

**NSLPP MEETING HELD ON 04/10/23****Attachments:**

1. Site Plan
2. Amended Architectural Plans
3. Clause 4.6 Height of Buildings variation request
4. Design Excellence Panel Minutes
5. Arborist Report
6. Landscape Plan

**ADDRESS/WARD:** 3-5 Morton Street, Wollstonecraft

**APPLICATION No:** DA 355/22

**PROPOSAL:** AMENDED PROPOSAL - Demolition of Two existing residential flat buildings and Construction of a New Residential Flat Building containing 28 Apartments, over two and a half levels of basement parking, plant and storage, associated works and landscaping.

**PLANS REF:**

Plan Nos.	Issue	Description	Prepared by	Dated
DA000	B	Cover Sheet	PBD Architects	25 July 2023
DA001	B	Project Summary		25 July 2023
DA002	B	Demolition Plan		25 July 2023
DA003	B	Site Analysis		25 July 2023
DA004	B	Site Plan		25 July 2023
DA100	B	Basement 2		25 July 2023
DA101	B	Basement 1		25 July 2023
DA102	B	Lower Ground Floor		25 July 2023
DA103	B	Ground Floor		25 July 2023
DA104	B	Level 1		25 July 2023
DA105	B	Level 2		25 July 2023
DA106	B	Level 3		25 July 2023
DA107	B	Roof Terrace		25 July 2023
DA108	B	Roof		25 July 2023
DA200	B	Elevations 1		25 July 2023
DA201	B	Elevations 2		25 July 2023
DA300	B	Section - 01		25 July 2023
DA301	B	Section - 02		25 July 2023
DA302	B	Section - 03		25 July 2023
DA400	B	Materials Schedule - 01		25 July 2023
DA410	B	Photomontage - 01	25 July 2023	
DA800	B	Excavation and Fill Diagram	25 July 2023	

**OWNER:** Mr H Xie, Ms C Lu, Mr R Johnston, Mr H Figgis, Ms E Hopkins, Ms F McDowell

**APPLICANT:** Mr H Xie c/o PBD Architects

**AUTHOR:** Kim Rothe, Senior Assessment Officer

**DATE OF REPORT:** 26 September 2023

**DATE LODGED:** 18 November 2022

**AMENDED:** 14 February 2023, 25 July 2023

**SUBMISSIONS:** **First Notification** - Twenty (20)  
**Second Notification** – Thirteen (13)

**RECOMMENDATION:** Approval

## EXECUTIVE SUMMARY

This development application seeks consent for the demolition of two strata residential flat buildings and the construction of a residential flat building development comprising twenty-eight apartments above three levels of basement parking and storage at 3 - 5 Morton Street, Wollstonecraft. The proposal is an amended design to respond to concerns raised by Council as part of the assessment.

**The application is reported to the North Sydney Local Planning Panel for determination as the application relates to SEPP 65 development, seeks a variation to a development standard by more than 10% and attracted more than 10 submissions by way of objection. In accordance with the Ministers direction of 1 August 2020 a public determination meeting is required because there were more than 10 Submissions.**

Development for the purpose of a residential flat building is permitted within the R4 High Density Residential zone. The proposed building results in a non-compliance with the height of buildings development standard in clause 4.3 of NSLEP 2013 by up to 3.47 m or 28.9% over the 12 metres height limit set under North Sydney Local Environmental Plan 2013. The extent of the variations relates primarily to the rooftop communal open space structures, lift overrun and associated plant and services on the rooftop. The variation is also reflective of the irregular steeply sloping topography through the site.

The written request submitted pursuant to clause 4.6 in NSLEP 2013 demonstrates that compliance with the development standard is unreasonable and unnecessary as the objectives of the standard are achieved notwithstanding the variation, and that there are sufficient environmental planning grounds to justify the variation in the circumstances of the case. The variation would be in the public interest as the proposed development is consistent with the objectives of the standard and the objectives of the R4 High Density Residential zone.

The proposed development meets the design principles and is consistent with the design requirements of the Apartment Design Guide. The proposed development is also generally in accordance with the objectives in NSDCP 2013.

The application was notified in accordance with the community engagement protocol where Council received twenty (20) submissions objecting to issues including the proposed height variation, amenity impacts, tree removal, construction impacts including excavation, traffic congestion and insufficient on-site parking. Following the submission of amended plans responding to Council's and the Design Excellence Concerns, the amended plans were re notified for a further two-week period resulting in an additional thirteen (13) submissions raising similar concerns expressed in the first notification.

This report has considered the issues and concerns raised in the submissions. The issues raised are considered to be generally acceptable or have been addressed through conditions of consent, particularly with regard to construction impacts including excavation.

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

LOCATION MAP



□ Property/Applicant ● Submitters - Properties Notified

## DESCRIPTION OF PROPOSAL

This development application seeks consent for demolition of for the demolition of two strata residential flat buildings and the construction of a residential flat building development comprising twenty-eight apartments above two and a half levels of basement parking and storage at 3 - 5 Morton Street, Wollstonecraft.

In summary the development proposes:

- Demolition of the two existing residential flat buildings and structures;
- Construction of a stepped, four level residential flat building with roof top communal open space, with three levels of basement parking and storage (Twenty eight (28) bays);
- Forty (40) x basement parking spaces (Thirty four (34) x resident, six (6) x visitor) accessed from Morton Street;
- Thirty one (31) Bicycle parking (twenty eight (28) resident and three(3) visitor spaces and four (4) motor bike spaces;
- Twenty Eight (28) x units;
  - Three (3) x 1 bedroom;
  - Thirteen (13) x 2 bedroom;
  - Twelve (12) x 3 bedroom;
- Associated landscaping.
- Removal for up to thirteen (13) trees

### Basement 2

RL65.800

- Ramp from level above;
- Lift lobby;
- Lift to levels above;
- Fire stair 1;
- Pump-out pit (see hydraulic report p6);
- Twenty four (24) x car spaces comprising ;
  - 3 x visitor spaces;
  - 21 residential spaces
  - 2 x accessible spaces;
  - 2 x motorcycle spaces;
- Fire stair 2;

### Basement 1

RL68.800

- Ramp from level above and below;
- Lift lobby;
- Lift to levels above;
- Fire stair 1;
- Sixteen (16) x car spaces comprising;
  - 3 x visitor spaces;
  - 13 residential spaces
  - 3 x accessible spaces;
  - 31 x Bicycle spaces;
- Waste room A (24.1m<sup>2</sup>);
- Bulky waste room (12.5m<sup>2</sup>);
- Services room;
- Fire stair 2;



### Lower Ground Floor plan

RL71.600

- Lift lobby;
- Lift to levels above and below;
- Fire stair 1;
- Fire sprinkler valve and Hydrant Pump Room (86m<sup>2</sup>);
- Services room (49.8m<sup>2</sup>);
- Accessible toilet (7.2m<sup>2</sup>);
- 28 x resident storage spaces;

### Ground Floor Plan

RL73.000 - RL74.500

- Vehicle entry ramp;
- Pergola above ramp;
- Bin pickup area;
- Pedestrian entry;
- Communal Open Space to Morton Street side of building;
- Lift lobby, split level
- Fire stairs;
- Services risers x 3
- 1 x Garbage chutes
- 3 x 3 bedroom dwellings
- 3 x 2 bedroom dwellings
- 1 x 1 Bedroom dwelling

### Level 01 Plan

RL76.100 - RL77.600

- Lift lobby, split level
- Fire stairs;
- Services risers x 3
- 1 x Garbage chutes
- 3 x 3 bedroom dwellings
- 3 x 2 bedroom dwellings
- 1 x 1 bedroom dwelling

### Level 02 Plan

RL79.200 – RL80.700

- Lift lobby, split level
- Fire stairs;
- Services risers x 3
- 1 x Garbage chutes
- 2 x 3 bedroom dwellings
- 4 x 2 bedroom dwellings
- 1 x 1 bedroom dwelling

### Level 03 Plan

RL82.400 – RL83.900

- Lift lobby, split level
- Fire stairs;
- Services risers x 3
- 1 x Garbage chute
- 3 x 3 bedroom dwellings
- 2 x 2 bedroom dwellings

### Roof Level

RL85.600 – RL87.000

- Lift lobby;
- Lift;
- Fire stairs;
- Accessible toilet;
- Services riser;
- Communal open space;
- Enclosed communal space room
- 2 x BBQ ;
- Perimeter landscaping;
- Plant and equipment (aircon, lift equipment);
- Solar PVs;
- Remainder of roof which is not communal area, services or ancillary landscaping is Non trafficable roof with pebble ballast;



**Figure 1:** Photomontage of the Morton Street elevation (as amended) of the building.

### **STATUTORY CONTROLS**

North Sydney Local Environmental Plan 2013

- Zoning – R4 High Density Residential
- Item of Heritage - No
- In Vicinity of Item of Heritage – No

- Conservation Area – No but backs onto Crows Nest Road Conservation Area over the eastern boundary.

Environmental Planning and Assessment Act 1979

- s7.11/12 Infrastructure Contributions
- s7.32 Affordable Housing Contributions

SEPP No. 65 - Design Quality of Residential Apartment Development

SEPP (Building Sustainability Index: BASIX) 2004

SEPP (Housing) 2021

SEPP (Resilience and Hazards) 2021

SEPP (Biodiversity and Conservation) 2021

## **POLICY CONTROLS**

North Sydney Development Control Plan 2013

Apartment Design Guide

North Sydney Local Infrastructure Contributions Plan 2020

## **DESCRIPTION OF LOCALITY**

The subject site is legally described as SP 8831 and SP 52008) and is also known as 3 - 5 Morton Street, Wollstonecraft. The land falls from south to north across the site from RL75.30 to RL71.67 (around 3.63m). The existing site is occupied by two separate residential flat buildings of masonry construction with a hipped, tiled rooves.

The site is zoned R4 High Density Residential and comprises two allotments oriented east-west and each with frontage to Morton Street (west). The land at 3 - 5 Morton Street comprises two rectangular lots. The land at 3 Morton Street has an area of 873.7m<sup>2</sup> with northern common boundary with 5 Morton Street of approximately 48.275m and a common southern boundary of approximately 48.12m. The 3 Morton Street (west) frontage of approximately 18.29m and a common eastern boundary of approximately 18.305m.

The land at 5 Morton Street has an area of 1,475m<sup>2</sup> with southern common boundary with 3 Morton Street of approximately 48.275m and a common northern boundary of approximately 48.535m. The 5 Morton Street (west) frontage of approximately 30.73m and a common eastern boundary of approximately 30.76m. The cumulative site has a total area of 2,348.7m<sup>2</sup>.

3 Morton Street (SP 8831) comprises 5 apartments which are all two bedroom units. 5 Morton Street (SP 52008) comprises 12 apartments which are all two bedroom units.

