



NSLPP MEETING HELD ON 06/12/23

Attachments:

1. Amended Architectural Plans
2. Amended Landscape Plans
3. Updated Clause 4.6 Variation Request
4. Amended View Loss Analysis
5. Arboricultural Impact Assessment
6. Shadow Diagrams

ADDRESS/WARD: 184 Kurraba Road Kurraba Point

APPLICATION NO: DA266/23

PROPOSAL: Alterations and additions to an existing dwelling house including part demolition / excavation works, additional level, landscaping, tree removal and associated works.

PLANS REF: Architectural Plans, Plan No 2205.1.1 – 2205.16.1 prepared by Antonio Caminiti Architect dated 10/08/2023 & 17/08/2023.

OWNER: Maryann Beregi

APPLICANT: Maryann Beregi

AUTHOR: Jeremy Swan, Consultant Town Planner

DATE OF REPORT: 27/11/2023

DATE LODGED: 24/08/2023

DATE AMENDED: 9/11/2023 & 20/11/2023

SUBMISSIONS: Fifteen (15)

RECOMMENDATION: Approval

EXECUTIVE SUMMARY

This development application seeks consent for alterations and additions to an existing dwelling house including part demolition / excavation works, additional level, landscaping, tree removal and associated works at 184 Kurraba Road, Kurraba Point. The application is an amended proposal, which was not required to be notified because the changes were a reduction in the size of the building to address concerns of view loss and building height.

The application is reported to the North Sydney Local Planning Panel for determination as the applicant and land owner is a councillor and the development attracted more than 10 submissions by way of objection. A public determination meeting is required in accordance with the Ministers Direction.

A total of 15 submission were received raising objections regarding issues including the proposed height variation; view loss; conflict of interest; excavation; construction management; landscaping and site coverage, bulk and scale, setbacks, materials and finishes, privacy Impacts, roof form, overshadowing impacts, zone objectives, foreshore building line; and insufficient information.

The key issues in the assessment of this DA are view loss impacts and the height exceedance with Council's 8.5m height limit. During the assessment of the DA, inspections were undertaken where available of properties where view loss was identified, this resulted in the applicant preparing a view loss analysis. Following receipt of this analysis, the applicant was advised that the height variation was not supported as a result of the view loss impact. Subsequently, the applicant amended their development application to reduce the extent of the top storey which reduced the view loss impact on adjoining properties and reduced the height exceedance.

The proposed application includes a non-compliance with the 8.5m height of buildings development standard in Clause 4.3 of North Sydney Local Environmental Plan (NSLEP) 2013. The extent of non-compliance is identified below using 2 methods which are discussed further in the report.

Measure	Bettar Approach (Max)	Merman Approach (Max)
Existing Building	9.05m	11.25m
Proposed Building	9.16m	11.27m
Exceedance (as a %)	7.76%	32.59%

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 R2 Low Density Residential zone.

The development application was assessed against relevant State Planning Polices, as well as Council policies including the NSLEP 2013 and North Sydney Development Control Plan 2013 (NSDCP 2013). The amended proposal is considered acceptable having regard to the constraints of the site, the existing impact and the applicable environmental planning controls. As such, following this assessment, and having regard to the provisions of S4.15(1) of the Environmental Planning & Assessment Act 1979, it is recommended that the proposed development be **approved** for the reasons as set out in this report.

LOCATION MAP

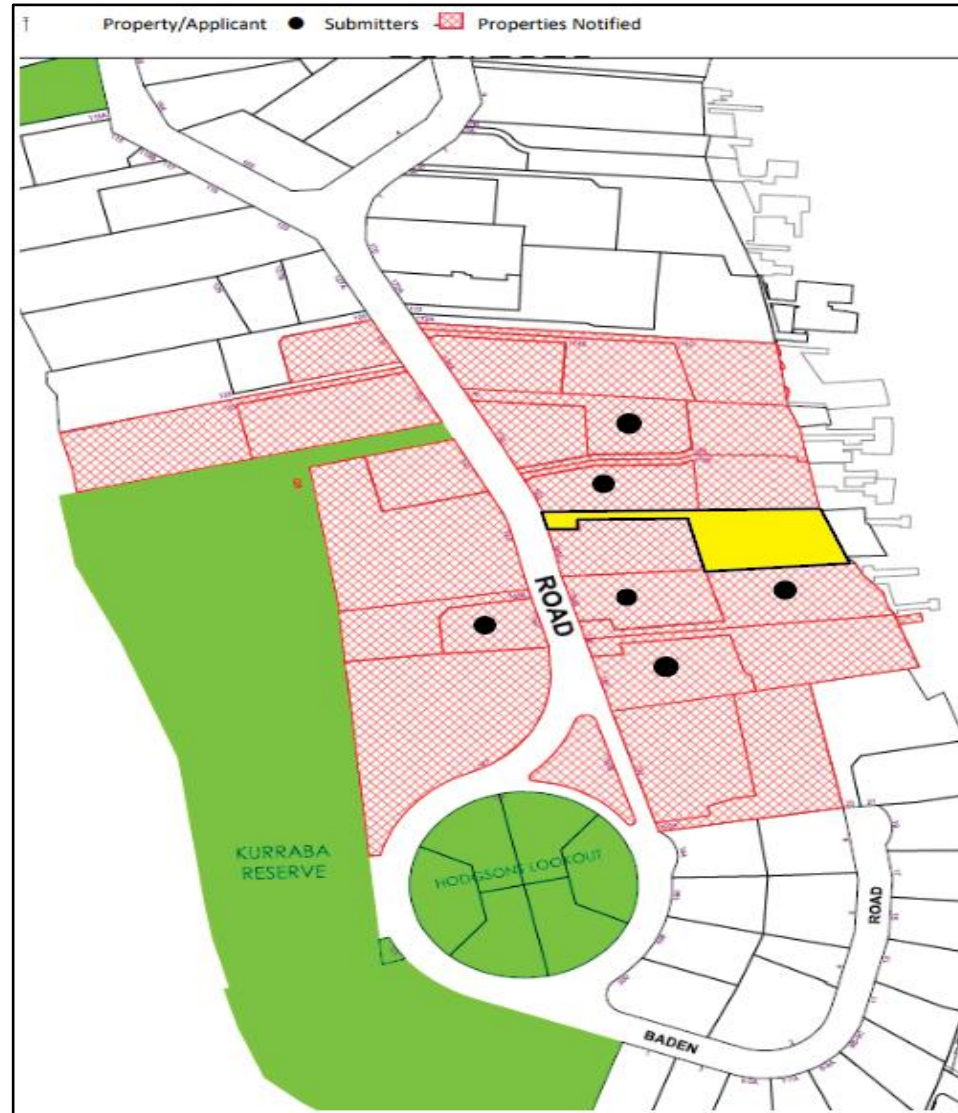


Figure 1: Location Map

DESCRIPTION OF PROPOSAL

This development application seeks consent for c at 184 Kurraba Road, Kurraba Point.

The application seeks approval for the alterations and additions to an existing dwelling house including part demolition / excavation works, additional level, landscaping, tree removal and associated works. Specifically, the works include:

Excavation and Demolition:

- Localised excavation associated with revised internal access, underneath and to the west of the dwelling at the lower level;
- Localised demolition associated with changes to the pedestrian access to the west of the dwelling, improved (forward) vehicular manoeuvrability and revised landscaping;
- Partial demolition of existing improvements on two levels of the dwelling, to accommodate the alterations and additions as shown dotted red on the plans;

Landscaping and Tree Removal:

- Revised retaining wall and associated landscaping, to the east of the revised access to the garage and revised direct pedestrian access to the dwelling (removing previous steep stairs);
- Revised landscaping around the dwelling;
- 3 trees are proposed to be removed (Tree 7 – a Crepe Myrtle, Tree 8 – a Leyland Cypress and Tree 10 – a Soft Tree Fern).

New Building Works

- Lower Ground Floor (Games):
 - No changes other than an external “blade” column to support an enlarged terrace above.
- Lower Ground Floor (Bar Room):
 - New northern external side access stairs; and
 - Minor alteration to internal lift lobby including the provision new stairs and lift providing access to upper level(s).
- Ground Floor:
 - Extension to the rear terrace and family room eastwards;
 - Extension to the west (front) to incorporate a new external stair case, new internal lift lobby incorporating amended stairs new lift;
 - Deletion of bedroom 6 for the provision of a study room;
 - Minor amendments to the size of the front terrace and the relocation of the powder room and dining area; and
 - Alteration and additions to the Kitchen area and associated prep/pantry to include a new eastern meals room, revised openings and new facilities and fit out.
- First Floor
 - Extension of bedroom eastwards, above the additions below;
 - Extension to the west (front) to incorporate a lift and stairs to the level(s) above and below; and
 - Various internal works and fit out including the provision new walls and door, ensuite for bedroom 2 to 4, provision of a storage area, and an amended laundry layout.

- Second Floor (addition)
 - New habitable level (current gabled roof level), with direct pedestrian access to the existing garage, one bedroom and study with associated bathroom/ensuites;
 - Recessed balcony and non-accessible roof space to the level below;
 - Lift and stairs to the level(s) below, to the west;
 - Provision of a skylight to below; and
 - Various internal works and fitout; and
 - Provision of a pebbles finish to non-trafficable roof areas and awning to lower levels.
- Roof:
 - Provision of a new concrete roof;

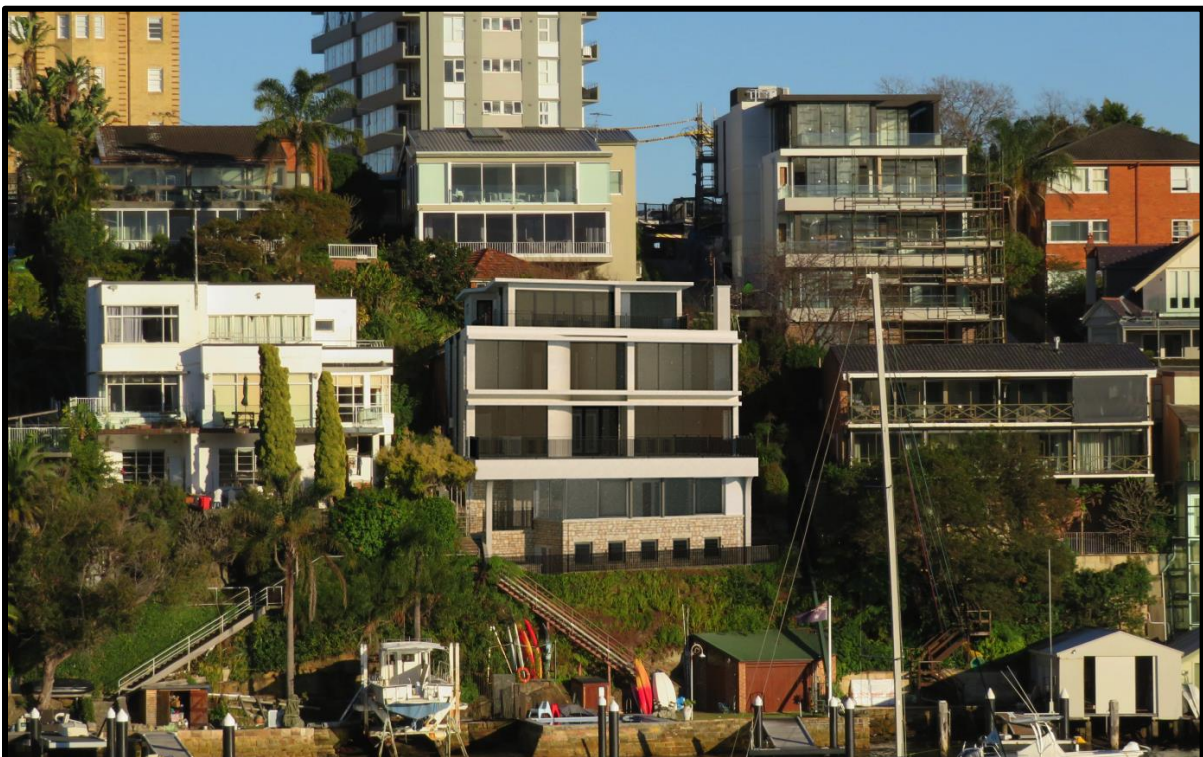


Figure 2: Photomontage

STATUTORY CONTROLS

- North Sydney LEP 2013
 - Zoning – R2 Low Density Residential
 - Maximum Building Height – 8.5m
 - Floor Space Ratio – Not Applicable
 - Foreshore Building Line – Yes
 - Item of Heritage - No
 - In Vicinity of Item of Heritage – Items: I0668 and I0667
- SEPP (Biodiversity and Conservation) 2021
 - Chapter 2 – Vegetation in non-rural areas
 - Chapter 6 – Water Catchment
- SEPP (Resilience and Hazards) 2021

- Chapter 2 – Coastal Management
- Chapter 4 – Remediation of Land

- SEPP (Building Sustainability Index: BASIX) 2004

POLICY CONTROLS

North Sydney DCP 2013

North Sydney Local Infrastructure Contributions Plan 2020

DESCRIPTION OF LOCALITY

The subject site is known as no. 184 Kurraba Road, Kurraba Point and is legally identified as Lot 3, DP 508566. The subject site has a frontage of 6.095m to Kurraba Road and is battle-axe allotment with an access handle of approximately 38.3m. The site has the following dimensions:

- Northern Boundary: 74.065m
- Southern Boundary: 38.74m
- Eastern Boundary: 19.505m
- Western Boundary: 6.095m to Kurraba Road and 17.695m to no. 184A Kurraba Road (Lots 1, 2 and CP / SP21324)

The subject site is a battle axe allotment with a total site area of 826.5m² including the access handle, and a site area of 705.62m² (excluding the access handle). The access handle consists of three rights of carriageways which service a total of eight dwellings and provides car parking for eighteen vehicles.

The topography of the site slopes steeply away from Kurraba Road towards Shell Cove by approximately 24m.

The existing development on the subject site consists of a one-to-three storey dwelling with a hipped-gabled tile roof that steps down the slope of the site.

The land owner also occupies the adjoining lot to the east (Lot 1, DP 581841) which contains an inground swimming pool, pontoon and mooring facility. It is noted that the owner has entered a lease agreement with Transport for NSW for this portion of land and no works are proposed on that lot.

The site has also entered a 99-year lease with the adjoining lot, no. 184A Kurraba Road (SP21324) and occupies an easement to which contains a garage and provides access for the subject site.

The subject site is highly visible, from public vantage points, such as the Cremorne Point coastal walkway. The subject site is situated within a mixed residential area characterised by a mix of multi storey dwellings and existing and new apartment buildings.

Located to the north of the site, sits a one-to-three storey dwelling at no. 178B Kurraba Road and to the immediate south of the site currently consists of a one-to-three storey dwelling at no. 186 Kurraba Road. It is noted that a Development Application (DA343/22) has been lodged across the sites, nos. 1/184B, 2/184B, 184B, 186 and 190 Kurraba Road for the demolition of the dwelling house, two (2) dual occupancies and a swimming pool and construction of two x residential flat buildings (4 x 3 beds and 2 x 4 beds) and 2 x dual occupancies (4 x 3 beds), with basement parking and access provided by car lifts, associated landscaping and civil works and internal boundary realignment and subdivision. The application is currently not yet determined.

To the north-west of the site, and adjoining the common driveway, is a 5-storey residential flat building undergoing redevelopment and transformation from a former dual occupancy, which sits on no. 182 Kurraba Road, on higher land than the subject site.

West of the subject site sits a two-to-three storey strata titled dual occupancy on no. 184A Kurraba Road, on higher land than the subject site.

An aerial map of the site is provided below:



Figure 3: Aerial Map with the Site outlined in Red (Source: Near Map)



Figure 4: View from the southwest of the subject site and surrounds (Source: Near Map)



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

The site is zoned R2 Low density pursuant to the NSLEP 2013 with adjoining sites to the west having a R4 High Density zoning.



Figure 6: NSLEP 2013 Height of Buildings maps within the subject site outlined in yellow.

The site has a maximum permitted building height of 8.5m pursuant to subclause 4.3(2) in NSLEP 2013 with adjoining sites to the west having a building height of 12m.

The subject site is not listed as a heritage item and does not sit within a Heritage Conservation Area under the North Sydney LEP 2013. However, the site is of close proximity to heritage items I0668 and I0667 and the Kurraba Point Heritage Conservation Area which are locally significant.



