

**NSLPP MEETING HELD 06/04/2022****SUPPLEMENTARY REPORT TO LPP 01 OF
NSLPP MEETING HELD 03/11/2021****Attachments:**

1. Original Assessment Report and Minutes
2. Amended View Sharing Assessment
3. Amended Clause 4.6 variation (Height of Buildings)

ADDRESS/WARD: 1 Baden Road, Kurraba Point**APPLICATION No:** DA 122/2021**PROPOSAL:** Demolition of all existing structures and construction of a part 4, part 5 storey dwelling house with an integrated garage, swimming and associated landscaping.**PLANS REF:**

Plan No	Issue	Title	Dated	Prepared	Received
DA03	A	Site & Roof Plan	August 2021	Luigi Rosselli Architects	27 September 2021
DA05	A	Level 1 Plan	August 2021		27 September 2021
DA06	A	Level 2 Plan	August 2021		27 September 2021
DA07	A	Level 3 Plan	August 2021		27 September 2021
DA08	A	Level 4 Plan	August 2021		27 September 2021
DA09	A	Level 5 Plan	August 2021		27 September 2021
DA10	A	Southern Elevation	August 2021		27 September 2021
DA11	A	Western Elevation	August 2021		27 September 2021
DA12	A	North Elevation	August 2021		27 September 2021
DA13	A	Eastern Elevation	August 2021		27 September 2021
DA14	A	Section	August 2021		27 September 2021
DA14A	B	Sections	August 2021		27 September 2021
DA14B	A	Swimming Pool Elevations & Sections	May 2021		8 June 2021
1,2 & 3 of 3	-	Landscaped Plans	20 April 2021	Bates Landscaping	4 May 2021

OWNER: Laura Hazzouri and Charbel Hazzouri**APPLICANT:** Charbel Hazzouri C/- Revelop**AUTHOR:** Michael Stephens, Senior Assessment Officer**DATE OF REPORT:** 29 October 2021**DATE OF SUPPLEMENTARY REPORT:** 21 March 2021**DATE LODGED:** 4 May 2021**RECOMMENDATION:** Approval

EXECUTIVE SUMMARY

This supplementary report is prepared in response to the deferral of Item No.1 at the 3 November 2021 meeting of the North Sydney Planning Panel. Following the deferral, the applicant undertook a further view sharing assessment which included an inspection of objector's properties and submitted a revised view sharing assessment report and written request to vary the height of buildings development standard pursuant to clause 4.6 in NSLEP 2013.

The revised documentation (December 2021) was notified in accordance with Council's Community Engagement Protocol where a further six submissions were received. The documentation was revised further (March 2022) to address concerns raised in submissions.

Following a detailed assessment of the submitted documentation, it is concluded that, the revised written request as submitted by the applicant is adequate to satisfy the jurisdictional matters in clause 4.6. The written request demonstrates that compliance is unreasonable or unnecessary in the circumstances and that there are sufficient environmental planning grounds to justify the variation. The variation is considered to be in Public Interest.

The application is returned to the Panel for determination and the recommendation for approval remains unchanged.

HISTORY

This application was considered at the 3 November 2021 meeting of the North Sydney Planning Panel where the application was deferred by the Panel.

The panel concluded:

"The Panel in its deliberations has concluded the matter be deferred and the Applicant given the opportunity to prepare a new Clause 4.6 written request that is not hampered by the former lockdown restrictions due to COVID. The Clause 4.6 written request is a threshold question to be satisfied prior to determination. The Panel has decided, on balance, a deferral is appropriate in the circumstances as this will allow the Applicant to seek access for the purpose of view assessments from the properties where owners have made submissions. In this regard owners are encouraged to grant permission for access to allow this to be undertaken in a timely manner.

The Panel notes that it was unclear whether the preliminary view analysis was in respect of the amended plans or earlier plans and technically the current plans must be addressed in a written request under Clause 4.6, even if the impact is reduced. Furthermore, the Panel is not persuaded the clause 4.6 written request should rely on a preliminary report that only makes a reference to 'Tenacity'. It is also noted this preliminary analysis states "at this time a detailed Tenacity assessment cannot be undertaken...based on the information available ...potential view loss for units at 200 Kurraba Road and 3 Baden Road is unlikely to meet the threshold test to proceed to Step 1 in Tenacity." This report also states ... "If, as a conservative measure, a Tenacity assessment were undertaken it would find that view loss is negligible...". Notwithstanding the preliminary view analysis, it is the written request for variation on which the Panel as the consent authority must be satisfied. The Applicant is to submit a new Clause 4.6 written request in a timely manner to allow a Supplementary Report to be prepared for the Panel's consideration and determination. The Panel will then determine the development application electronically."

The applicant submitted a revised view sharing assessment and written request to vary the height of buildings development standard pursuant to clause 4.6 in NSLEP 2013 on 15 December 2021. As part of the view sharing assessment the applicant's consultants were able to visit three of the units located within the residential flat building directly opposite the subject site which enjoy views over the subject site to Sydney Harbour and other iconic features.

The applicant submitted a further revised view sharing assessment report and a written request to vary the height of buildings development standard pursuant to clause 4.6 in NSLEP 2013 on 14 March 2022 to respond to issues raised in submissions.

NOTIFICATION

The additional documentation was notified in accordance with Council's Community Engagement Protocol form 14 January 2022 until 28 January 2022.

ASSESSMENT

View Sharing

The applicant has submitted a revised view sharing assessment after undertaking site inspections of three of the units within the residential flat building located directly opposite the subject site. The view sharing assessment incorporates the four-step test established in *Tenacity Consulting* [2004] NSWLEC 140 ('*Tenacity*') and also addresses the public domain views.

North Sydney Local Environmental Plan 2013

Clause 4.3 Height of Building

The proposed development results in a minor variations to the height of buildings development standard which are as follows:

- (a) Fifth Level Roof Form – 470mm or 5.38%
- (b) Rear Roof Awning – 200mm or 2.35%
- (c) Glazed Balustrade - 600mm or 6.81%

It is noted that the chimney is exempt from the height of buildings definition in clause 1.4 in NSLEP 2013.

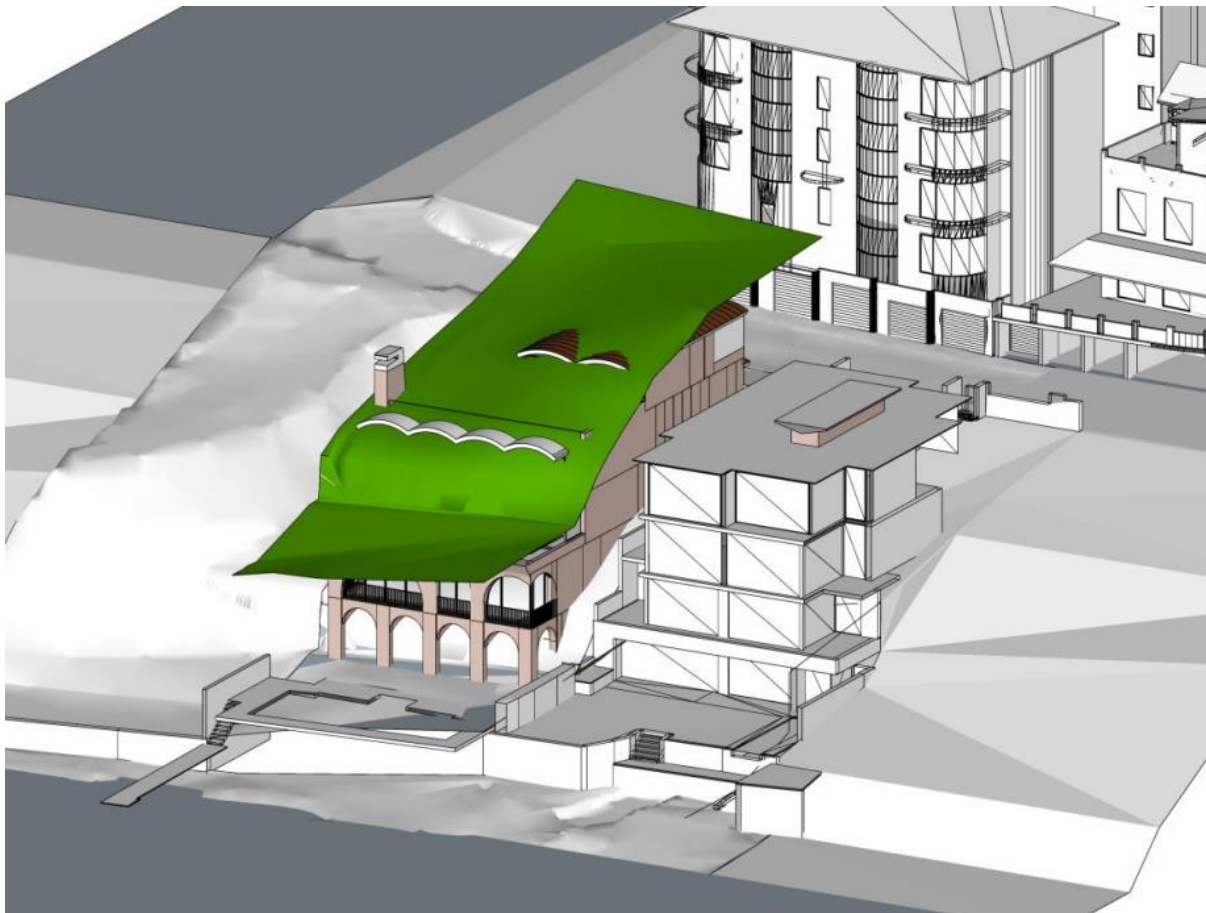


Figure 1. Extract from written request of the proposed protrusions through the height plane

The Panel concluded that the applicant's written request to vary the development standard in clause 4.3 in NSDCP 2013 was not well founded because the applicant could not successfully demonstrate the matters in as required in subclause 4.6(3)(a) given that the assessment undertaken to demonstrate compliance with objective (b) regarding view sharing in subclause 4.3(1) in NSLEP 2013 was considered inadequate. The applicant's assessment was hampered because inspections of potentially affected properties were not able to be undertaken at the time due to COVID restrictions.

The Panel also considered that an assessment should be undertaken having regard to the Planning Principle for view sharing established by Senior Commissioner Roseth in *Tenacity* to inform the written request to vary the development standard made pursuant to clause 4.6 in NSLEP 2013.

Clause 4.6 Exceptions to development standards

The amended clause 4.6 is addressed below where the request has been amended to reflect the concerns of the panel. This assessment is to be read in conjunction with the original assessment report.

Clause 4.6(3)(a)

(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”

In accordance with Test 1 outlined in *Wehbe v Pittwater Council* [2007] NSWLEC 827 at [42] (*‘Wehbe’*) a common method to demonstrate that compliance is unreasonable or unnecessary is by demonstrating that the objective of objectives of the development standard are achieved notwithstanding noncompliance with the development standard.

The relevant objective is addressed below. The objective (b) in subclause 4.3(1) is stated below:

“(b) to promote the retention and, if appropriate, sharing of existing views,”

In regard to objective (b) in subclause 4.3(1) the applicant’s revised written request dated December 2021 (and revised March 2021) has been amended to incorporate the outcome of the applicant’s revised view sharing assessment dated December 2021.

It is considered that the applicant’s written request has adequately demonstrated that the relevant objective is considered to be achieved notwithstanding the non-compliance with the standard.

The objective may be dealt with in two parts, the first being the retention of existing views being the more prescriptive part, with the second being the sharing of existing views, with a precursor that this may occur “if appropriate”.

Retention of views

The applicant’s written request refers to the impact of views and defines these impacts as negligible or minor, although ultimately relies on the view sharing principles to satisfy the objective as afforded by the wording. In the circumstances it is considered appropriate to participate in the sharing of views given that the proposed development results in the improvements over the existing views through the removal of the existing chimney box and provision of a generous setback along the western side of level 5.

Whilst it is noted that there are some minor impacts caused by the non-compliant portions of the level 5 roof form, being the southern edges of the arched roof forms, to the views from Units 1 and 2 of No. 200 Kurraba Road, this is limited to a slither of the overall water body. Given the minor nature of the impact in the context of the wider views, and interest of those views, it can be considered that the **retention of views is reasonably promoted**. Noting that “promote” is defined as “to support or encourage something”. In itself the objective is not an absolute and provides some flexibility where the circumstances are appropriate.



Figure 2. Propsoed View from unit 1 of No. 200 Kurraba Road (Page 27 of ATT 2)



Figure 3. Propsoed View from unit 2 of No. 200 Kurraba Road (Page 31 of ATT 2)

The impact to the view from Unit 7 of No. 200 Kurraba Road (view 03, page 22) is not caused by the proposed variations and therefore is not assessed as part of the consideration of the clause 4.6. The views from Unit 7 are first impacted by the wholly compliant portion of the roof form over level 5 at the northern elevation of the proposed dwelling and is otherwise addressed in the original assessment report dated 29 October 2021 with regards to other development controls in NSDCP 2013.

Sharing of views

The second part of the objective states “*if appropriate, sharing of existing views,*” as discussed above, the proposed development is considered to reasonably promote the retention of views, notwithstanding, there are minor view impacts cause by the curved roof forms. Whilst this could be deemed acceptable in itself, the applicant’s written request has also noted that the proposed development also supports view sharing by reducing the extent of the existing impact caused by the existing dwelling by increasing the side setbacks of the proposed dwelling, particularly on the western side, and removing elements such as the chimney box which are reflected in **Figure 2.** below (*View from Unit 1 of No. 200 Kurraba Road - Page 17 – Attachment 3*). The impacts and improvements would also be similar when viewed from Unit 2 of No. 200 Kurraba Road.

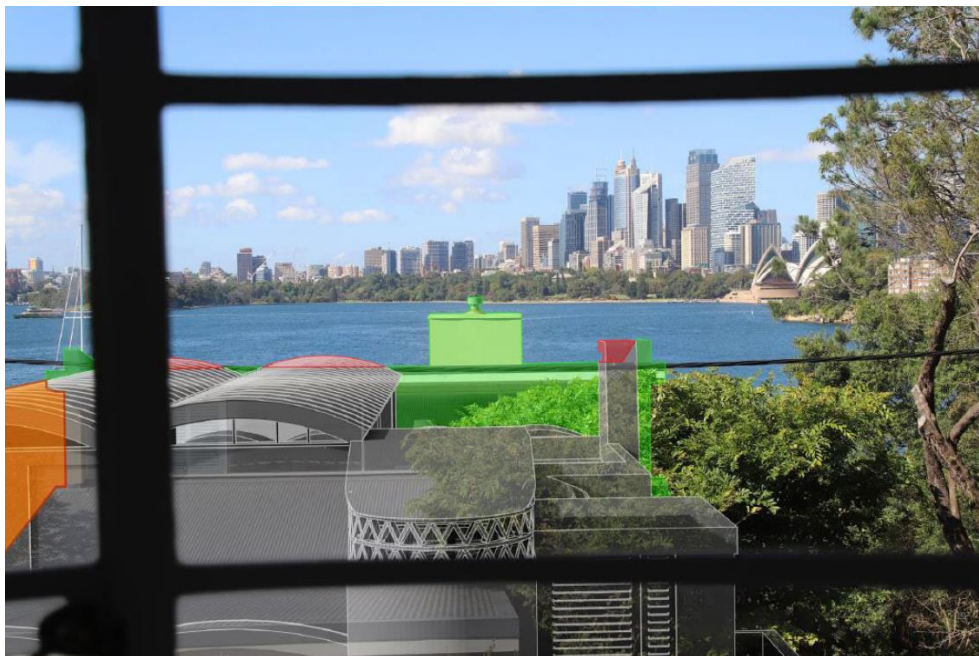


Figure 4. Extract from page 17 of the written request demonstrating the objectively net improvement to views from Unit 1 of No. 200 Kurraba Road

Remaining Objectives

Objectives Clause 4.3(1)(a), (c), (d), (e), (f) have been addressed in the submitted written request and were addressed in detail in the original assessment report dated 29 October 2021. The applicant’s written request is considered to satisfactorily demonstrate that compliance with the development standard is considered unreasonable and unnecessary in the circumstances by demonstrating that the objectives have been achieved notwithstanding the variations.

It should be noted that NSLEP 2013 was amended to include an additional objective, objective (g), on 30 June 2021. However, in accordance with the savings provision in clause 1.8A in NSLEP 2013, the objective is of no effect given that the application was originally lodged 4 May 2021, prior to the making of the amended Plan.

Clause 4.6(3)(b)

(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—

(b) that there are sufficient environmental planning grounds to justify contravening the development standard.

The applicant's written request is considered to adequately demonstrate that there are sufficient environmental planning grounds to justify the variation.

The applicant advances the following grounds (Page 26):

"This objection relates solely to the vaulted awning and roof structures proposed to the waterfront edges of the upper levels of the proposed building. In addition to weather protection, the structures are proposed primarily to:

- Echo the arched forms of the lower levels of the building, creating an integrated aesthetic across the waterfront facade.*
- Visually soften the horizontal lines of the building, reducing the perceived mass, as viewed from the Harbour.*

That is, the subject structures are proposed to mitigate, rather than contribute to the perceived mass of the building. In this sense the proposed variation is directly consistent with Object (e) of the EP&A Act, namely:

(g) to promote good design and amenity of the built environment,

Furthermore, the structures that exceed the height control:

- Occur primarily due to horizontal projection on a sloping site, rather than vertical projection above the otherwise compliant building.*
- Are generally contained within the building envelope of the existing dwelling to be demolished.*
- Do not form part of the main building mass.*
- Do not increase the gross floor area of the building.*
- Do not result in any unreasonable view impacts (see Section 5(b)).*
- Do not create any overshadowing or other amenity impact.*

Deletion of the structures, or replacing them with a simple flat roof, may achieve compliance with the standard and a marginal improvement to the views afforded some units at 200 Kurraba Road, but would result in a bulky, 'boxy' presentation to the Harbour that would integrate poorly with the architectural expression of the lower levels.

We submit that the proposed variation achieves better outcomes for and from the development and that there are sufficient environmental planning grounds to justify contravening the development standard in this instance."

The environmental planning grounds advanced by the applicant are generally concurred with and are considered to adequately demonstrate that there are sufficient grounds to justify the variation.

The proposed variations relate to the architectural expression of the proposed dwelling that have been designed to have regard to its foreshore location which is characterised by the sloping topography and extensive views of the Harbour and beyond. The specific elements that result in minor variations are caused by the horizontal projections of the curved roof forms and are consistent with or a reduction in the bulk and massing of the existing building on the site and only occur at the southern edges reflecting the fall of the land towards the water.

It is also noted that the proposed variations do not give rise to any material amenity impacts. As established in *Randwick Municipal Council Pty Ltd vs Micaul Holdings* [2016] NSWLEC 7, if it can be demonstrated that there is an absence of environmental harm it may be considered that there are sufficient planning grounds to justify a variation.

It is agreed that a flat roof would not have a favourable outcome having regard to the aesthetic quality of the building form when viewed from the Harbour and surrounding buildings, including No. 200 Kurraba Road, however, it should be acknowledged that this is not the only design solution available. Nevertheless, the curved roof design is considered reasonable in the circumstances and contributes to the architectural merit of proposed development. In addition, the design response offers other improvements such as the increased side setbacks and removal of intrusive elements such as the existing chimney box as demonstrated in figure 2 above.

Clause 4.6(4)

Clause 4.6(4) states:

- (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 Planning Secretary has been obtained.*

Clause 4.6(4)(a)(i)

It is considered that the consent authority can be satisfied that the applicant's written request is considered to adequately address the matters requirement to be demonstrated by subclause (3) as discussed in detail above.

Clause 4.6(4)(a)(ii)

It is considered that the consent authority can be satisfied that 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.

Objectives of the standard

It is considered that the consent authority can be satisfied that the proposed development is consistent with the objectives of the height of building development standard.

It useful to consider the interpretation that the test of “consistency” is less onerous than that of “achievement” as outlined in *Moskovich v Waverley Council* [2016] NSWLEC 1015 [53] (“*Moskovich*”).

The applicant’s written request assessed above relied on *Wehbe* Test 1 to demonstrate that compliance is unreasonable or unnecessary by demonstrating that the objectives of the development standard are **achieved** notwithstanding noncompliance with the development standard. Consistent with *Moskovich*, should it be found that the written request is acceptable then by virtue the proposed development would be consistent with the objectives of the standard.

Notwithstanding this comparison, the proposed development is considered to be consistent with the objectives of the standard. The proposed development reasonably responds to the topography of the site, promotes to retention of views, maintains solar access and privacy to surrounding properties and the public domain, is compatible with the surrounding development and is of an appropriate scale and density in accordance with the character of the area.

Objectives of the zone

It is considered that the consent authority can be satisfied that the proposed development is consistent with the objectives as the original assessment report dated 29 October 2021 found that the proposed development was consistent with the objectives of the R3 Medium Density Residential zone.

Clause 4.6(4)(b)

In accordance with the *Planning Circular PS20-002* dated 5 May 2020, concurrence may be assumed under clause 4.6 in NSLPP 2013 under delegated authority because the numerical variation (maximum 6.81%) is less than 10%. It is noted that should a numerical variation exceed 10% then concurrence may only be assumed by Council or its independent hearing and assessment panel (also referred to local planning panel) to ensure a greater level of public scrutiny.

The application is referred to the North Sydney Local Planning Panel for determination as another referral criteria listed in schedule 1 of the *Local Planning Panels Direction – Development Applications and Applications to Modify Development Consents* dated 30 June 2020 has been met because 10 submissions have been received objecting to the proposed development.

SUBMISSIONS

The additional information received on was notified in accordance with Council’s Community Engagement Protocol from 14 January 2022 until 28 January 2022. Six (6) submissions were received which are addressed below:

- *The increased height of the building along Baden Road would detract from the streetscape of Baden Road. The proposed development should be single storey at the streetscape with a flat roof, consistent with No. 3 Baden Road.*

The proposed development would appear as a two storey building form when viewed from Baden Road which is consistent with the surrounding building forms which are generally two to three storeys and the intent of the height control, with few examples which are single storey such as No. 3 Baden Road, or larger building such as No. 200 Kurraba Road.

- *The proposed front setback of the internal staircase would dominate the streetscape.*

The proposed building form is considered acceptable having regard to the desired future character of the street as addressed in the original assessment report. The proposed development provides a reasonable setback to Baden Road with a landscaped front garden.

- *The subject property would gain unabated views and is therefore unnecessary to allow any impact, even minor, to views enjoyed from other properties.*

The impact of the proposed development is minor in nature and considered to be a balanced approach which results in some improvements for various properties. Where there is a view impact caused, such as to Unit 7 of No. 200 Kurraba Road, it is caused by a compliant element. The attainment of views from the subject site is more easily achieved given the direct waterfront location. It is considered that views enjoyed over the subject site are reasonably maintained.

- *The proposed development protrudes further forward towards Baden Road in comparison to the existing building which would potentially impact views to Fort Denison. The view of Fort Denison is not addressed in the Tenacity Assessment in relation to Unit 1 of No. 200 Kurraba Road.*

Views to Fort Denison from Unit 1 of No. 200 Kurraba Road would be retained notwithstanding a partial loss of the water views between the Kurraba Point foreshore and Fort Denison which is caused by a portion of the building that complies with the height of buildings development standard and generally complies with controls in the NSDCP 2013. The original assessment report provides a satisfactory assessment of this specific view with regard to the view sharing controls in NSDCP 2013 which also addresses Tenacity.

- *The proposed development does not address Provision 8 and 10 in Section 6.1.1 of Part C in NSDCP 2013.*

This objection was addressed in the original assessment report. The provisions relate to the retention of views from vantage points within the public domain which is considered to be reasonably achieved.

- *The proposed windows on the front elevation on the first floor level impact the privacy of No. 200 Kurraba Road.*

This objection was addressed in the original assessment report. The proposed development is setback approximately 20m from the No. 200 Kurraba Road and would overlook Baden Road.

- *Views from the public domain, including from Baden Road and Kurraba Road should be retained.*

The view sharing assessment report has adequately addressed views from the public domain including the view vantage points in Hodgson Lookout which are identified in the Kurraba Point South Neighbourhood Character Statement in Section 6.1 of Part C in NSDCP 2013.

- *The View Sharing Advice is flawed and contains serious errors. The view impact of neighbouring properties is far more severe than that discussed and depicted.*

The potential impact to views is acknowledged to be a subjective topic, hence it is guided by various planning controls and planning principles. The submitted view loss assessment provides a reasonable representation of the potential view impacts which is inline with the assessment outlined in the original assessment report.

- *The Clause 4.6 Request cannot be consented to as it*
 - a. relies on a flawed View Sharing Advice; and*
 - b. does not satisfy the relevant provisions of clause 4.6(3) and (4) of the North Sydney Local Environmental Plan 2013 (the NSLEP).*

The revised written request (March 2022) has been addressed in detail in this supplementary report and is considered to have satisfactorily address the requirements of clause 4.6. The revised written request dated December 2021 was amended further to address these submissions.

- *The reasonableness of the impact does not address the relevant DCP non-compliances.*

The minor non-compliance with the eastern side setback has been addressed in the original assessment report that indicate that it does not have a material effect on the view impact and is outweighed by the increased setback on the western side of the dwelling.

- *The view sharing analysis incorrectly states that views are gained over a side boundary.*

The view sharing analysis acknowledges that the Baden Road frontage is effectively the front boundary of No. 200 Kurraba Road despite the street address being Kurraba Road.

- *The view sharing analysis fails to account for views enjoyed from other rooms within the units of No. 2002 Kurraba Road such as bedrooms and bathrooms.*

Impacts to views from bedrooms and bathrooms are considered to be less significant as outlined in *Tenacity*. Nethertheless, it has been demonstrated that reasonable view sharing is achieved. It is noted that views from bedrooms and bathrooms are retained through the living areas (refer to the floor plans of Units 1 and 2 of No. 200 Kurraba Road on pages 25 and 29 of attachment 2) and are naturally less panoramic as they are obstructed by the internal walls of the units, however, any potential view impact remains minimal.

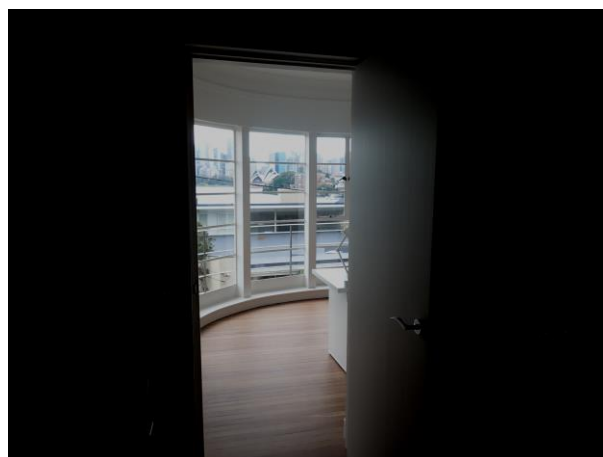


Figure 5. Example of bedroom view

- *The view sharing analysis does not have adequate regard for the value of the views enjoyed from Unit 7 of No. 200 Kurraba Road to the City of Sydney skyline and underestimates the impact to these views which should be considered severe.*

The portion of the development that impacts views to the City of Sydney city skyline enjoyed from the terrace of the lower ground floor unit of residential flat building located opposite the subject site is caused by a wholly compliant portion of the building and is considered to be an acceptable impact in the circumstances.

