

**NSLPP MEETING HELD ON 05/06/24****Attachments:**

1. Amended Architectural Plans
2. Design Changes Schedule
3. Amended Landscape Plans
4. Amended Clause 4.6 Variation Request
5. Letter to Panel

ADDRESS/WARD: 184B, 186 and 190 Kurraba Road, Kurraba Point

APPLICATION No: DA 343/22

PROPOSAL: Demolition of a dwelling house, two (2) dual occupancies and a swimming pool, and construction of two x residential flat buildings and 2 x dual occupancies, with basement parking and access provided by car lifts, associated landscaping and civil works and internal boundary realignment and subdivision.

PLANS REF:

Drwg No.	Rev	Title	Drawn By	Dated
A001	8	Project Summary	Koichi Takada Architects	02.02.2024
A009	4	Boundary Alignment Plan	Koichi Takada Architects	02.02.2024
A010	10	Zoning Plan	Koichi Takada Architects	02.02.2024
A011	5	Demolition Plan	Koichi Takada Architects	02.02.2024
A012	11	Site Plan	Koichi Takada Architects	02.02.2024
A014	7	Site Analysis Plan	Koichi Takada Architects	02.02.2024
A101	14	R2 Ground Floor	Koichi Takada Architects	02.02.2024
A102	14	R2 Level 1	Koichi Takada Architects	02.02.2024
A103	14	R2 Level 2	Koichi Takada Architects	02.02.2024
A104	15	R4 Lower Ground	Koichi Takada Architects	02.02.2024
A105	14	R4 Ground	Koichi Takada Architects	02.02.2024
A106	16	R4 Level 1	Koichi Takada Architects	02.02.2024
A107	15	R4 Level 2	Koichi Takada Architects	02.02.2024
A108	14	R4 Level 3	Koichi Takada Architects	02.02.2024
A109	14	R4 Roof	Koichi Takada Architects	02.02.2024
A110	8	Building Height	Koichi Takada Architects	02.02.2024
A200	4	Overall North Elevation	Koichi Takada Architects	02.02.2024
A201	10	Elevation - East	Koichi Takada Architects	02.02.2024
A202	10	Elevation – Norths	Koichi Takada Architects	02.02.2024
A203	10	Elevation – South	Koichi Takada Architects	02.02.2024
A204	11	Elevation – West	Koichi Takada Architects	02.02.2024
A205	8	Elevation – Building A & C South	Koichi Takada Architects	02.02.2024
A206	7	Elevation – Middle Looking South	Koichi Takada Architects	02.02.2024
A301	9	Section 1 – North Section	Koichi Takada Architects	02.02.2024
A302	9	Section 2 – South Section	Koichi Takada Architects	02.02.2024
A303	9	Section 3 – R4 Zone	Koichi Takada Architects	02.02.2024
A304	9	Section 4 – R2 Zone	Koichi Takada Architects	02.02.2024
A401	7	Combined Site Calculations	Koichi Takada Architects	02.02.2024
A403	5	Landscape & Excavation Area Calculation	Koichi Takada Architects	02.02.2024
A410	8	Height Plane Diagrams (Bettar)– R4 Zone	Koichi Takada Architects	02.02.2024
A411	7	Height Plane Plan (Bettar) – R4 Zone	Koichi Takada Architects	02.02.2024
A412	7	R4 DCP Envelope (Side Boundary)	Koichi Takada Architects	02.02.2024
A414	4	R4 DCP Envelope (Rear Boundary)	Koichi Takada Architects	02.02.2024
A415	8	Height Plane Diagram (Bettar) – R2 Zone	Koichi Takada Architects	02.02.2024
A416	7	Height Plane Plan (Bettar)– R2 Zone	Koichi Takada Architects	02.02.2024

A420	6	Cross Ventilation	Koichi Takada Architects	02.02.2024
A421	6	36 Degree Height Plane Diagrams – R4 Zone	Koichi Takada Architects	02.02.2024
A450	8	Shadow Diagrams – Dec 21 1/2	Koichi Takada Architects	02.02.2024
A451	8	Shadow Diagrams – Dec 21 2/2	Koichi Takada Architects	02.02.2024
A452	8	Shadow Diagrams – June 21 1/2	Koichi Takada Architects	02.02.2024
A453	8	Shadow Diagrams – June 21 2/2	Koichi Takada Architects	02.02.2024
A455	6	Sun Eye View – Dec 21	Koichi Takada Architects	02.02.2024
A456	6	Sun Eye View – June 21	Koichi Takada Architects	02.02.2024
A458	8	GFA Diagrams – Building A & B (R4 Zone)	Koichi Takada Architects	02.02.2024
A459	8	GFA Diagrams – Building C & D (R2 Zone)	Koichi Takada Architects	02.02.2024
A475	8	Pre & Post Adaptable Unit Layout (APT A 001)	Koichi Takada Architects	02.02.2024
A476	8	Pre & Post Adaptable Unit Layout (APT B 001)	Koichi Takada Architects	02.02.2024
A481	4	Height Plane Diagram (Merman) – R4 Zone	Koichi Takada Architects	02.02.2024
A482	4	Height Plane Diagram (Merman) – R4 Zone	Koichi Takada Architects	02.02.2024
A483	3	Height Plane Diagram (Merman) – R2 Zone	Koichi Takada Architects	02.02.2024
A484	3	Height Plane Diagram (Merman) – R2 Zone	Koichi Takada Architects	02.02.2024
A500	5	Material Sample Board	Koichi Takada Architects	02.02.2024
A620	3	DCP Side and Rear Setback – Survey Points	Koichi Takada Architects	02.02.2024
A630	2	Bettar Height Blanket Levels	Koichi Takada Architects	02.02.2024
A650	2	Boundary Sections – Existing Levels	Koichi Takada Architects	02.02.2024
A660	1	Retaining Study	Koichi Takada Architects	02.02.2024
A661	2	Cut & Fill Diagram	Koichi Takada Architects	02.02.2024
A662	2	Floor Plan – View Points	Koichi Takada Architects	02.02.2024
A663	1	Indicative 3D Views	Koichi Takada Architects	02.02.2024
A690	2	Feasibility Study – 184A Kurraba Road – Option 1	Koichi Takada Architects	02.02.2024
A691	2	Cross Section – Option 1	Koichi Takada Architects	02.02.2024
A692	2	Feasibility Study – 184A Kurraba Road – Option 2	Koichi Takada Architects	02.02.2024
A691	2	Feasibility Study – 184A Kurraba Road – Option 2	Koichi Takada Architects	02.02.2024
A691	2	Cross Section – Option 2	Koichi Takada Architects	02.02.2024

OWNER: Kurraba Point Pty Ltd ATF Kurraba Point Road Unit Trust

APPLICANT: PB & Co

AUTHOR: Jonathan Joseph of Planning Ingenuity

DATE OF REPORT: 22 May 2024

DATE LODGED: 9 November 2022

AMENDED: 7 February 2024

RECOMMENDATION: Refusal

EXECUTIVE SUMMARY

This development application seeks approval for the demolition of existing structures and construction of two x residential flat buildings, two x dual occupancies, basement parking, landscaping, internal boundary realignment and subdivision. During the assessment process, a Request for Additional Information Letter was issued, and the proposal was amended.

Following receipt of an amended proposal, the application was assessed and recommended for refusal to the North Sydney Local Planning Panel ('NSLPP' or 'Panel'). On the 6 December 2023, the NSLPP deferred the application and requested the Applicant provide additional information responding to the reasons for refusal. The Panel provided the following direction:

Panel Determination

The Panel has resolved to defer the application to allow the Applicant the opportunity to address issues of concern. The applicant has until 31 January 2024 to submit further information, including amended plans. In the event further information is not received by Council the Panel will determine the application on the basis of the information at hand by electronic means.

Panel Reason

The Panel notes the applicant advised that despite the dual zoning of R2 and R4 the ultimate built form is proposed as a single integrated development, and the fact the development is permissible this doesn't preclude the RFB being considered as part of a mixed use development that would include the dual occupancies. The Applicant indicated the site will be consolidated but the panels notes that this cannot occur as the dual occupancies need to stand on their own allotments for them to be permitted, otherwise the built form on the R2 land would be otherwise categorised as multi-unit housing, which is prohibited development.

Given the development cannot be consolidated as one development, each lot must be assessed individually in reference to the landscaping and site coverage. In addition, the panel considers that the car lift should be integrated into building B.

The amended documentation incorporates a number of changes in response to the NSLPP deferral, including the following:

- Car lift integrated into Building B to accommodate an on-site waiting bay serving Buildings B and D;
- Building A and B reduced in size to improve landscaping, un-built upon area and site coverage;
- Entry to Buildings A and B revised to improve landscaping and un-built upon area compliance;
- Building C and D amended to ensure no encroachment into foreshore area;
- Separate calculations provided for each allotment as it relates to landscaping, un-built upon area and site coverage; and
- Additional information provided, including building height plane measurement, calculations.

Overall, the proposal seeks approval for the following:

- Site preparation works, including demolition of existing structures and excavation;
- Construction of two x residential flat buildings containing 1 x 2 bedroom, 4 x 3 bedroom and 1 x 4 bedroom apartments;
- Construction of two x dual occupancies (attached), containing 4 x 3 bedroom dwellings;
- Construction of one level of basement parking below each residential flat building and secure parking garages for each dual occupancy;
- Landscaping and associated works;
- Internal boundary realignment; and
- Subdivision.

Prior to and following the NSLPP deferral, Council's notification of the proposal attracted seventy-six (76) submissions in total raising concern with regard to various non-compliances, including permissibility, building height, building envelope, setbacks, landscaped area and site coverage, misleading or incorrect plans and documentation, traffic impacts and safety, construction traffic and safety, excavation impacts, stormwater impacts, privacy, solar impacts and view loss.

Determination of the application by the North Sydney Local Planning Panel is required due to the application receiving 10 or more unique objections.

The proposed development has been assessed with respect to the objects and relevant Sections of the EP&A Act, as well as the objectives, merit-based provisions, development standards and prescriptive controls of various State Environmental Planning Policies, the North Sydney Local Environmental Plan 2013 and the North Sydney Development Control Plan 2013. Other plans and policies were also considered such as the North Sydney Section 7.11 Contributions Plan.

The development complies with the majority of relevant development standards in North Sydney LEP 2013. However, the proposal seeks a minor variation to the maximum building height development standard where both the 8.5m and 12m standard applies within the site.–The development is generally consistent with the North Sydney DCP, however, there are a number of key non-compliances as discussed in this Report, which are made further inconclusive due to the lack of sufficient information.

Council's Design Excellence Panel has considered the proposal and the Panel's advice has generally been adopted in the amended development. It is noted that *State Environmental Planning Policy No 65 – Design Quality of Residential Apartment Development* (SEPP 65) does not apply to the subject development. That is, whilst each residential flat building exceeds three storeys in height, each building does not contain four or more dwellings. As such, SEPP 65 and the Apartment Design Guide (ADG) do not apply.

For the purposes of this Report, each lot has been assessed individually to avoid any jurisdictional permissibility issue and as directed by the NSLPP. Following the initial NSLPP deferral, a strict timeframe was provided for the Applicants to provide additional information which was extended by Council by one week at the request of the applicant based on consultant availability given the time of year. As outlined below, a number of critical documents have not been provided which does not allow for the full assessment of the application. Additionally, and as discussed throughout this Report, a number of key items are yet to be resolved. These are summarized as follows:

- Lack of sufficient information with regards to the North Sydney Local Environmental Plan 2013, most importantly as it relates to site isolation under Clause 6.12;
- Non-compliance and lack of sufficient information as it pertains to site coverage, landscaped area and rear setback and incline plane requirements (for the R4 zone) within the North Sydney Development Control Plan 2013;
- Insufficient information to approve the development and allow for the thorough and robust assessment of matters relating to the application, including;
 - No Valuation and Letter of Offer provided for No. 184A Kurraba Road, therefore not satisfying all requirements of Clause 6.12 of NSLEP;
 - No valid BASIX Certificate has been prepared and submitted with the amended proposal per the *State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004*, and cannot be approved;
 - No amended Survey Plan has been provided detailing the location and dimensions of the revised easements and as such, the proposal cannot be approved;
 - No swept paths have been provided to demonstrate that the vehicular entry and exit, including waiting bay for Buildings B and D, complies with the relevant Australian Standards;
 - No amended View Loss Assessment has been provided for the revised proposal, and does not account for the view impacts of a number of properties raised in the original assessment report and objections;
 - Amended Stormwater Plans have not been provided; and

The Amended Landscape Plan does not reflect the revised building design, namely, the modified car lift and vehicular access arrangement for Building B and D

DESCRIPTION OF PROPOSAL

This development application (as most recently amended) seeks approval for the demolition of existing structures and construction of two x residential flat buildings, two x dual occupancies, basement parking, landscaping, internal boundary realignment and subdivision at Nos. 184B-190 Kurraba Road, Kurraba Point. Specifically, the following is proposed:

- Site preparation works, including demolition and excavation of existing structures;
- Construction of two x residential flat buildings, including:
 - Building A (North R4 zone) which is four storeys in height and contains 1 x 2 bedroom and 2 x 3 bedroom apartments. This includes one level of basement parking with a total of 5 car spaces, including 4 resident and 1 visitor spaces;
 - Building B (South R4 zone) which is four storeys in height and contains 2 x 3 bedroom and 1 x 4 bedroom apartments. This includes one level of basement parking with a total of 6 car spaces, including 5 resident and 1 visitor spaces;
- Construction of two x dual occupancies (attached), including:
 - Building C (North R2 zone) containing a side-by-side dual occupancy with each dwelling containing 3 bedrooms. This includes two x double garages and roof top terraces;
 - Building D (South R2 zone) containing a side-by-side dual occupancy with each dwelling containing 3 bedrooms. This includes two x double garages and roof top terraces;
- Vehicle access to Buildings A/C and Buildings B/D provided via two separate car lifts (with on-site waiting bays) and easements;
- Landscaping and associated works;
- Internal boundary realignment; and
- Subdivision.



Figure 1: Photomontage as viewed from Kurraba Road

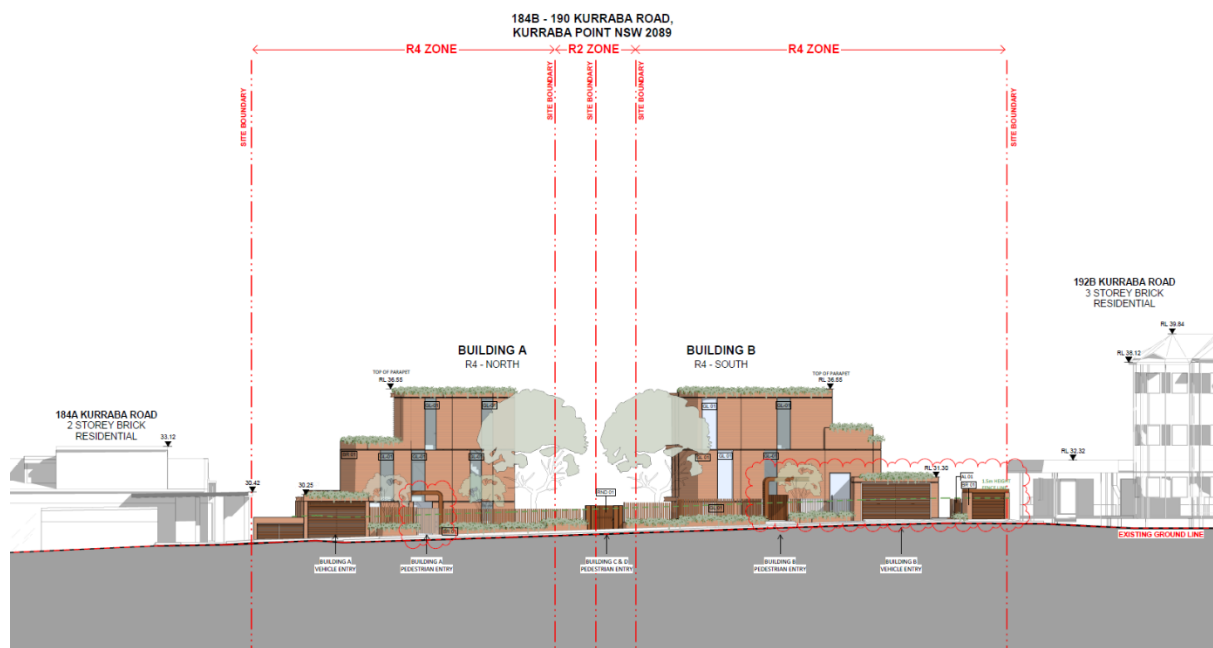


Figure 2: Kurraba Road Elevation



Figure 3: Waterway (Rear) Elevation

STATUTORY CONTROLS

North Sydney Local Environmental Plan 2013

- **Zoning** – R4 High Density Residential for land identified as Nos. 184B and 190 Kurraba Road. R2 Low Density Residential for land identified as No. 186 Kurraba Road.
- **Building Height** – R4 High Density Residential land is permitted a maximum building height of 12m. R2 Low Density Residential land is permitted a maximum building height of 8.5m.
- **Floor Space Ratio** – None.

- **Item of Heritage** – No.
- **In Vicinity of Item of Heritage** – The site is within the vicinity of numerous heritage items, including but not limited to I0667 ‘House’ at No. 174B Kurraba Road, I0668 ‘Gingie’ at No. 176 Kurraba Road, I0552 ‘Flat Building’ at 6 Baden Road, I0553 ‘Flat Building’ at 8 Baden Road, I0554 ‘Plaques commemorating Ben Boyd’, and I0669 ‘Site and remains of Port Jackson and Manly Steamship Company depot’.
- **Heritage Conservation Area** – No.

State Environmental Planning Policies

- State Environmental Planning Policy (Resilience and Hazards) 2021;
- State Environmental Planning Policy (Biodiversity and Conservation) 2021;
- State Environmental Planning Policy (Precincts – Eastern Harbour City) 2021, noting this is not applicable as discussed in this Report;
- State Environmental Planning Policy No 65 – Design Quality of Residential Apartment Development (2002 EPI 350), noting this is not applicable as discussed in this Report; and
- State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004.

Policy Controls

- North Sydney Development Control Plan 2013

CONSENT AUTHORITY

As this proposal has received more than 10 unique submissions, the consent authority for the purpose of determination of the development application is the North Sydney Local Planning Panel.

DESCRIPTION OF SITE AND LOCALITY

Subject Site:

The site is known as Nos. 184B, 186 and 190 Kurraba Road, Kurraba Point. It is legally described as follows:

- No. 184B Kurraba Road: SP 19950;
- No. 186 Kurraba Road: Lot 2 in DP 332334 and Lot 6 in DP 17452; and
- No. 190 Kurraba Road: Lot 1 in DP 332334.

The site has a total area of 3,343m² and is regular in shape with a splayed frontage to Kurraba Road of 45.665m. The land zoned R4 High Density Residential has an area of 1,414.2m², and the land zoned R2 Low Density Residential an area of 1,929m². The site has an eastern (rear) boundary of approximately 39m shared with the waterway.

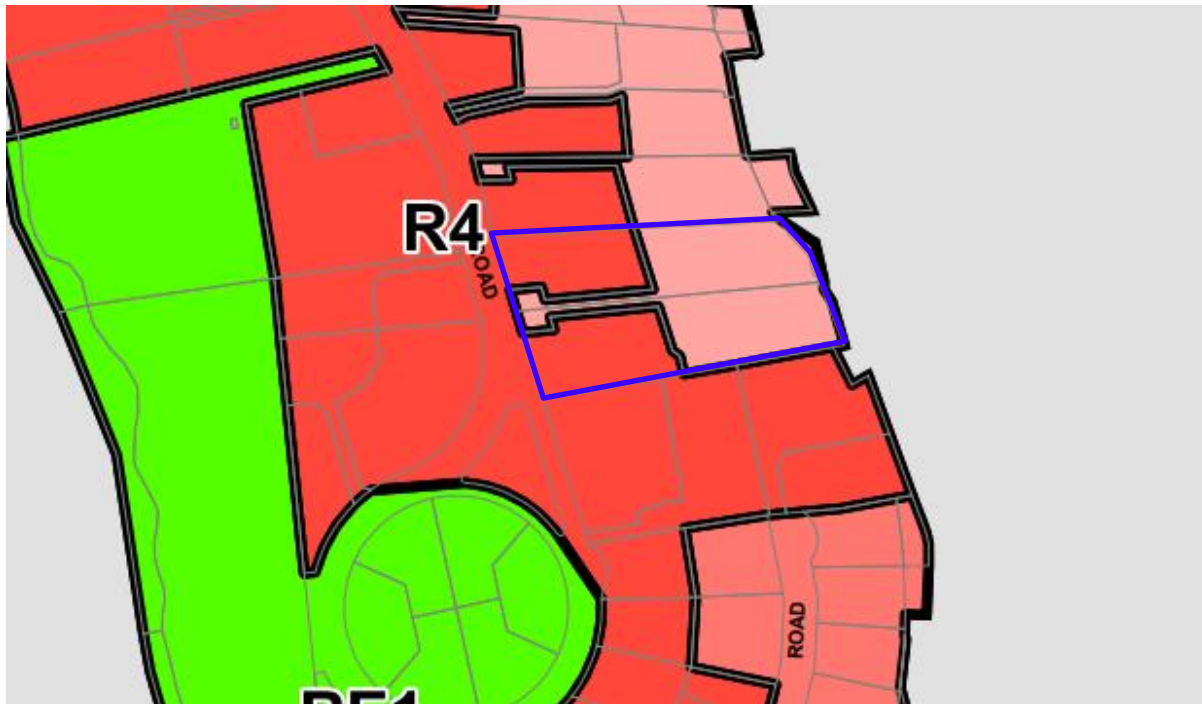


Figure 4: Land Zoning Map (Site edged in blue)

The site as a fall from the western (front) to eastern (rear) boundary of approximately 27m over the entire length of the site. Where the works are proposed, the site has a fall of approximately 18m from the western to eastern edges of the works footprint. The site also has a minor crossfall from the north-western to south-western corners of the site, along Kurraba Road. An aerial image of the site and surrounds is at **Figure 6**. The subject site contains 33 existing trees throughout, in addition to a number of trees located within the neighbouring allotments and in close proximity to the site boundaries.