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

RELEVANT DEVELOPMENT HISTORY

Current Application

Date	Action
24 August 2023	A Development Application (DA266/23) was lodged for alterations and additions to a dwelling house including excavation, partial demolition, internal and external alterations and additions, the construction of an additional storey and ancillary works.
8 September 2023 to 22 September 2023	The application was notified in accordance with Council's Community Engagement Protocol. A total of 15 submissions were received during the notification period.
19 October 2023	A site visit was undertaken by the assessing officer.
25 October 2023	Following the site visit, a preliminary assessment letter was provided to the applicant outlining the issues of concern and/or matters where additional information were required. The issues are listed below – <ul style="list-style-type: none"> • View Loss • Height and Updated Clause 4.6 • Landscaping • Landscaped area calculation • Public Submissions
2 November 2023	A site inspection was undertaken by the assessing officer and applicant's town planner to look at view loss from units in 182 Kurraba Road, and 176 Kurraba Road.
9 November 2023	The applicant subsequently submitted additional information in response to the request for further information dated 25 October 2023. The additional information was accompanied by the following: <ul style="list-style-type: none"> • Response to RFI Letter; • Revised Landscape Plan; • Landscaped area letter; • View Loss Analysis; • Amended clause 4.6 Variation Request Letter; and • Height Plane drawings
15 November 2023	Following receipt of amended information, an additional letter was sent to the applicant outlining that the height variation was not supported as a result of the view loss impact.
20 November 2023	The applicant subsequently submitted additional information in response to the request for further information dated 15 November 2023. The additional information was accompanied by the following: <ul style="list-style-type: none"> • Amended Architectural Plans; • Amended View Loss Analysis;

	<ul style="list-style-type: none">• Amended 3D Height Plane; and• Amended clause 4.6 Variation Request Letter. <p>The changes proposed in the amended application were a reduction in the building envelope of the top storey to reduce the view loss impact and height exceedance.</p>
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INTERNAL REFERRALS

ENGINEERING/TRAFFIC

The application has been referred to Council's Development Engineers Team who provided the following comments:

There is no modification to traffic aspect in this development.

It is recommended that the proposed development be supported with the following conditions imposed:

- (a) *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.*

Planner Comment: Traffic engineering comment noted and a condition has been included in the draft conditions in respect of a construction management plan which will be important given the site and street access.

ENGINEERING

The application has been referred to Council's Development Engineers Team who did not raise any issues and provided recommended conditions to be included in the consent.

Planner Comment: Engineering referral noted and conditions included in the recommendation.

LANDSCAPING

The application has been referred to Council's Landscape Development Officer who provided the following comments subject to conditions:

- *An amended and detailed Landscape Plan shall be required. This plan shall include replacement planting of minimum 4 x canopy trees (75l min) capable of attaining a mature height of at least 7m. These trees shall be treated as specimen trees to be grown to maturity, and not form part of a hedge.*
- *T10 Dicksonia antarctica shown for removal shall be transplanted elsewhere on site.*
- *Areas shown as "existing established garden" where it cannot be demonstrated that existing planting will withstand proposed works, shall be readdressed with new planting shown on amended LS plan.*

- *Vegetation shall be used for screening and for softening of built form, particularly within northern setback, and at base of proposed sandstone wall forming eastern building line, lower ground floor.*
- *The proposed location of stockpile shown on Erosion and sediment Plan prepared by Antonio Caminiti dated 14/8/23 is within the TPZ of protected trees, and requires relocation outside of any such TPZ.*

Planner Comment: Conditions of development consent have been included in the recommendation that includes all suggested conditions of Council's landscape officer.

EXTERNAL REFERRALS

Nil

SUBMISSIONS

On 8 September 2023, Council notified adjoining properties of the proposed development seeking comment between 8 September 2023 to 22 September 2023. Council received 15 Submissions and the matters raised are listed below:

Basis of Submissions

- Height variation
- View Loss
- Conflict of interest
- Excavation
- Construction management
- Landscaping and site coverage
- Bulk and scale
- Setbacks
- Materials and finishes
- Privacy impacts
- Roof form
- Overshadowing
- Foreshore building line.
- Insufficient information.
- Objectives of Zone

The issues raised in the submissions remain relevant and are addressed later in this report.

It is noted that amended plans were received 9 November 2023 and 20 November 2023. In accordance with Council Community Engagement Protocol, the amendments reduce the building envelope and impacts on adjoining properties that therefore did not necessitate re-notification.

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 and are provided for review by NSLPP members.

CONSIDERATION

The relevant matters for consideration under Section 4.15 of the *Environmental Planning and Assessment Act 1979* (as amended), are assessed under the following headings:

State Environmental Planning Policy (Resilience and Hazards) 2021

Chapter 2 – Coastal Management

The provisions of Chapter 2 to SEPP (Resilience and Hazards) 2021 applies to Coastal Management and aims for:

- managing development in the coastal zone and protecting environmental assets;
- providing a framework to guide land use decisions; and
- mapping coastal management areas.

The site is mapped as being within the Coastal Environment Area as well as within the Coastal Use Area as shown in Figures 8 & 9. However, the provisions of Section 2.10 and Clause 2.11 of the SEPP do not apply to land located within the Foreshores and Waterways area of SEPP (Biodiversity and Conservation) 2021 (the provisions of which are addressed below).

Division 5 of Chapter 2 apply general considerations to all development in the coastal zone. Section 2.12 requires that development consent must not be granted to development on land in the coastal zone unless the consent authority is satisfied that the proposed development is not likely to cause increased risk of coastal hazards on that land or other land. The proposal will not cause or increase the risk of coastal hazards at the site or on other land.



**Figure 8: Extract from the mapped Coastal Use Area showing the site outlined dashed yellow
(Source: NSW Spatial Viewer)**



Figure 9: Extract from the mapped Coastal Environment Area showing the site outlined dashed yellow (Source: NSW Spatial Viewer)

Section 2.13 requires that development consent must not be granted to development in the coastal zone unless the consent authority has considered the provisions of a certified coastal management program that applies to the land. The Greater Sydney Harbour Coastal Management Program is under preparation and is not yet certified. The scoping studies undertaken to date have identified urban stormwater discharge and coastal inundation by sea level rise as the major factors to consider with assessment of new development. Council's Development Engineer has recommended conditions of consent to ensure appropriate stormwater infrastructure is installed and monitored during construction and prior to the issue of a Construction Certificate.

The proposal is therefore consistent with the relevant provisions of Chapter 2 to the SEPP (Resilience and Hazards) 2021.

Chapter 4 - Remediation of Land

The existing building has been used for residential purposes for a long period of time and there is no evidence to suggest that the site is contaminated therefore the requirements of Chapter 4 have been satisfactorily addressed.

Notwithstanding, should the application be worthy of support conditions of consent could be imposed requiring an asbestos and contaminated materials survey to address the requirements of the SEPP and to protect the long-term health of workers on site and the occupants of the future development are not put at risk unnecessarily.

SEPP (Biodiversity and Conservation) 2021

Chapter 2 – Vegetation in Non-Rural Areas

The proposed development involves the removal of three trees on site. An appropriate and acceptable landscape outcome can be achieved through conditions of consent should the application be worthy of support.

Council's Landscape Development Officer reviewed the application and has included conditions requiring replacement planting.

Chapter 6 – Water Catchments

Chapter 6 to this SEPP applies to land mapped as Foreshores and Waterways. The site is within the mapped Foreshores and Waterways Area.

Subject to compliance with the recommended conditions of consent, it is satisfied that the proposed development will have neutral or beneficial effect on the quality of water and quantity and will avoid adverse impacts on aquatic ecology, flooding, recreational and public access and the overall catchment management.

It is noted that the site is partially mapped as being within a Foreshores and Waterways area and is therefore subject to Division 3 of the SEPP. An assessment has been provided as follows:

Division 3 Development in Foreshores and waterways Area

Section 6.28(1) requires that the consent authority consider the matters listed below: -

(a) *Whether the development is consistent with the following principles:*

- i. Sydney Harbour is a public resource , owned by the public, to be protected for the public good,*
- ii. The public good has precedence over the private good,*
- iii. The protection of the natural assets of Sydney Harbour has precedence over all other interests*

Comment: The proposal is unlikely to have an adverse impact on the natural assets and the environmental qualities of Sydney Harbour and its islands and foreshores because the proposed works are carried out away from the foreshore and are also not located on Lot 1 DP 581841 which is land owned by Transport for NSW. The proposal would not change the level of public access to the foreshore given that there is no formal public access across the subject site, and this proposal would not alter this arrangement.

(b) *Whether the development will promote the equitable use of the Foreshores and Waterways area including use by passive recreation craft.*

Comment: The development will not change current uses of the foreshores and waterways or access by passive recreation craft. No changes to existing boatshed located on Lot 1 DP 581841.

- (c) *whether the development will have an adverse impact on the Foreshores and Waterways Area, including on commercial and recreational uses of the Foreshores and Waterways Area,*

Comment: The development is not considered to have adverse impacts on the Foreshores and Waterways Area.

- (d) *whether the development promotes water-dependent land uses over other land uses,*

Comment: The development will have no impact on water-dependent land uses.

- (e) *whether the development will minimise risk to the development from rising sea levels or changing flood patterns as a result of climate change,*

Comment: The proposed works are above the predicted sea level rise anticipated within the lifetime of the structures and the site is not affected by flooding.

- (f) *whether the development will protect or reinstate natural intertidal foreshore areas, natural landforms and native vegetation,*

Comment: No tree works or additional landscaping is proposed in the foreshore area.

- (g) *whether the development protects or enhances terrestrial and aquatic species, populations and ecological communities, including by avoiding physical damage to or shading of aquatic vegetation,*

Comment: The development will have no impact on terrestrial and aquatic species and habitat.

- (h) *whether the development will protect, maintain or rehabilitate watercourses, wetlands, riparian lands, remnant vegetation and ecological connectivity.*

Comment: The development will have no impact on watercourses, wetlands, riparian lands, remnant vegetation or ecological connectivity.

Section 2.68(2) requires that development consent must not be granted to development in the Foreshores and Waterways Area unless the consent authority is satisfied as to certain matters.

Those matters relevant to the proposal are listed and commented on below.

- (d) *if the development site is on the foreshore—excessive traffic congestion will be minimised in the zoned waterway and along the foreshore,*

Comment: Councils engineers recommended conditions of consent to ensure traffic management during construction so as not to result in excessive traffic congestion. Once operational, the traffic generation from the site will be compatible with the local road network capacity.

- (e) *the unique visual qualities of the Foreshores and Waterways Area and its islands, foreshores and tributaries will be enhanced, protected or maintained, including views and vistas to and from:-*

- i. *the Foreshores and Waterways Area, and*
- ii. *public places, landmarks and heritage items.*

Comment: The proposed scale, form and siting of the proposed development have been considered with consideration to the form of the existing development on site and that of surrounding development. The proposed massing results in a four-storey dwelling when viewed from Shell Cove.

The proposal would be generally consistent with the existing adjoining-built forms in terms of height, bulk, scale and appearance. In addition, it is satisfied that development has been suitably amended avoid adverse view loss impacts on surrounding development despite the exceedance in the maximum building height.

SEPP (Building Sustainability Index: BASIX) 2004

A valid BASIX Certificate (*No. A500038 dated 05 July 2023* for residential alterations and additions has been submitted with the application to satisfy the Aims of the SEPP.

NORTH SYDNEY LOCAL ENVIRONMENT PLAN (NSLEP 2013)

Clause 1.2 Aims of Plan

The development application has been assessed against the aims of the NSLEP 2013 and is considered to be satisfactory with respect to the relevant aims of the Plan.

Clause 2.3 Zone objectives and Land Use Table

The site is zoned 'R2 Low Density Residential' under the provisions of the NSLEP 2013. The proposed works can be defined as alterations and additions to a dwelling house, Dwelling houses are a permissible form of development within the R2 Low Density zone.

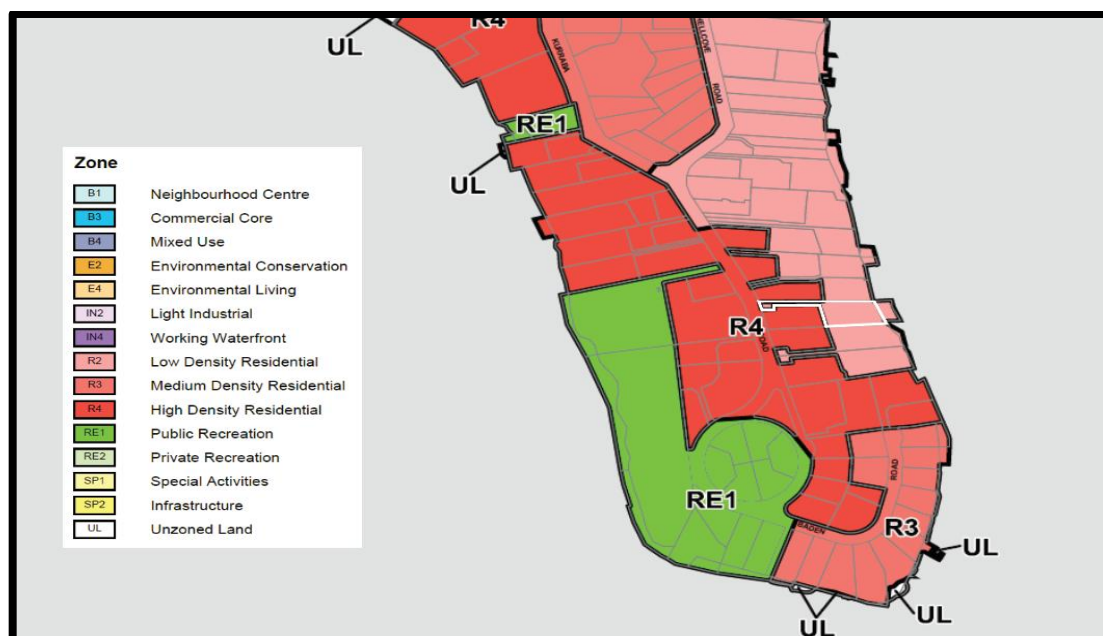


Figure 10: Land Zoning Map with the Site Outlined in White (Source: North Sydney LEP 2013)

Objectives of the zone

The objectives for the R2 Low Density Residential Zone are stated below:

- *To provide for the housing needs of the community within a low density residential environment.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*
- *To encourage development of sites for low density housing, including dual occupancies, 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 high level of residential amenity is achieved and maintained.*

The proposed development is consistent with the objectives of the zone. The proposed development will enhance residential amenity within an existing development that provides for the housing needs of the community within a low-density residential environment.

The proposed development has been designed in a manner that avoids adverse amenity impacts on adjoining properties in terms views, privacy, solar access and the like.

Clause 2.7 Demolition Requires Development Consent

The subject application is accompanied by a demolition plan.

Clause 4.3 Height of Building

The subject site has a maximum permitted building height of 8.5m pursuant to subclause 4.3(2) in NSLEP 2013. Building height is *“the vertical distance from ground level (existing) to the highest point of the building.”*

The applicant has provided two different methods to measure the existing ground level, both of which have been used by the Land and Environment Court of NSW.

- The 1st method is known as the Bettar approach, which involves establishing, existing ground level from footpaths or perimeter ground levels, where sites have been extensively excavated (see *Bettar v Council of the City of Sydney [2014] NSWLEC 1070*); and
- The 2nd method is known as the Merman approach, which involves measuring from the lowest level of an existing building vertically at every point, even if it is to a basement level (e.g. site may have an existing 6 storey basement, you would measure from the base of the basement. (see *Merman Investments Pty Ltd v Woollahra Municipal Council [2021] NSWLEC 1582*)

Below is a table using both methods.

Measure	Bettar Approach (Max)	Merman Approach (Max)
Existing Building	9.05m	11.25m
Proposed Building	9.16m	11.27m
Exceedance (as a %)	7.76%	32.59%

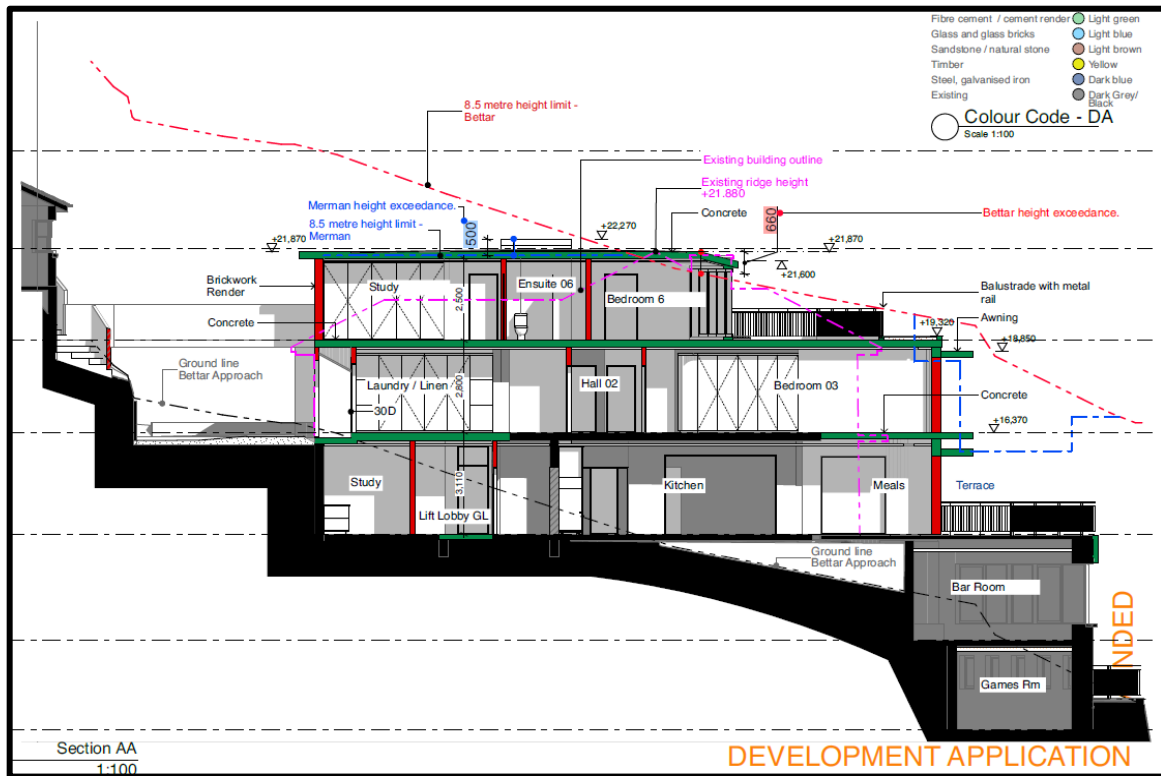


Figure 11: Northern Section (Source: Antonio Caminiti)