- *Should the applicant be approved, conditions should be applied requiring:*
 - *Council be appointed as the certifier;*
 - *Height poles be erected during construction;*
 - *Vibration monitoring be utilised during excavation;*
 - *Dust curtains be erected during excavation;*
 - *Dilapidation reports be prepared for surrounding developments;*
 - *Any cranes do not have lighting or signage etc;*
 - *Any work zone does not prevent access to the garages of surrounding properties;*
 - *Neighbours be consulted regarding traffic management;*

Reasonable conditions of consent have been recommended to ensure that construction impacts are minimised.

CONCLUSION

Having regard to the amended written request and view sharing assessment, it is considered that the statutory requirements of clause 4.6 in NSLEP 2013 have been satisfactorily addressed and no longer present an impediment to the approval of the subject application in its current form.

This supplementary report should be read in conjunction with the original assessment report dated 29 October 2021 where it has been demonstrated that the matters for consideration in section 4.15 of the Act have been satisfied. The conclusions and recommendation of the original assessment report remain unchanged and are further supported by this supplementary report.

Despite the minor extent of the variation to the height of buildings development standard, the proposed development results in an acceptable outcome for the directly adjoining residential flat building in comparison to the existing dwelling on the site or other potential compliant building forms. It is considered that no further design amendments would be warranted given the considered site response and the absence of any material amenity impacts.

On balance, the application is considered reasonable and is recommended for approval subject to relevant site specific and standard conditions of consent.

RECOMMENDATION

PURSUANT TO SECTION 4.16 OF ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979 (AS AMENDED)

THAT the North Sydney Local Planning Panel, exercising the functions of Council, as the consent authority, assume the concurrence of the Secretary, Department of Planning, Industry and Environment and invoke the provisions of Clause 4.6 in NSLEP 2013 with regards to the non-compliance with Clause 4.3 of NSLEP 2013 and grant consent to Development Application No. 122/2021 for demolition of all existing structures and construction of a part 4, part 5 storey dwelling house with an integrated garage, swimming and associated landscaping subject to the following site specific and standard conditions of consent attached to the original assessment report.

Michael Stephens
SENIOR ASSESSMENT OFFICER

Robyn Pearson
TEAM LEADER (ASSESSMENTS)

Stephen Beattie
MANAGER OF DEVELOPMENT SERVICES

EXECUTIVE SUMMARY

This supplementary report is prepared in response to the deferral of Item No.1 at the 3 November 2021 meeting of the North Sydney Planning Panel. Following the deferral, the applicant undertook a further view sharing assessment which included an inspection of objector's properties and submitted a revised view sharing assessment report and written request to vary the height of buildings development standard pursuant to clause 4.6 in NSLEP 2013.

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Following a detailed assessment of the submitted documentation, it is concluded that, the revised written request as submitted by the applicant is adequate to satisfy the jurisdictional matters in clause 4.6. The written request demonstrates that compliance is unreasonable or unnecessary in the circumstances and that there are sufficient environmental planning grounds to justify the variation. The variation is considered to be in Public Interest.

The application is returned to the Panel for determination and the recommendation for approval remains unchanged.

HISTORY

This application was considered at the 3 November 2021 meeting of the North Sydney Planning Panel where the application was deferred by the Panel.

The panel concluded:

"The Panel in its deliberations has concluded the matter be deferred and the Applicant given the opportunity to prepare a new Clause 4.6 written request that is not hampered by the former lockdown restrictions due to COVID. The Clause 4.6 written request is a threshold question to be satisfied prior to determination. The Panel has decided, on balance, a deferral is appropriate in the circumstances as this will allow the Applicant to seek access for the purpose of view assessments from the properties where owners have made submissions. In this regard owners are encouraged to grant permission for access to allow this to be undertaken in a timely manner.

The Panel notes that it was unclear whether the preliminary view analysis was in respect of the amended plans or earlier plans and technically the current plans must be addressed in a written request under Clause 4.6, even if the impact is reduced. Furthermore, the Panel is not persuaded the clause 4.6 written request should rely on a preliminary report that only makes a reference to 'Tenacity'. It is also noted this preliminary analysis states "at this time a detailed Tenacity assessment cannot be undertaken...based on the information available ...potential view loss for units at 200 Kurraba Road and 3 Baden Road is unlikely to meet the threshold test to proceed to Step 1 in Tenacity." This report also states ... "If, as a conservative measure, a Tenacity assessment were undertaken it would find that view loss is negligible...". Notwithstanding the preliminary view analysis, it is the written request for variation on which the Panel as the consent authority must be satisfied. The Applicant is to submit a new Clause 4.6 written request in a timely manner to allow a Supplementary Report to be prepared for the Panel's consideration and determination. The Panel will then determine the development application electronically."

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The applicant has submitted a revised view sharing assessment after undertaking site inspections of three of the units within the residential flat building located directly opposite the subject site. The view sharing assessment incorporates the four-step test established in *Tenacity Consulting* [2004] NSWLEC 140 ('*Tenacity*') and also addresses the public domain views.

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The Panel concluded that the applicant's written request to vary the development standard in clause 4.3 in NSDCP 2013 was not well founded because the applicant could not successfully demonstrate the matters in as required in subclause 4.6(3)(a) given that the assessment undertaken to demonstrate compliance with objective (b) regarding view sharing in subclause 4.3(1) in NSLEP 2013 was considered inadequate. The applicant's assessment was hampered because inspections of potentially affected properties were not able to be undertaken at the time due to COVID restrictions.

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(a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and”

In accordance with Test 1 outlined in *Wehbe v Pittwater Council* [2007] NSWLEC 827 at [42] (*‘Wehbe’*) a common method to demonstrate that compliance is unreasonable or unnecessary is by demonstrating that the objective of objectives of the development standard are achieved notwithstanding noncompliance with the development standard.

The relevant objective is addressed below. The objective (b) in subclause 4.3(1) is stated below:

“(b) to promote the retention and, if appropriate, sharing of existing views,”

In regard to objective (b) in subclause 4.3(1) the applicant’s revised written request dated December 2021 (and revised March 2021) has been amended to incorporate the outcome of the applicant’s revised view sharing assessment dated December 2021.

It is considered that the applicant’s written request has adequately demonstrated that the relevant objective is considered to be achieved notwithstanding the non-compliance with the standard.

The objective may be dealt with in two parts, the first being the retention of existing views being the more prescriptive part, with the second being the sharing of existing views, with a precursor that this may occur “if appropriate”.

Retention of views

The applicant’s written request refers to the impact of views and defines these impacts as negligible or minor, although ultimately relies on the view sharing principles to satisfy the objective as afforded by the wording. In the circumstances it is considered appropriate to participate in the sharing of views given that the proposed development results in the improvements over the existing views through the removal of the existing chimney box and provision of a generous setback along the western side of level 5.

Whilst it is noted that there are some minor impacts caused by the non-compliant portions of the level 5 roof form, being the southern edges of the arched roof forms, to the views from Units 1 and 2 of No. 200 Kurraba Road, this is limited to a slither of the overall water body. Given the minor nature of the impact in the context of the wider views, and interest of those views, it can be considered that the **retention of views is reasonably promoted**. Noting that “promote” is defined as “to support or encourage something”. In itself the objective is not an absolute and provides some flexibility where the circumstances are appropriate.



Figure 2. Proposed View from unit 1 of No. 200 Kurraba Road (Page 27 of ATT 2)



Figure 3. Proposed View from unit 2 of No. 200 Kurraba Road (Page 31 of ATT 2)

The impact to the view from Unit 7 of No. 200 Kurraba Road (view 03, page 22) is not caused by the proposed variations and therefore is not assessed as part of the consideration of the clause 4.6. The views from Unit 7 are first impacted by the wholly compliant portion of the roof form over level 5 at the northern elevation of the proposed dwelling and is otherwise addressed in the original assessment report dated 29 October 2021 with regards to other development controls in NSDCP 2013.

Sharing of views

The second part of the objective states “*if appropriate, sharing of existing views,*” as discussed above, the proposed development is considered to reasonably promote the retention of views, notwithstanding, there are minor view impacts cause by the curved roof forms. Whilst this could be deemed acceptable in itself, the applicant’s written request has also noted that the proposed development also supports view sharing by reducing the extent of the existing impact caused by the existing dwelling by increasing the side setbacks of the proposed dwelling, particularly on the western side, and removing elements such as the chimney box which are reflected in **Figure 2.** below (*View from Unit 1 of No. 200 Kurraba Road - Page 17 – Attachment 3*). The impacts and improvements would also be similar when viewed from Unit 2 of No. 200 Kurraba Road.

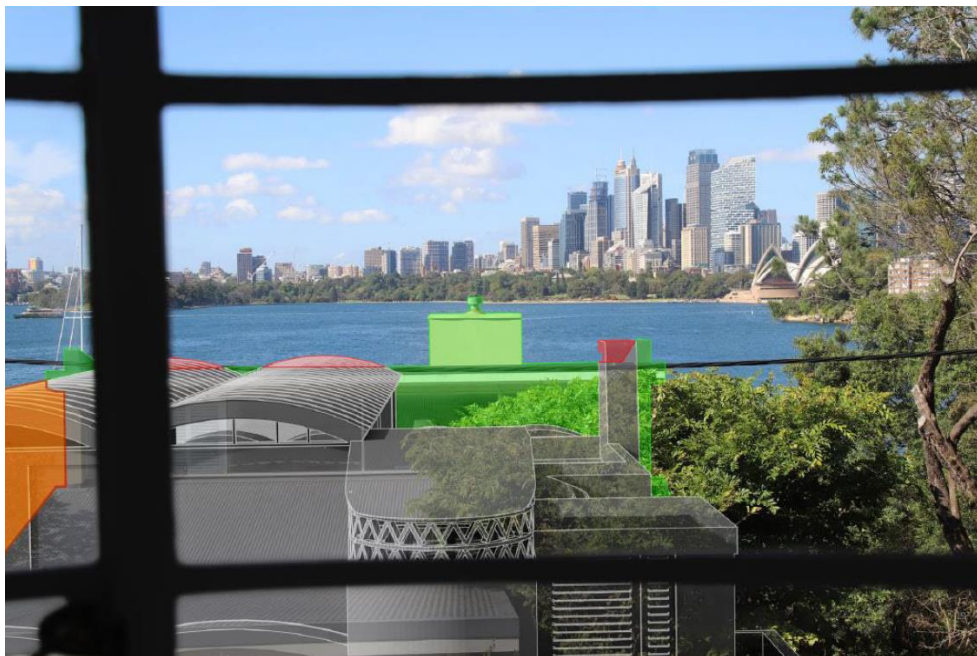


Figure 4. Extract from page 17 of the written request demonstrating the objectively net improvement to views from Unit 1 of No. 200 Kurraba Road

Remaining Objectives

Objectives Clause 4.3(1)(a), (c), (d), (e), (f) have been addressed in the submitted written request and were addressed in detail in the original assessment report dated 29 October 2021. The applicant’s written request is considered to satisfactorily demonstrate that compliance with the development standard is considered unreasonable and unnecessary in the circumstances by demonstrating that the objectives have been achieved notwithstanding the variations.

It should be noted that NSLEP 2013 was amended to include an additional objective, objective (g), on 30 June 2021. However, in accordance with the savings provision in clause 1.8A in NSLEP 2013, the objective is of no effect given that the application was originally lodged 4 May 2021, prior to the making of the amended Plan.

Clause 4.6(3)(b)

(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—

(b) that there are sufficient environmental planning grounds to justify contravening the development standard.

The applicant's written request is considered to adequately demonstrate that there are sufficient environmental planning grounds to justify the variation.

The applicant advances the following grounds (Page 26):

"This objection relates solely to the vaulted awning and roof structures proposed to the waterfront edges of the upper levels of the proposed building. In addition to weather protection, the structures are proposed primarily to:

- Echo the arched forms of the lower levels of the building, creating an integrated aesthetic across the waterfront facade.*
- Visually soften the horizontal lines of the building, reducing the perceived mass, as viewed from the Harbour.*

That is, the subject structures are proposed to mitigate, rather than contribute to the perceived mass of the building. In this sense the proposed variation is directly consistent with Object (e) of the EP&A Act, namely:

(g) to promote good design and amenity of the built environment,

Furthermore, the structures that exceed the height control:

- Occur primarily due to horizontal projection on a sloping site, rather than vertical projection above the otherwise compliant building.*
- Are generally contained within the building envelope of the existing dwelling to be demolished.*
- Do not form part of the main building mass.*
- Do not increase the gross floor area of the building.*
- Do not result in any unreasonable view impacts (see Section 5(b)).*
- Do not create any overshadowing or other amenity impact.*

Deletion of the structures, or replacing them with a simple flat roof, may achieve compliance with the standard and a marginal improvement to the views afforded some units at 200 Kurraba Road, but would result in a bulky, 'boxy' presentation to the Harbour that would integrate poorly with the architectural expression of the lower levels.

We submit that the proposed variation achieves better outcomes for and from the development and that there are sufficient environmental planning grounds to justify contravening the development standard in this instance."

The environmental planning grounds advanced by the applicant are generally concurred with and are considered to adequately demonstrate that there are sufficient grounds to justify the variation.

The proposed variations relate to the architectural expression of the proposed dwelling that have been designed to have regard to its foreshore location which is characterised by the sloping topography and extensive views of the Harbour and beyond. The specific elements that result in minor variations are caused by the horizontal projections of the curved roof forms and are consistent with or a reduction in the bulk and massing of the existing building on the site and only occur at the southern edges reflecting the fall of the land towards the water.

It is also noted that the proposed variations do not give rise to any material amenity impacts. As established in *Randwick Municipal Council Pty Ltd vs Micaul Holdings* [2016] NSWLEC 7, if it can be demonstrated that there is an absence of environmental harm it may be considered that there are sufficient planning grounds to justify a variation.

It is agreed that a flat roof would not have a favourable outcome having regard to the aesthetic quality of the building form when viewed from the Harbour and surrounding buildings, including No. 200 Kurraba Road, however, it should be acknowledged that this is not the only design solution available. Nevertheless, the curved roof design is considered reasonable in the circumstances and contributes to the architectural merit of proposed development. In addition, the design response offers other improvements such as the increased side setbacks and removal of intrusive elements such as the existing chimney box as demonstrated in figure 2 above.

Clause 4.6(4)

Clause 4.6(4) states:

- (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 Planning Secretary has been obtained.*

Clause 4.6(4)(a)(i)

It is considered that the consent authority can be satisfied that the applicant's written request is considered to adequately address the matters requirement to be demonstrated by subclause (3) as discussed in detail above.

Clause 4.6(4)(a)(ii)

It is considered that the consent authority can be satisfied that 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.

Objectives of the standard

It is considered that the consent authority can be satisfied that the proposed development is consistent with the objectives of the height of building development standard.

It useful to consider the interpretation that the test of “consistency” is less onerous than that of “achievement” as outlined in *Moskovich v Waverley Council* [2016] NSWLEC 1015 [53] (“*Moskovich*”).

The applicant’s written request assessed above relied on *Wehbe* Test 1 to demonstrate that compliance is unreasonable or unnecessary by demonstrating that the objectives of the development standard are **achieved** notwithstanding noncompliance with the development standard. Consistent with *Moskovich*, should it be found that the written request is acceptable then by virtue the proposed development would be consistent with the objectives of the standard.

Notwithstanding this comparison, the proposed development is considered to be consistent with the objectives of the standard. The proposed development reasonably responds to the topography of the site, promotes to retention of views, maintains solar access and privacy to surrounding properties and the public domain, is compatible with the surrounding development and is of an appropriate scale and density in accordance with the character of the area.

Objectives of the zone

It is considered that the consent authority can be satisfied that the proposed development is consistent with the objectives as the original assessment report dated 29 October 2021 found that the proposed development was consistent with the objectives of the R3 Medium Density Residential zone.

Clause 4.6(4)(b)

In accordance with the *Planning Circular PS20-002* dated 5 May 2020, concurrence may be assumed under clause 4.6 in NSLPP 2013 under delegated authority because the numerical variation (maximum 6.81%) is less than 10%. It is noted that should a numerical variation exceed 10% then concurrence may only be assumed by Council or its independent hearing and assessment panel (also referred to local planning panel) to ensure a greater level of public scrutiny.

The application is referred to the North Sydney Local Planning Panel for determination as another referral criteria listed in schedule 1 of the *Local Planning Panels Direction – Development Applications and Applications to Modify Development Consents* dated 30 June 2020 has been met because 10 submissions have been received objecting to the proposed development.

SUBMISSIONS

The additional information received on was notified in accordance with Council’s Community Engagement Protocol from 14 January 2022 until 28 January 2022. Six (6) submissions were received which are addressed below:

- *The increased height of the building along Baden Road would detract from the streetscape of Baden Road. The proposed development should be single storey at the streetscape with a flat roof, consistent with No. 3 Baden Road.*

The proposed development would appear as a two storey building form when viewed from Baden Road which is consistent with the surrounding building forms which are generally two to three storeys and the intent of the height control, with few examples which are single storey such as No. 3 Baden Road, or larger building such as No. 200 Kurraba Road.

- *The proposed front setback of the internal staircase would dominate the streetscape.*

The proposed building form is considered acceptable having regard to the desired future character of the street as addressed in the original assessment report. The proposed development provides a reasonable setback to Baden Road with a landscaped front garden.

- *The subject property would gain unabated views and is therefore unnecessary to allow any impact, even minor, to views enjoyed from other properties.*

The impact of the proposed development is minor in nature and considered to be a balanced approach which results in some improvements for various properties. Where there is a view impact caused, such as to Unit 7 of No. 200 Kurraba Road, it is caused by a compliant element. The attainment of views from the subject site is more easily achieved given the direct waterfront location. It is considered that views enjoyed over the subject site are reasonably maintained.

- *The proposed development protrudes further forward towards Baden Road in comparison to the existing building which would potentially impact views to Fort Denison. The view of Fort Denison is not addressed in the Tenacity Assessment in relation to Unit 1 of No. 200 Kurraba Road.*

Views to Fort Denison from Unit 1 of No. 200 Kurraba Road would be retained notwithstanding a partial loss of the water views between the Kurraba Point foreshore and Fort Denison which is caused by a portion of the building that complies with the height of buildings development standard and generally complies with controls in the NSDCP 2013. The original assessment report provides a satisfactory assessment of this specific view with regard to the view sharing controls in NSDCP 2013 which also addresses Tenacity.

- *The proposed development does not address Provision 8 and 10 in Section 6.1.1 of Part C in NSDCP 2013.*

This objection was addressed in the original assessment report. The provisions relate to the retention of views from vantage points within the public domain which is considered to be reasonably achieved.

- *The proposed windows on the front elevation on the first floor level impact the privacy of No. 200 Kurraba Road.*

This objection was addressed in the original assessment report. The proposed development is setback approximately 20m from the No. 200 Kurraba Road and would overlook Baden Road.

- *Views from the public domain, including from Baden Road and Kurraba Road should be retained.*

The view sharing assessment report has adequately addressed views from the public domain including the view vantage points in Hodgson Lookout which are identified in the Kurraba Point South Neighbourhood Character Statement in Section 6.1 of Part C in NSDCP 2013.

- *The View Sharing Advice is flawed and contains serious errors. The view impact of neighbouring properties is far more severe than that discussed and depicted.*

The potential impact to views is acknowledged to be a subjective topic, hence it is guided by various planning controls and planning principles. The submitted view loss assessment provides a reasonable representation of the potential view impacts which is inline with the assessment outlined in the original assessment report.

- *The Clause 4.6 Request cannot be consented to as it*
 - a. relies on a flawed View Sharing Advice; and*
 - b. does not satisfy the relevant provisions of clause 4.6(3) and (4) of the North Sydney Local Environmental Plan 2013 (the NSLEP).*

The revised written request (March 2022) has been addressed in detail in this supplementary report and is considered to have satisfactorily address the requirements of clause 4.6. The revised written request dated December 2021 was amended further to address these submissions.

- *The reasonableness of the impact does not address the relevant DCP non-compliances.*

The minor non-compliance with the eastern side setback has been addressed in the original assessment report that indicate that it does not have a material effect on the view impact and is outweighed by the increased setback on the western side of the dwelling.

- *The view sharing analysis incorrectly states that views are gained over a side boundary.*

The view sharing analysis acknowledges that the Baden Road frontage is effectively the front boundary of No. 200 Kurraba Road despite the street address being Kurraba Road.

- *The view sharing analysis fails to account for views enjoyed from other rooms within the units of No. 2002 Kurraba Road such as bedrooms and bathrooms.*

Impacts to views from bedrooms and bathrooms are considered to be less significant as outlined in *Tenacity*. Nethertheless, it has been demonstrated that reasonable view sharing is achieved. It is noted that views from bedrooms and bathrooms are retained through the living areas (refer to the floor plans of Units 1 and 2 of No. 200 Kurraba Road on pages 25 and 29 of attachment 2) and are naturally less panoramic as they are obstructed by the internal walls of the units, however, any potential view impact remains minimal.

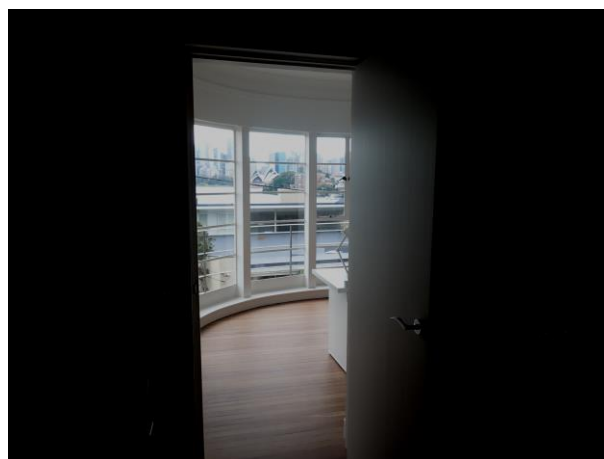


Figure 5. Example of bedroom view

- *The view sharing analysis does not have adequate regard for the value of the views enjoyed from Unit 7 of No. 200 Kurraba Road to the City of Sydney skyline and underestimates the impact to these views which should be considered severe.*

The portion of the development that impacts views to the City of Sydney city skyline enjoyed from the terrace of the lower ground floor unit of residential flat building located opposite the subject site is caused by a wholly compliant portion of the building and is considered to be an acceptable impact in the circumstances.

- *Should the applicant be approved, conditions should be applied requiring:*
 - *Council be appointed as the certifier;*
 - *Height poles be erected during construction;*
 - *Vibration monitoring be utilised during excavation;*
 - *Dust curtains be erected during excavation;*
 - *Dilapidation reports be prepared for surrounding developments;*
 - *Any cranes do not have lighting or signage etc;*
 - *Any work zone does not prevent access to the garages of surrounding properties;*
 - *Neighbours be consulted regarding traffic management;*

Reasonable conditions of consent have been recommended to ensure that construction impacts are minimised.

CONCLUSION

Having regard to the amended written request and view sharing assessment, it is considered that the statutory requirements of clause 4.6 in NSLEP 2013 have been satisfactorily addressed and no longer present an impediment to the approval of the subject application in its current form.

This supplementary report should be read in conjunction with the original assessment report dated 29 October 2021 where it has been demonstrated that the matters for consideration in section 4.15 of the Act have been satisfied. The conclusions and recommendation of the original assessment report remain unchanged and are further supported by this supplementary report.

Despite the minor extent of the variation to the height of buildings development standard, the proposed development results in an acceptable outcome for the directly adjoining residential flat building in comparison to the existing dwelling on the site or other potential compliant building forms. It is considered that no further design amendments would be warranted given the considered site response and the absence of any material amenity impacts.

On balance, the application is considered reasonable and is recommended for approval subject to relevant site specific and standard conditions of consent.

RECOMMENDATION

PURSUANT TO SECTION 4.16 OF ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979 (AS AMENDED)

THAT the North Sydney Local Planning Panel, exercising the functions of Council, as the consent authority, assume the concurrence of the Secretary, Department of Planning, Industry and Environment and invoke the provisions of Clause 4.6 in NSLEP 2013 with regards to the non-compliance with Clause 4.3 of NSLEP 2013 and grant consent to Development Application No. 122/2021 for demolition of all existing structures and construction of a part 4, part 5 storey dwelling house with an integrated garage, swimming and associated landscaping subject to the following site specific and standard conditions of consent attached to the original assessment report.

Michael Stephens
SENIOR ASSESSMENT OFFICER

Robyn Pearson
TEAM LEADER (ASSESSMENTS)

Stephen Beattie
MANAGER OF DEVELOPMENT SERVICES

URBIS

1 BADEN ROAD, KURRABA POINT

VISUAL ASSESSMENT AND VIEW SHARING REPORT

PREPARED FOR

REVELOP PROPERTY GROUP

MARCH 2022

FINAL - FOR SUBMISSION

URBIS STAFF RESPONSIBLE FOR THIS REPORT:

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Urbis acknowledges the important contribution that Aboriginal and Torres Strait Islander people make in creating a strong and vibrant Australian society.

We acknowledge, in each of our offices, the Traditional Owners on whose land we stand.

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1.0 PROJECT DESCRIPTION

1.1 INTRODUCTION

Urbis has been engaged by Anthony El-Hazouri the owner of 1 Baden Road, to prepare preliminary view sharing advice (Urbis March 2021) regarding potential impacts of the proposed development on the public domain and a View Sharing Report (Urbis December 2021) to determine the view impacts and view sharing outcomes of DA122/21 at 1 Baden Road. An interim response was also requested by Council to specifically address views from unit 1/200 Kurraba Point Road. This report combines information documented in each of the three submissions. In addition, a response to submissions prepared in 2022 in relation to view issues, is appended.

The preliminary visual assessment (Urbis March 2021) considered the visibility of the proposal from neighbouring public parks, reserves and streetscapes and dwellings. This report includes an analysis of the visibility of the built form proposed, impacts on the local visual context and identified those neighbouring dwellings most likely to be potentially affected by view loss. The Urbis March 2021 report identified the closest neighbouring residences including elevated ground floor south-facing units at 200 Kurraba Road, as being potentially affected by some level of potential view loss. This advice was based on external observations and concluded that view loss from units located at 200 Kurraba Road would be likely to range from minor to negligible. This advice was provided without the benefit of access to residences or views inspections.

Notwithstanding, the matter was deferred by the North Sydney Planning Panel (as per minutes following the Wednesday 3rd November meeting) which requested that a view sharing report be prepared to ensure that the effects of the clause 4.6 variation, were fully considered and assessed.

