stormwater will drain towards an existing pit within Geebung Lane which will be upgraded;
- Conversion of Geebung Lane from a two-way road to a one-way road;
- Vehicular access from Geebung Lane to 3 levels of basement car parking; and
- Provision of a loading bay capable of accommodating a HRV sized truck to facilitate waste collection.

A separate development application (DA19/0638) was approved on 21 April 2020 by the Sutherland Shire Local Planning Panel (SSLPP) for the boundary adjustment of three existing lots to facilitate a land swap, including the consolidation of the proposed road closure into the new Lot 12. A voluntary planning agreement (VPA) forms part of DA19/0638's approval, with a condition of this DA requiring approval of DA19/0472 to occur prior to enacting the consent of DA19/0638. The following plan extracts are provided to put this into context.

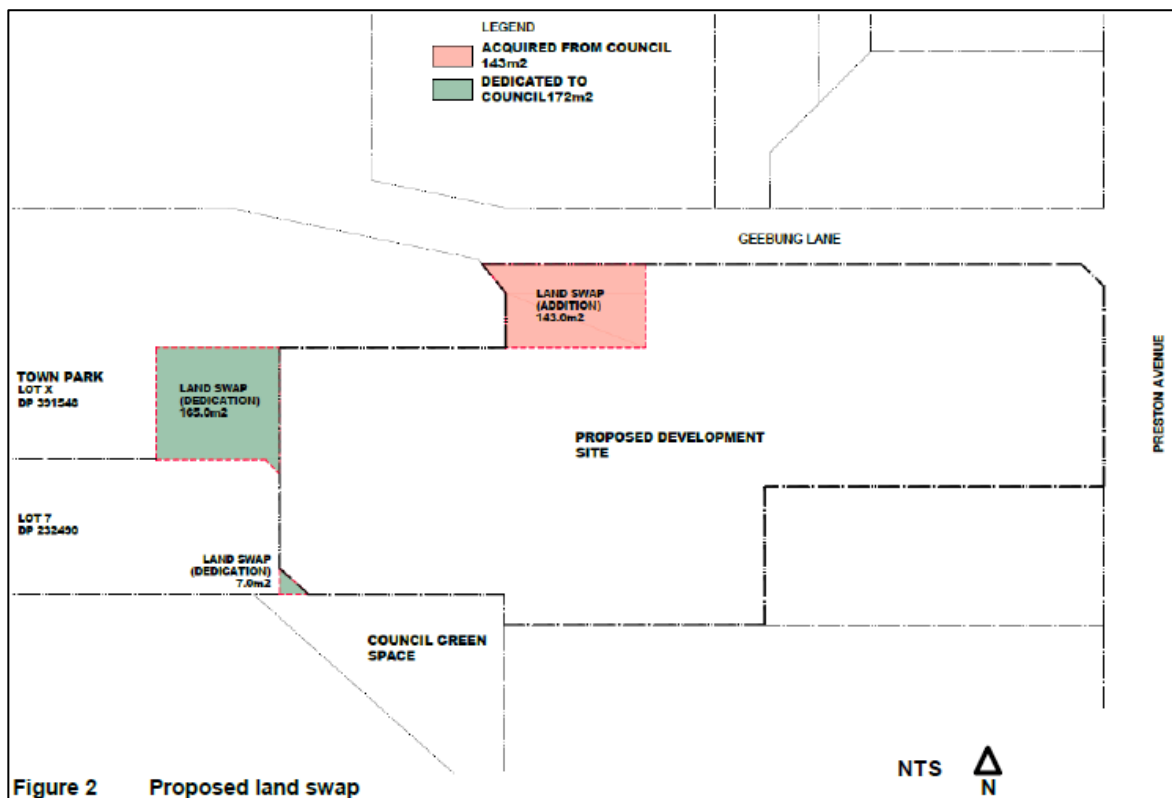


Figure 1: Site Plan of boundary adjustment and land swap approved as part of DA19/0638.

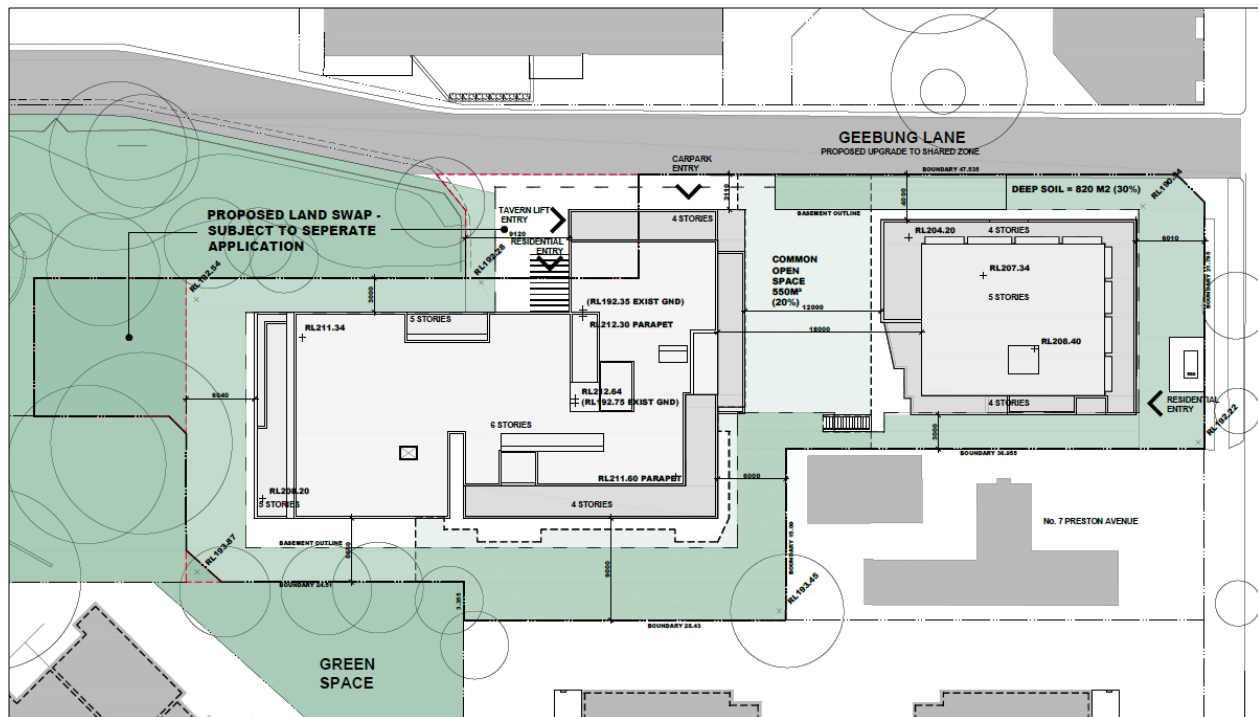


Figure 2: Site Plan of proposed residential flat building at 5 Preston Avenue undertaken once conditions of consent for DA19/0638 are completed.

## 2.0 SITE DESCRIPTION AND LOCALITY

The site comprises one parcel of land identified as Lot 6 in DP 232490 and is located on the south-western edge of the Engadine Town Centre on a corner allotment fronting Preston Avenue and Geebung Lane. The site is an irregular shaped lot that has a moderate fall of approximately 3.1m from the south-western corner to the north-eastern corner of the site. In its current form, the site has an area of 2,692.2m<sup>2</sup> and does not contain any natural features due to its present use as a carpark which is completely covered with bitumen.

Adjoining the rear south-eastern corner of the site is No. 7 Preston Avenue which has a zoning, permissible floor space ratio and building height identical to that of the subject site under the Sutherland Shire Local Environmental Plan 2015 (SSLEP 2015). No. 7 Preston Avenue is developed with a single dwelling (leased for short stay tourist and visitor accommodation). Where the site adjoins No. 9-11 Preston Avenue along the centre of the southern boundary, the site adjoins land zoned R4 High Density Residential which has a maximum floor space ratio of 1.2:1 and building height of 16m. No. 9-11 Preston Avenue is developed with a three storey residential flat building containing 12 units. Adjoining approximately one-third of the site's western portion (extending along the western and wrapping around a portion of the northern and southern boundary) is No. 1058-1062 Old Princes Highway which is zoned RE1 Public Recreation. A playground and accompanying seating exists on this site.

An aerial photo showing the location of the site and surrounds is shown below.



Figure 3: Aerial photo of subject site and surrounds.

### 3.0 BACKGROUND

A history of the development proposal is as follows:

- A pre-application discussion (PAD) was held on the 8 November 2018 regarding this development. As a result of this a formal letter of response was issued by Council dated 13 December 2018. A copy of the pre-DA letter is included at **Appendix B**, with the main, unresolved and contentious aspects of the development noted as follows:
  - **Site Isolation:** Details of the negotiations between adjacent properties must be submitted to Council and include evidence of a reasonable offer being made for No. 7 Preston Avenue in accordance with independent property valuation reports.
  - **Permissibility:** The 'townhouse' style component of the development resembles multi dwelling housing which is prohibited in the zone. Further, Council's decision to zone the land B3 Commercial Core and afford the site a substantial uplift in building height and FSR has occurred with an expectation that commercial development is provided at the ground floor, distributing a larger amount of gross floor area across the ground floor plate due to reduced setbacks. This would reduce the level of bulk distributed to upper levels.
  - **Built Form:** Preston Avenue is heavily aligned with three storey residential flat buildings and interspersed with four storey residential flat buildings. Extending the two storey built form of 'Building B' to three storeys with a rooftop communal open space on the fourth storey should be explored. However, care should be taken with regard to shadow impacts to No. 7 Preston Avenue.
- The current application was submitted on 27 June 2019.
- The application was placed on exhibition, with the last date for public submissions being 09 August 2019.



- Council's officer issued a letter on 25 October 2019 requesting that issues pertaining to isolation of No. 7 Preston Avenue, floor to floor separation, building setbacks, solar access, cross-ventilation, privacy, livable housing, storage, lifts, cut / fill, size and layout of units and balconies, streetscape, waste, communal open space design, building services and landscaping design be addressed.
- A meeting was held with the Applicant to discuss the issues in the letter on 22 November 2019.
- Amended plans were lodged on 24 December 2019, with feedback provided on 11 February 2020.
- A final set of amended plans and additional information were lodged 27 April 2020 and 11 May 2020.

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

In relation to the Statement of Environmental Effects, plans and other documentation submitted with the application or after a request from Council, the applicant has provided adequate information to Council to enable an assessment of this application, including a written request to vary the Floor Space Ratio development standard under Clause 4.6 of Sutherland Shire Local Environmental Plan 2015.

#### **5.0 PUBLIC PARTICIPATION**

The application was advertised in accordance with the provisions of Chapter 42 of Sutherland Shire Development Control Plan 2015 (SSDCP 2015).

Council notified adjoining or affected owners of the proposal and seven submissions from five properties were received during the first notification period. A table of the issues raised by each objector is contained within **Appendix C**.

Due to the substantial changes made to the design, particularly in relation to Building 'B' and setbacks to Building 'A', adjoining or affected owners were re-notified of the proposal. Five submissions were received during the second notification which are also listed in **Appendix C**.

The issues raised in these submissions are as follows:

##### Issues raised during the 1<sup>st</sup> notification period only

##### **Issue 1: Sewerage**

*Comment:* Concern is raised that the existing sewerage leaks on Preston Avenue will be exacerbated. Sydney Water should be notified of any existing sewerage leaks. Nevertheless, it will be a condition of consent that that proposal obtain a Compliance Certificate from Sydney Water to allow their assessment of whether sewer, water and stormwater mains will be affected by any part of the development.