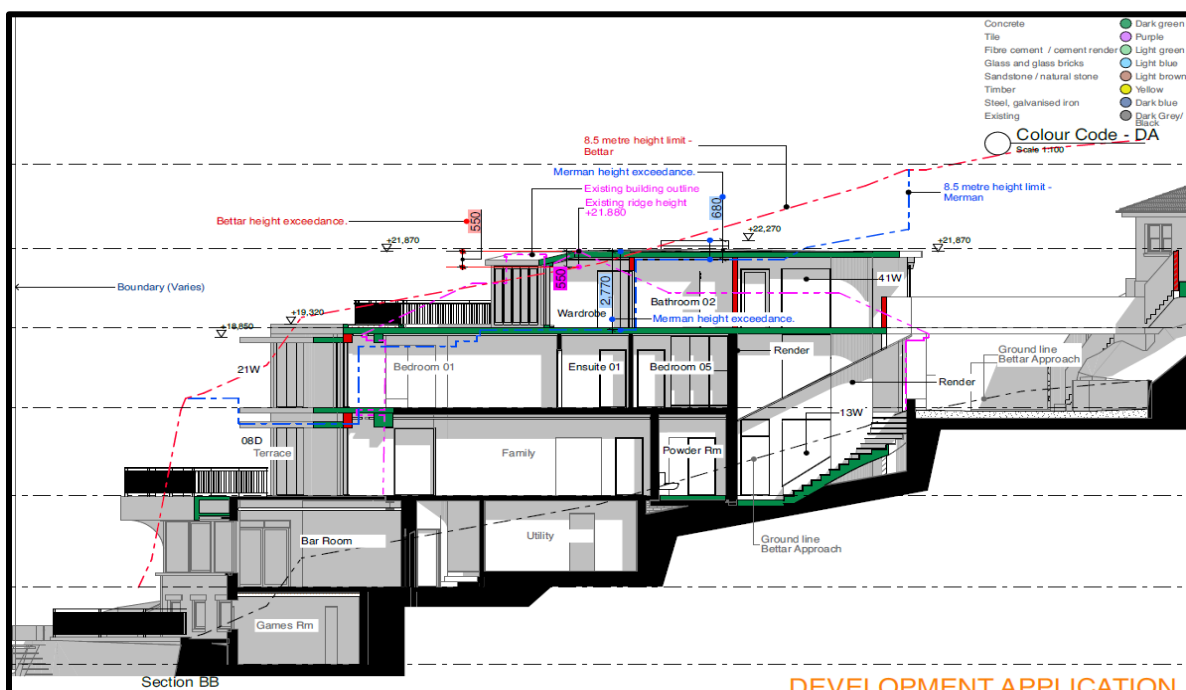


Figure 12: Southern Section (Source: Antonio Caminiti)

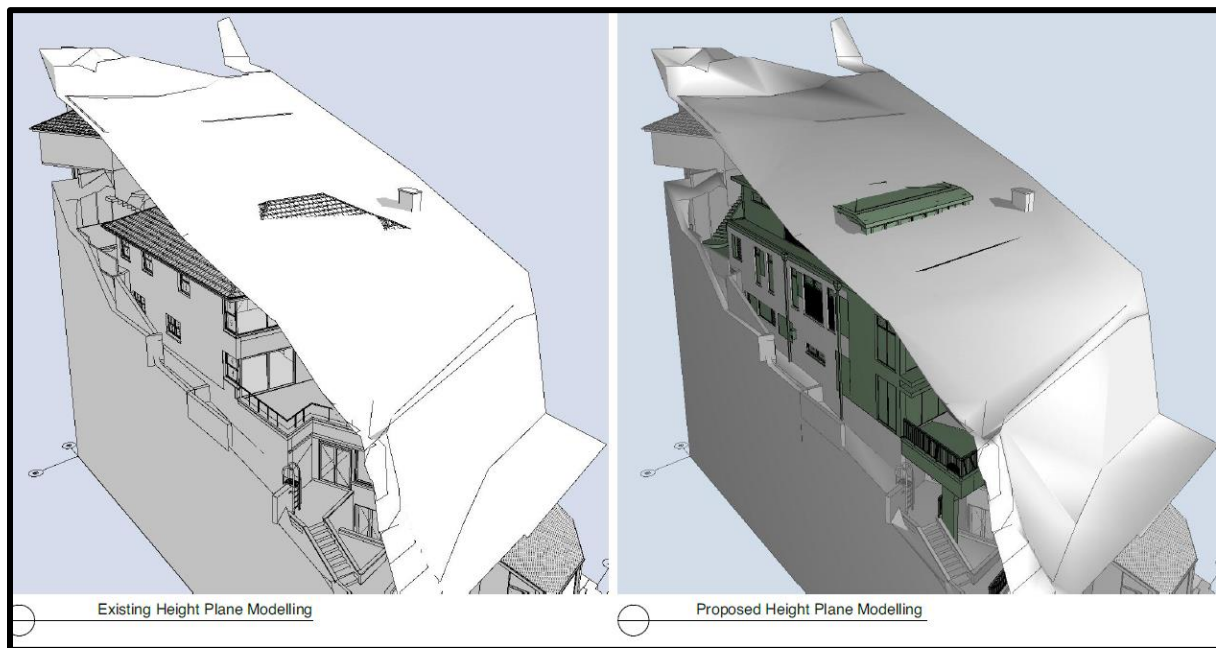


Figure 13: Height Plane Modelling (Source: Antonio Caminiti)

Clause 4.6 – Contravention of a Development Standard

A written request to contravene the height of building development standard has been submitted (**Attachment 3**) and has been considered below.

Clause 4.6(3)(a) Is compliance with the development standard unreasonable and unnecessary in the circumstances of the case?

The most common way to demonstrate that compliance with the development standard is unreasonable and unnecessary is to demonstrate that the objectives of the development standard are met notwithstanding the non-compliance. This is identified as test 1 in *Wehbe vs Pittwater Council* [2007] NSWLEC 827 (“Wehbe”).

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

Comment: The written request has demonstrated how the proposed development conforms to and reflects the slope of the land. Firstly, the proposed development does not significantly alter the ground condition and the new works are essentially the same as the existing ridge line (minor addition of 11mm). The elements which protrude above the maximum building height are sited towards the rear and do not impact on views.

The written request lodged with this development application highlights how the dwelling continues to appropriately step down with the slope of the site and demonstrates how the proposed works and non-complying height will cause no significant change to the silhouette of the building.

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

Comment: The applicant clause 4.6 Variation Request argues that the view impacts arising from the height non-compliance, are either non-existent or at worst negligible, both in themselves and also in the context of the remaining views unaffected by the proposal, in qualitative and quantitative terms.

The application is accompanied by a view loss analysis (**Attachment 4**). Based on the analysis provided, the non-complying elements will not result in any material impact to the existing views available from surrounding properties.

Extracts from a number of different viewpoints is provided in figure 14 to 16 below.

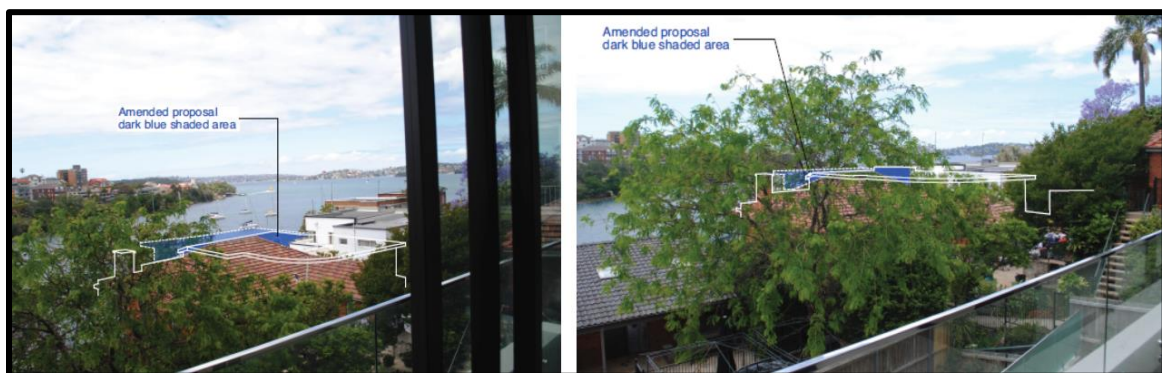


Figure 14: View analysis from Units 101 (left) and Upper Level of G01 (Right) (Source: Antonio Caminiti)



Figure 15: View analysis from Units 201 (left) and No 176 Kurraba Road (right) (Source: Antonio Caminiti)



Figure 16: View analysis from other locations at No 176 Kurraba Road (Source: Antonio Caminiti)

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

Comment: The objective refers to maintaining solar access and is therefore a relevant consideration. The proposed height exceedance is minor and surrounding development will continue to receive satisfactory exposure to sunlight.

The accompanying solar access drawings demonstrate that a majority of shadows arise predominantly from the compliant portions of the building. The area of non-compliance are centrally located and do not arise adverse overshadowing impacts on surrounding dwellings, public reserves, and streets.

It is satisfied that any additional overshadowing arising from the non-compliance would not materially impact the amenity of the adjoining properties.

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

Comment: The written request has demonstrated that the proposed alterations and additions would maintain privacy for residents of the existing dwelling and that the building height variation does not lead to increased privacy impacts. Privacy measures include:

- Provision of adequate setbacks for the new roof top terrace being adequately setback from the facades of the building;
- New windows on side elevations that generally align with existing provisions;
- Louvers (northern elevation) which will support minimise overlooking of adjoining properties; and
- An elevated pedestrian foot bridge that is centrally located and adequately setback from side boundaries.

Furthermore, a condition has been imposed requiring suitable screening.

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

The written request demonstrates that the proposed development is compatible with the scale of surrounding development and that the height of the proposed works generally matches the existing roof ridge. The design of the development generally maintains the existing building envelope with minor extension and a new top level. The proposal maintains an appropriate transition in building heights with consideration to the R4 High Density Residential zoning adjoining the site to the west. This is complemented by a development that is appropriate in form and scale with consideration to surrounding development in the R2 Low Density zone.

(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 demonstrates that the proposed development would be compatible with the scale of surrounding properties. The surrounding area is characterised by a mixture of buildings of various styles and building forms, driven by the unique topography. The alterations are generally contained within the existing building envelope and are intended to enhance the existing dwelling without compromising the scale and design of the dwelling. The existing scale is maintained, and there is no increase in density despite the site being zoned R2 Low Density Residential. The building height variation does not result in a development that would be incompatible with the existing and desired future character of the Kurraba Point South Neighbourhood and wider South Cremorne Planning Area.

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

The written request has demonstrated that this objective is achieved. The existing dwelling is predominantly three storeys, and the addition to height is at the current roof level and essentially no higher than the existing roof ridge. The existing dwelling is several levels and is compatible with the predominant form in the area. The additional works exceeding the height limit do not significantly change the perceived scale or built form, particularly within the streetscape, but also from the waterway.

Clause 4.6(3)(b) Are there sufficient environmental planning grounds to justify the variation

The written request has provided several environmental planning grounds to justify the variation on pages 12-14 of the written request which are briefly summarised below.

- *Given the location adjoining a Foreshore Building Line/Harbour and the nature of adjoining development to the north, south and west, there is benefit in the proposed additions at roof level in terms of minimising overall impacts to neighbours and the Harbour;*
- *To the extent that the decision in Merman may apply, if it is used to determine existing ground level, then in accordance with Paragraph 74 of that judgement there is an environmental planning ground that justifies the contravention of the height standard, given prior excavation of the site distorts the maximum building height plane;*
- *The proposed height is compatible with adjoining and surrounding development;*

- *The height non-compliance will not be readily visible from the street and will not be discernible from surrounding development when viewed from the Harbour waters, also noting higher building forms to the immediate west, which also have a higher 12m applicable height limit;*
- *The roof form adopted is a flat roof, with reasonable ceiling heights, while the overall height is essentially no higher than the existing roof ridge (except for a small lift overrun in an area which complies with the height limit), which results in both a contextually appropriate form;*
- *The height non-compliance has been reduced since DA lodgement, after detailed consideration of view impacts to neighbours;*
- *The site is steeply sloping and localised areas of non-compliance arise from such land slope, which is relatively common in areas with steep slope transitions, while the actual areas of height non-compliance are relatively minor;*
- *Design measures have been incorporated into the design of the upper addition to mitigate impacts on neighbours in terms of views, privacy and overshadowing;*
- *Reasonable view protection and view sharing is accommodated by the proposal, including in the redesign and original design, by amendments to the upper level extension since DA lodgement, increased setbacks and reduced building massing above the height limit, revising the roof form, reasonably limiting ceiling heights, limiting the size of the upper addition, the proposed roof matching the roof ridge, providing a lift where the lift over-run is within the height limit, providing a large northern side setback and limiting the eastern extension at the upper level;*
- *Altering and adapting the dwelling is likely to have less overall environmental impacts compared to a new dwelling or dual occupancy, noting the foreshore location;*
- *The additional height and height non-compliance will significantly improve the amenity of the dwelling, yet not at any significant impacts on neighbours;*
- *The existing building exceeds the height limit and the additional height and bulk is minor;*
- *The design and layout of rooms giving rise to the height non-compliance supports sustainable living and energy use and is consistent with principles of ESD;*
- *The proposed development is consistent with the relevant objectives of the EP&A Act.*

The statements in the written request are generally agreed with and address the site circumstances, and adequately identify that there are sufficient environmental planning grounds to justify the variation in the circumstances of the case.

The proposed built form is considered to be appropriate having regard to the surrounding context. The form, massing and scale of the building is consistent with surrounding development and continues to reflect the stepping down of development to follow the sloping topography of the area. The additions are efficient in its use of space whilst only requiring minor amendments to the existing building footprint. The internal alterations to reconfigure the room layout and size, staircase, and incorporate a new lift will provide for a high level of amenity and useability within the dwelling, with no significant increase in density or population. The associated impacts for adjoining properties, on balance, are considered reasonable.

Clause 4.6(4)(a)(i) Applicant's written request

The written request provided by the applicant adequately addresses the matters required by subclause (3) as discussed above.

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

The proposed development would be in the public interest because it is consistent with the objectives of the standard proposed to be varied and the objectives of the R2 Low Density Residential zone as discussed above.

Concurrence with the Minister

A Local Planning Panel as consent authority may assume concurrence with the Minister as per the Planning Circular PS 20-002.

Conclusion

The written request to vary the development standard provided by the applicant is considered to be well-founded. The written request demonstrates that compliance with the development standard would be unreasonable and unnecessary in the circumstances of the case and that there are sufficient planning grounds to justify the variation. The proposed development is considered to be in the public interest. It is recommended that the variation be supported in these circumstances.

Clause 5.10 - Heritage Conservation

The subject site is not listed as a heritage item, and do not sit within a Heritage Conservation Area under the North Sydney LEP 2013. However, the site is of close proximity to heritage items I0668 and I0667 and the Kurraba Point Heritage Conservation Area which are locally significant.

The proposed works are generally minor and do not significantly alter the overall form and scale of the existing built form. As such, it is satisfied that the proposed development will not detract from the heritage significance of items and conservation areas in proximity to the site.

6.9 Limited Foreshore Building Line

The subject site is partially mapped as forming part of Foreshore Area as detailed on Councils Foreshore building line map. As shown in Architectural Plans lodged with the application, all works proposed under this development application are sited outside the foreshore area.

As such, this clause does not apply to the proposed development in accordance with Clause 6.9(2) of the NSLEP 2013.

6.10 Earthworks

The application includes excavation and subject to conditions the earthworks is considered acceptable.

6.13 Vehicle Access

The proposed development utilise the existing location of the driveway and vehicular crossing and is permissible with consent.

NORTH SYDNEY DEVELOPMENT CONTROL PLAN 2013

The proposal has been assessment under the following heading within NSDCP 2013:

Part B Section 1- Residential Development		
	<i>complies</i>	<i>Comments</i>
1.2 Social Amenity		
1.2.2 Maintaining Residential Accommodation	Yes	The proposed development would retain the existing residential density on the site.
1.2.3 Affordable Housing	NA	Part 3 Retention of Affordable Housing in SEPP (Housing)2021 does not apply to the proposed development.
1.3 Environmental Criteria		
1.3.1 Topography	Yes	The proposed development involves earthworks, and the overall topography is maintained. Conditions are recommended by Council's Development Engineer to ensure the structural integrity of adjoining land is maintained.
1.3.4 Foreshore Frontage	Yes	The proposed development is consistent with chapter 6 of the SEPP (Biodiversity and Conservation) 2021. The development will not alienate public access and does not compromise any significant natural features. Council Development Engineers reviewed the disturbance of existing, surface and underground drainage and raised no objection subject to recommended conditions of consent. Furthermore, the proposed development maintains the overall topography of the site and does not introduce large areas of blank, hard or reflective surfaces. Lastly, Councils Council's Landscape Development Officer reviewed the proposed landscape scheme and raised no objection subject to recommended conditions of consent.
1.3.5 Visual Impact - Access	Yes	Councils Council's Landscape Development Officer reviewed the proposed landscape scheme and raised no objection subject to recommended conditions of consent. Furthermore, pathways and ramps will not be visible from the public domain.
1.3.6 Views	Yes	Refer to the discussion provided below this table.
1.3.7 Solar Access	Yes	The application is accompanied by shadow diagrams which demonstrate that adjoining development will continue to receive a minimum of 3 hours of solar between the hours of 9.00am and 3.00pm to windows of main internal living areas, POS and COS at the winter solstice (21st June).
1.3.8 Acoustic Privacy	Yes	The proposed development is unlikely to result in any acoustic impacts above those anticipated from development within a residential environment. Specifically, there is minimal changes to the size and configuration of the existing balconies/terraces. The new roof terrace is adequately setback from adjoining properties and is unlikely to arise adverse acoustic impact on adjoining properties. There is not considered to be any potential for noise impacts from the lift and conditions are recommended to manage acoustic impacts from the lift equipment to maintain acoustic privacy.