"The Clause 4.6 written request is a threshold question to be satisfied prior to determination. The Panel has decided, on balance, a deferral is appropriate in the circumstances as this will allow the Applicant to seek access for the purpose of view assessments from the properties where owners have made submissions".

Following the Panel's decision, the lead author of this report attended and inspected views at units 1, 2 and 7/200 Kurraba Road on the 18th November 2021, accompanied by a registered surveyor. Various views were captured from each residence, as directed by the objectors legal representative.

2.0 SUBJECT SITE

The subject site at 1 Baden Road is located at the southern end of Kurraba Point adjacent to Kurraba Reserve. The site occupies sloping land south of the road carriageway and falls to meet Sydney Harbour. 200 Kurraba Road is located directly north of and opposite the subject site and includes ground floor units that are partially elevated above street level. Unit 1/200 Kurraba Road occupies the south-west corner of the RFB and as such has potential views to the south over and across part of the subject site.

2.1 EXISTING BUILT FORM ON SITE

The existing dwelling on the site appears to be a post-modern simply massed building including split floor-levels with sloping skillion-style roof forms. Due to the steep underlying topography on the site which falls in elevation from the street level towards Sydney Harbour, the existing dwelling presents to Baden Road as a part-one storey dwelling. In views from the south from Sydney Harbour and foreshore, the dwelling appears as four storeys, albeit stepped in two storey sections. The dwelling is not highly visible from the road as a result of the existing open carport structure occupying the majority of the street frontage. From elevated locations along Kurraba Road parts of the roof and the wide chimney structure are visible. The dwelling appears to include two main roof forms, the northern section of which is visible above the carport and slopes down towards the road. The southern and larger section of the roof slopes down towards the harbour from its north and highest edge. This north edge which presents to Baden Road above the carport sits broadly in an east-west alignment and is the tallest built form on the site. In this regard this feature constrains potential views from neighbouring dwellings to the south.

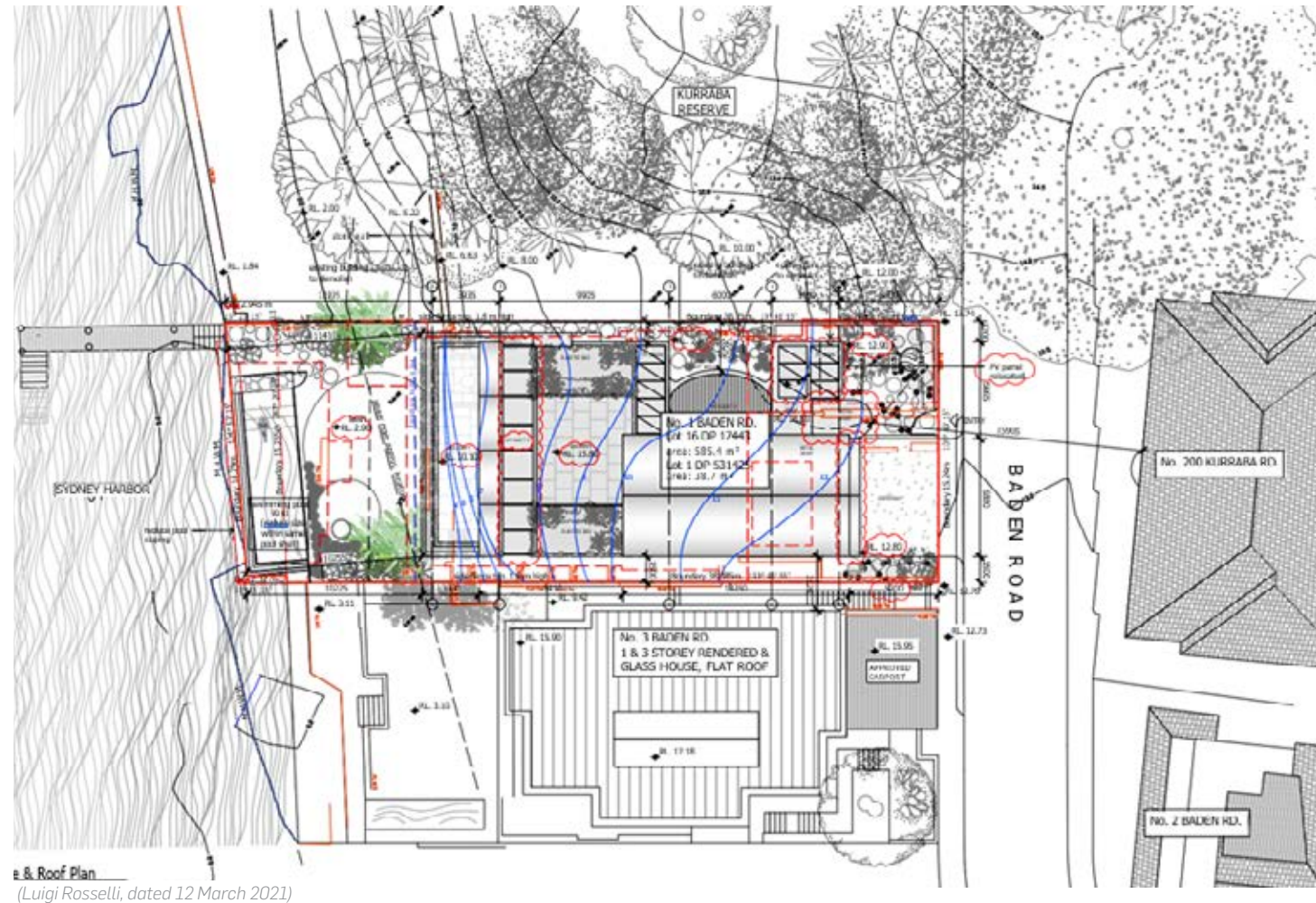


Figure 1 Site Plan

1:200 @ A4

2.2 PROPOSED DEVELOPMENT

The Development Application (DA) is for the demolition of the existing dwelling on the site and construction of a new dwelling with a two-car garage. The updated architectural drawings prepared by Luigi Roselli Architects Pty Ltd (LR architects) Issue B 12/21 which are the subject of the Clause 4.6 variation show that the dwelling will present to Baden Road as two-storeys including a single storey garage and second storey curved roof forms.

The drawings show that the dwelling will present to Baden Road as a two-storey dwelling where the single storey garages include a curved roof form and the western end of the dwelling adjacent to the park is elevated approximately half a storey above street level. The second storey as viewed from the Road also includes a double curved roof form with an apex height of RL 19.19, which appears to be approximately 400mm higher compared to the highest parts of the existing dwelling's ridgeline. The western part of the roof form is significantly lower in height compared to the existing situation and that in the northern elevation to Baden Road, all parts of the built form proposed sit below the height control of 8.5m.

We note that the proposed curved roof forms are significantly lower than the height of the existing chimney structure and both end walls and that the proposed chimney located at the west end of the building is the same height and is directly aligned with, the western end wall. In this regard the proposed tall narrow feature essentially replaces the existing built form.

When considering the proposed development from the east for example from 3 Baden Road, the proposed development is stepped so that levels 1 and 2 from one mass, the southern extent of the which sits approximately 1m north of and inside the location of the existing dwelling which occupies the site.

In other words the existing proposed floorplates at levels 1 and 2 are set back to the north compared to the existing built form. The same situation occurs in relation to levels 3 and 4 above, which are set back significantly to the north behind an open terrace that is characterised by glazed balustrades. The plans show that the south-east edge at levels 4 and 5 sits approximately 3m further back (north) compared to the existing built forms on the site. Further, the single level simply massed form at level 5 is setback 7m to the north compared to the existing dwelling on the site, the sloping roof of which currently occupies this space.

The combination of setbacks of built form to the north provides for an improved spatial separation from the FBL and Sydney Harbour. We note that overall the mass of the proposed development is smaller compared to the existing built form on the site for example; the site coverage will reduce from 442m² to 323m², while landscape area will increase from 60m² to 248m².

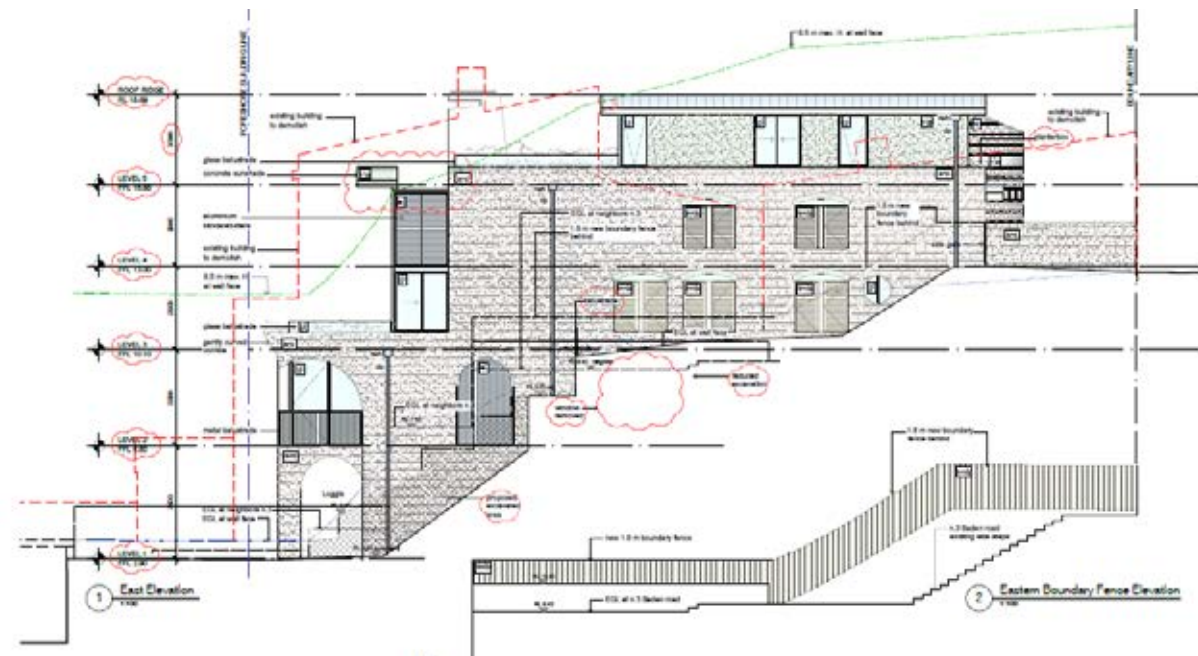


Figure 2 Eastern Elevation of Proposed Development

(Luigi Roselli, dated 12 March 2021)

2.3 CLAUSE 4.6 VARIATION

Given the underlying sloping topography and constraints in relation to developable area for example the location of the foreshore building line (FBL) across the lower section of the site, the footprint of the proposed massing is set closer to the road, thereby increasing the spatial setback of the dwelling from Sydney Harbour. As a result the floor levels respond and vary slightly when compared to the existing dwelling on the site. This Clause 4.6 variation request seeks to vary the maximum Building Height (Height) of the building standard which applies to the site under Clause 4.3 of the North Sydney Local Environmental Plan 2013 (the NSLEP 2013). The maximum height standard which applies under the NSLEP 2013 is 8.5m.

The Clause 4.6 variation prepared by Mecone September 2021 (Applicant's planners) states that minor exceedances to the height occur in two locations including the south edge of the curved roof form (470mm) and the southern edge of the level 4 balcony parapet (600mm). A 'height blanket' image prepared by LR Architects demonstrates the two minor areas and extent of the non-compliance and cause of the Clause 4.6 application refer to Figure 3 below.



Figure 3 The image shows that both non-complying features are of low external visibility and are unlikely to be highly visible for residents in views from units at 200 Kurraba Road. In this regard the non-compliances will not generate any significant visual effects or view loss.

3.0 LOCAL VISUAL CONTEXT



Public domain and Streetscape inspections

Urbis conducted fieldwork on 10 March 2021 and observed the existing visual setting of the site, its spatial arrangement in relation to neighbouring development and public spaces. We considered the external visibility of the subject site and the proposed development from public and private domain locations.

Hodgsons Lookout

Hodgsons Lookout is located north-west of the subject site on an elevated knoll that is encircled by Kurraba Road. Its upper level is relatively flat and includes public open space and play equipment. The east side of the reserve includes dense mature vegetation which screen easterly views to adjoining residential development. Views from the south edge of Hodgsons lookout are elevated and less constrained by foreground vegetation which along the south edge of the space, springs from lower, sloping topography. Dense evergreen vegetation that exists within and along the east boundary of the reserve is such that the western wall and built form present on the subject site is heavily screened and barely visible (refer to photo 1 to 4).

Figure 4 Aerial Site Plan



3.0 LOCAL VISUAL CONTEXT

Kurraba Point Reserve

This is an extension of open space south of Kurraba Road. The area is characterised by gentle south-facing slopes which fall in elevation to meet the harbour and vegetation including a continuous group of trees located along the east side of the reserve adjacent to the subject site's boundary. The vegetation includes a mix of Ficus and Pinus species, Phoenix Caneriensis and Pittosporums all of which are evergreen so that the dense vegetative screen will be present year-round. The lower reaches of the park are characterised by more open turfed areas which meet the sea wall and timber post and rail fence

LEGEND




-  Subject Site
-  Photomontages View Locations (1=unit1)(2=unit 2) (3=unit 7)
-  Photo Location Reference



Figure 5 200 Kurraba Road - View location plan is showing private location views.



Figure 6 View Location Plan



Photo. 1 View south-south-east towards the subject site from Hodgsons Lookout. The existing dwelling is blocked from view by evergreen fig trees (*Ficus Hillii* sp.).



Photo. 3 View east to existing dwelling from the lower reaches of Kurraba Point Reserve near Spains Lookout. From this location, we expect that the focus of views would be to the south-east, south and south-west towards scenic and iconic views across Sydney Harbour.



Photo. 2 View south-south-east towards the subject site from the south edge of the elevated knoll at Hodgsons Lookout



Photo. 4 View east towards the site's boundary wall from the edge of Sydney Harbour.

3.1 BUILT FORM IN THE IMMEDIATE CONTEXT

The built form along Baden Road and Kurraba Road could be described as medium density, with the majority of dwellings being between two and four storeys with street level garaging and carports. In this regard the ground floor of dwellings along the north side of the road are elevated a part-storey above the carriageway. For example both 200 Kurraba Rad and 2 Baden Road are residential flat buildings which include multiple units. Dwellings located in Baden Road are of mixed age and architectural style and are predominantly characterised by sandstone, timber, steel and glass materials and by hipped and gabled pitched roofs, while some apartment buildings have flat or skillion roofing including for example 3 Baden Road. We observed that lots along the south and east side of Baden Road are arrayed about the curved carriageway so that frontages are narrower than rear boundaries and other lots including 1 and 3 Baden Road are narrow and long.

The wider visual context of Kurraba Point is characterised by medium density residential developments with some pockets of the South Cremorne Planning Area being designated for high rise residential development. The built form around Kurraba Point is built with setbacks from the street and neighbouring properties to allow for the character of the area to be maintained. This character prioritises being sympathetic to the natural landscape and maintain its green and leafy setting.

New developments in the area are expected to complement the existing building forms in respect to massing, composition, materials, colours and maintaining the original subdivision pattern. The natural character of the Kurraba Point area includes mature trees and steep topography including a highpoint at Hodgsons Lookout. Dwellings in the area are predominantly medium to large Federation and Edwardian homes with some earlier Victorian development, interwar dwelling houses and residential flat buildings.



LEGEND

- Subject Site
- All View Locations
- ⓧ Photo Location Reference

VIEW LOCATION REFERENCE MAP



Photo. 5 Detail of south elevation of 1 Baden Road from the south-east edge of Kurraba Point Reserve



Photo. 6 View from Pool north-east corner to bridge

HARBOUR VIEWS FROM EAST TO WEST



Photo. 7 View east from the south-east edge of the subject site, adjacent to 3 Baden Road



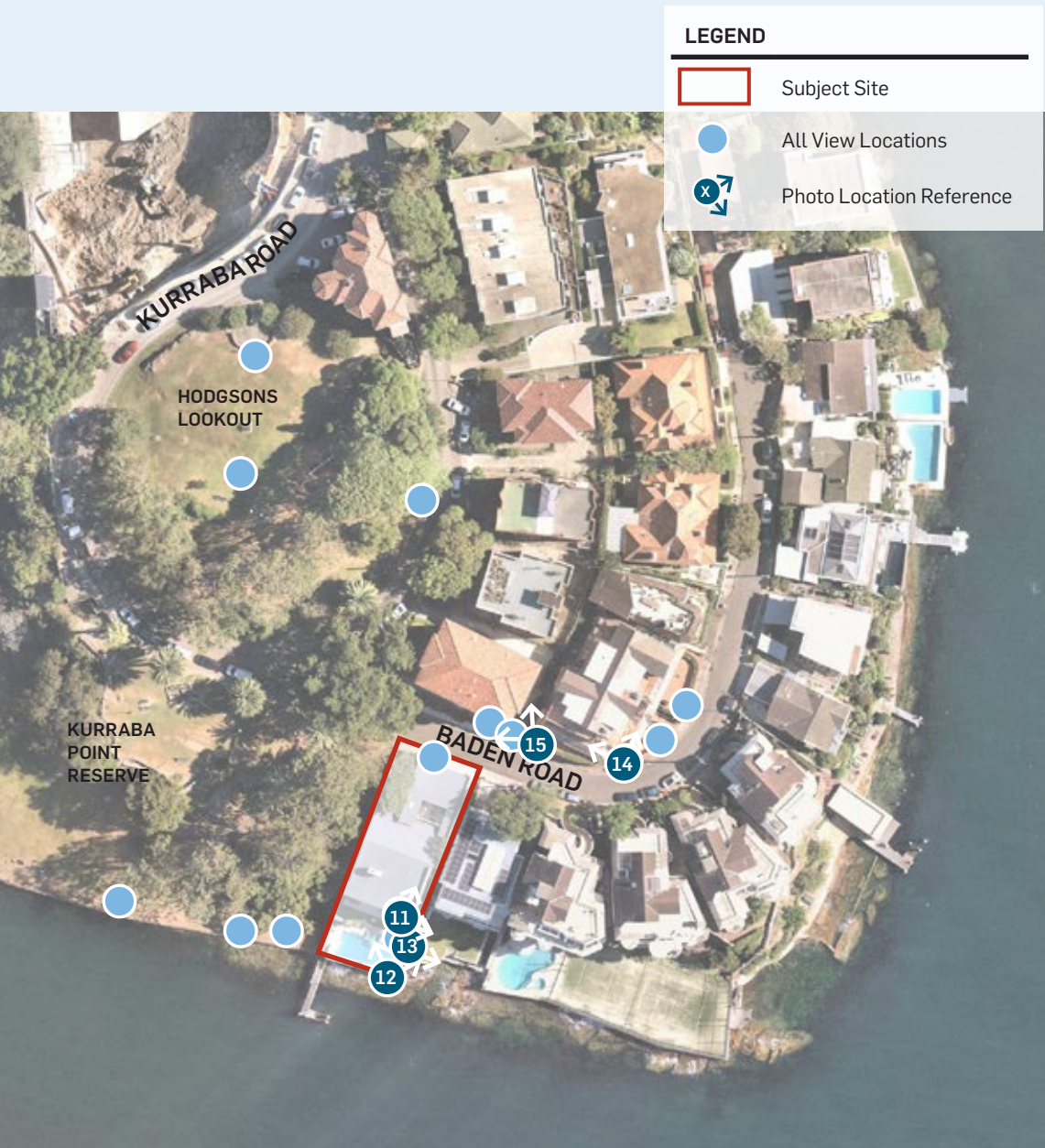
Photo. 8 View south-east from the south-east edge of the subject site



Photo. 9 View south from the south-east edge of the subject site



Photo. 10 View south-west from the south-east edge of the subject site



VIEW LOCATION REFERENCE MAP



Photo. 11 Detail of south elevation of 3 Baden Road from an external balcony at 1 Baden Road



Photo. 12 Detail of the south elevation at 1 Baden Road



Photo. 13 Detail of south elevation at 3 Baden Road



Photo. 14 Detail view of the south elevation at 2 Baden Road



Photo. 15 Detail of the south and east elevation of 200 Kurraba Road



VIEW LOCATION REFERENCE MAP



Photo. 16 Detail of the south elevation at 200 Kurraba Road showing the symmetrical layout of windows etc.



Photo. 17 Existing carport entry and roof form at 1 Baden Road



Photo. 18 Detail of 3-3a Baden Road Garage



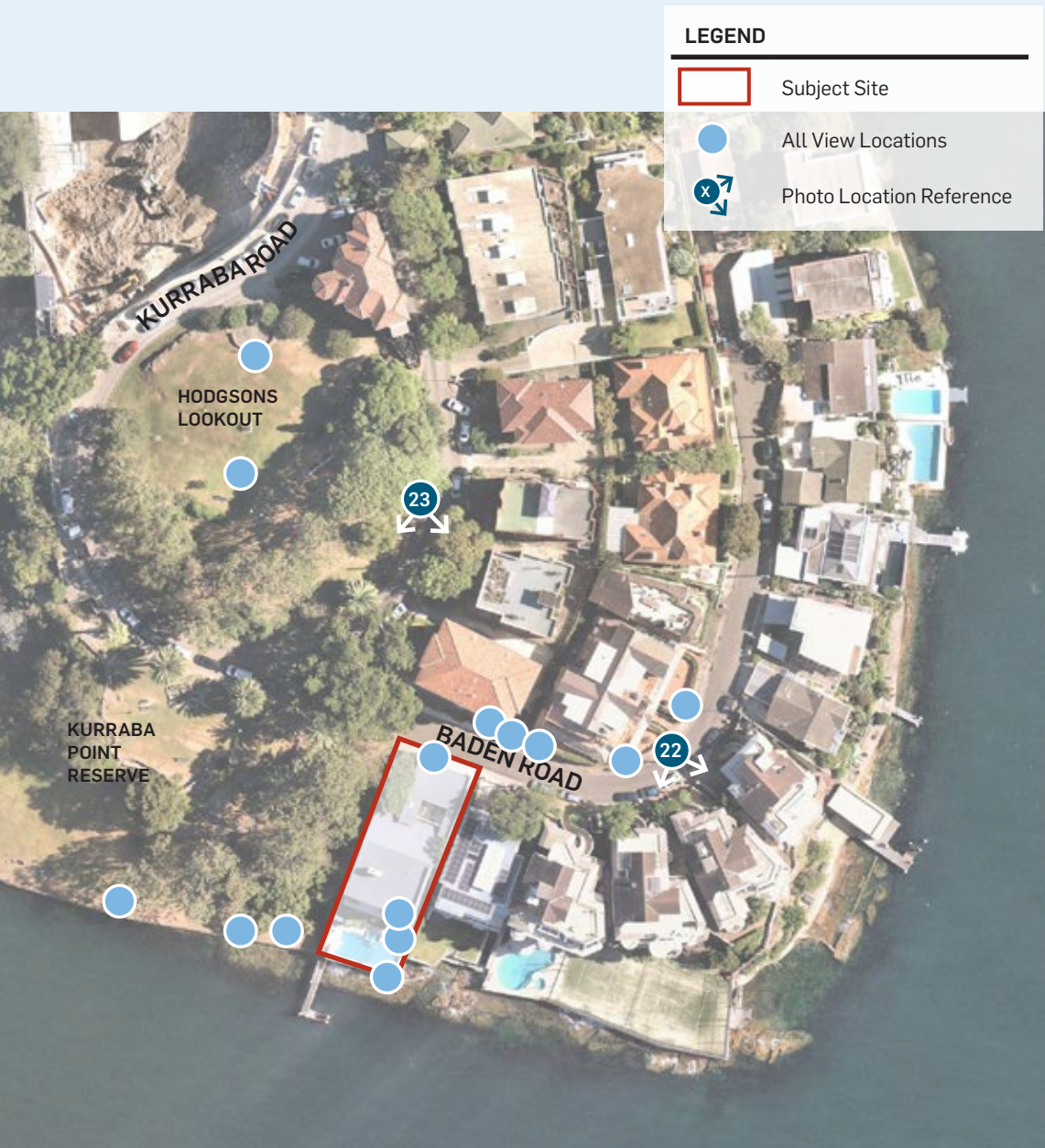
Photo. 20 Streetscape view west along Baden Road including 2 Baden Road in the foreground



Photo. 19 Neighbouring residential development at 5 Baden Road east of the subject site



Photo. 21 Streetscape view west towards the site



VIEW LOCATION REFERENCE MAP



Photo. 22 Detail view of 9 Baden Road



Photo. 23 View of existing dwelling on the site

4.0 EXISTING VIEW ACCESS

This analysis is constrained to those views closest and potentially most affected by the likely visual effects of the proposed development.

4.1 HODGSONS LOOKOUT PARK & KURRABA POINT RESERVE

Views to the site from the upper elevated knoll and southern stairs of Hodgsons Lookout Park are limited and constrained by intervening vegetation. Views from these locations to the south and south-west are expansive and iconic including the Sydney Harbour Bridge to the south-west, Sydney Opera House, Royal Botanic Gardens, parts of Sydney Harbour and Sydney CBD.

The western boundary wall of the site and a small portion of the dwelling is partly visible from Spain's Lookout at Kurraba Reserve. However, due to its neutral colour and significant vegetative screen the site and existing dwelling are of low external visibility.

The dense vegetation along the western boundary of the site which runs from Kurraba Road to the foreshore contributes to the low visibility of the existing development from the lower reaches of Kurraba Point Reserve including from the water edge. Views from south of Kurraba Road are expansive and iconic as described above.

In our opinion the height, bulk and scale of the proposed dwelling will not generate any significant visual effects, or view impacts on public domain views from neighbouring streetscape, and park or look out locations.

4.2 3 BADEN ROAD

This dwelling is located immediately east of the subject site and includes 4 storeys of accommodation. Assumptions made about potential views available are based on observations made of the south elevation from the subject site and a review of real estate images found online.

The south elevation of this dwelling includes four levels of accommodation which are characterised by floor to ceiling glazing and a narrow external balcony is included at level 1 and Juliette balconies at level 2 and 3.

Real estate views show that views are available from windows located at each level. View compositions include a wide arc from the south-east to the south-west. The views are expansive approximately from Vaucluse in the east, include many iconic features such as parts of the Sydney Harbour, sections of land-water interface and islands, the Royal Botanic Gardens, Sydney Opera House, Sydney CBD skyline and parts of the Sydney Harbour Bridge.

Floorplans show that the ground, second and third levels include living and dining areas whilst the first floor is occupied by a large master bedroom. It is likely therefore that potential views available from those rooms and areas are expansive and include the features listed above.

4.3 VISUAL EFFECTS OF THE PROPOSAL ON EXISTING VIEWS

The potentially most affected private domain views are located at **3 Baden Road** and **200 Kurraba Road**.

3 Baden Road

Given the location of the proposed development within and setback from the south edge of existing building footprint, the extent of the eastern walls at level 1 and 2, the proposed built form is likely to occupy a minor to negligible part of the south-westerly views from this dwelling.