Figure 5: Aerial image of subject site (Site edged in red) (Source: Nearmap Aerial photo dated 3 October 2023)

No. 184B Kurraba Road contains a two-storey brick dual occupancy with pitched tile roof. The building is located at-grade fronting Kurraba Road and presents to the streetscape as generally single storey, increasing to two storeys at the rear. Within the front setback is a single storey carport and at-grade parking area, with right-of-carriageway easement shared with No. 184A Kurraba Road to the east.

No. 186 Kurraba Road is a battle axe site containing a part two, part three storey rendered dwelling with metal roof and swimming pool adjacent to the waterway. The Kurraba Road frontage is occupied by two detached garage structures (one single and one double), with a driveway and stairs providing access to the dwelling at the rear. The dwelling is surrounded by a variety of landscaping and vegetation, with access provided to the jetty and waterway via existing stairs. A sandstone seawall is located along the length of the property's eastern boundary where it fronts the waterway.

No. 190 Kurraba Road contains an attached, two-storey brick dual occupancy with pitched tile roof. Fronting the public domain are two detached double garages and pedestrian accessways to the individual dwellings comprising the dual occupancy. There is existing vegetation within the setback addressing Kurraba Road and a balcony at the rear of the building.



Figure 6: Nos. 184B Kurraba Road as viewed from public domain in an easterly direction.



Figure 7: No. 186 Kurraba Road as viewed from public domain in an easterly direction.



Figure 8: No. 190 Kurraba Road as viewed from public domain in an easterly direction.



Figure 9: Subject site as viewed from the waterway (Source: Urbis, View Sharing Report)

The subject site is burdened by a number of easements. This is shown within the Survey Plan prepared by *LTS* and described as follows:

- A 7m wide right-of-carriageway providing for vehicular access to No. 184b Kurraba Road, and benefitting SP21234 (No. 184A Kurraba Road);
- A 0.915m wide drainage easement along the northern boundary of No. 186 Kurraba Road, benefitting SP 19950 (No. 184B Kurraba Road); and
- A 0.915m wide drainage easement along the southern boundary of No. 186 Kurraba Road, benefitting Lot 1 in DP 332334 (No. 190 Kurraba Road).

Surrounding Development:

The surrounding locality contains an eclectic mix of building types and architectural styles. A number of buildings within the locality are currently under construction or have recently been completed.

Directly to the north-west of the site is No. 184A Kurraba Road, which contains a two-storey dual occupancy development with detached carport. This property relies on an easement within the north-western corner of the site to allow for vehicular access.

Directly to the north-east of the site is No. 184 Kurraba Road, which is a battle-axe allotment containing a two storey brick dwelling with a frontage to the waterway and swimming pool below the foreshore building line. This site has the benefit of a consent for alterations and additions which has yet to be commenced.

Further to the north is No. 182 Kurraba Road. This property contains a residential flat building subject to a recent approval for substantial alterations and additions to the existing building. DA333/19 granted consent to alterations and additions to result in a five storey building containing 4 x 3 bedroom apartments, an eight-car stacker, excavation and landscaping. The works pertaining to this approval are complete.

Directly to the south of the subject site are Nos. 192 and 192A Kurraba Road and No. 23 Baden Road. No. 192 Kurraba Road is located to the south-west and contains a two storey multi-dwelling development. No. 192A Kurraba Road is located centrally to the south of the site and contains a three storey residential dwelling. To the south-east is No. 23 Baden Road which contains a six storey residential flat building.

To the west of the site and on the opposite side of Kurraba Road are a series of residential flat building developments. Specifically, No. 143 Kurraba Road contains a nine storey residential flat building with at-grade parking and No. 145 Kurraba Road contains a four storey residential flat building with at-grade parking. South-west of the site is Nos. 147-153 Kurraba Road which is the subject of a recent approval (DA255/19) for the construction of a six storey residential flat building with 25 apartments which has been completed. Further to the south and west is Hodgsons Lookout Park and Kurraba Reserve.

Directly to the east of the subject site is Shell Cove which forms part of Sydney Harbour.

The site is not located within a Heritage Conservation Area and does not contain any Heritage Items. The site is located within proximity to a number of heritage items, including the following:

- I0667 'House' at No. 174B Kurraba Road;
- I0668 'Gingie' at No. 176 Kurraba Road;
- I0552 'Flat Building' at No. 6 Baden Road;
- I0553 'Flat Building' at No. 8 Baden Road;
- I0554 'Plaques commemorating Ben Boyd'; and
- I0669 'Site and remains of Port Jackson and Manly Steamship Company depot'.

The site is located approximately 1.8km south of the Neutral Bay Town Centre and 2km east of the North Sydney CBD.

BACKGROUND

The history of the subject development application is summarised below:

9 November 2022	Lodgement of a Development Application (DA343/22) for demolition of a 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.
20 January 2023	DA343/22 was advertised for 21 days until 10 February 2023. A total of forty-two (42) submissions were received during the notification period.
24 January 2023	The application was referred to the Design Excellence Panel. The panel supported the application, subject to the issues they identified being resolved. The issues include setbacks, landscaping, internal amenity and excavation.
13 June 2023	Following a site visit and receipt of the Design Excellence Panel comments, a preliminary assessment of the application was undertaken and a Request for Additional Information Letter (RFI Letter) provided to the Applicant. The issues of the RFI Letter are listed below:

	<ul style="list-style-type: none"> • Building height; • Foreshore area; • Earthworks and excavation; • Residential flat buildings under Clause 6.12 of NSLEP; • Adaptable housing • Dwelling mix; • Side setbacks and rear setbacks of R2 zone; • Side/rear setbacks and building height plane of R4 zone; • Uppermost incline plane; • Site coverage; • Landscaped and un-built upon area; • Visual privacy; • Dual occupancy private open spaces and roof top terraces; • View loss; • Car parking and traffic; • Materiality and colour; • Heritage; • Subdivision and boundary realignment; • Waste management; • Landscaping; • Insufficient information; and • Matters raised by submissions.
<p>16 August 2023</p>	<p>The applicant submitted amended plans and consultant documentation. Whilst a number of matters raised in the RFI Letter were adequately addressed by the Applicant, several critical issues were not resolved.</p>
<p>01 September 2023</p>	<p>The amended scheme was re-advertised for 21 days until 22 September 2023. A total of twenty (20) submissions were received during the re-notification period.</p>
<p>06 December 2023</p>	<p>The development was the North Sydney Local Planning Panel and was recommended for refusal predicated on a number of issues, which are summarised as follows:</p> <ul style="list-style-type: none"> • Inconsistency and lack of sufficient information with regards to various requirements of the North Sydney Local Environmental Plan 2013, including building height, heritage, excavation, foreshore area and residential flat buildings; • Non-compliance and lack of sufficient information as it pertains to site coverage, landscaped area, un-built upon area and incline plane requirements within the North Sydney Development Control Plan 2013; • Traffic impacts due to the reliance upon on-street waiting bay serving Buildings B and D; • Extent of excavation is excessive and unacceptable; • Unresolved heritage issues; and • Insufficient information to allow for the thorough and robust assessment of matters relating to the application. <p>The application was subsequently deferred by the Local Planning Panel, with the Applicant given additional time to submit further information. The Local Planning Panel noted the following:</p>

	<p><i>'...The Panel notes the applicant advised that despite the dual zoning of R2 and R4 the ultimate built form is proposed as a single integrated development, and the fact the development is permissible this doesn't preclude the RFB being considered as part of a mixed use development that would include the dual occupancies. The Applicant indicated that site will be consolidated but the panels notes that this cannot occur as the dual occupancies need to stand on their own allotments for them to be permitted, otherwise the built form on the R2 land would be otherwise categorised as multi unit housing, which is prohibited development.</i></p> <p><i>Given the development cannot be consolidated as one development, each lot must be assessed individually in reference to the landscaping and site coverage. In addition, the panel considers that the car lift should be integrated into building B...'</i></p>
07 February 2024	<p>Amended documentation were submitted, including:</p> <ul style="list-style-type: none">• Amended Architectural Plans;• Design Change Schedule;• Amended Landscape Plans;• Amended Clause 4.6 Variation Request;• Amended Notification Plans; and• Letter to Planning Panel.
15 March 2024	<p>The amended proposal was advertised for 21 days until 8 April 2024. A total of fourteen (14) additional submissions were received during the notification period.</p>

INTERNAL REFERRALS

Design Excellence Panel

Council's Design Excellence Panel provided the following advice on the originally submitted scheme;

Principle 1: Context and local character

The context of Kurraba Road is emerging with several residential apartment buildings under construction.

Principle 2: Built form, scale and public domain/ urban design response

The new building should observe the boundary setback and building envelope requirements of the NSDCP 2013. This could provide a more sympathetic relationship of the new building to the side boundaries, while also benefiting amenity to neighbours. The Panel was particularly concerned at the proximity of the proposed building to 184 Kurraba Rd in the north-east corner.

Principle 3: Density

The development should provide the minimum landscaped area and comply with the setback controls in NSDCP 2013. There appears no justification not to.

Principle 4: Sustainability, building performance and adaptability

Consideration is to be given to the microclimate and how the development will perform.

Principle 5: Landscape Integration

The development should comply with the minimum landscaped area requirement.

Further details are required for the boundary treatment. There is opportunity for attractive landscape along both sides of the site.

Extensive 'greening' of the rooftops, nearly all of which will be overlooked from existing adjacent and nearby residential buildings is recommended.

The central pedestrian access area would benefit from direct activation from dwellings, increase useable green space and additional landscape planting integrated into communal areas.

A landscape design proposal (completed by a registered landscape architect) should be submitted for consideration by the Panel.

Principle 6: Building configuration, planning, and amenity

The Panel noted that the proposal results in two landlocked buildings on the eastern portion of the site. The Applicant should provide details clarifying how fire trucks will access these properties and how the failure of car lifts would be addressed for residents needing to access their properties.

The building setbacks should comply with NSDCP 2013.

Side setbacks should be increased for both dual occupancies on the lower ground floor to provide better amenity. Any habitable rooms below ground level are not supported.

There appears to be too much emphasis to the external composition which compromises internal amenity. For example the windows to north facing bedrooms of Buildings A and B do not appear sufficiently large nor well positioned to provide suitable daylighting and outlook. The façade focus also impacts room layout including less useable corridor spaces and long internal hallways in Building A and B.

North facing windows should be increased in size to afford greater solar access and ventilation.

There appears to be an excessive amount of excavation, as much as two levels below ground is indicated on Drawing A203 (South Elevation). Further level details are required to properly assess the impact.

The Panel recommends the proposal satisfy the requirements of the ADG with respect to planning and amenity standards. This would then represent an acceptable level of design quality to the Panel.

Principle 7: Safety

Windows should be provided to the street frontage to allow for passive surveillance.

Principle 8: Housing diversity and social interaction

Not discussed.

Principle 9: Architectural expression and materiality

The material palette and composition is generally well designed. Care should be taken to provide suitable weather protection and landscaping to east and south facing balconies.

Recommendations to Achieve Design Excellence

The Panel provides qualified support for the proposal, subject to the identified issues being resolved.

Planning Comment: The application was amended in response to the DEP comments and the advice has largely been adopted in the revised design. The proposal is largely considered satisfactory with regard to the advice of the DEP, with the exception of the following:

- **Site Coverage:** As discussed in further detail, the proposal does not comply with the maximum site coverage requirement for the R4 zoned allotments;
- **Landscaped Area:** As discussed in further detail, the proposal does not comply with the minimum landscaped area requirement for the R4 zoned allotments; and
- **Rear setback and Incline Plane:** The proposed development does not appropriately consider the rear incline plane as measured from the revised internal allotment.

Traffic

Council's Traffic and Transport Engineer supports the amended proposal subject to the implementation of a number of conditions. As described, the proposal has been amended and integrates the car lift of Building B into the built form, to provide for an on-site waiting bay.

Per the above, the Traffic and Transport Engineer supports the development, which has been amended following the NSLPP. Specifically, the Council Traffic and Transport Engineer notes the following:

- **Traffic Generation:** The proposed development is expected to generate approximately 7 vehicle trips per peak hour compared to a traffic generation of 3 vehicle trips per peak hour from the existing use. Generally, the proposed development will not have unacceptable traffic implications in terms of road network capacity.
- **Parking Provision:** The development proposes a total of 19 parking spaces, including 9 resident spaces for apartments, 8 resident spaces for dual occupancy dwellings and 2 visitor parking spaces. This satisfies Council's DCP.
- **Adaptable Parking Provision:** The proposal includes an accessible parking space for each of the two adaptable apartments, with one accessible space provided in each car parking area, meeting the relevant requirement.
- **Traffic and Access:** An off-street waiting area has been nominated for both the northern and southern car lift servicing Buildings A and C and Buildings B and D, respectively. This satisfies the concern about traffic queuing for both the northern and southern car lift and is acceptable.
- **Car Lift Operation:** By default, the car lifts will be set to prioritise any inbound vehicles, with residents able to use a remote control to open the car lift door on approach to the site so as to minimise the chance of queuing on Kurraba Road. This is deemed satisfactory.
- **No Stopping:** Currently a "No Stopping" zone exists along the frontage of the site, however it is proposed to change the kerbside restriction to "No Parking" to allow a vehicle to temporarily wait in this location in the rare event that both car lifts are already in use when an inbound vehicle arrives. The proposed arrangement does not require a change from the 'No Stopping' restriction to 'No Parking' restriction at the current stage. This is a standard lift manoeuvring in our LGA and it does not warrant a change at the moment. If the issue arises post construction, then it can be looked at as a separate matter.

- **Bicycle Parking:** Council's DCP specifies that all new developments provide on-site, secure bicycle parking facilities. The minimum required bicycle space for residential building is 1 bicycle parking space per 1 dwelling (total of 10) and 1 visitor space per 10 dwelling (total of 1). Therefore, a minimum of 11 on-site, secure bicycle parking is required to be provided. The applicant has reported providing 11 bicycle racks in the Traffic Report and this satisfies the DCP. To ensure this is provided, this could be imposed as a condition of consent with details to be nominated in the plans submitted with the Construction Certificate.
- **Construction Management Plan:** CTMP should state that workers are not relying on on-street parking. DA traffic report states that a shuttle bus arrangement is to be provided. Council requires confirmation on the shuttle bus as this is highly recommended as Kurraba Road residents have raised the concern of the amount of workers parking their utes. Concern raised about the HRV can be looked at CTMP stage and can be advised on the size of the truck with swept path. This could be imposed as a condition of consent.
- **Visitor Parking:** Each visitor parking space within Building A and B should be designed to function as a car wash bay. This could be imposed as a condition of consent.

Planning Comment: As outlined above, the amended development provides for on-site vehicle waiting areas therefore removing the requirement for on-street waiting. This is considered to be an appropriate planning and traffic outcome and will reduce impacts to the public road reserve, neighbours and wider Kurraba Point locality. It should be noted that no swept paths have been provided for the revised vehicular access arrangement of Building B and D and is necessary for assessment purposes.

In terms of the Construction Management Plan, this will be required and can be imposed as a condition of consent, should the development be approved. Furthermore, and as identified in the DA traffic report, a shuttle bus arrangement is to be provided during the demolition, excavation and construction stages. This will also be imposed as a condition of consent to ensure traffic movement and safety is maintained throughout the construction process.

Heritage

Council's Heritage Officer has assessed the amended proposal and does not support the application on the basis of lack of association with Trygve Halvorsen. The following conclusions and recommendations were provided by the Heritage Officer:

"The site does have a direct association with Trygve Halvorsen and therefore does meet the Criterion B – Associative Significance relating to the former home of Trygve Halvorsen the notable Norwegian-Australian ocean sailor.

It is recommended that that reference to and interpretation of the site having an association with Trygve Halvorsen be made as part of the development including an outline on how the interpretation will occur as an integrated part of the development. The interpretation of the place is to be prepared as per the HNSW Information Series for Interpreting Heritage Places and Items: Guidelines."

The above interpretation was not included in the amended proposal, despite being raised in the original assessment. Additional information provided by the Applicant post-LPP stipulated the following:

“Further, the subject site does not feature moveable heritage or landscape features such as a jetty or wharf which demonstrate tangible association with Halvorsen or sailing. Furthermore, while well known in the sailing community, there is little information to suggest that Halvorsen was a well-known figure within the North Sydney LGA who contributed to the LGA’s history. The subject site does not reach the threshold of associative significance at a local level and does not warrant retention.

Interpretation of Halvorsen’s occupation of the place may be suitably demonstrated through the implementation of a short sign or plaque within the proposed new development. A brief Heritage Interpretation Strategy should be prepared as a Condition of Consent of an approved Development Application.”

Despite the above, the development is not still supported by Council’s Heritage Officer. To resolve this issue, should the development be approved, a condition of consent would be imposed which would require details of interpretive signage visible from the public realm which references Trygve Halvorsen. This condition would require the design and location details of the plaque or sign to be referred to Council’s Heritage Officer for approval prior to the issue of the Construction Certificate.

It is noted that Council’s Heritage Officer supports the amended palette of colours, which utilises a light brown brick responding to the heritage items and conservation areas in the vicinity and is generally complimentary with the 20th Century earthy darker tones of heritage buildings in the locality.

Engineering/Stormwater Drainage

Council’s Development Engineer has assessed the amended development and raised no objection, subject to conditions. The following comments were provided by the Development Engineer:

Traffic Management:

A large scale of works. CTMP is required and referred to the traffic committee.
Appropriate conditions can be imposed in this regard.

Stormwater:

Approval from RMS is required to discharge stormwater directly into the Shell Cove (Sydney Harbour). Appropriate conditions can be imposed in this regard.

Parking and Access:

A basement carpark is proposed. Two new vehicular access with car-lifts are proposed.
Appropriate conditions can be imposed in this regard.

Sediment and Erosion controls

Appropriate conditions shall be imposed in this regard. The conditions will seek to manage runoff and dust to protect the amenity and safety of neighbouring properties and the public domain.

Excavation and Retaining Walls

Extensive excavation is proposed. Appropriate conditions can be imposed in this regard to protect the safety of surrounding residents and the public domain.

Planning Comment: Conditions of consent could be imposed should the development be approved. However, and as detailed in this Report, the development is recommended for refusal.

Landscaping

Council's Landscape Officer has assessed the amended proposal and is willing to support the proposal subject to amendments and conditions.

Of note, the Landscape Officer will only support the removal of T2 *Cinnamomum camphora* on the basis of it being replaced with a suitable, super advanced species to deliver an improved outcome. The Landscape Officer requires the following amendments:

- 3 x *Ficus rubiginosa* shown to be planted in the front setback of the subject site shall be 500L minimum pot size
- 1x additional *Ficus rubiginosa* (500L min pot size) shall be planted in the front setback of the subject site to the north of those already proposed
- 9 x advanced *Livistona australis* shown to be planted shall have a minimum trunk height of 6m at time of planting
- 6 (approx.) x *A. cunninghamiana* within the front setback of 190 Kurraba Rd shall be retained and transplanted on site.
- Stormwater is currently shown directed through the TPZ of at least 1 x protected tree. All Stormwater and other underground services shall be redirected outside the TPZ of any protected tree.

Planning Comment: Conditions of consent could be imposed should the development be approved. However, and as detailed in this Report, the development is recommended for refusal.

Waste Management

Council's Waste Operations Officer provided comments which have been addressed in the amended scheme. The proposal has been amended and is therefore considered acceptable:

- A single waste chute is provided in Buildings A and B;
- A recycling bin (240L) is provided adjacent to each waste chute; and
- Two temporary bin holding areas are provided adjacent to the street frontage for Buildings A and B which will accommodate 8 x 240L bins.

It should be noted that the garbage chute and recycling bin is not provided for Building A, A201. This can be rectified through a condition of consent.

Notwithstanding and as detailed in this Report, the development is recommended for refusal.

EXTERNAL REFERRALS

Sydney Water

Sydney Water has no objection to the development application. The following response was provided by Sydney Water:

Water Servicing

- *Potable water servicing should be available via a 150 CICL watermain (laid in 1911) on Kurraba Road.*
- *Amplifications, adjustments, and/or minor extensions may be required.*

Wastewater Servicing

- *Wastewater servicing should be available via a 150 VC wastewater main (laid in 1955) within the property boundary.*
- *Amplifications, adjustments, and/or minor extensions may be required.*

This advice is not formal approval of our servicing requirements. Detailed requirements, including any potential extensions or amplifications, will be provided once the development is referred to Sydney Water for a Section 73 application.

Planning Comment: Suitable conditions could be applied if the development were recommended for approval.

Ausgrid

Ausgrid has no objection to the development application. The following response was provided by Ausgrid:

Ausgrid has no objection to this development application, however the design submission must comply with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice for construction works near existing electrical assets.

The “as constructed” minimum clearances to Ausgrid’s infrastructure must not be encroached by the building development. It also remains the responsibility of the development and relevant contractors to verify and maintain these clearances on-site.

Planning Comment: Suitable conditions could be applied if the development were recommended for approval.

SUBMISSIONS

Original proposal

The application was originally notified in accordance with Council policy from 20 January 2023 to 10 February 2023. Following the Request for Additional Information (RFI) Letter and receipt of amended documentation, the application was again notified on 1 September 2023 to 22 September 2023. Following the NSLPP deferral, amended documentation was submitted and the application notified for a final time from 15 March 2024 to 8 April 2024.

A total of seventy-six (76) submissions were received in both the original and two subsequent notification periods.

The issues raised in the submissions are summarised below and addressed later in this report. The original submissions may be viewed by way of DA tracking on Council’s website https://www.northsydney.nsw.gov.au/Building_Development/Current_DAs and are available for review by NSLPP members.

Basis of Submissions

- Excessive building height;
- Non-compliant building envelope;
- Non-compliant setbacks to side and rear boundaries;
- Non-compliant site coverage;
- Non-compliant landscaped area and un-built upon area;

- Permissibility, internal boundary adjustment and easements;
- Works within right-of-way;
- Roof top terraces;
- Site isolation;
- Misleading or incorrect plans and documentation;
- Methods of calculation;
- Traffic impacts and safety;
- Construction traffic and safety;
- Excavation impacts;
- Stormwater impacts
- Privacy Impacts;
- Solar impacts; and
- View loss.

CONSIDERATION

Environmental Planning and Assessment Act 1979

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

- State Environmental Planning Policy (Resilience and Hazards) 2021;
- State Environmental Planning Policy (Biodiversity and Conservation) 2021;
- State Environmental Planning Policy (Precincts – Eastern Harbour City) 2021;
- State Environmental Planning Policy No 65 – Design Quality of Residential Apartment Development (2002 EPI 350); and
- State Environmental Planning Policy (Building Sustainability Index: BASX) 2004.