<p>1.3.10 Visual Privacy</p>	<p>Acceptable</p>	<p>The proposed addition would not materially impact the privacy of surrounding properties. The proposed windows within the second-floor addition on the second-floor level are setbacks from facades of the development and avoid overlooking of adjoining properties. The remaining windows generally replace existing fenestration.</p> <p>Of note, a condition has been imposed limiting the size of the top floor balcony to 18m² in accordance with the DCP.</p>
<p>1.4 Quality built form</p>		
<p>1.4.1 Context</p>	<p>Yes</p>	<p>The proposed alterations to the dwelling are primarily within the existing footprint. The additions will not be visible from the street and will not significantly alter the form and scale of the existing development. This will ensure that there are minimal impacts on the surrounding area.</p>
<p>1.4.3 Streetscape</p>	<p>Yes</p>	<p>The proposed development relates to a battle axe block and will not have an adverse impact on the streetscape.</p>
<p>1.4.5 Siting</p>	<p>Yes</p>	<p>The proposed development relates to alteration and additions which do not significantly change the siting of the building.</p>
<p>1.4.6 Setbacks</p>	<p>Acceptable</p>	<p><u>Front</u> Minor extension works are proposed to the dwelling west being the front of the dwelling. It is noted that the site is a battle axe block and does not contain a direct frontage to a street. Furthermore, adjoining sites do not contain a consistent setback to this boundary also being battle axe blocks. The proposed additions are minor and do not impact on the existing alignment.</p> <p><u>Side</u> Alterations are not proposed to the side setbacks for the ground floor and first floor. The new second floor addition is setback a 2.5m to south boundary and complies with the minimum of 2.5m for 3rd storey or higher (greater than 7m) components as required under the DCP. Of note, lower ground floor continues to comply with the minimum of 900mm.</p> <p>A minor non compliance of 50mm is proposed to the 1st floor level, which is an existing non-compliance and has no impact on adjoining properties and would not be discernible to anyone.</p> <p><u>Rear</u> Alterations are not proposed to the rear setback.</p>
<p>1.4.7 Form Massing Scale</p>	<p>Acceptable</p>	<p>The proposed rear addition maintains a similar bulk and scale and is compatible with the existing building typology of the subject dwelling and adjoining property, having regard to the fall of the land towards the east. The proposed non-compliance in building height generally aligns with existing provisions and is considered acceptable in this instance.</p> <p>It is noted that the second storey component has a floor to ceiling height of 2.5m which does not comply with the minimum of 2.7m. A lesser height is considered acceptable in this instance noting the applicant has satisfactorily demonstrated that the dwelling is capable of receiving satisfactory natural daylight and ventilation.</p>

1.4.8 Built Form Character	Yes	The proposed built form character is compatible with the existing and surrounding development, in particular: <ul style="list-style-type: none"> The proposed development does not substantially alter the size, location and proportions of existing dwelling; The proposed development will not be visible from the street; The building does not form part of a uniform group of buildings. The proposed development is reflective of waterfront development; and The forms and scale of the development aligns with existing and envisaged character of development in the Kurraba Point South Neighbourhood Area. 																
1.4.9 Dwelling Entry	Yes	It is noted that the site is battle axe allotments and the existing entry driveway at the Kurraba Road frontage will be retained. The proposed development will support enhance direct pedestrian access through the provision of a pedestrian footbridge.																
1.4.10 Roofs	Acceptable	The applicant has demonstrated that the proposed flat roof is consistent with the character of the area. Furthermore, this arrangement will help minimise potential view loss impacts to the surrounding development.																
1.4.12 Colours and Materials	Yes	The proposed materials and finishes are considered acceptable with regard to surrounding development and that required under the Kurraba Point South Neighbourhood Area. The proposed development avoids the extensive use of reflective glass, reflective metal and plastics on the exterior of buildings.																
1.5 Quality Urban Environment																		
1.5.3 Safety and Security	Yes	The property will maintain its secure perimeter and direct sightlines of pathways. A battle axe block in its nature clearly distinguishes public and private domains.																
1.5.4 Vehicle Access and Parking	Yes	The existing garage will be unchanged. However, it is noted that minor alterations are proposed to the vehicular access including a driveway/turning bay. This arrangement has been reviewed by Council's Development Engineer who raised no objection subject to recommended conditions.																
1.5.5 and 1.5.6 Landscape Area and Site Coverage (lot size 500-749m ²) (Table B-1.7)	Yes	<table border="1" data-bbox="794 1491 1433 1776"> <thead> <tr> <th>Control</th> <th>Existing</th> <th>Proposed</th> <th>Compliance</th> </tr> </thead> <tbody> <tr> <td>Site coverage (40% Max)</td> <td>263.86m² (37.4%)</td> <td>277.61m² 39.3%</td> <td>Yes</td> </tr> <tr> <td>Landscaped area (40% Min)</td> <td>220.67m² (31.2%)</td> <td>281m² (39.8%)</td> <td>Acceptable (see below)</td> </tr> <tr> <td>Unbuilt-upon area (20% Max)</td> <td>215.45m² (30.5%)</td> <td>138.80m² (19.7%)</td> <td>Yes</td> </tr> </tbody> </table> <p>The site has an area of 705.62m² (excluding access handle) The relevant site coverage and unbuilt upon area and landscape area provisions for Detached dwellings are assessed in the table above. The proposed development complies with the maximum site coverage and unbuilt upon area and whilst there is a very minor non-compliance with the minimum landscaped area, the proposed development improves the landscaped area for the site and subject to conditions recommended by Council's landscape officer the landscaped area is considered acceptable.</p>	Control	Existing	Proposed	Compliance	Site coverage (40% Max)	263.86m ² (37.4%)	277.61m ² 39.3%	Yes	Landscaped area (40% Min)	220.67m ² (31.2%)	281m ² (39.8%)	Acceptable (see below)	Unbuilt-upon area (20% Max)	215.45m ² (30.5%)	138.80m ² (19.7%)	Yes
Control	Existing	Proposed	Compliance															
Site coverage (40% Max)	263.86m ² (37.4%)	277.61m ² 39.3%	Yes															
Landscaped area (40% Min)	220.67m ² (31.2%)	281m ² (39.8%)	Acceptable (see below)															
Unbuilt-upon area (20% Max)	215.45m ² (30.5%)	138.80m ² (19.7%)	Yes															

1.5.7 Landscaping	Yes	Council's Landscape Development Officer reviewed the application and raised no objection subject to recommended conditions of consent.
1.5.8 Front Gardens	Yes	The entire front garden is no paved or concrete. The application is accompanied by a landscape plan which includes scheme that will soften and complement the view of buildings surrounding properties.
1.5.9 Private and Communal Open Space	Yes	The proposed development achieves a minimum 50m ² of POS.
1.5.12 Garbage Storage	Yes	Alterations are not proposed to existing provisions.
1.5.13 Site Facilities	Yes	Existing provisions are proposed to be retained.
1.5.14 Servicing of new lots	Yes	Existing provisions are proposed to be retained.
1.6 Efficient Use of Resources		
1.6.1 Energy Efficiency	Yes	The development meets BASIX requirements.
Part B Section 14- Contamination and hazardous building materials		
14.2.2 Contamination Investigation and Reporting	Yes	The existing building has been used for residential purposes for a long period of time and there is no evidence to suggest that the site is contaminated therefore the requirements further investigation is considered unnecessary.
Part B Section 16 – Tree & Vegetation Management		
16.2 Control for the management of trees and Vegetation	Yes	The proposed development involves the removal of 3 trees and relocation of 1. The application has been reviewed by Councils Landscape Development Officer who raised no objection subject to recommended conditions of consent.
Part B Section 17 Erosions and Sediment Control		
17.4 Procedures	Yes	A condition has been imposed requiring an amended Erosion and Sediment Control Plan to be provided prior to the issue of a construction certificate.
Part B Section 18 Stormwater Management		
18.2 Requirements	Yes	Council's Development Engineers reviewed the proposed means of stormwater drainage and raised no objection subject to recommended conditions of consent.
Part B Section 19 Waste Minimisation & Management		
19.4 Waste Facilities and Management	Yes	A condition has been imposed requiring a Waste Management Plan to be provided prior to the issue of a construction certificate.

Part C – Section 6 – South Cremorne Planning Area of the NSDCP 2013

The subject site is located within the Kurraba Point South Neighbourhood of the South Cremorne Planning Area. The character statement characterises land uses within the area as predominately residential accommodation with passive and active recreational land uses. The area falls from the ridge along Kurra Road down to foreshores with natural features comprising of low topographic profile and steady slopes, retained edges, some small jetties and boatsheds, mixed with natural shoreline and Natural vegetation, varying degrees of private landscaping of native and introduced species. Expansive views are enjoyed down Sydney Harbour as a key icon along with Hodgson lookout.

The streetscape is defined by narrow carriageways, tall, rendered masonry retaining walls built to street frontages and with buildings being generally setback a minimum from the boundary with a skewed alignment to respective street frontages.

The desired built form controls envisage buildings that address both the street, as well as the foreshore and sites that permit front setbacks with adequate soft landscaping. The preferred materials and finishes include muted colours and non-reflective materials, such as brick and timber to ensure the scenic and environmental qualities are enhanced.

The proposed development does not determinately impact on existing views of the foreshore and other associated water views. The development has been designed to appropriately address the foreshore noting it does not have a direct frontage to Kurraba Road. The proposed development maintains suitable provisions of landscaping along the north, south and west portion of the site to soften and screen the intended development when viewed from surrounding development. Furthermore, the development incorporates suitable materials and finishes of that desired in the Kurraba Point South Neighbourhood of the South Cremorne Planning Area.

View Loss

Clause 1.3.6 of NSDCP includes specific controls relating to views noting that there is a need to strike a balance between facilitating new development while preserving, as far as practicable, access to view from surrounding properties.

Control P4 states:

“Where a proposal is likely to adversely affect views from either public or private land, Council will give consideration to the Land and Environment Court’s Planning Principles for view sharing established in Rose Bay Marina Pty Ltd v Woollahra Municipal Council and anor [2013] NSWLEC 1046 and Tenacity Consulting v Warringah Council [2004] NSWLEC 140.”

In respect of view from private land, Tenacity includes the following 4 step assessment of views.

Step 1 - *The first step is the assessment of views to be affected. Water views are valued more highly than land views. Iconic views (eg of the Opera House, the Harbour Bridge or North Head) are valued more highly than views without icons. Whole views are valued more highly than partial views, eg a water view in which the interface between land and water is visible is more valuable than one in which it is obscured.*

Step 2 - *The second step is to consider from what part of the property the views are obtained. For example the protection of views across side boundaries is more difficult than the protection of views from front and rear boundaries. In addition, whether the view is enjoyed from a standing or sitting position may also be relevant. Sitting views are more difficult to protect than standing views. The expectation to retain side views and sitting views is often unrealistic.*

Step 3 - *The third step is to assess the extent of the impact. This should be done for the whole of the property, not just for the view that is affected. The impact on views from living areas is more significant than from bedrooms or service areas (though views from kitchens are highly valued because people spend so much time in them). The impact may be assessed quantitatively, but in many cases this can be meaningless. For example, it is unhelpful to say that the view loss is 20% if it includes one of the sails of the Opera House. It is usually more useful to assess the view loss qualitatively as negligible, minor, moderate, severe or devastating.*

Step 4 - *The fourth step is to assess the reasonableness of the proposal that is causing the impact. A development that complies with all planning controls would be considered more reasonable than one that breaches them. Where an impact on views arises as a result of non-compliance with one or more planning controls, even a moderate impact may be considered unreasonable. With a complying proposal, the question should be asked whether a more skilful design could provide the applicant with the same development potential and amenity and reduce the impact on the views of neighbours. If the answer to that question is no, then the view impact of a complying development would probably be considered acceptable and the view sharing reasonable.*

A view loss analysis was prepared by the applicant following access provided by a number of neighbours. The photos taken by the applicant were in the company of the assessing officer so as to ensure veracity of what was provided.

Following receipt of the view loss analysis the applicant was advised that the height non-compliance was not supported principally because the exceedance directly resulted in view loss. The applicant subsequently amended their plans and provided an amended view loss analysis. (Attachment 4). Below is an analysis of Attachment 4 with some of the images extracted.

View Impact on Unit G01/182 Kurraba Rd



Figure 17: Existing View from Upper Level of Unit G01/182 Kurraba Rd, Kurraba Point (Source: Applicant)



Figure 18: Proposed View (location 2) from Upper Level Balcony of Unit G01/182 Kurraba Rd, Kurraba Point (Source: Applicant)

Comment – Firstly, it is noted that the tree in the foreground is deciduous. The views are across a side boundary. Views are available from within the living area and balcony. With the amended proposal, the view loss is considered to be negligible and acceptable.

View Impact on Unit 101/182 Kurraba Rd



Figure 19: Existing View from Unit 101/182 Kurraba Rd, Kurraba Point (Source: Applicant)



Figure 20: Proposed View (location 2) from Unit 101/182 Kurraba Rd, Kurraba Point (Source: Applicant)

Comment – Similar to G01, the tree in the foreground is deciduous. The views are across a side boundary. Views are available from within the living area and balcony. With the amended proposal, the view loss is considered to be negligible and acceptable.

View Impact on Unit 201/182 Kurraba Rd



Figure 21: Existing View from Unit 201/182 Kurraba Rd, Kurraba Point (Source: Applicant)

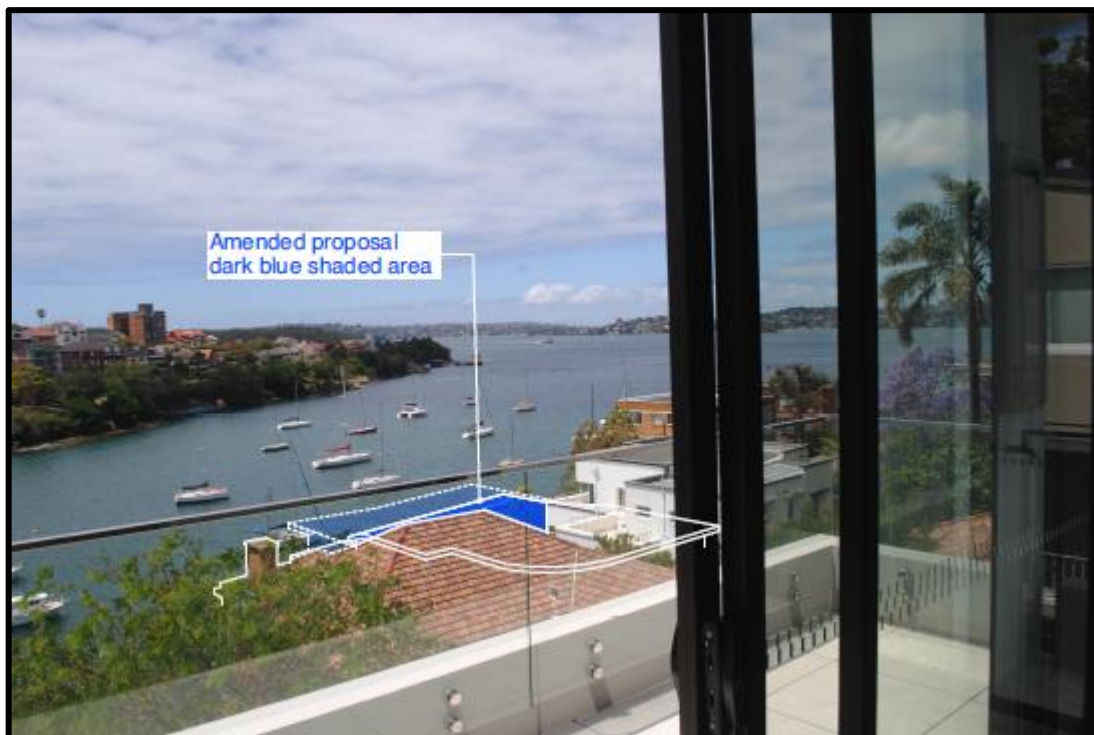


Figure 22: Proposed View from Unit 201/182 Kurraba Rd, Kurraba Point (Source: Applicant)

Comment - The views are across a side boundary and expansive. Views are available from within the living area and balcony. With the amended proposal, the view loss is considered to be negligible and acceptable.