As the proposed massing steps back further to the north at levels 3 and 4 and again at level 5, the built form proposed will occupy even less of potential oblique south-westerly views from the upper levels at 3 Baden Road. In this regard there is likely to be a net-benefit to the extent of the south-westerly views currently available due to this stepped design.

All views to the south and south-east will be unaffected by the proposed development. No views which include scenic items, icons and highly valued features as described in Tenacity would be lost. In southerly or south-easterly views.

200 Kurraba Road

Views were inspected from units for the view sharing sharing report prepared (Urbis December 2021)

2 Baden Road

The proposed development is unlikely to create any significant view blocking effects in highly oblique west-south-westerly views from ground level or first floor units at 2 Baden Road. Views from top floor units are unlikely to be affected by potential view loss



LEGEND

- Subject Site
- All View Locations
- Potentially most affected dwellings

VIEW LOCATION REFERENCE MAP

FLOOR PLANS OF 3 BADEN ROAD



GROUND LEVEL

GROUND PLAN



LEVEL ONE

LEVEL ONE

FLOOR PLANS OF 3 BADEN ROAD



LEVEL 2



LEVEL THREE

APPLICATION OF TENACITY

Notwithstanding in my opinion, based on an initial review of photomontages the proposed development will not cause any significant view loss, as required by the Panel and for completeness we have applied the Tenacity planning principle and all steps despite in our view the need to do so. In addition, we have assumed that the formal street presentation of the residential flat building at 200 Kurraba Road, is to the west to Kurraba Road itself and as such, all dwellings inspected gain southerly views across a side boundary. However, taking a reasonable and conservative approach for the purposes of the assessment, we have considered that all views from the units inspected are primary views. Further given the internal layout and individual unit floorplates we have considered that existing views are via a front boundary.

USE OF PHOTOMONTAGES

Photomontages are frequently used as objective visual aids to assist in quantifying the extent of visual effects that is; the amount of visual change or view loss. Accurate photomontages have been prepared for this purpose by Digital line Architectural Illustrators in a manner that satisfies the Land and Environment Court of New South Wales practice direction for the use of visual aids that are to be relied upon by the Court. Further information about the method of preparation and certification of accuracy is include in Section 6.0 of this report and in Appendix 1.

Urbis conducted the views inspections and recorded a number of high-resolution photographs from each unit and selected the most instructive view from each to be modelled further analysis, in a photomontage. In general, the view places were approximately 1m inside the bay window in each living area please refer to the location plans, per unit floorplate on each view page (Figures 6, 8 and 9). Each view place was surveyed by CMS surveyors, data for which is included in Appendix 2.

200 KURRABA ROAD

200 Kurraba Road is a part three and part four storey residential flat building located north and directly opposite the site. We note that its formal street address and front elevation is to the west to Kurraba Road and that in fact its south elevation is a side boundary that is set parallel with and presents to Baden Road. Notwithstanding, its longest elevation and the main living area windows of units within 200 Baden Road its formal address is to Kurraba address at 200 Baden Road, it preliminary to the north side of Baden Road which includes two south facing units per floor. Fieldwork observations and a review of real estate images and floor plans show that existing views from the elevated ground level units (above garaging) are likely to be available over part of the subject site. In our previous advice for this project, we noted that existing views access from the eastern and western south-facing units at 200 Kurraba Road would be likely to differ, in that views from the eastern unit would be more expansive in relation to Harbour Views and less constrained by intervening vegetation and built form, compared to views from the western unit.



Figure 7 Detail of the south elevation at 200 Kurraba Road showing the symmetrical layout of windows .

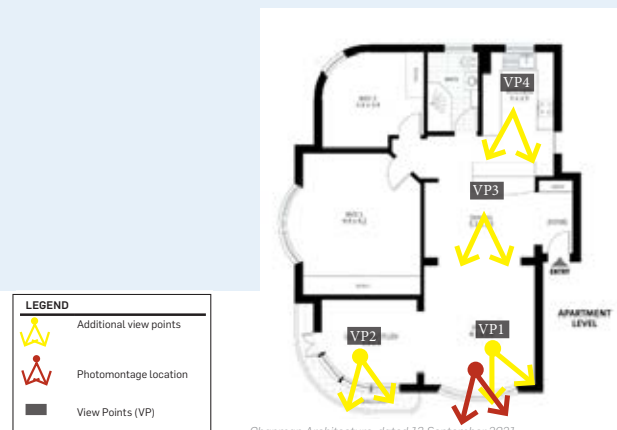


Figure 8 200 Kurraba Road | Unit 1 floorplate and view place



View 01 - Existing view south from sitting room - unit 1 - 200 Kurraba Road



View 01 - Proposed view south from sitting room - unit 1 - 200 Kurraba Road

Is Tenacity Relevant?

Only the foreground of the view will be potential affected where existing built form will essentially be replaced by the proposed built form. The proposed development does not create any significant change to the predominant composition of the view, and creates no significant view loss or view impact.

Notwithstanding the composition and character of the view include scenic and highly valued features in Tenacity terms. As per paragraphs 25 and 26 of the planning principle, the quantity of view loss or effect on view sharing is negligible and the items lost are not highly valued, therefore in my opinion the pre-test threshold to proceed to Step 1 of the planning principle is not met and as such the planning principle has no work to do.

However, for completeness, and as requested we will complete the steps outlined in the principle.

VIEW 01, UNIT 1 SITTING ROOM SHARING VIEW

Existing View

This view is from the eastern living space that is used as a living room. The foreground composition includes the existing dwelling on the site, its roof forms and wide chimney feature as well as evergreen vegetation within the subject site and adjoining reserve. The midground composition is characterised by a wide expanse of open undifferentiated water within Sydney Harbour whilst the background is predominantly characterised by a long section of land-water interface including the bay and distinctive band of vegetation within the Royal Botanic Gardens Sydney and building development in the City of Sydney CBD skyline. The west edge of the view includes part of an international icon, the Sydney Opera House.

Proposed View

The foreground composition includes the proposed development massed to the east where the wide chimney feature, upper roof form and western mass of the existing dwelling will be removed, revealing additional areas of Sydney Harbour. The arched roof forms including the trailing edge (southern edge) which includes a short, minor section of awning (the non-complying part of the proposed development that is subject to the Clause 4.6 variation) is low and blocks a negligible amount of undifferentiated open water in the immediate foreground. The north edge and part of the arched roof form which is fully compliant, replaces a view of the existing dwelling and a small section of open water immediately east of the existing dwelling. The eastern edge of the proposed built form (oblique part of the view) does not block any scenic items, areas of land-water interface or icons which would be considered to be highly valued in Tenacity terms. The proposed development as modelled including the minor non-complying trailing edge of the curved roof form, does not cause any significant view loss or block scenic or highly valued items.

5.0 TENACITY ASSESSMENT

5.1 USE OF VIEW LOSS AND VIEW SHARING ASSESSMENT- UNIT 1

STEP 1

Existing views to be affected

The first step is the assessment of views to be affected. Water views are valued more highly than land views. Iconic views (eg of the Opera House, the Harbour Bridge or North Head) are valued more highly than views without icons. Whole views are valued more highly than partial views, eg a water view in which the interface between land and water is visible is more valuable than one in which it is obscured.

The proposal will replace existing built form with new built form in the immediate foreground and below the standing eye-height horizontal view line. The existing view composition is described in detail above and includes scenic and highly valued features for example sections of land-water interface, the Sydney CBD skyline and the Sydney Opera House etc The foreground of the view is predominantly characterised by existing built form a similar extent of which will be changed to the proposed built form.

The part of the view that will be lost does not include highly valued features, as identified in Tenacity, therefore in my opinion the threshold test to proceed to Step 2 in Tenacity has not been met.

However for completeness, and as requested we will complete the following step in the principle.

STEP 2 IN TENACITY

From where are views available?

This step considers from where the affected views are available in relation to the orientation of the building to its land and to the view in question. The second step, quoted, is as follows:

The second step is to consider from what part of the property the views are obtained. For example, the

protection of views across side boundaries is more difficult than the protection of views from front and rear boundaries. In addition, whether the view is enjoyed from a standing or sitting position may also be relevant. Sitting views are more difficult to protect than standing views. The expectation to retain side views and sitting views is often unrealistic.

The view is available from an elevated ground floor unit across the residential flat building's side boundary (assuming Kurraba Road is the formal street frontage for 200 Kurraba Road) but the unit's effective front boundary. The view modelled and other views are available to the south from living areas and from standing and seated positions, across the property's side boundary.

The views are available from standing positions and the threshold test to proceed to Step 3 in Tenacity has been answered.

Given that the proposed development is apparently compliant with planning controls, the question of reasonableness is relevant and should be answered.

STEP 3 IN TENACITY

The next step in the principle is to assess the extent of impact, considering the whole of the property and the locations from which the view loss occurs. Step 3 as quoted is:

The third step is to assess the extent of the impact. This should be done for the whole of the property, not just for the view that is affected. The impact on views from living areas is more significant than from bedrooms or service areas (though views from kitchens are highly valued because people spend so much time in them). The impact may be assessed quantitatively, but in many cases this can be meaningless. For example, it is unhelpful to say that the view loss is 20% if it includes one of the sails of the

Opera House. It is usually more useful to assess the view loss qualitatively as negligible, minor, moderate, severe or devastating.

Aside the from representative 'modelled' photomontage view to demonstrate the extent of view loss, views to the south towards Sydney Harbour are available from two living areas and parts of the view although constrained by internal walls and structures etc, are available from further north in the dwelling for example from the open-plan kitchen and dining area. We note that views to the south-east from both southern living rooms are unaffected by the proposed development and further, that westerly and easterly views from western living area (sitting room) and from bedrooms are unaffected by the proposed development.

When considering relevant factors in Steps 1 and 2, including the quantitative and qualitative change as modelled, the view impact would be considered as negligible. This is the lowest rating possible using the Tenacity scale (negligible, minor, moderate, severe or devastating) and in our opinion the threshold test to proceed to Step 4 in Tenacity has not been met.

However, for completeness, and as requested we will complete the following step in the principle.

STEP 4 IN TENACITY

Reasonableness

29 The fourth step is to assess the reasonableness of the proposal that is causing the impact. A development that complies with all planning controls would be considered more reasonable than one that breaches them. Where an impact on views arises as a result of non-compliance with one or more planning controls, even a moderate impact may be considered unreasonable. With a complying proposal, the question should be asked whether a more skilful design could

provide the applicant with the same development potential and amenity and reduce the impact on the views of neighbours. If the answer to that question is no, then the view impact of a complying development would probably be considered acceptable and the view sharing reasonable.

The is a minor non-compliance with the LEP height control in relation to two parts of roof form as identified in the height blanket image and discussed in section 2.2 Clause 4.6 variation. Given the minor non-compliance, the skilful design questions are not required to be answered. Instead, we address the reasonableness of the view loss and overall view sharing impact. As discussed above the visual effects or extent of view loss including the additional height sought in the Clause 4.6, is negligible, the scenic quality of the view to be lost is not highly valued in Tenacity terms and there is a low level of view impact in relation to the whole dwelling (as per step 3 in *Tenacity*)

STEP 4 IN TENACITY

Summary Response

The view loss for Unit 1/200 Kurraba Road in our opinion is minor and inconsequential given that a minor part of the view is affected and no scenic or highly valued items are affected. The proposed development is massed so that less built form will occupy the western part of the view, revealing a new view corridor and parts of Sydney Harbour and as such the proposed development creates a net-gain of view and benefit for the residents at Unit 1/200 Kurraba Road.

The view impact when considered across the whole dwelling is negligible and as such the overall view sharing outcome is reasonable and acceptable.

UNIT 1 - PHOTOMONTAGE DETAILED VIEW



View 01 - Proposed view south from sitting room - unit 1 - 200 Kurraba Road

ADDITIONAL VIEWS-UNIT 1 200 KURRABA ROAD



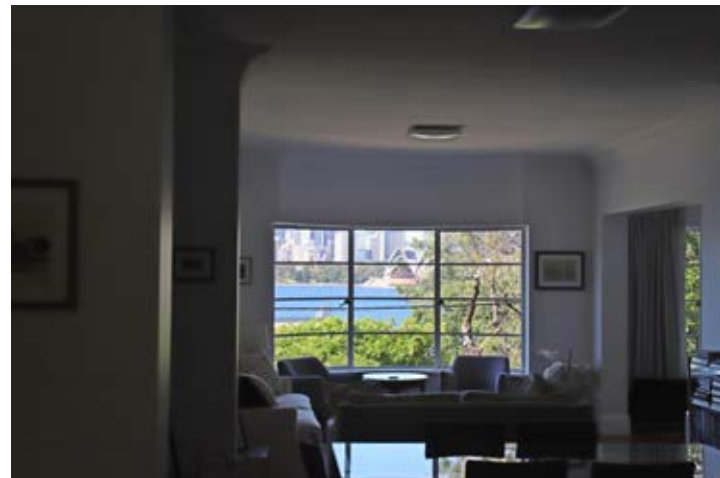
View Place 1-view southeast from living room



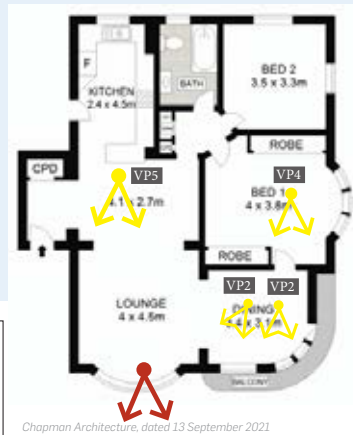
View Place 2- view south from sun room



View Place 3-standing view south from dining room



View Place 4-view south from kitchen



Chapman Architecture, dated 13 September 2021

Figure 10 200 Kurraba Road | Unit 2 floorplate and view place



View 02 - Existing view south from west side of living room Road



View 02 - Proposed view south from west side of living room

VIEW 02, UNIT 2 LIVING ROOM

Existing View

This view is from the western living area which is used as a living room. The foreground composition includes the existing dwelling on the site, its wide northern elevation and its roof forms, wide chimney feature etc which fill the majority of the site. The midground composition is characterised by a wide expanse of open undifferentiated water in Sydney Harbour whilst the background is predominantly characterised by a long section of land-water interface including the bay and distinctive band of vegetation within the Royal Botanic Gardens Sydney and building development in the City of Sydney CBD skyline. The west edge of the view includes part of an international icon, the Sydney Opera House.

Proposed View

The foreground composition includes the proposed development massed to the east and further north so that it occupies less of the view when compared to the existing dwelling. It's simply massed and more compact form including the arched roof, replaces the wider dwelling and tall wide chimney feature. The removal of the existing chimney significantly improves the view composition by decluttering the visual setting of the Sydney Opera House. The reduced extent and lower height of the western part of the proposed development reveals a wider section of open water in the midground which in our opinion improves the view available. A similar improvement at the east edge of the proposed development, where the existing projected fin wall will be removed, will result in a less cluttered and more scenic composition being available.

The arched roof forms including the trailing edge (southern edge) which includes a short, section of non-complying awning (that is subject to the Clause 4.6 variation) is low and blocks a negligible amount of undifferentiated open water in the immediate foreground. The 'leading' north edge and part of the arched roof form which is fully compliant, replaces the view of part of the existing dwelling. The proposed development as modelled including the minor non-complying trailing edge of the curved roof form, does not cause any significant view loss or block scenic or highly valued items and in fact creates a wider, more scenic and less cluttered view.

5.2 USE OF VIEW LOSS AND VIEW SHARING ASSESSMENT-UNIT 2

VIEW 02 UNIT 2 200 KURRABA ROAD VIEW

Is Tenacity Relevant?

Only the foreground of the view will be potential affected where existing built form will essentially be replaced by the proposed built form. The proposed development does not create any significant change to the predominant composition of the view, creates no significant view loss or view impact.

Notwithstanding the composition and character of the view includes scenic and highly valued features in Tenacity terms. As per paragraphs 25 and 26 of the planning principle, the quantity of view loss or effect on view sharing is negligible and the items lost are not highly valued, therefore in my opinion the pre-test threshold to proceed to Step 1 of the planning principle is not met and as such the planning principle has no work to do.

However, for completeness, and as requested we will complete the steps outlined in the principle.

STEP 1 IN TENACITY

Existing views to be affected

The first step is the assessment of views to be affected. Water views are valued more highly than land views. Iconic views (eg of the Opera House, the Harbour Bridge or North Head) are valued more highly than views without icons. Whole views are valued more highly than partial views, eg a water view in which the interface between land and water is visible is more valuable than one in which it is obscured.

The existing view composition is described in detail above and includes scenic and highly valued features for example sections of land-water interface, the Sydney CBD skyline and the Sydney Opera House etc The foreground of the view is predominantly characterised by existing built form a similar extent of which will be replaced by the proposed built form.

The part of the view that will be lost does not include highly valued features, as identified in Tenacity, therefore in my opinion the threshold test to proceed to Step 2 in Tenacity has not been met.

However, for completeness, and as requested we will complete the following step in the principle.

STEP 2 IN TENACITY

From where are views available?

This step considers from where the affected views are available in relation to the orientation of the building to its land and to the view in question. The second step, quoted, is as follows:

The second step is to consider from what part of the property the views are obtained. For example, the protection of views across side boundaries is more difficult than the protection of views from front and rear boundaries. In addition, whether the view is enjoyed from a standing or sitting position may also be relevant. Sitting views are more difficult to protect than standing views. The expectation to retain side views and sitting views is often unrealistic.

The view is available from an elevated ground floor unit across the residential flat building's side boundary (assuming Kurraba Road is the formal street frontage for 200 Kurraba Road) but the unit's effective front boundary. The view modelled and other views are available to the south from living areas and from standing and seated positions, across the property's side boundary.

The views are available from standing positions and the threshold test to proceed to Step 3 in Tenacity has been answered.

STEP 3 IN TENACITY

Extent of impact using Tenacity scale

Aside the from representative 'modelled' photomontage view to demonstrate the extent of view loss, views to the south towards Sydney Harbour are available from two living areas and parts of the view although constrained by internal walls and structures etc, are available from further north in the dwelling for example from the open-plan kitchen and dining area. We note that views to the south-east from both southern living rooms are unaffected by the proposed development and further, that westerly and easterly views from western living area (sitting room) and from

bedrooms are unaffected by the proposed development. In fact, the south-westerly part of the view will be greatly improved with the removal of the chimney and higher flat roof form.

When considering relevant factors in Steps 1 and 2, including the quantitative and qualitative change as modelled, the view impact would be considered as negligible and there is a net view benefit in relation to the south-west part of the view. Negligible is the lowest rating possible using the Tenacity scale (negligible, minor, moderate, severe or devastating) and in our opinion the threshold test to proceed to Step 4 in Tenacity has not been met.

However, for completeness, and as requested we will complete the following step in the principle.

STEP 4 IN TENACITY

Reasonableness

29 The fourth step is to assess the reasonableness of the proposal that is causing the impact. A development that complies with all planning controls would be considered more reasonable than one that breaches them. Where an impact on views arises as a result of non-compliance with one or more planning controls, even a moderate impact may be considered unreasonable. With a complying proposal, the question should be asked whether a more skilful design could provide the applicant with the same development potential and amenity and reduce the impact on the views of neighbours. If the answer to that question is no, then the view impact of a complying development would probably be considered acceptable and the view sharing reasonable.

The is a minor non-compliance with the LEP height control in relation to two parts of roof form as identified in the height blanket image and discussed in section 2.2 Clause 4.6 variation. Given the minor non-compliance, the 'skilful design question' is not required to be answered. Instead, we address the reasonableness of the view loss and overall view sharing impact. As discussed above the visual effects or extent of view loss including the additional height sought in the Clause 4.6, is negligible, the scenic quality of the view to be lost is not highly valued in Tenacity terms and there is a low level of view impact in relation to the whole dwelling (as per step 3 in Tenacity)

UNIT 2 - PHOTOMONTAGE DETAILED VIEW

STEP 4 IN TENACITY

Summary Response

The view loss for Unit 2/200 Kurraba Road in our opinion is minor and inconsequential given that a minor part of the view is affected and no scenic or highly valued items are affected. The proposed development is massed so that less built form will occupy the view, revealing more of the south-westerly composition and improving the scenic quality and visual setting of the Sydney Opera House. In this regard the proposed development creates a net gain and significant benefit for the residents at Unit 2/200 Kurraba Road.

The view impact when considered across the whole dwelling is negligible and as such the overall view sharing outcome is reasonable and acceptable.



View 02 - Proposed view south from west side of living room - unit 2 - 200 Kurraba Road

ADDITIONAL VIEWS-UNIT 2 200 KURRABA ROAD



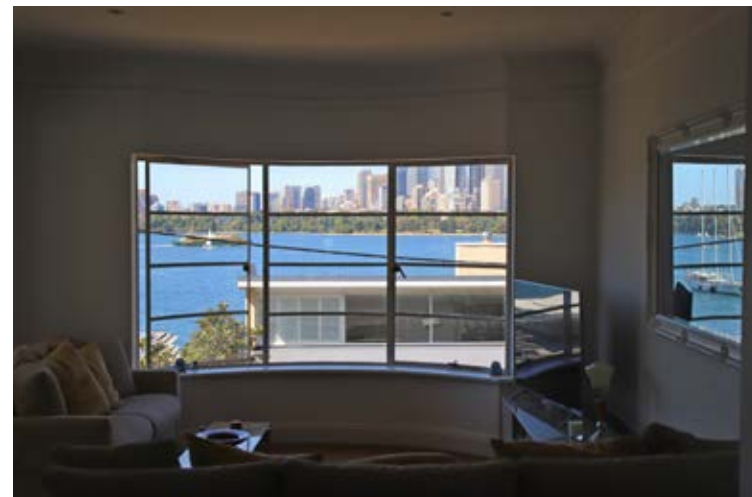
View Place 2- view south-west from office area



View Place 2- view south from home office



View Place 4- seated view south from master bedroom



View Place 5- standing view south from dining room

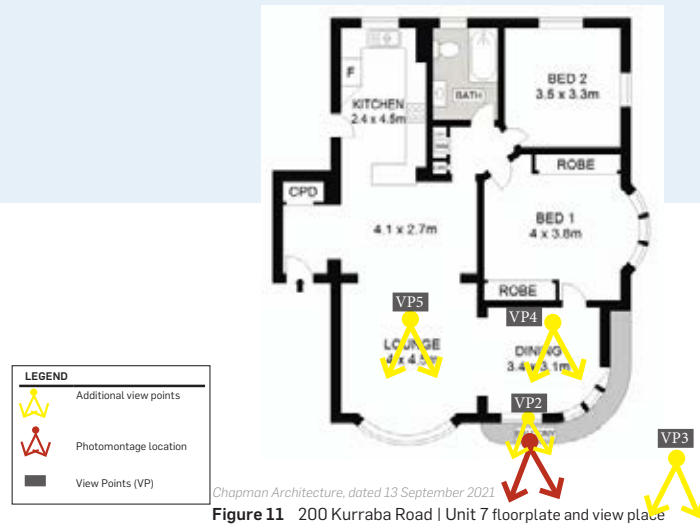


Figure 11 200 Kurraba Road | Unit 7 floorplate and view place



View 03 - Standing existing view south from lower ground central doors from study



View 03 - Standing proposed view south from lower ground central doors from study

VIEW 03, UNIT 7 CENTRAL DOORS FROM STUDY

Existing View

This view is from the centrally located ground floor study doors to the external garden area. The foreground composition includes the existing dwelling on the site including its flat roof forms and garage walls which extend towards the eastern site boundary. The foreground composition also includes a wide view corridor to the south-south-east to parts of Sydney Harbour, Mrs Macquarie's Chair and Potts Point in the distance. The distant view composition above the existing dwelling includes the upper parts of the City of Sydney CBD tower cluster. There is no access to individual icons and the 'whole' view could not be characterised as being highly scenic notwithstanding the east side of the view includes a whole view if considered in a formal pictorial sense.

Proposed View

The foreground composition includes the proposed development massed to the west and further north compared to the existing dwelling. Its simply massed, compact form including a wider eastern side setback replaces the wider existing dwelling. The complying leading edges of the arched roof forms will block the upper parts of Sydney CBD tower cluster but do not block access to scenic or iconic items. The trailing (southern) edge of the arched roof forms subject to the Clause 4.6 variation, are not visible in this view and as such make no contribution to the view loss. The inclusion of the wider east side setback will reveal a narrow additional view corridor towards Sydney Harbour and as such (depending on the removal of the existing magnolia tree) will offer an improved view. The proposed development as modelled including the minor non-complying trailing edge of the curved roof form, does not cause any significant view loss or block scenic or highly valued items.

5.3 USE OF VIEW LOSS AND VIEW SHARING ASSESSMENT - UNIT 7

VIEW 03 UNIT 7 200 KURRABA ROAD VIEW

Is Tenacity Relevant?

The easterly view corridor will be unaffected, retained and enhanced with the additional of the east side setback to the proposed dwelling. A minor part of the view described above including the upper parts of the Sydney CBD skyline will be lost. Notwithstanding the proposed development does not create any significant change to the predominant composition of the view and the features lost are not identified as scenic and highly valued features in Tenacity terms, the proposed built form will create a minor amount of view loss and as such the pre-test threshold to proceed to Step 1 of the planning principle is met.

STEP 1 IN TENACITY

Existing views to be affected

The first step is the assessment of views to be affected. Water views are valued more highly than land views. Iconic views (eg of the Opera House, the Harbour Bridge or North Head) are valued more highly than views without icons. Whole views are valued more highly than partial views, eg a water view in which the interface between land and water is visible is more valuable than one in which it is obscured.

The proposal will replace existing built form with new built form including a section of arched roof that is taller compared to the existing situation. The part of the view to be affected does not include any scenic or highly valued features as defined in Tenacity and is predominantly characterised by the existing dwelling and a distant background including the upper parts of the Sydney CBD city skyline.

Given the quantum and scenic quality of the view in our opinion the threshold test to proceed to Step 2 in Tenacity has not been met.

However, for completeness, and as requested we will complete the following step in the principle.

STEP 2 IN TENACITY

From where are views available?

This step considers from where the affected views are available in relation to the orientation of the building to its land and to the view in question. The second step, quoted, is as follows:

The second step is to consider from what part of the property the views are obtained. For example, the protection of views across side boundaries is more difficult than the protection of views from front and rear boundaries. In addition, whether the view is enjoyed from a standing or sitting position may also be relevant. Sitting views are more difficult to protect than standing views. The expectation to retain side views and sitting views is often unrealistic.

The view is available from the ground floor study and south-facing living rooms from standing positions, across the property's side boundary, but the unit's effective front boundary.

The views are available from standing positions and the threshold test to proceed to Step 3 in Tenacity has been met.