SEPP (Resilience and Hazards) 2021

State Environmental Planning Policy (Resilience and Hazards) 2021 repeals and replaces three former SEPPs related to coastal management, hazardous and offensive development and remediation of land. Of relevance to the proposed development is Chapter 2 Coastal Management and Chapter 4 Remediation of Land.

Chapter 2 Coastal Management

Chapter 2 Coastal Management gives effect to the objectives of the *Coastal Management Act 2016* from a land use planning perspective, by specifying how development proposals are to be assessed if they fall within the coastal zone.

The site is mapped under the SEPP as being within the Coastal Environment area and the Coastal Use area.

The *Coastal Management Act 2016* sets out management objectives for land located within the different coastal areas. The SEPP provides for requirements for land within the Coastal Environment area and Coastal Use area and is addressed below. As detailed, the proposal generally satisfies the requirements of Chapter 2. However, due to non-compliances with site coverage and landscaped area, the proposal does not strictly satisfy all the requirements of this chapter.

Table 1 Chapter 2 Coastal Management			
Clause / Control	Requirement	Proposal	Y/N
2.10 Development on land within the coastal environment area	<i>(1) Development consent must not be granted to development on land that is within the coastal environment area unless the consent authority has considered whether the proposed development is likely to cause an adverse impact on the following:</i>		
	<i>(a) the integrity and resilience of the biophysical, hydrological (surface and groundwater) and ecological environment,</i>	(a) The development, when complete, will have no adverse impacts on the integrity and resilience of the biophysical, hydrological or ecological environment. Water quality will be maintained through management of stormwater on the site during construction and occupation.	Yes
	<i>(b) coastal environmental values and natural coastal processes,</i>	(b) The development takes place on land that has been previously disturbed. It will have no adverse impact on coastal environmental values or natural coastal processes. Works are located outside the foreshore area.	Yes
	<i>(c) the water quality of the marine estate (within the meaning of the Marine Estate Management Act 2014), in particular, the cumulative impacts of the proposed development on any of the sensitive coastal lakes identified in Schedule 1,</i>	(c) The proposal will be appropriately connected to the stormwater system per the Stormwater Plans and will therefore have no adverse impacts on the waterway. Where possible, stormwater will be reused on-site. Sewage and other waste water from the proposal will be piped through the existing sewer network to be treated in the typical manner. The site is not on a coastal lake.	Yes
	<i>(d) marine vegetation, native vegetation and fauna and their habitats, undeveloped headlands and rock platforms,</i>	(d) The proposed development will not have any significant impact on native or marine vegetation and habitats and no impacts to undeveloped headlands and rock platforms.	Yes
	<i>(e) existing public open space and safe access to and along the foreshore, beach, headland or rock platform for members of the public, including persons with a disability,</i>	(e) The site is private land and no public access is existing or proposed.	N/A
	<i>(f) Aboriginal cultural heritage, practices and places,</i>	(f) The site has a long history of disturbance from urban development and use. Therefore, it is unlikely that any Aboriginal cultural heritage items or places will be impacts as a result of the proposal.	N/A
<i>(g) the use of the surf zone.</i>	(g) The site is not located adjacent to a surf zone.	N/A	

Table 1 Chapter 2 Coastal Management			
Clause / Control	Requirement	Proposal	Y/N
	<p>(2) <i>Development consent must not be granted to development on land to which this clause applies unless the consent authority is satisfied that:</i></p> <p>(a) <i>the development is designed, sited and will be managed to avoid an adverse impact referred to in subclause (1), or</i></p> <p>(b) <i>if that impact cannot be reasonably avoided—the development is designed, sited and will be managed to minimise that impact, or</i></p> <p>(c) <i>if that impact cannot be minimised—the development will be managed to mitigate that impact</i></p>	<p>(a) The development has been designed and sited to avoid adverse impact, as outlined above. The proposed works are setback appropriately from the rear boundary and nearby waterway and will therefore have no impact to the waterway.</p> <p>(b) As above.</p> <p>(c) As above</p>	<p>Yes</p> <p>Yes</p> <p>Yes</p>
2.11 Development on land within the coastal use area	<p>(1) <i>Development consent must not be granted to development on land that is within the coastal use area unless the consent authority:</i></p> <p>(a) <i>has considered whether the proposed development is likely to cause an adverse impact on the following:</i></p> <p>(i) <i>existing, safe access to and along the foreshore, beach, headland or rock platform for members of the public, including persons with a disability,</i></p> <p>(ii) <i>overshadowing, wind funnelling and the loss of views from public places to foreshores,</i></p> <p>(iii) <i>the visual amenity and scenic qualities of the coast, including coastal headlands,</i></p>	<p>(a)(i) There is no existing public access to the waterway via the site. This will not be altered as a result of the proposal.</p> <p>(a)(ii) The site will not overshadow, create a wind tunnel or result in any adverse loss of views to or from any public place. Amenity impacts from surrounding developments has been considered elsewhere in this Report.</p> <p>(a)(iii) The proposed development will provide for high quality buildings and result in visual improvements as viewed from the public domain and waterway. As such, the proposed development will not adversely impact on the visual amenity or scenic qualities of the waterway.</p>	<p>N/A</p> <p>Yes</p> <p>Yes</p>

Table 1 Chapter 2 Coastal Management			
Clause / Control	Requirement	Proposal	Y/N
	<p><i>(iv) Aboriginal cultural heritage, practices and places,</i></p> <p><i>(v) cultural and built environment heritage, and</i></p>	<p>(a)(iv) The site has already been disturbed by the existing development and use, therefore it is unlikely that any Aboriginal cultural heritage items or places will be impacted as a result of the proposal. A condition of consent will be imposed in the event any items of Aboriginal cultural heritage are uncovered.</p> <p>(a)(v) The site does not contain any cultural and built environmental heritage items. However, the site is situated within close proximity to numerous heritage items. See comments from Council’s Heritage Officer above which indicate inadequate consideration has been given to the heritage significance of the site and its context. However, should the application be recommended for approval, heritage matters can be addressed by conditions of consent.</p>	<p>Yes</p> <p>No</p>
	<p><i>(b) is satisfied that:</i></p> <p><i>(i) the development is designed, sited and will be managed to avoid an adverse impact referred to in paragraph (a), or</i></p> <p><i>(ii) if that impact cannot be reasonably avoided—the development is designed, sited and will be managed to minimise that impact, or</i></p> <p><i>(iii) if that impact cannot be minimised—the development will be managed to mitigate that impact, and</i></p>	<p>(b)(i) The development has been designed and sited to avoid adverse impact, as outlined above.</p> <p>(b)(ii) As above.</p> <p>(b)(iii) As above.</p>	<p>Yes</p> <p>Yes</p> <p>Yes</p>
	<p><i>(c) has taken into account the surrounding coastal and built environment, and the bulk, scale and size of the proposed development.</i></p>	<p>(c) The proposed development generally complies with the relevant provisions under NSLEP 2013 (noting a height non-compliance) and the NSDCP. However, the non-compliance with site coverage, landscaped area and rear setback and incline plane requirements results in (c) not being satisfied as insufficient data has been provided to quantify accurate measures of the bulk, scale and size of development and potential consistency with the locality.</p>	<p>No</p>

Chapter 4 Remediation of Land

Chapter 4 of the Resilience and Hazards SEPP 2021 provides planning controls for the remediation of contaminated land and requires an investigation to be made if land contamination is suspected. The site contains existing residential buildings and has been utilised for this purpose for a considerable period of time. It is therefore unlikely to be contaminated. As such, Chapter 4 Remediation of Land is considered to be satisfied.

SEPP (Biodiversity and Conservation) 2021

State Environmental Planning Policy (Biodiversity and Conservation) 2021 commenced on 1 March 2022, repealing and replacing 11 previous SEPPs. Of relevance to the proposed development is Chapter 2 Vegetation in non-rural areas and Chapter 6 Water Catchments.

Chapter 2 Vegetation in Non-rural Areas

Chapter 2 regulates clearing that is not ancillary to development requiring consent. Whereas, clearing that is ancillary to development requiring consent will be assessed as part of the development assessment process. As such, the proposed removal of trees is ancillary to development requiring consent and has been assessed by Council's Tree and Landscape Officer.

As described in this Report, Council's Landscape Officer has reviewed the application and has stated their support of the application, subject to specific conditions of consent.

Chapter 6 Water Catchments

Chapter 6 provides aims with respect to the Sydney Harbour Catchment and other catchments including protection, enhancement and maintenance of natural assets, sustainable environments, ecologically sustainable development, culturally rich and vibrant places and accessibility. The subject site is identified within the Sydney Harbour Catchment Map and Foreshore and Waterway Area Map (noting it is not located within a specified zone).

The below table outlines the requirements under Chapter 6 and provides a response with regards to the proposal. As outlined below, the proposal mostly satisfies the requirements of Chapter 6, however, as the development does not comply with the required landscaped area and site coverage requirements, this chapter is not fully satisfied.

Clause/ Control	Requirement	Response	Y/N
Division 3 Development in Foreshores and Waterway	<p><i>(1) In deciding whether to grant development consent to development in the Foreshores and Waterways Area, the consent authority must consider the following—</i></p> <p><i>(a) whether the development is consistent with the following principles—</i></p> <p><i>(i) Sydney Harbour is a public resource, owned by the public, to be protected for the public good,</i></p> <p><i>(ii) the public good has precedence over the private good,</i></p> <p><i>(iii) the protection of the natural assets of Sydney Harbour has precedence over all other interests,</i></p>	<p>(a)(i) The proposal will have no impact to Sydney Harbour as a public resource.</p> <p>(a)(ii) The proposal will have no impact to the public usage of Sydney Harbour.</p> <p>(a)(iii) The proposal will have no impact to natural assets of Sydney Harbour.</p>	<p>Yes</p> <p>Yes</p> <p>Yes</p>

Table 2 Chapter 6 Water Catchments			
Clause/ Control	Requirement	Response	Y/N
	<i>(b) whether the development will promote the equitable use of the Foreshores and Waterways Area, including use by passive recreation craft,</i>	(b) The proposal will have no impact to the equitable use of foreshore and waterway areas. The development will not impact use of the harbour by passive recreational craft.	Yes
	<i>(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,</i>	(c) The proposed development will have no impact to the commercial and recreational use or enjoyment of these spaces.	Yes
	<i>(d) whether the development promotes water-dependent land uses over other land uses,</i>	(d) Not applicable.	N/A
	<i>(e) whether the development will minimise risk to the development from rising sea levels or changing flood patterns as a result of climate change,</i>	(e) The proposed development is setback appropriately from the waterway and is well above the mean high water mark. The development is not considered to be at any risk from climate change.	Yes
	<i>(f) whether the development will protect or reinstate natural intertidal foreshore areas, natural landforms and native vegetation,</i>	(f) The proposed development will not reinstate natural areas, native vegetation or natural landforms. Where vegetation is to be removed from the subject site, this will be replaced with landscaping as shown on the Landscape Plan.—However, the proposal does not satisfy the landscaped area and site coverage requirements for the site, and is therefore considered to not strictly satisfy (f).	No
	<i>(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,</i>	(g) As detailed above, the proposal will have no impact to the aquatic environment or species. The proposal does not specifically protect or enhance native species, populations or communities.	Yes
	<i>(h) whether the development will protect, maintain or rehabilitate watercourses, wetlands, riparian lands, remnant vegetation and ecological connectivity.</i>	(h) There are no riparian lands in or near the site.	N/A
	<i>(2) Development consent must not be granted to development in the Foreshores and Waterways Area unless the consent authority is satisfied of the following—</i>		

Table 2 Chapter 6 Water Catchments			
Clause/ Control	Requirement	Response	Y/N
	<i>(a) having regard to both current and future demand, the character and functions of a working harbour will be retained on foreshore sites,</i>	(a) The proposed dual occupancies and residential flat buildings which are permissible in their respective zones will have no impact on the functions of Sydney Harbour.	Yes
	<i>(b) if the development site adjoins land used for industrial or commercial maritime purposes—the development will be compatible with the use of the adjoining land,</i>	(b) Not applicable.	N/A
	<i>(c) if the development is for or in relation to industrial or commercial maritime purposes—public access that does not interfere with the purposes will be provided and maintained to and along the foreshore,</i>	(c) Not applicable.	N/A
	<i>(d) if the development site is on the foreshore—excessive traffic congestion will be minimised in the zoned waterway and along the foreshore,</i>	(d) Not applicable.	N/A
	<i>(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.</i>	(e) The development will generally enhance the visual character on the subject site through high quality residential development integrated with landscaping on ground and on structures because it is within a broader urban setting where the foreshore is dominated by multi-storey residential development. Generally, the proposal will not have any negative impacts to the visual qualities of Sydney Harbour.—However, as the proposal does not comply with the landscaped area and site coverage requirements for the site, the proposal does not strictly satisfy (e). The deficiency is inconsistent with the landscaped setting anticipated by the planning controls for the locality.	No

SEPP (Precincts – Easter Harbour City) 2021

State Environmental Planning Policy (Precincts – Eastern Harbour City) 2021 commenced on 1 March 2022, repealing and replacing previous SEPPs and SREPs. It is noted that the site is not within the area affected by the Sydney Opera House Buffer Zone and therefore no further consideration is required.

SEPP 65 Design Quality of Residential Apartment Development

Clause 4(1)(a)-(c) of SEPP 65 state the following:

- (1) *This Policy applies to development for the purpose of a residential flat building, shop top housing or mixed use development with a residential accommodation component if—*
 - (a) *the development consists of any of the following—*
 - (i) *the erection of a new building,*
 - (ii) *the substantial redevelopment or the substantial refurbishment of an existing building,*
 - (iii) *the conversion of an existing building, and*
 - (b) *the building concerned is at least 3 or more storeys (not including levels below ground level (existing) or levels that are less than 1.2 metres above ground level (existing) that provide for car parking), and*
 - (c) *the building concerned contains at least 4 or more dwellings*

In accordance with the above, whilst the proposed residential flat buildings satisfy (a)(i) and (b), whereby the development is for the erection of a new building and is at least three storeys or more, each building (Building A and B) does not contain at least 4 dwellings. As such, SEPP 65 (and the Apartment Design Guide) does not apply.

Whilst SEPP 65 does not apply, the application has been considered by the Design Excellence Panel (DEP). As detailed above, the DEP generally supported the proposal. The amended proposal largely responded to the comments of the DEP, with the exception of landscaping, site coverage and rear setback incline plane.

SEPP (BASIX) 2004

SEPP (Building Sustainability Index: BASIX) 2004 applies to the proposed development. In accordance with the provisions of the SEPP, a BASIX Certificate was submitted for the original scheme and confirmed that the development (once operational) would comply with the water, thermal comfort and energy efficiency requirements of the policy. However, the development has been amended and not accompanied by a revised BASIX Certificate. In this regard, the SEPP (BASIX) 2004 is not satisfied.

NORTH SYDNEY LOCAL ENVIRONMENT PLAN (NSLEP 2013)

Aims of Plan

Clause 1.2 Aims of North Sydney LEP 2013 read as follows (our underline):

- (2) *The particular aims of this Plan are as follows—*
 - (aa) *to protect and promote the use and development of land for arts and cultural activity, including music and other performance arts,*
 - (a) *to promote development that is appropriate to its context and enhances the amenity of the North Sydney community and environment,*
 - (b) *in relation to the character of North Sydney's neighbourhoods—*
 - (i) *to ensure that new development is compatible with the desired future character of an area in terms of bulk, scale and appearance, and*
 - (ii) *to maintain a diversity of activities while protecting residential accommodation and local amenity, and*

- (iii) *to ensure that new development on foreshore land does not adversely affect the visual qualities of that foreshore land when viewed from Sydney Harbour and its tributaries,*
- (c) *in relation to residential development—*
 - (i) *to ensure that new development does not adversely affect residential amenity in terms of visual and acoustic privacy, solar access and view sharing, and*
 - (ii) *to maintain and provide for an increase in dwelling stock, where appropriate,*
- (d) *in relation to non-residential development—*
 - (i) *to maintain a diversity of employment, services, cultural and recreational activities, and*
 - (ii) *to ensure that non-residential development does not adversely affect the amenity of residential properties and public places, in terms of visual and acoustic privacy, solar access and view sharing, and*
 - (iii) *to maintain waterfront activities and ensure that those activities do not adversely affect local amenity and environmental quality,*
- (e) *in relation to environmental quality—*
 - (i) *to maintain and protect natural landscapes, topographic features and existing ground levels, and*
 - (ii) *to minimise stormwater run-off and its adverse effects and improve the quality of local waterways,*
- (f) *to identify and protect the natural, archaeological and built heritage of North Sydney and ensure that development does not adversely affect its significance,*
- (g) *to provide for the growth of a permanent resident population and encourage the provision of a full range of housing, including affordable housing.*

The application proposed the construction of two x residential flat buildings and two x dual occupancies, which are permissible in the respective zones. Whilst the proposal is of a high quality design, there are key elements which result in adverse impacts to the surrounding locality, primarily non-compliances with site coverage and landscaping, in addition to the rear setback incline plane (R4 zone). The proposal is not supported for these reasons.

The site coverage is excessive and landscaping deficient which results in the scale and appearance of the development being incompatible with the desired character of the area, being inconsistent with Clause 1.2(2)(b)(i). This is discussed in detail within Section 9.7 of this Report.

Insufficient information has been submitted with the application to assess potential impacts on view sharing and therefore it has not been demonstrated that the development will protect the amenity of neighbouring properties as required by Clause 1.2(2)(c)(i). As discussed in this Report, a number of properties have not been assessed in terms of view loss and the extent of non-compliances, particularly for the rear setback incline plane (R4 zone), has not been adequately addressed.

It is also considered that the proposal will be antipathetic to Clause 1.2(2)(e)(i) where it will not provide a compliant landscaped area and Clause 1.2(2)(f) because it does not recognize the established heritage characteristics of the site (as described by Council's Heritage Officer).

Permissibility within the Zone

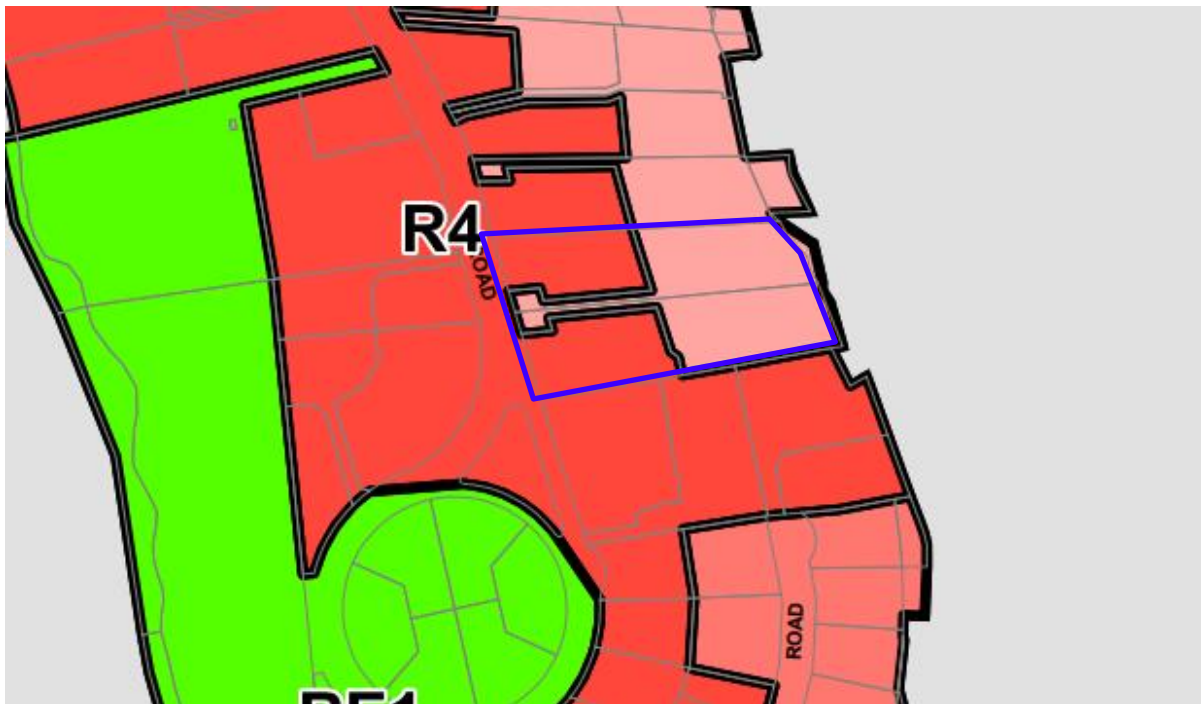


Figure 11: Land Zoning Map (site outlined in blue)

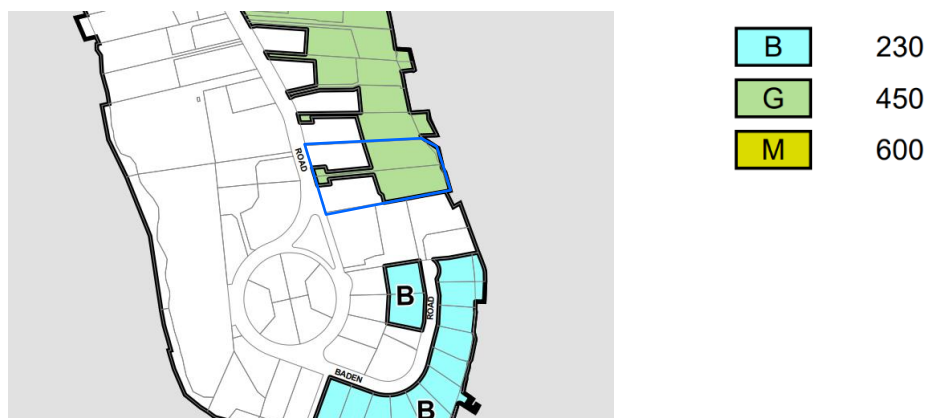


Figure 12: Minimum Lot Size Map (site outlined in blue)

The subject site has a split zoning where both Zone R4 High Density Residential and Zone R2 Low Density Residential apply under the provisions of the *North Sydney Local Environmental Plan 2013* (NSLEP 2013).

In terms of the R4 High Density Residential land, the application proposes two 'residential flat buildings' which are a permissible form of development in the zone. With regards to both the R2 Low Density Residential and R4 High Density Residential zoned land, 'dual occupancies' are a permissible form of development in these zones.