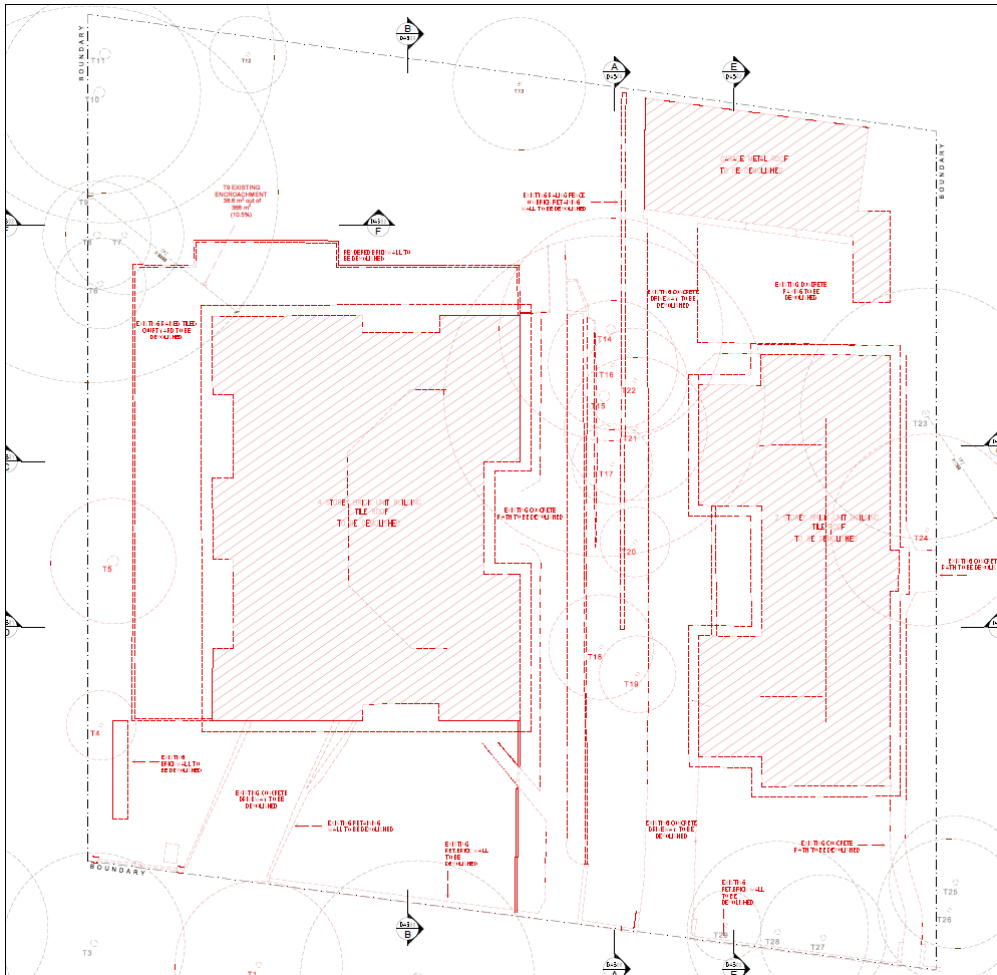


Figure 2. Aerial Image of the subject site and surrounds

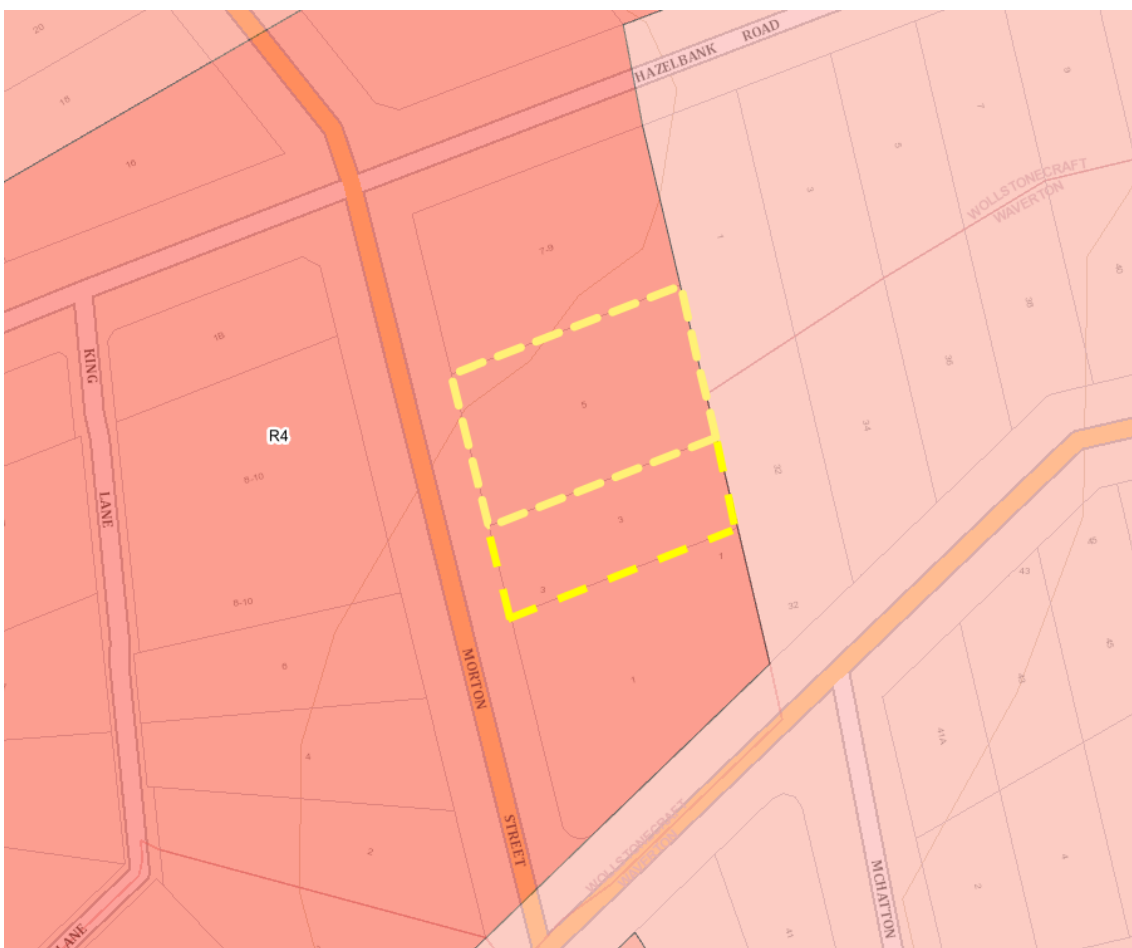


Figure 3. Aerial Image of the subject site and surrounds (includes brown roofed building to north)





**Figure 4. View from the southwest of the subject site and surrounds**



**Figure 5. NSLEP 2013 Land use zoning map with the subject site shown outlined in yellow.**



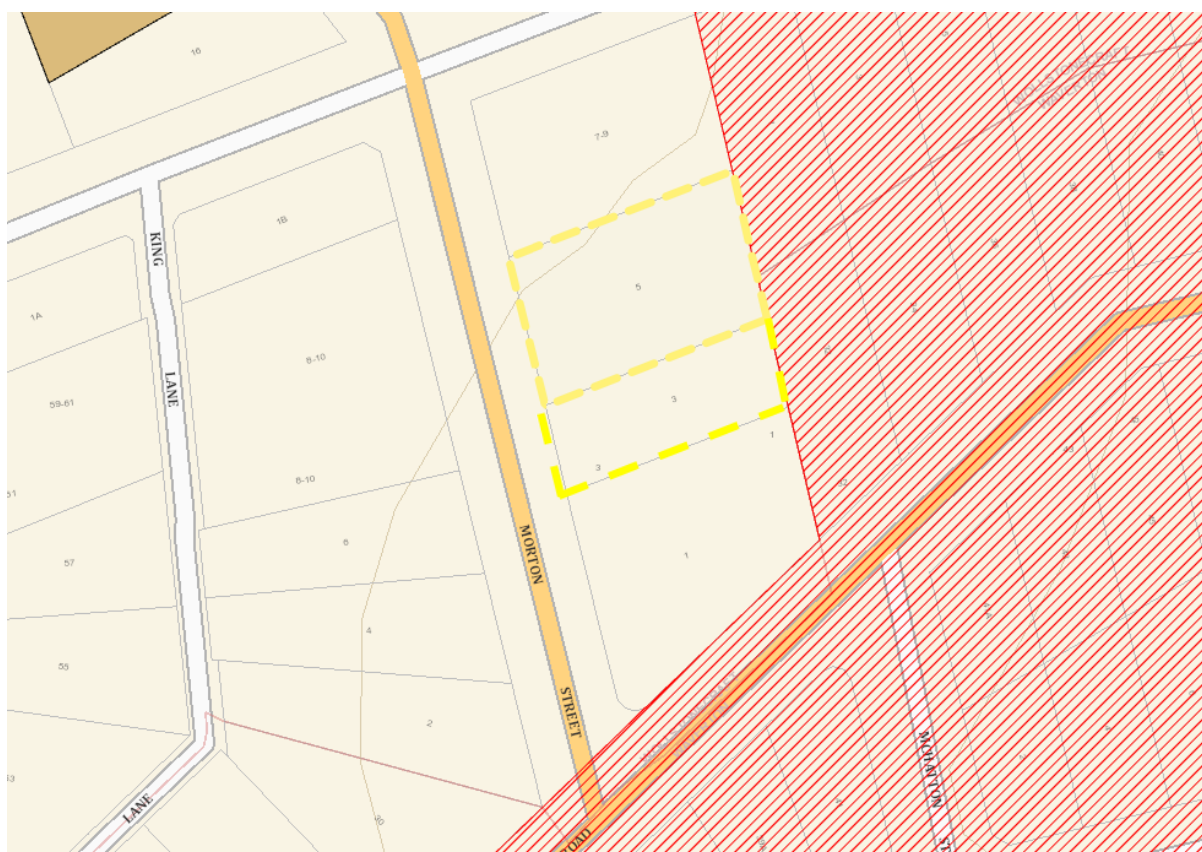
The site has a maximum permitted building height of 12m pursuant to subclause 4.3(2) in NSLEP 2013.



**Figure 6. NSLEP 2013 Height of Buildings maps within the subject site shown crosshatched in red.**

The surrounding development typology includes a mix of residential development with residential flats buildings located towards the south and east and dwelling houses towards the northeast.

The subject site and surrounding residential properties are not identified as a heritage item or located within a conservation area. The site does however back onto Crows Nest Road Conservation Area



**Figure 7. NSLEP 2013 Schedule 5 Heritage items (Conservation Area hatched)**

**RELEVANT DEVELOPMENT HISTORY**

There is recent no relevant development history available on Council’s electronic records. The Existing buildings would be from the later post war period, but the original approvals predate any of Council’s accessible electronic records.

**RELEVANT APPLICATION HISTORY**

Date	Assessment
18 November 2022	The application was lodged with Council via the NSW Planning Portal.
22 December 2022	The application was notified in accordance with Council’s Community Engagement Protocol from 2 December 2022 until 16 December 2022.
13 December 2022	The application was considered by the Design Excellence Panel.
14 February 2022	The outstanding additional information requested in Council’s letter dated was provided.
15 May 2023	A letter was sent to the applicant outlining the issues identified in the preliminary assessment, including ADG non-compliances, subterranean apartment rooms, landscaping and tree removal, parking rates and finishes and materials.
23 June 2023	An online meeting occurred between Council staff and the applicant do discuss sketch plans of various proposed amendments seeking advice from Council.
25 July 2023	Amended Plans and supporting documentation was lodged with Council via the NSW Planning Portal.
22 June 2022	The amended application was notified in accordance with Council’s Community Engagement Protocol from 11 August until 25 August 2023.

## REFERRALS

### Design Excellence

The application was considered by the Design Excellence Panel on. A copy of the Minutes are provided at **Attachment 4**.

The Design Excellence Panel was generally supportive of the proposed development and addressed the Design Principles in SEPP No. 65 – Design Quality of Residential Apartment Development. The panel provided qualified support for the proposal however noted in the minutes that the following issues and recommendations should be address with further plans:

- Subterranean habitable rooms including secondary bedrooms should be deleted or reconfigured where they are located 1m or more below the adjacent ground level.
- Incorporate an attractive and functional communal area, preferably with an enclosed section for use in all weather.
- The dwelling mix should be improved by providing additional one and two bedroom apartments.
- Minor improvements to the external finishes and materials including the introduction of natural finishes.

The amended plans lodged 25 July 2022 incorporated the following changes in response to the Panel’s concerns and recommendations.

- Deletion of part subterranean apartments/bedrooms at ground level,
- reconfiguration of ground floor/lower ground floor plate to improve connectivity between split floor levels.
- New ground level communal space room, new plant space at ground level in spaces formerly proposed for low amenity apartments.
- Amendments to the proposed rooftop communal open space and introduction of a communal room on the rooftop.
- Alteration to the apartment mix throughout the building to incorporate 1 bedroom apartments and increase numbers of 2 bedroom apartments.

The proposed amended development remained generally consistent with the original scheme referred to the Design Excellence Panel. The proposed amendments were considered to respond, to the Panel’s concerns and were not considered to give rise to any new or different design issues and therefore the amended application was not referred back to the Panel for further feedback.

### Traffic

The application was referred to Council’s Traffic Engineers. The following advice was provided.

*Based on the Council’s DCP 2013 the following maximum parking provisions for this development are required:*

**Parking Provision**  
**Development**  
**Component**  
**Residential**

**DCP**      **2013**  
**Parking Rate**

**Max. No. Parking**  
**Spaces**

20 x 2 bedroom	1 space per dwelling	20
9 x 3 bedroom	1.5 space per dwelling	13.5
Visitors	0.25 space per dwelling	7.25
<b>Total</b>		<b>41</b>

The development proposes a total of 40 residents (inc. 6 accessible spaces and 6 visitor spaces) car parking spaces which complies with Council's DCP.

**Accessible Parking:**

Council's DCP requires residential developments to have at least one accessible car parking space for each adaptable dwelling proposed. The development proposes six (6) adaptable units and proposes six (6) Accessible Parking spaces which complies with Council DCP's requirements.

**It is advisable to relocate the proposed Accessible parking spaces closer to the lift for easy access.**

**Bicycle Parking**

Council's DCP specifies that all commercial developments to provide on-site, secure bicycle parking facilities. The minimum required bicycle space, specified as follows:

<b>Development Component</b>	<b>DCP 2013 Bicycle Parking Rate</b>	<b>Max. No. Parking Spaces</b>
Residential (29)	Occupants 1/1 dwelling	29
Visitors 1/10 dwelling	3	
<b>Total No. bicycle Spaces</b>		<b>32</b>

The proposed development makes provision for 32 bicycle spaces on basement level 1 which complies with Council's DCP.

**Car wash bay:**

Council's DCP requires a car wash bay for developments containing 4 or more dwellings.

The proposed development contains 4 dwellings, hence require providing one (1) carwash bay which may comprise a visitor car space. The wash bay is to be adequately drained and connected to the sewer line.

The proposed development makes provision for a car wash bay which is shared with visitor space (#4) located on Basement 2 which complies with Council DCP's requirements.

### **Motorcycle Parking**

*Council's DCP does not require any provision for motorcycle space, however the development proposes a total of 3 motorcycle spaces on basement level 2. This has been provided within the basement car park which complies with Council's DCP.*

### **Loading and Unloading facilities**

*Council's DCP specifies that all new developments with more than 30 must provide at least 1 service delivery space. The proposed development proposes 29 dwelling and as such does not require to provide any space for the purpose of loading and unloading.*

### **Conclusion**

*It is recommended that the proposed development be supported. It is also recommended that the following conditions be imposed:*

- 1. That a Construction Management Plan be prepared and submitted to Council for approval by the North Sydney Traffic Committee prior to the issue of the Construction Certificate. Any use of Council property shall require appropriate separate permits/ approvals issued by North Sydney Council.*
- 2. That all aspects of the car park comply with the Australian Standard AS2890.1 Off-Street Parking and Council's DCP.*
- 3. That all aspects of bicycle parking and storage facilities comply with the Australian Standard AS2890.3 and Council's DCP.*
- 4. That a condition be imposed on determination stating that Council will not consider any future requests for provision of on-street Loading Zone benefitting this development.*

**Planners Comment:** The amended design has accounted for the required parking and bicycle facilities. All remaining matters can be conditioned as recommended. The development is satisfactory in this regard.

### **Engineering**

The amended application was referred to Council's Development Engineers who raised no objection to the proposed development. Standard and site specific engineering conditions were recommended to be imposed upon any approval notice.

### **Landscape**

The initial application was referred to Council's Landscape Development Officer who raised concerns regarding the potential impact to trees particularly some significant specimens in the south east corner of the site.