View Impact on 176 Kurraba Rd

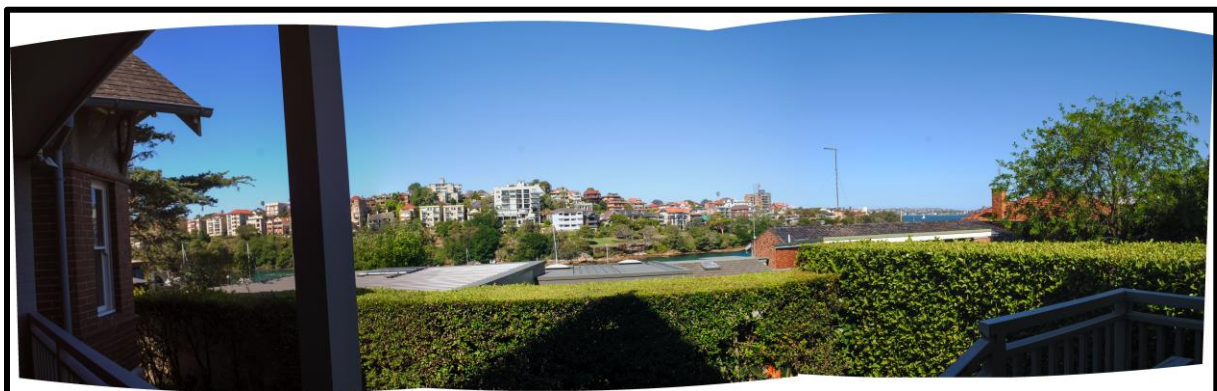


Figure 23: Existing View (ground Floor) from 176 Kurraba Rd, Kurraba Point (Source: Applicant)

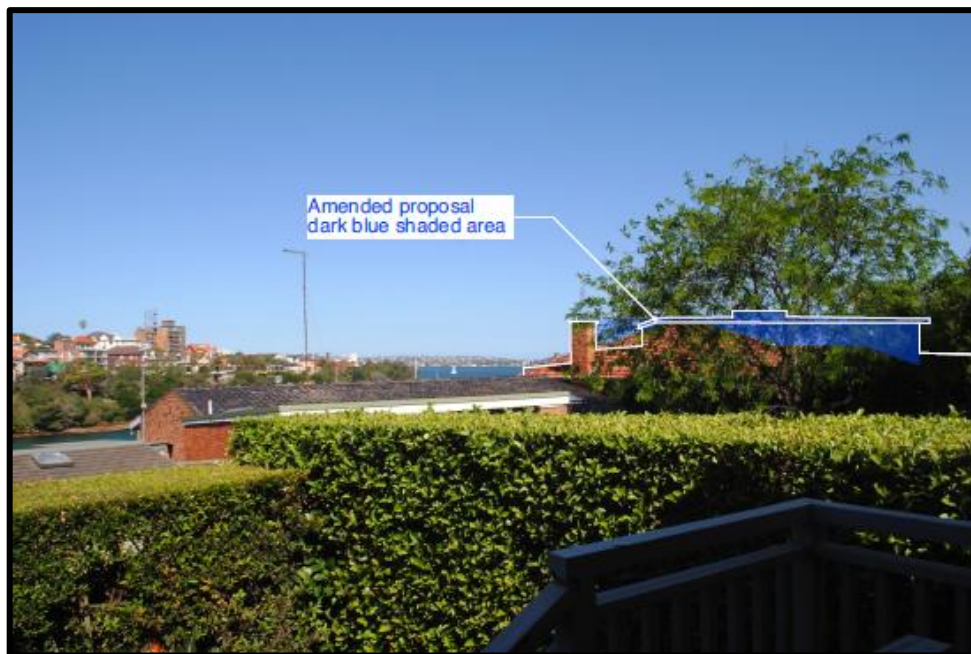


Figure 24: Proposed View (location 4) from 176 Kurraba Rd, Kurraba Point (Source: Applicant)



Figure 25: Existing View (1st Floor) from 176 Kurraba Rd, Kurraba Point (Source: Applicant)

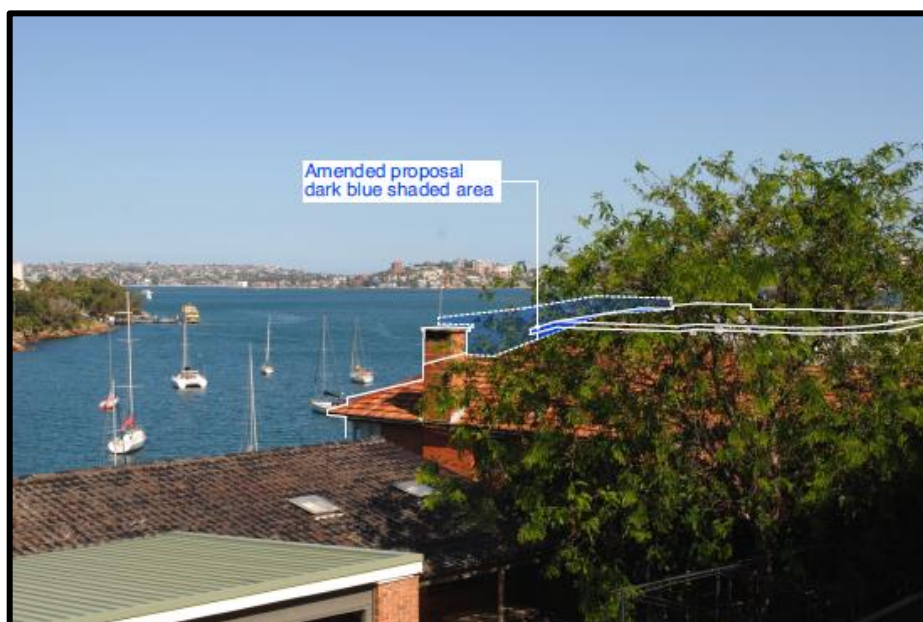


Figure 26: Proposed View (location 7) from 176 Kurraba Rd, Kurraba Point (Source: Applicant)

Comment - Firstly, it is noted that 176 Kurraba Rd is a heritage item and therefore place importance on their views as they will have limited ability to redevelop in the future.

The views are across a side boundary. Views from the ground floor are from living areas and balcony. Views from the 1st floor are from the main bedroom.

With the amended proposal, the view loss is considered to be negligible and acceptable.

Conclusion

Having undertaken the above view loss analysis and assessment in accordance with Tenacity, the view impacts are considered negligible when considering the totality of their view. Views from each property is considered negligible with the amended proposal and acceptable.

LOCAL INFRASTRUCTURE CONTRIBUTIONS PLAN

The proposed development does not increase the number of dwellings on the site and therefore a contribution levied under section 7.11 of the Act is not required in accordance with Council's Infrastructure Contributions Plan. Instead, a contribution is required to be levied under Section 7.12 of the Act. The contribution is equal to 1% of the building cost which was identified as \$2,765,000 in the submitted cost summary report. The total contribution payable is therefore \$27,650.

A condition requiring the payment of contributions at the appropriate time are included in the attached conditions.

ALL LIKELY IMPACTS OF THE DEVELOPMENT

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

A key consideration having regard to submissions relates to view loss which is discussed above.

ENVIRONMENTAL APPRAISAL

CONSIDERED

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	N/A

7.	Physical relationship to and impact upon adjoining development (Views, privacy, overshadowing, etc.)	Yes
8.	Site Management Issues	N/A
9.	All relevant S4.15 considerations of Environmental Planning and Assessment (Amendment) Act 1979	Yes

SUBMITTERS CONCERNS

The application was notified to surrounding properties and the Kurraba Precinct in accordance with Council's Community Engagement Protocol from 8 September 2023 to 22 September 2023. Council received 15 submission objecting to the application. Key matters are identified below and considered in the following table.

Issue	Consideration
<ul style="list-style-type: none"> Height Variation 	The height variation is discussed in the body of the report and the amended proposal is considered acceptable and the Clause 4.6 acceptable.
<ul style="list-style-type: none"> View Loss 	View loss is discussed in the body of the report and the amended proposal is considered acceptable and results in negligible impact to adjoining properties.
<ul style="list-style-type: none"> Conflict of Interest 	This DA has been assessed at arm's length from Council and assessed by an external independent Council that has no conflict of interest.
<ul style="list-style-type: none"> Excavation 	The proposed development does propose excavation but considered acceptable subject to conditions covering construction management and requiring a dilapidation report.
<ul style="list-style-type: none"> Construction Management 	The proposed development is considered acceptable from a construction management perspective subject to a condition requiring a construction management plan and dilapidation report.
<ul style="list-style-type: none"> Landscape and Site Coverage 	Landscaped area and site coverage is discussed in the body of the report and considered acceptable subject to conditions from Councils landscape officer.
<ul style="list-style-type: none"> Bulk and Scale 	The bulk and scale of the building is considered to be an acceptable response to the site constraints and would not unreasonably impact on adjoining land.
<ul style="list-style-type: none"> Setbacks 	Setback is discussed in the body of the report and considered acceptable.

<ul style="list-style-type: none">• Materials and finishes	Materials and finishes is discussed in the body of the report and considered acceptable.
<ul style="list-style-type: none">• Privacy Impacts	Privacy is considered acceptable subject to the reduction in the upper-level balcony to an area of 18m ² .
<ul style="list-style-type: none">• Roof Form / Floor to ceiling Height	The roof form is considered acceptable to minimise view loss impacts, as is the floor to ceiling height and does not result in any unacceptable impacts.
<ul style="list-style-type: none">• Overshadowing	Overshadowing is discussed in the body of the report and complies with Council's DCP.
<ul style="list-style-type: none">• Foreshore Building Line	As detailed in the Architectural Plans lodged with the application, all works proposed under this development application are sited outside the foreshore area.
<ul style="list-style-type: none">• Objectives of zone	The objectives of the zone are discussed in the body of the report and considered to be satisfied with the amended application.
<ul style="list-style-type: none">• Insufficient information – View analysis, Height diagram	Sufficient information has been provided with the amended proposal to allow an assessment of both the height and view loss.

PUBLIC INTEREST

The proposed development is considered to be in the public interest for the reasons stated throughout this report.

SUITABILITY OF THE SITE

The proposal is considered to be suitable for the site having regard to the merits of the proposal as described in the above report.

HOW WERE THE COMMUNITY VIEWS TAKEN INTO CONSIDERATION?

The subject application was notified to adjoining properties and the Kurraba Precinct for 14 days where a number of issues were raised that have been addressed in this report where appropriate conditions of consent have been recommended to maintain the amenity of adjoining properties and the character of the area.

CONCLUSION

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 a development standard made pursuant to Clause 4.6 *Height of buildings* of NSLEP 2013.

The written request made pursuant to Clause 4.6 *Departure to development standards* in NSLEP 2013 demonstrates that compliance with the development standard is both unreasonable and unnecessary in the circumstances and that there are sufficient environmental planning grounds to justify the variation. Approval of the variation would be in the public interest.

Having regard to the merits of the proposal, the application is recommended for approval subject to appropriate standard and site-specific conditions provided below.

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, assume the concurrence of the Secretary of The 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 Height of Building and grant consent to Development Application No. DA266/23 for alterations and additions to an existing dwelling house and associated works at 184 Kurraba Road, Kurraba Point subject to the following attached standard conditions.

JEREMY SWAN
CONSULTANT TOWN PLANNER

LUKE HARVEY
DIRECTOR CORPORATE SUPPORT

NORTH SYDNEY COUNCIL
CONDITIONS OF DEVELOPMENT APPROVAL
184 KURRABA ROAD, KURRABA POINT
DEVELOPMENT APPLICATION NO. 266/23

A Conditions that identify Approved Plans

Development in Accordance with Plans/Documentation

- A1. The development must be carried out in accordance with the following drawings and documentation and endorsed with Council's approval stamp, except where amended by the following conditions of this consent.

Drawing No.	Rev	Description	Prepared by	Dated
Architectural Plans				
2205.4.2	-	Stormwater Drainage Plan – Proposed	Antonio Caminiti Design P/L	10/08/2023
2205.6.0	-	-3 Lower Ground (1500) Pool Plan – Demolition		10/8/2023
2205.6.1	-	-2 Lower Ground (7300) Plan – Demolition		10/8/2023
2205.6.2	-	-1 Lower Ground (10030) Plan – Demolition		10/8/2023
2205.6.3	-	Ground Floor (13260) Plan – Demolition		10/8/2023
2205.6.4	-	First Floor (16370) Plan – Demolition		10/8/2023
2205.6.5	-	Roof Plan – Demolition		10/8/2023
2205.6.6	-	Garage Level Plan – Demolition		10/8/2023
2205.7.1	-	Site Plan – Proposed		17/11/2023
2205.7.2	-	Lower Ground Floor – (Pool) Plan		17/11/2023
2205.7.3	-	Lower Ground Floor – (Games) Plan		17/11/2023
2205.7.4	-	Lower Ground Floor – (Bar Room) Plan		17/11/2023
2205.7.5	-	Ground Floor Plan		17/11/2023
2205.7.6	-	First Floor Plan		17/11/2023
2205.7.7	-	Second Floor Plan		17/11/2023
2205.7.8	-	Second Floor – Garage Footbridge Plan		17/11/2023
2205.7.9	-	Roof Plan		17/11/2023
2205.8.1	-	West Elevation		17/11/2023
2205.8.2	-	North Elevation		17/11/2023
2205.8.3	-	East Elevation		17/11/2023
2205.8.4	-	South Elevation		17/11/2023
2205.8.5	-	East Elevation (Towards Garage)		17/11/2023
2205.9.1	-	Section A-A		17/11/2023
2205.9.2	-	Section B-B		17/11/2023
2205.9.3	-	Section C-C	17/11/2023	
2205.9.4	-	Section D-D	17/11/2023	

2205.10.1	-	BASIX Requirements		10/8/2023
2205.11.1	-	Material Selections		10/8/2023
L01/1-K26714	A	Landscape Planting Plan	Michael Siu Landscape Architects	26/10/2023
Documents				
-	-	Request to Contravene the Building Height Standard (Clause 4.6)	Perica & Associates Urban Planning Pty Ltd	21/11/2023
A500038	-	BASIX Certificate	Antonio Caminiti Design P/L	05/07/2023
-	1	Arboricultural Impact Assessment	Treeism Arboricultural Services	07/2023

(Reason: To ensure that the form of the development undertaken is in accordance with the determination of Council, Public Information)

Plans on Site

- A2. A copy of all stamped approved plans, specifications and documents (including the plans, specifications and documents submitted and approved with the Construction Certificate) must be kept on site at all times so as to be readily available for perusal by any officer of Council or the Principal Certifying Authority.

All documents kept on site in accordance with this condition must be provided to any officer of the Council or the certifying authority upon their request.

(Reason: To ensure that the form of the development undertaken is in accordance with the determination of Council, Public Information and to ensure ongoing compliance)

No Demolition of Extra Fabric

- A3. Alterations to, and demolition of the existing building shall be limited to that documented on the approved plans.

(Reason: To ensure compliance with the approved development)

External Finishes and Materials

- A4. External finishes and materials must be in accordance with the submitted Material Selection, prepared by Antonio Caminiti Design P/L, dated 10/08/2023, unless otherwise modified by Council in writing.

(Reason: To ensure that the form of the development undertaken is in accordance with the determination of Council, Public Information)

B. *Matters to be completed before the lodgement of an application for a construction certificate*

Construction Management Program –North Sydney Council Traffic Division Approval

- B1. A Construction Management Program prepared by a suitably qualified and experienced traffic consultant must be submitted and approved in writing by North Sydney Council's Traffic Division PRIOR TO THE ISSUE OF ANY Construction Certificate. Any use of Council property will require appropriate approvals prior to any work commencing. At a minimum, the Construction Management Program must specifically address the following matters:
- a) A plan view (min 1:100 scale) of the entire site and frontage roadways indicating:
 - i. Dedicated temporary construction site driveway entrances and exits, controlled by a certified traffic controller, to safely manage pedestrians and construction related vehicles in the frontage roadways and footways;
 - ii. The proposed signage for pedestrian management to comply with the relevant Australian Standards, including pram ramps;
 - iii. Turning areas within the site for construction and spoil removal vehicles, allowing a forward egress for all construction vehicles on the site;
 - iv. The locations of any proposed Work Zones in the frontage roadways (to be approved by Council's Traffic Committee);
 - v. Locations of hoardings proposed;
 - vi. Location of any proposed crane standing areas;
 - vii. A dedicated unloading and loading point within the site for all construction vehicles, plant and deliveries;
 - viii. Material, plant and spoil bin storage areas within the site, where all materials are to be dropped off and collected; and
 - ix. The provision of an on-site parking area for employees, tradesperson and construction vehicles as far as possible.
 - b) A detailed heavy vehicle access route map through the Council area to Arterial Roads. Provision is to be made to ensure through traffic is maintained at all times.
 - c) The proposed phases of works on the site, and the expected duration of each phase.
 - d) How access to neighbouring properties will be maintained at all times and the proposed manner in which adjoining property owners will be kept advised of the timeframes for completion of each phase of process.
 - e) The road is not to be used as a waiting area for trucks delivering to or awaiting pick up of materials.