Whilst the proposal seeks to adjust the internal allotment boundaries, it does not modify the zone boundaries. The physical built forms of the residential flat buildings are located entirely within the R4 zone and are therefore permitted with consent. Whilst part of proposed Lot 1 and 2 will be located in the R2 zoned land, no part of the built form pertaining to the residential flat building is located within the R2 zone.

It is noted that numerous objections have been received regarding perceived permissibility of the development as it pertains to the provision of residential flat buildings, including ancillary elements (walkways, terracing and landscaping) which encroach into the R2 zone. The objections have relied on *Chamwell Pty Ltd v Strathfield Council (2007) 151 LGERA 400* to stipulate that that the ancillary elements to residential flat building are not permissible on the R2 land and therefore the development prohibited. To avoid any jurisdictional hurdle, the elements of concern can be easily resolved by the way of a deferred commencement condition which would ensure that the consent is only operational once these conditions are resolved. This includes the following:

1. The entire land serving the residential flat buildings (Buildings A and B) must be subdivided so that no part of the allotments containing residential flat buildings are located within the R2 Low Density Residential zone.
2. The pedestrian accessway easement must be located entirely within the land zoned R2 Low Density Residential and is to only be accessible by the residents of the R2 zone. That is, the easement must not serve the residents of the R4 High Density Residential zoned land.
3. The landscaped terraces ancillary to the residential flat buildings (Buildings A and B) must not encroach into the R2 Low Density Residential zoned land. Separate landscaped terraces must be provided for the R2 Low Density Residential land.
4. The pedestrian accessway where located between the private garage of D1 and Building B, and C2 and Building A, must not be accessible to occupants of the residential flat building

It is noted that modification to the allotment size in accordance with (1) above would impact the calculation of landscaped area, site coverage and un-built upon area. This is considered elsewhere in this Report.

Ultimately, the above conditions would remove any perceived permissibility issue.

Separately, the proposed dual occupancies are located within both the R2 and R4 zoned land. As detailed above, dual occupancies are permitted with consent in the R2 and R4 zone.

Zone R4 High Density Residential

The planning objectives of the R4 High Density Residential zone and comments with consideration to the proposal are provided below:

Objective: To provide for the housing needs of the community within a high density residential environment.

Comment: The proposed residential flat buildings includes six apartments which will meet the housing needs of the community.

Objective: To provide a variety of housing types within a high density residential environment.

Comment: The proposed residential flat buildings include 1 x 2 bedroom, 4 x 3 bedroom and 1 x 4 bedroom apartments which will provide for an appropriate variety in the zone.

Objective: To enable other land uses that provide facilities or services to meet the day to day needs of residents.

Comment: The proposal will not be antipathetic to other facilities meeting the day to day needs of residents.

Objective: To encourage the development of sites for high density housing if such development does not compromise the amenity of the surrounding area or the natural or cultural heritage of the area.

Comment: The proposal includes high density housing. However, the site coverage and landscaped area controls are not satisfied, and inaccurate and insufficient information is provided. Controls for landscaped area and site coverage, in addition to rear setback and incline planes, are intended to manage the density of development in the zone where no FSR standard applies. Non-compliance compromises the amenity of the locality, namely in terms of view loss and balancing built form with landscaping and un-built upon areas.

In terms of cultural heritage, Council's Heritage Officer considers the proposal does not adequately acknowledge the significance of surrounding heritage items, and is therefore unacceptable. However, as explained above, cultural heritage can be addressed by conditions of consent should the application be recommended for approval.

Objective: To ensure that a reasonably high level of residential amenity is achieved and maintained.

Comment: The amended design will achieve a high level of residential amenity for the proposed residential apartments, including solar access and ventilation, access to open space, quality of open space, outlooks and views.

However, inaccurate or insufficient information is provided to ascertain the potential impacts relating to the non-compliances and surrounding properties, as discussed in this Report. Namely, this pertains to the view loss of surrounding properties with regards to site coverage, landscaped area and rear setbacks (to the R4 zone).

As such, the proposal does not satisfy all objectives of the R4 zone.

Zone R2 Low Density Residential

The planning objectives of the R2 Low Density Residential zone and comments specific to the amended proposal are provided below:

Objective: To provide for the housing needs of the community within a low density residential environment.

Comment: The proposal will provide for two x dual occupancies (attached) which will meet the housing needs of the community within a low density environment.

Objective: To enable other land uses that provide facilities or services to meet the day to day needs of residents.

Comment: The proposal will not be antipathetic to other facilities meeting the day to day needs of residents.

Objective: 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.

Comment: The amended proposal demonstrates that no part of the built form is located within the foreshore area and is acceptable in this regard. It is noted that the compliance with the relevant envelope controls for the dual occupancies is considered acceptable.

In terms of heritage character, Council’s Heritage Officer has advised the proposal does not appropriately relate to the established heritage significance of Trygve Halvorsen and cannot meet this objective. However, appropriate conditions can be imposed should the application be approved.

Objective: To ensure that a high level of residential amenity is achieved and maintained.

Comment: The proposal will achieve a high level of residential amenity to the proposed dual occupancy dwellings. Neighbouring properties will also maintain a high level of amenity as discussed in this Report. It is noted that specific conditions can be imposed to ensure the amenity of neighbouring properties is protected in terms of roof top terraces size, dimensions and fitout should the application be recommended for approval.

As such, the proposal satisfies the objectives of the R2 zone.

NSLEP Compliance Table – Summary

NSLEP 2013	Proposed	Control	Complies
Minimum Lot Size	The proposal seeks to adjust the internal allotment boundaries. The proposed will result in the following: Lot 3: 924m ² ; and Lot 4: 1,012m ² . The proposal will not alter the location of the zoning. The rearrangement to allotment boundaries will not impact permissibility as is discussed in this Report. No minimum lot size applies to the R4 zoned land.	450m ²	Yes
Height (Cl 4.3)	Refer to discussion provided under Section 9.6.6 of this Report.	R4 zone: 12m R2 zone: 8.5m	No. See discussions under Section 9.6.6 of this Report.
FSR (Cl. 4.4)	N/A	N/A	N/A
Heritage Conservation (Cl. 5.10)	The proposal provides for two x residential flat buildings and two x dual occupancies with a contemporary design and materiality.	The site is not identified as a heritage item nor is it within a heritage conservation area.	No. See discussion provided under Section 6.3 of this Report..
Dual Occupancies (Cl. 6.6)	The proposed dual occupancies will have a common wall shared on Level 2 of 86% to 91%.	80% shared common wall or ceiling to ceiling	Yes

NSLEP 2013	Proposed	Control	Complies
	The dual occupancies are located on allotments which exceed 450m ² .	450m ² lot size for dual occupancy	
Foreshore Area (Cl 6.9)	The architectural plans indicate all works are located outside the foreshore area.	Foreshore building line	Yes
Residential Flat Buildings (Cl. 6.12)	The neighbouring property to the north-west at No. 184A Kurraba Road has a lot area of approximately 650m ² with an existing dual occupancy. The remainder of neighbouring properties to the north or south are zoned R2 Low Density Residential or contain existing residential flat buildings.	No	No. See discussions provided under Section 9.6.8 of this Report.
Vehicular Access (Cl. 6.13)	Driveway crossings are proposed for the development as is permissible in the zone.	Refer to Clause.	Yes.
Airspace Operations (Cl. 6.15)	Maximum RL of 36.5 which does not exceed the Outer Horizontal Surface 156m AHD.	Penetrate Limitation or Operations Surfaces Map	Yes

Clause 4.3 Building Height

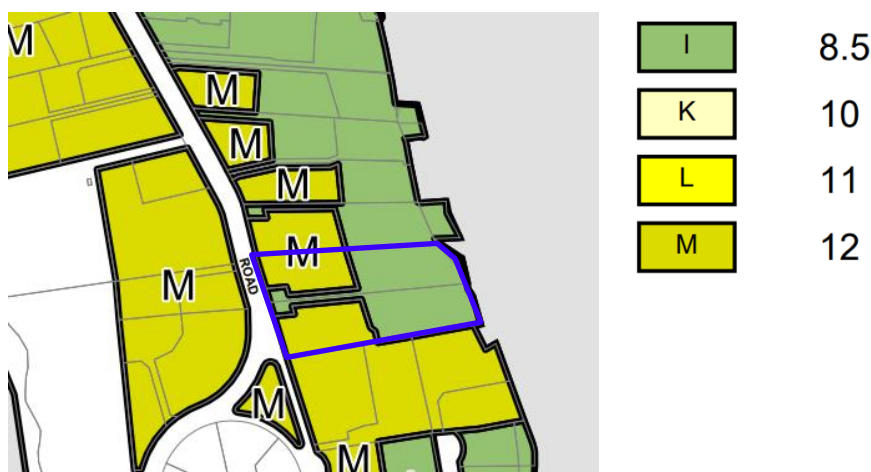


Figure 10: Building Height Map

A maximum building height of 12m (R4 zone) and 8.5m (R2 zone) applies to the subject site. The amended development, including Clause 4.6 Variation, has measured the maximum building height from the existing excavated floor level, as is consistent with the NSLEP definition of building height as established by relevant caselaw, *Merman Investments Pty Ltd v Woollahra Municipal Council* [2021] NSWLEC158. The amended Clause 4.6 identifies the following height non-compliances:

- **Building A:** Where the 12m height limit applies, the proposed residential flat building attains a maximum building height of 12.2m to the roof form and is therefore non-compliant. This represents a variation of 0.2m or 1.6%.
- **Building B:** Where the 12m height limit applies, the proposed residential flat building is compliant.

- **Building C:** Where the 8.5m height limit applies, the proposed dual occupancy attains a maximum building height of 9.22m to the roof form and is therefore non-compliant. This represents a variation of 0.72m or 8.4%.
- **Building D:** Where the 8.5m height limit applies, the proposed dual occupancy attains a maximum building height of 8.95m to the roof form and is therefore non-compliant. This represents a variation of 0.45m or 5.3%.

As outlined, a Clause 4.6 Variation dated 7 February 2024 has been prepared by *Gyde* and is submitted with this application.

Additional documentation contained within the architectural package has also considered the extent of non-compliance when measured from the periphery of the site and extrapolating between the periphery levels, that is, without the variations to the landform created by the existing excavated floor level. This is consistent with the findings of *Bettar v Council of the City of Sydney* (2014) NSWLEC 1070. This calculation considers the topography below any existing finished floor level or raised slab, and has demonstrated an acceptable maximum building height. The following is noted as measured from the extrapolated topography:

- **Building A:** Where the 12m height limit applies, the proposed residential flat building attains a maximum building height of 12.13m to the roof form and is therefore non-compliant. This represents a variation of 0.13m or 1%.
- **Building B:** Where the 12m height limit applies, the proposed residential flat building is compliant.
- **Building C:** Where the 8.5m height limit applies, the proposed dual occupancy attains a maximum building height of 8.78m to the roof form and is therefore non-compliant. This represents a variation of 0.28m or 3.3%.
- **Building D:** Where the 8.5m height limit applies, the proposed dual occupancy attains a maximum building height of 8.78m to the roof form and is therefore non-compliant. This represents a variation of 0.28m or 3.3%.

Criteria for approval under Clause 4.6

It is noted that Clause 4.6 was amended by the *Standard Instrument (Local Environmental Plans) Amendment (Exceptions to Development Standards) Order 2023* on 1 November 2023. However, the current Development Application was lodged before this date, so (in accordance with clause 8(1) of the *Standard Instrument (Local Environmental Plans) Order 2006* the former terms of clause 4.6 still apply.

For consent to be granted, the following criteria must be satisfied:

1. The consent authority must be satisfied, according to cl. 4.6 (2):
 - (a) the provision for which non-compliance is sought is a development standard as defined by section 1.4 Environmental Planning and Assessment Act 1979 (the Act), and
 - (b) the development standard in question is not excluded from being varied, by cl. 4.6 (6) or (8) of the LEP.
2. The applicant's written request must, according to cl. 4.6 (3):
 - (a) demonstrate that compliance is unreasonable or unnecessary in the circumstances of the case, and
 - (b) demonstrate that there are sufficient environmental planning grounds to justify contravention.

3. As required by cl. 4.6 (4) (a), the consent authority must be satisfied that:
 - (a) the applicant's request has satisfactorily addressed these matters, and
 - (b) that the development is in the public interest, being consistent with the objectives of the standard and the zone in which the development is proposed.

4. Concurrence must be obtained from the Secretary for Planning and Environment (cl. 4.6 (4) (b)). As a delegate of the Secretary, in accordance with cl. 4.6 (5), the consent authority must consider the following in deciding whether to grant concurrence:
 - (a) If a matter of State or regional significance is raised by the standard's contravention,
 - (b) the benefit in maintaining the standard, and
 - (c) any other matters.

Evaluation of the applicant's written request

In consideration of the LEP's provisions above, an evaluation of the applicant's request to contravene the building height development standard follows.

Criteria 1(a): Only a development standard can be varied

The "maximum height of building" is a development standard as defined by the Act, as it establishes a maximum height for development on a site.

Criteria 1(b): The development standard must not be excluded from cl. 4.6's application

The height of building development standard is not excluded from clause 4.6's application. An application may be approved without proposed development complying with the standard when other provisions of cl. 4.6 are satisfied.

Criteria 2 (a): Compliance would be unreasonable or unnecessary

The applicant's written request (attached) submits that the proposal is not inconsistent with the objectives of the standard, which are discussed later. This is most-often used of the methods suggested by the Land and Environment Court to establish that compliance with a development standard is unnecessary or unreasonable, in *Wehbe V Pittwater Council* (2007) NSW LEC 827.

Planning Comment: Having considered the applicant's request, its conclusion that compliance with the building height standard is unreasonable is concurred with, as the objectives of the standard are met as set out below.

Criteria 2(b): Sufficient environmental planning grounds to justify contravention

The applicant's written request submits the following to demonstrate adequate environmental planning grounds to contravene the standard, as follows:

Steep Topography

"The steep topography of the site, in part, contributes to the proposed height variation. The site slopes approximately 26m from Kurraba Road down to the waterfront. The proposed excavation (which has been significantly reduced) seeks to generally maintain the step down across the site while also accommodating basement parking below the RFBs. The built form has been designed to step down across the site responding to the topography. The RFBs are proposed to be four storeys with the upper level setback from the side boundaries. The built form then transitions at the zone boundary within the step down to two to three storey dual occupancies in the R2 zoned part of the site".

Planning Comment: The request submits that the design is appropriately stepped according to the topography of the site and that this steep topography combined with maximum grades for basement parking is a specific reason for the non-compliance. The proposed built form is considered to respond appropriately to the topography when considered strictly in terms of maximum building height. Whilst the development results in minor non-compliances to the roof forms, these have not influenced the overall siting, bulk and scale of the development as it responds to the topography. In this regard, it is considered that the steeply sloping topography is a site specific reason which has resulted in a variation to the maximum building height and is considered acceptable.

Character

“As discussed in detail in Section 5, the proposal is in harmony with adjoining developments and the character of the wider street”.

Planning Comment: As viewed from Kurraba Road, the non-compliances will not be visible and the development will appear as a two storey built form. This, in addition to the various design features, ensures compatibility with the locality and streetscape. The stepped built form is also compatible with the general stepped form character of surrounding buildings as viewed from the waterway.

Orderly and economic development

“The proposal facilitates the orderly and economic development of the site and in particular in the R4 zoned part of the site. At present the R4 zone is occupied by two x dual occupancies which undermines the objectives of the R4 Zone. The redevelopment of the site will provide for the housing needs of the community within a high-density residential environment in accordance with the first objective of the R4 Zone and low density dual occupancies in the R2 Zone which are facilitated by the minor variation of the height of buildings standard. Accordingly, the variation promotes objective 1.3 (c) of the EP&A Act”.

Planning Comment: The proposed development represents an orderly and economic development of the site. Strict compliance with the development standard in comparison to the proposed variations would not result in any additional benefit to character of the locality.

The non-compliance is minor

“The proposed variation is limited to minor parts of the roof level structures and roof slab”.

Planning Comment: The extent of non-compliances are minor and are limited to parts of the roof forms as stipulated by the applicant. This does not result in any adverse visual impact in terms of viewing the built form from the public domain. To request strict compliance would be unreasonable in this regard.

Compatibility with locality and amenity impacts

“The proposed development is compatible with adjoining residential development, is articulated and features a mix of materials, colours and landscaping which make it visually sympathetic to neighbouring buildings. Importantly, the variation to the height of building development standard does not result in any unreasonable impacts to residential amenity, solar access, views or privacy. Accordingly, the proposal achieves objective 1.3 (g) of the EP&A Act, “to promote good design and amenity in the built environment”.

Planning Comment: The applicant submits that the application will provide for a high quality residential development which will be compatible with the surrounding properties and character of the locality, despite non-compliance. The minor variation to the building height development standards does not result in the delivery of a built form which is out of character or incompatible with the surrounding developments. To request strict compliance for the minor variation is considered unreasonable in this regard as it will not result in any significant improvement to compatibility of building height.

In terms of residential amenity, the non-compliances are minor and pertain to non-habitable roof top elements. Accordingly, the following is noted:

- There will be no privacy impact created by the non-compliant building height given its non-habitable nature;
- The extent of overshadowing created by the non-compliance is relatively minor when considered against the compliant building envelope and will not result in any significant impact to the solar access of the properties to the south; and
- There will be no significant view loss created by the non-compliances where addressed by the View Loss Assessment prepared by *Urbis*. As discussed elsewhere in this Report, view loss from other properties raised in previous correspondence and objections have not been considered and the height non-compliance cannot be entirely contemplated in terms of this impact. As the application is recommended for refusal and additional view loss information has not been provided, the full extent of impact created by the non-compliance from the neighbouring properties has not been assessed.

Concluding Comment: The submission demonstrates adequate grounds for the variation to the maximum building height development standard, as set out above with the exception of a complete assessment of potential view impacts.

Criteria 3 (a): The applicant must demonstrate satisfaction of criteria 2(a) and 2 (b)

As outlined, the applicant's written request satisfies these criteria with the exception of analysis of all potential view impacts. Compliance has been demonstrated to be unreasonable in the circumstances of the case in terms of topography, character and compatibility of built form with the surroundings and some amenity impacts and the request has established sufficient environmental planning grounds to justify the non-compliance with the exception of complete analysis of all potential view impacts.

**Criteria 3 (b): Consistency with the development standard's and the zone's objectives
Standard's objectives**

Objectives of the building height maximum are:

- (a) to promote development that conforms to and reflects natural landforms, by stepping development on sloping land to follow the natural gradient,
- (b) to promote the retention and, if appropriate, sharing of existing views,
- (c) to maintain solar access to existing dwellings, public reserves and streets, and to promote solar access for future development,
- (d) to maintain privacy for residents of existing dwellings and to promote privacy for residents of new buildings,
- (e) to ensure compatibility between development, particularly at zone boundaries,

- (f) to encourage an appropriate scale and density of development that is in accordance with, and promotes the character of, an area,
- (g) to maintain a built form of mainly 1 or 2 storeys in Zone R2 Low Density Residential, Zone R3 Medium Density Residential and Zone C4 Environmental Living.

Key elements of the applicant's request, which demonstrate consistency with the height standards' objectives follow:

Objective (a) – Topography:

- The topography of the site is steep, with a step down of approximately 27.3m from the street level to the water.
- The proposed residential flat buildings are three to four storeys from existing ground level and the upper levels are setback from the eastern building edge. The residential flat buildings reduce to two to three storeys to the R2 zone.
- The amount of excavation has been reduced significantly.
- The elements that contravene the standard are minor and relate to the roof level.

Planning Comment: The proposal is designed to respond to the topography of the site when considering the building height non-compliances for both the residential flat buildings and dual occupancies. The non-compliances are relatively minor to appropriately respond to the topography of the site and is therefore acceptable.

Objective (b) View retention and sharing:

- The assessment of view loss, as created by the height non-compliance, has been considered against *Tenacity Consulting v Warringah [2004] NSWLEC 140*.
- View impacts have been considered from Unit 1 and 3 of No. 192 Kurraba Road where the impacts created by the non-compliant building height are considered negligible.
- View impacts have been considered from Unit 2 of No. 192A Kurraba Road, where the impacts are considered to be minor and a result of a complying and non-complying building height.
- The view impacts have been considered from Unit 2 of No. 184A Kurraba Road where the height non-compliance results in a minor impact.
- The view impacts have been considered from No. 184A Kurraba Road and in terms of the maximum building height non-compliances, the impacts to views are considered negligible to minor.
- The view impacts have been considered from Level 4 of N. 147 Kurraba Road. The variation to building height only results in a minor to negligible loss of views.

Planning Comment: The extent of view impacts created by the non-compliant building height is negligible to minor as viewed from the surrounding properties investigated with the view impact assessment. The extent of impact is consistent with parts of the building where the height satisfies the development standard. As described in this Report, the non-compliant elements are minor and pertain to minor portions of the roof form which do not result in any adverse loss of views from the neighbouring properties and when compared to parts of the development where the height is compliant for those properties addressed in the View Impact Analysis. To request strict compliance would not result in any wholesale improvement to the views of surrounding properties identified in the View Impact Assessment. In accordance with Step 4 of *Tenacity Consulting v Warringah [2004] NSWLEC 140*, the non-compliance with maximum building height does not result in a moderate or greater impact to views and is acceptable for those properties addressed in the view impact assessment.

Separately and as set out above, it is noted that the view impacts for a number of surrounding residences (as addressed in this Report) have not been assessed in terms of view loss. In this regard, this objective cannot be satisfied in entirety, without those views being considered in light of the variation to maximum building height.

Accordingly, whilst the impacts to properties considered in the View Loss Assessment are acceptable in terms of the height non-compliance, no conclusive assessment can be provided for the properties not considered. In this regard, objective (b) is not satisfied.

Objective © Solar access to existing dwellings and the public domain

Solar access to existing dwellings and the public domain:

- *The height non-compliance casts a shadow at No. 192A Kurraba Road as follows:*
- *At 9am, onto the building of this properties;*
- *From 10am to 11am, onto the ground level open space; and*
- *From midday to 2pm, on the hardstand parking area.*
- *Overall, the main balconies at No. 192 and 192A Kurraba Road will retain three hours of solar access during mid-winter, between 9am and 3pm.*

Planning Comment: As demonstrated in the submitted shadow diagrams, the extent of overshadowing created by the non-compliant building height will be minor. Importantly and as addressed elsewhere in this Report, the neighbouring properties will retain an appropriate amount of solar access during mid-winter and will not be adversely impacted by the height non-compliance.