The following landscaping concerns were included in Council's Issues letter:



- *T9 Cinnamomum camphora (25m) shall be retained and protected in accordance with AS4970. The existing ivy growing into the canopy, and existing deadwood should be removed as a matter of urgency, as per correct horticultural practice. Changes to proposed landscaping may be required to reduce level changes within the TPZ of this tree.*
- *An amended arborist report shall be required detailing any pruning required to site or neighbouring trees and shall allow for erection of scaffolding and associated works. The design of scaffolding shall be such that any need for canopy pruning is minimised.*
- *An amended Landscape Plan including increased setbacks with deep soil planting and sufficient space for future growth for adequate and suitable replacement planting of canopy trees to replace those removed, provide screening and privacy, and soften built form shall be provided. This LS Plan shall include suitable canopy height species, number and pot size. Species generally regarded as large shrubs/small trees, such as the Magnolia Grandiflora are not considered as adequate replacement planting for large canopy trees proposed for removal.*
- *Plans shall be amended to correctly show trees proposed for removal, and to reflect consistency and accuracy across all lodged documentation.*
- *T1 Lophostemon confertus shall be removed. 4-5 new Lophostemon confertus (200l) shall be planted within the roadway across the frontage of 3-5 Morton St, to correspond to existing plantings. These trees shall be planted in consultation with Council's engineers and Street Tree Team and planted as per specifications advised by same.*
- *Large bare expanses of building façade, notably the northern façade, shall have green walls installed, and spill over planting shall be included on balconies.*
- *Viburnum odoratissimum 'Emerald Lustre' shall be replaced with a more suitable species for balcony planter boxes, and Dietes grandiflora shall be replaced with a less invasive, weedy species.*

Following receipt of amended plans and information, the application was referred back to the Landscape Officer for further comment. Whilst the Landscape Officer maintains concerns regarding the amended proposal and necessary protections for the trees, the Landscape Office provide a set of recommendation for conditions which can be imposed upon any determination notice to accommodate the works.

*The specific requirements to be incorporated are as follows:*

- *Stormwater Plans prepared by JHA Services dated Aug 22 Rev P3 show SW directed through the SRZ and TPZ of numerous protected trees notably T3 Lophostemon confertus (12m) street tree, and trees along northern and western boundaries of the subject site. Amended SW Plans that do not direct SW through the TPZ of protected trees shall be required.*
- *An amended arborist report shall be required detailing any pruning (including marked-up pics) required to site or neighbouring trees and shall allow for erection of scaffolding and associated works. The design of scaffolding shall be such that any need for canopy pruning is minimised. It should be note that no more than 10% tree canopy should be removed, and that no pruning to canopies of neighbouring trees shall be permitted without owner's consent. This amended report shall address the following issues/errors, from recent and original reports:*

- *T11 shown in arb reports as Acacia sp. (16m) for retention, is actually a Gleditsia sp. in poor condition, and it shall be removed and replaced with 3 x Corymbia maculata (100l)*
- *T23 & T24 shown as Cupressus lusitanica (16m) are actually X Cupressocyparis leylandii, T16 shown as Livistona australis (12m) appears to be Trachycarpus sp.. These anomalies shall be corrected to ensure accuracy across documentation.*
- *Assessment, impact, & tree protection measures provided by arborist for T25 Ulmus parvifolia (8m) – “1. This tree is in the adjacent site 1m to the boundary. None of its crown is over the boundary. 2. There will be no additional impact on this tree from the proposed development plans. Retain and protect. 3. TPZ fencing is not required as the site boundary fence will provide adequate protection” and T26 Photinia robusta (5m) “1. This tree is in the adjacent site 500mm to the boundary. None of its crown is over the boundary. 2. There will be no additional impact on this tree from the proposed development plans. Retain and protect. 3. TPZ fencing is not required as the site boundary fence will provide adequate protection.” are incorrect. Site visits and pics clearly show canopy overhanging the boundary of subject site, and the assertion that the boundary fencing will provide adequate protection does not comply with AS4970 as TPZ will not be protected.*
- *An amended Landscape Plan shall be required to replace the loss of established landscaping within the site.*
  - *The amended plan shall show T11 shown in arb reports as Acacia sp. (16m) but actually a Gleditsia sp. to be removed and replaced with a grove of 3 x Corymbia maculata (100l) in approximately the same location.*
  - *Green walls shall be installed on the façade above the garage/driveway on the western frontage, and on the southern façade large expanse of brickwork towards front of site.*
  - *Dietes grandiflora shall be replaced with a less weedy species*
  - *Replacement street trees shall be 3 x Lophostemon confertus (200l), not 100l as shown. These trees shall be planted in the roadway in front of 3-5 Morton St as shown on plans. Planting holes shall be dug and constructed as per council’s engineering specs.*
  - *LS Plan shall include species, number and pot size. All trees except 3 x Corymbia maculata (100l) shall be 200l pot size as recommended by Design Excellence Panel.*

Other standard tree protection conditions were also recommended in the referral comments.

### **Waste**

The original and amended application was referred to Council’s Waste Operations Officer, who provided relevant conditions and requirements regarding waste storage and collection. Please note, the amended details include a temporary bin holding area at the Morton Street elevation of the building and a recycling bin is provided adjacent to the garbage chute on the residential levels.

## **EXTERNAL ADVICE**

### **AUSGRID**

The application was referred to AUSGRID who raised no objection and provided general advice regarding works in proximity to overhead powerlines.

### **Sydney Water**

The application was referred to Sydney Water who raised no objection and provided general advice regarding availability of services in vicinity of the site and noted the requirement to obtain a Section 73 certificate.

## **SUBMISSIONS**

The application was notified in accordance with Council's Community Engagement Protocol from 2 December 2022 to 16 December 2022. twenty (20) submissions were received. The issues raised in the first round of objections are summarised below:

### **Basis of Submissions:**

**Note:** Due to the number of submissions received, the following constitutes a summation of the issues as raised and is not intended as a recounting of every specific submission concern raised.

#### ***Height***

- *The proposed development does not comply with the height of buildings development standard in clause 4.3 in NSELP 2013.*
- *The written request to vary the height of building development standard pursuant to clause 4.6 is insufficient and should not be supported.*

#### ***Significance of the Original Buildings***

- *5 Morton Street has history. It was built by the late Kevin John McCann OAM. It is a beautiful well floor planed building.*

#### ***Bulk and Scale***

- *The proposed development represents an overdevelopment of the site given the increased building footprint and non-compliance with the height of buildings development standard.*
- *The proposed development should provide a dwelling mix as advised by the DEP.*
- *The proposed development excessively bulky and is not in keeping with surrounding development.*
- *The increase in residential density is not suitable for the area*

#### ***Traffic and Parking***

- *The proposed development provided insufficient onsite parking for residents given that only one space is provided per dwelling.*
- *The proposed development would result in increased traffic congestion.*
- *Concerns of pedestrian safety raised.*
- *The proposed development would result in increased on-street parking congestion.*
- *Object to the location of the new driveway.*
- *Construction traffic management should consider the existing site constrains and surrounding development including new bypass exits.*

### **Construction Impacts**

- *Excavation and construction would create significant noise impacts that should be reasonably ameliorated.*
- *Construction management should include consultation with the adjoining property to minimise impacts including the emission of dust and debris and ensure property damage is not caused.*
- *Concerns over the total amount of excavation proposed.*

### **Landscaping**

- *Concerns over a significant amount of existing significant trees and vegetation from the site particularly the northern side.*
- *Mature trees should be used in the replacement plantings*

### **Amenity**

- *Insufficient communal open space is provided for the future residents.*
- *Proximity of rooftop communal area to existing building (particularly 7 – 9 Morton Street, Wollstonecraft).*
- *The proposed development would impact the amenity of surrounding properties.*
- *The proposed balconies and rooftop area would have an adverse acoustic impact on the amenity of the dwellings located opposite on 7-9 Morton Street, Wollstonecraft.*
- *Shadowing impacts to 1 Morton Street, Wollstonecraft*
- *Loss of ambient light*

### **Drainage**

- *Concerns raised that drainage is not adequately considered or resolved.*

### **Materials**

- *Concern raised over the dark colour scheme and material palette proposed.*

Amended plans were received 25 July 2023 and the amended application was notified in accordance with Council's Community Engagement Protocol from 11 August until 25 August 2023. A further thirteen (13) objections were received. The following additional or new issues raised in the objections are summarised below:

- *Previous issues as raised in original submissions.*
- *Consideration should be given to the installation of electric vehicle (including e-bike) charging ports.*

The issues raised in the submissions to both notified schemes remain relevant and are addressed later in this report.

The original submissions may be viewed by way of DA tracking on Council's website [https://www.northsydney.nsw.gov.au/Building\\_Development/Current\\_DAs](https://www.northsydney.nsw.gov.au/Building_Development/Current_DAs) and are provided for review by NSLPP members.

## **CONSIDERATION**

The relevant matters for consideration under section 4.15(1) of the Environmental Planning and Assessment Act 1979, are assessed under the following headings:

## **State Environmental Planning Policy (Resilience and Hazards) 2021**

Section 4.6 of the SEPP requires the consent authority to consider whether the subject site is contaminated, and if so, what remediation would be required to make the site suitable for the proposed use. The subject site has previously been used for residential dwellings. Given the historical use, the subject site is unlikely to be contaminated. The applicant has also provided a preliminary site investigation report which details the existing site condition and concludes that there is low risk that the site would be contaminated. Conditions relating to the identification of asbestos and its removal would be imposed should the application be approved by the Panel. The matters for satisfaction in the SEPP are considered to be satisfied.

### **SEPP No. 65 - Design Quality of Residential Apartment Development**

The proposal is assessed below against the Design Quality Principles in Schedule 1 of the Policy.

#### ***Principle 1: Context and neighbourhood character***

The immediate locality is of mixed character, with existing buildings of differing style, height and forms. Development on adjoining sites to the south, west and north west is exemplified by post war flat buildings and does not provide any overarching precedent as to desirable character on the subject site. North east of the site are lower density single dwelling forms on larger lots which are also located in the Crows Nest Road Conservation Area. The site lies near the lowest point of Morton Street and is flanked by inter war flat buildings, the proposal is considered to be consistent with these built forms.

The stepping of the building across the site sufficiently responds well to topography and the use of articulated dry pressed brick façade provides depth and character.

The proposed development would have a perceived three/four storey scale when viewed from Morton Street consistent with the zone and building height intents and is acceptable in this regard.

#### ***Principle 2: Built form and scale***

Except for a minor exceedance of the height, the building appears to generally conform with the relevant height limit and setback controls. The stepped building form addresses the sloping topography of the site.

The built form of the proposed development steps down to follow the existing topography and is well proportioned and articulated to manage the visual impact of the building as viewed within the streetscape and from surrounding dwellings.

#### ***Principle 3: Density***

The proposal as amended has incorporated an improved variety of dwelling mix than that which was originally proposed and is considered acceptable in this regard. Generally, building massing and form is considered to be appropriate to the extant controls on site, generally meeting height and envelope controls.



#### ***Principle 4: Sustainability***

##### Energy and water efficiency initiatives

- The proposal includes solar panels on the roof as well as rainwater collection and recycling. The proposal is also subject to BASIX to incorporate energy efficient appliances and fixtures throughout the building.

##### Passive environmental design

- apartments achieve satisfactory solar access and natural cross ventilation in accordance with Council's DCP and SEPP 65 requirements. The south-eastern corner of the site has been redesigned where there were identified to be a low amenity apartment with poor solar access due to topography and landscaping constraints.
- Generally materials with acceptable thermal performance are proposed and the design incorporates a number of passive design features for good thermal performance.

#### **Principle 5: Landscape Integration**

The proposal has been amended to respond to concerns in this regard increasing separation to existing plantings to be retained in the south eastern corner of the site. Landscaping details have been amended to incorporate recommendations of the Design Excellence Panel and Landscaping Officer. The design incorporates plantings on the roof and around the façade to soften the appearance of the building when viewed from the street and adjoining sites.

#### ***Principle 6: Building configuration, planning, and amenity***

##### Building Entry / Circulation

- The proposal has been amended to improve circulation through the building particularly around the lift well and spit levels to provide for open pedestrian stairs between the levels.
- The dwelling access corridors are also amended to allow for windows to improve visual amenity rather than dark enclosed corridor spaces.

##### Private open space and balconies

- The proposed balconies and courtyard are suitably located and dimensioned.
- a small, enclosed space on the rooftop balcony open space area is provided for wind and rain protection for users of the communal open space.
- planters allow for appropriate soil volumes to enable thriving vegetation.
- A water reuse facility is incorporated into the development
- The landscaping details include for maintenance of the new plantings

##### Visual Privacy

- The relationship to the adjoining residential flat buildings is generally accepted.
- Generally separation distances are submitted to be well resolved throughout the proposal which also respond to proximity to existing adjoining buildings and topography. There are discussed in further detail later in the report but for the purposes of this section of the report, are submitted to the panel as being acceptable in the circumstances.

### Shadow impacts

- Similar to the above concern, the design has been amended to reduce building bulk in the south eastern corner of the site improving solar performance of the apartments and reducing solar impact to adjoining sites.
- Separations and massing have been designed to respond to the latent topography and siting of adjoining buildings.
- Given the building generally conforms to the envelope controls, the development is considered to be acceptable in this regard.

### ***Principle 7: Safety***

The proposed development promotes reasonable levels of safety and security. Building entries and vehicle access are well defined and highly visible from the street to promote passive surveillance. The proposed fencing and landscaping also delineate the private domain from the street.

### ***Principle 8: Housing diversity and social interaction***

The proposed building as amended provides a mix of one, two and three bedroom apartments. The proposed apartments would cater for various social demographic groups and provides opportunities for causal social interaction. A communal indoor and outdoor space both on the roof and at the street elevation of the building.

### ***Principle 9: Architectural expression and materiality***

The proposed built form character of the building is consistent with the wider character of the High-density zoned areas of the Wollstonecraft Neighbourhood. The use of materials is contemporary, however, the overall design and proportioning of the building is consistent with the surrounding mixed building typology and is well articulated with various building elements that express the architecture of the building. The specified materials and finishes are generally recessive in appearance, creating visual interest, and are considered to be of a high quality and will result in a positive contribution to the locality.