##### **Issue 2: Emergency Vehicle Accessibility**

*Comment:* Concern is raised that emergency vehicles from the fire station at No. 8 Preston Avenue will be adversely impacted. There are no changes to the Preston Avenue roadway and Council's Traffic Engineers have considered the increased traffic movement within the vicinity of the site to be acceptable.

##### **Issue 3: Landscaping**

*Comment:* Concern is raised that the proposed plant species and landscape design does not reflect the Australian native bush character of Engadine. Council's Landscape Architect has brought this to the applicant's attention and the Landscape Plan has been amended to reflect inclusion of species appropriate for the locality. Where there have been opportunities to further improve the volume and variety of native species in the design, this has been addressed via conditions of consent.

Request is also made for the boundary fencing shared with No. 9-11 Preston Avenue to be replaced at the conclusion of the construction phase with the cost borne by the applicant. Replacement of boundary fencing is a civil matter under the Dividing Fences Act 1991. The applicant will be informed of this request.

#### Issues raised during the 1<sup>st</sup> and 2<sup>nd</sup> notification period

##### **Issue 4: Site Isolation**

*Comment:* No. 7 Preston Ave have expressed concern that their property will become isolated as a consequence of the development. Refer Section 8.1 of report for discussion.

##### **Issue 5: Privacy**

*Comment:* Concern is raised that proposed upper levels will overlook balconies and windows within No. 9-11 Preston Avenue and the backyard of No. 7 Preston Avenue. Refer Section 8.3 of report for discussion.

##### **Issue 6: Overshadowing**

*Comment:* Concern is raised that the development will reduce sunlight to No. 7 and No. 9-11 Preston Avenue and No. 1064 Old Princes Highway, allowing mould to grow in units. Refer Section 8.4 of report for discussion.

##### **Issue 7: View Loss**

*Comment:* This issue was raised by the body corporate of No. 9-11 Preston Avenue. The body corporate was asked to confirm which specific units are concerned with view loss. A submission of photos from various units then followed identifying their existing views. Refer Section 8.16 of report for discussion.

##### **Issue 8: Traffic and Parking**

*Comment:* This concern relates to increased traffic congestion within surrounding streets, inadequate parking for visitors, failure of the Traffic Report to adequately address potential traffic and parking impacts and lack of provision of car wash bays. These issues are discussed within Section 8.8 of the report.

##### **Issue 9: Pedestrian Safety**

*Comment:* This concern arises from increased traffic movement in the area and a change to the functionality of Geebung Lane. No Council verge occurs between properties and the roadway along Geebung Lane. Council's Public Asset Engineer has advised that to mitigate against the inability to force public footpaths across private land along Geebung Lane, Council's Public Domain Design Manual has identified Geebung Lane as converting to a shared zone. This will ensure the safe movement of pedestrians around the site and is supported by Council's Traffic Engineer. The conversion of Geebung Lane to a one-way road will



also assist in the safe movement of pedestrians and will be an improvement to the existing movement of pedestrians along Geebung Lane.

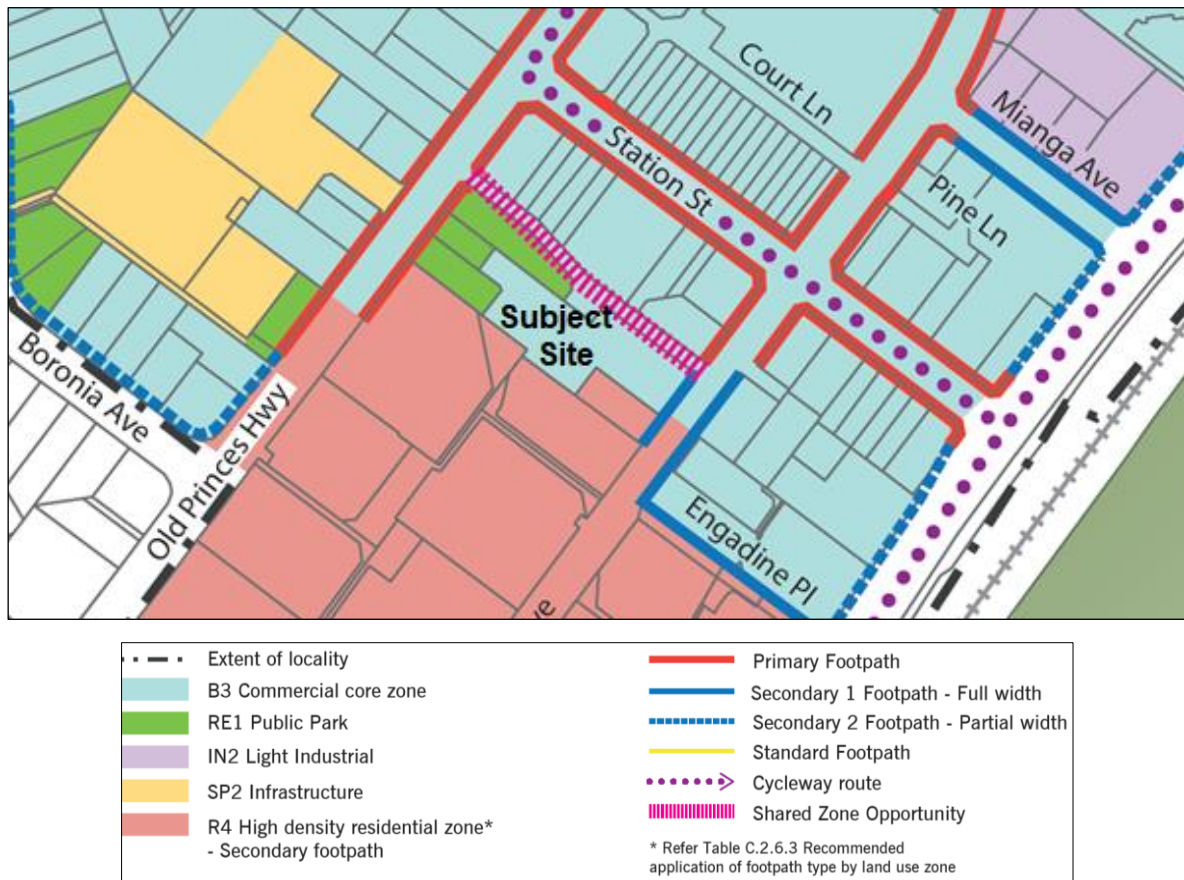


Figure 4: Plan extract from Sutherland Shire's Public Domain Design Manual

### Issue 10: Property Damage

*Comment:* A condition of consent has been imposed requiring the applicant to obtain a dilapidation report and geotechnical report prior to issue of a Construction Certificate for adjacent properties at No. 1058-1062 Old Princes Highway, 1064-1070 Old Princes Highway, 7 Preston Avenue, 9-11 Preston Avenue, 1 Preston Avenue and 42-50 Station Street.

### Issue 11: Building Height

*Comment:* Concern is raised that the development's height is excessive and the proposed height does not meet the objectives of Clause 4.3 Height of Buildings within the SSLEP 2015. The proposal complies with the overall height limit of 20m. This provides strong grounds for the proposal to adhere to the objectives of Clause 4.3. The proposal has undergone considerable amendment to relieve the developments bulk by providing separation between buildings on the site and a substantial landscape buffer where the site adjoins residential properties. The applicant has continually modified the proposal to relieve the development's visual bulk and improve the level of sunlight gained to No. 7 and 9-11 Preston Avenue to ensure the controls and objectives are compliant with the ADG and SSDCP 2015.

**Issue 12: Noise**

*Comment:* Concern is raised that noise occurring from 64 dwellings on the site will disrupt the amenity of surrounding residential development – specifically, noise from air conditioning, mechanical ventilation and other plant areas. It must be acknowledged that conversion of a site from an at-grade car park to a 64 unit residential flat building will result in a change in noise emanating from the site. However, noise from the use of units will be residential in nature, consistent with adjoining residential development. With regards to noise from air conditioning or mechanical plants, a condition of consent has been imposed that restricts the sound pressure level of these devices.

**Issue 12: Bulk and Scale**

*Comment:* Concern is raised that the overall size of the development is excessive, not in keeping with character of the locality and fails to meet urban design principles detailed within Clause 6.16 and Clause 6.17 of the SSLEP 2015. The development complies with the building height control. When excluding the basement (which is concealed below ground), the development has a compliant FSR and bulk associated with the portion of the development above ground which has been distributed to ensure setback and building separation controls are generally compliant. The aims of these controls have been satisfactorily achieved. Refer Section 8.3 of report for discussion on the development's compliance with Clause 6.16 and 6.17 of the SSLEP 2015.

**Issue 13: Floor Space Ratio (FSR)**

*Comment:* Objection is raised to any variation to the maximum permitted FSR of 2:1 under the SSLEP 2015. Refer Section 8.2 of report for discussion.

**Issue 14: Building Separation / Setbacks**

*Comment:* This concern relates to building separation and setbacks between the site and No. 7 Preston Avenue and No. 9-11 Preston Avenue. Refer Section 8.3 of report for discussion.

**Issue 15: Inadequate width Geebung Lane**

*Comment:* Concern is raised that Geebung Lane is too narrow to accommodate needs of proposed development. The proposal seeks to convert Geebung Lane to a one way road. Council's Traffic Engineer, Public Assets Engineer and the RMS are each supportive of this modification and have not raised concerns with the width of Geebung Lane.

**Issue 16: Construction Phase**

*Comment:* Disruption to the amenity of surrounding residents was raised as a concern and request was made to restrict hours of construction to 7:30am to 4:30pm weekdays only. It is acknowledged that during the construction phase, disruption to the amenity of surrounding properties may occur. The disruption caused during the construction of the development will be temporary and mitigated through conditions of consent relating to noise. To impose a stricter set of hours permitted for construction to occur would lengthen the project's timeframe, putting pressure on the area and workers for longer and would be unfair given all other development approvals are subject to the hours of 7am to 6pm Monday to Friday and 8am to 3pm Saturdays. No work is permitted on Sundays and Public Holidays.

## Issues raised during the 2<sup>nd</sup> notification period only

### **Issue 17: Vehicle Sightlines**

*Comment:* This concern is in relation to the use of No. 7 Preston Avenue's driveway which aligns the boundary shared with subject site. Council's Development Engineer has imposed a condition that limits the height of the boundary fence to a maximum 1.2m for the first 2m within the site should it be replaced. Council's Landscape Architect has also reviewed the Landscape Plan and imposed a condition to ensure the species proposed within the vicinity of this area are low level and do not have the potential to create an obstruction for a reversing vehicles from No. 7 Preston Avenue.

### **Issue 18: Replacement of Boundary Fencing**

*Comment:* Request is made for boundary fencing with No. 9-11 Preston Avenue to be replaced at the completion of the development at a cost borne by the applicant. Replacement of boundary fencing is a civil matter under the Dividing Fences Act 1991. The applicant has been made aware of this request. Typically, replacement of boundary fencing at the expense of the developer is normal for major development.

### **Issue 19: Property Value**

*Comment:* Development proponents have a right, under the provisions of the Environmental Planning and Assessment Act, 1979, to apply for developments that achieve the aim of orderly and economic use and development of land. Concerns about possible decreases in surrounding property values do not constitute a reasonable ground for refusal. This position has been reinforced by planning and development decisions in the Land and Environment Court.