- f) The proposed method of support to any excavation adjacent to adjoining properties, or the road reserve. The proposed method of support is to be designed and certified by an appropriately qualified and practising structural engineer and must not involve any permanent or temporary encroachment onto Council's property.
- g) Proposed protection for Council and adjoining properties. Details are to include site fencing and the provision of "B" class hoardings over footpaths and laneways.
- h) A Waste Management Plan. The Waste Management Plan must include, but not be limited to, the estimated volume of waste and method of disposal for the construction and operation phases of the development, design of on-site waste storage and recycling area and administrative arrangements for waste and recycling management during the construction process.

All traffic control work and excavation, demolition and construction activities must be undertaken in accordance with the approved Construction Management Program and any conditions attached to the approved Program. A certificate of compliance with this condition must be obtained from Council's Traffic and Transport engineers.

The certificate and the approved Construction Management Program must be submitted as part of the documentation lodged with the application for approval of a construction certificate.

A copy of the approved Construction Management Program and any conditions imposed on that Program, must be kept on the site at all times and made available to any officer of Council upon request.

Notes:

- 1) North Sydney Council's adopted fee for certification of compliance with this condition shall be payable on lodgement, or in any event, prior to the issue of the relevant approval.
- 2) Any use of Council property will require appropriate approvals and demonstration of liability insurances prior to such work commencing.
- 3) Failure to provide complete and detailed information may result in delays. It is recommended that your Construction Management Plan be lodged with Council as early as possible, as a **minimum six (6) weeks assessment period** is required.
- 4) Dependent on the circumstances of the site, Council may request additional information to that detailed above.

(Reason: To ensure appropriate measures have been considered for site access, storage and the operation of the site during all phases of the demolition process in a manner that respects adjoining owner's property rights and residential amenity in the locality, without unreasonable inconvenience to the community)

Arborist to be commissioned

- B2. An experienced AQF Level 5 consulting arborist must be commissioned to assist the design development, contract documentation and overseeing of construction works on the site for their duration by undertaking regular inspections of the works in progress and providing advice in relation to tree matters.

Written details of the engagement of the experienced arborist must be submitted to the Certifying Authority prior to the issue of any Construction Certificate.

Note: This condition, and any advice given by the consulting arborist, should not be construed as authorising the carrying of development with/ otherwise than in accordance with the development consent.

(Reason: To ensure that all matters relating to trees are resolved and recorded using best practice)

C. *Prior to the Issue of a Construction Certificate (and ongoing, where indicated)*

Dilapidation Report Damage to Public Infrastructure

- C1. A dilapidation survey and report (including photographic record) must be prepared by a suitably qualified consultant which details the pre-developed condition of the existing public infrastructure in the vicinity of the development site. Particular attention must be paid to accurately recording any pre-developed damaged areas so that Council is fully informed when assessing any damage to public infrastructure caused as a result of the development. A copy of the dilapidation survey and report is to be submitted to the Certifying Authority for approval prior to the issue of any Construction Certificate.

The developer may be held liable for all damage to public infrastructure in the vicinity of the site, where such damage is not accurately recorded and demonstrated as pre-existing under the requirements of this condition.

The developer shall bear the cost of carrying out works to restore all public infrastructure damaged as a result of the carrying out of the development, and no occupation of the development shall occur until damage caused as a result of the carrying out of the development is rectified.

A copy of the dilapidation survey and report must be lodged with North Sydney Council by the Certifying Authority with submission of the Construction Certificate documentation.

(Reason: To record the condition of public infrastructure prior to the commencement of construction)

Structural Adequacy of Existing Building

- C2. A report prepared by an appropriately qualified and practising structural engineer, certifying the structural adequacy of the property and its ability to withstand the proposed additional, or altered structural loads during all stages of construction shall be submitted to the Certifying Authority for approval prior to issue of any Construction Certificate. The certified report must also include all details of the methodology to be employed in construction phases to achieve the above requirements. The methodology in the certified report must be complied with at all times.

(Reason: To ensure the structural integrity of the building is maintained)

Waste Management Plan

- C3. A Waste Management Plan is to be submitted for approval by the Certifying Authority prior to the issue of any Construction Certificate. The plan must include, but not be limited to:
- a) The estimated volume of waste and method of disposal for the construction and operation phases of the development;
 - b) The design of the on-site waste storage and recycling area; and
 - c) Administrative arrangements for waste and recycling management during the construction process.

The approved Waste Management Plan must be complied with at all times in the carrying out of the development.

(Reason: To encourage the minimisation of waste and recycling of building waste)

Skylight(s)

- C4. Skylight flashing(s) and frame(s) to be coloured to match the roof material. Skylight(s) to sit no higher than 100 mm above roof plane when in a closed position. Plans and specifications which comply with this condition must be submitted to the Certifying Authority for approval prior to the issue of any Construction Certificate.

The Certifying Authority must ensure that the building plans and specifications submitted fully satisfy the requirements of this condition.

(Reason: To minimise the visual impact of the skylight(s) on the roof plane)

Roofing Materials – Reflectivity

- C5. Roofing materials must be factory pre-finished with low glare and reflectivity properties to be compatible with the colours of neighbouring buildings. The selected roofing material must not cause a glare nuisance or excessive reflectivity to adjoining or nearby properties. Plans and specifications which comply with this condition must be submitted to the Certifying Authority for approval prior to the issue of any Construction Certificate. The Certifying Authority must ensure that the building plans and specifications submitted, referenced on and accompanying the issued Construction Certificate, fully satisfy the requirements of this condition.

(Reason: To ensure that excessive glare or reflectivity nuisance from roofing materials does not occur as a result of the development)

Roofing Materials – Reflectivity

- C6. If a Work Zone is proposed, an application must be made to the North Sydney Local Traffic Committee to install the 'Work Zone'. A Work Zone permit is required to be issued by the Council prior to the issue of any Construction Certificate.

Work Zones are provided specifically for the set down and pick up of materials and not for the parking of private vehicles associated with the site. Work Zones will generally not be approved where there is sufficient space on-site for the setting down and picking up of goods being taken to or from a construction site. If the Work Zone is approved by the Committee, the Applicant must obtain a written copy of the related resolution from the North Sydney Local Traffic Committee and submit a copy of this to the Certifying Authority to enable issue of the Construction Certificate.

Where approval of the 'Work Zone' is given by the Committee, the requirements of the Committee, including installation of the necessary 'Work Zone' signage and payment of any fees, must occur prior to commencement of any works on the site. Further, at the expiration of the Work Zone approval, the developer is required to remove the Work Zone signs and reinstate any previous signs, all at the developer's cost. The requirements imposed by the Committee on the Work Zone permit (or permits) must be complied with at all times.

(Reason: Amenity and convenience during construction)

Sediment Control

- C7. Where construction or excavation activity requires the disturbance of the soil surface or existing vegetation, erosion and sediment control techniques, as a minimum, are to be in accordance with the publication Managing Urban Stormwater: Soils and Construction (4th Edition, Landcom, 2004) commonly referred to as the "Blue Book" or a suitable and effective alternative method.

A revised Erosion and Sediment Control Plan must be prepared and submitted to the Principal Certifier for approval prior to the issue of any Construction Certificate and prior to any works commencing. The Erosion and Sediment Control Plan must be consistent with the Blue Book and disclose:

- a) All details of drainage to protect and drain the site during the construction processes;
- b) All sediment control devices, barriers and the like;
- c) Sedimentation tanks, ponds or the like;
- d) Covering materials and methods; and
- e) A schedule and programme of the sequence of the sediment and erosion control works or devices to be installed and maintained.
- f) Methods for the temporary and controlled disposal of stormwater during construction.
- g) Show stockpiles outside the TPZ of protected trees

All works must be undertaken in accordance with the approved Sediment Control plan.

The Principal Certifier must ensure that the building plans and specifications submitted, referenced on and accompanying the issued Construction Certificate, fully satisfy the requirements of this condition.

(Reason: To protect the environment from the effects of sedimentation and erosion from development sites)

Stormwater Disposal - Drainage Plan

- C8. Prior to the issue of any Construction Certificate, site drainage plans must be prepared by qualified drainage engineer. The site drainage plans must be designed in accordance with the following criteria:
- a) compliance with BCA drainage requirements and current Australian Standards and guidelines,
 - b) stormwater runoff and subsoil drainage generated by the approved development must be conveyed in a controlled manner by gravity to the bay waters, via existing stormwater lines and outlets
 - c) new pipelines within council land shall be hot dipped galvanised steel hollow section with a minimum wall thickness of 4.0 millimetres and a section height of 100 millimetres,

- d) the design and installation of the Rainwater Tanks shall comply with BASIX and Sydney Water requirements. Overflow from tank shall be connected by gravity to the stormwater disposal system, and
- e) prevent any stormwater egress into adjacent properties by creating physical barriers and surface drainage interception.

Drainage plans and specifications which comply with this condition must be submitted to the Certifying Authority for approval prior to the issue of any Construction Certificate. The Certifying Authority must ensure that the building plans and specifications submitted, referenced on and accompanying the issued Construction Certificate, fully satisfy the requirements of this condition.

(Reason: Proper disposal of stormwater)

Bond for Damage and Completion of Infrastructure Works - Stormwater, Kerb and Gutter, Footpaths, Vehicular Crossing and Road Pavement

- C9. Prior to the issue of any Construction Certificate, security deposit or bank guarantee must be provided to Council to the sum of **\$5,000.00** to be held by Council for the payment of cost for any/all of the following:
- a) making good any damage caused to any property of the Council as a consequence of the doing of anything to which this consent relates,
 - b) completing any public work (such as road work, kerbing and guttering, footway construction, stormwater drainage and environmental controls) required in connection with this consent. remedying any defects in any such public work that arise within six months after
 - c) the work is completed.

The security required by this condition and in the schedule contained later in these conditions must be provided by way of a deposit with the Council; or other such guarantee that is satisfactory to Council (such as a bank guarantee). Any guarantee provided as security must name North Sydney Council as the nominated beneficiary and must not be subject to an expiry date.

The security will be refundable following the expiration of six months from the issue of any final Occupation Certificate or completion of public work required to be completed (whichever is the latest) but only upon inspection and release by Council's Engineers.

Council shall have full authority to make use of the bond for such restoration works as deemed necessary by Council in circumstances including the following:

- where the damage constitutes a hazard in which case Council may make use of the security immediately;
- the applicant has not repaired or commenced repairing damage within 48 hours of the issue by Council in writing of instructions to undertake such repairs or works;

- works in the public road associated with the development are to an unacceptable quality; and
- the Certifying Authority must ensure that security is provided to North Sydney Council prior to issue of any Construction Certificate.

(Reason: To ensure appropriate security for works on public land and an appropriate quality for new public infrastructure)

Asbestos Material Survey

- C10. A report must be prepared by a suitably qualified person in relation to the existing building fabric to be demolished and/or disturbed identifying the presence or otherwise of asbestos contamination and, if asbestos contamination is present, making recommendations as to the work required to safely address the contamination.

Any demolition works or other works identified in the report as having to be carried out must be carried out in accordance with the recommendations of the report and the following:

- a) the removal of asbestos must be undertaken by a WorkCover licensed contractor;
- b) all removal must be in strict accordance with the requirements of the WorkCover Authority in relation to the removal, handling and disposal of material containing asbestos and any Work Safe Australia requirements.
- c) during the removal of any asbestos a sign stating "DANGER ASBESTOS REMOVAL IN PROGRESS" must be erected in a visible position at the boundary of the site; and
- d) Waste disposal receipts must be provided to the Certifying Authority as proof of correct disposal of asbestos laden waste.

The report must be submitted to the Certifying Authority for approval prior to the issue of any Construction Certificate. The Certifying Authority must ensure that the report, and other plans, referenced on and accompanying the issued Construction Certificate, fully satisfy the requirements of this condition.

(Reason: To ensure the long-term health of workers on site and occupants of the building is not put at risk unnecessarily)

Noise from Plant and Equipment

- C11. The operation of the lift must not:

- a) Contribute an LAeq(15min) which will cause the total LAeq(15min) from all plant and equipment operating contemporaneously on the site or in the strata scheme or in the mixed strata schemes to exceed the RBL by more than 5dB when measured at the boundary of any affected receiver. The modifying factor adjustments in Section 4 of the EPA Industrial Noise Policy shall be applied.
- b) Cause "offensive noise" as defined in the *Protection of the Environment Operations Act 1997*.

“affected receiver” includes residential premises (including any lot in the strata scheme or another strata scheme), premises for short-term accommodation, schools, hospitals, places of worship, commercial premises and parks and such other affected receiver as may be notified by the Council in writing.

“boundary” includes any window or elevated window of an affected receiver.

Terms in this condition have the same meaning as in the Noise Guide for Local Government and the Industrial Noise Policy published by the NSW Environment Protection Authority.

(Reason: To maintain an appropriate level of amenity for adjoining land uses)

Privacy Measures

C12. The following privacy measures are to be provided:

- (a) The size of the upper balcony on the second-floor level is to be reduced in size to a maximum of 18m².

(Reason: To maintain privacy between the subject dwelling and adjoining properties)

Section 7.12 Contributions

C13. A monetary contribution pursuant to the provisions of Section 7.12 of the Environmental Planning and Assessment Act 1979 is to be paid to Council, in accordance with the North Sydney Council’s Contribution Plan, to provide for local infrastructure improvements.

Based on the cost of development at the date of determination, the total contribution payable to Council is **\$27,650**.

Indexation

The monetary contribution required under this consent will be indexed at the time of payment in accordance with quarterly movements in the Consumer Price Index (All Groups Index) for Sydney as published by the Australian Bureau of Statistics.

Timing of Payment

The contribution must be paid to Council prior to issue of any Construction Certificate for any work approved by this consent.

A copy of the North Sydney Contribution Plan can be viewed at North Sydney Council’s Customer Service Centre, 200 Miller Street, North Sydney or downloaded via Council’s website at www.northsydney.nsw.gov.au.

(Reason: To provide for local infrastructure identified in the North Sydney Council Local Contributions Plan 2020)

Security Deposit/Guarantee Schedule

- C14. All fees and security deposits/guarantees in accordance with the schedule below must be provided to Council prior to the issue of any Construction Certificate:

Security deposit/ guarantee	Amount (\$)
Infrastructure Damage Bond	\$5000.00
TOTAL BONDS	\$5000.00

Note: The following fees applicable

Fees	
Section 7.12 Contributions	\$27,650.00
TOTAL FEES	\$27,650.00

The security required by the above schedule must be provided by way of a deposit with the Council; or other such guarantee that is satisfactory to Council (such as a bank guarantee). Any guarantee provided as security must name North Sydney Council as the nominated beneficiary and must not be subject to an expiry date.

(Reason: Compliance with the development consent)

BASIX Certificate

- C15. Under clause 97A(3) of the Environmental Planning and Assessment Regulation 2000, it is a condition of this development consent that all the commitments listed in BASIX Certificate No. A500038 dated 05 July 2023 for the development are fulfilled. Plans and specifications complying with this condition must be submitted to the Certifying Authority for approval prior to the issue of any Construction Certificate. The Certifying Authority must ensure that the building plans and specifications submitted, referenced on and accompanying the issued Construction Certificate, fully satisfy the requirements of this condition.

(Reason: To ensure the proposed development will meet the Government's requirements for sustainability and statutory requirements)

Dilapidation Report Private Property (Excavation)

- C16. A full dilapidation survey and report on the visible and structural condition of all neighbouring structures within the 'zone of influence' of the required excavations must be submitted to the Principal Certifier for approval prior to the issue of any Construction Certificate. The zone of influence is to be defined as the horizontal distance from the edge of the excavation face to twice the excavation depth.

The dilapidation report and survey are to be prepared by a consulting structural/geotechnical engineer and a copy to be given to the owner of any affected adjoining property.

All costs incurred in achieving compliance with this condition shall be borne by the person entitled to act on this Consent.

In the event that access for undertaking the dilapidation survey is denied by an adjoining owner, the applicant **MUST DEMONSTRATE**, in writing, to the satisfaction of Council that all reasonable steps have been taken to obtain access and advise the affected property owner of the reason for the survey and that these steps have failed. Written concurrence must be obtained from Council in such circumstances.

Note: This documentation is for record keeping purposes only, and may be used by the developer or affected property owners to assist in any action required to resolve dispute(s) over damage to adjoining properties arising from the works. It is in the applicant's and adjoining owner's interest for it to be as full and detailed as possible.

(Reason: To record the condition of property/ies prior to the commencement of construction)

Dilapidation Survey Private Property (Neighbouring Buildings)

- C17. A photographic survey and dilapidation report of adjoining properties No's. 178B, 182 and 186 Kurraba Road detailing the physical condition of those properties, both internally and externally, including, but not limited to, such items as walls, ceilings, roof, structural members and other similar items, **MUST BE** submitted to the Principal Certifier for approval prior to the issue of any Construction Certificate. The survey and report are to be prepared by an appropriately qualified person and a copy to be given to the owner of the adjoining property. A copy of the report is to be provided to Council, if Council is not the Principal Certifier, prior to the issue of any Construction Certificate.

All costs incurred in achieving compliance with this condition shall be borne by the person entitled to act on this Consent.

In the event that access for undertaking the photographic survey and dilapidation report is denied by an adjoining owner, the applicant **MUST DEMONSTRATE**, in writing, to the satisfaction of Council that all reasonable steps have been taken to obtain access and advise the affected property owner of the reason for the survey and that these steps have failed. Written concurrence must be obtained from Council in such circumstances.