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

A valid Multi-Dwelling BASIX Certificate has been provided with the amended plans which meets the requirements of this policy. It is noted that it is proposed to transition this SEPP into the proposed Design and Place SEPP however there is no indication of additional future provisions at this stage.

### **State Environmental Planning Policy (Transport and Infrastructure) 2021**

Schedule 3 - Traffic Generating Development.

The proposed development does not meet the thresholds to be classified as traffic generating development and therefore referral to RMS is not required.

## **State Environmental Planning Policy (Biodiversity and Conservation) 2021**

### Chapter 2 – Vegetation in Non-Rural Areas

Council's Landscape Development Officer has recommended conditions to the proposed removal of trees on the subject site to facilitate the construction of the proposed development. Consent is required for the removal of or impact to any tree identified in Section 16 Tree and Vegetation Management of NSDCP 2013. The primary threshold triggering the requirement to obtain consent is where trees are over 5m in height or a crown width greater than 5m. The proposed development seeks to retain three existing significant mature canopy trees where possible particularly those in the southeastern corner of the site. The proposal can therefore be supported in this regard.

### Chapter 10 – Sydney Harbour Catchment

The subject site is not overly visible from Sydney Harbour or its foreshores. The proposal therefore would not impact upon the ecological significance, water quality or scenic quality of Sydney Harbour or its waterways and is considered acceptable with regard to the Chapter 10 of the Policy.

## **North Sydney Local Environmental Plan 2013**

### **Permissibility**

The subject site is zoned R4 High Density Residential. The proposed development for the purpose of a residential flat building is a permitted use within the zone.

### **Objectives of the zone**

The objectives of the R4 High Density Residential zone are as follows:

- *To provide for the housing needs of the community within a high density residential environment.*
- *To provide a variety of housing types within a high density residential environment.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*
- *To encourage the development of sites for high density housing if such development does not compromise the amenity of the surrounding area or the natural or cultural heritage of the area.*
- *To ensure that a reasonably high level of residential amenity is achieved and maintained.*

The proposed development is a form of permissible development with consent in the zone. The proposed development would facilitate the redevelopment of the site and provides housing for a variety of different demographics (singles, couples, new and established families and retirees) within a high-density residential environment, hence supporting a variety of housing types.

The proposed development would not compromise the amenity of the surrounding area or the natural or cultural heritage of the area. The proposed building steps down the land and has a modest three-four storey appearance along the primary frontages of Morton Street.

The proposed development would achieve a high level of residential amenity for the proposed apartments noting that nearly all apartments would receive solar access and natural cross ventilation, and are well proportioned. Whilst there are some areas of habitable subterranean bedrooms, this is reflective of the steeply sloping topography of the site and excavation below footpath level and has been minimised where possible to provide a reasonable degree of amenity for these bedrooms.

The proposed development has also been designed to ensure that the existing amenity of the surrounding dwellings is maintained, specifically where it relates to the retention of views, solar access and privacy.

The proposed development is considered to be consistent with the objectives of the zone.

**Clause 4.3 - Height of buildings**

The subject site has a maximum permitted building height of 12m pursuant to clause 4.3(2) in NSLEP 2013. The proposed development has a maximum height of 15.47 m, resulting in a variation of 3.47 metres or 28.9%. The proposed building does not comply with the height of building development standard at multiple points as summarised in the table below:

	Non-compliant Building Element	Control	Height	Variation
A.	Lift overrun	12m	15.47 m	28.9%
B.	Communal open space and pergolas)		14.3 m	19.2%
C.	Surrounding planting		13.65 m	13.8%
D.	Fire Stair		13.33 m	11.1%
E.	Plant Enclosure		13.00 m	8.3%



**Figure 8. NSLEP 2013 Height of building height compliance perspective**

The variations at the centre of the uppermost rooftop communal space and associated plant and services. The non-compliances are concentrated to the northern side of the site and principally within the middle of the roof area. It should be noted that the proposal is stepped in two parts across the width of the site in order to respond to the cross-fall of the topography as can be understood from the section below. It is noted that the breach to the height control arises from the lift overrun and supporting features for the communal open space with a minor breach to the leading edge of the roof. This is clearly illustrated in the 12m height blanket raised from the survey plan above. The building proposes four (4) levels of apartments which is consistent with the intent of the control.

#### **Clause 4.6 - Contravention of a Development Standard**

A written request to contravene the development standard for height has been submitted, and is attached. It is considered in the following section of the 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”*

The written request relies upon the tests outlined in *Wehbe v Pittwater Council* [2007] NSWLEC 827 at [42] to demonstrate whether compliance is unreasonable or unnecessary by demonstrating that the objective of objectives of the development standard are achieved notwithstanding noncompliance with the development standard.

The objectives of the development standard are addressed below:

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

The proposal has endeavoured to minimise overshadowing, loss of privacy and visual impacts for the neighbouring properties consistent with the objectives of this clause. The proposal presents as a building predominantly within the maximum height of buildings as it presents to the street. Separation between the proposed building and the adjoining existing flat buildings is utilised to achieve shadowing and privacy objectives. It should be also noted that the proposed is stepped in two parts across the width of the site in order to respond to the cross-fall of the topography. It is noted that the breach to the height control arises from the lift overrun/roof top plant and services with a minor breach to the leading edge of the northern roof.

The stepped building is maintains a consistent four stories with a three storey base and the upper level contained within a stepped back form consistent with the provisions of the DCP.

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

It is not anticipated that any significant view loss arises from the proposal given the siting of the building and the extent of the residential flat buildings to the north, west and south. The four-storey building form effectively sits within the mature tree canopy surrounding the site.

The non-complying elements would not result in any material impact to the existing views available from surrounding properties. Notwithstanding the absence of any credible impacts, the bulk of the proposed development is largely maintained within the existing building envelope and accordingly can be supported in this regard.

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

The objective refers to maintaining solar access and therefore the impact of the existing building is a relevant consideration. The height of the proposal is considered to be consistent with the desired future character of the locality and the surrounding buildings and public areas will continue to receive satisfactory exposure to sky and sunlight.

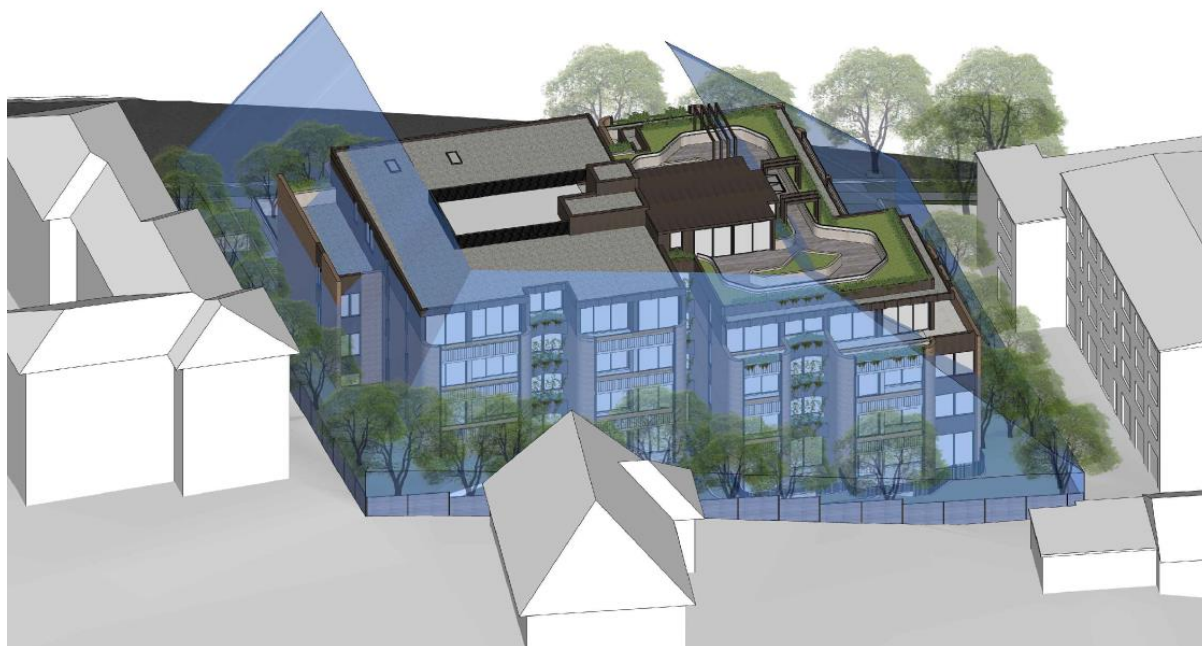
As can be seen by views from the sun diagrams of the architectural package to allow the assessment of solar access. It is clear that the impact of shadows arise predominantly from the compliant portions of the building. The upper most floor is setback from the third-floor roof edge to further promote solar penetration to the lower portions of affected adjoining buildings.

The applicant has also addressed the potential impact to surrounding streets which would be consistent with other buildings on Morton Street.

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

The written request details that an acceptable level of privacy would be maintained for surrounding dwellings. The proposed non-compliances along the northern side of the building relate to habitable living areas and balconies and their separation and alignment has regard to the existing buildings on adjoining sites. Notwithstanding this, the sites required separation distances provided conform to requirements for habitable / balconies, habitable / non habitable and non habitable to non habitable distances required in both the Apartment Design Guide and NSDCP 2013. The separation distances establish that reasonable privacy is maintained on the lower levels of the building but these are not subject to the Building Height non compliances nor the variation request.

To detail the performance of the building at the upper levels with regard to Privacy, it is important do analyse the buildings performance with regard to Council's Building Height Plane control. The proposed building generally complies with the 45-degree building height plane as required under NSDCP 2013 and as can be seen by the compliance diagram provided in the design package (extract below) there are non-compliances at the upper levels in similar locations to the building height breaches.



**Figure 9. NSLEP 2013 Building height Plane compliance perspective. The northern side of the site is on the right side of this perspective.**

Primarily the non-compliances encompass the rooftop communal space landscape planters and a portion of the northern fourth level secondary balcony area. Given the setback of the usable portion of the communal roof area, it is submitted that there are no adverse privacy impacts arising from this portion of the building. Regarding the level 4 northernmost apartment, the trafficable balcony on the north side is not the primary portion of the balcony which wraps around the apartment to the east. The living room to this apartment is orientated east with the great width portion on the east side of the building. Accordingly, should the panel determine there are potential privacy impacts at this point of the building, screening or restrictions to the use of the balcony on the northern side can be considered. It is however submitted that the eastern side of this balcony will be the primary used area.

It should be noted the southern side non-compliance is principally a non-trafficable roof space area and accordingly there is no adverse privacy impacts arising from this building height plane. On balance, the privacy impacts related to the building height and building height plane are submitted to be acceptable in the circumstances.

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

The written request has detailed the existing character of the locality as being of a high-density residential area which is characteristic by residential flat buildings of varying height from two to four storeys. The directly adjoining residential flat building to the north and south on Morton Street are three storey residential flat buildings over at grade parking structures. The proposed development would be similar in scale with a four-storey form to Morton Street. East of the site is R2 Low Density zoned land occupied by single dwelling forms however as the site is bookended by 1 and 7 Morton Street Wollstonecraft both of which are corner sites containing four storey buildings and accordingly are responsible for the expression of the transition between the R4 High Density zone and R2 Low Density zone. The building comfortably confirms to a visible four storey and is appropriate in this regard.

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

The written request has identified the relevant built form and character of the Wollstonecraft Neighbourhood and provided an assessment to demonstrate that the proposed development would be consistent with the surrounding built form character which primarily comprises density according to zone.

The portions of the building that do not comply with the development standard are set back away from surrounding development which would limit the perceived scale of the building from Morton Street and positively contribute to the locality.

Further, whilst there is no applicable Floor Space Ratio development standard, the proposed development complies with the site coverage, unbuilt upon area and landscaped area controls which are key controls to establish the permitted scale and density of development.

The scale and density of the proposed development has also been managed to ensure that the amenity of the surrounding properties have been maintain as outlined regarding objectives (b), (c) and (d) above.

***(1)(g) 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.***

This objective is not relevant as the subject site is located within the R4 High Density Residential zone.

**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 environmental planning grounds advanced in the written request are considered to be sufficient to justify the contravention of the development standard in the circumstances of the case. The applicant has provided a detailed list of environmental planning grounds of the written request that relate specifically to the variation and are in part based around the objectives in section 1.3 of the Act. The grounds relate to:

*“The proposal seeks flexibility in the application of the standard where the breach to the height control arises from a building, which is consistent in bulk and scale with the desired future character and the breach predominantly arises from the lift overrun providing equitable access to the roof top communal open space of the building. It is apparent from the views from the sun that the ground level open space is overshadowed by the buildings to the north and landscaping, consequently, the roof top communal open space provides good solar access and amenity with very low levels of amenity impact to the neighbours given that it is located on the north of the residential flat building on the subject site. A compliant building would unnecessarily fail to provide good solar access, amenity and equitable access to the upper level of the building in order to achieve the height control. This is considered to achieve flexibility consistent with the objectives of this clause.*



*The proposal provides for a better outcome in making available communal open space on the building the provides equitable access from all levels, which benefits from high amenity and high levels of solar access and outlook. This is considered to be a better outcome consistent with the objectives of this clause.*

*A consideration of the application and the submitted shadow diagrams demonstrate that no significant overshadowing, privacy, view or bulk and scale amenity impacts arise from the proposal. It is considered that the proposal is the better planning outcome encouraged by the provisions of Clause 4.6.*

*The proposed works above the height have no significant view impact and cause no overshadowing, nor bulk or scale impacts to the existing surrounding dwellings.*

*In the circumstances where there are sound environmental and site specific sufficient environmental planning grounds reasons for the breach to the height control it is considered to justify contravention of the control and consequently the exception to the height control standard under Clause 4.6 is considered acceptable.*

*In this regard, there are sufficient environmental planning grounds to justify contravening the development standard. The proposed additional height sought in this Clause 4.6 better allows the built form on the site to achieve the desired future character of the locality, as expressed under the DCP, as compared to the do nothing scenario.”*

The submitted justifications are generally concurred with. The proposed development seeks to manage the bulk and scale having regard to the design envelope controls.