### **Issue 20: Non-compliant with SEPP 65, ADG, SSLEP 2015 & SSDCP 2015**

*Comment:* An assessment of the proposal against these environmental planning instruments appears within appendices of this report. Non-compliances are discussed within Section 8.

### **Information Session**

An Information Session was held on 31 July 2019 and 7 people attended. A meeting summary was issued 5 August 2019 with responses to questions and concerns provided.

### **Revised Plans**

The applicant lodged a final set of revised plans on 26 March 2020. In accordance with the requirements of SSDCP2015 these plans were publicly exhibited in the same way as the original application. Some modifications have occurred to the plans since public exhibition that increase the setback achieved to levels 4 and 5 within Building 'A' when measured to the boundary shared with No. 7 Preston Avenue.

### **Submission Review Panel (SRP)**

At the conclusion of the first notification period, the submissions received were discussed with the Sydney South Planning Panel in a briefing meeting. These submissions were passed onto the applicant, who were requested to respond and address the concerns raised. As there were considerable aspects of the design that required the applicant's attention, it was decided that referral to Council's SRP was not required at that time.

As the design evolved, re-notification occurred to gauge an understanding of surrounding property's response to the amendments. The submissions raised were discussed and were found to be issues that could be addressed via design changes or conditions of consent where appropriate.

## **6.0 STATUTORY CONSIDERATIONS**

The subject land is located within Zone B3 Commercial Core pursuant to the provisions of Sutherland Shire Local Environmental Plan 2015. The proposed development, being a residential flat building, is a permissible land use within the zone with development consent from Council.

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

- State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004.
- State Environmental Planning Policy (State and Regional Development) 2011.
- State Environmental Planning Policy No. 65 – Design Quality of Residential Flat Development (SEPP 65).
- State Environmental Planning Policy (Infrastructure) 2007 (Infrastructure SEPP).
- Sutherland Shire Local Environmental Plan 2015 (SSLEP 2015).
- Sutherland Shire Development Control Plan 2015 (SSDCP 2015).

### **Section 7.11 and Section 7.12**

- Section 7.11 2016 Contribution Plan – Engadine Centre Precinct.

## **6.1 State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004**

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

## **6.2 State Environmental Planning Policy (State and Regional Development) 2011**

State Environmental Planning Policy (State and Regional Development) 2011 identifies State and Regionally Significant development in NSW. Schedule 7 of the SEPP identifies this application as regionally significant development as it involves land that remains in Council ownership until formalisation of DA19/0638 which relates to a boundary adjustment and has a construction cost over \$5 million. As such, the application is referred to the South Sydney Planning Panel for determination.

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

State Environmental Planning Policy No. 65 – Design Quality of Residential Flat Development (SEPP 65) and the accompanying Apartment Design Guide (ADG) seeks to improve the design quality of residential flat development through the application of a series of nine design principles. The proposal is affected by SEPP 65. Sutherland Shire Council engages its Design Review Forum (DRF) to guide the refinement of development to ensure design quality is achieved in accordance with SEPP 65. DRF comments are included in Section 7 of this report, and the applicant has taken these comments into consideration in the development of the design.

In the context of the SEPP 65 considerations, the proposal has been developed in a competent manner, providing a high quality aesthetic and a composition of built form that appropriately responds to the desired future character of the Engadine Centre.

An assessment of the proposal having regard to the design quality principles of SEPP 65 is set out in **Appendix D** to this report.

## **6.4 Apartment Design Guide (ADG)**

The applicable design guidelines for the proposed development are contained within the ADG, which is based on the 9 design quality principles set out in SEPP 65. The ADG illustrates good practice and these guidelines are largely replicated in the SSDCP 2015. A table with a compliance checklist of the proposal against the ADG design criteria is contained in **Appendix E** to this report. Aspects of the ADG which were either non-compliant or contentious through being raised as a concern by neighbours relate to building separation and setbacks, privacy, solar access to proposed and neighbouring units and provision of lifts and are discussed in Section 8.0 of this report.

### **6.4.1 State Environmental Planning Policy (Infrastructure) 2007**

*Impact of road noise or vibration (Clause 102) -*

Division 17, Subdivision 2 of the Infrastructure SEPP also relates to development that may be impacted by road noise or vibration. This application is for residential accommodation and the site is approximately 112m west of Princes Highway and is also identified on Council's Road and Rail Noise Buffer Map.

The site is within proximity to Princes Highway where the annual average daily traffic volume exceeds 40,000 vehicles. The impact of road noise and vibration on the residential accommodation have been considered under clause 102.

The application has been accompanied by a noise assessment addressing the relevant acoustic criteria and NSW Department of Planning's Development near Rail Corridors and Busy Roads - Interim Guideline. Subject to conditions, suitable noise attenuation measures are incorporated into the design of the buildings. An acceptable acoustic environment and reasonable amenity will be achieved for future occupants.

#### **6.5 Sutherland Shire Local Environmental Plan 2015**

The proposal has been assessed for compliance against Sutherland Shire Local Environmental Plan 2015. A compliance table with a summary of the applicable development standards is contained below:

<b>Standard / Control</b>	<b>Required</b>	<b>Proposed</b>	<b>Complies</b>
<b>Sutherland Shire Local Environmental Plan 2015</b>			
Building Height	20m	20m	Yes
Floor Space Ratio	2:1	2.78:1	No – Refer Section 8.2 of report.

#### **6.6 Sutherland Shire Development Control Plan 2015**

The proposal has been assessed for compliance with SSDCP 2015. A compliance table with a summary of the applicable development controls is contained in **Appendix F**. Non-compliances are discussed within Section 8.0 of this report and relate to isolation of No. 7 Preston Avenue, provision of adaptable dwellings, size of communal open space and provision of motorbike parking.

### **7.0 SPECIALIST COMMENTS AND EXTERNAL REFERRALS**

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

#### **Water NSW**

Pursuant to Clause 91(3) of the Water Management Act 2000, the application was referred to Water NSW. General Terms of Agreement have been received, which will be included in a condition of consent.

#### **Roads and Maritime Services (RMS)**

A referral to RMS was undertaken given Geebung Lane will be converted to a one-way road. RMS have no objections to this arrangement.

#### **NSW Police Force**

The NSW Police provided a response on 15 October 2019 and undertook a crime risk evaluation, noting recommendations that have been addressed through conditions of consent.

#### **Design Review Forum (DRF)**

The proposed development was considered by Council's DRF and the panel recommended that the following changes to the proposal be considered to improve its design quality:

- *The submitted illustrations of potential development on the site at No. 7 Preston Street are not convincing in demonstrating that the site can be feasibly developed if isolated. Given this, the proposal to build to the common southern boundary is not supported.*
- *As currently proposed, the Lane appears to be a place without an identity, and the built form along the park frontages will potentially dominate the public spaces. The Lane interface at ground level presents as an amorphous set of spaces with uses that are difficult to integrate into a coherent frontage.*
- *The Forecourt to Building A off the Lane is bordered by an incompatible mix of functions and spaces – an open fire escape, a residential entry, an outside lift servicing a tavern on another site, and loading and car parking – all lacking appropriate definition and articulation of the frontage to the Lane.*
- *The Panel believes that a clear commercial edge fronting the Lane at ground level interspersed with discrete residential entries and a separate lift lobby for the tavern, overlooked by residential above, and common open space accommodated on the roof, should be regarded as a model for the development.*
- *The setbacks on the eastern rear boundary adjoining 7 Preston St should be set back 9m above Level 4.*
- *Building related issues that should be resolved are:*
  - *Common circulation spaces in Building B are lengthy and circuitous and do not have adequate natural light and ventilation.*
  - *Residential floor to floor heights should be 3100mm.*
  - *Common open space should include a unisex WC, solid sun shading, seating, and a BBQ and food preparation area with a sink.*
  - *The lack of cover to balconies on the top floors reduces their amenity and protection from the weather.”*

Amended plans were provided that have addressed the majority of these issues. Council’s Architect has undertaken a review of the amended plans, taking into consideration the comments provided by the DRF as provided below.

### **Architect**

Council’s Architect initially advised that the nil setback to No. 7 Preston Avenue would result in a poor urban planning outcome and would result in an illogical building form on the streetscape. The setbacks at upper levels to Building ‘A’ were not supported as the bulk as this adversely contribute to the building’s visually intrusiveness to adjoining properties (in particular No. 7 Preston Ave and No. 9-11 Preston Ave). Further, opportunities to minimise overlooking through unit configuration, balustrade materiality and window form required improvement. The applicant has amended their design to increase setbacks at levels 4 and 5 at the southern corner of Building ‘A’, in addition to amending balustrade design, window size and style and unit layouts.



In terms of functionality and amenity of the proposed units, Council's Architect was initially not in agreement that solar access, cross-ventilation, storage and floor to floor separation requirements of the ADG were achieved. The applicant has been informed of these issues and amended their design accordingly. Council's Architect reviewed the final set of amended plans and is supportive of the proposal.

### **Building Surveyor**

Council's Building Surveyor initially requested further information on the fire hydrant facilities to ensure they didn't detract from the streetscape. The hydrant was re-located to achieve integration with the building wall to avoid a free standing hydrant that would detract from the landscaping. Council's Building Surveyor is supportive of the amended proposal subject to conditions.

### **Traffic Engineer**

Council's Traffic Engineer is supportive of the proposal, noting that the conversion of Geebung Lane to one way only will need to be formalised via a Traffic Committee. In addition to Council's Traffic Engineer, a representative from RMS sits on this committee. Given RMS have raised no objection to the proposal, the conversion of Geebung Lane imposition of a restriction in traffic movement to one way would not be

### **Public Assets Engineer**

Council's Public Assets Engineer considered the proposal in conjunction with Council's Public Domain Design Manual. It was acknowledged that Geebung Lane is identified as a shared pedestrian / vehicle zone given that no Council verge extends between properties and Geebung Lane. Council's Public Assets Engineer is supportive of the proposal subject to conditions.

### **Development Engineer**

Council's Assessment Team Engineer is supportive of the proposal subject to conditions. Concerns with the placement of the drainage lines through the centre of deep soil areas (notably, within the 4m landscape setback provided along Geebung Lane in front of Building 'B') has been investigated and addressed via conditions of consent.

### **Open Space**

In conjunction with the assessment of DA19/0638 which was subject to the boundary adjustment of land owned by Council, park maintenance staff have identified an alternate location for a maintenance access gate that exists to the west of Building 'A's pedestrian entry from Geebung Lane and provides access to Council's maintenance staff. No objections were raised to the proposal as an alternate location for this gate has been identified along to the northern side and the cost of this relocation has been captured in the voluntary planning agreement that was entered into as part of DA19/0638.

### **Property Officer**

Council's Property Officer reviewed the proposal given Council owns part of the land subject of the DA until the boundary adjustment approved as part of DA19/0638 is completed. No objections were raised.

## Landscape Architect

Council's Landscape Architect is supportive of the amended design subject to conditions.

### 8.0 ASSESSMENT

A detailed assessment of the application has been carried out having regard to the Matters for Consideration under Section 4.15(1) of the Environmental Planning and Assessment Act 1979. The following matters are considered important to this application.