Objective (d) Maintain privacy for existing residents and promote privacy for new developments:

- *The proposed development which contravenes the height standard relates to non-trafficable roof areas which do not cause any privacy impacts to existing or future neighbouring properties.*

Planning Comment: As outlined by the Applicant, the non-compliant sections of the buildings pertain to non-habitable elements which do not result in any privacy impacts to the surrounding properties or internal to the site.

Objective (e) Compatibility between development:

- *The non-compliance and compatibility has been considered with regard to Project Venture Developments Pty Ltd v Pittwater Council [2005] NSWLEC 191.*
- *The non-compliance does not result in any adverse amenity impact to surrounding properties.*
- *The subject site, including non-compliances, are located within an area with a mix of building typologies.*
- *The proposal will present to Kurraba Road as two x two to three storey buildings which step according to the topography.*
- *The proposal steps according to the topography of the subject site from the R4 to R2 zone.*

Planning Comment: The proposal has been designed to step according to the topography of the site and provides a transition from Kurraba Road to the waterway, when considered in light of the maximum building height. The minor extent of variation to the maximum building height, as it relates to the residential flat building and dual occupancies, does not impact compatibility of the development form and character to the surrounding locality. The non-compliances pertain to minor non-habitable roof features and will not result in a significant departure from the existing and desired character of built form in the locality, both in the R2 and R4 zone. That is, to request strict compliance would not result in any discernible benefit to bulk, scale or character and is therefore considered acceptable.

Objective (f) Appropriate scale and density to promote the areas character:

Planning Comment: It is noted that the Clause 4.6 Variation has not assessed this objective. For completeness, this has been considered below.

The proposed non-compliance is limited to minor roof elements within the R2 and R4 zone. This does not result in a scale or density which is dissimilar from that desired within the Kurraba Point locality. As addressed above, the proposal provides for a bulk, scale and character which transitions from Kurraba Road from the R4 to R2 zone. The built form steps according to the topography, when considering the maximum building height, and the non-compliance does not alter this objective being achieved.

Despite the above, the written request prepared by the Applicant does not address this objective and as such, cannot be technically satisfied.

Objective (g) Maintain a built form of mainly 1 and 2 storeys in certain zones:

- *The dual occupancies are part two, part three storeys which step towards the waterfront.*
- *The built form where it exceeds two storeys is in harmony with the surrounding developments, notwithstanding the height non-compliance.*
- *The existing dwelling on-site within the R2 zone is two to three storeys in height, in which the proposal is consistent.*

Planning Comment: The extent of variation does not significantly contribute to the overall bulk and scale of the development. That is, the non-compliance is minor and pertains to roof elements which do not alter the broad character of the dual occupancies as predominantly one and two storeys as viewed from the neighbouring properties or waterway, and is therefore consistent with objective (g).

Zone objectives

R2 Low Density Residential zone

- *To provide for the housing needs of the community within a low density residential environment.*
- *The proposed development provides for high quality dual occupancies which are suitable within the low density environment. The height non-compliances do not impact the satisfaction of this objective.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*
- *The proposal, including non-compliance, will not be antipathetic to this objective.*

- *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.*
- The proposed development will deliver dual occupancies as permitted in the zone. The height non-compliances do not adversely compromise the amenity of neighbouring properties or impact the character of the locality.
- *To ensure that a high level of residential amenity is achieved and maintained.*
- As discussed, the proposal (including non-compliant height) will not adversely impact the amenity of neighbouring properties created by the dual occupancies. The amenity of future residents will be maintained to a high level.

R4 High Density Residential zone

- *To provide for the housing needs of the community within a high density residential environment.*
The proposed development will provide for high quality residential flat buildings which will meet the needs of the community, despite non-compliance.
- *To provide a variety of housing types within a high density residential environment.*
- The proposed development will provide for six residential apartments which includes a mixture of two to four bedroom dwellings.
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*
- The proposal, including height non-compliance, is not antipathetic to this objective.
- *To encourage the development of sites for high density housing if such development does not compromise the amenity of the surrounding area or the natural or cultural heritage of the area.*
- The proposed height non-compliance will not compromise the amenity of the surrounding properties with the exception of those nearby dwellings that have not been addressed in the view impact assessment. The proposed height of the residential flat buildings is considered to be consistent with the character of the area.
- *To ensure that a reasonably high level of residential amenity is achieved and maintained.*
- As above, the proposal will maintain a high level of amenity to the neighbouring properties with the exception of those nearby dwellings for which view impacts have not been analysed and future occupants despite the non-compliance with maximum building height.

Getting concurrence

Criteria 4 (a): Matters of state or regional planning significance

The minor height non-compliances are not a matter of state or regional planning significance.

Criteria 4 (b): Benefit of maintaining the standard

The proposed development maintains amenity and has acceptable environmental impacts with the exception of those dwellings for which view impacts have not been analysed and as such, there is no public benefit of maintaining the standard.

Criteria 4(c): Other matters to be considered

Breaching the height standard in this instance requires no matters to be considered in addition to those addressed by this assessment other than analysis of the view impacts to those properties not addressed in the view impact assessment.

Summary:

The proposed non-compliance is relatively minor and the maximum building height is capable of being contravened via a Clause 4.6. The applicant's written request demonstrates that strict compliance is unreasonable and unnecessary, as there are sufficient environmental planning grounds and the proposal satisfies the objectives of the standard and zone with the exception of analysis of the potential impacts to views from nearby dwellings that have not been addressed in the view impact assessment.

However, and as detailed, the written request does not provide justification for Objective (f) of Clause 4.3.

Overall insufficient information regarding all potential view impacts and consistency with Objective (f) to Clause 4.3 has been provided to complete the assessment in accordance with Clause 4.6.

Clause 6.9 Limited development on foreshore area

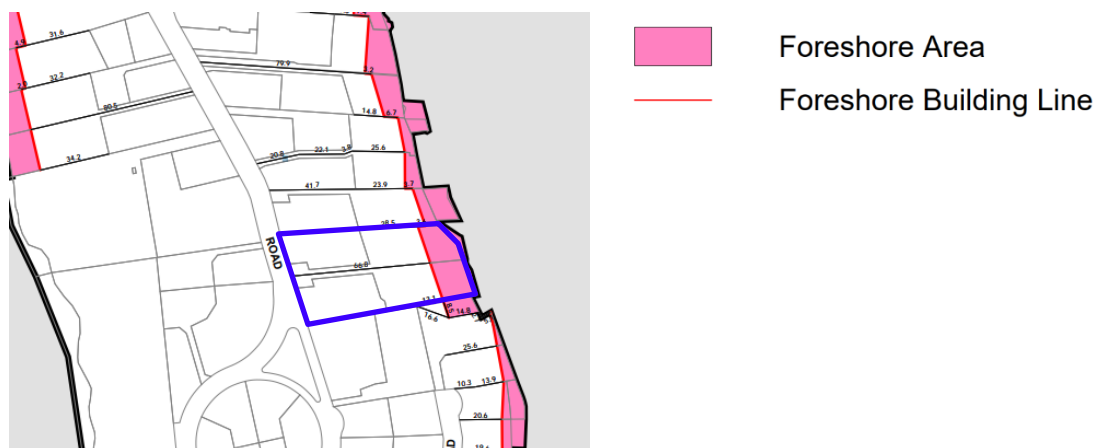


Figure 11: Foreshore Building Line Map (site outlined blue)

The amended architectural plans indicate that no works are located within the foreshore area and as such, is consistent with Clause 6.9 of NSLEP.

It is noted that The Amended Survey Plan prepared by *LTS Survey* (dated 08 July 2023) has not been updated in accordance with the most recent scheme and indicates that part of the dual occupancies are located within the foreshore area. The Applicant has identified that this is diagrammatic and does not require further consideration.

A further Amended Survey Plan is required to demonstrate the revised easements, as they pertain to the revised Building B arrangement. This has not been provided as addressed elsewhere in this Report. This amended documentation should also consider the revised proposal in terms of the foreshore building line.

Earthworks

Pursuant to Clause 6.10(2)(b) of the North Sydney Local Environmental Plan 2013, ancillary earthworks are permissible with development consent. With respect to the above, the proposed earthworks have been assessed against the provisions of Clause 6.10(3) as follows:

Control	Response
<p><i>(a) the likely disruption of, or any detrimental effect on—</i> <i>(i) drainage patterns and soil stability in the locality of the development, and</i> <i>(ii) natural features of, and vegetation on, the site and adjoining land,</i></p>	<p>This application has been referred to Council’s Development Engineers who responded in support of the proposal, subject to conditions of consent. The proposal is therefore considered acceptable in this regard.</p> <p>In terms of impact to natural features of the site, the extent of excavation proposed is considered to be acceptable. The amended proposal has provided additional information regarding the extent of excavation required between Buildings A and B. Whilst it is acknowledged that there is a considerable amount of excavation, this is necessary given the typology of developments proposed and the conditions of the site. The excavation is considered acceptable as it will be integrated with the overall development and landscaping on-site and will not compromise landscaping and ground surface levels at the site boundaries.</p>
<p><i>(b) the effect of the development on the likely future use or redevelopment of the land,</i></p>	<p>The proposed works will not place any restriction on the current or potential future use of the site for residential purposes. While some disruption may occur during construction works, these could be managed via appropriate conditions recommended by Council’s Development Engineers and are not considered to detrimentally effect the likely future use or redevelopment of this land.</p>
<p><i>(c) the quality of the fill or the soil to be excavated, or both,</i></p>	<p>Appropriate conditions of consent could be implemented relating to the disposal of excavated material, should the application be approved.</p>
<p><i>(d) the effect of the development on the existing and likely amenity of adjoining properties,</i></p>	<p>Appropriate conditions of consent could be implemented as Council’s Development Engineer has determined there will be no impact to adjoining properties or the locality.</p>
<p><i>(e) the source of any fill material and the destination of any excavated material,</i></p>	<p>Appropriate conditions of consent could be implemented relating to excavated material.</p>
<p><i>(f) the likelihood of disturbing Aboriginal objects or relics,</i></p>	<p>Whilst unlikely, appropriate conditions can be imposed requiring the ceasing of works and appropriate care should any aboriginal artefacts be uncovered during the course of construction, should the application be approved.</p>
<p><i>(g) the proximity to, and potential for adverse impacts on, any waterway, drinking water catchment or environmentally sensitive area,</i></p>	<p>The proposal is not anticipated to result in any adverse impact to any waterways or catchment areas surrounding the subject site. Council’s Development Engineer has reviewed the application and is in support of the proposal. Should the application be approved, conditions of consent could be implemented.</p>
<p><i>(h) any appropriate measures proposed to avoid, minimise or mitigate the impacts of the development.</i></p>	<p>The proposal has been reviewed by Council’s Development Engineer as well as a full assessment against provisions of the North Sydney Local Environmental Plan 2013 and North Sydney Development Control Plan 2013.</p> <p>As outlined above, the amended proposal has reduced the extent of excavation (through removal of a basement level) and the extent of excavation between Buildings A and B has been appropriately documented. Overall, the extent of excavation is considered to be reasonable in the context of the development, and the proposal has been generally designed to respond to the topography of the site.</p>

In accordance with the above, the proposal generally satisfies Clause 6.10 of NSLEP.

Clause 6.12 Residential flat buildings

Clause 6.12 applies to the proposal and is reproduced below:

- (2) *This clause applies to land in Zone R4 High Density Residential.*
- (3) *Development consent must not be granted for development for the purposes of a residential flat building if the development will result in a single dwelling house, dual occupancy or semi-detached dwelling being located on adjoining land in Zone R4 High Density Residential unless—*
 - (a) *the adjoining land is at least 900 square metres, or*
 - (b) *the consent authority is satisfied that the adjoining land is land on which development may be carried out for the purposes of a residential flat building.*

No. 184A Kurraba Road to the north contains an existing dual occupancy within an approximate site area of 650m². Clause 6.12 has not been adequately satisfied as no evidence of a Valuation and Letter of Offer has been made to this neighbouring property. As no offer has been evidenced, the consent authority cannot be satisfied that an attempt to amalgamate and redevelop the subject site and neighbouring property has been made as required by Clause 6.12.

This is in accordance with *Karavellas v Sutherland Shire Council* [2004] NSWLEC 251 ('*Karavellas*'). Per *Karavellas*, the first step is to ascertain if amalgamation of the subject site and neighbouring property is feasible. Given No. 184A Kurraba Road will be isolated to the extent that it does not adjoin any other R4 zoned land, the offer to amalgamate is necessary and as such, Clause 6.12 is not satisfied.

It is noted that Feasibility Studies (Drawing Sheet A690-A694) have been prepared by *Koichi Takada Architects*. Whilst these studies demonstrate that the neighbouring property at No. 184A Kurraba Road can be redeveloped to accommodate a residential flat building, no evidence of a genuine offer to amalgamate with the neighbouring property has been provided with the DA. As such, Clause 6.12 has not been completely satisfied and the development cannot be approved in this regard.

North Sydney Development Control Plan 2013 Compliance Table

The proposal has been assessed against the following relevant sections of NSDCP 2013

- **Part B Section 1** – Residential Development
- **Part B Section 10** – Carparking and Transport
- **Part C Section 6.1** – Kurraba Point South Neighbourhood

The proposed development is considered to be generally consistent with the desired character of the locality.

However, and as addressed throughout this Report, there are a select number of controls in which the development is inconsistent or inaccurate and insufficient information has been provided. More detailed comments are provided throughout the following DCP 2013 Compliance Table.

NSDCP Part B Compliance Table

Part B Section 1- Residential Development		
Control	Complies	Comments
1.2 Social Amenity		
1.2.1 Population Mix	Yes	The proposal provides for 1 x 2 bedroom apartment, 4 x 3 bedroom and 1 x 4 bedroom apartments within the residential flat buildings and therefore satisfies this requirement.
1.2.2 Universal Design and Adaptable Housing	Yes	The proposed development provides two adaptable apartments within Buildings A and B, A001 and B001 and is therefore compliant.
1.3 Environmental Criteria		
1.3.1 Topography	Yes	<p>The amended proposal has reduced the excavation around the periphery of the site and building footprints, and is generally acceptable with regards to the extent of excavation and the site edges.</p> <p>Furthermore, additional information has been provided regarding the extent of excavation between the built form of Buildings A and B. Whilst the extent of excavation is fairly extensive, this is necessary given the character of the site, typology of the development and has been integrated into the design of the development to ensure there will be no adverse impact to the locality or neighbouring properties.</p> <p>It is also noted that the extent of excavation within proximity to the neighbouring properties has been considered by Council's Development Engineer and is considered acceptable.</p>
1.3.2 Bushland	N/A	Not applicable.
1.3.3 Bush Fire Prone Land	N/A	Not applicable.
1.3.4 Foreshore Frontage	Yes	<p>The amended architectural plans indicate that proposed development has been designed so that it is not situated within the foreshore area and will have no adverse impacts to the character and natural qualities of this area.</p> <p>It is noted that a further Amended Survey Plan has not been submitted with the revised scheme. The Applicant has noted that this is diagrammatic and does not indicate the location of the building in terms of the foreshore area. Notwithstanding, an Amended Survey Plan would be required to identify the revised easement location and dimensions (particularly for Building B) and demonstrate that no part of the dual occupancies are located in the foreshore area.</p>
1.3.6 Views	No	<p>A full and thorough assessment of view loss against the <i>Tenacity Principles</i> cannot be undertaken as insufficient information has been provided to identify the extent of non-compliance with maximum rear setbacks and incline plane, site coverage and landscaped area requirements. Furthermore, the view assessment has not considered all the relevant impacts from surrounding properties, despite being requested and raised in the previous assessment report and by objections.</p> <p>The development is non-compliant with NSDCP controls or, has not accurately demonstrated that the proposal is compliant. This is particularly in relation to site coverage, landscaped area and rear setback incline planes (for the R4 zone) which has not been accurately demonstrated or considered by the applicant. Whilst a view loss assessment is provided in Section 9.7.2 of this Report, any view loss created by the non-compliant development cannot be considered to satisfy the <i>Tenacity Principles</i> and as such, cannot be supported.</p>

		<p>An Amended View Sharing Report has not been submitted following the NSLPP deferral and changes to the building envelope.</p> <p>It is also noted that additional submissions have raised concerns regarding the provision of view loss analysis from additional neighbouring properties, including the following:</p> <ul style="list-style-type: none"> - No. 143 Kurraba Road (Unit 43); - No. 145 Kurraba Road (Units 1 and 6); - No. 182 Kurraba Road (Units G01, 101, 201 and 301); - No. 192 Kurraba Road (Units 2 and 4) <p>Potential view loss from these properties was raised in the original assessment report and as part of submissions, and has not been addressed in the assessment submitted with the amended development application.</p> <p>As such, the view impacts of the proposal cannot be accurately determined and the application assessment cannot be completed.</p>
<p>1.3.7 Solar Access</p>	<p>Yes</p>	<p>The application includes shadow diagrams demonstrating the extent of overshadowing to the neighbouring properties to the south of the subject site.</p> <p>The NSDCP requires that a minimum 3 hours of solar access be provided to neighbouring properties from 9am to 3pm during mid-winter. The shadow diagrams indicate that the properties to the south will be affected throughout mid-winter, however, the eastern facades will retain solar access from 9am to 12pm which is anticipated to include direct sunlight to the primary openings to living areas and is therefore acceptable.</p> <p>In terms of communal open space of No. 192 Kurraba Road, the proposal will overshadow this area throughout mid-winter. Whilst this will be overshadowed by the proposal, this is not anticipated to be significantly improved by a compliant building height.</p> <p>Whilst the above appears to be acceptable, it should be noted that insufficient information has been provided as it pertains to the rear setbacks and incline plane, site coverage and landscaped area to accurately determine if the extent of overshadowing impacts to the neighbouring properties is indeed acceptable with consideration to a three dimensional built form compliant with the relevant controls.</p> <p>It is noted that an objection regarding solar access has been raised in relation to the front garden, kitchen and bedrooms of No. 192 Kurraba Road. This is addressed in Section 13 of this Report, noting that the impact to these spaces is deemed acceptable and are independent of the potential numeric non-compliances with the three dimensional building form.</p>
<p>1.3.8 Acoustic Privacy</p>	<p>Yes</p>	<p>The proposed uses are permissible and anticipated in the zone and as such, the acoustic privacy of neighbouring properties will be appropriately maintained.</p> <p>With regards to the proposed private roof top terraces, these have been designed with considerable setbacks and landscaped planter boxes to protect the aural privacy of future residents and neighbouring properties. These areas are limited in size and are orientated towards to the waterway, thereby mitigating adverse impact. Should development be approved, the roof top terraces are to be modified by the way of condition, including:</p> <ul style="list-style-type: none"> - Removal of the roof top spas from all terraces above the dual occupancies; - Removal of the BBQ and sink area from all terraces above dual occupancies;

		<ul style="list-style-type: none"> - All roof top terraces to be reduced in area to a maximum of 18m², with no reduction in setbacks to the northern and southern (side) boundaries; and - Where roof top terraces are reduced in area, they are replaced with roof top planting. <p>In terms of construction noise, an Acoustic Assessment has been prepared. Conditions of consent could be imposed to appropriately limit noise and vibrations during the construction phase, including the requirement for a construction phase management plan, should the development be approved. This will include a Vibration and Construction Noise Assessment.</p> <p>Accordingly, the proposal is considered acceptable with regards to acoustic privacy.</p>
1.3.10 Visual Privacy	Yes	<p>The proposal predominately complies with the site specific setback controls for boundaries shared with residential neighbours and one of the objectives of these controls is to ensure reasonable privacy is maintained to surrounding properties. This includes the setbacks from both the dual occupancies and residential flat buildings.</p> <p>Where openings and private open spaces are oriented to neighbouring properties or between built forms, they include appropriate privacy screens, obscure glazing, blade walls and blank facades. It is noted that where the proposal does not comply with the side setback requirements to the northern façade of Building A, this pertains to bedrooms, study areas and non-habitable bay window rooms which will not create any adverse impact. These openings are limited and to avoid any potential impact, could be conditioned to include obscure glazing up to a height of 1.5m from the finished floor level.</p> <p>Furthermore, additional setback and planters are provided to certain components of the development, including the dual occupancy roof top terraces, which limits the extent of overlooking to neighbouring properties. As outlined above, these roof top terraces are to be conditioned so that they are reduced in size and intensity of use, and will therefore reduced adverse overlooking to the neighbouring properties and internally within the subject site.</p> <p>As such, the proposal is satisfactory with regard to visual privacy.</p>
1.4 Quality built form		
1.4.1 Context	No	<p>The building design is generally consistent with the site specific controls that apply to the site and provides for a high quality development. However, there are a number of unresolved matters which do not represent an appropriate contextual response, including non-compliances with site coverage and landscaped area, rear setback and incline plane (to R4 zone), as discussed in this Report.</p> <p>As such, the proposal is not in keeping with the desired future character of the area.</p>
1.4.2 Subdivision Pattern	Yes	<p>The proposal will seek to adjust the internal lot boundaries as discussed in this Report. The internal adjustments will not result in any uncharacteristic or non-compliant subdivision pattern. As discussed in this Report, the internal boundary adjustments will not result in any permissibility issues.</p>
1.4.3 Streetscape	Yes	<p>Generally, the development provides a high-quality street edge with the provision of landscaping and generally low front boundary treatment.</p>
1.4.5 Siting	Yes	<p>The proposed building is satisfactory with regard to the provisions of Section 1.4.5.</p>
1.4.6 Setbacks Front Setback	Yes	<p>NSDCP states that the front setback must match the alignment of the primary facades of buildings on adjoining properties. The proposed front setback of 10m to the residential flat buildings along Kurraba Road is consistent with the neighbouring properties and therefore acceptable.</p>

		The provision of detached car lift structures within the front setback is considered acceptable, where this is entirely consistent with the established characteristics and patterns of garages along the front boundaries of neighbouring properties, and as is existing on-site.
	On merit	In terms of the front setback of the dual occupancies to the internal (western) boundary, this is consistent with the neighbouring properties. Where Building C and Building D oppose the northern and southern boundaries (respectively), the built form aligns with the neighbours. It is only the proposed parking structures which extend into the front setback, noting that these align with the revised internal boundary arrangement. These elements are single storey in height and incorporate green roofing, thereby mitigating impacts. Furthermore, they will be concealed from the public domain and will not result in any adverse amenity impacts to neighbouring properties and the streetscape, as discussed in this Report.
Side Setback – R2 Zone	On merit	<p>The proposal is considered acceptable with regards to the side setbacks, as follows:</p> <ul style="list-style-type: none"> - Building C1 (North): 1.5m to 2m on ground and level 1, 2.5m on level 2 and is compliant. It is noted that minor portions of the roof protrude into the 2.5m setback which is acceptable given the minor nature and limited impact. The roof top terrace exceeds the 2.5m setback requirement. With regards to the C1 garage, this provides a 1.5m setback and is a height of approximately 5m from natural ground, and is therefore compliant. - Building C2 (South): 1.5m on ground and level 1, 2.1m to 2.5m on level 2, which is predominantly compliant excluding a minor balcony edge and access to roof top on level 2 which does not result in any adverse impact and is therefore acceptable. The useable portion of the roof top terrace exceeds the 2.5m requirement. - Building D1 (North): 0.9m to 1.5m on ground, 0.8m to 1.5m on level 1 and 1.5m to 3m on level 2, which is predominantly compliant. The non-compliances on level 1 pertain to projected wall elements which provide for articulation and will not impact the amenity of neighbouring properties (proposed Unit C2) as obscured glazing can be imposed as a condition of consent, should the development be approved. The 1.5m setback on level three pertains to the roof top terrace access and will not result in any adverse impact due to the provision of privacy screens, as shown on the architectural plans. The roof top terrace exceeds the minimum setback requirement. - Building D2 (South): 2.5m to 3m on ground and level 1, 3m to 3.3m on level 2 and is compliant. 5.8m from the edge of the roof top terrace and is therefore compliant. <p>As outlined above, the proposal is predominantly compliant with the setback requirements with the exception of only minor portions of Buildings C and D as they oppose each other internal to the site. The variations pertain to minor elements which provide for visual articulation and where amenity is concerned, privacy screens and obscure glazing are, or can be, provided subject to conditions should the DA be recommended for approval.</p>
Rear Setback – R2 Zone	Yes	The proposed dual occupancies provide for a rear setback which aligns with the neighbouring properties and foreshore building line and as such, is considered acceptable as shown in the architectural plans.