The bulk and scale of the of the proposed development steps down with the topography the site and reflects the natural slope of the land as evident along Morton Street. The proposed development has regard to the amenity of the adjoining properties and seeks to manage and minimise any potential amenity impacts with regard to overshadowing, overlooking and privacy, particularly where this relates to the non-complying building elements.

The environmental planning grounds raised by the applicant are considered satisfactory to justify the variation in circumstances of the case.

#### **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 adequately addresses the matters required 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 is 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.

The proposed development would be compatible with surrounding development having an appropriate bulk and scale, consistent with the established and desired 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 of the zone as discussed above.

#### **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 but not by a delegate because the numerical variation is greater than 10%. Concurrence may only be assumed by the Council's independent assessment panel (also refers 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 the application meets the referral criteria listed in schedule 1 of the *Local Planning Panels Direction – Development Applications and Applications to Modify Development Consents* dated 30 June 2020 being that the application involves a contravention to a development standard by greater than 10%.

### **Clause 5.10 - Heritage conservation**

The subject site is located adjacent to the Crows Nest Road Conservation Area as per Schedule 5 Part 2 of NSLEP 2013. Pursuant to sub-clause 5.10(5) the consent authority may require an assessment of the potential impact that the proposed development would have on a heritage item of conservation area within the vicinity of the site. The proposed development would not adversely impact the heritage significance of the Conservation area given the site is bookended by 1 and 7 Morton Street Wollstonecraft both of which are corner sites containing four storey buildings and are the visible transition buildings to the Conservation Area. The building will not be readily visible from the Conservation Area and accordingly does not adversely impact upon the significance of the Conservation Area.

The proposed development would provide for a new replacement residential flat building form as permitted by the R4 High Density Residential zoning and is consistent with the scale of development envisaged.

### **Clause 6.10 - Earthworks**

Sub-clause 6.10(3) in NSLEP 2013 requires the consent authority to consider the following matters:

- (a) the likely disruption of, or any detrimental effect on:**
  - (i) drainage patterns and soil stability in the locality of the development, and**
  - (ii) natural features of, and vegetation on, the site and adjoining land,**

The proposed excavation to site the proposed building has regard to the existing topography of the site including the previously excavated areas. The proposed development includes significant excavation and some filling of the land to terrace the land levels to align with the floor levels of the proposed building and would reflect the existing fall of the land from south to north and cross fall from west to east.

The existing site has previously been developed and the proposed development would not disrupt any specific natural features and subject to conditions would not adversely impact existing trees that are recommended for retention.

Stormwater collected from the roof levels and terrace areas is to be conveyed by gravity to Council's existing stormwater network in Morton Street.

- (b) the effect of the development on the likely future use or redevelopment of the land,**

The proposed development would not adversely impact the potential future development on adjoining properties.

- (c) the quality of the fill or the soil to be excavated, or both,**

The applicant has also provided a preliminary site investigation report which details the existing site condition and concludes that there is low risk that the site would be contaminated.

**(d) the effect of the development on the existing and likely amenity of adjoining properties,**

The proposed excavation in close proximity to any boundary is limited the basement driveway point and some surface works on vicinity of the southern boundary of the site. Subject to conditions of development consent to manage excavation, it is unlikely that excavation in itself will adversely impacts on the amenity of adjoining properties.

**(e) the source of any fill material and the destination of any excavated material,**

Conditions are recommended relating to a waste management plan and removal of excavated material to be disposed to appropriate landfill areas. Subject to these conditions, there is no concern regarding the source of fill and destination of excavated material.

**(f) the likelihood of disturbing Aboriginal objects or relics,**

The proposal is unlikely to disturb an Aboriginal objects or relics as the site has been previously developed and contains no rocky outcrops or other features that would indicate the presence of Aboriginal objects or relics.

**(g) the proximity to, and potential for adverse impacts on, any waterway, drinking water catchment or environmentally sensitive area,**

The site is not located in proximity to a waterway or environmentally sensitive area.

**(h) any appropriate measures proposed to avoid, minimise or mitigate the impacts of the development.**

Conditions have been recommended to ensure that the proposed excavation does not adversely impact the stability and structural integrity of the surrounding properties.

**Clause 6.12 - Residential flat buildings**

The proposed development is zoned R4 High Density Residential and therefore this clause applies. The adjoining property to the north and south both contain an existing residential flat building and therefore the clause is satisfied.

**POLICY CONTROLS**

**Apartment Design Guide (ADG)**

The proposed development has also been considered against the Apartment Design Guide and is generally compliant as detailed in the table below:

<b>Amenity</b>	<b>Design Criteria</b>	<b>Comment</b>	<b>Compliance</b>
<b>2C- Building Height</b>	<i>Consider the height of surrounding buildings that are unlikely to change (such as contributory and heritage items)  Development should respond to desired future scale and character.</i>	The proposed development does not comply with the height of buildings development standard in clause 4.3 in NSLEP 2013, however, the written request submitted pursuant to clause 4.6 in NSLEP 2013 has satisfactorily demonstrated that the proposed variation is acceptable in the circumstances of the case.	Acceptable

		<p>The subject site is sloping, and the proposed building has been designed to step down the slope having a stepped four storey form.</p> <p>The surrounding development on this section of Morton Street is four storeys and the proposed development is considered to satisfactorily respond to the density of existing surrounding development as per the zoning.</p>	
<p><b>2F - Building Separation</b></p>	<p><i>Minimum separation distances for buildings are: Up to four storeys (approximately 12 m):</i></p> <ul style="list-style-type: none"> <li>• <i>12 m between habitable rooms/balconies (6m to boundary)</i></li> <li>• <i>9 m between habitable and non-habitable rooms (4.5m to boundary)</i></li> <li>• <i>6 m between non-habitable rooms (3m to boundary)</i></li> </ul>	<p><b>Northern Side Boundary</b>          The setbacks/separation distances from the northern boundary vary from 4.8 metres to 9 metres. The 4.8 metre setback is utilised to a largely secondary elevation of the building at this point with the only openings being minor bedroom windows and secondary living room windows. Privacy screens are also provided to the windows for further privacy measures.</p> <p>Where the setback is increased to 9 metres, primary balconies orientated north are proposed, however given the 9 metre separation to the boundary, separation requirements are met for balcony requirements. The adjoining building to the north at this point has its balconies oriented to the street and windows are to bedrooms and the like.</p> <p><b>Southern Side Boundary</b>          The setbacks/separation distances from the southern boundary vary from 3.0 metres to 6.3 metres.</p> <p>All openings utilised are to a secondary elevation of the building at this point with apartments orientated to the east or west. The only openings being minor bedroom windows and secondary living room windows. Privacy screens are also provided to the windows for further privacy measures.</p> <p><b>Eastern Side Boundary</b>          A variable setback of 6-9 metres is provided to this elevation with the only encroachment within the 9 metre setback to the northern side apartments balconies. As this intersects primarily with rear yards of the Low-density dwellings (zoned R2 Low Density) to the east, separations are generally acceptable in this regard.</p>	<p>Acceptable</p>

		<p><b>Western Side Boundary</b>          The western boundary is the street boundary, and the development has a variable setback of 6 -&gt;8 metres setback consistent with adjoining buildings on Morton Street. As it is the street boundary there are no separation issues.</p>	
<p><b>3D- Communal Open Space</b></p>	<p><i>Communal open space has a minimum area equal to 25% of the site.</i></p> <p><i>Developments achieve a minimum of 50% direct sunlight to the principal usable part of the communal open space for a minimum of 2 hours between 9 am and 3.00 pm on 21 June (mid-winter)</i></p> <p><i>Communal open space is designed to allow for a range of activities, respond to site conditions and be attractive and inviting</i></p> <p><i>Communal open space is designed to maximise safety</i></p>	<p>The subject site has a total site area of 2348.2 sqm and therefore requires a minimum communal open space area of 587.05 sqm. The applicant has designated two areas of communal open space being the northern rooftop and a space at the ground level of the building to Morton Street. The total usable area measures approximately 414.7sqm or 18% of the site and does not meet the minimum required 25%.</p> <p>Further space is available around ground the building not allocated to ground floor apartments however given the access issues to providing ease of access to these spaces renders them impractical to be used for dedicated communal open space. There spaces are used for landscaping so therefore make a contribution to the setting of the building.</p> <p>The proposed development includes a communal room in the roof space and multiple outdoor seating areas which may contribute to social interaction between residents within the development.</p> <p>The split leveling of the building make the provision of further contiguous rooftop area in the development difficult, so the upper roof area has been devoted to providing plant and a solar system.</p> <p>Each apartment also provides ample private open space for the residents.</p> <p>The Rooftop communal open space is setback from the roof edge with planter box buffers to promote privacy. It is submitted that in the circumstances, the development is acceptable in this regard.</p>	<p>No, however considered acceptable</p>
<p><b>3E - Deep Soil Zones</b></p>	<p><i>Deep soil zones are to meet the following minimum requirements:</i></p> <ul style="list-style-type: none"> <li>• 3 m minimum width</li> <li>• Minimum 7% of the site area</li> </ul> <p><i>Design Guidance 15% of the site where the site area is greater than 1,500 sqm</i></p>	<p>The subject site has a site area of 2348.2 sqm and therefore requires 352.23 sqm of deep soil.</p> <p>The proposed development would provide a minimum of 941 sqm, largely with a minimum width of 3m or greater and therefore exceeds the minimum requirement.</p>	<p>Yes</p>

<p><b>3F - Visual privacy</b></p>	<p><i>Separation between windows and balconies is provided to ensure visual privacy is achieved. Minimum required separation distances from buildings to the side and rear boundaries are as follows:</i></p> <table border="1" data-bbox="422 465 762 683"> <thead> <tr> <th>Building Height</th> <th>Habitable rooms and balconies</th> <th>Non-habitable rooms</th> </tr> </thead> <tbody> <tr> <td>Up to 12m (4 storeys)</td> <td>6m</td> <td>3m</td> </tr> <tr> <td>Up to 25m (5-8 storeys)</td> <td>9m</td> <td>4.5m</td> </tr> </tbody> </table>	Building Height	Habitable rooms and balconies	Non-habitable rooms	Up to 12m (4 storeys)	6m	3m	Up to 25m (5-8 storeys)	9m	4.5m	<p><b>Northern Side Boundary</b>                  The setbacks/separation distances from the northern boundary vary from 4.8 metres to 9 metres. The 4.8 metre setback is utilised on a largely secondary elevation of the building at this point with the only openings being minor bedroom windows and secondary living room windows. Privacy screens are also provided to the windows for further privacy measures.</p> <p>Where the setback is increased to 9 metres, primary balconies orientated north are proposed, however given the 9 metre separation to the boundary, separation requirements are met for balcony requirements. The adjoining building to the north at this point has its balconies oriented to the street and windows are to bedrooms and the like.</p> <p><b>Southern Side Boundary</b>                  The setbacks/separation distances from the southern boundary vary from 3.0 metres to 6.3 metres.</p> <p>All openings utilised are to a secondary elevation of the building at this point with apartments orientated to the east or west. The only openings being minor bedroom windows and secondary living room windows. Privacy screens are also provided to the windows for further privacy measures.</p> <p><b>Eastern Side Boundary</b>                  A variable setback of 6-9 metres is provided to this elevation with the only encroachment within the 9 metre setback to the northern side apartments balconies. As this intersects primarily with rear yards of the Low-density dwellings (zoned R2 Low Density) to the east, separations are generally acceptable in this regard</p>	<p>Acceptable</p>
Building Height	Habitable rooms and balconies	Non-habitable rooms										
Up to 12m (4 storeys)	6m	3m										
Up to 25m (5-8 storeys)	9m	4.5m										
<p><b>3G - Pedestrian Access and Entries</b></p>	<p><i>Building entries and pedestrian access connects to and addresses the public domain                  Access, entries and pathways are accessible and easy to identify</i></p>	<p>The proposed building entry is located along the Morton frontage. The proposed entry is provided directly from the footpath at grade and would provide accessible access into the building. The proposed entry is highly visible from the street and provides for a sense of address.</p>	<p>Yes</p>									

<p><b>3H - Vehicle Access</b></p>	<p><i>Vehicle access points are designed and located to achieve safety, minimise conflicts between pedestrians and vehicles and create high quality street-scapes</i></p>	<p>Vehicle access is provided on the northern side of the site to the basement entry. The vehicular driveway is dual width to accommodate traffic flow in and out of the basement without the need for a waiting bay. The proposed vehicle access arrangement would not adversely impact the quality of the streetscapes along Morton Street.</p>	<p>Yes</p>
<p><b>3J - Bicycle and Car parking</b></p>	<p><i>the minimum car parking requirement for residents and visitors is set out in the Guide to Traffic Generating Develop-ments, or the car parking requirement prescribed by the relevant council, whichever is less.</i></p>	<p>The subject site is located within 500m of Waverton railway station and the parking provisions in Council's DCP apply.</p> <p>The proposed development includes 40 parking spaces for residents which complies with the maximum permitted number of parking spaces per dwelling equating to 41 spaces.</p> <p>The 40 spaces include 6 visitor parking spaces are provided which complies with the rate of 0.25 per dwelling.</p> <p>Bicycle parking / storage is provided for 31 bicycles within the basement level and lower ground floor storage area at the required rates for residents and visitors.</p> <p>Four dedicated motorcycle spaces are also proposed.</p>	<p>Yes</p> <p>Yes</p> <p>Yes</p>
<p><b>Amenity</b></p>	<p><b>Design Criteria</b></p>		
<p><b>4A - Solar and daylight access</b></p>	<p><i>Living rooms and private open spaces of at least 70% of apartments in a building receive a minimum of 2 hours direct sunlight between 9.00 am and 3.00 pm at mid-winter in the Sydney Metropolitan Area and in the Newcastle and Wollongong local government areas</i></p>	<p>A total of 22/28 (79%) apartments would receive adequate solar access to living rooms and private open space areas which complies with this requirement.</p> <p>There are no directly southern orientated apartments within the scheme</p>	<p>Yes</p>
<p><b>4B - Natural ventilation</b></p>	<p><i>All habitable rooms are naturally ventilated.</i></p> <p><i>The layout and design of single aspect apartments maximises natural ventilation.</i></p> <p><i>The number of apartments with natural cross ventilation is maximised to create a comfortable indoor environment for residents - At least 60% of apartments are naturally cross ventilated</i></p>	<p>A total of 18/28 (62%) apartments are naturally cross ventilated which complies with this requirement.</p> <p>All other single orientated apartments generally have their living rooms and bedrooms adjacent to the outer edges of the building and service areas located within the centre of the building.</p>	<p>Yes</p>