#### 8.1 Isolation of No. 7 Preston Avenue

Adjoining the subject site to the south is a single dwelling house situated on No. 7 Preston Avenue. To the south of this property (No. 9-11 Preston Avenue) exists a 3 storey residential flat building.

The applicant was informed by letter on 25 October 2019 that insufficient evidence had been submitted with the DA to satisfactorily demonstrate that all reasonable attempts have been made to acquire No. 7 Preston Avenue, which has the potential to be isolated. Subsequently, the applicant obtained three independent property valuation reports and proceeded to issue a formal letter of offer (above the value stated in the property valuation reports) via registered mail. No response was received from the property owner (14 days was given to accept the offer and this was stated in the letter of offer). It is also noted that prior to lodgement of the DA, email correspondence had occurred with the owner of No. 7 Preston Avenue, with an email confirming they were not willing to accept the offer but as this did not follow a due process or appear to allow adequate time for the owner to consider the offer, request for this to re-occur was made.

The applicant has provided a scheme demonstrating how No. 7 Preston Avenue could be redeveloped in isolation, considering building separation controls along with other key requirements of the ADG and SSDCP 2015 (refer plan extract below for drawing A701 – C).

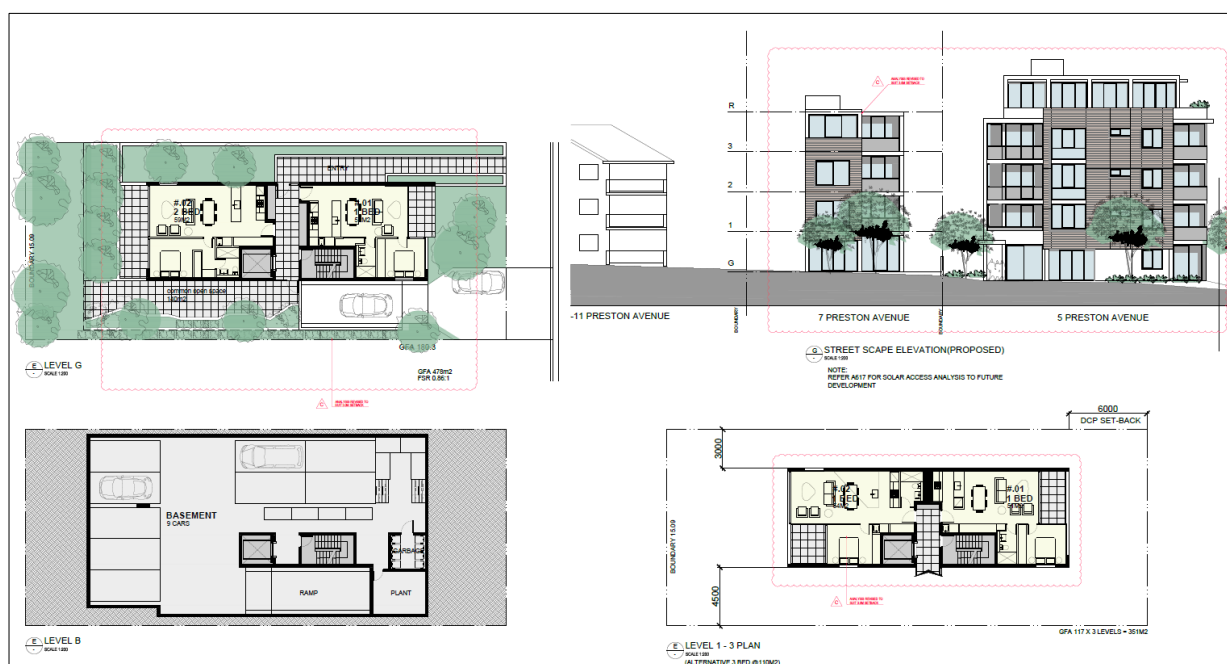


Figure 5: Potential redevelopment option for 7 Preston Avenue, Engadine

Whilst this plan is schematic, this drawing has been revised as the proposal has evolved. The scheme has a FSR of approximately 0.83:1 and height of 4 storeys, below the maximum permitted FSR of 2:1 and 20m height limit (which typically allows for a 5-6 storey building). While this scheme does not exhaust the allowances in FSR and height controls permitted by the SSLEP 2015, the applicant has noted that an alternate scheme which introduces commercial premises would have the potential to increase the FSR achieved on the site.

Clause 8 (Area 3) of the SSDCP 2015 sets out design guidelines specific to No. 5 and 7 Preston Avenue including:

*“While amalgamation of 5 and 7 Preston Avenue is not required, it is desirable to rationalise the site by providing greater street frontage onto Preston Avenue and to prevent the isolation of number 7 Preston Street.”*

This clause does not mandate the amalgamation of the sites, rather opting for due consideration to be to acquire the land and its future redevelopment. It is considered that this has occurred.

The principles to be considered when a development will contribute to the isolation of land through redevelopment were set out by Brown C in *Melissa Grech v Auburn Council* [2004] NSWLEC40. As specified by Brown C, where no satisfactory result is achieved from negotiations:

*“the development application should include details of the negotiations between the owners of the properties. These details should include offers to the owner of the isolated property. A reasonable offer, for the purposes of determining the development application and addressing the planning implications of an isolated lot, is to be based on at least one recent independent valuation and may include other reasonable expenses likely to be incurred by the owner of the isolated property in the sale of the property.”*

This judgement also states that the level of negotiation and any offers made for the isolated site are matters that can be given weight in the consideration of a DA. The level of information submitted by the applicant demonstrating that a reasonable attempt to acquire No. 7 Preston Avenue is sufficient. There is merit in the proposal as the subject site achieves the minimum site width and there are examples throughout the Sutherland Shire of sites achieving a residential flat building development which are less than 20m in width (as will be the case for No. 7 Preston Avenue). The undersized lot only has one adjoining residential property and whilst it is preferable that it amalgamate with the subject site, to refuse the DA based on isolation when the applicant has explored all options to acquire the land and the SSDCP 2015 states that amalgamation is not essential but desired is unreasonable in the circumstances.

## 8.2 Floor Space Ratio

The proposed development fails to comply with the development standard for building density. Clause 4.4(2) of SSLEP 2015 stipulates a maximum floor space ratio (FSR) of 2:1 for this site. The inclusion of 69 parking spaces for use by Engadine Tavern's patrons in the basement causes the development to exceed the maximum FSR permitted by 2,100.8m<sup>2</sup>, a variation to the standard of 39%.

The site's existing use as a car park can accommodate 70 car spaces. The proposal is transferring the existing carpark within the basement to ensure the current business operations and parking facilities to Engadine Tavern can be maintained. This is a unique situation which is highly unlikely to be replicated elsewhere in the Sutherland Shire where support for varying the FSR is based on continuing an existing use on a site (as a carpark for 69 vehicles) in tandem with establishing a residential flat building on a site. This will not be a precedent that could be seldom referred to in future proposal's justification for varying the FSR control.

The objectives of the floor space ratio development standard set out in Clause 4.4(1) of SSLEP 2015 are as follows:

- (a) *to ensure that development is in keeping with the characteristics of the site and the local area,*
- (b) *to ensure that the bulk and scale of new buildings is compatible with the context of the locality,*
- (c) *to control development density and intensity of land use, taking into account:*
  - (i) *the environmental constraints and values of the site, and*
  - (ii) *the amenity of adjoining land and the public domain, and*
  - (iii) *the availability of infrastructure to service the site, and*
  - (iv) *the capacity of the road network to accommodate the vehicular and pedestrian traffic the development will generate, and*
  - (v) *the desirability of retaining the scenic, visual, and landscape qualities of the area.*

The variation sought does not contravene the development's ability to achieve these objectives as the additional gross floor area is entirely concealed within the basement so no additional visual bulk will occur that would potentially impact the amenity of adjoining properties. The site does not benefit from any environmental constraint that inhibits the provision of an enlarged basement. Water NSW are supportive of the basement depth and width, issuing General Terms of Agreement to mitigate against any potential impacts to the groundwater. Council's Traffic Engineer, Public Asset Engineer and the RMS do not raise any objections in relation to the capacity of the road network, noting that the conversion of Geebung Lane to a one way road would assist in traffic flow within the vicinity of the site. The enlargement of the basement has not been to the detriment of the proposal's ability to establish a landscape setting around the perimeter of the site as it is adequately set back from each boundary (particularly where the site adjoins No. 7 Preston Avenue and No. 9-11 Preston Avenue).

The proposed development is located within zone B3 Commercial Core. The objectives of this zone are as follows:

*Zone B3 Commercial Core*

- *To provide a wide range of retail, business, office, entertainment, community and other suitable land uses that serve the needs of the local and wider community.*
- *To encourage appropriate employment opportunities in accessible locations.*
- *To maximise public transport patronage and encourage walking and cycling.*
- *To strengthen the viability of existing commercial centres through increased economic activity, employment and resident population.*
- *To create an attractive, vibrant and safe public domain with a high standard of urban design and public amenity.*
- *To enhance commercial centres by encouraging incidental public domain areas that have a community focus and facilitate interaction, outdoor eating or landscaping.*
- *To provide for pedestrian-friendly and safe shopping designed to cater for the needs of all ages and abilities.*

The site is well-positioned in terms of accessibility to Engadine Town Centre and Engadine Train Station. Whilst desirable to include a commercial component within the development, this would have presented limited business opportunities due to the inactive nature of Geebung Lane. However, the retention of patron parking for Engadine Tavern will assist in the viability of the Tavern allowing patrons of various needs and abilities to access the property when a vehicle there is only form of transport to the venue.

The applicant has lodged a written request in accordance with the requirements of Clause 4.6 of SSLEP 2015 that has been amended to reflect the final set of amended plans.

A full copy of this request is within **Appendix G** and the most relevant section is reproduced below:

*“Overall, the proposal results in an opportunity to maintain the Engadine Tavern car parking on-site within a development that facilitates the renewal of otherwise underutilised land. The provision of this car parking will not result in an increase to the perceptible bulk, scale or density of the development, nor does it contravene LEP height of building controls or DCP setbacks. As such, strict compliance with the development standard would otherwise result in a reduction in car parking for a commercial business within Engadine Town Centre and increased pressure for on-street car parking.”*

The applicant's written submission demonstrates that compliance with the FSR development standard is unreasonable or unnecessary in the circumstances of the case. It also demonstrates sufficient environmental planning grounds to justify varying this development standard. When excluding the Engadine Tavern parking, the FSR has not been exhausted and is 1.95:1. This equates to 113.2m<sup>2</sup>. Requiring the development to delete the 70 Tavern parking spaces for the primary reason of statistical compliance would

increase demand for on-street parking due to the Tavern's patrons and would not result in any reduction in the development's bulk and scale.

The proposed development is in the public interest as the proposal complies with the objectives for both Clause 4.4 FSR and the B3 Commercial Core zone.

The proposed variation does not raise any matters of State or regional environmental planning significance.

In conclusion the variation to the FSR development standard satisfies all relevant parts of Clause 4.6 and therefore the variation can be supported.