Note: This documentation is for record keeping purposes only and may be used by an applicant or affected property owner to assist in any action required to resolve any dispute over damage to adjoining properties arising from the works. It is in the applicant's and adjoining owner's interest for it to be as full and detailed as possible.

(Reason: Proper management of records)

Tree Protection

- C18. To ensure the protection of all trees to be retained, the following measures are to be undertaken:
- a) All documentation for the Construction Certificate application must show the site trees to be retained, and retention of the adjoining trees, with their positions and diameters of trunks and crowns (canopies) to be clearly and accurately shown in relation to all levels of the proposed development.
 - b) All plans and correspondences must refer to the required compliance with the approved Tree Protection and Management Plan, and clearly show the assigned number of each tree on site, adjoining and Council land.
 - c) A Consulting Arboriculturist (“the project arboriculturist”), who holds a minimum Australian Qualification Framework Level 5 in Arboriculture, is a registered consulting member of a nationally recognised arboricultural organisation or association, and who does not remove or prune trees in the North Sydney local government area, shall be engaged before work commences for the duration of site preparation, demolition, construction and landscaping.
 - d) The project arboriculturist shall inspect, monitor, supervise, provide recommendations and written reports and certification relating to protection of the trees and compliance with the conditions of consent.
 - e) The contact details of the project arboriculturist shall be advised to council before work commences and maintained up to date for the duration of works. If a new project arborist is appointed details of the new project arborist shall be notified to council within 7 days.

(Reason: Tree protection measures)

Tree Protection Measures to be shown on Construction Drawings

- C19. The tree protection measures contained in the arborist report prepared by Treeism Arboricultural services dated July 2023, as amended by conditions contained herein shall be shown clearly on the Construction Certificate drawings. Plans and specifications showing the said tree protection measures must be submitted to the Certifying Authority for approval prior to the issue of any Construction Certificate. The Certifying Authority must ensure the construction plans and specifications submitted, referenced on and accompanying the issued Construction Certificate, fully satisfy the requirements of this condition.

(Reason: To ensure that appropriate tree protection measures are shown on construction drawings)

Protection of Trees

- C20. The following tree(s) are required to be protected and retained as part of the development consent in accordance with AS 4970-2009 – Protection of trees on development sites:

Tree	Location	Height
<i>T4 Gleditsia triacanthos</i>	Southern setback 178B Kurraba Rd	12x10m
<i>T5 Acer palmatum</i>	Front setback 184 Kurraba Rd	6x8m
<i>T9 Camellia japonica</i>	Eastern setback 184A Kurraba Rd	5x6m
<i>T11 Melaleuca 'revolution Gold'</i>	Northern setback 184 Kurraba Rd	4x5m
<i>T12 Glochidion ferdinandii</i>	Northern setback 186 Kurraba Rd	14x16m
<i>T10 Dicksonia antarctica</i>	Front 184 Kurraba Rd-to be transplanted	3x4m
<i>All Existing vegetation</i>	Adjacent to drive-184A Kurraba Rd	var

Plans and specifications complying with this condition must be submitted to the Certifying Authority for approval prior to the issue of any Construction Certificate. The Certifying Authority must ensure that the building plans and specifications submitted, referenced on and accompanying the issued Construction Certificate, fully satisfy the requirements of this condition.

Any tree(s) shown as being retained on the approved plans (regardless of whether they are listed in the above schedule or not) must be protected and retained in accordance with this condition.

(Reason: Protection of existing environmental and community assets)

Approval for removal of Trees

- C21. The following tree(s) are approved for removal in accordance with the development consent:

Trees that are acceptable to remove	Location	Height
<i>T1 Bougainvillea glabra</i>	Northern setback 186 Kurraba Rd	3.5x12m
<i>T2 Murraya paniculata</i>	Northern setback 186 Kurraba Rd	4x6m
<i>T3 Camellia japonica</i>	Northern setback 186 Kurraba Rd	3x3m
<i>T6 Schefflera arboricola</i>	Eastern setback 184 Kurraba Rd	3m
<i>T7 Lagerstroemia indica</i>	Eastern setback 184 Kurraba Rd	5x14m
<i>T8 Xcupressocyparis leylandii</i>	Eastern setback 184 Rd	4.5x5m

Removal of any other tree on the site is not approved, excluding species exempt under Council's Tree Preservation Order.

Any tree(s) shown as being retained on the approved plans (regardless of whether they are listed in the above schedule or not) must be protected and retained in accordance with this condition.

(Reason: Protection of existing environmental and community assets)

Pruning of Trees

- C22. All pruning works shall to the following tree(s) shall be undertaken under the guidance of an appropriately qualified arborist/tree surgeon in accordance with Australian Standard AS 4373-2007 - Pruning of Amenity Trees:

The arborist has determined that no canopy pruning shall be required for any protected tree, therefore no canopy pruning shall be permitted.

Trees that may Require Pruning	Location	Height
Nil		

A report detailing the measures to be employed during construction shall be submitted to the Certifying Authority for approval prior to the issue of any Construction Certificate.

All measures required by the said report must be complied with at all times in the carrying out of the development.

(Reason: To ensure the protection and longevity of existing significant trees)

Amendments to the Landscape Plan

- C23. The landscape plan must be amended as follows to provide an appropriate landscaped setting:

- An amended and detailed Landscape Plan shall be required. This plan shall include replacement planting of minimum 4 x canopy trees (75l min) capable of attaining a mature height of at least 7m. These trees shall be treated as specimen trees to be grown to maturity, and not form part of a hedge.
- *T10 Dicksonia antarctica* shown for removal shall be transplanted elsewhere on site.
- Areas shown as “existing established garden” where it cannot be demonstrated that existing planting will withstand proposed works, shall be readdressed with new planting shown on amended LS plan.
- Vegetation shall be used for screening and for softening of built form, particularly within northern setback, and at base of proposed sandstone wall forming eastern building line, lower ground floor.
- The proposed location of stockpile shown on Erosion and sediment Plan prepared by Antonio Caminiti dated 14/8/23 is within the TPZ of protected trees, and requires relocation outside of any such TPZ.

An amended landscape plan complying with this condition must be submitted to the Certifying Authority for approval prior to the issue of any Construction Certificate. The Certifying Authority must ensure that the amended landscape plan and other plans and specifications submitted fully satisfy the requirements of this condition.

(Reason: To ensure residential amenity)

Geotechnical Certificate

- C24. A certificate prepared by an appropriately qualified Geotechnical Engineer certifying that the existing rock formations and substrate on the site is capable of:
- a) Withstanding the proposed loads to be imposed;
 - b) Withstanding the extent of the proposed excavation, including any recommendations for shoring works that may be required to ensure the stability of the excavation;
 - c) Providing protection and support of adjoining properties; and
 - d) The provision of appropriate subsoil drainage during and upon completion of construction works

must be submitted for approval by the Certifying Authority prior to the issue of any Construction Certificate.

Recommendations made in the certified report must be complied with at all times.

Building plans and specifications submitted for approval with any construction certificate application must comply with (a), (b), (c) and (d) above and the certified report, including any recommendations made in the said certified report.

The Certifying Authority must ensure that the building plans and specifications submitted, referenced on and accompanying the issued Construction Certificate, fully satisfy the requirements of this condition.

(Reason: To ensure the structural integrity of the subject site and adjoining sites during the excavation process)

D. Prior to the Commencement of any Works (and continuing where indicated)

Public Liability Insurance - Works on Public Land

- D1. Any person or contractor undertaking works on public land must take out Public Risk Insurance with a minimum cover of \$20 million in relation to the occupation of public land and the undertaking of approved works within Council's road reserve or public land, as approved by this consent. The Policy is to note and provide protection/full indemnification for North Sydney Council, as an interested party. A copy of the Policy must be submitted to Council prior to commencement of any works. The Policy must be valid for the entire period that the works are being undertaken.

(Note: Applications for hoarding permits, vehicular crossings etc will require evidence of insurance upon lodgement of the application.)

(Reason: To ensure the community is protected from the cost of any claim for damages arising from works on public land)

Sydney Water Approvals

- D2. Prior to the commencement of any works, the approved plans must be submitted to Sydney Water to determine whether the development application will affect Sydney Water's sewer and water mains, stormwater drains and/or easements, and if further requirements need to be met. The Certifying Authority must ensure that Sydney Water has appropriately stamped the plans before the commencement of building works.

(Note: **Sydney Water Building Plan Approvals** can be obtained from the Sydney Water Tap in™ online service. Building plans must be submitted to the Tap in™ to determine whether the development will affect any Sydney Water sewer or water main, stormwater drains and/or easement, and if further requirements need to be met. For further information visit <http://www.sydneywater.com.au/tapin/index.htm> or call 13 000 TAP IN (1300 082 746) for further information.)

(Reason: To ensure compliance with Sydney Water requirements)

Asbestos Material Survey

- D3. Prior to the commencement of any works, a report must be prepared by a suitably qualified person in relation to the existing building fabric to be demolished and/or disturbed identifying the presence or otherwise of asbestos contamination and, if asbestos contamination is present, making recommendations as to the work required to safely address the contamination.

Any demolition works or other works identified in the report as having to be carried out must be carried out in accordance with the recommendations of the report and the following:

- a) the removal of asbestos must be undertaken by a WorkCover licensed contractor;
- b) all removal must be in strict accordance with the requirements of the WorkCover Authority in relation to the removal, handling and disposal of material containing asbestos and any Work Safe Australia requirements.
- c) during the removal of any asbestos a sign stating "DANGER ASBESTOS REMOVAL IN PROGRESS" must be erected in a visible position at the boundary of the site; and
- d) Waste disposal receipts must be provided to the Certifying Authority as proof of correct disposal of asbestos laden waste.

The report must be submitted to the Certifying Authority for approval prior to the issue of any Construction Certificate. The Certifying Authority must ensure that the report, and other plans, referenced on and accompanying the issued Construction Certificate, fully satisfy the requirements of this condition.

(Reason: To ensure the long-term health of workers on site and occupants of the building is not put at risk unnecessarily)

Commencement of Works' Notice

- D4. Building work, demolition or excavation in accordance with this development consent must not be commenced until the developer has given at least two days' notice to North Sydney Council of the person's intention to commence building work, demolition or excavation in accordance with this development consent.

(Reason: To ensure appropriate safeguarding measures are in place prior to the commencement of any building work, demolition or excavation)

Tree Protection

- D5. The tree protection measures detailed in the approved Tree Protection and Management Plan, and as directed by the project arboriculturist shall be established before work commences.

(Reason: To ensure that the stability and ongoing viability of trees being retained are not compromised Tree protection measures)

Protection of Trees

- D6. All trees that are specifically nominated to be retained by notation on plans or by condition as a requirement of this consent must be maintained and protected during demolition, excavation and construction on the site in accordance with AS4970-2009 (Protection of trees on development sites). A report containing recommendations, and methods of tree protection prepared by an appropriately qualified person must be provided to the Certifying Authority for approval by an appropriately qualified person prior to commencement of any works on the site. Any recommendations must be undertaken for the duration of works on the site.

Sensitive construction techniques including hand excavation, pier & beam construction & flexible location of piers/footings shall be used within the TPZ of any protected tree. No roots greater than 40mm shall be cut. No stormwater or any other underground services shall be directed through the TPZ of any protected tree.

(Reason: To ensure compliance with the requirement to retain significant planting on the site)

Project Arborist Engaged

- D7. • The project arboriculturist shall inspect tree protection measures and certify in writing to the Principal Certifying Authority the measures comply with the approved Tree Protection Plan and as directed by the project arboriculturist before work commences.
- The project arboriculturist shall provide guidance and oversight of tree protection and management to ensure that the stability and ongoing viability of trees being retained is not compromised.

- The project arboriculturist must contact the tree pruning contractor and Council's Tree Management Officer (giving at least 2 working days' notice) to arrange a joint site meeting, prior to commencing any pruning, to determine the exact location and extent of pruning that is permissible, with the tree pruning contractor to comply with any instructions issued by Council, acting reasonably.
- Any pruning must be undertaken by a practicing arborist with a minimum Australian Qualification Framework Level 3 in arboriculture, in accordance with the principles of the Australian Standard AS 4373-2007 'Pruning of Amenity Trees,' and the NSW Work Cover Code of Practice for the Amenity Tree Industry (1998), as well as any instructions issued on site by Council, acting reasonably.
- The practicing arborist must keep a log of dates and times of when they attended the site, the type of works that were performed, and must form part of the certification required prior to Occupation.

(Reason: Tree protection measures)

Temporary Fences and Tree Protection

- D8. All protected trees on-site that are specifically nominated to be retained by notation on plans or by condition as a requirement of this consent must be tagged with luminous tape or the like for purposes of identification prior to demolition, excavation or construction works and must remain so for the duration of works on the site. No materials or builder's waste are to be stored in the vicinity of the nominated tree/trees at any time.

Appropriate fencing or barricades in accordance with AS4970-2009 (Protection of trees on development sites), not less than the distance shown in the schedule hereunder, must be installed to the satisfaction of the Certifying Authority prior to demolition or commencement of any works and must be maintained for the duration of the works.

(Reason: To protect the trees to be retained on the site during construction works)

E. *During Demolition and Building Work*

Parking Restrictions

- E1. Existing public parking provisions in the vicinity of the site must be maintained at all times during works. The placement of any barriers, traffic cones, obstructions or other device in the road shoulder or kerbside lane is prohibited without the prior written consent of Council. Changes to existing public parking facilities/restrictions must be approved by the North Sydney Local Traffic Committee. The Developer will be held responsible for any breaches of this condition and will incur any fines associated with enforcement by Council regulatory officers.

(Reason: To ensure that existing kerbside parking provisions are not compromised during works)

Road Reserve Safety

- E2. All public footways and roadways fronting and adjacent to the site must be maintained in a safe condition at all times during the course of the development works, with no obstructions caused to the said footways and roadways. Construction materials and plant must not be stored in the road reserve without approval of Council. A safe pedestrian circulation route and a pavement/route free of trip hazards must be maintained at all times on or adjacent to any public access ways fronting the construction site.

Where public infrastructure is damaged, repair works must be carried out in when and as directed by Council officers (at full Developer cost). Where pedestrian circulation is diverted on to the roadway or verge areas, clear directional signage and protective barricades must be installed in accordance with AS1742-3 (1996) "Traffic Control Devices for Work on Roads". **If pedestrian circulation is not satisfactorily maintained across the site frontage, and action is not taken promptly to rectify the defects, Council may undertake proceedings to stop work.**

(Reason: Public Safety)

Temporary Disposal of Stormwater Runoff

- E3. During construction, stormwater runoff must be disposed in a controlled manner that is compatible with the erosion and sediment controls on the site. Immediately upon completion of any impervious areas on the site (including roofs, driveways, paving) and where the final drainage system is incomplete, the necessary temporary drainage systems must be installed to reasonably manage and control runoff as far as the approved point of stormwater discharge. Such ongoing measures must be to the satisfaction of the Certifying Authority.

(Reason: Stormwater control during construction)

Removal of Extra Fabric

- E4. Should any portion of the existing building, trees, or curtilage of the site which is indicated on the approved plans to be retained be damaged for whatever reason, all the works in the area of the damaged portion are to cease and written notification of the damage is to be given to Council forthwith. No work is to resume until the written approval of Council to do so is obtained. Failure to comply with the provisions of this condition may result in the Council taking further action including legal proceedings if necessary.

(Reason: To ensure compliance with the terms of this development consent)

Dust Emission and Air Quality

- E5. The following must be complied with at all times:
- (a) Materials must not be burnt on the site.

- (b) Vehicles entering and leaving the site with soil or fill material must be covered.
- (c) Dust suppression measures must be carried out to minimise wind-borne emissions in accordance with the NSW Department of Housing's 1998 guidelines – Managing Urban Stormwater: Soils and Construction.
- (d) Odour suppression measures must also be carried out where appropriate so as to prevent nuisance occurring at adjoining properties.

(Reason: To ensure residential amenity is maintained in the immediate vicinity)

Noise and Vibration

- E6. The works must be undertaken in accordance with the "Interim Construction Noise Guideline," published by the NSW Environment Protection Authority, to ensure excessive levels of noise and vibration do not occur so as to minimise adverse effects experienced on any adjoining land.

(Reason: To ensure residential amenity is maintained in the immediate vicinity)

Applicant's Cost of Work on Council Property

- E7. The Applicant must bear the cost of all works associated with the development that occurs on Council's property, including the restoration of damaged areas.

(Reason: To ensure the proper management of public land and funds)

No Removal of Trees on Public Property

- E8. No trees on public property (footpaths, roads, reserves, etc.) unless specifically approved by this consent shall be removed or damaged during construction including for the erection of any fences, hoardings or other temporary works.

(Reason: Protection of existing environmental infrastructure and community assets)

Special Permits

- E9. Unless otherwise specifically approved in writing by Council, all works, processes, storage of materials, loading and unloading associated with the development must occur entirely on the property.

The developer, owner or builder may apply for specific permits available from Council's Customer Service Centre for the undermentioned activities on Council's property. In the event that a permit is granted by Council for the carrying out of works, processes, storage of materials, loading and unloading associated with the development on Council's property, the development must be carried out in accordance with the requirements of the permit. A minimum of forty-eight (48) hours' notice is required for any permit:

1) **On-street mobile plant**

E.g., cranes, concrete pumps, cherry-pickers, etc. - restrictions apply to the hours of operation, the area of operation, etc. Separate permits are required for each occasion and each piece of equipment. It is the developer's, owner's and builder's responsibilities to take whatever steps are necessary to ensure that the use of any equipment does not violate adjoining property owner's rights.