<p><b>4C - Ceiling Heights</b></p>	<p><i>Ceiling height achieves sufficient natural ventilation and daylight access - Minimum 2.7 m (habitable rooms), 2.4 m for second floor where it does not exceed 50% of the apartment area.</i></p>	<p>The internal ceiling heights of all apartments comply with the relevant requirements.</p>	<p>Yes</p>
<p><b>4D 1 - Apartment size and layout</b></p>	<p><i>Apartments are required to have the following minimum internal areas:            50 m<sup>2</sup> (1B), 70 m<sup>2</sup> (2B), 90 m<sup>2</sup> (3B)</i></p> <p><i>Additional bathrooms increase the minimum internal area by 5 m<sup>2</sup> each A fourth bedroom and further additional bedrooms increase the minimum internal area by 12 m<sup>2</sup> each</i></p> <p><i>Every habitable room must have a window in an external wall with a total minimum glass area of not less than 10% of the floor area of the room. Daylight and air may not be borrowed from other rooms</i></p>	<p>The internal floor space and configurations of all apartments comply with the requirements. Apartments generally exceed the size and dimension requirements and provide functional layouts.</p>	<p>Yes</p>
<p><b>4D 2 - Apartment size and layout</b></p>	<p><i>1. Habitable room depths are limited to a maximum of 2.5 x the ceiling height</i></p> <p><i>2. In open plan layouts (where the living, dining and kitchen are combined) the maximum habitable room depth is 8m from a window</i></p>	<p>All apartments have a maximum open plan room depth of less than 8m measured from the nearest window.</p>	<p>Yes</p>
<p><b>4D 3- Apartment size and layout</b></p>	<p><i>1. Master bedrooms have a minimum area of 10m<sup>2</sup> and other bedrooms 9m<sup>2</sup> (excluding wardrobe space)</i></p> <p><i>2. Bedrooms have a minimum dimension of 3m (excluding wardrobe space)</i></p> <p><i>3. Living rooms or combined living/dining rooms have a minimum width of:</i></p> <ul style="list-style-type: none"> <li><i>• 3.6 m for studio and 1 bedroom apartments</i></li> <li><i>• 4 m for 2 and 3 bedroom apartments</i></li> </ul>	<p>All bedrooms comply with the minimum internal size and dimension requirements.</p>	<p>Yes</p> <p>Yes</p> <p>Yes</p>
<p><b>4E - Private open space and balconies</b></p>	<p><i>All apartments are required to have primary balconies as follows:            Studio apartments – 4 m<sup>2</sup> 1 bedroom apartments – 8 m<sup>2</sup>, minimum depth 2 m            2 bedroom apartments 10 m<sup>2</sup> minimum depth 2 m            3+ bedroom apartments 12 m<sup>2</sup> minimum depth 2.4 m</i></p> <p><i>The minimum balcony depth to be counted as contributing to the balcony area is 1.0 m</i></p>	<p>All apartments have a balcony or courtyard access directly from the living room that comply with the size and dimension requirements.</p> <p>All balconies have a minimum depth of 2.7m and exceed the size requirements.</p>	<p>Yes</p>

	<p>2. For apartments at ground level or on a podium or similar structure, a private open space is provided instead of a balcony. It must have a minimum area of 15 m<sup>2</sup> and a minimum depth of 3 m</p> <p>Primary private open space and balconies are appropriately located to enhance liveability for residents.</p> <p>Private open space and balcony design is integrated into and contributes to the overall architectural form and detail of the building.</p> <p>Private open space and balcony design maximises safety.</p>		
<b>4F - Common circulation and spaces</b>	<p>1. The maximum number of apartments off a circulation core on a single level is eight</p>	<p>As the building is split level, there is a maximum of 4 apartments accessed by corridor. Lower-level corridors benefit from windows to the outdoors.</p> <p>Upper-level corridors does not have windows however the circulation space is large to create amenity.</p>	Yes
<b>4G -Storage</b>	<p>Studio apartments- 4 m<sup>3</sup>                  1 bedroom apartments- 6 m<sup>3</sup>                  2 bedroom apartments- 8 m<sup>3</sup>                  3+bedroom apartments- 10 m<sup>3</sup></p>	<p>Storage cages are provided within the basement levels for each apartment and additionally adequate storage is also provided for within apartments.</p>	Yes

Overall, the proposal is satisfactory having regard to the design criteria specified in the Apartment Design Guide.

### North Sydney Development Control Plan 2013

NORTH SYDNEY DEVELOPMENT CONTROL PLAN 2013 PART B - SECTION 1 - Residential Development																							
	Complies	Comments																					
<b>1.2 Function</b>																							
<b>Section 1.2.1 - Mixed residential population</b>	Acceptable	<p>The proposed residential flat building contains 28 units and therefore the population mix specified in provision P3 applies and is assessed in the table below:</p> <table border="1" data-bbox="810 1749 1385 1944"> <thead> <tr> <th>Dwelling Size</th> <th>Control</th> <th>Proposed (%)</th> <th>Complies</th> </tr> </thead> <tbody> <tr> <td>Studio</td> <td>10-10%</td> <td>0</td> <td>No</td> </tr> <tr> <td>1 bedroom</td> <td>25-35%</td> <td>3 (11%)</td> <td>No</td> </tr> <tr> <td>2 bedroom</td> <td>35-45%</td> <td>13 (46%)</td> <td>No</td> </tr> <tr> <td>3 bedroom +</td> <td>10-20%</td> <td>12 (43%)</td> <td>Yes</td> </tr> </tbody> </table> <p>The proposed lack of studio and under provisioning of 1 bedroom apartments is considered acceptable having regard to the suburban location of the subject site. The proposed development would cater more so for downsizers and families by providing larger apartments. Accordingly, it is submitted that, adequate provision is made for choice of housing in this location.</p>		Dwelling Size	Control	Proposed (%)	Complies	Studio	10-10%	0	No	1 bedroom	25-35%	3 (11%)	No	2 bedroom	35-45%	13 (46%)	No	3 bedroom +	10-20%	12 (43%)	Yes
Dwelling Size	Control	Proposed (%)	Complies																				
Studio	10-10%	0	No																				
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2 bedroom	35-45%	13 (46%)	No																				
3 bedroom +	10-20%	12 (43%)	Yes																				

<b>Section 1.2.2 - Universal Design and Adaptable Housing</b>	Yes	A minimum of 20% of units are to be adaptable which equates 5.6 or 6 dwellings (rounded up). Six adaptable/liveable units have been provided with accompanying accessible parking spaces.
<b>Section 1.2.3 - Maintaining residential accommodation</b>	Yes	The proposed development seeks to demolish 17 total dwellings, in the two existing building all comprising two bedroom apartments. With 28 apartments proposed, the development does not result in a reduction in housing stock.
<b>Section 1.2.4 - Maintaining affordable housing</b>	N/A	The existing buildings do not contain existing affordable housing.
<b>1.3 Environmental criteria</b>		
<b>Section 1.3.1 -Topography</b>	Yes	<p>The existing site slopes away from the south eastern corner of the site towards the front north western corner by approximately 5.75 m through the building footprint. The internal layout of the building is configured to address the change in levels.</p> <p>Additionally, in response to Council's concerns regarding apartments with poor amenity in the south eastern corner of building of the as submitted proposal, the design has been amended to remove the originally proposed dwelling in this corner of the building.</p> <p>The development is considered to be acceptable in this regard.</p>
<b>Section 1.3.2 - Land in Bushland Buffer</b>	N/A	The site is not located in a bushland nor within vicinity of an identified bushland area.
<b>Section 1.3.6 - Views</b>	Yes	<p>The subject site and surrounding properties have outlook to sky, tree and the built environment to the west south west of the site. There are no high value view features such as water or iconic features such as the harbour bridge or primary cityscape afforded from the site.</p> <p>In the circumstances given the non-disrupt nature of the outlook and the otherwise reasonableness of the proposed development, having regard to the key building envelope controls.</p>
<b>Section 1.3.7 - Solar access</b> P1 Developments provides solar access on (21st June) a minimum of 3 hours between the hours of 9.00am and 3.00pm to: (a) any solar panels; (b) the windows of main internal living areas; (c) principal private open space areas; and (d) any communal open space areas. located on the subject property and any adjoining residential properties. Note: Main internal living areas excludes bedrooms, studies, laundries, storage areas. P2 <b>Despite</b> P1 above, living rooms and private open spaces for at least 70% of dwellings within a residential flat building should receive a minimum of 2 hours of solar access between the hours of 9.00am and 3.00pm at the winter solstice (21st June).	Yes	<p>The controls for a detached or semi- detached dwellings require that a minimum of 3 hour be maintained to adjoining dwelling however as per P2 of Section 1.3.7 Solar Access of the DCP, for residential flat building development, the requirement is lowered to a minimum of 2 hours.</p> <p>The proposed development results in some overshadowing to the adjoining property to the south (No. 1 Morton Street), which contains a 3-level residential flat building over a base of garage parking at the ground level. This building sits higher in topography than the subject site.</p> <p>As can be noted in the view from the sun shadow diagrams of the architectural suite, between 9:00 am to 12:00 pm June 21, any shadowing is only impacting the ground level garages of the adjoining building at 1 Morton Street. BY 1 pm Some shadowing impacts the lower first floor rear apartment which increases to the second level rear apartments at 3:00 pm.</p> <p>Notwithstanding the identified overshadowing, the adjoining residential flat building would maintain well in excess of the required 2hours of solar access between 9:00am to 12:00pm in mid-winter for at least 70% of the dwellings and is therefore satisfactory in this regard.</p>

<b>Section 1.3.8 - Acoustic privacy</b>	Yes	<p>The layout of the apartments within the proposed building are generally orientated with living areas and balconies towards the east and west. A small portion of northern orientated apartments are setback 9 metres maximising building separation at that point. Any potential impact emanating from the proposed living areas and balconies would be consistent with the R4 High Density Residential zone and is reasonably ameliorated through the provision of compliant setbacks from the side and rear boundary to achieve acceptable building separation to the surrounding dwellings in accordance with the ADG.</p> <p>The proposed plant and equipment are located within the basement levels or sound proofed rooftop areas and are unlikely to cause any unreasonable acoustic impacts.</p> <p>A Condition is recommended to ensure that all plant and equipment are suitably designed and installed to minimise any impact.</p>
<b>Section 1.3.9 - Vibration</b>	Yes	<p>The proposed other plant and equipment beyond the rooftop air conditioning units are located within the basement levels and are unlikely to cause any vibration impacts. A Condition is recommended to ensure that all plant and equipment are suitably designed and installed to minimise any impact.</p>
<b>Section 1.3.10 - Visual privacy</b>	Acceptable	<p><b>Northern Outlook</b>                  The proposed building provides a minimum of 4.8 m to 9 metres building separation to the boundary as appropriate to the apartments orientation on this elevation. The proposed building separation is considered acceptable to provide privacy due to these separations.</p> <p><b>Eastern Outlook</b>                  The proposed eastern side setbacks generally achieve a minimum of 6 m building separation to the boundary. To the east of the site is the R2 Zoned Crows Nest Road Conservation Area and is not likely to be built up to a higher density in the foreseeable future.</p> <p>Fencing and landscaping has also been incorporated along the eastern side setback area to improve privacy between the buildings.</p> <p><b>Southern Outlooks</b>                  Lower separations of between 3-6 metres to the boundary are provided in this location however apartments on the southern side of the building are orientated to the east or west and the southern elevation is a secondary elevation with openings for bedrooms or minor windows to livings rooms with privacy screens for additional privacy.</p> <p><b>Within the Development</b>                  The proposed courtyards and balconies include privacy screens or blade walls to ensure privacy between apartments within the proposed development.</p>
<b>1.4 Quality Built Form</b>		
<b>Section 1.4.5 - Siting</b>	Yes	<p>The proposed building is sited to align with the boundaries of the site with setbacks utilised as appropriate. The layout of the apartments is generally orientated towards the east or west aspect.</p>
<b>Section 1.4.6 - Front Setback</b>	Yes	<p>The proposed front setback to Morton Street is variable but generally no less than 6m but typically more than 10 metres and aligns with the adjoining building to the north and south. No objection is raised to the</p>