### 8.3 Building Separation & Setbacks

#### Separation between Building 'A' and Building 'B' on the site

The ADG stipulates that a 12m building separation is achieved for the first four storeys where this distance is measured between habitable rooms / balconies. This distance is to widen to 18m for the 5<sup>th</sup> storey. A 12m building separation between Building 'A' and Building 'B' is achieved for the first 4 storeys, however a 14.4m separation is proposed at the 5<sup>th</sup> storey, representing a non-compliance of 3.6m (20%). Non-compliance occurs due to an encroachment from unit 4.08's balcony which partially extends within this space. When excluding this balcony, an 18m setback is achieved between the buildings. The plan extract below identifies this non-compliant portion of Building 'B':

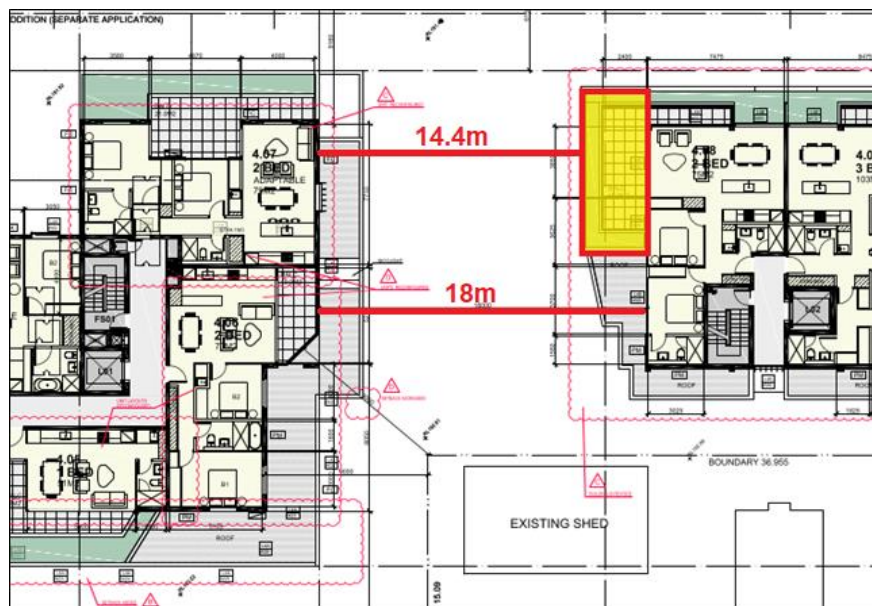


Figure 6: Separation between the buildings on site at level 5.

The intent of this control is to minimise building bulk at upper levels and achieve privacy between dwellings. This is achieved as the unit directly opposite within Building 'A' has a defensive façade, limiting a direct line of sight from the living space of unit 4.08 into this unit. The offending balcony also has a 1m wide planter box around its perimeter to provide an additional layer of privacy. Further, the balcony is unroofed so bulk associated with this element is limited to 1m from the storey below so minimal bulk will result from non-compliance.

#### Setbacks to Geebung Lane and Preston Avenue

The SSDCP 2015 requires a 6m front landscaped setback. The site's identified address as No. 5 Preston Avenue suggests which frontage this applies to. A 6m setback is provided to Building 'B'. Amendments have been made to increase planting within this area to Council's Landscape Architect's satisfaction.

In regards to the setback along Geebung Lane, 4m is required in accordance with the SSDCP 2015. A 4m setback is achieved when measured to Building 'B' however this reduces to 3m between Building 'A' representing a non-compliance of 1m (25%), extending from the ground floor to level 4 (5 storeys). The intent of this control is twofold; to establish a landscape setting between the building and the street and allow for reduced visual bulk. The portion of Building 'A' which is only set back 3m relates to the driveway and fire hydrant (integrated into the building wall) at the ground level and has a width of 16m for upper levels.

No opportunities for planting are missed from this non-compliance. To shift Building 'A' back would reduce the setback provided to development situated to the south-west (No. 9-11 Preston Avenue), accentuating the development's visual bulk when viewed from adjoining residential properties. No residential properties exist on the opposite side of Geebung Lane so there is no adverse impact occurring from this variation.

#### Setbacks and separation between development and adjoining properties

For setbacks, the ADG specifies a 6m setback between habitable rooms and balconies or 3m to non-habitable rooms for the first 4 storeys, increasing to 9m for levels 5 and 6 between habitable rooms and balconies or 4.5m to non-habitable room. For separation between buildings, 12m is required between habitable rooms and balconies for the first 4 storeys.

The ADG also notes that buildings should have an increased separation distance of 3m to the aforementioned when a site is adjacent to a different zone that permits lower density residential development to provide a transition in scale and increased landscaping. The SSDCP 2015 also reflects these sentiments by stating that '*a transition in building form between the mixed use and active frontage of Engadine's main shopping streets and the adjacent areas zoned for medium density*' is to be provided.



With regards to No. 7 Preston Avenue, this site is occupied by a single storey building that contains 2 dwellings which are used as 'service apartments'. No formal approval has been issued by Council to authorise this operation. Its historical use has been as a single storey dwelling house. That aside, in assessing the proposal's relationship with this property, a 4m setback is provided at the ground level when measured from Building 'B' and is defensive in its design, compliant with the ADG. In considering the separation between buildings, the garage (converted into a serviced apartment) is situated 1m from the shared boundary and does not contain any windows. This provides a 5m separation, representing a non-compliance of 1m as seen below:

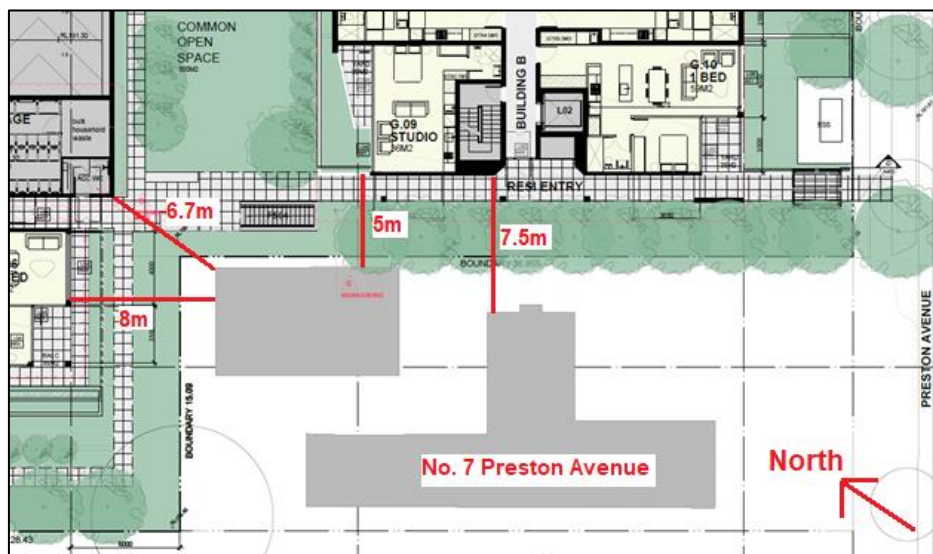


Figure 7: Building Separation Distances to No. 7 Preston Avenue

The 5m setback distance is acceptable given the garage has a defensive north-eastern façade orientated towards Building 'B', is a property used for short stay periods and is likely to be redeveloped in the future. Whilst a 4m setback is provided at the ground floor, this reduces to 3m for levels 1-3 and increases to 4.72m at level 5. This elevation is defensive, introducing windows with a 1.8m sill height to achieve privacy and slatting over lobby windows that are centrally position down the elevation.

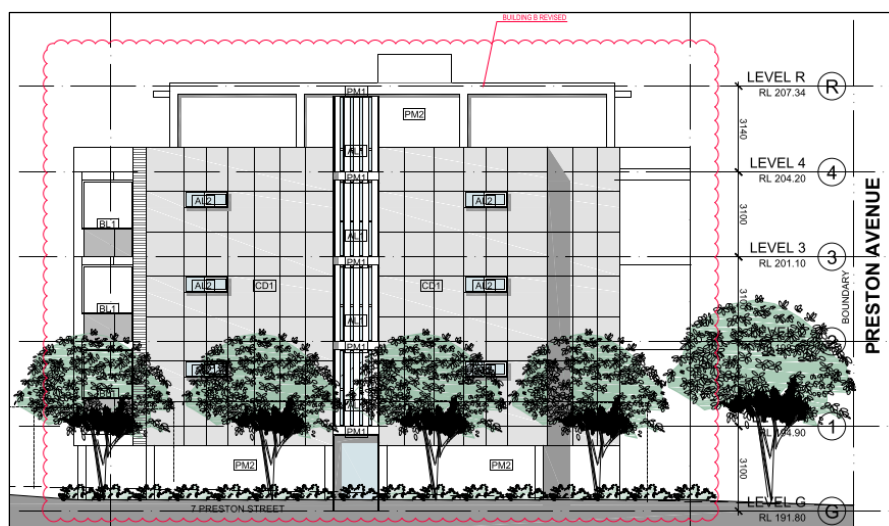


Figure 8: View of 'Building B's elevation adjacent to No. 7 Preston Avenue

No. 9-11 Preston Avenue partially adjoins the south-western boundary and is occupied by a 3 storey residential flat development. The proposal applies a 9m setback for the first four storeys, compliant with the ADG. With regards to building separation, 12m has been achieved. The portion of this adjoining property aligning with Building 'A' on the site is shown below:

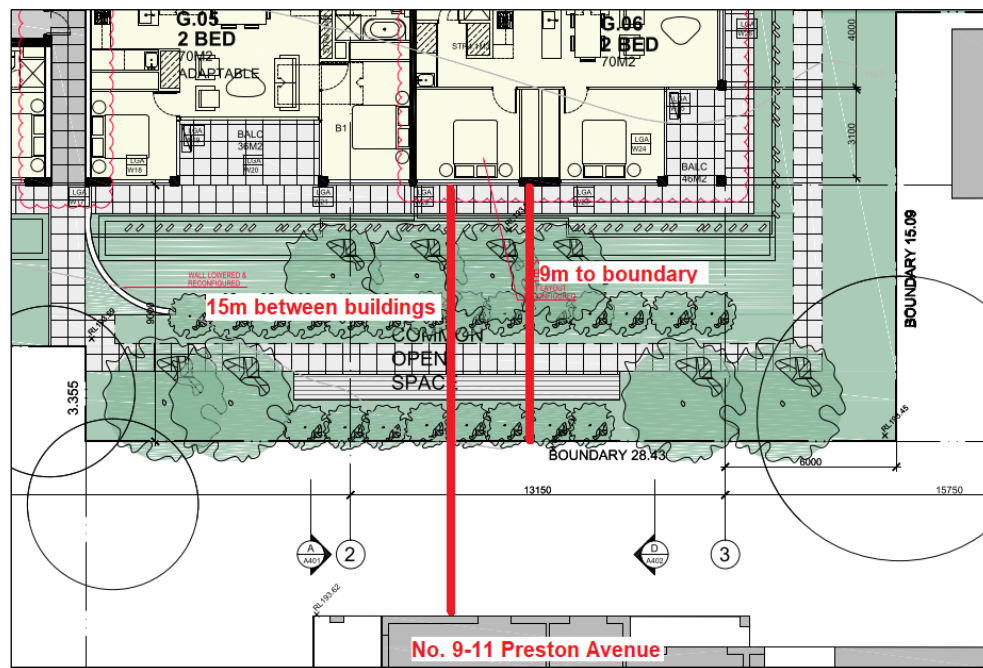


Figure 9: Setback and separation distances between Building 'A' and No. 9-11 Preston Avenue.