STEP 3 IN TENACITY

The next step in the principle is to assess the extent of impact, considering the whole of the property and the locations from which the view loss occurs. Step 3 as quoted is:

The third step is to assess the extent of the impact. This should be done for the whole of the property, not just for the view that is affected. The impact on views from living areas is more significant than from bedrooms or service areas (though views from kitchens are highly valued because people spend so much time in them). The impact may be assessed quantitatively, but in many cases this can be meaningless. For example, it is unhelpful to say that the view loss is 20% if it includes one of the sails of the Opera House. It is usually more useful to assess the view loss qualitatively as negligible, minor, moderate, severe or devastating.

Aside the from representative 'modelled' photomontage view to demonstrate the extent of view loss, views to the south are available from the adjoining living areas and parts of the view although constrained by internal walls and structures etc, are available from further north in the dwelling for example from the open-plan kitchen and dining area. Views to the existing and proposed dwelling are also available from the external timber deck, pebble area and the eastern lawn. We note that views to the south-east from both southern living rooms and external deck are unaffected by the proposed development and further, that south-easterly views from the study, from bedrooms are also unaffected by the proposed development. Views south from the eastern garden and lawn are via the wide view corridor above the roof of 3 Baden Road and will be unaffected by the proposed development.

When considering relevant factors in Steps 1 and 2, including the quantitative and qualitative change as modelled, the view impact would be considered as minor. This is a low rating using the Tenacity scale (negligible, minor, moderate, severe or devastating) and in our opinion the threshold test to proceed to Step 4 in Tenacity has not been met.

However, for completeness, we will complete the following step in the principle.

STEP 4 IN TENACITY

Reasonableness

29 The fourth step is to assess the reasonableness of the proposal that is causing the impact. A development that complies with all planning controls would be considered more reasonable than one that breaches them. Where an impact on views arises as a result of non-compliance with one or more planning controls, even a moderate impact may be considered unreasonable. With a complying proposal, the question should be asked whether a more skilful design could provide the applicant with the same development potential and amenity and reduce the impact on the views of neighbours. If the answer to that question is no, then the view impact of a complying development would probably be considered acceptable and the view sharing reasonable.

Given that that the part of the proposed development that causes the view loss, is compliant with LEP height control, the question of reasonableness in relation to a more skilful design is relevant.

UNIT 7 - PHOTOMONTAGE DETAILED VIEW

Step 4 Tenacity - Summary Response

The part of the proposed development causing view loss and minor view impact (in quantitative and qualitative terms) is the complying leading (south-edge) of the arched roof form. The question to be answered is whether or not the view impacts could be significantly reduced or improved by re-massing or changing the built form proposed.

Views lost are from a ground floor dwelling in front of which any fully complying two storeys dwelling up to 8.5m in height, could be constructed. The north elevation and leading edge of the roof form proposed sits significantly below the LEP height control (by approximately 2m). A fully compliant building that occupied all of the permissible, would block all of the upper section of the CBD skyline and in so doing create a greater extent of view blocking, resulting in a poor and significantly worse view and amenity outcome for Unit 7.

A lower or altered roof form would reduce the extent of view loss by revealing a minor amount of additional tower forms, but would not significantly improve the view sharing outcome. The inclusion of a wider east side set back and potential tree removal will enhance the existing view south above the roof of 3 Baden Road.

On balance, given that the view lost is minor in extent and does not include scenic or highly valued items, in our opinion the view sharing outcome is reasonable and acceptable. In this regard in our opinion no changes to the massing proposed, are required.



View 03 - Staging proposed view south from lower ground central doors from study - unit7 - 200 Kurraba Road

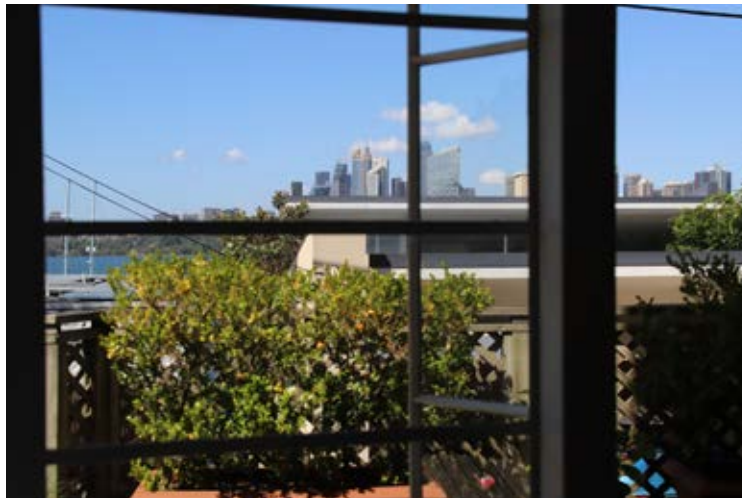
ADDITIONAL VIEWS-UNIT7 200 KURRABA ROAD



View Place 2-view to southeast from centred on doors to timber deck



View Place 3- close view to south from east side of the timber deck



View Place 4-view south from study



View Place 5-standing view south to CBD from living room

6.0 CERTIFICATION OF ACCURACY

The purpose of the detailed surveying/modelling, and independently surveyed camera locations is to enable a 3D virtual version of the site to be created in CAD software. If this has been done accurately, it is then possible to insert the selected photo into the background of the 3D view, position the 3d camera in the surveyed position and then rotate the camera around until the surveyed 3d points match up with the correlating real-world objects visible in the photo. This is a self-checking mechanism – if the camera position or the survey data is out by even a small distance then good fit cannot be achieved. A 100% 'perfect fit' cannot occur for the following reasons:

Variance between measured focal length compared to stated focal length,

Minor lens distortion which varies from lens to lens and manufacturer to manufacturer,

Absence of a suitable range of reference points on site/visible through lens (although in this case an acceptable number of points have been used)

Allowing for these limitations, Digital Line demonstrated that the alignment was achieved to a high degree of accuracy.

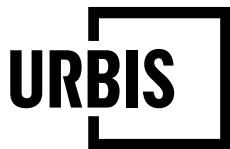
The accuracy of the locations of the 3D model of the proposed development with respect to the photographic images was checked by Urbis in multiple ways:

- The model was checked for alignment and height with respect to the 3D survey and adjacent surveyed reference markers which are visible in the images.
- The location of the camera in relation to the model was established using the survey model and the survey locations, including map locations and RLs. Focal lengths and camera bearings in the meta data of the electronic files of the photographs are known.
- Reference points from the survey were used for cross-checking accuracy in all images.
- No significant discrepancies were detected between the known camera locations and those predicted by the computer software. Minor inconsistencies due to the natural distortion created by the camera lens, were reviewed by myself and were considered to be within reasonable limits.
- I am satisfied that the photomontages have been prepared in accordance with the Land and Environment Court of New South Wales practice direction.
- I certify, based on the methods used and taking all relevant information into account, that the photomontages are as accurate as is possible in the circumstances and can be relied upon by the Court for assessment.

7.0 SUMMARY AND CONCLUSION

- The forward sections of this report include an assessment of the visual effects and impacts of the proposed development on surrounding streetscapes and public domain parks, reserves and foreshore of Sydney Harbour.
- The site, existing and proposed dwelling are of low external visibility from sensitive public domain locations including to Hodgson Lookout Park, Kurraba Point Reserve and Spains Lookout.
- Visibility to the site is constrained from the public domain locations by intervening dense vegetation such that photomontages could not be prepared, given the low visibility of all existing built forms on the site.
- Expansive views are available from 4 areas inspected at Hodgsons Lookout Park and Kurraba Point Reserve to the south-west, south and south-east.
- The proposed built form if visible, will occupy a negligible part of the south-easterly view notwithstanding that the subject site is heavily screened by existing dense vegetation.
- The proposed built forms presents to Baden Road as a two storey dwelling , is lower in hieght and smaller in scale than all neighbouring residential dwellings and flat buildings that are located along both sides of the Baden Road. In this regard its form and scale are highly compatible with the existing steetscape character and visual context.
- The proposed development was found woudl be of low visibility from publcidomain areas to the north-westand west.
- The visual effects of the proposed development on 3 Baden Road were found to be low based on a reviwie of real estate imagery and external observations.
- Detailed analysis based on view inspections at the closest dwellings inlcuding at elevated ground floor units 1,2 and 7 Kurraba Road, was included in the view sharig reort (Urbis December 2021)
- The view sharing outcome in relation to dwellings within 200 Kurraba Road were determined based on site inspections and observations and analysis of analytical block-model photomontages prepared by Digital Line architectural Illustrators.
- The photomontages have been prepared to satisfy the Land and Environment Court of New South Wales practice direction for the use of visual aids to be relied upon by the Court.
- The accuracy of the photomontages has been cross checked by Urbis to ensure that the alignment of the constructed 3D architectural model of the proposed development has been inserted, rotated and aligned with surveyed features in the real world (parts of the existing 1 Baden Road) that are visible in the photographs.
- The extent of view loss for units 1 and 2 as modelled is negligible and inconsequential. These ratings relate to the extent of view loss but when all relevant factors are considered as required in Step 3 of Tenacity, the view impacts are negligible for units 1 and 2 and minor in relation to unit 7.
- The built form proposed is lower and narrower compared to the existing dwelling on the site so that, additional parts of the composition to the west are revealed in views from units 1 and 2 including areas of open water and the visual setting of Sydney Opera House is decluttered. These changes provide a net benefit to the existing views.
- Notwithstanding there is a greater extent of view loss for unit 7, the composition lost does not include scenic or highly valued items or whole views as defined in Tenacity. The absence of these characteristics provides a 'down weight' in relation to the overall view impact resulting in a rating of minor. The view corridor to the south from unit 7 is unaffected by the proposed development and is wider compared to the existing situation, revealing more of the harbour view.
- The northern edge of the curved roof form along, sits significantly below the LEP height control of 8.5m, by approximately 2m. The extent of view loss therefore is anticipated by the controls.
- The additional height or individual features subject to the Clause 4.6 variation, block a minor to negligible extent of open undifferentiated water in the immediate foreground of views from Units 1 and 2 Kurraba Road.
- The additional height or individual features subject to the Clause 4.6 variation do not block access to any scenic or highly valued views, or compositions that are predominantly characterised by icons or any part of an individual icon, in views from unit 1 and 2. The additional height or individual features subject to the Clause 4.6 variation, are not visible and do not impact views from unit 7/200 Kurraba Road
- View loss is minimal for all units, view impacts range from negligible to minor (at the low end of the Tenacity scale) and view sharing impacts when all relevant factors are considered, is reasonable and acceptable.

APPENDIX 1 REPOSSES TO SUBMISSIONS



**ANGEL PLACE
LEVEL 8, 123 PITT STREET
SYDNEY NSW 2000**

URBIS.COM.AU
Urbis Pty Ltd
ABN 50 105 256 228

[17th February 2022](#)

North Sydney Council
Attention: Robyn Pearson
Team Leader (Assessments)
200 Miller Street
North Sydney 2059

Dear Robyn Pearson,

RE: 1 BADEN ROAD, KURRABA POINT – VIEW SHARING ADVICE

Urbis has been engaged by Anthony El-Hazouri to provide a response to submissions in relation to a proposed DA122/21 at 1 Baden Road, Kurraba Point. This letter responds to concerns raised by objectors and forwarded to Urbis by Revelop.

This letter provides a summary of responses to key Issues raised in submissions where they are relevant to views. The submissions were received following the preparation of a detailed view sharing report (VSR). When relevant matters as required in *Tenacity* were considered, the VSR found that overall the extent of view loss was minor, view impacts for the whole dwelling were negligible to minor and overall the view sharing outcome was reasonable and acceptable.

Findings in the view sharing report were based on view inspections from all rooms at units 1, 2 and 7/ 200 Kurraba Road, as directed by the owner's/residents legal representative from Shaw Reynolds. Urbis recorded up to 4 views from each dwelling in order to consider view impacts holistically we then recommended in each case the potentially most affected view, which in our opinion would best demonstrate the 'worst-case' scenario in relation to potential view loss.

We find the objections to be highly repetitive and as such have addressed key points once in each case.

200 KURRABA ROAD

Objections were received from 3 units at the ground floor and lower ground floor at 200 Kurraba Road. This development is a part three and part four storey residential flat building which includes two south facing units per floor. The internal floor plans of the units inspected are included in the View Sharing Report prepared by Urbis in December 2021 (VSR).

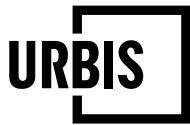
The units are located as per the image in Figure 1 below.

LTR_1 Baden Road_RTS 090222

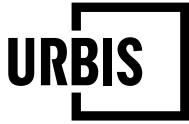


Figure 1 location of units within 200 Kurraba Road

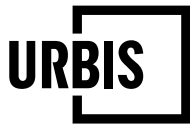
Objector's address	Key issue raised (One short sentence or quote per topic (only relevant to views!))	Urbis report response/Or Urbis new response to a new objection made.
<p>Peter Gill 1/200 Kurraba Road</p>	<p>Impact on views from his apartment and the streetscape.</p> <p>No image reflected the effect of the proposed development in terms of height, bulk and scale and loss of public views in relation to the Kurraba Road streetscape towards Fort Denison.</p> <p>The applicant only completed a photo montage fronting the harbour.</p> <p>The view issue relates to the balcony position.</p>	<p>Urbis were required to prepare a view sharing report. This report is limited to the assessment of impacts on private domain views, and does not address potential visual impacts on streetscape character. The view sharing report followed preliminary advice (Urbis report dated 20 September 2021 <i>the preliminary report</i>) which provided commentary in relation to visual effects and impacts on the streetscape character of Baden Road (VIA dated 26 March 2021)</p> <p>The preliminary report found that the presentation of a two storey dwelling to the streetscape (as proposed) and the level of visual effects and impacts generated, was highly compatible with the predominant streetscape character in terms of height, bulk, scale, and character. in other words the extent of visual effects and impacts of the proposed development would be similar and highly comparable to visual effects and impacts generated by other two storey dwellings located along the south side of Baden Road. In this regard the extent of public domain view loss and resultant visual impacts is anticipated by LEP controls and DCP objectives.</p>



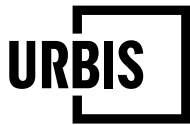
		<p>The preliminary report also included the following specific detail regarding impacts on public views; from ;</p> <ul style="list-style-type: none"> • The southern stairs of Hodgsons Lookout Park. • And view places within Kurraba Point Reserve <p>4 views were documented from unit 1/200 Kurraba Road and were included in the report. Urbis was not directed to access the narrow Juliette balcony by the representative on site. Urbis recorded a view directly aligned with the balcony (see view place 2 page 15) This view is highly constrained to the south by intervening vegetation and as such it was not selected for modelling. The potential most affected was selected for modelling which is typically the case and most useful for analysis.</p> <p>Visual effects as modelled are unlikely to be significantly different to those that may be experienced from the Juliette balcony. In our opinion if an oblique south-easterly view from the balcony was modelled it would show that the level of visual effects is low and the view impact is negligible and reasonable.</p> <p>Conclusions in the preliminary report regarding visual impacts of the proposed development on streetscape character, were accepted and supported by the Council and Panel.</p>
<p>Jacqueline Heppard</p> <p>Unit 2/200 Kurraba Rd</p>	<p>It fails to show the extensiveness of the iconic views from every room except the rear bedroom.</p> <p>It fails to show high-quality views from living room, kitchen, sunroom.</p> <p>It ignores 'highly valued' views of the Domain and Royal Botanical Gardens.</p> <p>It minimises the impact of the bulk, mass, and height by only producing 1 photomontage of 1 area.</p> <p>The entire of Unit 2 including the rear areas will be impacted not just the foreground.</p> <p>P17 references to side views- they don't have side views.</p>	<p>View sharing reports typically include one photomontage from the most affected room or view location within a dwelling. It would be unreasonably onerous to expect photomontages to be prepared for other rooms within each dwelling given the composition from each location is virtually the same as what has been modelled. In other words there is no utility in providing additional images from locations within a few metres of the view modelled. In this regard one representative from each dwelling was selected for modelling and further analysis.</p> <p>4 views were documented from unit 2/200 Kurraba Road and were included in the report for example views from the office, master bedroom and dining room adjacent to the kitchen. This amounts to a view from all rooms in the dwelling except the rear bedroom 2.</p> <p>The photomontages show that there is no view loss in relation to the Domain and Royal Botanical Gardens.</p> <p>The extent of visual change is accurately shown and demonstrates that there will be a negligible change to the lower foreground part of the view. All scenic, iconic and highly scenic features in the view will be unaffected.</p> <p>The residential flat building has a formal legal street address to Kurraba Road and as such views south are technically available across a side boundary via Baden Road. The location of the front door as suggested in the Objection is immaterial. This formal/legal boundary is a relevant consideration in Step 2 in <i>Tenacity</i>.</p>



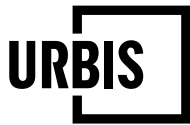
Owner of Unit 7	Block our cityscape view - day and night. The height and shape of the proposed arched roof will remove this view from our unit, and our outdoor deck.	The intent of Roseth in <i>Tenacity</i> is to protect whole views above all else and those which are predominantly characterised by features and items that are defined as scenic, iconic or highly valuable. This view is predominantly characterised by built form (the existing dwelling) and a narrow horizontal band of a distant view that includes the upper parts of tower forms. The upper parts of the end on view of part of the Sydney Skyline is not widely considered to be iconic. Selecting a part of the view are attaching greater value to it is contrary to the intent of <i>Tenacity</i> which clearly states that whole views are more valued compared to partial views. Notwithstanding the resident may value this view, it is not a view given any weight in <i>Tenacity</i> terms. Furthermore it is a partial view of less value according to <i>Tenacity</i> . I note that the parts of the view that include features and compositions that ARE valued in <i>Tenacity</i> are retained, unaffected by the proposed development and in fact, widened and expanded as a result of an increased side setback.
Rob Mason Unit 7/200 Kurraba Road	Repeats objections made by Shaw Reynolds	This information was not required as part of the view sharing report and was addressed in the preliminary advice report. Council accepted preliminary advice in relation to minor and negligible visible and likely effects on public domain views.
Objection reference 8CDC5TW	The DA will impact views of neighbouring buildings including iconic Sydney Harbour and also have a negative impact on the values of these properties. <ul style="list-style-type: none"> Impact on streetscape view 	This information was not required as part of the view sharing report and was addressed in the preliminary advice report. Council accepted preliminary advice in relation to minor and negligible visible and likely effects on public domain views. Visual impacts on public domain locations were addressed in the preliminary report.
Shaw Reynolds Lawyers objection on behalf of residents at unit 1 and 2/200 Kurraba Road	The view impact of neighbouring properties is far more severe than that discussed and depicted; and b. the Clause 4.6 Request cannot be consented to as it. Unit 1: <ul style="list-style-type: none"> the 'iconic view' of Fort Denison is not noted in the assessment of the views. This is despite the View Sharing Advice on page 15, depicting the view of Fort Denison from the living room. Unit 2: <ul style="list-style-type: none"> incorrectly concludes at page 17 that the view that will be lost does 'not include highly valued features' which is incorrect in light of the impact on views of the waters of Sydney Harbour evident despite the narrow view modelled. 	The points made in relation to each unit are highly repetitive therefore salient points for units 1, 2 and 4 are addressed below. <ul style="list-style-type: none"> The view sharing outcome (view impact) rating of minor and negligible is based on a conservative judgement of objective and certifiable visual aids. The view impact rating does not directly equate to the view loss shown albeit it is minor to negligible in all cases. The overall impact rating takes into consideration all relevant matters in Steps 1, 2 and 3. The ratings determined are conservative and the objection misinterprets the intent of <i>Tenacity</i>. The objection states that the impacts are severe. For example, if part of an icon or part of the whole iconic view or part of the land-water interfaces visible, or part of an island or heritage item were to be lost, from the majority of living areas and kitchens inspected, then in such a case this would generate a higher impact rating. None of the key features in the views available from all units will be lost. No significant quantum of the view characterised by highly valued features will be lost. The amount of open water (not associated with land-water interface to be lost) is insignificant when considering the whole views available. The photomontages show that a minor amount of built form will protrude above the level of the existing built form on the site. In fact in the majority of views, the proposed development reveals more of the view where existing tall



	<p>Page 5 notes the use of extreme close up view</p>	<p>and bulky features including t for example the chimney will be removed.</p> <ul style="list-style-type: none"> No part of any individual icon is affected by the proposed development. The minor quantum of view to be lost is not characterised by icons or features described as highly valued in <i>Tenacity</i>. The loss of the minor amount of open and undifferentiated water does not render the view tokenistic, does not have any significant impact on the over all scenic quality or composition of the view available. All of the key compositional features including the vast majority of water in Sydney Harbour, all of the land-water interface associated with the Domain and CBD skyline, access to the Sydney Harbour Bridge and Sydney Opera House and the setting and island of Fort Denison remain available and unaffected by the proposed development. This the case for all views from units at 1 and 2/200 Kurraba Road. The Urbis report does not refer to an iconic view of Fort Denison. An isolated view to Fort Denison is not considered iconic in isolation but rather is one feature within a whole view composition that is predominantly characterised by icons. The whole view could be referred to as iconic and would be considered in that regard to be highly valued in <i>Tenacity</i> terms. Views to Fort Denison from all units are not affected by the proposed development. The highly oblique view in the image provided at page 3 where Fort Denison is circled in red, is from a low level (seated position) at a highly oblique angle from the western edge of western most room of the dwelling. This view is technically available across a side boundary (to Baden Road) from a seated position and demonstrates that there will be little if any effect on the view given that the arch roof form and leading (closest edge) will be lower where it sits close to the Fort. This art of the proposed development is fully compliant and well below the LEP height control. Views to Fort Denison will remain available. As per Step 3 in <i>Tenacity</i> when considering all potential view loss from all rooms in the dwelling, overall the view sharing impacts are low and acceptable. Unit 2 b) the report states clearly that the part of the view to be lost is not highly valued. This correct as it is widely acknowledged in Court evidence that an undifferentiated open area of water that is not associated or visually linked to land-water interfaces is of less value compared to water where land-water interface is visible. This is stated in paragraph 25 of <i>Tenacity</i>. Quoted as follows; <i>Water views are valued more highly than land views. Iconic views (eg of the Opera House, the Harbour Bridge or North Head) are valued more highly than views without icons. Whole views are valued more highly than partial views, eg a water view in which the interface</i>
--	--	--



		<i>between land and water is visible is more valuable than one in which it is obscured.</i>
Shaw and Reynolds General comments	View place selection and views modelled	The legal representative present at view inspections from Shaw and Reynolds (SR) directed Urbis to document views from various locations within units 1 and 2/200 Kurraba. All view places as directed were captured. SR did not request views to be documented from Juliette balconies, perhaps because they are narrow, being approximately 700mm to 800mm wide and as such preclude the use of seating or other furniture. In this regard they are unlikely to be occupied for extended time periods. In this case views from main living areas were the logical place and more valuable location from which to model a representative view from each dwelling. Refer to figure 1
	Page 5 notes the use of extreme close up view	All base photographs used for modelling as stated in the report, use a 50mm Focal length lens, which is typically adopted for view sharing assessments.
Shaw and Reynolds points 16 and 17	Non- compliance and Step 4 in Tenacity	The objection appears to mis interpret the intent of Tenacity , in that if a non compliance results in view loss of value (that is including scenically valuable features) then view impacts would attract more 'weight'. The intent of Tenacity is to rate the scenic quality of views over all, which in a practical sense relates to the quality of the view composition to be lost. The non-compliances (southern edges) of the arched roof forms are of low visibility in all views assessed and modelled. In fact the non-compliance in relation to the eastern most arch form is less visible compared to the western arch form. The minor non-compliances with height do not generate view loss of any significance in that the view lost is not highly valued (as discussed above) does not include icons, does not include parts of icons or land-water interface and does not include any significant extent of a view composition that is characterised by icons. The views lost as a result of the minor non compliances are minor to negligible in both quantitative and qualitative terms.
Shaw and Reynolds points in relation to unit 7	Criticises the 'close up view'	All photographs used for modelling as stated in the report in photomontages use a 50mm Focal length lens, which is typically adopted for view sharing assessments
	Loss of partial view of the upper most parts of tower development in Sydney CBD and criticism of a low impact rating.	Roseth in <i>Tenacity</i> places more weight on the protection of whole views above all else and those which are predominantly characterised by features and items that are defined as scenic, iconic or highly valuable . This view is predominantly characterised by built form (the existing dwelling) and a narrow horizontal band of a distant view that includes the upper parts of tower forms. The upper parts of the end on view of part of the Sydney Skyline is not widely considered to be iconic. In addition



		<p>selecting a part or a 'slice of a view' eg the upper tower forms or Fort Denison and attaching greater value to it is contrary to the intent of <i>Tenacity</i> which clearly states that whole views are more valued compared to partial views. Notwithstanding the resident may value this view, it is not a view given any weight in <i>Tenacity</i> terms. Furthermore it is a partial view of less value according to <i>Tenacity</i>. I note that the parts of the view that include features and compositions that ARE valued in <i>Tenacity</i> are retained, unaffected by the proposed development and in fact, widened and expanded as a result of an increased side setback.</p>
	<p>45 the question of reasonableness in Step 4 in relation to unit 7.</p>	<p>Given the underlying steep topography and FBL constraints on the site, a more skilful design would not afford the applicant with the same development potential. More importantly a change to the design, if it were to include lower height arch forms would not result in any significant improvement to the view. In this case a narrow horizontal mid-height section of some tower forms would be revealed. This would amount to a negligible improvement to a partial view that is not characterised by highly valued features as defined in <i>Tenacity</i>. When all things are considered there would be no significant view sharing benefit achieved by requiring the design as proposed to be reconsidered.</p>

Analysis of colour-coded photomontage.