		<p>In terms of separation distances between Building A and the northern boundary, and Building C and southern boundary, the proposal does not strictly comply with the separation requirements where openings are proposed. Where blank facades or non-habitable rooms are provided, the minimum 3m setbacks comply with the separation distances as setout in Section 1.3.10 of the DCP. Importantly, the sole objective of Section 1.3.10 is to ensure that existing and future residents are provided with a reasonable level of visual privacy. That is, if the setbacks do not meet the separation distances they must satisfy the objective of the Section.</p> <p>Accordingly, the following is noted:</p> <ul style="list-style-type: none"> - Building A (North): On ground and level 1, the proposal provides a 3m setback to blank facades which satisfies the separation requirements. Where openings are proposed on these levels, in the form of bay windows, a 2.5m setback is provided. To ensure privacy is protected, a condition can be imposed to provide obscure glazing to a height of 1.5m. On level 2, the proposal provides a 6m setback to blank facades, which is compliant. Where openings are provided in the form of bay windows, these include a 5.45m setback. Whilst falling short of the separation requirement, these are appropriately setback and can be similarly conditioned with obscure glazing. An 8.8m setback is provided on the uppermost level which is acceptable and compliant. - Building B (South): On ground and level 1, the proposal provides for a 3.7m to 5m setback to habitable openings. Despite falling short of the 6m requirement, the provision of privacy screens limits the opportunity for overlooking for the property of the south and ensures visual privacy will be maintained. On level 2, the proposal complies with the 6m separation requirement excluding the minor south-eastern corner which is acceptable given the limited impact and also includes privacy screens. The uppermost level significantly exceeds the separation distance to the southern boundary. <p>Per the above, the separation distances will entirely satisfy the objective of Section 1.3.10.</p>
<p>1.4.7 Form Massing Scale</p>	<p>No</p>	<p>The proposed building form, massing and scale is considered to be generally consistent with the desired future character as set out in the specific LEP and DCP controls for the site.</p> <p>However, and as discussed in further detail below, the proposed residential flat buildings have a flat roof, which does not comply with the 36° incline plane requirement. Whilst not meeting this requirement, the development is designed to predominantly comply with the 45° incline plane requirement (as discussed above) and the stepping of the buildings limits an adverse visual or physical impact.</p> <p>It should be noted however that the non-compliance with site coverage, landscaped area, rear setback and incline plane (R4 zone) results a density of development which is greater than that anticipated on the subject site. As such, is excessive with regards to its bulk and scale. This is discussed in further detail below.</p>
<p>1.4.8 Built Form Character</p>	<p>No</p>	<p>The subject site is zoned both R2 and R4, in which the propose dual occupancies and residential flat buildings are permissible with the consent.</p> <p>There are certain elements including landscaping and site coverage, in addition to rear incline plane (of R4 zone), which result in a development which negatively impacts the character of the locality.</p>

1.4.9 Dwelling Entry	Yes	<p>The building entries are clearly distinguishable and well defined to all buildings.</p> <p>The proposal also includes habitable rooms and openings orientated towards Kurraba Road to for passive surveillance.</p>
1.4.10 Roofs	Yes	<p>The proposed residential flat buildings and dual occupancies have flat roofs, which are appropriate with regard to the building typology and character of the locality. The contemporary architectural character is well-suited to the provision of flat roofing and will not result in any adverse impact. Furthermore, the roof forms have included green roofing to soften the built form and useable open space to improve amenity.</p>
1.4.12 Colours and Materials	Yes	<p>The proposed building colours and materials are satisfactory and suitable for the proposed building design and surrounding locality. The development includes light brown brick responding to the vicinity of heritage items and conservation areas, and is generally complimentary with the 20th Century earthy darker tones within the vicinity of the site.</p> <p>It is noted that the proposal includes extensive glazing to the eastern facades of the residential flat buildings and dual occupancies. This is considered acceptable and appropriate in the context of the locality and views afforded in an easterly direction.</p>
1.4.13 Balconies - Apartments	Yes	<p>All apartments are designed with a balcony with a minimum size of 27m² and depth of 2m.</p>
1.4.14 Front Fences	Yes	<p>The front fences are satisfactory. They are generally at a height of 1.5m and are of an open construction so that they are transparent and appropriately relate to the character of the locality. A condition of consent could be imposed to ensure the fencing does not exceed a height of 1.5m.</p>
1.5 Quality Urban Environment		
1.5.1 High Quality Residential Accommodation	Yes	<p>The apartments sizes, balconies and layouts meet the minimum requirements as outlined under 1.5.1 of NSDCP. Specifically, all apartments exceed 90m², include private open space balconies and have appropriate depths.</p> <p>It is noted that all apartments and dual occupancies would achieve natural cross ventilation.</p>
1.5.3 Safety and Security	Yes	<p>The proposal is generally acceptable as it pertains to safety and security of the development. This includes well defined entries, casual surveillance and delineation of public and private spaces.</p> <p>It is noted that the amended proposal provides for on-site waiting bays which addresses potential safety impacts to future residents and the general public.</p>
1.5.4 Vehicle Access and Parking	Yes	<p>The development requires the following parking rates:</p> <ul style="list-style-type: none"> - Building A: 4 resident and 1 visitor space, in which the proposal complies. - Building B: 5 resident and 1 visitor space, in which the proposal complies. - Building C: 4 resident spaces, in which the proposal complies. - Building D: 4 resident spaces, in which the proposal complies. <p>In accordance with the above, the proposal meets the minimum parking requirements for both uses through a combination of basement and at-grade garage parking, which is acceptable. Parking spaces are accessed via car lift structures located within the front setback, which is consistent with the character of developments along Kurraba Road.</p>
	Yes	<p>The amended proposal provides separate on-site waiting area for Buildings A and C and Buildings B and D. This will result in an acceptable traffic, vehicular and pedestrian safety outcome for future occupants, neighbouring properties and the general public.</p>

		The bin storage area encroaching the easement shared with No. 184A Kurraba Road can be conditioned so that it is located outside this area.
1.6 Efficient Use of Resources		
1.6.1 Energy Efficiency	Yes	A BASIX Certificate has been provided with this Development Application, however, is no longer valid as the development has been amended significantly since the time in which the development application was lodged. A new BASIX Certificate must be provided for the amended development to be approved, however, has not been provided.
1.6.2 Passive Solar Design	Yes	The proposed residential flat buildings and dual occupancies have been designed and orientated towards the waterway, orientated to the east. Openings on the northern facades are limited to protect the privacy between buildings on-site and to neighbouring properties. 80% of dwellings on-site will receive solar access from 9am to 11am during mid-winter, and 40% from 9am to 12pm, to living areas. This is considered acceptable given the site orientation and views offered towards the waterway.
1.6.4 Natural Ventilation	Yes	All dwellings proposed will achieve natural cross ventilation.
1.6.7 Water Conservation	Yes	A BASIX Certificate has been provided with this Development Application, however, is no longer valid as the development has been amended significantly since the time in which the development application was lodged. A new BASIX Certificate must be provided for the amended development to be approved, however, has not been provided.
1.6.8 Stormwater Management	Yes	Stormwater Plans have been submitted and considered by Council's Development Engineer, who raises no concern regarding the proposal. It is noted that no revised stormwater plans have been submitted for the amended proposal and this is required for a complete and thorough assessment.
1.6.9 Waste Management and Minimisation	Yes	A Waste Management Plan has been submitted and the development considered by Council's Waste Officer. The amended proposal includes waste chutes, recycling bin storage and temporary holding areas to ensure waste minimisation and is considered satisfactory subject to conditions.
1.6.10 Green Roofs	Yes	The proposal includes the provision of green roofing above the dual occupancy and residential flat building components and planting on structures. This will contribute to improving amenity of occupants, aesthetics of the development and improve the green network in the locality.
Part B Section 10 Car Parking and Transport		
10.1 Parking Provision	Yes	The development requires the following parking rates: <ul style="list-style-type: none"> - Building A: 4 resident and 1 visitor space, in which the proposal complies. - Building B: 5 resident and 1 visitor space, in which the proposal complies. - Building C: 4 resident spaces, in which the proposal complies. - Building D: 4 resident spaces, in which the proposal complies. In accordance with the above, the proposal meets the minimum parking requirements.

View Loss Assessment

As set out in the Table above, an Amended View Sharing Report prepared by *Urbis*, dated August 2023 was submitted in response to the Request for Additional Information dated 13 June 2023. However, and following the NSLPP deferral, no further amendments were made to the View Sharing Report in terms of the revised building envelopes, views enjoyed from other surrounding properties (as listed throughout this Report) and consideration of non-compliances. In this instance, it is not possible to thoroughly assess the view impacts from neighbouring properties in accordance with the principles set by *Tenacity Consulting v Warringah* [2004] NSWLEC 140.

For completeness, the view loss analysis undertaken by *Urbis* has been considered below, where possible. The views analyzed are listed below.

- No. 192a Kurraba Road, Units 1 and 2;
- No. 192 Kurraba Road, Units 1 and 3;
- No. 184 Kurraba Road;
- No. 184A Kurraba Road; and
- No. 147 Kurraba Road.

As discussed, no additional view loss was undertaken for the following properties, despite being requested and identified in neighbouring objections:

- No. 143 Kurraba Road (Unit 43);
- No. 145 Kurraba Road (Units 1 and 6);
- No. 182 Kurraba Road (Units G01, 101, 201 and 301);
- No. 192 Kurraba Road (Units 2 and 4)

Whilst the Applicant, in their Letter to Panel, attempted to justify the view impact (or lack thereof) from the above properties, this is not suitable in terms of satisfactorily responding to neighbour objections or Tenacity Principles. It is noted that Unit 2 of No. 192 Kurraba Road was purposefully not modelled by *Urbis* as it was stated that this was similar to Unit 1 and 3.

Tenacity Evaluation

In the interest of brevity, the View Sharing Report and images provided in that document are relied upon. An assessment of the Four Steps of the Tenacity Principles is provided in the Table below, as it relates to the properties assessed by the Applicant and information made available.

Property	Step 1	Step 2	Step 3
<i>Unit 1, No. 192a Kurraba Road</i>	The view is obtained from the living area and includes land-water interface views.	The view is obtained from the living area, across the side and rear boundary of the site.	The extent of view impact is moderate and results in a loss of land-water interface. The view impact is created by dual occupancies in the R2 zone. There are additional, unaffected views enjoyed from this property, directed away from the subject site. It is noted that the view loss assessment does not show the proposed development from the additional views available, which skews consideration of Step 3. Refer to Photo 3 where the development will likely be visible.

<i>Unit 2, No. 192a Kurraba Road</i>	The view is obtained from the balcony and includes land-water interface views.	The view is obtained from the balcony, across the side and rear boundary of the site.	The extent of view impact is severe and results in a loss of land-water interface views. The view impact is created by the dual occupancies proposed in the R2 zone. As above, there are additional views enjoyed from this property, however, the additional photos (Photo 18) does not show the location of the proposed development where the proposal will likely be visible and potentially impactful.
<i>Unit 1, No. 192 Kurraba Road</i>	The view is obtained from the balcony and includes land-water interface views.	The view is obtained from the balcony, across the side and rear boundary of the site.	The extent of view impact is minor and results in a loss of water views. The view impact is created partly by the residential flat buildings and dual occupancies in the R4 and R2 zone, respectively. There are additional views enjoyed from this property, however, the additional photos (Photo 13) does not show the location of the proposed development where it will likely be visible and impactful.
<i>Unit 3, No. 192 Kurraba Road</i>	The view is obtained from the balcony and includes land-water interface views.	The view is obtained from the balcony, across the side and rear boundary of the site.	The extent of view impact is minor to moderate and results in a loss of water views. The view impact is created by dual occupancies in the R2 zone. There are additional views enjoyed from this property that have not been included in the analysis.
<i>No. 184 Kurraba Road</i>	A number of views have been assessed from living areas and balconies, and include land-water interface views.	The views are obtained from the balcony and living areas, across the side and rear boundary of the site.	The extent of view impacts are negligible to minor.
<i>No. 184a Kurraba Road</i>	A number of views have been assessed from dining rooms, living areas and balconies, and include land-water interface, water and headland views.	The views are obtained from dining rooms, living areas and balconies, across the side and rear boundary of the site.	The extent of impacts created by the development are minor to severe and result in a loss of views ranging from vegetation, to water, land-water interfaces and distant headland. The view impact is created partly by the residential flat buildings and dual occupancies in the R4 and R2 zone, respectively.
<i>No. 147 Kurraba Road</i>	A number of views have been assessed from living areas and balconies, and include a variety of district views, water views and land-water interface views.	The views are obtained from living areas and balconies, across the front and rear boundary of the site.	The extent of impact created by the development are negligible to minor, and result in a loss of views ranging from vegetation, to water and land-water interfaces. The view impact is created partly by the residential flat buildings and dual occupancies in the R4 and R2 zone, respectively.

Step Four

In terms of Step 4, the extent of view impacts created by parts of the development, namely the residential flat buildings within the R4 zone, are unreasonable for the following reasons:

- The impacts are considered to be a result of non-compliances with site coverage, landscaping and rear setback, incline planes;
- The impacts cannot be fully assessed due to the provision of inaccurate information;
- The assessment does not provide a comparison between the complaint envelope and that proposed, thereby skewing the assessment and potential conclusions of view impacts;
- The assessment does not highlight the non-compliant portions of the building, excluding maximum building height;
- The assessment does not indicate the proposed built form when considering the 'Additional Views' for the properties assessed; and
- The assessment does not assess the potential visual impacts to other surrounding properties, as outlined throughout this Report.

Ultimately, the proposal is considered to result in adverse view loss impacts and therefore cannot be supported. The impacts created by the dual occupancies are reasonable given they are predominantly compliant with the relevant controls and represent a skillful design. However, and in terms of the residential flat buildings, the compliant and more skillful design, which would create an increased setback from the proposed rear boundary to Buildings A and B, is anticipated to potentially improve views obtained from the neighbouring properties across the subject site but has not been quantified or analysed.

As outlined above, the provided information does not allow for the full and thorough assessment of the view impacts in accordance with the Tenacity Principles and Section 1.3.6 of the NSDCP. Accordingly, the proposal is not considered acceptable in this regard.

Rear Setback and Incline Plan (R4 High Density Residential zone)

Section 1.4.6 Setbacks, Rear Setbacks of the NSDCP requires a 1.5m setback from the rear boundary, with building height plane commencing at 3.5m above ground level (existing) rear boundary and projected at an angle of 45° internally to the site. The amended architectural plans provide rear setbacks as follows, as measured from the existing rear boundary alignment:

- **Building A:** A 2.5m to 5.75m setback is provided to the rear (internal) boundary (existing). The proposal seeks a minor variation to 45° incline plane, as measured from ground level existing, from the existing rear boundary alignment.
- **Building B:** A 1.7m to 4.5m setback is provided to the rear (internal) boundary (existing). The proposal seeks a minor variation to 45° incline plane, from the existing rear boundary alignment.

The proposal seeks minor variations to the incline plane requirement as measured from the existing internal boundaries which is considered acceptable.

However, and critically, the rear setback and incline plane requirement, as measured from the proposed adjusted internal boundary, would be non-compliant with this control. The applicant has stated in their Letter to Panel dated 7 February 2024, that an assessment of the rear setback and incline plane from the proposed internal boundary is irrelevant as the development is to be viewed as integrated. This information has been specifically requested and is essential to the complete assessment of the development application. As set out in the Local Planning Panel minutes, the development cannot be considered as integrated or consolidated and each proposed allotment should be considered separately.

In this regard, no information or further justification has been provided for the rear setback and incline plane as measured from the proposed allotment boundaries. This information is crucial and necessary for assessment, as the proposed dual occupancies have a front setback which is entirely reliant on the adjusted internal boundaries and internal boundaries must address permissibility. In this regard, the front and rear setbacks should be applied consistently, from the proposed adjusted internal boundaries and insufficient information has been submitted with the DA to evaluate this matter.

It should be noted that it is not possible to utilize the architectural plans to accurately demonstrate the extent of non-compliance for the building height incline plane, as measured from the proposed internal rear boundary. This representation can only be achieved through the inclusion of additional architectural plans. However, it is evident that the south-eastern corner of Building A and north-eastern corner of Building B will likely result in non-compliances.

As outlined in this Report, this non-compliance has a direct impact for the assessment of reasonableness of amenity impacts, namely views. The extent of variation as measured from the proposed internal allotment boundary, to both rear setback and incline plane, has not been accurately demonstrated or quantified and therefore assessment of the view loss impact is compromised by this lack of information. That is, the view impact cannot be considered thoroughly, particularly in terms of Step 4 of the Tenacity Principles, as the extent of variation is not accurately determined in the architectural set or the View Sharing Report. To simply state that the rear setback incline plane is acceptable and not identify, quantify and consider the impact in terms of the revised internal allotment boundary is unsatisfactory and does not satisfy the objectives of Section 1.4.6 or view loss principles.

Accordingly, whilst it is noted that the residential flat building has been stepped as part of the amended design and this is commended, this matter cannot be thoroughly assessed as insufficient information has been provided as it relates to the proposed rear boundary.

Site Coverage

The Applicant has provided, as part of the amended package, separate calculations for each allotment as it pertains to site coverage. Each building is to be viewed as a separate built form within its proposed new lot and must comply with the site area calculations for both the dual occupancies and residential flat buildings. Per *Section 1.5.5 Site Coverage* of the NSDCP, a maximum site coverage of **45%** is permitted for both development types. P2 and P3 of Section 1.5.5 outline elements which should be considered when calculating the extent of site coverage, as is reproduced below:

***P2** For the purposes of P1, the following items are considered to constitute site coverage:*

- a. buildings as defined by the EP&A Act 1979;*
- b. garages and carports;*
- c. sheds;*
- d. enclosed / covered balconies, decks, pergolas and the like;*
- e. swimming pools, spa pools and the like;*
- f. other structures including:*
 - i. permanent BBQ structures;*
 - ii. cabanas;*
 - iii. external staircases;*
 - iv. gazebos;*
 - v. greenhouse/glasshouse;*

- vi. *plant rooms;*
- vii. *rainwater tanks;*
- viii. *ramps;*
- ix. *garbage storage facilities.*

However, site coverage excludes:

- g. *any basement;*
- h. *any part of an awning that is outside the subject site;*
- i. *any eaves;*
- j. *unenclosed balconies, decks, pergolas and the like;*
- k. *paving and patios (porous and non-porous);*
- l. *driveways and car stand areas (porous and non-porous);*
- m. *water features; or*
- n. *anything else defined as landscaped area.*

P3 *For the purposes of P1, the area of any access handle, access way or right of carriageway is to be excluded from the calculation of site area and site coverage.*

The NSDCP prescribes certain elements to be included and excluded in the calculation of site coverage. Furthermore, and as part of these calculations, both existing and proposed access handles, accessways or right of carriageways are to be excluded from the site area and considered in the calculations. This will influence the total calculation of site coverage.

In accordance with the above, the provided calculations in relation to site area do not accurately exclude the existing and proposed access and right of ways for both vehicles and pedestrians in the R2 and R4 zones. In this instance, the site area will be reduced by easements and rights of way and the calculation of site area altered, as follows:

- **R4 Zone North (Lot 1, Building A):** Site area of 550m², excluding existing and proposed vehicular accessway easement within front and rear of site. It is noted that the existing easement equates to an area of 69.8m²;
- **R4 Zone South (Lot 2, Building B):** Site area of 678.5m², excluding proposed vehicular accessway easement within front and rear of site, and pedestrian easement where encroaching allotment;
- **R2 Zone North (Lot 3, Building C):** Site area of 856m², excluding proposed pedestrian accessway easement; and
- **R2 Zone South (Lot 4, Building D):** Site area of 929.3m², excluding proposed pedestrian accessway easement

It is noted that the vehicular accessway where situated within the building footprints of Building A and B have not been excluded from the site area calculations. Additionally, the site area calculations for Lot 2 have been assumed given the location and size of easements have not been indicated in amended survey documentation. As stated above, amended survey information is required to verify these calculations.

Following the above, the calculations provided for site coverage are also inaccurate where a portion of the built form for both Buildings A and B have been excluded from the site coverage calculations, and are subsequently included in landscaped area, as shown in the Figure below (extract from A401). The following site coverage calculations are obtained for Buildings A and B:

- **Building A:** Approximately 300m² of site coverage; and
- **Building B:** Approximately 353.5m² of site coverage.