<p><b>Section 1.4.6 - Setbacks (Side and Rear)</b></p>	<p>Merit</p>	<p>The proposed development requires a minimum setback of 3m from the side boundary and compliance with a 45-degree height plane measured from 3.5m above existing ground level at the boundary (Refer to figure B-1.3 in NSDCP 2013).</p> <p>The applicant has provided additional sections through the building that largely demonstrated compliance with the 45-degree building height plane, noting the irregular land levels along the northern eastern and southern side boundaries. Material encroachments into the 45-degree height plane would occur at the northern, north eastern and southern portions of the building. The non compliances are discussed as follows:</p> <p><b>Northern Side Setback</b></p> <p>The north side setback of the building has a significant fall from the south eastern side of the to the north western side with the existing ground level also being irregular given the existing building platforms, retaining walls, driveway ramp and terraced areas.</p> <p>The setbacks/separation distances from the northern boundary vary from 4.8 metres to 9 metres. The 4.8 metre ground level setback is utilised to a largely secondary elevation of the building at this point with the only openings being minor bedroom windows and secondary living room windows. Privacy screens are also provided to the windows for further privacy measures.</p> <p>At the upper portions of the building in non compliance with the building height plane, has further increased side setbacks to improve upon the buildings performance with regard to separation and privacy.</p> <p>Regarding the level 4 northernmost apartment in breach of the building height plan control, the trafficable balcony on the north side is not the primary portion of the balcony which wraps around the apartment to the east. The living room to this apartment is orientated east with the great width portion on the east side of the building. Accordingly, should the panel determine there are potential privacy impacts at this point of the building, screening or restrictions to the use of the balcony on the northern side can be considered. It is however submitted that the eastern side of this balcony will be the primary used area.</p> <p>Regarding the communal rooftop areas space landscape planters and a portion of the northern fourth level secondary balcony area. Given the setback of the usable portion of the communal roof area, it is submitted that there are no adverse privacy impacts arising from this portion of the building</p> <p><b>Southern Side Setback</b></p> <p>The proposed encroachment of the BHP towards the southern end of Level 4 is minor in nature is principally a non-trafficable roof space area and accordingly there is no adverse privacy impacts arising from this building height plane.</p> <p><b>Eastern Side Setbacks</b></p> <p>At this elevation of the building, the site interests with R2 Low Density Residential land which is also the established Crows Nest Road Conservation Area. A defining feature of the conservation area are large single dwellings forward to the street on larger allotments.</p>
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<b>Section 1.4.7 - Form, massing and scale</b>	Yes	<p>The proposed form, massing and scale of the building is considered acceptable having regard to the height of the building as address regarding clause 4.3 <i>Height of buildings</i> in NSLEP2013 above and the proposed siting, setbacks and articulation of the building.</p> <p>Each level within the proposed building has a minimum floor to ceiling height of 2.7m to comply with provision P4 of Section 1.4.7 of Part B in NSDCP 2013.</p> <p>The extent of glazing is broken down through the use of solid elements including wall nibs, solid balustrading and building articulation in accordance with P5 in Section 1.4.7 of Part B in NSDCP 2013.</p> <p>Provision P8 in Section 1.4.7 of Part B in NSDCP 2013 requires building with a flat roof to incorporate an additional 36-degree building height plane setback for the upper most level. Whilst non compliances are exhibited to the BHP controls, it has been demonstrated that the proposal does not result in adverse privacy impacts.</p> <p>The proposal is acceptable in this regard.</p>
<b>Section 1.4.8 - Built form character</b>	Yes	<p>The proposed articulation of the building facades is well modulated in plan and elevation and expresses the elements of the buildings architecture. The use of varied wall finishes, projecting balconies adjoining recessed alcoves, solid and open balustrading, well-proportioned glazing, external screening and landscaped planters break down the visual massing and scale of the building and provide visual interest when viewed from the public domain and surrounding properties.</p> <p>The proposed development would utilise high quality materials and is considered to positively contribute to the streetscape.</p>
<b>Section 1.4.9 - Building entry</b>	Yes	<p>The proposed building entry is located on the western side of the building off Morton Street. The proposed building entry is highly visible from the public domain and includes a communal open space area which will assist in providing a sense of address through the visibility and scale of the entryway area.</p>
<b>Section 1.4.10 - Roofs</b>	Yes	<p>The proposed building has a flat roof and would be consistent with the varied roof typology within the Wollstonecraft Neighbourhood (excluding Conservation Areas). The proposed flat roof seeks to minimise the bulk and massing of the building and the intent of the provision P8 in Section 1.4.7 of Part B in NSDCP 2013 has also been met as addressed above.</p>
<b>Section 1.4.12 - Colours and materials</b>	Yes	<p>The proposed development utilises a mix of earthy toned rendered finishes and complementary metal finishes. The proposed use of materials and finishes is compatible with the surrounding development and landscaping. Commissar</p>
<b>Section 1.4.13 - Balconies - apartments</b>	Yes	<p>Each apartment has a balcony or ground level courtyard that complies with the minimum size and dimension requirements. Refer to the compliance diagrams in this regard.</p>



<b>Section 1.4.14 - Front fences</b>	Yes	The proposed front fencing along the Morton Street frontages is stepped to match the sloping topography along the boundaries. The proposed fencing has a variable height corresponding with the slope of the land and utilises a combination of solid and open elements to reinforce the private and public domains. Where applicable, ground floor apartments on the ground level to Morton Street have direct access to their ground level courtyards.															
<b>1.5 Quality urban environment</b>																	
<b>Section 1.5.1 - High quality residential accommodation</b>	Yes	These provisions largely mirror the ADG requirements and are considered to be achieved as outlined above (Refer to ADG compliance table above).															
<b>Section 1.5.3 - Safety and security</b>	Yes	A reasonable level of safety and security is provided for the proposed development. The proposed building entry is located from Morton Street and is highly visible from the public domain. Passive surveillance to the street is enhanced with a significant number of apartments having primary indoor and outdoor living spaces facing Morton Street.															
<b>Section 1.5.4 - Vehicle Access and Car Parking</b>	Yes	<p>The proposed carparking is located within two levels of basement parking largely within the footprint of the proposed building. The basement parking is accessed from a single garage entry from Morton Street at the northern end of the site.</p> <p>Council's Traffic Engineers raised no objection to the proposed access arrangements subject to recommended conditions of development consent..</p>															
<b>Section 10.2.1 Car Parking</b>	Acceptable	<p>The proposed development includes on-site parking spaces with three levels of basement. Maximum parking rates are as follows:</p> <table border="1" data-bbox="798 1086 1396 1355"> <thead> <tr> <th>Control</th> <th>Proposed</th> <th>Compliance</th> </tr> </thead> <tbody> <tr> <td>Studio/One bed apartments 1 Per dwelling (3)</td> <td>3</td> <td>Yes</td> </tr> <tr> <td>2 Bedroom Apartments (13) 1 per dwelling (13 spaces)</td> <td>13</td> <td>Yes</td> </tr> <tr> <td>3 Bedroom Apartments (12) 1.5 per dwelling (18 spaces)</td> <td>18</td> <td>Yes</td> </tr> <tr> <td>Visitor Parking (28 Dwellings) 0.25 per dwelling (7 Visitors)</td> <td>6</td> <td>Yes</td> </tr> </tbody> </table> <p>It is also proposed to utilise one visitor parking space as a car wash bay in accordance with P3 of Section 10.2.1 of Part B in NSDCP 2013.</p> <p>The development also provides for one accessible parking space per adaptable apartment.</p> <p>A condition is recommended to ensure that apartment and visitor parking is equitability distributed in compliance with the parking rates.</p>	Control	Proposed	Compliance	Studio/One bed apartments 1 Per dwelling (3)	3	Yes	2 Bedroom Apartments (13) 1 per dwelling (13 spaces)	13	Yes	3 Bedroom Apartments (12) 1.5 per dwelling (18 spaces)	18	Yes	Visitor Parking (28 Dwellings) 0.25 per dwelling (7 Visitors)	6	Yes
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3 Bedroom Apartments (12) 1.5 per dwelling (18 spaces)	18	Yes															
Visitor Parking (28 Dwellings) 0.25 per dwelling (7 Visitors)	6	Yes															
<b>Section 1.5.5 - Site Coverage</b>  <b>Section 1.5.6 - Unbuilt Area and Landscaped Area</b>	Yes	<p>The site has an area of 2348.2 sqm. Compliance with the site coverage, unbuilt upon area and landscaped area provisions for residential flat buildings is assessed in the table below:</p> <table border="1" data-bbox="798 1787 1396 2000"> <thead> <tr> <th>Control</th> <th>Proposed</th> <th>Compliance</th> </tr> </thead> <tbody> <tr> <td>Site coverage = Maximum 45%</td> <td>1060 sqm (45%)</td> <td>Yes</td> </tr> <tr> <td>Landscaped Area = Minimum 40%</td> <td>941.3sqm (40%)</td> <td>Yes</td> </tr> <tr> <td>Unbuilt Upon Area = Maximum 15%</td> <td>349.4sqm (15%)</td> <td>Yes</td> </tr> </tbody> </table> <p>The proposed development complies with the relevant site coverage, unbuilt upon area and landscaped area provisions.</p>	Control	Proposed	Compliance	Site coverage = Maximum 45%	1060 sqm (45%)	Yes	Landscaped Area = Minimum 40%	941.3sqm (40%)	Yes	Unbuilt Upon Area = Maximum 15%	349.4sqm (15%)	Yes			
Control	Proposed	Compliance															
Site coverage = Maximum 45%	1060 sqm (45%)	Yes															
Landscaped Area = Minimum 40%	941.3sqm (40%)	Yes															
Unbuilt Upon Area = Maximum 15%	349.4sqm (15%)	Yes															

<p><b>Section 1.5.9 Private and Communal Open Space</b></p>	<p>Yes (private)  Merit (Communal)</p>	<p><b>Private Open Space</b> Balconies or courtyards are provided for each apartment within the development and comply with the minimum size and depth requirements.</p> <p><b>Communal Open Space</b>  The subject site has a total site area of 2348.2 sqm and therefore requires a minimum communal open space area of 587.05 sqm. The applicant has designated two areas of communal open space being the northern rooftop and a space at the ground level of the building to Morton Street. The total usable area measures approximately 414.7sqm or 18% of the site and does not meet the minimum required 25%.</p> <p>Further space is available around ground the building not allocated to ground floor apartments however given the access issues to providing ease of access to these spaces renders them impractical to be used for dedicated communal open space. There spaces are used for landscaping so therefore make a contribution to the setting of the building.</p> <p>The proposed development includes a communal room in the roof space and multiple outdoor seating areas which may contribute to social interaction between residents within the development.</p> <p>No objection is raised given that each dwelling provides adequate private open space areas in excess of the minimum requirements as per Provision P5 of Section 1.5.9 of Part B in NSDCP 2013 and other opportunities are provided for social interaction between residents, including the proposed communal room.</p>
<p><b>Section 1.5.12 - Garbage storage</b></p>	<p>Yes</p>	<p>The proposed development has a waste storage room within the basement that is of sufficient capacity for the number of rubbish and recycling bins that the development would be entitled to. A garbage chute and separate recycling bin storage cupboard is also provided on each level of the building.</p> <p>A temporary garbage storage area has also been provided along Morton Street to facilitate weekly collection.</p>
<p><b>Section 1.5.13 - Site Facilities</b></p>	<p>Yes</p>	<p>The mailboxes are located adjacent to the proposed front building entry and are high accessible and visible to increase safety and security.</p> <p>Adequate storage is provided within individual apartments with ancillary storage areas provided within the lower ground floor storage cages for each apartment.</p>
<p><b>1.6 Efficient use of resources</b></p>		
<p><b>BASIX</b></p>	<p>Yes</p>	<p>A valid multi-dwelling BASIX certificate has been provided.</p>

**Part C – Section 10.2 Upper Slopes Neighbourhood Character Statement**

The subject site is located within the of **Upper Slopes Neighbourhood** the **Waverton / Wollstonecraft Planning Area**

**10.2.2 Desired Future Character**

*P1 Predominantly residential accommodation, comprising*

*(a) Residential flat buildings on garden lots, according to zone.*

The proposed development is for the purpose of a residential flat building and is permitted within the R4 High Density Residential zone.

### **10.2.3 Desired Built Form**

*P1 Development in the form of residential flat buildings and multi dwelling housing in the relevant zones.*

The proposed development is for the purpose of high density housing and therefore this provision applies. The proposed building would have a sympathetic relationship to other surrounding development as detailed throughout this report, particularly with regard to the proposed bulk and scale, notwithstanding the proposed height variation, and would not result in undue impacts to the surrounding developments.

The proposed building form steps down the site towards the north to reflect the natural topography of the area.

## **SECTION 7.11 CONTRIBUTIONS**

The proposed development would result in a net increase in the number of residents within the locality and therefore a contribution levied under section 7.11 the Act is required under Council's Infrastructure Contributions Plan. Contributions are based on a credit being applied for the existing residential population for 3 Morton Street (SP 8831) comprising 5 apartments which are all two bedroom units and 5 Morton Street (SP 52008) comprising 12 apartments which are all two bedroom units.

### **s7.11 contribution**

Open space and recreation facilities:	\$114,038.91
Public domain:	\$63,482.09
Active transport:	\$3,623.31
Community facilities:	\$22,905.25
Plan administration and management:	\$3,051.21
<b>Total:</b>	<b>\$207,100.77</b>

The s7.11 Contribution is the greater contribution vs the 7.12 Contribution. Accordingly a condition levying the s7.11 Contribution amount is included in the recommended conditions.

## **ALL LIKELY IMPACTS OF THE DEVELOPMENT**

All likely impacts of the proposed development have been considered within the context of this report.