This setback distance has applied the additional 3m required where a transition between zones occurs. The floor plate visible in the figure above is replicated for an additional 3 storeys above the ground floor plan extract below. The applicant has also re-worked the design to increase the setbacks to the 5<sup>th</sup> and 6<sup>th</sup> storey where it aligns with No. 9-11 Preston Avenue to provide a 12m setback to the shared boundary (noting a slight protrusion of 1m occurring for a small portion of a balcony at the 5<sup>th</sup> storey). It is also noted that the basement is setback 6.4m from the boundary shared with No. 9-11 Preston Avenue and considerable amendments have occurred to the Landscape Plan to introduce further planting within this setback to soften the visual bulk of the development.

## 8.4 Solar Access to Adjoining Properties

### No. 9-11 Preston Avenue

In accordance with the ADG, adjoining residents should maintain 2 hours solar access between 9am and 3pm midwinter. The applicant has provided suns eye view diagrams and elevation shadow diagrams for No. 9-11 Preston Avenue to demonstrate that each unit is capable of meeting these requirements. 12 units exist within this adjoining development, each with a dual aspect. This is shown on one of the shadow diagrams below to provide an understanding of the layout of this adjoining residential flat building:

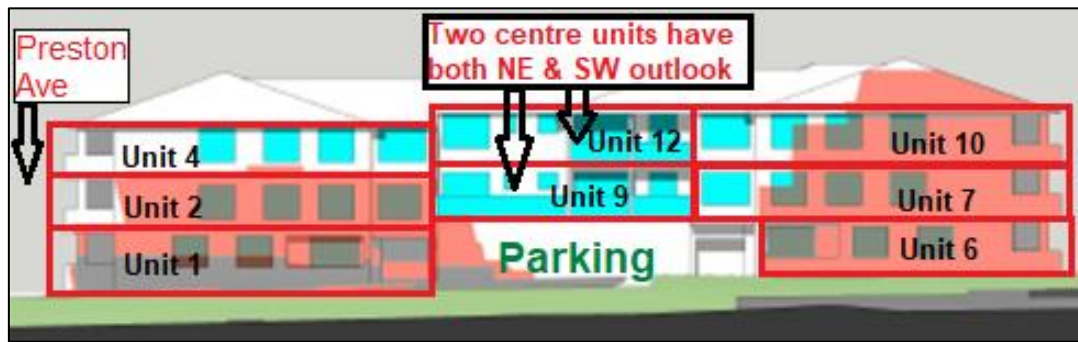


Figure 10: North-eastern elevation of No. 9-11 Preston Avenue

The following table shows the time at which each unit with an orientation towards the subject site will receive solar access midwinter:

Unit	9am	10am	11am	Midday	1pm	2pm	3pm
1		✓	✓	✓	✓	✓	
2		✓	✓	✓	✓	✓	
4	✓	✓	✓	✓	✓	✓	
6					✓	✓	✓
7				✓	✓	✓	✓
9	✓	✓	✓	✓	✓		
10	✓	✓	✓	✓	✓	✓	✓
12	✓	✓	✓	✓	✓	✓	

It should be noted that along the north-eastern elevation, No. 9-11 Preston Avenue is in full shadow at 3pm. This is due to existing shadow cast from its own building. The last time of the day where shadow casts onto No. 9-11 President Avenue from the proposed development is at 1pm, which impacts unit 6 only as shown below:

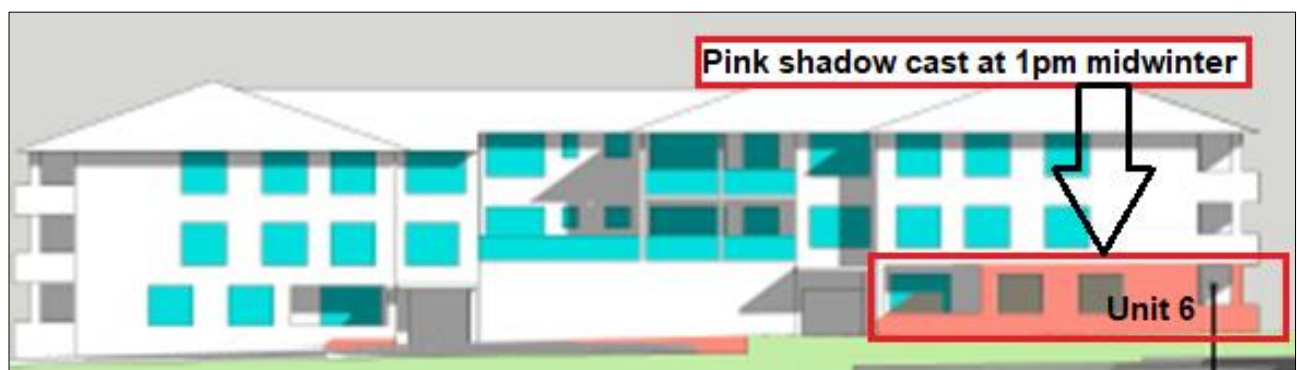


Figure 11: Most affected unit in relation to overshadowing. Shadow cast ceases at 1pm for No. 6/9-11 Preston Avenue

No. 9-11 Preston Avenue adjoins Council owned land (identified as No. 1058-1062 Old Princes Highway) that is undeveloped and vegetated. At 3pm, it is evident from the suns eye diagram below that unit 6 will have the capacity to receive sunlight (albeit, filtered due to scattered vegetation across the adjoining Council land) at 3pm onwards:

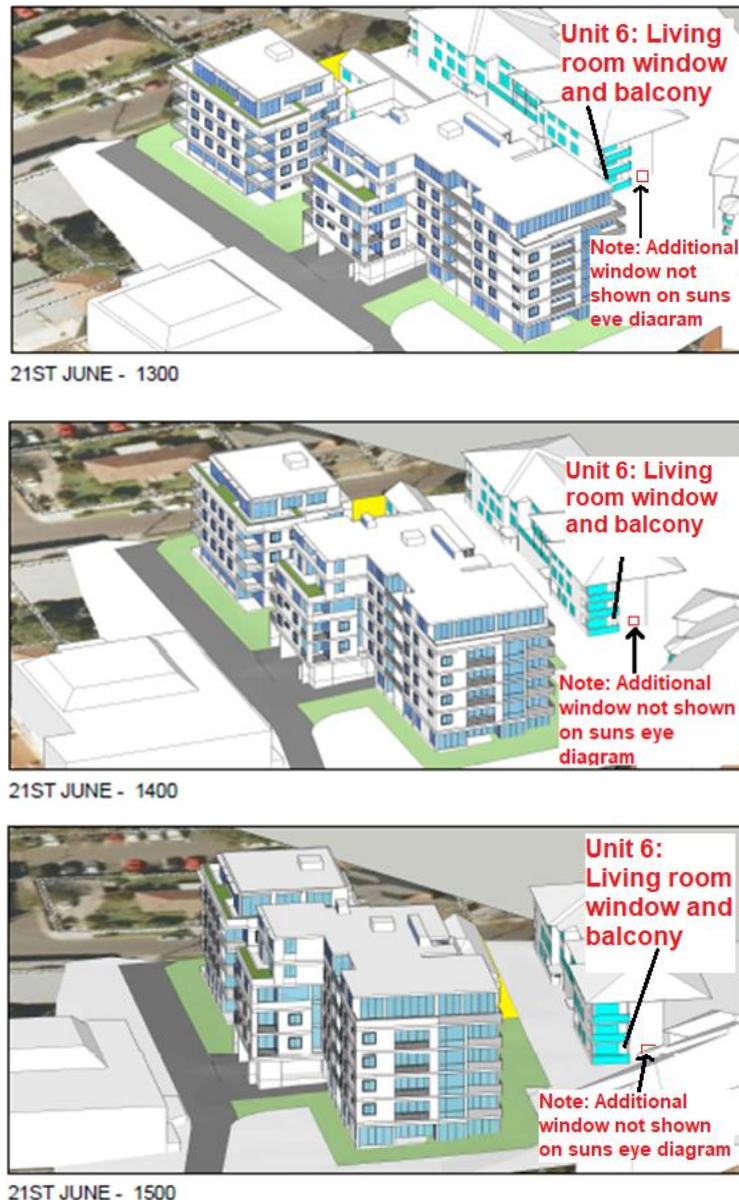


Figure 12: Suns eye view diagrams showing the level of solar access gained to No. 6/9-11 Preston Avenue

It is accepted that currently, units within No. 9-11 Preston Avenue experience unobstructed solar access between 9am and 3pm midwinter due to the site's use as a carpark. The degree of change will be significant however, whilst amendments to the proposal's distribution of bulk across the site have been made to minimise overshadowing to adjoining properties, it is inevitable that some overshadowing to this adjoining property will occur due to its position being south-west of the site.

#### No. 7 Preston Avenue

No. 7 Preston Avenue shares its north-eastern side and north-western rear boundary with the subject site and contains a dwelling house that has been converted to two serviced apartments. To strictly apply solar access controls that apply to a dwelling house is unreasonable. The applicant has undertaken a shadow analysis to demonstrate that this adjoining site will receive solar access midwinter at each hour between 9am and 3pm to varying degrees in the front and rear yards. At 1pm and 2pm, the shadow diagrams below show sunlight capable of reaching north facing windows within the larger of the two serviced apartments.



This level of solar access is supported for the following reasons:

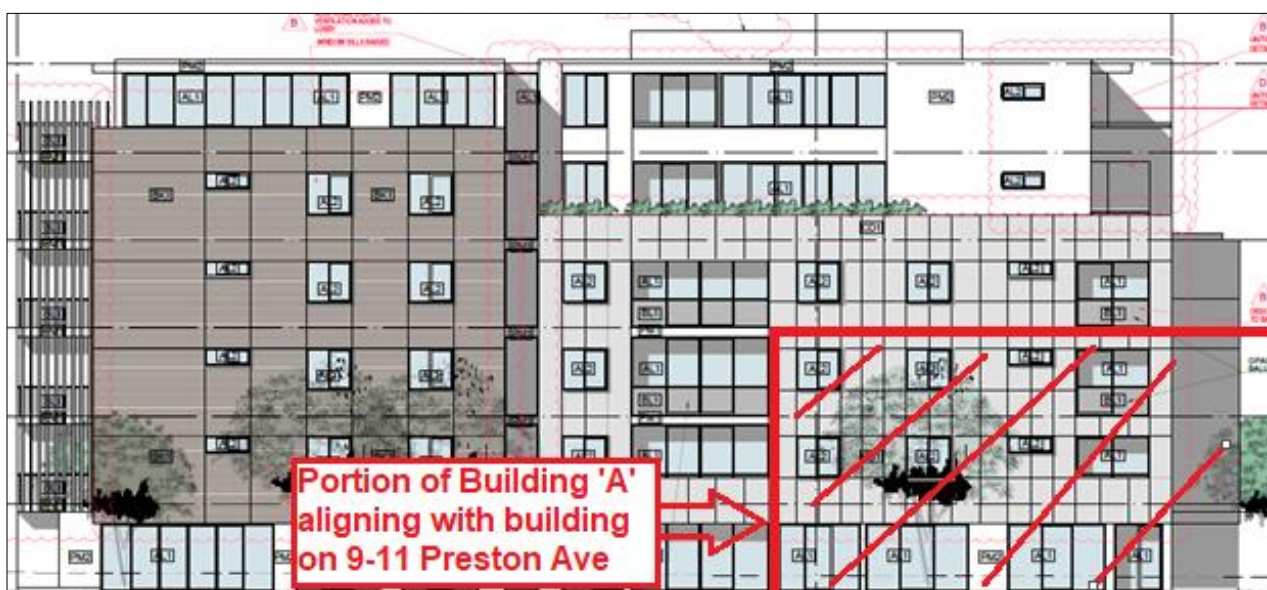
- The development complies with the 20m height control;
- Setbacks to both Building 'A' and Building 'B' are compliant;
- No. 7 Preston Ave is in the unfortunate position, being to the south of the site and is single storey. A reduction in the number of storeys would still cause a dramatic reduction in solar access gained to this adjoining property; and
- Redevelopment of No. 7 Preston Avenue is an undeveloped site, subject to the same zoning, building height and FSR controls as the subject site.