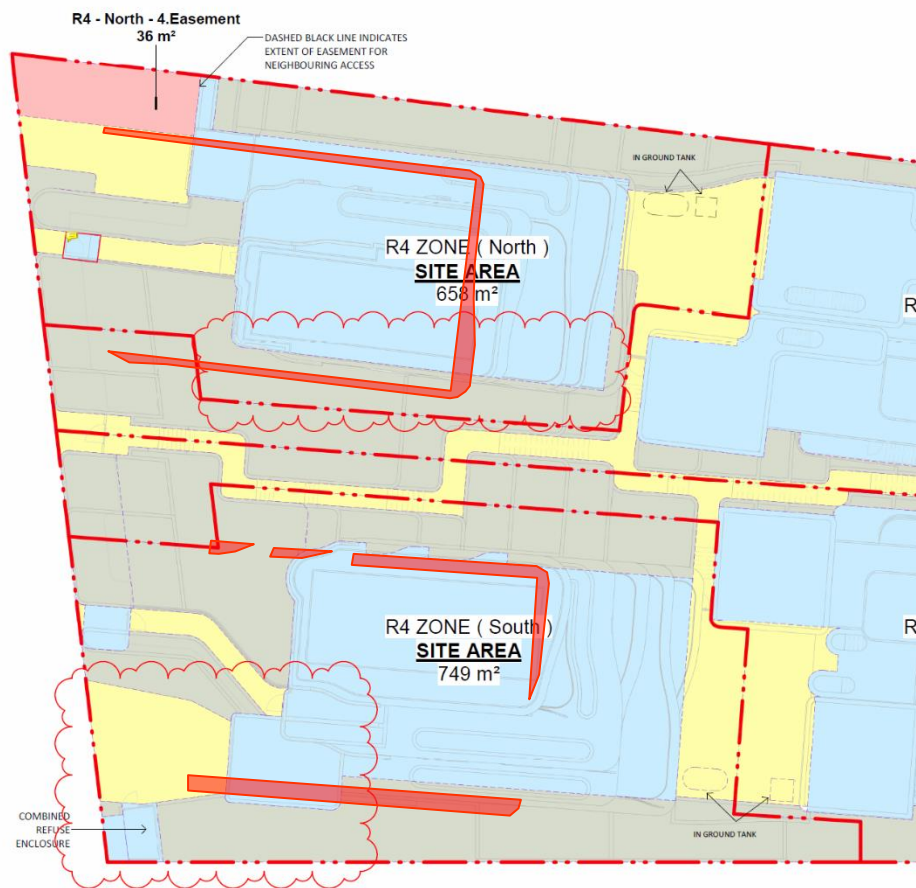


Figure 12: Excerpt from calculations Sheet A401, with areas incorrectly included in site coverage shown shaded red

Accordingly and provided within the Table below is a breakdown of the site area, including and excluding accessways, and site coverage calculations for all allotments.

Lot	Site Area	Site Coverage Calculation
R4 Zone North (Lot 1)	Total: 658m ² Excluding Easements: 550m ²	300m ² or 45.5% based on 658m ² 300m ² or 54.5% based on 550m ²
R4 Zone South (Lot 2)	Total: 749m ² Excluding Easements: 678.5m ²	353.4m ² or 47.1% based on 749m ² 353.4m ² or 52% based on 678.5m ²
R2 Zone North (Lot 3)	Total: 924m ² Excluding Easements: 856m ²	400.1m ² or 43.3% based on 924m ² 400.1m ² or 46.7% based on 856m ²
R2 Zone South (Lot 4)	Total: 1012m ² Excluding Easements: 929.3m ²	430m ² or 42.4% based on 1,012m ² 430m ² or 46.2% based on 929.3m ²

It is noted that where the allotment boundaries would be modified to remove any potential jurisdictional hurdle, the extent of site coverage for both R4 allotments would increase. Whilst this would increase the extent of non-compliance, it is not considered critical to the application as the development is not supportable when calculated under the current allotment sizes. That is, the development, at the very least, should comply when calculated at the abovementioned lot sizes.

As such, the extent of site coverage is considered to be significant for both R4 zoned allotments. Whilst the development may appear as acceptable when calculated against the total site area, the easements must be excluded from the calculation of site area, as outlined by the NSDCP. Importantly, if the site coverage were to be considered against the total site area, the landscaped area non-compliance (as set out in Section 9.7.4 below) would be unacceptable. This is also compounded with the variations and rear setback incline plane and is further exacerbated by the provision of inaccurate information for both site coverage and site area calculations.

Ultimately, the site coverage (and landscaped area) requirements set the desired density and built form on the subject site (in the absence of FSR). As outlined above, the extent of variation ranging between 52% to 54.5% is significant and cannot be supported.

Landscaped and -Un-built Upon Area

As detailed above, the Applicant has provided, as part of the amended package, separate calculations for each allotment as it pertains to landscaped area. However, these calculations do not correctly calculate the site area or quantum of landscaping proposed, and therefore provides for inaccurate information. In terms of the calculation of site area, this is discussed above in detail within Section 9.7.3 of this Report.

Per *Section 1.5.6 Landscape Area* of the NSDCP, a minimum landscaped area of **40%** is required for both development types. Similarly, a maximum un-built upon area of **15%** is permitted for both developments. P1 of Section 1.5.6 outlines elements should be considered when calculating the extent of landscaped area, as is reproduced below:

P2 For the purposes of P1:

- a. Landscaped area is considered to comprise all parts of a site used for growing plants, grasses and trees, but does not include any building, structure or hard paved area 6;*
- b. The area of any access handle, access way or right of carriageway is to be excluded from the calculation of site area, landscaped area and un-built upon area; and*
- c. The following items are considered to constitute un-built upon area:*
 - (i) any part of a basement which does not comprise site coverage;*
 - (ii) unenclosed balconies, decks, pergolas and the like;*
 - (iii) paving and patios (porous and non-porous);*
 - (iv) driveways and car stand areas (porous and non-porous); or*
 - (v) water features.*

However, un-built upon area excludes:

 - (vi) anything else defined as site coverage; or*
 - (vii) anything else comprising landscaped area.*

Following the above, the calculations provided for landscaped area are also inaccurate where a portion of the built form for both Buildings A and B have been included in landscaped area calculations, despite being located over building structures, per P2 (a). This is shown in the Figure below, as extracted from A401. The following landscaped area calculations are obtained for Buildings A and B:

- **Building A:** Approximately 216m² of landscaped area; and
- **Building B:** Approximately 284m² of landscaped area.

It is also noted that Sheet A402 differs from Sheet A401 in terms of areas included in landscaped calculations. For consistency Sheet A401 has been relied upon. It is noted that the Applicant has stipulated that these areas should be included in landscaped calculations as they include vegetation above, however, this is not consistent with P2 above.

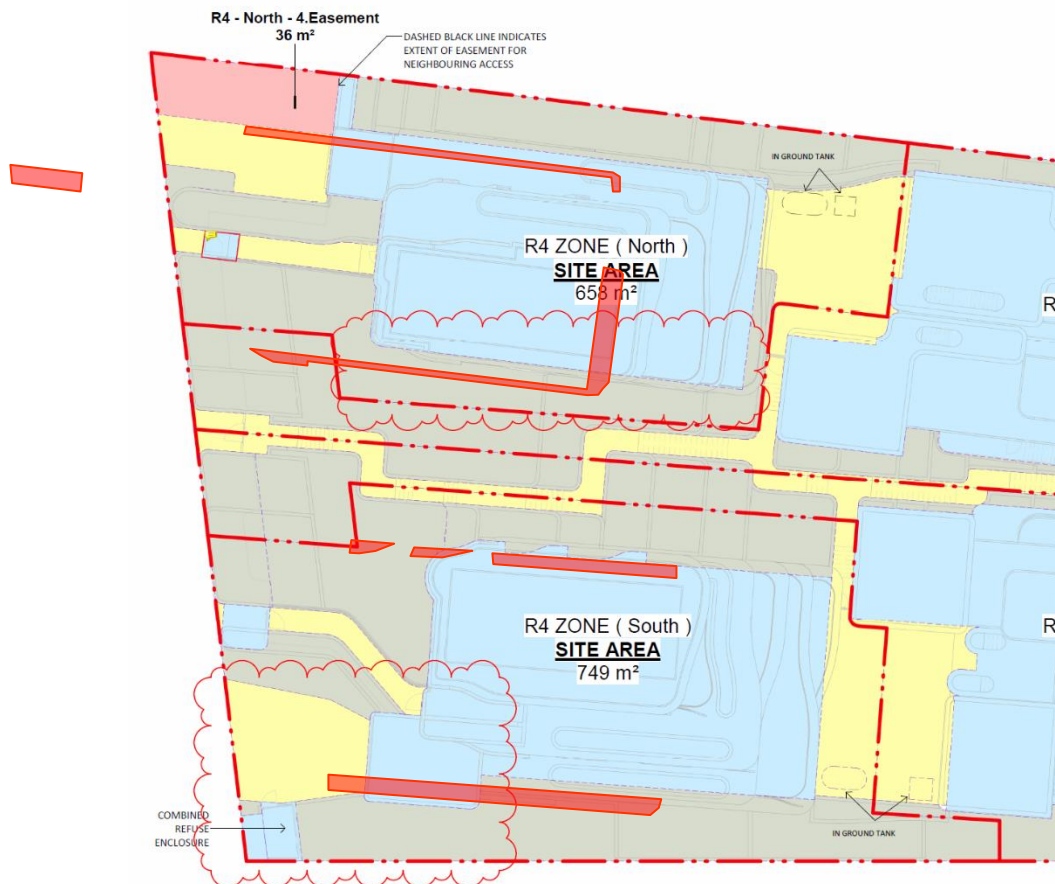


Figure 13: Excerpt from calculations Sheet A401, with areas incorrectly included in landscaped area shown shaded in red

Lot	Site Area	Landscaped Area Calculation	Un-Built Upon Area Calculation
R4 Zone North (Lot 1)	Total: 658m ² Excluding Easements: 550m ²	216m ² or 32.8% based on 658m ² 216m ² or 39.2% based on 550m ²	142m ² or 21.5% based on 658m ² 34m ² or 6.1% based on 550m ²
R4 Zone South (Lot 2)	Total: 749m ² Excluding Easements: 678.5m ²	284m ² or 37.9% based on 749m ² 284m ² or 41.8% based on 678.5m ²	111.6m ² or 14.9% based on 749m ² 41.1m ² or 6% based on 678.5m ²
R2 Zone North (Lot 3)	Total: 924m ² Excluding Easements: 856m ²	421.8m ² or 45.6% based on 924m ² 421.8m ² or 49.2% based on 856m ²	102.1m ² or 11% based on 924m ² 34.1m ² or 3.9% based on 856m ²
R2 Zone South (Lot 4)	Total: 1,012m ² Excluding Easements: 929.3m ²	434.3m ² or 42.9% based on 1,012m ² 434.3m ² or 46.7% based on 929.3m ²	147.7m ² or 14.5% based on 1,012m ² 65m ² or 7% based on 929.3m ² .

In accordance with the above, the proposal does not meet the minimum requirements for landscaping when considered against the total site area for the R4 zones. When excluding site area occupied by the easements, the extent of landscaping is generally acceptable. However, the extent of landscaping is directly correlated with the provision of site coverage. That is, if the site coverage is calculated against the site area excluding the easements, a significant non-compliance results and whilst the landscaping may comply, this results in an overdevelopment of the R4 zoned allotments.

It is noted that the development, as it pertains to un-built upon area, generally complies with the 15% maximum when calculated against the total site area or site area excluding easements. However, if the un-built upon area of proposed Lot 1 is to be calculated against the total site area, it results in non-compliance.

Ultimately, the site coverage and landscaped area calculations are directly correlated and extent of built form, as located within the R4 zone, is considered unacceptable. Whilst the development includes an acceptable amount of on-structure landscaping, this does not offset the non-compliances as addressed in this Report.

Part C Area Character Statements – Compliance Table

As detailed, the subject site is located within the South Cremorne Planning Area, Kurraba Point South Neighbourhood.

Part C Section 6 South Cremorne Planning Area, 6.1 Kurraba Point South Neighbourhood		
Control	Complies	Comments
6.1.1 Significant Elements		
Land Use	Yes	The proposal provides for residential accommodation in the form of residential flat buildings and dual occupancy developments which are desired land uses in the locality.
Topography	Yes	<p>The proposal is mostly responsive to the topography of the site. The development has been amended through the assessment process to reduce the extent of excavation for the building footprints and along the boundaries shared with the neighbouring properties.</p> <p>In terms of the excavation is proposed internally, between Buildings A and B, additional information has been provided regarding the extent of excavation. Whilst a degree of excavation is required between these envelopes, this is consistent with the typology of development and is therefore considered acceptable.</p>
Natural Features	No	<p>The topography as it adjoins the side boundaries has been terraced and the extent of excavation reduced and is considered acceptable and consistent with the pattern of surrounding development and terracing. Internally between Buildings A and B, the extent of excavation is considered suitable to the typology of development with appropriate landscaping provided to limit any adverse impact.</p> <p>Notwithstanding the above, the development does not provide for compliant landscaped area and site coverage as discussed in further detail below. The non-compliances result in an undesirable impact to the provision of natural vegetation and landscaping and site coverage exceeding the desired character, particularly with regards to the R4 zoned land.</p> <p>The proposal will not alter the characteristics of the foreshore area which is dominated by multi-storey residential buildings.</p>

Views	Insufficient information	Insufficient information regarding the degree of height non-compliance means the potential impacts to the views obtained from Kurraba Road towards the waterway and from the public domain cannot be thoroughly assessed. This is discussed in detail elsewhere in this Report.
Identity and Icons	Yes	The development will have no adverse impact to any iconic elements in the immediate and wider locality.
Subdivision	Insufficient information	<p>The internal adjustments to the lot boundaries will not have any adverse impact to the irregular grid pattern which responds to the topography of the land.</p> <p>The adjustment of the lot boundary between the residential flat building and the dual occupancies results in setbacks that are non-compliant. No justification for this variation has been provided besides the reliance on an integrated development, which has been established as not acceptable.</p> <p>The lots adjacent to the foreshore will be retained in terms of shape and pattern despite the minor internal adjustments. However, the ways in which the allocation of private open space within the foreshore area will be delineated has not been clarified in the DA and the potential impacts of any such arrangements on the foreshore area cannot be assessed.</p> <p>It is also noted that an Amended Survey Plan has not been provided as it relates to the dimensions and areas of easements serving vehicles for Buildings B and D.</p>
Streetscape	Yes	The built form of the residential flat buildings as they front Kurraba Road is appropriately designed, including street frontage height, setbacks and architectural design. It is noted that the proposal will remove the existing street fronting garages which is an acceptable response for a contemporary development.
Public Transport	Yes	The proposal will facilitate opportunities to use public transport.
6.1.2 Desired Future Character		
Diversity	Yes	The proposal provides for residential flat buildings and dual occupancies which will provide for an appropriate variety of developments in the locality. The proposed building typologies are consistent with the R4 and R2 zoning of the subject site.
6.1.3 Desired Built Form		
Siting	No	The proposed residential flat buildings address Kurraba Road and the dual occupancies address the waterway which is acceptable. It is noted however that the proposal does not satisfy the minimum landscaped area and exceeds the site coverage requirements for the R4 zone which ultimately impacts the character of the locality and streetscape and cannot be supported.
Colours and Materials	Yes	The proposed materials are consistent with the character of the locality and supported by Council's Heritage Officer.

Section 7.11 Contributions

The subject application has been assessed against the North Sydney Local Infrastructure Contribution Plan 2020 and is subject to payment of contributions towards the provision of local infrastructure. The contributions payable has been calculated in accordance with Council's Contributions Plan as follows:

Type of Contribution	Amount
S7.11 Contribution – increase in the number of dwellings in accordance with section 1.3.3 within the Plan (from 4 to 10 units)	
Applicable contribution type	
Open space and recreation facilities	\$44,051.57
Public domain facilities	\$24,522.20
Active transport	\$1,399.63
Community facilities	\$8,847.96
Plan administration and management	\$1,178.64
Total	\$80,000.00

Conditions requiring the payment of contributions at the appropriate time could be included should the application be worthy of support.

Site Suitability

The proposed development is considered to have an undesirable outcome to the locality as described in this Report. The site is not considered to be suitable for the proposed development in its current form as a result of the non-compliances as set out in this Report. As such, the application is not considered suitable for the site and is contrary to Section 4.15(c) of the EP&A Act.

All Likely Impacts of the Development

All likely impacts of the proposed development have been considered within the context of this report to the fullest extent possible noting insufficient information for some matters including site coverage and landscaped area, setbacks and inclined planes and calculations based on proposed new lot boundaries and accurate identification of landscaped and built-upon areas.

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	Yes
9. All relevant S4.15 considerations of Environmental Planning and Assessment (Amendment) Act 1979	Yes

Submissions

The issues raised by the submissions are summarised below and addressed with planning comments:

- *The car lift for Building B and D provides no off-street waiting bay and as such, vehicles will stand on Kurraba Road which will have an adverse impact.*

Comment: The amended proposal provides for an on-site waiting bay for Buildings B and D which will result in acceptable impacts to the movement and flow of traffic along Kurraba Road. The provision of two on-site waiting bays and car lifts, each of which serve four dwellings, is considered to be suitable for the scale of the development. That is, the quantum of dwellings proposed and served by their respective car lifts will not result in any adverse impact to traffic movement in the locality, and is considered acceptable. Importantly, the revised parking arrangement, which includes an on-site waiting bay for Buildings B and D, is supported by Council's Traffic Engineer.

- *Boundary adjustment and permissibility.*

Comment: The issue of boundary adjustment and permissibility is discussed in detail within Section 9.6.2 of this Report. To avoid any jurisdictional hurdle raised by the objections, a deferred commencement condition can be imposed to ensure that no part of the residential flat building will be located within the R2 Low Density Residential zone. Furthermore, conditions will also ensure that residents of the residential flat buildings cannot access the R2 zone, including the foreshore area.

- *Permissibility of residential flat buildings, terraces and access.*

Comment: The proposal is permissible with consent in the zones (subject to above). It is considered that the provision of landscaping and terraces which extend between the zones does not result in a prohibition as both are permitted uses. However, and to ensure any jurisdictional hurdle is avoided in terms of permissibility, conditions of consent can be imposed so that the landscaped terraces ancillary to the residential flat building do not encroach into the R2 Low Density Residential zone.

In terms of the pedestrian accessway serving the dual occupancies, conditions could similarly be imposed so that no part of the central accessway is permitted within the R4 zone, and no access is permitted to the foreshore area and pedestrian accessways for the occupants of the R4 zone. This will remove any potential jurisdictional issue.

- *View loss from surrounding properties.*

Comment: No amended view loss imagery has been submitted with the revised architectural scheme. Furthermore, and discussed in this Report, a full and thorough assessment of the view loss impact cannot be undertaken in entirety as the extent of non-compliances pertaining to site coverage, landscaped area and rear setback incline plane requirements, have not been accurately quantified. Accordingly, a view loss assessment in accordance with the *Tenacity Principles* cannot be fully undertaken and the development assessment cannot be satisfactorily completed.

It is also noted that view loss imagery was also requested as part of the original assessment report and additional objections received from a number of properties. This included No. 143 Kurraba Road (Unit 43), No. 145 Kurraba Road (Units 1 and 6), No. 182 Kurraba Road (Units G01, 101, 201 and 301) and No. 192 Kurraba Road (Units 2 and 4). As view loss images have not been provided from these properties, the submissions cannot be appropriately addressed.

- *Clause 6.12 of NSLEP and site isolation.*

Comment: As discussed in this Report, the application is not supported as the development has not provided evidence of Valuation and Letter of Offers for the neighbouring property at No. 184A Kurraba Road. This is considered necessary to satisfy Clause 6.12 of the NSLEP.

The proposal includes concept diagrams for the neighbouring property which demonstrate that redevelopment can occur independently on the neighbouring site, however, no evidence has been submitted with the application that demonstrates compliance with all requirements of Clause 6.12 to NSLEP.

It is noted that appropriate side setbacks have been provided by the proposed development to the north, including appropriate privacy measures, to ensure the potential for any future development of the adjoining site at No. 184A Kurraba Road is not compromised, as discussed in this Report. Whilst it is noted that the indicative schemes have not considered the side setback incline plane requirements, each floor level of the potential residential flat building depicted on A690 provides for a floor area of approximately 127m². Should a stepped approach be taken from the southern boundary of No. 184A Kurraba Road, appropriate floor area can be maintained to enable the provision of generously sized two or three bedroom apartments across all levels.

Furthermore, and due to the lot arrangement of the properties to the north of No. 184A Kurraba Road, the example shown in A690 is also considered acceptable with regards to the incline plane. This is due to the extent of setback distances to the nearby R4 zoned land.

When considering building separation, the intent of this control is to ensure that visual privacy is protected as discussed in this Report. The proposed development on the subject site and any future development to the north can be designed with appropriate setbacks and privacy measures to ensure visual privacy is maintained.

Notwithstanding the above, no Valuation or Letter of Offer has been provided, despite being requested and as such, Clause 6.12 cannot be satisfied.

- *Landscaped area and site coverage.*

Comment: As discussed in this Report, the development cannot be supported as it relates to site coverage and landscaped area due to non-compliance, in addition to insufficient and inaccurate information provided to quantify these measures. Any development must justify compliance with these requirements as they set the desired density for the subject site.

- *Rear setbacks and incline plane of R4 Zone.*

Comment: As discussed in this Report, the proposal is compliant with the rear setback requirements as measured from the existing internal boundary. In terms of the incline plane, the proposal includes minor variations to the parapet and roof edges.

However, and importantly, the adjustment to internal lot boundaries which are relied upon for compliant setbacks for the dual occupancies have not been addressed in terms of the change to the rear setback for the residential flat buildings. As discussed in this Report, the proposal results in variations and insufficient information has been provided to both assess and justify the setbacks arising from the proposed subdivision. A consistent approach to the controls is required, in that each allotment must be assessed separately and based on the proposed allotment arrangement, and therefore the development assessment cannot be completed in full.