<b>ENVIRONMENTAL APPRAISAL</b>	<b>CONSIDERED</b>
1. Statutory Controls	Yes
2. Policy Controls	Yes
3. Design in relation to existing building and natural environment	Yes
4. Landscaping/Open Space Provision	Yes
5. Traffic generation and Carparking provision	Yes
6. Loading and Servicing facilities	Yes
7. Physical relationship to and impact upon adjoining development (Views, privacy, overshadowing, etc.)	Yes
8. Site Management Issues	Yes
9. All relevant s4.15(1) considerations of Environmental Planning and Assessment (Amendment) Act 1979	Yes

### **SUBMITTERS CONCERNS**

The application was notified in accordance with Council's Community Engagement Protocol from 2 December 2022 to 16 December 2022. Twenty (20) submissions were received. Amended plans were received 25 July 2023 and the amended application was notified in accordance with Council's Community Engagement Protocol from 11 August until 25 August 2023. A further Thirteen (13) further objections were received. A total of thirty three (33) objections have been received and are addressed below:

#### ***Height***

- *The proposed development does not comply with the height of buildings development standard in clause 4.3 in NSELP 2013.*
- *The written request to vary the height of building development standard pursuant to clause 4.6 is insufficient and should not be supported.*

The proposed variations to the height of buildings development standard have been considered having regard to the written request made pursuant to clause 4.6 in NSLEP 2013. The statutory matters in clause 4.6 are considered to be satisfied. The applicant's written request has satisfactorily demonstrated that compliance with the development standard is unreasonable and unnecessary in the circumstances and that there are sufficient environmental planning grounds to justify the variation.

The variation is largely a result of the existing irregular topography of the site and the provision of roof top communal and servicing facilities. Such features are supported in breach of the height controls in this form of development for the reasons outlined in the report.

### ***Significance of the Original Buildings***

- *5 Morton Street has history. It was built by the late Kevin John McCann OAM. It is a beautiful well floor planed building.*

Whilst the submission matter is noted, the building is not identified as a building of significance from a Heritage standpoint.

### ***Bulk and Scale***

- *The proposed development represents an overdevelopment of the site given the increased building footprint and non-compliance with the height of buildings development standard.*
- *The proposed development should provide a dwelling mix as advised by the DEP.*
- *The proposed development excessively bulky and is not in keeping with surrounding development.*
- *The increase in residential density is not suitable for the area.*

The proposed development complies with the maximum permitted site coverage provision in NSDCP 2013 and is designed to follow the slope of the land. The height of the building is considered acceptable as addressed above. The development is not considered to overwhelm the adjoining existing residential flat development.

The proposed development is more contemporary in design than some of the surrounding development, however, is considered to be compatible with the character of the area. The proposed development would have a two-three storey scale when viewed from Morton Street.

- *The proposed development should provide a dwelling mix as advised by the DEP.*

The proposed as amended provides for development mix of one, two- and three-bedrooms apartments. Whilst the mix does not strictly comply with the dwelling mix requirements in NSDCP the proposed dwelling mix is a minor variation that is considered acceptable. The availability of smaller units is met in the locality (typically closer to the CBD and transport nodes) and would provide for that portion of the LGA demographic.

### ***Traffic and Parking***

- *The proposed development provided insufficient onsite parking for residents given that only one space is provided per dwelling.*

The proposed development provides onsite parking for residents and visitors in line with the **maximum** permitted parking rates in Section 10 of Part B in NSDCP 2013.

- *The proposed development would result in increased traffic congestion.*

The proposed development has been assessed by Council's Traffic Division who advise that the proposal will not result in an unreasonable increase to traffic congestion. The development is considered to have parking in the basement sufficient for the needs of the development.

- *Concerns of pedestrian safety raised.*

The development incorporates dual carriageway driveway thereby reducing traffic congestion at vehicular access points and the wide driveway promotes visibility of vehicles entering and leaving the site. Multiple pedestrian entry points are proposed from Morton Street. It is beyond the scope of the development to ensure pedestrian safety outside of the site however it is submitted that all reasonable safety features are incorporated into the site with provision for adequate pedestrian sight lines.

- *The proposed development would result in increased on-street parking congestion.*

The proposed development provides onsite parking for residents and visitors in line with the maximum permitted parking rates in Section 10 of Part B in NSDCP 2013 so the proposed development would satisfy the parking demand generated by the development.

- *Object to the location of the driveway.*

The proposed development only has one frontage. And the driveway has been sited at the location which will minimise the total amount of excavation required for the development.

- *Construction traffic management should consider the existing site constraints and surrounding development including the infrastructure works.*

Council's Development Engineer has recommended **Condition B1** requiring a Construction Traffic Management Plan to be prepared prior to the applicant for any construction certificate. The standard requirements of the condition would require the applicant to consider the cumulative impact of other development and infrastructure works in the proximity.

- *Consideration should be given to the installation of electric vehicle (including e-bike) charging ports.*

A condition has been recommended requiring the proposed basement to be futureproofed by incorporating infrastructure to allow individual apartment owners to install chargers for electric vehicles which would improve the sustainability of the proposed development.

### **Construction Impacts**

- *Excavation and construction would create significant noise impacts that should be reasonably ameliorated.*

A condition is recommended for imposition which imposes the standard construction hours which are formulated to ensure that construction impacts balance the need to undertake works and have a reasonable impact on the amenity of surrounding residents.

- *Construction management should include consultation with the adjoining property to minimise impacts including the emission of dust and debris and ensure property damage is not caused.*

**A condition** is included in the recommended conditions that would require the applicant to inform surrounding residents when noisy demolition, excavation or construction activities are due to be undertaken. The Construction Traffic Management Plan required under **Condition B1** would also require residents to be notified when construction access may impact surrounding residents.

- *Concerns over the total amount of excavation proposed.*

The excavation is typical of a residential building of this size and is deemed satisfactory in the circumstances subject to conditions to ensure the management of excavation and construction on site.

### **Landscaping**

- *Concerns over a significant amount of existing significant trees and vegetation from the site particularly the northern side.*
- *Mature trees should be used in the replacement plantings*

Council's Landscape Development Officer requires the retention of this significant mature canopy tree and has assessed that any impacts to the tree have been minimised to ensure its retention. The landscaping recommendation also include recommended conditions for landscaping amendments and a maintenance schedule for an improved landscaping result on site.

### **Amenity**

- *Insufficient communal open space is provided for the future residents.*

The proposed development provides some communal open space although is considered acceptable given the quality of the proposed private open spaces, the provision of a communal room and ground floor and rooftop outdoor areas.

- *The proposed development would impact the amenity of surrounding properties.*
- *Proximity of rooftop communal area to existing building (particularly 7 – 9 Morton Street, Wollstonecraft).*

The proposed development would have a reasonable impact on the amenity of the surrounding properties. The proposed development would not result in any unreasonable impact on the retention of views, solar access or privacy. The rooftop space provides for ample separations to adjoining properties and the inclusion of bordering plantings will further assist in amelioration of impacts.

- *The proposed balconies and rooftop area would have an adverse acoustic impact on the amenity of the dwellings located opposite on 7-9 Morton Street, Wollstonecraft.*

The proposed balconies are setback a minimum of 9m from the boundary and provides for further separation outside of the boundary to the existing building at 7-9 Morton Street. The surrounding properties would be provided a reasonable level of privacy via separation.

### **Drainage**

- *Concerns raised that drainage is not adequately considered or resolved.*



The proposal including the amendments has been reviewed by Council's Development Engineer who is satisfied that the proposal can proceed with regard to stormwater and drainage matters, subject to the recommended conditions of development consent.

### **Materials**

- *Concern raised over the dark colour scheme and material palette proposed.*

The colours and materials palette has been reviewed by Council's independent Design Excellence Panel who were supportive of the proposed colours and materials scheme.

### **SITE SUITABILITY**

The subject site contains an existing residential flat building and is zoned R4 High Density Residential. The proposed development is permitted in the zone and has been design having regard to the constraints and context of the site and is considered suitable.

### **PUBLIC INTEREST**

There are no matters raised in which approval of the application would not be in the public interest.

### **HOW THE COMMUNITY VIEWS WERE TAKEN INTO CONSIDERATION**

The application, and subsequent amended application were notified in accordance with Council Community Engagement Protocol from 2 December 2022 to 16 December 2022 and 11 August until 25 August 2023 and thirty three (33) objections were received. The issues raised in objections have been addressed in this assessment report and various conditions recommended to ensure that construction impacts are minimised.

### **CONCLUSION + REASONS**

The matters for consideration as outlined in section 4.15(1) of the Act have been satisfied. The proposed development is permissible, meets the development standards and relevant provisions of NSLEP 2013 subject to the written request to vary the height of buildings development standard made pursuant to clause 4.6 of NSLEP 2013.

The extent of the variations relates primarily to the rooftop communal open space structures and associated plant and services on the rooftop and is reflective of the irregular steeply sloping topography through the site. The clause 4.6 submitted demonstrates that in the particular circumstances of the case that strict compliance is unreasonable and unnecessary, and that there are sufficient environmental planning grounds to justify the variation. Should the panel not share the view it could consider deferral of the application and seek amended plans which delete the communal rooftop area and additional lift and stair overruns.

The proposed development meets the design principles in SEPP 65 and is consistent with the design requirements of the Apartment Design Guide. The proposed development is also generally in accordance with the objectives in NSDCP 2013.

The proposed development would achieve a high level of residential amenity for the proposed apartments noting that nearly all apartments would receive solar access and natural cross ventilation and are well proportioned. The proposed development has also been designed to ensure that the existing amenity of the surrounding dwellings is maintained, specifically where it relates to the retention of views, solar access and privacy.

The application was notified in accordance with the community engagement protocol where Council received nineteen (19) submissions objecting to issues including the proposed height variation, amenity impacts, tree removal, construction impacts including excavation, traffic congestion and insufficient on-site parking. Following the submission of amended plans responding to Council's and the Design Excellence Concerns, the amended plans were re notified for a further two-week period resulting in an additional thirteen (13) submissions raising a similar suite of concerns as per the first notification.

This report has considered the issues and concerns raised in the submissions. The issues raised are considered to be generally acceptable or have been addressed through conditions of consent, particularly with regard to construction impacts including excavation.

On balance, the proposed development is considered reasonable and is recommended for **approval** subject to various site specific and standards 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. 355/22 for demolition of an existing residential flat building and construction of a part 3, part 4 storey residential flat building containing 28 apartments with basement parking, and landscaping and associated works on land at No 3-5 Morton Street, Wollstonecraft, subject to the following site specific conditions and council's Standard conditions:

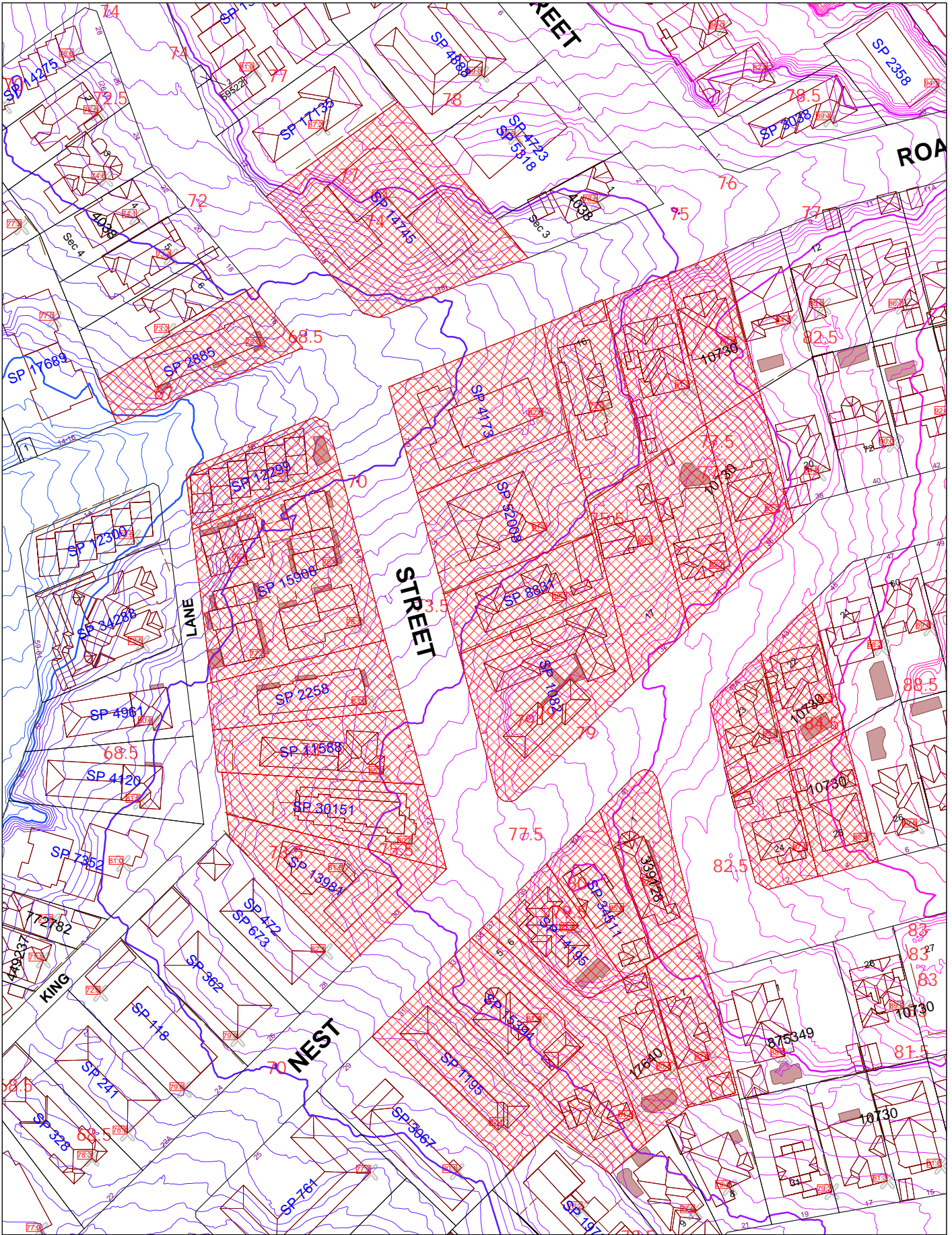
**KIM ROTHE**  
**SENIOR ASSESSMENT OFFICER**

**DAVID HOY**  
**TEAM LEADER ASSESSMENTS**

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**STEPHEN BEATTIE**  
**MANAGER OF DEVELOPMENT SERVICES**

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**North Sydney Council**

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