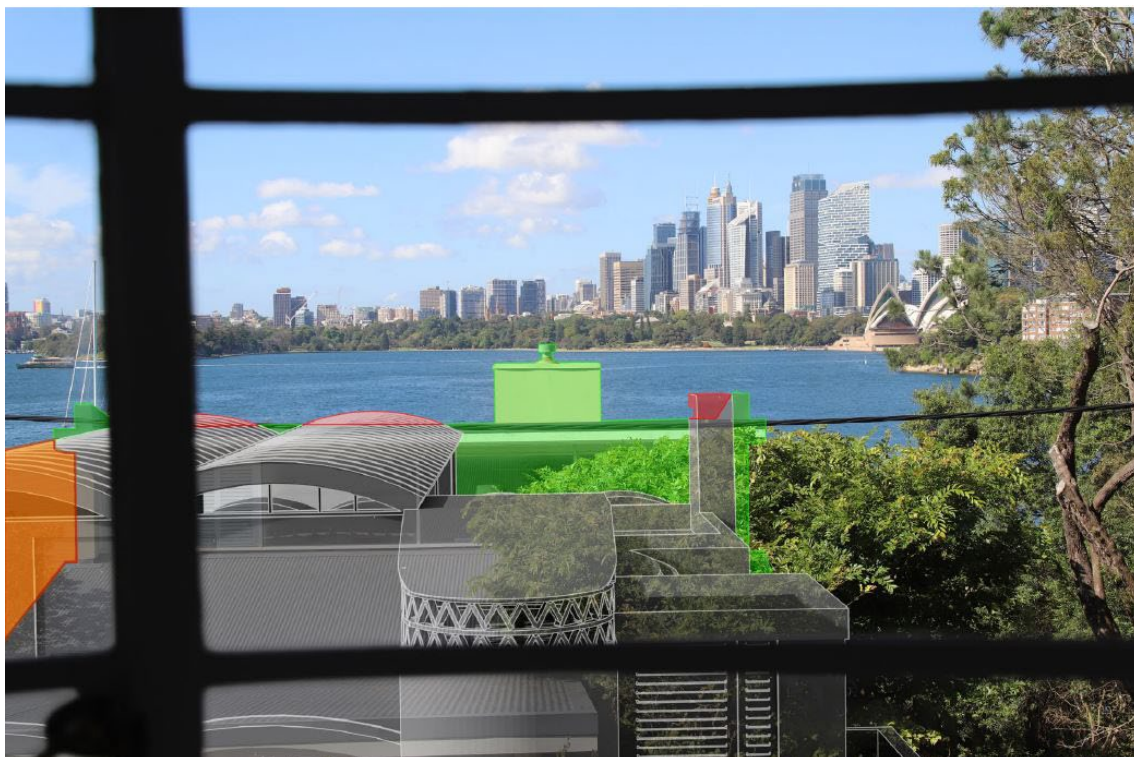
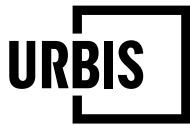


Figure 2 Amended photomontage view from Unit 1/200 Kurraba Road



The image provided above is the existing certified photomontage prepared to satisfy the NSWLEC practice direction, however colours have been applied to demonstrate key points.

The red colour clearly demonstrates the minor extent of view loss that would be occasioned by the parts of the proposed built form that additional to the height of the existing dwelling on the site for example the upper part of the proposed chimney and narrow horizontal sections of the leading edge of the arched roof form generates the minor extent of view loss referred to in the view sharing report.

The orange colour shows the part of the built form at the east edge (left side) of the view where fully compliant built form will sit further north and will appear slightly higher compared to the existing built form on the site. The orange coloured parts of the view block a minor additional extent of view (in this highly oblique view). The fully compliant parts of the built form do not block access to scenic or highly valued features as defined in *Tenacity*.

The green colour applied indicates parts of the new view gained or revealed, as a result of the demolition of the existing built form on the site and construction of the proposed development which includes reduced bulk. The green areas are a 'net gain' to the view that will be enjoyed by all residents depending on their view orientation.

I note that the objections received make no mention of the significant section of additional areas of water and distant harbour including a short section of land-water interface at the Domain, which is no longer interrupted by the existing Chimney form.

The majority of the proposed chimney form fully complies with controls, reveals more of the view to the east and is both narrower and lower compared to the existing tall chimney form. The upper east edge of the proposed chimney form block only a minor amount of undifferentiated water in the midground composition. As previously stated in the View Sharing Report in my opinion the non-compliances do not generate significant view loss and from all views inspected within each dwelling, based on the modelled views do not generate any significant view impacts.

Summary

In our opinion the analysis and conclusions made in the Urbis view sharing reported are objective, accurate and evidenced-based. Information included in that report forms the basis of the responses provided above.

We find that many assertions made in the submission prepared by Shaw Reynolds are exaggerated and erroneous where the **underlying intent** of *Tenacity* has not been fully considered.

Taking an objective and independent perspective, in our opinion the view impacts of the proposed development on neighbouring views is reasonable and supportable.

Kind regards,

A handwritten signature in black ink, appearing to read "Jane Maze-Riley".

Jane Maze-Riley
Associate Director
02 8233 9908
jmazeriley@urbis.com.au

APPENDIX 2 PHOTO MONTAGE PREPRATION METHOD



ABN 79 085 185 833
 PO Box 860
 Neutral Bay NSW 2089
 Ph. 02 9953 2312 Fax 02 8003 9708
 e-mail info@digitalline.com.au
 website www.digitalline.com.au

Att: Jane Maze-Riley
 Urbis
 Angel Place, Lvl 8, 123 Pitt St
 Sydney, NSW 2000,

Re: Project 1 Baden Road, Kurraba Point, NSW, 2089

30/11/2021

Dear Jane,

The photomontage provided for the buildings proposed at the property 1 Baden Road, Kurraba Point, NSW, 2089 was prepared utilizing the latest technology and the following methodology:

1. Digital Line Pty Ltd was created in Sydney, NSW in November 1998. The company creates 3D computer generated graphics, including photomontages for the analysis of visual impacts of Development Applications.
2. Photomontages created by Digital Line have been successfully used by our clients in Randwick, Woollahra, Waverley and other NSW councils. In 2009 and in 2013, Digital Line was announced as a winner of the tender for the preferred supplier of DA photomontages for Randwick City Council.
3. For creating photomontages Digital Line Pty Ltd uses specialized software 3DStudio MAX 2016, created by Autodesk®. Software is licensed and registered with Autodesk®, S/N 398-15013741 .
4. Digital Line use the "Camera Match utility" system from 3DStudio MAX for creating the photomontages:
 - 4.1. The following input information was required for creating the photomontages:
 - High resolution digital photograph of the site, taken from each viewing place.
 - Architectural plans and elevations in DWG format.
 - Certified survey plans.
 - 4.2. The Camera Match utility uses a bitmap background photo and five or more special "CamPoint" objects to create or modify a camera match so that its position, orientation, and field of view matches that of the camera that originally created the photo.
 - 4.3. An accurate 3d model is created from the architectural drawings and this is then superimposed on the original photograph
 - 4.4. After determining the position of the camera match we check accuracy by comparing the photograph and 3d model with existing objects (such as height poles, buildings, trees and other objects, the locations and heights of which can be derived from survey data)
 - 4.5. For a detailed explanation of the processes involved, please call Digital Line Pty Ltd
5. The "Camera Match utility" system from 3DStudio MAX currently is the most accurate system for creating images used in the preparation of photomontages.
6. I certify that the photomontage complies with the Land and Environment Court policy and is an accurate representation of the proposed development.

Attached to this letter: Project 1 Baden Road, Kurraba Point, NSW, 2089 - Cam1 Photomontage Expert Report

Sincerely yours,

Leonid Medvedskiy
 Director

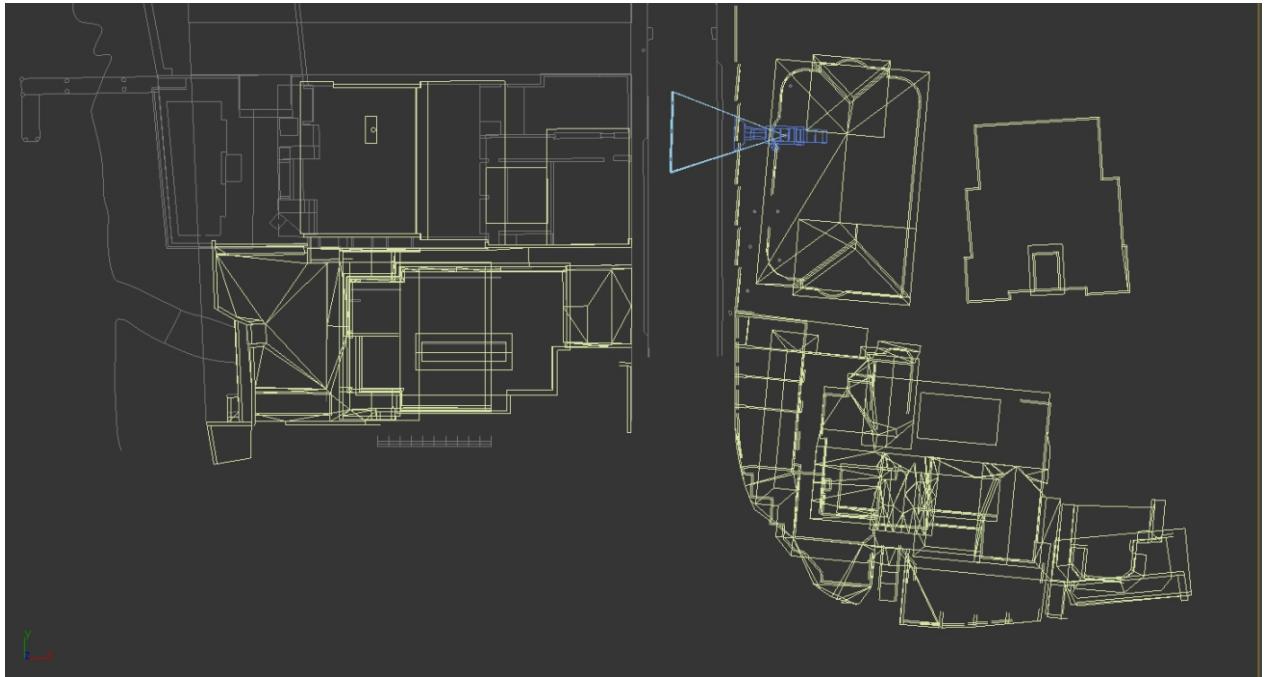
Project 1 Baden Road, Kurraba Point, NSW, 2089 - Cam1 Photomontage Expert Report



1a. Existing Photograph-the current, unchanged view of the location depicted in the photomontage from the same viewing point as that of the photomontage



1b. existing photograph with the wire frame lines depicted so as to demonstrate the data from which the photomontage has been constructed



1c. 2D plan showing the location of the camera and target point that corresponds to the same location the existing photograph was taken

1d. Survey data.

The accurate 2D survey data has been used for preparation of the photomontage

- i. To build the 3D models of existing buildings as shown in the wireframe.
- ii. To establish the accurate camera location and RL

2a. The name and qualifications of the surveyor who prepared the survey information from which the underlying data for the wire frame from which the photomontage was derived:

Surveyor Company:
 CMS Surveyors Pty Limited
 2/99A South Creek Rd, DEE WHY NSW 2099
 Ph: 02 9971 4802 Fax: 02 9971 4822
 Email: info@cmssurveyors.com.au

Survey Date: 18/11/2021
 Surveyors Reference: 19432detail

2b. The camera type and field of view of the lens used for the purpose of the photograph in 1a. from which the photomontage was derived:

Camera: Canon EOS 6D Mark II
 Focal Length(35 mm film camera equivalent) 50 mm



ABN 79 085 185 833
PO Box 860
Neutral Bay NSW 2089
Ph. 02 9953 2312 Fax 02 8003 9708
e-mail info@digitalline.com.au
website www.digitalline.com.au

Att: Jane Maze-Riley
Urbis
Angel Place, Lvl 8, 123 Pitt St
Sydney, NSW 2000,

Re: Project 1 Baden Road, Kurraba Point, NSW, 2089

30/11/2021

Dear Jane,

The photomontage provided for the buildings proposed at the property 1 Baden Road, Kurraba Point, NSW, 2089 was prepared utilizing the latest technology and the following methodology:

1. Digital Line Pty Ltd was created in Sydney, NSW in November 1998. The company creates 3D computer generated graphics, including photomontages for the analysis of visual impacts of Development Applications.
2. Photomontages created by Digital Line have been successfully used by our clients in Randwick, Woollahra, Waverley and other NSW councils. In 2009 and in 2013, Digital Line was announced as a winner of the tender for the preferred supplier of DA photomontages for Randwick City Council.
3. For creating photomontages Digital Line Pty Ltd uses specialized software 3DStudio MAX 2016, created by Autodesk®. Software is licensed and registered with Autodesk®, S/N 398-15013741 .
4. Digital Line use the "Camera Match utility" system from 3DStudio MAX for creating the photomontages:
 - 4.1. The following input information was required for creating the photomontages:
 - High resolution digital photograph of the site, taken from each viewing place.
 - Architectural plans and elevations in DWG format.
 - Certified survey plans.
 - 4.2. The Camera Match utility uses a bitmap background photo and five or more special "CamPoint" objects to create or modify a camera match so that its position, orientation, and field of-view matches that of the camera that originally created the photo.
 - 4.3. An accurate 3d model is created from the architectural drawings and this is then superimposed on the original photograph
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 - 4.5. For a detailed explanation of the processes involved, please call Digital Line Pty Ltd
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6. I certify that the photomontage complies with the Land and Environment Court policy and is an accurate representation of the proposed development.

Attached to this letter: Project 1 Baden Road, Kurraba Point, NSW, 2089 - Cam2 Photomontage Expert Report

Sincerely yours,

Leonid Medvedskiy
Director

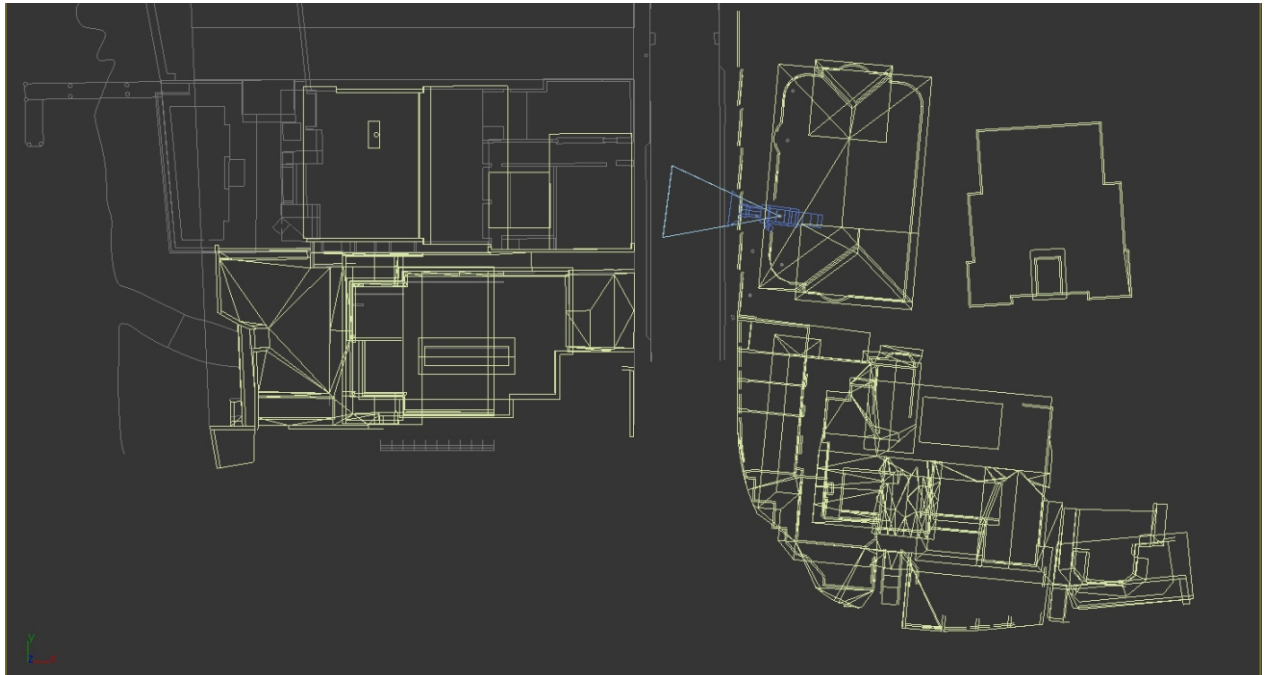
Project 1 Baden Road, Kurraba Point, NSW, 2089 - Cam2 Photomontage Expert Report



1a. Existing Photograph-the current, unchanged view of the location depicted in the photomontage from the same viewing point as that of the photomontage



1b. existing photograph with the wire frame lines depicted so as to demonstrate the data from which the photomontage has been constructed



1c. 2D plan showing the location of the camera and target point that corresponds to the same location the existing photograph was taken

1d. Survey data.

The accurate 2D survey data has been used for preparation of the photomontage

- i. To build the 3D models of existing buildings as shown in the wireframe.
- ii. To establish the accurate camera location and RL

2a. The name and qualifications of the surveyor who prepared the survey information from which the underlying data for the wire frame from which the photomontage was derived:

Surveyor Company:
 CMS Surveyors Pty Limited
 2/99A South Creek Rd, DEE WHY NSW 2099
 Ph: 02 9971 4802 Fax: 02 9971 4822
 Email: info@cmssurveyors.com.au

Survey Date: 18/11/2021
 Surveyors Reference: 19432detail

2b. The camera type and field of view of the lens used for the purpose of the photograph in 1a. from which the photomontage was derived:

Camera: Canon EOS 6D Mark II
 Focal Length(35 mm film camera equivalent) 55 mm



ABN 79 085 185 833
 PO Box 860
 Neutral Bay NSW 2089
 Ph. 02 9953 2312 Fax 02 8003 9708
 e-mail info@digitalline.com.au
 website www.digitalline.com.au

Att: Jane Maze-Riley
 Urbis
 Angel Place, Lvl 8, 123 Pitt St
 Sydney, NSW 2000,

Re: Project 1 Baden Road, Kurraba Point, NSW, 2089

30/11/2021

Dear Jane,

The photomontage provided for the buildings proposed at the property 1 Baden Road, Kurraba Point, NSW, 2089 was prepared utilizing the latest technology and the following methodology:

1. Digital Line Pty Ltd was created in Sydney, NSW in November 1998. The company creates 3D computer generated graphics, including photomontages for the analysis of visual impacts of Development Applications.
2. Photomontages created by Digital Line have been successfully used by our clients in Randwick, Woollahra, Waverley and other NSW councils. In 2009 and in 2013, Digital Line was announced as a winner of the tender for the preferred supplier of DA photomontages for Randwick City Council.
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 - Certified survey plans.
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6. I certify that the photomontage complies with the Land and Environment Court policy and is an accurate representation of the proposed development.

Attached to this letter: Project 1 Baden Road, Kurraba Point, NSW, 2089 - Cam3 Photomontage Expert Report

Sincerely yours,

Leonid Medvedskiy
 Director

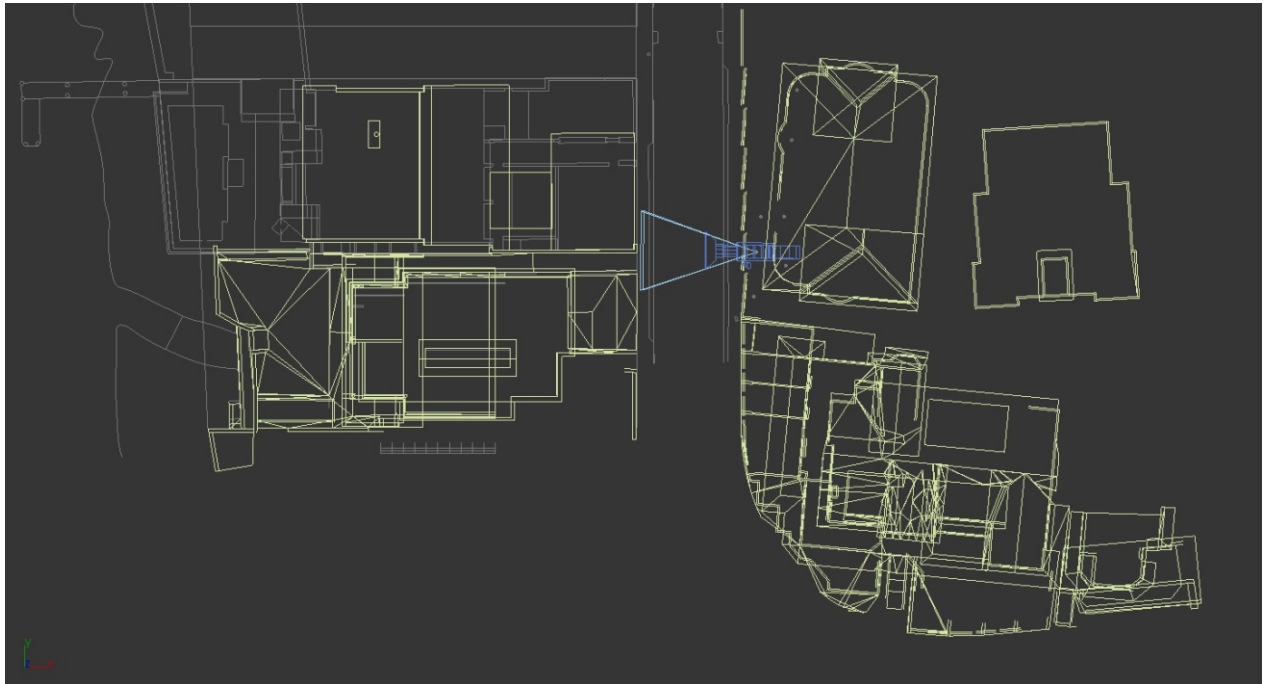
Project 1 Baden Road, Kurraba Point, NSW, 2089 - Cam3 Photomontage Expert Report



1a. Existing Photograph-the current, unchanged view of the location depicted in the photomontage from the same viewing point as that of the photomontage



1b. existing photograph with the wire frame lines depicted so as to demonstrate the data from which the photomontage has been constructed



1c. 2D plan showing the location of the camera and target point that corresponds to the same location the existing photograph was taken

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2a. The name and qualifications of the surveyor who prepared the survey information from which the underlying data for the wire frame from which the photomontage was derived:

Surveyor Company:
 CMS Surveyors Pty Limited
 2/99A South Creek Rd, DEE WHY NSW 2099
 Ph: 02 9971 4802 Fax: 02 9971 4822
 Email: info@cmssurveyors.com.au

Survey Date: 18/11/2021
 Surveyors Reference: 19432detail

2b. The camera type and field of view of the lens used for the purpose of the photograph in 1a. from which the photomontage was derived:

Camera: Canon EOS 6D Mark II
 Focal Length(35 mm film camera equivalent) 52 mm

APPENDIX 3 CMS SURVEY DATA

CMS Surveyors Pty Limited

A.B.N. 79 096 240 201
LAND SURVEYING, PLANNING & DEVELOPMENT CONSULTANTS



Date: 19/11/2021

Our Ref: 19432A Photo Locations

Revelop Building & Developments Pty Ltd
PO Box 313, Baulkham Hills
NSW 2153

Dear Emily Han,

RE: PHOTO LOCATIONS – 1 BADEN ROAD, KURRABA POINT

As requested, we have attended site and measured the Co-ordinates and Elevation of the photo locations for 1 Baden Road, Kurraba Point.

Co-ordinates are MGA 56 (**GDA 2020**) and elevation to Australian Height datum (AHD).

Measurements were taken using theodolite measurements.

DWG of locations has also been supplied.

<u>POINT NAME</u>	<u>EASTING</u>	<u>NORTHING</u>	<u>REDUCED LEVEL (RL)</u>	<u>SURVEYED STRUCTURE</u>
UNIT 1 - LIVING ROOM	335707.16	6253506.65	18.97	FLOOR LEVEL
UNIT 1 - SUNROOM	335703.22	6253508.56	18.98	FLOOR LEVEL
UNIT 2 - LIVING ROOM	335713.21	6253503.77	19.00	FLOOR LEVEL
UNIT 2 - HOME OFFICE	335717.30	6253502.47	19.02	FLOOR LEVEL
UNIT 7 - WESTERN PEBBLES	335712.54	6253501.86	15.91	PEBBLES
UNIT 7 DECK - CENTRE OF DOOR	335715.31	6253500.46	15.99	DECK
UNIT 7 - EASTERN SIDE DECK	335718.89	6253498.93	15.99	DECK
CHIMNEY 1	335695.63	6253472.57	19.82	CHIMNEY
PARAPET 3	335692.35	6253477.92	19.23	PARAPET
PARAPET 2	335704.41	6253473.57	19.20	PARAPET
PARAPET 5	335711.82	6253490.60	17.58	PARAPET
CHIMNEY 2	335693.37	6253473.38	19.79	CHIMNEY
PARAPET 4	335692.06	6253478.02	19.23	PARAPET
PARAPET 1	335704.69	6253473.47	19.20	PARAPET
CHIMNEY 3	335694.49	6253472.89	20.24	CHIMNEY
ROOF 1	335705.13	6253473.97	18.75	ROOF

Note: R.L. shown on the report for photo locations are ground levels. Camera height should be added to the supplied RL of each corresponding photo location.

Yours faithfully,
CMS Surveyors Pty Limited

Damon Roach



HEAD OFFICE
2/99A South Creek Rd, DEE WHY NSW 2099
PO Box 463, DEE WHY NSW 2099
Ph: 02 9971 4802 Fax: 02 9971 4822
Email: info@cmssurveyors.com.au
Web: www.cmssurveyors.com.au

INCORPORATING
A.C.GILBERT & Co.
(Roseville)
MBS GREEN & ASSOCIATES
(Mona Vale)

COOTAMUNDRA
Incorporating PENGELLY & GRAY
90 Wallendoon St, COOTAMUNDRA NSW 2590
Ph: 02 6942 3395 Fax: 02 6942 4046
Email: coota@cmssurveyors.com.au



A1

APPROX TRUE NORTH
MGA NORTH

NOTES

- A BASIC BOUNDARY SURVEY HAS BEEN UNDERTAKEN SUITABLE FOR COUNCIL DA SUBMISSION (TITLE DIMENSIONS ONLY).
- IF CONSTRUCTION IS TO BE UNDERTAKEN ON OR NEAR THE PROPERTY BOUNDARIES IT IS REQUIRED THAT A PLAN OF BOUNDARY REDEFINITION BE UNDERTAKEN.
- AREA IS APPROXIMATE ONLY AND HAS BEEN CALCULATED BY TITLE DIMENSIONS ONLY.
- THIS SURVEY IS FOR DESIGN PURPOSES OF THE SUBJECT LAND ONLY. THIS PLAN MUST NOT BE USED FOR ANY OTHER MATTER, PURPOSE OR CONSTRUCTION SETOUT.
- TREE SIZES ARE ESTIMATES ONLY.
- THIS PLAN HAS BEEN PREPARED FOR THE EXCLUSIVE USE OF REVELOP BUILDING AND DEVELOPMENTS PTY LTD.
- RELATIONSHIP OF IMPROVEMENTS TO BOUNDARIES IS DIAGRAMMATIC ONLY. WHERE OFFSETS ARE CRITICAL THEY SHOULD BE CONFIRMED BY FURTHER SURVEY.
- EXCEPT WHERE SHOWN BY DIMENSION LOCATION OF DETAIL WITH RESPECT TO BOUNDARIES IS INDICATIVE ONLY.
- ONLY VISIBLE SERVICES HAVE BEEN LOCATED. UNDERGROUND SERVICES HAVE NOT BEEN LOCATED. DIAL BEFORE YOU DIG SERVICES (DN 1100) SHOULD BE USED AND A FULL UTILITY INVESTIGATION INCLUDING A UTILITY LOCATION SURVEY, SHOULD BE UNDERTAKEN BEFORE CARRYING OUT ANY CONSTRUCTION ACTIVITY IN OR NEAR THE SURVEYED AREA.
- SEWER MAIN PLOTTED FROM SYDNEY WATER SEWER DIAGRAM. LOCATION SHOULD BE MARKED ON SITE IF CRITICAL.
- CRITICAL SPOT LEVELS SHOULD BE CONFIRMED WITH SURVEYOR.
- CONTOURS SHOWN DEPICT THE TOPOGRAPHY. THEY DO NOT REPRESENT THE EXACT LEVEL AT ANY PARTICULAR POINT. ONLY SPOT LEVELS SHOULD BE USED FOR CALCULATIONS OF QUANTITIES WITH CAUTION.
- CONTOUR INTERVAL - 0.5 metre. - SPOT LEVELS SHOULD BE ADOPTED.
- POSITION OF RIDGE LINES ARE DIAGRAMMATIC ONLY (NOT TO SCALE).
- THE INFORMATION IS ONLY TO BE USED AT A SCALE ACCURACY OF 1:100.
- DO NOT SCALE OFF THIS PLAN / FIGURED DIMENSIONS TO BE TAKEN IN PREFERENCE TO SCALED READINGS.
- THIS PLAN HAS BEEN PREPARED UNDER THE SUPERVISION OF REGISTERED SURVEYOR S B McEVROY, BOSSI NUMBER 265.
- COPYRIGHT © CMS SURVEYORS 2021.
- NO PART OF THIS SURVEY MAY BE REPRODUCED, STORED IN A RETRIEVAL SYSTEM OR TRANSMITTED IN ANY FORM, WITHOUT THE WRITTEN PERMISSION OF THE COPYRIGHT OWNER EXCEPT AS PERMITTED BY THE COPYRIGHT ACT 1968.
- ANY PERMITTED DOWNLOADING, ELECTRONIC STORAGE, DISPLAY, PRINT, COPY OR REPRODUCTION OF THIS SURVEY SHOULD CONTAIN NO ALTERATION OR ADDITION TO THE ORIGINAL SURVEY.
- THIS NOTICE MUST NOT BE ERASED.