- *Side setbacks and incline plane of R4 Zone.*

Comment: An objection has been raised regarding the encroachment of Building A into the 3m setback, as it pertains to the bay windows. Whilst encroaching the setback, these elements are minor and are limited to two levels and will not have any adverse visual or amenity impact. It is noted that obscure glazing can be imposed as a condition of consent to these windows, to a height of 1.5m above ground level.

Further to the above, an objection has been made in terms of the accuracy of the side setback incline plane of Building A to the northern boundary. As outlined in this Report, the side setback incline planes have been based on the existing ground levels along the northern (side) boundary, per A620, as to inform the diagrams of A412. As shown in the Figures below, the extent of non-compliance to A101 and A201 (lower and upper levels) is consistent with that depicted in A412. Specifically, the roof form of A101 to the north is non-compliant by 2m and pertains to a relatively minor portion of the parapet roofing and glazing which does not result in any adverse impacts. As the topography rises considerably, the extent of variation will reduce as shown in A412. In terms of A201 (low and upper levels), the extent of non-compliance is negligible and pertains to parapet roof elements.

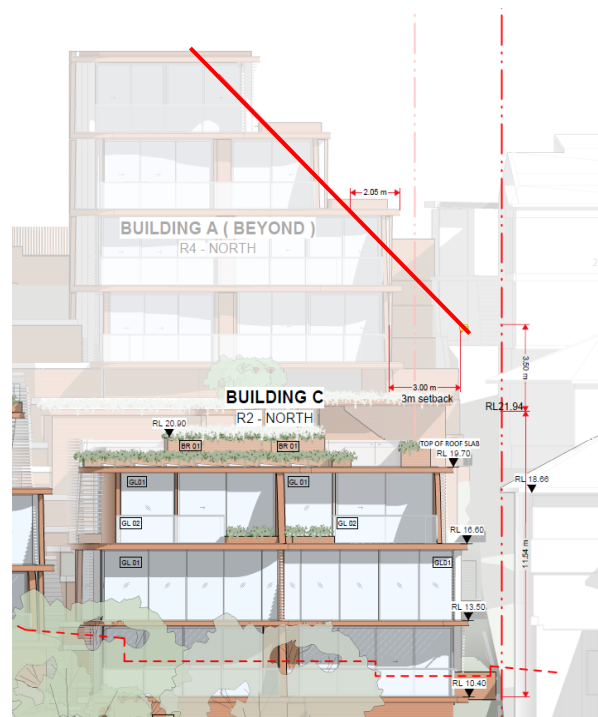


Figure 14: Side Setback Plane A101, with existing ground RL21.94 and 3.5m 45° incline plane, with 3m setback determined from envelope.

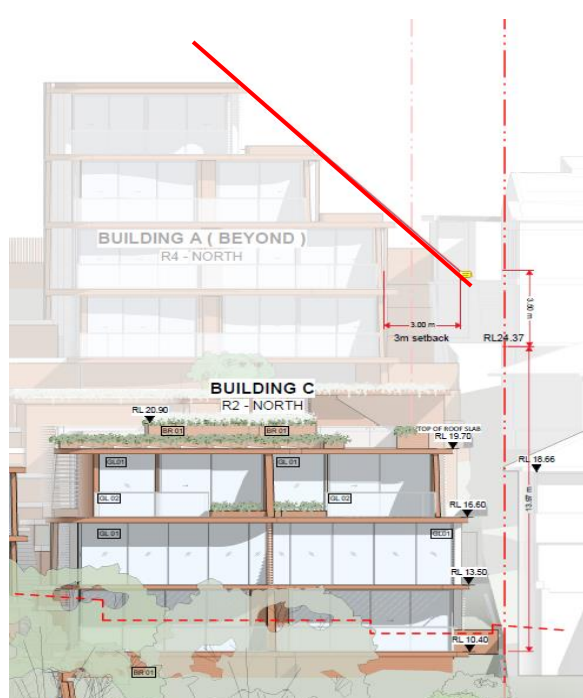


Figure 15: Side Setback Plane A201 (Lower Level), with RL24.37 and 3.5m 45° incline plane, with 3m setback determined from envelope.

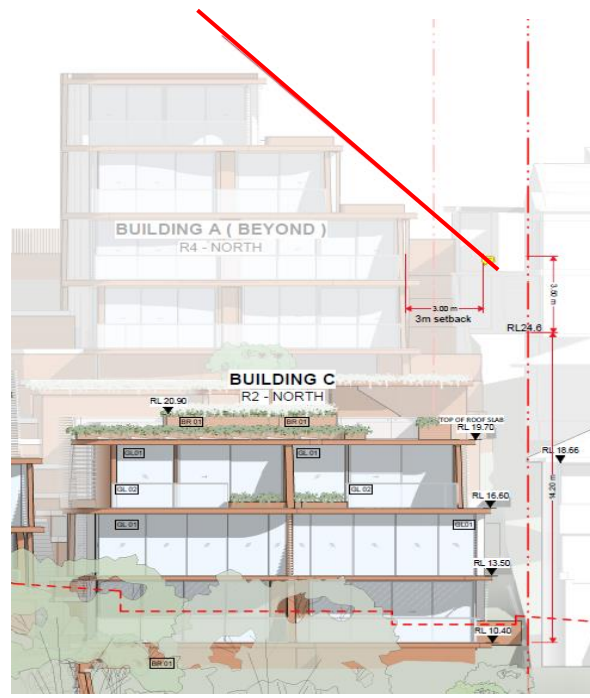


Figure 16: Side Setback Plane A201 (Lower Level), with RL24.6 and 3.5m 45° incline plane, with 3m setback determined from envelope.

In accordance with the above, the non-compliance with the side setback incline plane is considered acceptable and consistent with that shown in A412.

Separately and in terms of the meters and booster where located with a nil setback to the northern boundary, a condition of consent will be imposed to ensure that appropriate separation is provided to protect the privacy of the neighbour to the north.

- *Side setbacks and incline plane of R2 Zone.*

Comment: The proposed dual occupancies are designed so that they provide appropriate setbacks from the side boundaries as set out in this Report. The setbacks to the northern and southern (side) boundaries, and internally between dual occupancies on the subject site, will not result in any adverse amenity, bulk or scale impact and is acceptable.

- *Visual privacy impacts and roof top terraces.*

Comment: As discussed in this Report, the visual privacy impacts have been appropriately managed through the provision of screening, location and dimensions of windows, sections of blank facades, blade walls, planter boxes and orientation of outlooks from openings. Furthermore, appropriate setbacks have been provided as to reduce the extent of overlooking to the neighbouring properties.

Any unscreened openings and balconies to the northern and southern boundaries can include obscure glazing and screening as part of conditions of consent.

In terms of the roof top terraces have also been reduced in size and include significant setbacks with planter boxes to edges as to minimise overlooking. As described elsewhere in this Report, conditions of consent would be imposed to remove the roof top terrace spa, sink and BBQ area and reduce the size to a maximum of 18m² (with no reduction to the side setbacks).

- *Building height non-compliance and stepping of built form.*

Comment: As discussed in this Report, the extent of non-compliance has been reduced throughout the assessment process and sufficient information provided to determine the extent of non-compliance is acceptable.

It is noted that an objection has raised concerns regarding the topography below the open space of No. 190 Kurraba Road and the calculation of maximum building height. The Clause 4.6 Variation has measured maximum building height from the finished floor level of the building in accordance with the definition of building height. The Survey Plan indicates that the topography falls sharply at the edge of this open space (in an easterly direction), which has been considered in the height blanket diagrams prepared by Koichi Takada Architects. Specifically, the architectural set includes a maximum building height plane as measured from the extrapolated topography, which considers the topography as measured from the periphery of the existing building and ignores the modifications to landforms created by the existing structures. As depicted in A410 and as measured from the extrapolated topography, there will be no additional non-compliance when accounting for the landform below this open space.

- *Overshadowing.*

Comment: The extent of overshadowing is generally acceptable given the orientated of the subject site, aspect of the site and surrounding properties and permitted built form. However, the reasonableness of the extent of overshadowing cannot be quantified without accurate information on the degree of non-compliance with the built form controls including rear setbacks and incline plane, site coverage and landscaped area.

It is noted that concern was raised regarding the overshadowing to the front garden, bedrooms and kitchens of No. 192 Kurraba Road, as they front Kurraba Road in a westerly direction. As outlined in this Report, the NSDCP requires that a minimum 3 hours of solar access be provided to the main internal living areas and private open spaces of neighbouring properties from 9am to 3pm during mid-winter. The proposed development indicates that the properties to the south, including No. 192 Kurraba Road, will retain solar access to the eastern facades (which contain primary living areas and balcony spaces) for three hours between 9am and 12pm in mid-winter, and is therefore acceptable.

Whilst there will be an impact to the western front garden, bedrooms and kitchens of No. 192 Kurraba Road, the sun eye and shadow diagrams demonstrate that this will be from 9am to 10am on 21 June. From 12pm to 3pm, the proposal will not result in any adverse impact to these areas. Furthermore, the front garden, kitchen and bedrooms of this property will receive direct solar access from 1pm to 3pm, noting a degree of solar impact from other surrounding developments at 3pm. Accordingly, the extent of solar impact created by the proposal is acceptable.

- *Extent of excavation and impacts.*

Comment: The amended proposal has reduced the extent of excavation on the subject site and is considered acceptable. Additional information has been provided in relation to the extent of excavation internally within the site and is considered acceptable with regards to the typology of development.

It is noted that should the development be approved, appropriate conditions of consent will be imposed to ensure the structural integrity of the public domain and neighbouring properties will be protected. This includes built forms and retaining walls of neighbouring properties.

- *Accuracy of information.*

Comment: Amended documentation has been submitted which resolves a number of issues regarding the accuracy of documentation. However, there are a number of matters which have yet to be resolved, predicated on insufficient information, and are identified within this Report. They include site coverage, landscaped area, rear setbacks and incline plane and view impacts.

Where objection has been raised regarding the accuracy of other information, this has been addressed in this Section of the Report.

- *Traffic volumes are taken from October 2019.*

Comment: Revised traffic studies have been submitted. This has been reviewed by Council's Traffic Engineer and the data is deemed acceptable.

- *Traffic volumes and impacts.*

Comment: Council's Traffic Engineer has reviewed the application and the development is considered acceptable with regards to traffic volumes and trip generation. Whilst car lifts are proposed, these are deemed appropriate for the subject site, where on-site waiting bays have been provided.

- *Resident and visitor Parking.*

Comment: The proposal provides for resident and visitor parking which is consistent with the NSDCP requirements and is therefore acceptable.

- *Safety impacts to pedestrians and vehicles.*

Comment: The proposal is considered to be generally acceptable with regards to the safety of pedestrians and vehicles. As outlined, the amended proposal provides for an on-site waiting bay for Buildings B and D which satisfactorily addresses the on-going safety of pedestrians and vehicles.

As discussed in detail below, construction impacts could be addressed with a condition of consent.

- *Impact from construction vehicles on infrastructure and traffic.*

Comment: Council's Development Engineer has reviewed the application and if the development is to be approved, appropriate conditions of consent can be implemented to ensure the safe and efficient operation throughout the construction process. This will include the requirement for a Construction Management Plan which should include consideration of shuttle-bus arrangements for the movement of construction workers to and from the site.

Further to the above, it is noted that this Construction Management Plan must be referred to Council's Traffic Committee for approval prior to the issuing of a Construction Certificate. The operation of this Construction Management Plan will require ongoing liaison with Council to ensure it has been properly enforced throughout the demolition, excavation and construction phase. Specifically, the shuttle-bus arrangement should be strictly enforced to limit parking for construction purposes throughout Kurraba Point.

Other submissions have been raised regarding the general parking arrangement throughout the Kurraba Point locality. As above, the Construction Management Plan should be monitored throughout the construction process to ensure that the shuttle-bus arrangement is being followed. Separate issues regarding alternative, locality wide parking measures, whilst important for the Kurraba Point locality, is not within the scope of this assessment.

- *Impact of removing 'No Stopping Zone' to 'No Parking Zone'*

Comment: This is not supported by Council's Traffic Engineer and should the development be approved, this will not be changed.

- *Inappropriate materiality and colour scheme.*

Comment: The colour scheme has been amended to better reflect the character of the surrounding locality and is supported by Council's Heritage Officer.

- *Streetscape character and relationship to Kurraba Road.*

Comment: The proposed development has been referred to the Design Excellence Panel who are largely in support of the development application. Whilst there are outstanding issues as outlined in this Report, the development form and streetscape presentation is considered to be generally appropriate within the context of Kurraba Point. As outlined in this Report, the materials and colour scheme have been amended to respond to the character of the locality.

- *Waste collection.*

Comment: The amended proposal provides temporary bin holding areas within the front setback as required by the DCP. This has been reviewed by Council's waste officer who has deemed the proposal acceptable. It is noted that the waste storage areas will only be utilised temporarily and will not result in any adverse impact, as permanent waste storage is contained within the building envelopes, away from neighbouring properties.

- *Clause 6.6 of NSLEP and presentation of dual occupancies.*

Comment: The provision of side by side dual occupancies is considered the most efficient use of land. The proposal will present to the public domain and generally appear as a single dwelling through the provision of appropriate design measures. It is noted that the development has been referred to Council's Design Excellence Panel who support the architectural design of the proposal.

- *Foreshore building line.*

Comment: Additional information has been provided to accurately depict the foreshore building line. The Architectural Plan indicates that no built form is located in the foreshore area.

- *Subterranean living areas.*

Comment: The amended proposal has reduced the extent of excavation and habitable rooms have acceptable finished floor levels relative to the ground levels.

- *Disruption of water flows.*

Comment: Council's Development Engineer has reviewed the stormwater management plans for the amended proposal and has deemed the proposal acceptable, subject to conditions of consent should the application be approved.

- *Vibration and construction noise impacts.*

Comment: Should the development be approved, conditions of consent can be implemented to ensure vibration and construction noise impacts are appropriately managed. Specifically, a Vibration and Construction Noise Assessment would be conditioned which will ensure the amenity of neighbouring properties and the wider locality is maintained.

- *Bulk, scale and mass.*

Comment: The proposal in the current form cannot be supported given the lack of information provided regarding site coverage and landscaped area in addition to rear setback and incline plane, as set out in this Report.

- *Pitched roof.*

Comment: The provision of a flat roof form is considered reasonable and reflective of the contemporary character of the development. A flat roof will be compatible with the diversity of buildings in the locality and will provide opportunities for green roof treatments.

- *Tree removal.*

Comment: The proposal has been considered by Council's Landscape Officer who is generally in support of the application, subject to amendments and conditions which would be imposed, should the development be approved.

1. Public Interest

The cumulative effect of the non-compliances with Council's controls and lack of sufficient information, particularly as it relates to site coverage, landscaped area, rear setback and incline plane and view loss, amongst other items, is considered to be not in the public's interest and contrary to Section 4.15(e) of the *Environmental Planning and Assessment Act 1979*.

2. How the community views were taken into consideration

The application was notified in accordance with Council Community Engagement Protocol from 20 January 2023 to 10 February 2023 and the amended plans and additional information were re-notified between 1 September 2023 to 22 September 2023. Following the North Sydney Local Planning Panel deferral, the application was again notified between 15 March 2024 and 8 April 2024. The application is to be rereferred to the North Sydney Local Planning Panel given the number of submissions received. The submissions have been addressed earlier in the report.

3. Conclusion and Reasons

The application seeks to demolish the existing structures on-site and construct 2 x residential flat buildings and 2 x dual occupancies with basement and at-grade parking, landscaping, internal boundary adjustment and subdivision.

Insufficient information has been provided with the development application to enable a thorough assessment of the proposal in accordance with Section 4.15 of the EP&A Act, 1979. Specifically, insufficient information has been provided to quantify the full extent of non-compliance with the height incline planes (namely for the rear setback), site coverage and landscaped area, treatment of the foreshore area to provide multiple areas of private open space, evidence demonstrating offers of site amalgamation and methods to acknowledge the heritage significance. Furthermore, technical information as also set out in this Report has not been provided.

The proposed development is considered to result in a built form in proportion to landscaped area which is inconsistent with the desired character of the locality. This is predominately predicated on non-compliances with site coverage and landscaped area. These non-compliances, combined with the lack of accurate information, not only results in a development which is out of character, but also does not allow for a thorough and robust assessment of the application. As outlined in this Report, the site coverage and landscaped area controls seek to manage the density of built form on the subject site, where no FSR standard applies.

The non-compliances and lack of information relating to the measurement of the rear height incline plane, site coverage and landscaped area prevents a thorough assessment, particularly as it relates to the impacts on surrounding properties such as solar access, privacy and views. When considering the issue of view loss, as set out in this Report, the impacts are not considered reasonable when considering the NSDCP variations for the residential flat buildings, in addition to the lack of view analysis for surrounding properties raised in previous documents and via neighbouring objections.

The proposal does not adequately satisfy various clauses within the NSLEP 2013, including Clause 5.10 Heritage conservation area and Clause 6.12 Residential flat buildings. The proposal is also inconsistent with various sections of NSDCP 2013, views, context, rear setbacks and incline plane (R4 High Density Residential zone), form and massing, built form and character, site coverage and landscaped area.

The application has attracted a number of unique submissions raising particular concerns regarding building height, envelope, setbacks, landscaped area and site coverage, misleading or incorrect plans and documentation, traffic impacts and safety, construction traffic and safety, excavation impacts, stormwater impacts, privacy, solar impacts and view loss.

Following this assessment and having regard to the provisions of Section 4.15 of the *Environmental Planning & Assessment Act 1979*, the application is recommended for **refusal**.

RECOMMENDATION

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

THAT the North Sydney Local Planning Panel exercising the functions of Council as the consent authority refuse Development Application No.343/22 for the demolition of a dwelling house, two (2) dual occupancies and a swimming pool and construction of two x residential flat buildings and 2 x dual occupancies, with basement parking and access provided by car lifts, associated landscaping and civil works and internal boundary realignment and subdivision, for the following reasons:

1. The proposed development fails to satisfy Clause 1.2(2) Aims in Part 1 of the North Sydney Local Environmental Plan 2013

- a) The application does not demonstrate the development will enhance the amenity of the community and environment and is inconsistent with Clause 1.2(2)(a);
- b) The application exceeds the maximum site coverage and is deficient in landscaped area resulting in an overdevelopment of the site which is incompatible with the desired future character of the area and inconsistent with Clause 1.2(2)(b)(i);
- c) The application fails to ensure that new development does not adversely affect residential amenity in terms of view sharing and is inconsistent with Clause 1.2(2)(c)(i); and
- d) The application fails to protect the natural qualities of North Sydney and does not ensure that development does not adversely affect its significance and is inconsistent with Clause 1.2(2)(f).

2. The proposed development does achieve the objectives of the zone

- a) The proposal does not satisfy the objectives of the R4 High Density Residential zone as:
 - i. The proposed residential flat buildings do not demonstrate that a reasonably high level of amenity to the neighbouring properties are achieved, particularly in relation to view loss impacts; and
 - ii. The proposed residential flat buildings compromise the natural landscaped character of the area as the development does not satisfy the relevant built form controls as required within the R4 zone.

3. The proposed development does satisfy Clause 6.12 of the North Sydney LEP 2013.

- a) The development does not satisfy Clause 6.12 Residential flat buildings as it has not been adequately demonstrated that amalgamation has been considered for No. 184A Kurraba Road to the north. As such, the consent authority cannot be satisfied that land is capable of being redeveloped as a residential flat building.

4. The proposed development does not comply with the following provisions pursuant to the North Sydney DCP 2013.

- a) O2 and P2, P4 of Part B, Section 1.3.6 Views in NSDCP 2013;
- b) O2, O3, O4 and P2, P6 of Part B, Section 1.4.6 Setbacks in NSDCP 2013;
- c) O1 and P1 of Part B, Section 1.4.7 Form, massing and scale in NSDCP 2013;
- d) O1 and P8 of Part B, Section 1.4.8 Built form character in NSDCP 2013;
- e) O1, O2, O3, O4 and P1, P2, P3 of Part B, Section 1.5.5 Site Coverage in NSDCP 2013; and
- f) O1 and P1, P2 of Part B, Section 1.5.6 Landscape Area in NSDCP 2013.

5. The application does not satisfy the provision of State Environmental Planning Policy (Biodiversity and Conservation) 2021

- a) The application does not satisfy the provisions of SEPP (Biodiversity and Conservation) 2021, specifically, Chapter 6 Water catchments in that the development does not protect or enhance terrestrial vegetation.

6. Insufficient information

Insufficient information has been provided to allow for the robust and thorough assessment of the application in accordance with Section 4.15 of the EP&A Act, 1979, as follows:

- a) The calculations for site coverage, landscaped area and un-built upon area are inaccurate and do not allow for a full and thorough assessment;
- b) The rear setback and building height plane of the R4 High Density Residential zone has not been measured from the proposed internal lot boundaries;
- c) The extent of view impact cannot be robustly assessed as insufficient information is provided to determine the extent of non-compliances to built form, particularly as it pertains to site coverage, landscaping and rear setback, incline plane;
- d) The view impact does not provide an assessment of a number of surrounding properties, including;
 - i. No. 143 Kurraba Road (Unit 43);
 - ii. No. 145 Kurraba Road (Units 1 and 6);
 - iii. No. 182 Kurraba Road (Units G01, 101, 201 and 301);
 - iv. No. 192 Kurraba Road (Units 2 and 4);
- e) No Valuation or Letter of Offer has been evidenced for the potential amalgamation of the property to the north at No. 184A Kurraba Road, Kurraba Point;
- f) No amended BASIX Certificate in relation to the amended development;
- g) No swept paths provided in relation to the revised vehicular access arrangement for Building B and D;
- h) No amended survey documentation for the revised easements as it pertains to Buildings B and D;
- i) No amended stormwater plans for the revised development;
- j) The amended landscaped documentation does not reflect the revised vehicular access arrangement of Building B and D; and
- k) The Amended Clause 4.6 Written Request does not address Objective (f) of Clause 4.3. The Clause 4.6 Written Request cannot be technically upheld as the Applicant has not demonstrated that this Objective will be satisfied.

7. Not considered to be in the public interest or suitable for the subject site.

- a) The proposed development is not considered suitable for the subject site nor in the public interest and does not satisfy Section 4.15(e) of the Environmental Planning and Assessment Act 1979 (as amended) due to a lack of information to enable a thorough assessment.

JONATHAN JOSEPH
PLANNING INGENUITY

Manager's note: This report has been reviewed for quality and completeness only. The content and recommendation is materially unchanged from that of the Independent Assessment Officer