#### No. 1067-1070 Old Princes Highway

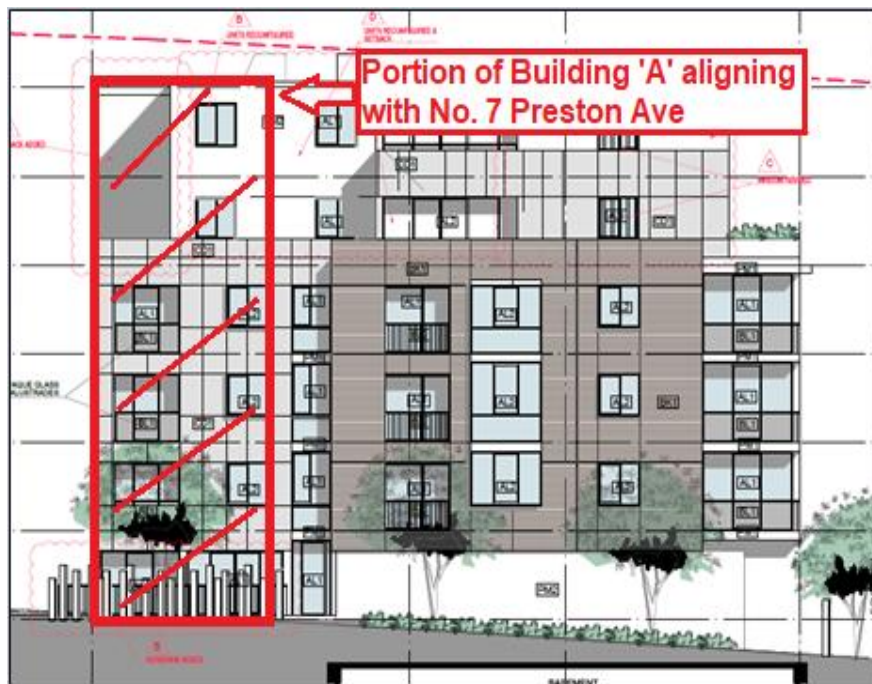
The development will cast shadow onto this adjoining property at 9am only at midwinter. This shadow will recede by 10:30am so the north-eastern elevation of this development will be capable of achieving the required 2 hours solar access between 10:30am and 12:30pm with ease.

### **8.5 Visual Privacy**

Various submissions raised visual privacy as an issue with the proposal. As discussed earlier in the report, the proposal has undergone modifications to achieve compliance with setbacks and building separation requirements which has aided impacts associated with visual privacy. Further to this, internal unit layouts have been revised and the treatment of building elevations adjacent to residential properties has evolved through the assessment process to include 1.8m high sill windows where it is a secondary bedroom window / bathroom / laundry, opaque glass balustrades and replacement of floor to ceiling bedroom windows with 1.2m high sill windows. To relocate the balconies of unit's 1.06, 2.06 and 3.06 so that they don't align with the residential flat building on No. 9-11 Preston Avenue is difficult to achieve given this southern corner of Building 'A' aligns with two residential properties (the second being No. 7 Preston Avenue) as per the following plan extracts:



*Figure 13: South-western elevation of Building 'A' identifying portion of proposed building that will align directly with the residential flat building on No. 9-11 Preston Avenue.*



*Figure 14: South-eastern elevation of Building 'A' identifying portion of proposed building in direct alignment with No. 7 Preston Avenue.*

It is unavoidable to have the development incorporate a completely defensive façade where the building aligns with a residential property. However, on balance the building has an acceptable relationship with adjoining residential properties and is not excessive in their provision of glazing and balcony sizing to warrant further design changes to be made. The proposal's compliance with setback and building separation controls with No. 7 Preston Avenue and No. 9-11 Preston Avenue allows for ample deep soil landscaping within setbacks to relieve any overlooking between properties.

### **8.6 Solar Access to Proposed Units**

Whilst 70% (45 units) of proposed units receive 2 hours sunlight to their living areas and private open spaces as required by the ADG, the number of units receiving no sunlight to habitable rooms exceeds the required 15% (10 units) with 17.1% (11 units) not receiving sunlight.

Non-compliance occurs due to the shape of the site. Considerable amendments have occurred to improve solar access to units (particularly along the south-eastern elevation of Building 'A').

On balanced consideration, non-compliance is acceptable for the following reasons:

- The site has an irregular shape with an elongated south-western boundary which has a combined length of 89.8m. This makes it difficult to avoid a large portion of the building having a south-eastern orientation.
- The ADG's natural ventilation requirements are achieved.

- Building separation and setbacks to adjoining 3 storey development to the south-east (No. 9-11 Preston Avenue) which align with most units that don't receive solar access are in accordance with the ADG. This will ensure a high level of daylight to these units will be achieved.
- Should the building form be altered to provide increased articulation, non-compliance with setback controls would occur. This would have the potential for poorer privacy outcomes to adjoining properties.
- The site benefits from sharing a boundary with Engadine Town Park and the proposal includes common open space that complies with solar access requirements so residents will have options in walking a short distance to open areas with good levels of solar access.

## 8.7 Communal Open Space

Communal open space which has a minimum area equal to 25% of the site (673.05m<sup>2</sup>) is required under the ADG and SSDCP 2015. The proposal provides communal open space at ground level; between the buildings and at the rear of Building 'A' which is equal to 11.7% of the site area (or 316m<sup>2</sup>), and as such the proposal falls short of the minimum volume recommended under the ADG by 357.05m<sup>2</sup>.

In lieu of the minimum volume of common open space, a smaller, high quality space between the buildings. The quieter, densely planted thoroughfare provided at the rear of Building 'A' will supplement the larger communal open space, providing additional landscaping, and opportunities for passive use by residents. The ADG recognises such spaces as a legitimate consideration for sites located in town centres.

The context of the development in the Engadine Town Centre offers residents a high standard of amenity through a range of retail activities, cafes, and parks, within walking distance of the proposed units. Of particular benefit to the development is the site's location being adjacent to Engadine Town Park. This Park is some 1,900m<sup>2</sup> in size and will become more regular in shape as a consequence of this development due to the approval of the boundary adjustment proposal (DA19/0638). This will aid the usability of this Park, which contains playground equipment. While the proposal demonstrates that minimum solar access requirements can be achieved to the primary communal open space area situated between the buildings on the site, this area will be in shade at 2pm. Engadine Town Park's location on the western side of the site will see this area receive full sunlight in the afternoon thereby offering future residents an opportunity to utilise this space should they seek an open space area in full sun.

The proposed communal open space forms a well-designed, accessible, easily identifiable and usable area, which is well resourced with furniture, BBQ, shade and planting. Therefore, the variation to common open space volume is supported.

## 8.8 Traffic and Parking

### Parking

Provision of parking is assessed against the SSDCP 2015, which stipulates that a minimum one and a maximum two car spaces are to be provided per dwelling. No visitor parking is required for development occurring within the B3 Commercial Core zone. The proposal includes provision of 80 residential car spaces and no visitor parking, complying with the SSDCP 2015. To request inclusion of visitor parking would be



contrary to the SSDCP 2015's controls and would therefore be considered gross floor area and counted towards the calculation of FSR.

70 parking spaces are allocated for the exclusive use of the Engadine Tavern however, the area nominated as car space 1 is narrow in width and obstructs access to a door to the fire stairs. A condition has been imposed to delete this space as a car space resulting in a reduction to 69 parking spaces.

#### Car Wash Bays

An objection has been made on the basis that there is insufficient car wash bays. One has been proposed however, the SSDCP 2015 does not stipulate provision of any car wash bay. Whilst there is a real benefit to including a car wash bay and the one provided is supported, to request that the applicant provide additional car wash bays beyond the requirements of the SSDCP 2015 is not supported as it is contrary to the planning controls.

#### Traffic Generation

The application was referred to the RMS, who raised no objection to the proposal which includes conversion of Geebung Lane to a one-way road. As noted earlier, Council's Traffic Engineers have also looked at the proposal's implications on traffic generation and movement in and around the development and deemed the proposal to have acceptable impact.

### **8.9 Lifts**

The ADG stipulates that a maximum eight units should feature off a circulation core on a single level. Three levels within Building 'A' have 9 units per floor where only one lift is provided. Building 'A' contains a total of 48 units and is 6 storeys. The ADG states that this applies to buildings of 10 storeys or more.

As the levels in which the single lift services nine units are situated close to the ground, the time taken for the lift to move between floors and the ground or basement levels will be reduced which will improve the waiting time. In some instances, occupants may choose to use the stairs should they need only move between a few floors. Further to this, the floors which don't comply include small sized units (each containing 3 x 1 bedroom units), likely to be occupied by one resident as shown below:

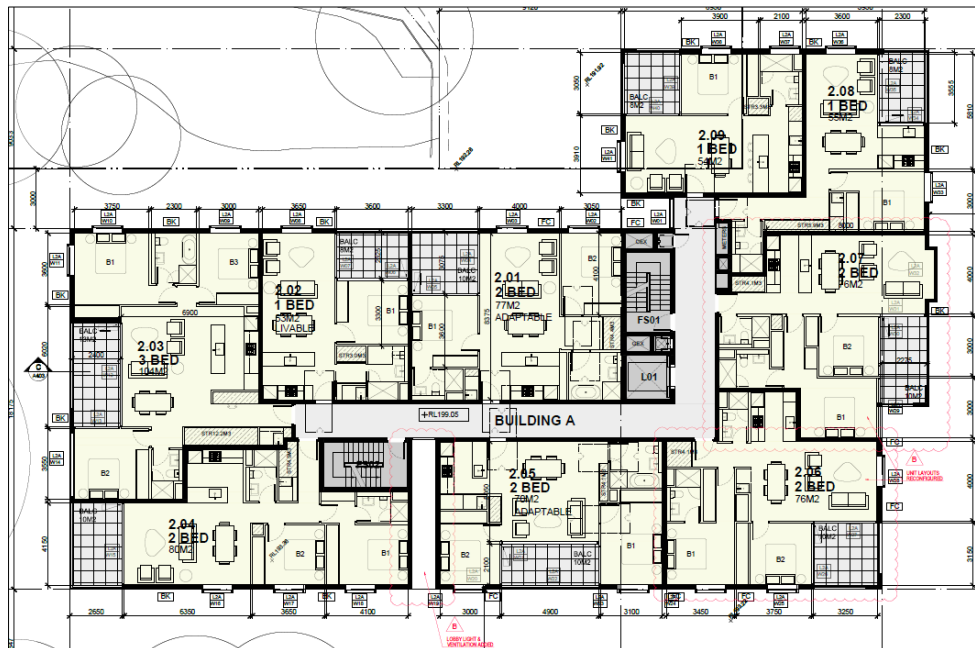


Figure 15: Typical floor plate for Level 1-3 where 9 units are proposed per floor

A second lift would also see strata premiums raised for future occupants. Future owners will be aware of the size, design and amenity of the development and therefore will know upfront what they will be buying into. For these reasons, non-compliance is supported.