2) **Hoardings**

Permits are required to erect Class A and Class B hoardings. If an 'A' Class hoarding is to alienate a section of Council's property, that section will require a permit for the occupation of Council's property.

3) **Storage of building materials and building waste containers (skips) on Council's property**

Permits to utilise Council property for the storage of building materials and building waste containers (skips) are required for each location. Failure to obtain the relevant permits will result in the building materials or building waste containers (skips) being impounded by Council with no additional notice being given. Storage of building materials and waste containers on open space reserves and parks is prohibited.

4) **Kerbside restrictions, construction zones**

Attention is drawn to the existing kerbside restrictions adjacent to the development. Should alteration of existing kerbside restrictions be required, or the provision of a construction zone, the appropriate application must be made and the fee paid to Council. Alternatives to such restrictions may require referral to Council's Traffic Committee and may take considerable time to be resolved. An earlier application is suggested to avoid delays in construction programs.

(Reason: Proper management of public land)

Construction Hours

E10. Construction activities and works approved under this consent must be restricted to within the hours stipulated in the following table:

Standard Construction Hours		
Location	Day	Hours
All zones	Monday - Friday	7.00am - 5.00pm
	Saturday	8.00am - 1.00pm
	Sunday Public holiday	No work permitted

Construction activities for development approved under this consent must be carried out in accordance with the standard construction hours above, the EPA Noise Policy for Industry 2017 and any Construction Noise Management Plan required under this consent.

In the event of breach to the approved hours of construction Council take may take enforcement action under Part 9 of the EP & A Act 1979 and in accordance with Council's adopted Compliance & Enforcement Policy.

(Reason: To ensure that works do not interfere with reasonable amenity expectations of residents and the community)

Installation and Maintenance of Sediment Control

E11. Erosion and sediment controls must be installed and maintained at all times in accordance with the Sediment and erosion control plan submitted and approved with the Construction Certificate

Erosion and sediment measures must be maintained in accordance with the publication Managing Urban Stormwater: Soils and Construction (4th edition, Landcom, 2004), commonly referred to as the "Blue Book" and can only be removed when development activities have been completed and the site fully stabilised.

(Reason: To protect the environment from the effects of sedimentation and erosion from development sites)

Sediment and Erosion Control Signage

E12. A durable sign must be erected during building works in a prominent location on site, warning of penalties should appropriate erosion and sedimentation control devices not be maintained. A sign of the type referred to in this condition is available from Council.

(Reason: To protect the environment from the effects of sedimentation and erosion from development sites)

Site Amenities and Facilities

E13. Where work involved in the erection and demolition of a building is being carried out, amenities which satisfy applicable occupational health and safety and construction safety regulations, including any WorkCover Authority requirements, must be provided and maintained at all times. The type of work-place determines the type of amenities required.

Further information and details can be obtained from the Internet at www.workcover.nsw.gov.au

(Reason: To ensure the health and safety of the community and workers on the site)

Health and Safety

- E14. All work undertaken must satisfy applicable occupational health and safety and construction safety regulations, including any WorkCover Authority requirements to prepare a health and safety plan. Site fencing must be installed sufficient to exclude the public from the site. Safety signs must be erected that warn the public to keep out of the site and provide a contact telephone number for enquiries.

Further information and details regarding occupational health and safety requirements for construction sites can be obtained from the internet at www.workcover.nsw.gov.au.

(Reason: To ensure the health and safety of the community and workers on the site)

Prohibition on Use of Pavements

- E15. Building materials must not be placed on Council's footpaths, roadways, parks or grass verges, (unless a permit is obtained from Council beforehand). A suitable sign to this effect must be erected adjacent to the street alignment.

(Reason: To ensure public safety and amenity on public land)

Plant and Equipment Kept Within Site

- E16. All plant and equipment used in the undertaking of the development/ works, including concrete pumps, wagons, lifts, mobile cranes, hoardings etc, must be situated within the boundaries of the site (unless a permit is obtained from Council beforehand) and so placed that all concrete slurry, water, debris and the like must be discharged onto the building site, and is to be contained within the site boundaries.

Details of Council requirements for permits on public land for standing plant, hoardings, storage of materials and construction zones and the like are available on Council's website at www.northsydney.nsw.gov.au.

(Reason: To ensure public safety and amenity on public land)

Waste Disposal

- E17. All records demonstrating the lawful disposal of waste must be retained and kept readily accessible for inspection by regulatory authorities such as North Sydney Council and the Environmental Protection Authority.

(Reason: To ensure the lawful disposal of construction and demolition waste)

Asbestos Removal

- E18. All demolition works involving the removal and disposal of asbestos cement must only be undertaken by contractors who hold a current WorkCover Asbestos or “Demolition Licence” and a current WorkCover “Class 2 (Restricted) Asbestos Licence and removal must be carried out in accordance with National Occupational Health and Safety Commission.

(Reason: To ensure works are carried out in accordance with relevant WorkCover requirements)

Service Adjustments

- E19. The adjustment or inclusion of any new utility service or facilities must be carried out by an appropriately contractor in accordance with the requirements of the relevant utility authority.

These works shall be at no cost to Council. It is the Applicant’s responsibility to contact the relevant utility authorities to ascertain the impacts of the proposal upon utility services prior to the commencement of any work, including demolition (including water, phone, gas and the like).

Council accepts no responsibility for any impact on or influence upon utility services provided by another authority.

(Reason: To ensure the service requirements are met)

Noxious Plants

- E20. All lantana, privet, rubber trees, asthma weed, and other declared noxious plants on the site, must be eradicated before the commencement of landscape works.

(Reason: To ensure that plants identified as weed species are not allowed to proliferate or interfere with a quality landscaping outcome)

Re-use of Sandstone

- E21. Sandstone blocks (if any) removed from the site are to be either stored for re-use on site or offered to Council in the first instance.

Note: The provisions of the Heritage Act may also apply to altering any sandstone elements on any site)

(Reason: To allow for preservation of cultural resources within the North Sydney Council area)

No Work on Public Open Space

E22. No work can be undertaken within adjoining public lands (ie. Parks, Reserves, Roads etc) without the prior written consent of Council. In this regard the developer is to liaise with Council prior to the commencement of any design works or preparation of a Construction and Traffic Management Plan.

(Reason: Protection of existing public infrastructure and land and to ensure public safety and proper management of pub

No Removal of Trees on Public Property

E23. No trees on public property (footpaths, roads, reserves, etc.) unless specifically approved by this consent shall be removed or damaged during construction including for the erection of any fences, hoardings or other temporary works.

(Reason: Protection of existing environmental infrastructure and community assets)

Protection of Trees

E24. All trees required to be retained, as part of this consent must be protected from any damage during construction works in accordance with AS4970-2009. All recommendations contained within the tree report prepared by Treeism Arboricultural services dated July 2023, as amended by conditions contained herein must be implemented for the duration of the works.

In the event that any tree required to be retained is damaged during works on the site, notice of the damage must be given to Council forthwith.

Notes:

- a. If the nominated tree is damaged to a significant degree or removed from the site without prior written approval being obtained from Council, the issuing of fines or legal proceedings may be commenced for failure to comply with the conditions of this consent.
- b. An application to modify this consent pursuant to Section 96 of the Environmental Planning and Assessment Act 1979 will be required to address the non-compliance with any of the conditions of consent relating to the retention of nominated trees, and Council may require tree replenishment.

(Reason: Protection of existing environmental infrastructure and community assets)

Trees to be Removed

E25. All trees on the site must be protected and retained save for those expressly identified below as being approved for removal: -

Trees that are acceptable to remove	Location	Height
<i>T1 Bougainvillea glabra</i>	Northern setback 186 Kurraba Rd	3.5x12m
<i>T2 Murraya paniculata</i>	Northern setback 186 Kurraba Rd	4x6m
<i>T3 Camellia japonica</i>	Northern setback 186 Kurraba Rd	3x3m
<i>T6 Schefflera arboricola</i>	Eastern setback 184 Kurraba Rd	3m
<i>T7 Lagerstroemia indica</i>	Eastern setback 184 Kurraba Rd	5x14m
<i>T8 Xcupressocyparis leylandii</i>	Eastern setback 184 Rd	4.5x5m

(Reason: To ensure compliance with the terms of this development consent)

F. Prescribed Conditions imposed under EP&A Act and Regulations and other relevant Legislation

National Construction Code

F1. All building work must be carried out in accordance with the provisions of the National Construction Code.

(Reason: Prescribed - Statutory)

Home Building Act

- F2. 1) Building work that involves residential building work (within the meaning and exemptions provided in the Home Building Act 1989) for which the *Home Building Act 1989* requires there to be a contract of insurance under Part 6 of that Act must not be carried out unless the Principal Certifier for the development to which the work relates has given North Sydney Council written notice of the contract of insurance being issued and of the following:
- a) in the case of work for which a principal contractor is required to be appointed:
 - i) the name and licence number of the principal contractor, and
 - ii) the name of the insurer by which the work is insured under Part 6 of that Act, or
 - (b) in the case of work to be done by an owner-builder:
 - (i) the name of the owner-builder, and
 - (ii) if the owner-builder is required to hold an owner-builder permit under that Act, the number of the owner-builder permit.

- 2) If arrangements for doing residential building work are changed while the work is in progress such that the information submitted to Council in accordance with this condition is out of date, work must cease, and no further work may be carried out unless the Principal Certifier for the development to which the work relates (not being the Council), has given the Council written notice of the updated information.

Note: A certificate purporting to be issued by an approved insurer under Part 6 of the Home Building Act 1989 that states that a person is the holder of an insurance policy issued for the purposes of that Part is, for the purposes of this clause, sufficient evidence that the person has complied with the requirements of that Part.

(Reason: Prescribed - Statutory)

Appointment of a Principal Certifying Authority (PCA)

- F3. Building work, **demolition** or excavation in accordance with the development consent must not be commenced until the developer has appointed a Principal Certifier for the building work in accordance with the provisions of the EP&A Act and its Regulations.

(Reason: Statutory; To ensure appropriate safeguarding measures are in place prior to the commencement of any building work, demolition or excavation)

Construction Certificate

- F4. Building work, demolition or excavation in accordance with the development consent must not be commenced until a Construction Certificate for the relevant part of the building work has been issued in accordance with the provisions of the EP&A Act and its Regulations.

(Reason: Statutory; To ensure appropriate safeguarding measures are in place prior to the commencement of any building work, demolition or excavation)

Occupation Certificate

- F5. A person must not commence occupation or use of the whole or any part of a new building (new building includes an altered portion of, or an extension to, an existing building) unless an Occupation Certificate has been issued in relation to the building or part. Only the Principal Certifier appointed for the building work can issue an Occupation Certificate.

(Reason: Statutory)

Mandatory Critical Stage Inspections

F6. Building work must be inspected by the Principal Certifier on the critical stage occasions prescribed by the EP&A Act and its Regulations, and as directed by the appointed Principal Certifier.

(Reason: Statutory)

Excavation/Demolition

- F7.
- 1) All excavations and backfilling associated with the erection or demolition of a building must be executed safely and in accordance with appropriate professional standards.
 - 2) All excavations associated with the erection or demolition of a building must be properly guarded and protected to prevent them from being dangerous to life or property.
 - 3) Demolition work must be undertaken in accordance with the provisions of AS2601- Demolition of Structures.

(Reason: To ensure that work is undertaken in a professional and responsible manner and protect adjoining property and persons from potential damage)

Protection of Public Places

- F8.
- 1) A hoarding and site fencing must be erected between the work site and adjoining public place.
 - 2) If necessary, an awning is to be erected, sufficient to prevent any substance from, or in connection with, the work falling into the public place.
 - 3) The work site must be kept lit between sunset and sunrise if it is likely to be hazardous to persons in the public place.
 - 4) Any such hoarding, fence or awning is to be removed when the work has been completed.
 - 5) No access across public reserves or parks is permitted.

Note: Prior to the erection of any temporary fence or hoarding over property owned or managed by Council, written approval must be obtained. Any application needs to be accompanied by plans indicating the type of hoarding and its layout. Fees are assessed and will form part of any approval given. These fees must be paid prior to the approval being given. Approval for hoardings will generally only be given in association with approved building works, maintenance or to ensure protection of the public. An application form for a Hoarding Permit can be downloaded from Council's website.

(Reason: To ensure public safety and the proper management of public land)

Site Sign

- F9. 1) A sign must be erected in a prominent position on the site
- a) stating that unauthorised entry to the work site is prohibited;
 - b) showing the name of the principal contractor (or person in charge of the work site), and a telephone number at which that person may be contacted at any time for business purposes and outside working hours; and
 - c) showing the name, address and telephone number of the Principal Certifier for the work.
- 2) Any such sign must be maintained while to building work or demolition work is being carried out but must be removed when the work has been completed.

(Reason: Prescribed - Statutory)

G. Prior to the Issue of an Occupation Certificate

Infrastructure Repair and Completion of Works

- G1. Prior to the issue of any Occupation Certificate any and all works relating to the development:
- a. in the road reserve must be fully completed; and
 - b. to repair and make good any damaged public infrastructure caused as a result of any works relating to the development (including damage caused by, but not limited to, delivery vehicles, waste collection, contractors, sub-contractors, concrete vehicles) must be fully repaired;

to the satisfaction of Council Engineers at no cost to Council. Council's development engineer must be contacted to arrange inspections of the completed works in the Public Domain.

(Reason: Maintain quality of Public assets)

Damage to Adjoining Properties

- G2. All precautions must be taken to prevent any damage likely to be sustained to adjoining properties. Adjoining owner property rights and the need for owner's permission must be observed at all times, including the entering onto land for the purpose of undertaking works.

(Reason: To ensure adjoining owner's property rights are protected)

Utility Services

- G3. All utility services shall be adjusted to the correct levels and/or location/s required by this consent, prior to issue of an occupation certificate. This shall be at no cost to Council.

(Reason: To ensure compliance with the terms of this consent)

BASIX Completion Certificate

- G4. In accordance with Section 45 of the Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021, prior to issuing a final occupation certificate the Principal Certifier must provide a BASIX completion receipt.

(Reason: To ensure compliance with the Regulations)

Asbestos Clearance Certificate

- G5. For building works where asbestos based products have been removed or altered, an asbestos clearance certificate signed by an appropriately qualified person (being an Occupational Hygienist or Environmental Consultant) must be submitted to and approved by the Principal Certifier (and a copy forwarded to Council if it is not the Principal Certifier) for the building work prior to the issue of any Occupation Certificate, the asbestos clearance certificate must certify the following: -

- a) the building/ land is free of asbestos; or
- b) the building/ land has asbestos that is presently deemed safe.

The certificate must also be accompanied by tipping receipts, which detail that all asbestos waste has been disposed of at an approved asbestos waste disposal depot. If asbestos is retained on site the certificate must identify the type, location, use, condition and amount of such material.

Note: Further details of licensed asbestos waste disposal facilities can be obtained from www.epa.nsw.gov.au

(Reason: To ensure that building works involving asbestos based products are safe for occupation and will pose no health risks to occupants)

Landscaping

- G6. The landscaping shown in the approved landscape plan numbered LAO1/1-K26714 prepared by Michael Siu dated 26 October 2023 must be completed prior to the issue of any Occupation Certificate as amended by this consent.

(Reason: To ensure compliance)

Compliance with Certain Conditions

- G7. Prior to the issue of any Occupation Certificate C11 must be certified as having been implemented on site and complied with.

(Reason: To ensure the development is completed in accordance with the requirements of this consent)

Certification of Tree Condition

- G21. Prior to the issue of an Occupation Certificate, a report prepared by an appropriately qualified person (being an arborist or the like) must be submitted to the Certifying Authority, describing the health of the tree(s) specifically nominated below: -

Tree	Location	Height
T4 <i>Gleditsia triacanthos</i>	Southern setback 178B Kurraba Rd	12x10m
T5 <i>Acer palmatum</i>	Front 184 Kurraba Rd	6x8m
T9 <i>Camellia japonica</i>	Eastern setback 184A Kurraba Rd	5x6m
T11 <i>Melaleuca 'revolution Gold'</i>	Northern setback 184 Kurraba Rd	4x5m
T12 <i>Glochidion ferdinandii</i>	Northern setback 186 Kurraba Rd	14x16m
T10 <i>Dicksonia antarctica</i>	Front 184 Kurraba Rd-to be transplanted	3x4m
All Existing vegetation	Adjacent to drive-184A Kurraba Rd	var

The report must detail the condition and health of the nominated tree(s) upon completion of the works, and shall certify that the tree(s) has/have not been significantly damaged during the works on the site, and has/have reasonable prospects for survival.

(Reason: To ensure compliance with the terms of this consent)

I. Ongoing/Operational Conditions

Single Occupancy

- I1. Nothing in this consent authorises the use of the premises other than for a single occupancy.

(Reason: To ensure compliance with the terms of this consent)

Maintenance of Approved Landscaping

12. The owner of the premises at 184 Kurraba Road is to maintain the landscaping approved by this consent in accordance with the approved landscape plans.

Any replacement plants required shall be advanced in growth and be selected to maintain the anticipated mature height, canopy density and nature of those plant species as originally approved.

(Reason: To ensure maintenance of the amenity, solar access and views of adjoining properties)