HORIZONTAL DATUM:
CO-ORDINATE SYSTEM: MGA (GDA2020)
MARKS ADOPTED: PM38394 & SSM21730

VERTICAL DATUM:
DATUM: AUSTRALIAN HEIGHT DATUM (AHD)
B.M. ADOPTED: PM 38394
R.L. 19.51 (CLASS D)
SOURCE: S.C.I.M.S. (15/06/2020)

2	PHOTO LOCATIONS ADDED	18/11/2021
1	FIRST ISSUE	26/06/2020

CLIENT:
REVELOP BUILDING AND DEVELOPMENTS PTY LTD
PO BOX 313
BAULKHAM HILLS, NSW, 2153

SURVEY PLAN SHOWING DETAIL & LEVELS OVER LOT 16 IN D.P.17443 & LOT 1 IN D.P.531425
1 BADEN ROAD
KURRABA POINT, NSW, 2089

C.M.S. Surveyors Pty Limited
SURVEYORS

ACN: 096 240 201
PO Box 463 Dee Why NSW 2089
2/90A South Creek Road, Dee Why NSW 2089
Telephone: (02) 9971 4802
Facsimile: (02) 9971 4822
E-mail: info@cmsurveyors.com.au

LGA: NORTH SYDNEY SHEET 1 OF 1

SURVEYED	DRAWN	CHECKED	APPROVED
TC	GP	TC	DR

SURVEY INSTRUCTION	SCALE	DATE OF SURVEY
19432A	1:100 @ A1 1:200 @ A3	15/06/2020 & 18/11/2021

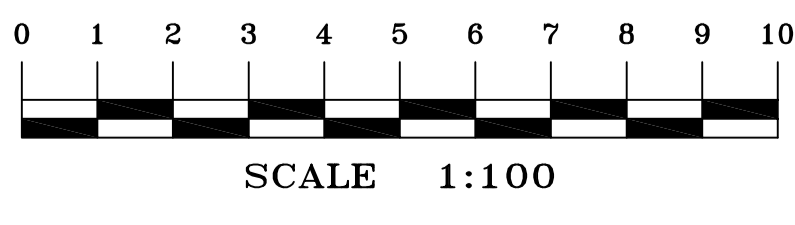
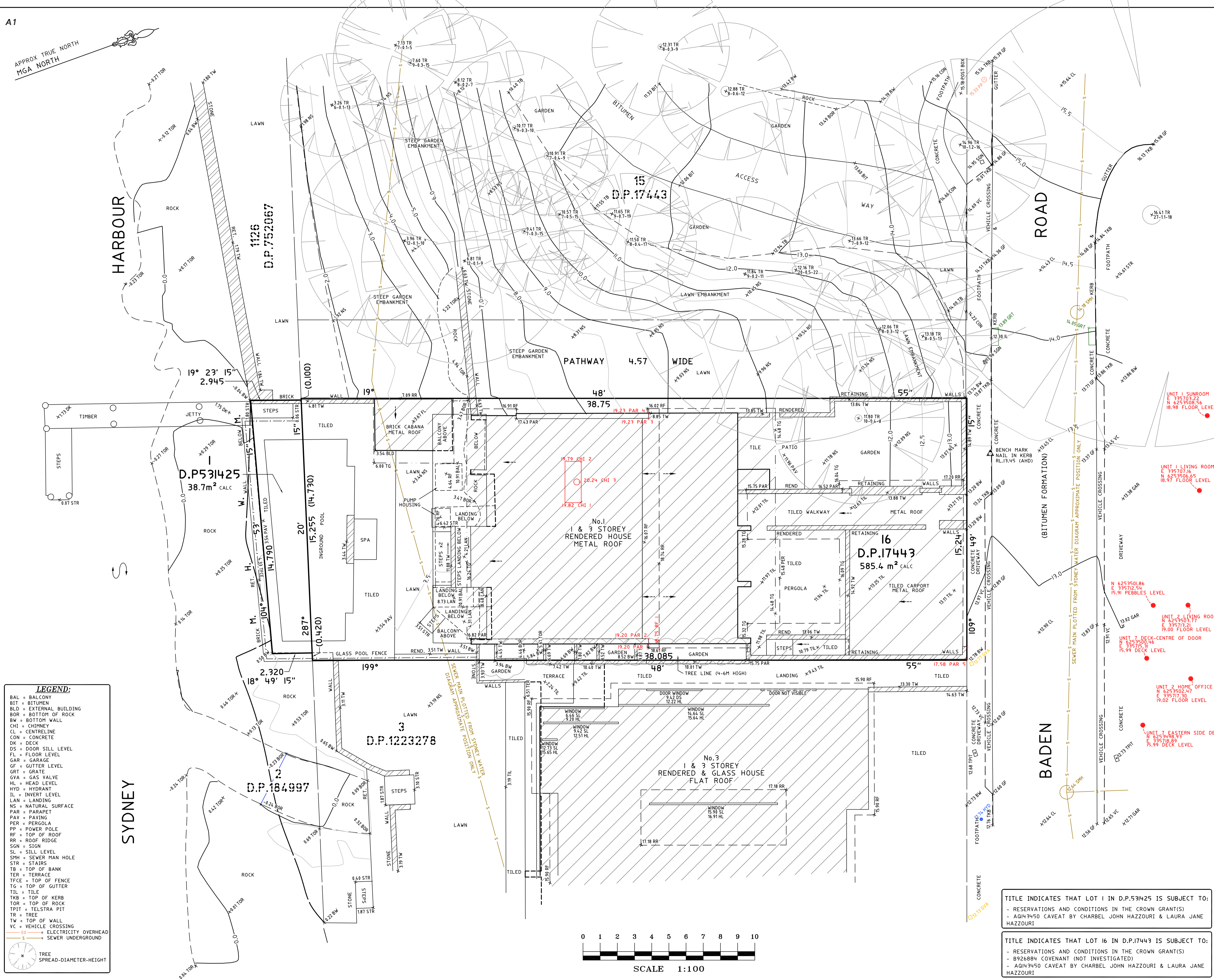
DRAWING NAME
19432detail
CAD FILE
19432detail 2.dwg

ISSUE
2

LEGEND:

- BAL = BALCONY
- BIT = BITUMEN
- BLD = EXTERNAL BUILDING
- BOR = BOTTOM OF ROCK
- BW = BOTTOM WALL
- CH = CHIMNEY
- CL = CENTRELINE
- CON = CONCRETE
- DK = DECK
- DS = DOOR SILL LEVEL
- FL = FLOOR LEVEL
- GAR = GARAGE
- GF = GUTTER LEVEL
- GRT = GRATE
- GVA = GAS VALVE
- HL = HEAD LEVEL
- HYD = HYDRANT
- IL = INVERT LEVEL
- LAN = LANDING
- NS = NATURAL SURFACE
- PAR = PARAPET
- PAV = PAVING
- PER = PERGOLA
- PP = POWER POLE
- RF = TOP OF ROOF
- RR = ROOF RIDGE
- SGN = SIGN
- SL = SILL LEVEL
- SMH = SEWER MAIN HOLE
- STR = STAIRS
- TB = TOP OF BANK
- TER = TERRACE
- TFCE = TOP OF FENCE
- TG = TOP OF GUTTER
- TIL = TILE
- TKB = TOP OF KERB
- TOR = TOP OF ROCK
- TPIT = TELSTRA PIT
- TR = TREE
- TW = TOP OF WALL
- VC = VEHICLE CROSSING
- EO = ELECTRICITY OVERHEAD
- S = SEWER UNDERGROUND

TREE
SPREAD-DIAMETER-HEIGHT



TITLE INDICATES THAT LOT 1 IN D.P.531425 IS SUBJECT TO:
- RESERVATIONS AND CONDITIONS IN THE CROWN GRANT(S)
- AQ149450 CAVEAT BY CHARBEL JOHN HAZZOURI & LAURA JANE HAZZOURI

TITLE INDICATES THAT LOT 16 IN D.P.17443 IS SUBJECT TO:
- RESERVATIONS AND CONDITIONS IN THE CROWN GRANT(S)
- B92688 COVENANT (NOT INVESTIGATED)
- AQ149450 CAVEAT BY CHARBEL JOHN HAZZOURI & LAURA JANE HAZZOURI

1 Baden Road, Kurraba

Clause 4.6 Variation Request to Clause 4.3 Height of Buildings of the North Sydney
Local Environmental Plan 2013

On behalf of
Revelop
March 2022



Table of Contents

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4	Clause 4.6 (3)(a) Compliance with the development standard is unreasonable or unnecessary in the circumstances of the case.....	12
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1 Introduction

This Clause 4.6 variation request accompanies a Development Application (**DA**) submitted to No

rth Sydney Council (**Council**) for the demolition of the existing dwelling house, bulk excavation and construction of a new dwelling house at 1 Baden Road, Kurraba Point (**the site**). It seeks to vary the 8.5 metre maximum Height of Building (**Height**) standard which applies to the site under Clause 4.3 of the *North Sydney Local Environmental Plan 2013* (the **NSLEP 2013**).

Clause 4.3 of the NSLEP states:

(2) The height of a building on any land is not to exceed the maximum height shown for the land on the Height of Buildings Map.

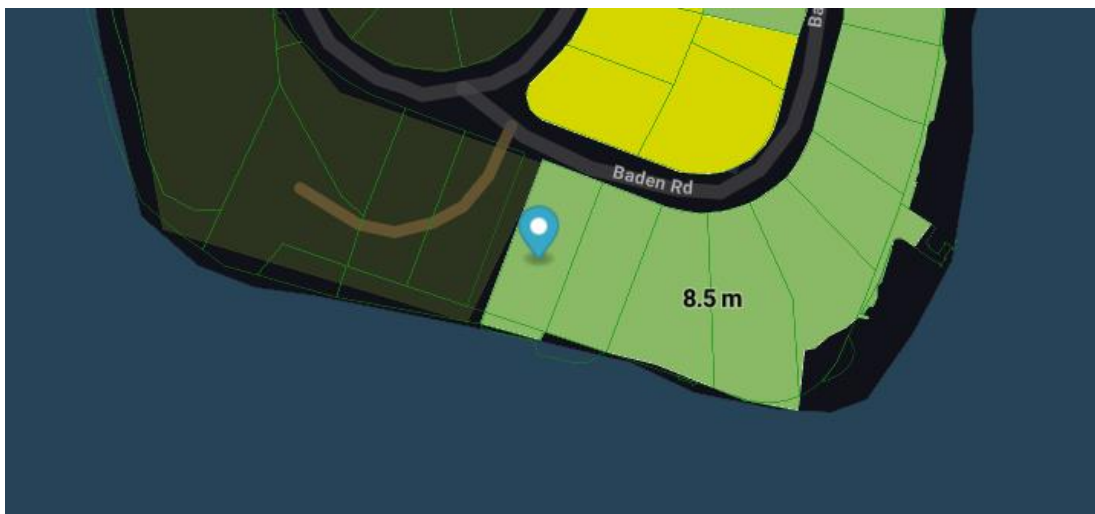


Figure 1. Height Control - NSLEP2013

Source: Mecone MOSAIC

The proposed development includes the demolition of the existing dwelling, bulk excavation and construction of a new 5 storey dwelling consisting of 5 bedrooms, 6 bathrooms (excluding 4 powder rooms) and 2 car spaces.

The building will be stepped in response to the steep topography of the Sydney Harbour foreshore. As depicted in the architectural images below, the proposal will present to Baden Road as a two-storey development and to Sydney Harbour as a 4-storey dwelling stepped in two storey sections.

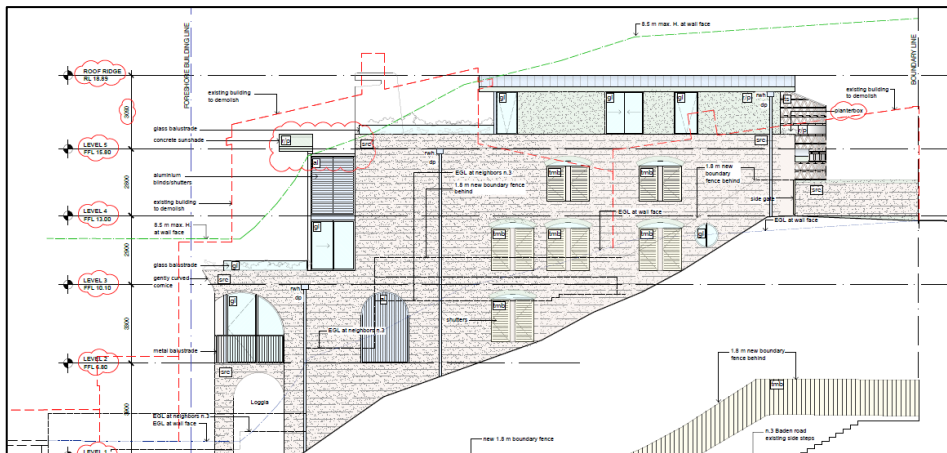


Figure 2. East Elevation (extract from DA13 A) Source: Source: Luigi Rosselli

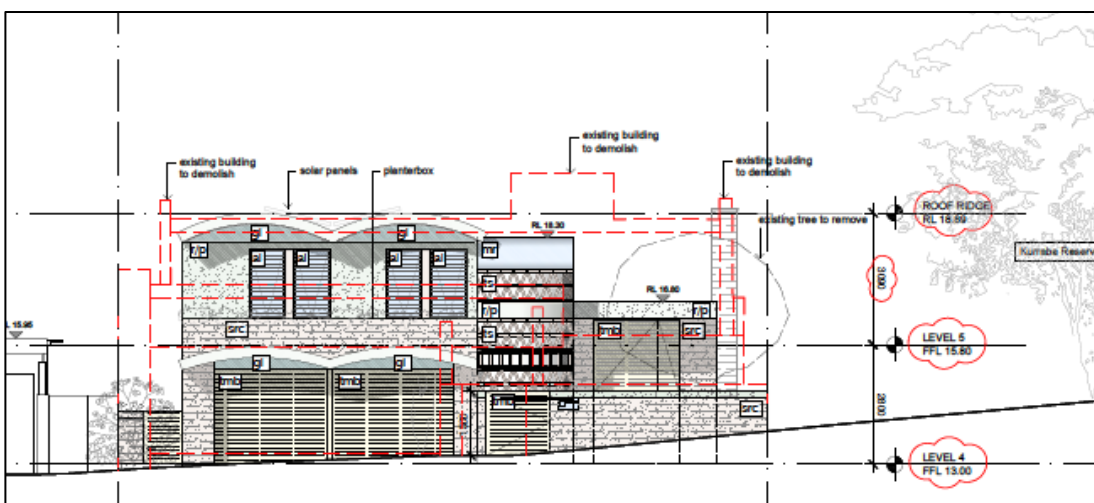


Figure 3. North Elevation (extract from DA12 A) Source: Source: Luigi Rosselli

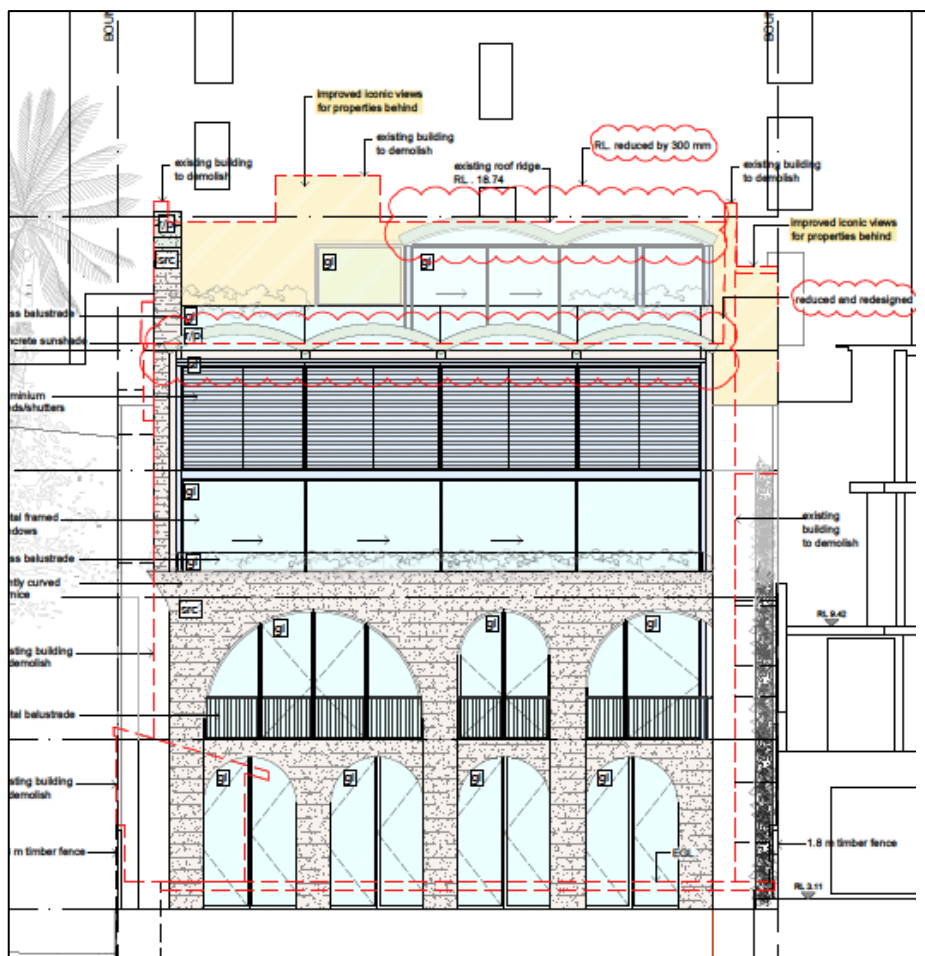


Figure 4. South Elevation (extract from DA10 A) Source: Source: Luigi Rosselli

The bulk and massing of the proposed dwelling is generally contained within the envelope of the existing dwelling to be demolished. The minor exceedance of the 8.5m height standard occurs in two locations; the south edge of the curved roof form (470mm); and the southern edge of the level 4 balcony parapet (600mm). The extent of variation is discussed further in **Section 3**.

This Clause 4.6 Variation request therefore seeks a variation to the height standard.

Strict application of the height controls is unnecessary and unreasonable because the proposed changes are minor in nature, are proposed to soften and integrate the architecture of the building and do not result in any unreasonable, visual, overshadowing or view loss impacts.

Additionally, the variation will not change the intensity of use or its compatibility with the surrounding natural and built environment. Notwithstanding the proposed variation, the Objectives of Clause 4.3 Height of Buildings and the R3 Residential Zone in which the site is located are nevertheless achieved.

The variation will enable the delivery of a new dwelling that enhances the architectural quality presented to Sydney Harbour and without generating any unreasonable environmental effects.

The following sections of this report provide an assessment of the request to vary the Height Standard of Clause 4.3 of NSLEP 2013. Consideration has been given to the following matters within this assessment:

- *Varying Development Standards: A Guide, prepared by the Department of Planning and Infrastructure dated August 2011; and*
- Relevant planning principles and judgements issued by the Land and Environment Court.

2 Exceptions to Development Standards

Clause 4.6 of the NSLEP 2013 includes provisions that allow for exceptions to development standards in certain circumstances. The objectives of Clause 4.6 are as follows:

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

Clause 4.6 enables a variation to any development standard to be approved on consideration of a written request from the applicant that justifies the contravention in accordance with the detailed provisions of Clause 4.6.

Clause 4.6 provides flexibility in the application of planning provisions by allowing a Consent Authority to support a DA for approval, even where it does not comply with certain development standards, where it can be shown that flexibility in the circumstances of the case would achieve better outcomes for the development.

In determining whether to grant consent for development that contravenes a development standard, Clause 4.6(3) and (4) requires that the Consent Authority consider a written request from the applicant, which demonstrates that:

- *Compliance with the development standard is **unreasonable or unnecessary in the circumstances** of the case, and*
- *There are **sufficient environmental planning grounds** to justify contravening the development standard.*
- *That 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.*
(Our emphasis)

A judgement by Preston in *Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118* clarified the correct approach to Clause 4.6 variation requests, including that:

“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.” [88]

This Clause 4.6 variation request is set out using the relevant principles established by the Court.

Clause 4.6 of the NSLEP 2013 reads as follows:

Clause 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 Planning Secretary has been obtained.
- (5) In deciding whether to grant concurrence, the Planning 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 Planning Secretary before granting concurrence.
- (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)."

(Emphasis added)

The proposed non-compliance in height has been assessed against the objectives of the zone and development standard in **Section 6** and **Section 7**.

The assessment of the proposed variation has been undertaken in accordance with the requirements of the NSLEP 2013, Clause 4.6(3) Exceptions to Development Standards in the assessment in **Section 5** and **Section 6**.

This Clause 4.6 Variation has been prepared as a written request seeking to justify contravention of the following provisions under the NSLEP 2013:

'4.3 Height of Buildings'

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

- (a) to promote development that conforms to and reflects natural landforms, by stepping development on sloping land to follow the natural gradient,*
- (b) to promote the retention and, if appropriate, sharing of existing views,*
- (c) to maintain solar access to existing dwellings, public reserves and streets, and to promote solar access for future development,*
- (d) to maintain privacy for residents of existing dwellings and to promote privacy for residents of new buildings,*
- (e) to ensure compatibility between development, particularly at zone boundaries,*
- (f) to encourage an appropriate scale and density of development that is in accordance with, and promotes the character of, an area,*
- (g) to maintain a built form of mainly 1 or 2 storeys in Zone R2 Low Density Residential, Zone R3 Medium Density Residential and Zone E4 Environmental Living.*

(2) *The height of a building on any land is not to exceed the maximum height shown for the land on the Height of Buildings Map.*

3 Extent of variation to the development standard

In accordance with Clause 4.3 of the NSLEP 2013, the site is subject to a maximum height of building development standard of 8.5m.

The proposed dwelling sits within both the existing dwelling envelope and the maximum building height standard of 8.5m, with a minor exceedance as a result of reconfiguration of roof features. Given the sloping topography of the site, the dwelling is stepped to reduce impacts to the neighbouring dwellings and surrounding environment. A minor exceedance of the maximum height standard occurs on the southern facade as a result of the curved roof (**Figure 2**) and the balcony parapet located on level four of the southern elevation of the dwelling (**Figure 3**). Despite the minor height exceedance of these features, they have been designed specifically to integrate the architecture of the upper and lower levels of the building, enhancing its design quality.

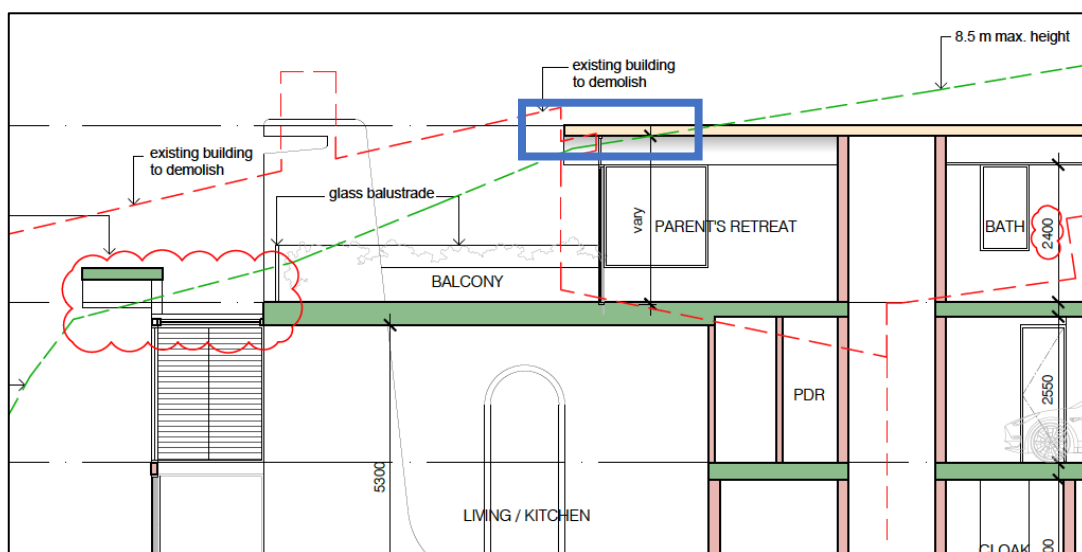


Figure 5. Section AA (extract from DA14 A 2026) Source: Luigi Rosselli

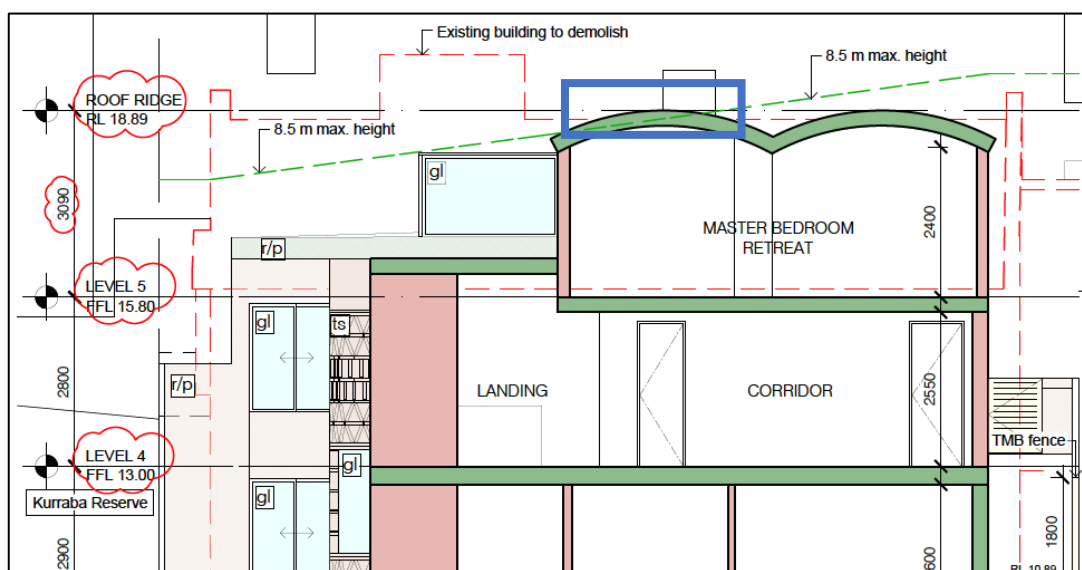


Figure 6. Section CC (extract from DA14 A 2026) Source: Luigi Rosselli

The extent of variation from the 8.5m height standard is summarised in the table below.