### 8.10 Adaptable Dwellings

The SSDCP 2015 requires provision of adaptable dwellings to account for 20% of the units within the development, resulting in a need for 13 adaptable units. 12 units are proposed to be adaptable. When the proposal was first lodged with Council, 60 units were proposed, equating to a need for 12 adaptable units. As the design evolved, the applicant incorporated a further four units, forcing the percentage of units to increase by one to 13. There is no justifiable planning reason why a variation should be afforded, particularly as the site is highly accessible, attracting buyers who are ageing or less mobile and wanting to 'age in place' close to the Engadine Town Centre. A condition requiring compliance has been included.

### 8.11 Motorbikes

The SSDCP 2015 requires provision of motorbikes at a rate of one space per 25 car spaces or part thereof. A total of 80 residential car spaces are proposed and therefore, three motorbike spaces are required. Two are provided. There are a total of six motorbike spaces provided within the Tavern parking area when none is required. Therefore, it is acceptable in the circumstances to allow a variation knowing that an additional six spaces are available on the levels above the residential component.

### 8.12 Waste Management

Initially, the proposal's waste arrangements were not supported. The proposal conflicted with Council's "Environmental Specification – Waste Collection for new multi-unit dwellings and residential flat buildings". The design has been amended to accommodate a HRV sized truck on-site through widening the driveway. A bin holding bay has been situated on the southern side of the driveway extending partially within the front setback. Waste will be collected weekly from 660L bins which will be wheeled up to the holding bay by the

site manager using a tug. This is acceptable to Council's Waste Officer with appropriate conditions of consent recommended.

### **8.13 Earthworks**

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

### **8.14 Stormwater Management**

Clause 6.4 requires Council to be satisfied of certain matters in relation to stormwater management prior to development consent being granted. These matters include maximising permeable surfaces; on-site stormwater retention minimising the impacts on stormwater runoff. These matters have been addressed to Council's satisfaction.

### **8.15 Urban Design (Residential Buildings)**

Clause 6.16 of SSLEP 2015 contains certain matters of consideration relating to urban design. These include the extent to which recognition has been given to the public domain in the design of the development and the extent to which high quality design and development outcomes will be attained. Clause 6.17 of SSLEP 2015 requires the consent authority to consider the extent to which the design minimises adverse impacts on adjoining land, such as overshadowing and overlooking, the extent to which the streetscape will be improved, and opportunities for the provision of affordable housing.

These key matters have been given consideration and have been met as follows:

- The development enhances the public domain, enabling the boundary adjustment and land swap approved as part of DA19/0638 to occur which will regularise the shape of the site and Engadine Town Park to improve its usability and facilitate enlargement of the Park. Geebung Lane's conversion to a shared pedestrian / vehicle zone will improve safe movement of pedestrians around the immediately area.
- The development will improve the activation of Geebung Lane and provide passive surveillance.
- The building form, proportions and compositional strategies proposed for the development are of a high quality.
- The proposal is compliant with the recommended separation distances to adjoining residential land, providing an opportunity for future development to be undertaken at No. 7 Preston Avenue with minimal creation of privacy and visual bulk issues.
- The proposal gentrifies the existing site which presents as a rundown bitumen carpark that is unmarked and without vegetation with a modern building which responds to the objectives of the B3 Commercial Core zone. The development will result in a marked improvement for the streetscape.

The proposal is considered to be acceptable with regard to the urban design considerations of SSLEP2015.

### 8.16 View Loss

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

Note: A compilation of photographs from each of the six units that raised view loss as an issue (namely, 2, 4, 6, 7, 10, 12/9-11 Preston Avenue) can be found in **Appendix H**.

#### Step 1 - The first step is the assessment of views to be affected

All six units were within the same adjoining residential flat building at No. 9-11 Preston Avenue and each had provided photographs from the rooms within their units depicting their view, it was decided that an inspection of the unit most affected by view loss would be appropriate to begin with based on a preliminary assessment of the photos provided. If further inspections were needed, this would then be arranged. This meant that an inspection of No. 10/9-11 Preston Avenue was undertaken (a unit situated on the third and highest storey in the northern corner of the building). It was clear from this inspection and submission of various unit's photographs that views and vistas of the city skyline would be impacted in addition to a loss of outlook over the locality.

In the assessment of view loss, Council is of the opinion that the only iconic features to be assessed is the Sydney CBD. Chatswood, Parramatta and Bondi Junction are not considered to be 'iconic' as these are considered to be large urban centres within the Sydney metropolitan area. It was noted that city fireworks can be seen at New Year's Eve, inclusive of fireworks from the Harbour Bridge. A view of the Harbour Bridge through the day is not visible. Regardless, these are very distant horizon views.

#### Step 2 - The second step is to consider from what part of the property the views are obtained.

The following table has been prepared based on the photos submitted by objectors and a site inspection of No. 10/9-11 Preston Avenue:

	Unit 2	Unit 4	Unit 6	Unit 7	Unit 10	Unit 12
View obtained across front boundary?	✓	✓	X	X	X	X
View obtained across rear boundary?	✓	X	X	X	X	X
View obtained across side boundary?	✓	✓	X	✓	✓	✓
View from living area – standing?	✓	✓	X	✓	X	X
View obtained from balcony – standing?	✓	✓	X	✓	✓	✓
View obtained from bedroom – standing?	✓	✓	X	X	✓	✓

No. 9-11 Preston Avenue shares a side boundary with the subject site. Views of the Sydney CBD are all gained across this boundary and the subject site. Unit's 2 and 4 are orientated towards Preston Avenue so partial views (of the Royal National Park) are gained over the front boundary which will remain unchanged. From the photos taken on site and provided by objecting residents, it is foreseen that a sitting position would not increase visibility of any city view due to its distance from the Sydney CBD and the fact that the subject site is free of any building, structures or vegetation that would create an obstacle to this view.

Unit 6 is situated at ground level and has an outlook towards a 1.8m high boundary fence. A site inspection undertaken from the outside of this unit revealed that no views of the Sydney CBD were achieved. It is considered that a loss of skyline / outlook is what will be experienced by this unit as opposed to a loss of views.

*Step 3 - The third step is to assess the extent of the impact.*

There are no trees impeding the view, however a development at No. 99 Caldarra Avenue undertaken in 2012 for a six storey aged care development does partially obstruct the view of the western side of the city skyline from many units. It is also evident from the aerial image below that the subject site is situated on the southern side of the Engadine Commercial Centre. Engadine has been relatively slow to experience redevelopment of a bulk and scale permitted under the SSLEP 2015 (2:1 FSR and 20m building height consistent across the majority of sites within the Engadine Commercial Core zone. Most sites occupied by single or two storey commercial development. Therefore, it is anticipated emerging development will further deplete the outlook and views towards the city.



*Figure 16: Subject site is situated 230m from No. 99 Caldarra Avenue which obstructs views north-east from No. 9-11 Preston Avenue.*

The following is a view assessment from the balconies, living and bedroom areas of units at No. 9-11 Preston Avenue.

	Unit 2	Unit 4	Unit 6	Unit 7	Unit 10	Unit 12
View loss qualitatively quantified	Severe	Severe	None (no existing views gained)	Severe	Severe	Severe

***Step 4 - The fourth step is to assess the reasonableness of the proposal that is causing the impact.***

To redevelop the site in accordance with planning controls that permit a generous building envelope achieved through application of the maximum floor space ratio, building height and setback controls will impede, and in some cases virtually block all views towards the Sydney CBD skyline.

The proposal complies with building height, setback and building separation controls when measured to No. 9-11 Preston Avenue. During the pre-DA process, a redevelopment scheme was presented to Council which showed the development comprising of one building that extended the full width of No. 9-11 Preston Avenue. This building included a six storey component which had a similar built form to the current Building 'A' form which then stepped down to a three storey built form in the portion of the site where the communal open space and Building 'B' is currently shown. This scheme did not provide any break in the built form. The current scheme is reflective of a more skilful and considerate design that will allow an outlook north between Building 'A' and Building 'B' for some centrally positioned units (specifically, units 9 and 12) and rooms. However, this may be depleted into the future should No. 7 Preston Avenue and single storey commercial properties situated on the northern side of Geebung Lane be redeveloped. These properties are afforded the same FSR (2:1) and maximum building height controls as the subject site so would likely be redeveloped to a similar bulk and scale. Therefore, should a refusal determination be made for reasons associated with view loss, this will not ensure the long term retention of existing views.

Whilst a variation to the maximum FSR is sought and acknowledged, this relates to an area within the basement that on a technicality does not meet the definition of gross floor area. When calculating gross floor area on the built form elements above ground, compliance is achieved. So whether the proposal was modified to comply with FSR, this would not see any reduction to the building's built form above ground.

The views are all gained via a side boundary and have been obtained incidentally for many years by No. 9-11 Preston Avenue. For retention of views to be achieved, the development would need to be reduced to two storeys in height as No. 9-11 Preston Avenue is only three storeys. This would retain views to units on the top floor only, effectively warranting redevelopment of the site unfeasible.



It is therefore considered unrealistic in accordance with the Tenacity judgement that a more sensitive designed development that is sympathetic to view loss could be attained. Based on the merits of the application in its current form, Council is of the opinion that the application be approved.

### **8.16 Archaeological Sensitivity**

Council records indicate that the subject site is rated a combination of high and disturbed in terms of Archaeological Sensitivity. The 'disturbed portion of the site relates to No. 5 Preston Avenue where a bitumen car park exists whereas the

A site inspection did not reveal any evidence of shell material or significant sandstone features within the development zone. The proposal does not warrant an Aboriginal Archaeological Study being undertaken.

## **9.0 DEVELOPMENT CONTRIBUTIONS**

The proposed development will introduce additional residents to the area and as such will generate Section 7.11 Contributions in accordance with Council's adopted Section 94 Development Contribution Plan. These contributions include:

Regional Contribution:	\$349,040.00
Local Contribution:	\$930,960.00

These contributions are based upon the likelihood that this development will require or increase the demand for regional and local recreational space and infrastructure facilities within the area. It has been calculated on the basis of 64 new residential units. No concession is given for the existing allotment as no dwelling currently exists on the site.

## **10.0 DECLARATIONS OF AFFILIATION, GIFTS AND POLITICAL DONATIONS**

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

## **11.0 CONCLUSION**

The subject land is located within Zone B3 Commercial Core pursuant to the provisions of Sutherland Shire Local Environmental Plan 2015. The proposed development, being a residential flat building, is a permissible land use within the zone with development consent.

In response to public exhibition, seven submissions were received during first notification period and five submissions were received during the second notification period. The matters raised in these submissions have been addressed via design changes or conditions of consent where appropriate.



The proposal includes a variation to solar access to proposed units, adaptable housing, building separation and setbacks. These variations have been discussed and are considered acceptable subject to design changes and/or conditions of consent.

The application has been assessed having regard to the Heads of Consideration under Section 4.15 of the Environmental Planning and Assessment Act 1979. The application will not result in any significant impact on the environment or the amenity of nearby residents. Following assessment, Development Application No. DA19/0472 may be supported for the reasons outlined in this report.

#### **RESPONSIBLE OFFICER**

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