Building Feature	Proposed Exceedance	Extent of Variation
Curved roof	470 mm	0.47m 5.38%
Balcony parapet on level 4	600mm 200 mm for the solid parapet and 400 mm of glass balustrade over it	0.6m 6.81%

As depicted in **Figure 4** below, the minor exceedance in height is a result of the proposed roof features on two levels of the dwelling. The exceedance of both roof features is less than 10%, minor in nature and will not have a significant impact on the amenity of surrounding dwelling with regards to view loss, overshadowing or privacy.

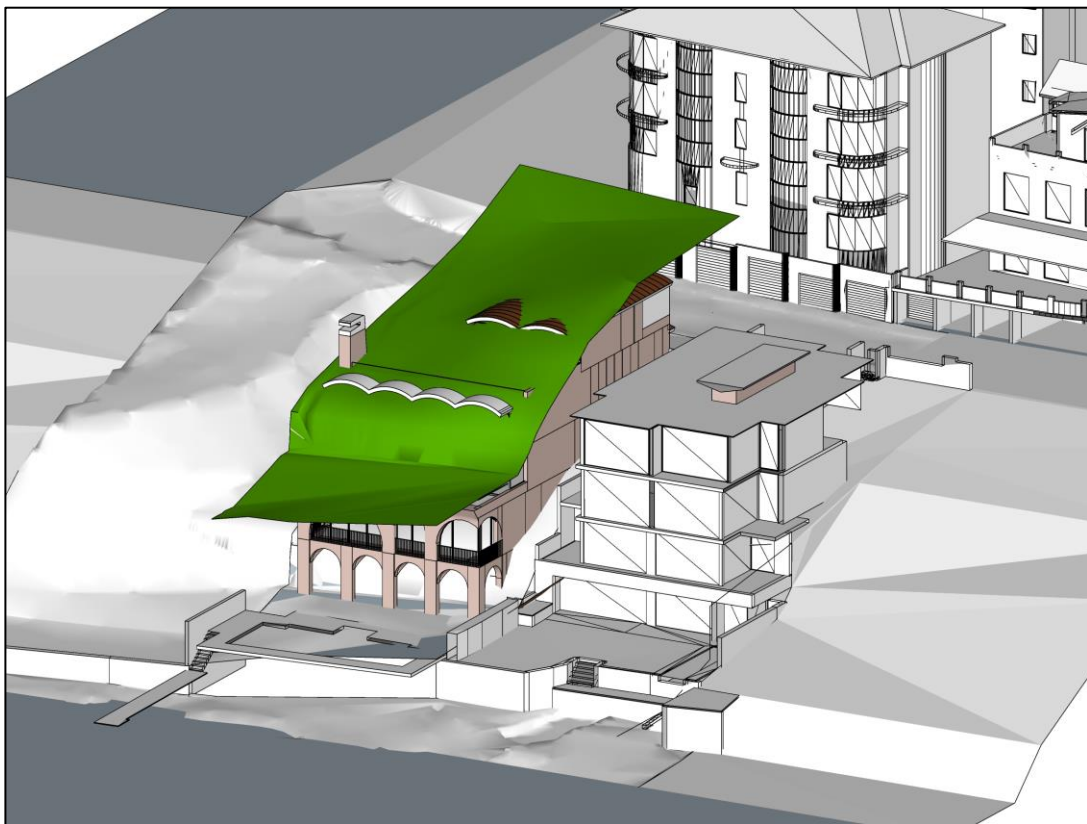


Figure 7. Protrusions through height control plane

Source: Luigi Rosselli

Further to this, and as noted in the SEE, although the proposed chimney and concrete curved sunshades on level 4 exceed the 8.5m height control, these features are excluded from the LEP definition of building height, and the proposed chimney has since been reduced in size and height. It is also noted that the upper roof form and western mass of the existing dwelling will be removed, revealing additional views to Sydney Harbour.

4 Clause 4.6 (3)(a) Compliance with the development standard is unreasonable or unnecessary in the circumstances of the case

In *Wehbe v Pittwater* [2007] NSW LEC 827 (**Wehbe**) a five-part test was established in which a variation to a development standard is considered to be unreasonable or unnecessary as per Clause 4.6(3A). The five tests established in *Wehbe* are (emphasis added):

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 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 would be unreasonable or unnecessary. That is, the particular parcel of land should not have been included in the particular zone.*

Satisfaction of any one of these tests is sufficient to demonstrate the compliance with the standard is unreasonable or unnecessary.

This objection is based on the **first test**, which is addressed further below

5 The objectives of the standard are achieved notwithstanding non-compliance with the standard

The **first test** of *Wehbe* requires demonstration that the objectives of a development standard can be achieved notwithstanding non-compliance with that particular standard. Achievement of each of the objectives of the LEP Height standard is demonstrated below.

(a) to promote development that conforms to and reflects natural landforms, by stepping development on sloping land to follow the natural gradient,

The proposed design carefully considers the natural and existing topography on site with a design that steps down to the Harbour.

The proposed built form will appear to be two storeys when viewed from the front on Baden Road, and four storeys (Level 3 and Level 4 combined) viewed from the rear. The proposed built form steps down to reflect the natural gradient of the land (see **Figure 1**) and therefore satisfies Objective (a).

(b) to promote the retention and, if appropriate, sharing of existing views,

In *Tenacity Consulting v Warringah Council* [2004] NSWLEC 140, Roseth established a four step methodology for assessing view loss. This is commonly referred to as 'Tenacity Assessment' and involves consideration of; 1. Assessment of views potentially effected; 2. Consideration of from what part of the property the views are obtained; 3. Consideration of the extent of the impact; and 4. The reasonableness of the development causing the impact.

In particular, Step 4 states that:

Where an impact on views arises as a result of non-compliance with one or more planning controls, even a moderate impact may be considered unreasonable. With a complying proposal, the question should be asked whether a more skilful design could provide the applicant with the same development potential and amenity and reduce the impact on the views of neighbours. If the answer to that question is no, then the view impact of a complying development would probably be considered acceptable and the view sharing reasonable.

The attached Tenacity Assessment prepared by Urbis addresses these four steps. Specifically, it identifies and considers potential view loss and sharing from four locations in the public domain, including two views from Kurraba Point Reserve and two views from Hodgsons Lookout and views from the three most potentially effects residential properties, being the lower apartments within 200 Kurraba Road (Units 1, 2 and 7).

It concludes that:

- *The additional height or individual features subject to the Clause 4.6 variation, is not visible from the public domain due to the vegetation*

and group of trees located west of the building, which block any potential view loss or loss of view sharing.

- The additional height or individual features subject to the Clause 4.6 variation, block a minor amount of open undifferentiated water in the immediate foreground of views from Units 1 and 2 Kurraba Road.
- The additional height or individual features subject to the Clause 4.6 variation do not block access to any scenic or highly valued views, or compositions that are predominantly characterised by icons or any part of an individual icon, in views from Units 1 and 2.
- The additional height or individual features subject to the Clause 4.6 variation caused by the minor encroachment of the arch roof forms, achieves design excellence and improve the appearance of the building viewed from the water.
- The additional height or individual features subject to the Clause 4.6 variation do not impact valued views from unit 7/200 Kurraba Road, as it only blocks views from parts of Sydney Skyline.
- Whilst there is a marginal view loss from the proposal it is a more than equitable sharing of views as there are more gained than lost of views from Units 1 and 2, revealing views towards Sydney Harbour.
- View loss is minimal for all units, view impacts range from negligible to minor (at the low end of the Tenacity scale) and view sharing impacts when all relevant factors are considered, is reasonable and acceptable.

Public Domain Views

The four public domain views considered in the Urbis report are identified at **Figure 8-12** and considered below.



Figure 8. Public Domain View Location Plan - Source: Urbis

Public Domain Location 1 – Hodgsons Lookout



Figure 9. View south to site from Hodgsons Lookout - Source: *Urbis*

As can be seen in **Figure 9**, the view south from Hodgsons reserve towards the subject dwelling is screened by a dense evergreen fig tree, such that neither the existing nor the proposed development will be visible from this location.

Public Domain Location 2 – South Edge of Hodgsons Lookout



Figure 10. View south-south-east to site from south edge of Hodgsons Lookout - Source: *Urbis*

As can be seen in **Figure 10**, the view south-south-east to site from south edge of Hodgsons Lookout towards the subject dwelling is also screened by a dense evergreen fig tree, such that neither the existing nor the proposed development will be visible from this location.

Public Domain Location 3 – View from Spains Lookout



Figure 2. View east to site from Kurraba Point Reserve neat Spains Lookout - Source: *Urbis*

As can be seen in **Figure 11**, the view east to site from Spains Lookout is also screened by vegetation. While there are gaps in the vegetation providing glimpses to the existing dwelling, the outline of the existing and proposed dwellings are obscured by tree canopies such that the elements subject to this Clause 4.6 variation request will not be visible.

Public Domain Location 4 – View Along Waterfront



Figure 3. View east to site along foreshore - Source: *Urbis*

As can be seen in **Figure 12**, dense vegetation adjacent to the site prevents views along the foreshore to the elements subject to this Clause 4.6 variation request.

All four locations present vegetation and trees towards the view of the building to the east, which prevents any potential view loss or loss of view sharing from these positions in the public domain.

Private View - Unit 1 / 200 Kurraba Road



Figure 4. Photomontage View from Unit 1/200 Kurraba Road
Source: Urbis

In relation to this view, Urbis conclude that:

"The view impact when considered across the whole dwelling is negligible and as such the overall view sharing outcome is reasonable and acceptable".

The photomontage at **Figure 13** is annotated with a red shading over existing views to be lost by proposed structures exceeding the LEP height control, an orange shading over views to be lost by structures complying with the height control and green shading over water views that will become available through proposed demolition of existing structure.

Noting that chimneys are not subject to the LEP height control, the only view loss relates to marginal increases at the apex of the two vaulted roof structures and a small part of the top of the proposed chimney. These views comprise the centre of the large expanse of Sydney Harbour potentially available and their loss will not change the composition of that view. That is, Unit 1 will retain a large expanse of harbour water, including the opposite land-water interface and views to iconic elements, including the Sydney Opera House and the Sydney CBD skyline.

This impact will be very significantly offset by Unit 1 regaining the substantial area of water view shaded green at Figure 12. Not only will this significantly increase the central area of water view, it also involves removal of the existing chimney which splits the existing view into two sections of water and interrupts the opposite land water interface.

In summary, the marginal proposed loss of existing view will be more than offset by regaining a significantly larger and more valuable view, such that the proposed development can be described as a more than reasonable sharing of views with Unit 1, notwithstanding the proposed variation to the height standard.

Private View - Unit 2 / 200 Kurraba Road



View 02 - Proposed view south from west side of living room - unit 2 - 200 Kurraba Road

Figure 5. Proposed View from Unit 2/200 Kurraba Road

Source: Urbis (Red Line Added)

In relation to this view, Urbis also conclude that:

"The view impact when considered across the whole dwelling is negligible and as such the overall view sharing outcome is reasonable and acceptable".

Similar to Unit 1, **Figure 14** demonstrates that a marginal loss of a central area of Harbour water from Unit 2 will be more than offset by removal of the existing obstruction of the view of the land-water interface of the iconic Sydney Opera House. The proposed development can therefore also be described as a more than reasonable sharing of views with Unit 2, notwithstanding the proposed variation to the height standard.

Private View - Unit 7 / 200 Kurraba Road



Figure 6. Proposed View from Unit 7/200 Kurraba Road - Source: Urbis

In relation to this view, Urbis conclude that:

“Views lost are from a ground floor dwelling in front of which any fully complying two storeys dwelling up to 8.5m in height, could be constructed. The north elevation and leading edge of the roof form proposed sits significantly below the LEP height control (by approximately 2m). A fully compliant building that occupied all of the permissible, would block all of the upper section of the CBD skyline and in so doing create a greater extent of view blocking, resulting in a poor and significantly worse view and amenity outcome for Unit 7”.

As the view loss experienced by Unit 7 is unrelated to any breach of the height control it is not relevant to this objection. Given the above, Objective (b) is satisfied.

(c) to maintain solar access to existing dwellings, public reserves and streets, and to promote solar access for future development,

The proposal has been generally designed to minimise overshadowing effects on the surrounding built and natural environment. As depicted in the overshadowing diagrams included in Appendix 3 of the SEE, minor overshadowing of the adjoining dwelling at 3 Baden Road will occur as a result of the development. Despite this minor overshadowing, aspects of 3 Baden Rd will receive improved sun access as a result of the proposal with approximately 2hrs of additional sunlight into the 3rd bedroom of level 3.

Further to this, the living areas and principal private open space of the proposed dwelling will receive sun access that is considered appropriate given both the southern orientation of the site as well as the provision of additional balconies on the upper levels. These features ensure sufficient sun access to private open space is maintained. Given the above, Objective (c) is satisfied.

(d) to maintain privacy for residents of existing dwellings and to promote privacy for residents of new buildings,

The proposed landscaping features and building setbacks in conjunction with the sloping topography of the site ensures that the dwelling will not overlook neighbouring properties. The minor exceedance of the height standard is a result of various roof features and will not impede on the privacy of neighbouring properties. As the proposed dwelling is consistent with the existing building envelope of the site the level of privacy experienced by residents is to remain largely unchanged. As such, Objective (d) is satisfied.

(e) to ensure compatibility between development, particularly at zone boundaries,

The scale-built form and materiality of the dwelling has been considered to ensure it remains compatible with the surrounding streetscape and environment. Given this, Objective (e) is satisfied.

(f) to encourage an appropriate scale and density of development that is in accordance with, and promotes the character of, an area,

The subject site is located in the Kurraba Point South Neighbourhood. The desired future character of the area is to be primarily medium to high density residential accommodation, with potential increases in density in the vicinity of Kurraba Wharf. The minor exceedance of the height standard will not impact on the character of the area as the proposal responds positively to both the street and foreshore. Sufficient landscaping has been introduced at

the front setback as well as above the garage roof. The proposal includes materials that will enhance the scenic and environmental qualities of the coast. The proposal will bring a contemporary edge to the surrounding area whilst reflecting the scale, rhythm and materiality of the neighbouring residences. The proposal generally meets the desired character of the Kurraba Point South Neighbourhood and as such Objective (f) is satisfied.

(g) to maintain a built form of mainly 1 or 2 storeys in Zone R2 Low Density Residential, Zone R3 Medium Density Residential and Zone E4 Environmental Living.

As a result of the sloping topography of the site, the dwelling has been stepped resulting in a 4-storey development when viewed from Sydney Harbour, but only a 2-storey dwelling when viewed from the primary frontage on Baden Road. Despite the minor height exceedance, the proposed scale and density of the development is consistent with surrounding developments located within the R3 Medium Density residential Zone. As such, Objective (g) is satisfied.

In accordance with Wehbe Test 1, it is clearly demonstrated that the proposed development meets the objectives of the height control under Clauses 4.3 notwithstanding the minor non-compliances with the numerical controls for the site. As such, strict application of the standard is unreasonable and unnecessary in the circumstances.

6 Clause 4.6 (3)(b) Sufficient environmental planning ground to justify contravening the development standard

Clause 4.6(3)(b) requires the applicant to demonstrate that there are sufficient environmental planning grounds to contravene the development standard.

In Initial Action the Court found at [23]-[24] that:

23. As to the second matter required by cl 4.6(3)(b), the grounds relied on by the applicant in the written request under cl 4.6 must be **“environmental planning grounds”** by their nature: see *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 90 at [26]. The adjectival phrase “environmental planning” is not defined, but would refer to grounds that relate to the subject matter, scope and purpose of the EPA Act, including **the objects in s 1.3 of the EPA Act**.
24. The environmental planning grounds relied on in the written request under cl 4.6 must be “sufficient”. There are two respects in which the written request needs to be “sufficient”. First, the environmental planning grounds advanced in the written request must be sufficient “to justify contravening the development standard”. The **focus of cl 4.6(3)(b) is on the aspect or element of the development that contravenes the development standard, not on the development as a whole, and why that contravention is justified on environmental planning grounds.**
(our emphasis)

Proposed Design

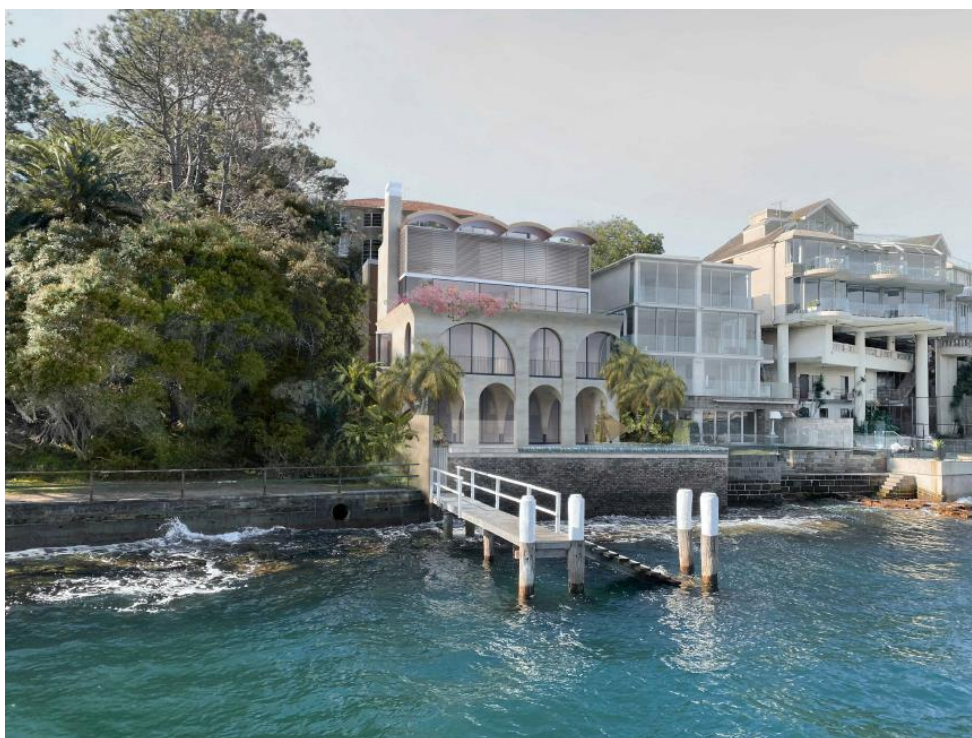


Figure 7. Proposed Waterfront View of the Dwelling House - Source: Urbis

This objection relates solely to the vaulted awning and roof structures proposed to the waterfront edges of the upper levels of the proposed building. In addition to weather protection, the structures are proposed primarily to:

- Echo the arched forms of the lower levels of the building, creating an integrated aesthetic across the waterfront facade.
- Visually soften the horizontal lines of the building, reducing the perceived mass, as viewed from the Harbour.

That is, the subject structures are proposed to mitigate, rather than contribute to the perceived mass of the building. In this sense the proposed variation is directly consistent with Object (e) of the EP&A Act, namely:

(g) to promote good design and amenity of the built environment,

Furthermore, the structures that exceed the height control:

- Occur primarily due to horizontal projection on a sloping site, rather than vertical projection above the otherwise compliant building.
- Are generally contained within the building envelope of the existing dwelling to be demolished.
- Do not form part of the main building mass.
- Do not increase the gross floor area of the building.
- Do not result in any unreasonable view impacts (see Section 5(b)).
- Do not create any overshadowing or other amenity impact.

Deletion of the structures, or replacing them with a simple flat roof, may achieve compliance with the standard and a marginal improvement to the views afforded some units at 200 Kurraba Road, but would result a bulky, 'boxy' presentation to the Harbour that would integrate poorly with the architectural expression of the lower levels.

We submit that the proposed variation achieves better outcomes for and from the development and that there are sufficient environmental planning grounds to justify contravening the development standard in this instance.

7 Clause 4.6 (4a) (ii) Public Interest

Clause 4.6(4a)(ii) requires that the consent authority consider whether 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.

Preston CJ in *Initial Action* (Para [27]) described the relevant test for this as follows:

The matter in cl 4.6(4)(a)(ii), with which the consent authority or the Court on appeal must be satisfied, is not merely that the proposed development will be in the public interest but that it will be in the public interest because it 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.

If the proposed development is inconsistent with either the objectives of the development standard or the objectives of the zone or both, the consent authority, or the Court on appeal, cannot be satisfied that the development will be in the public interest for the purposes of cl 4.6(4)(a)(ii).

As detailed above the proposed development will be consistent with the objectives of the zone standards as discussed in detail below.

7.1 Consistency with Zone R3 Medium Density Residential

Further, it is considered that the proposal will remain consistent with the objectives of the *R3 Medium Density Residential* as summarised below:

- **To provide for the housing needs of the community within a medium density residential environment.**

The proposed development will deliver a residential dwelling within the envelope of the existing dwelling to be demolished on the site. The proposed dwelling responds well to the sloping topography as the minor exceedance in height will not impede on the character of the area. Further, the proposed dwelling is considered an appropriate use of the site to deliver a residential dwelling in the medium density residential zone.

- **To provide a variety of housing types within a medium density residential environment.**

The proposed dwelling will contribute to a variety of housing types located within the medium density zone.

- **To enable other land uses that provide facilities or services to meet the day to day needs of residents**

The proposed development will not compromise the ability for existing facilities to meet the day to day needs of residents.

- **To encourage the development of sites for medium density housing if such development does not compromise the amenity of the surrounding area or the natural or cultural heritage of the area.**

Baden Road is characterised by detached houses and apartment structures, with the harbour side mostly consisting of large houses built in recent decades. The proposal has been designed with a greater front setback to improve the existing streetscape along Baden Road. The proposed development would not impede on the amenity of the surrounding area or physically impact any heritage items in the vicinity of the site or the heritage landscape of Kurraba Point Reserve.

- ***To provide for a suitable visual transition between high density residential areas and lower density residential areas.***

The proposed dwelling will maintain the existing visual transition between high density residential area and lower density area currently provided by the existing residential dwelling on the site. Further to this, Urbis have undertaken a Tenacity View Assessment of the proposed built form and concluded that the proposed development can be supported on view sharing grounds.

- ***To ensure that a high level of residential amenity is achieved and maintained.***

The proposed development provides a highly desirable development outcome. It positively contributes to the existing streetscape, introduces an architecturally designed building that provides high amenity environment for its site users, is sympathetic to the surrounding area whilst not resulting in any adverse impacts on the environment or surrounding developments in regard to overshadowing, privacy and view loss.

As demonstrated in this request, the proposed development it is consistent with the objectives of the development standard and the objectives for development of the zone in which the proposed change of use is to be carried out.

Accordingly, the Council can be satisfied that the proposed development will be in the public interest if the standard is varied because it is consistent with the objectives of the standard and the objectives of the zone.

8 Clause 4.6(5) Grounds for Consideration

In deciding whether to grant concurrence, subclause 4.6(5) requires that the Secretary 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.*

The proposal has been assessed against the relative criteria below:

Would non-compliance raise any matter of significance for State or regional planning?

The non-compliance is minor, specific to the circumstances of the site and proposed development and does not raise any matter of significance for State or regional environmental planning.

Is there a public benefit of maintaining the development standard?

There is no public benefit associated with maintaining strict compliance with the development standard in this instance. Doing so would require the removal or roof features that result in a minor non-compliance with the development standard and do not significantly impede on the privacy and views of neighbouring dwellings.

Are there any other matters required to be taken into consideration by the Secretary before granting concurrence?

There are no additional matters that need to be considered in exercising the assumed concurrence of the Secretary.

9 Conclusion

The objectives of Clause 4.6 are to provide an appropriate degree of flexibility in applying certain development standards and to achieve better outcomes for and from development in particular circumstances.

The request concludes that strict compliance with the numerical standard of the height control is unnecessary and unreasonable, and satisfies the tests under Clause 4.6 for the following reasons:

- Strict compliance with the NSLEP 2013 maximum height development standard would be unreasonable and unnecessary in the circumstances as the objectives of the standard are achieved notwithstanding non-compliance with the numerical control (Clause 4.6(3)(a) and Wehbe test 1). In particular, the proposed variation is consistent with Objective (b) in that it will not result in any significant view loss and represents a more than reasonable sharing of views.
- There are sufficient environmental planning grounds to justify the minor contravention of the development standard. Specifically, in addition to weather protection, the subject structures are proposed primarily to echo the arched forms of the lower levels of the building, creating an integrated aesthetic across the waterfront façade and to visually soften the horizontal lines of the building, reducing the perceived mass, as viewed from the Harbour. By mitigating, rather than contributing to the perceived mass of the building the proposed variation is directly consistent with Object (e) of the EP&A Act, namely *'good design and amenity of the built environment'*.
- Notwithstanding the variation the proposed development is consistent with the objectives of both the zone and the standard.
- As the non-compliance does not raise any matter of significance for State or regional planning and there would be no public benefit in maintaining the standard, the proposed variation is in the public interest

Furthermore, the structures that exceed the height control:

- Occur primarily due to horizontal projection on a sloping site, rather than vertical projection above the otherwise compliant building.
- Are generally contained within the building envelope of the existing dwelling to be demolished.
- Do not form part of the main building mass.
- Do not increase the gross floor area of the building.
- Do not result in any unreasonable view impacts (see Section 5(b)).
- Do not create any overshadowing or other amenity impact.

Deletion of the structures, or replacing them with a simple flat roof, may achieve compliance with the standard and a marginal improvement to the views afforded some units at 200 Kurraba Road, but would result a bulky, 'boxy' presentation to the Harbour that would integrate poorly with the architectural expression of the lower levels.

As the relevant tests under Clause 4.6 are satisfied and there are sufficient environmental planning grounds to, we submit that Clause 4.6 should be invoked to vary the development standard in this circumstance.