

07 February 2024

Ms Therese Manns
General Manager
North Sydney Council
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Attention: Ms Manns

RE: Letter to Panel addressing issues raised in the Council report and deferral decision

Item LPP02 at 184B, 186 & 190 Kurraba Road, Kurraba Point

This letter has been prepared by Gyde Consulting on behalf of the Applicant, PB & Co in relation to the deferral granted by North Sydney Local Planning Panel (Panel) on 6 December 2023; regarding DA 343/22 at 184b, 186 & 190 Kurraba Road, Kurraba Point (subject site).

The Panel resolved to defer the application to allow the Applicant the opportunity to address issues of concern raised in the Council report. The Panel granted a deferral with the following 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 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 muti 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”.

After reviewing the Council report, reasons for refusal and the deferral comments provided by the Panel, the applicant has provided amended documentation to address the issues raised which formed those reasons for refusal and subsequent deferral. The reasons for refusal and the manner of overcoming the issues raised are discussed in the table below.

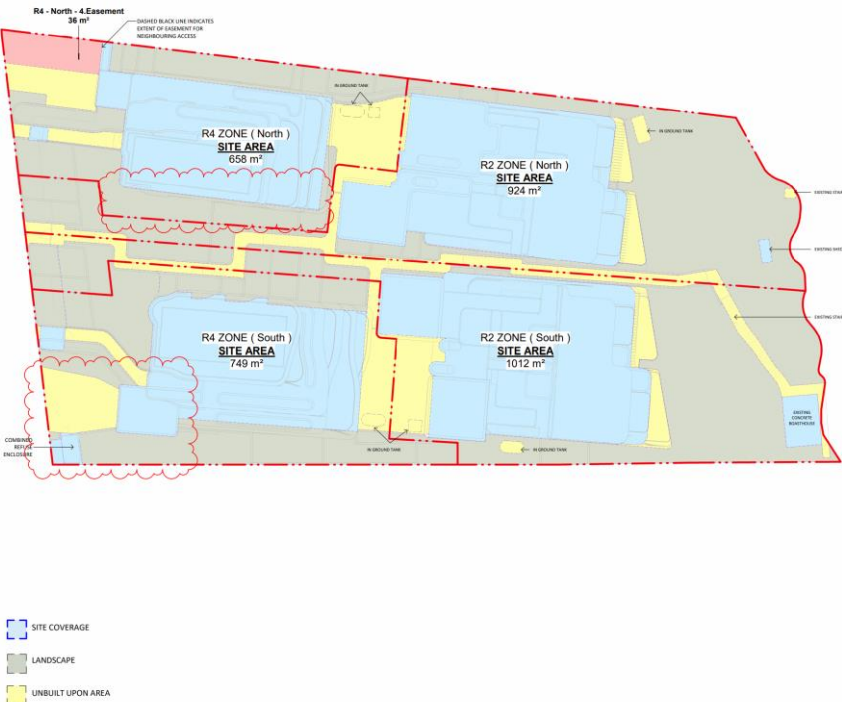
It would be appreciated if the Council could forward this information to the Panel so that they can review it as part of their determination in this matter.

Overview:

The site is a steeply sloping site (some 27m from front to rear) surrounded by multi-storey dwellings and residential flat buildings. It comprises 2 x different zones, being R4 (closer to the street) and R2 towards the water. Following the Panel discussion, each lot has now been considered individually in reference to landscaping and site coverage, ensuring that each individual lot is compliant with development controls in order to ensure the permissibility of each of the buildings in each zone.

The amendments made following the Panel's deferral include:

- Buildings A & B built form has been compressed, improving the landscaping, unbuilt upon and site coverage compliance for each lot in both R2 and R4 zones.
- Amended site calculation diagrams, demonstrating each lot to be assessed individually in reference to the landscaping, unbuilt upon and site coverage.
- The car lift has been integrated into building B to accommodate a waiting bay within the site. Entries from Kurraba Rd for building A & B have been rearranged to consolidate the landscaping and unbuilt upon area compliance.
- Shadow diagrams updated to reflect the integration of the car lift for building B.
- Units A001 and B001 – Adaptable apartments plans updated to reflect overall building changes.
- Plans have been amended to show the foreshore building line as provided by LTS. The foreshore access stairs have been pulled back from the foreshore zone, ensuring there is no building element encroaching on the foreshore building line.
- The additional height plane diagrams have been prepared demonstrating the height blankets based on Merman for both R2 and R4 zones.

Issues Raised	How the matter has been addressed
<p>1. Site coverage, landscaped area, un-built upon area and desired future character</p>	<p>The Council report states the proposal does not comply with the relevant site coverage requirements for each individual allotment.</p> <p>It was resolved at the Panel meeting dated 6 December 2023 that the site cannot be consolidated as one development as the dual occupancies need to stand on their own allotments in order to be permissible. Therefore, the Panel reasoned that each individual lot must be assessed individually in relation to landscaping and site coverage.</p> <p>As such, drawing A401(Rev 7) shows the site coverage, landscaped area and un-built upon areas for each individual lot, refer to extract below.</p> 

Issues Raised | **How the matter has been addressed**

COMPLIANCE SUMMARY - R4 ZONE

R4 NORTH SITE AREA:	658m ²	R4 NORTH SITE AREA (EASEMENT EXCLUDED):	622m ²
R4 SOUTH SITE AREA:	749m ²	R4 SOUTH SITE AREA:	749m ²
R4 TOTAL SITE AREA:	1407m ²	R4 TOTAL SITE AREA:	1371m ²

	PROPOSED R4 NORTH	PROPOSED R4 SOUTH	COMBINED R4	R4 CONTROL
SITE COVERAGE	279.9 m ² = 45%	329.3m ² =44.0%	609.2m² = 44.4%	Max 45% of combined site area (617m ²)
LANDSCAPE	243.9m ² = 39.2%	310.1m ² =41.4%	554m² = 40.4%	Min 40% of combined site area =548.4m ²
UNBUILT UPON AREA	98.2m ² = 15.8%	109.6m ² =14.6%	207.8m² = 15.2%	Max 15% of combined site area (205.7m ²)
EASEMENT	NOT INCLUDED	-	-	
SITE AREA	622 m ²	749 m ²	1371 m²	

COMPLIANCE SUMMARY - R2 ZONE

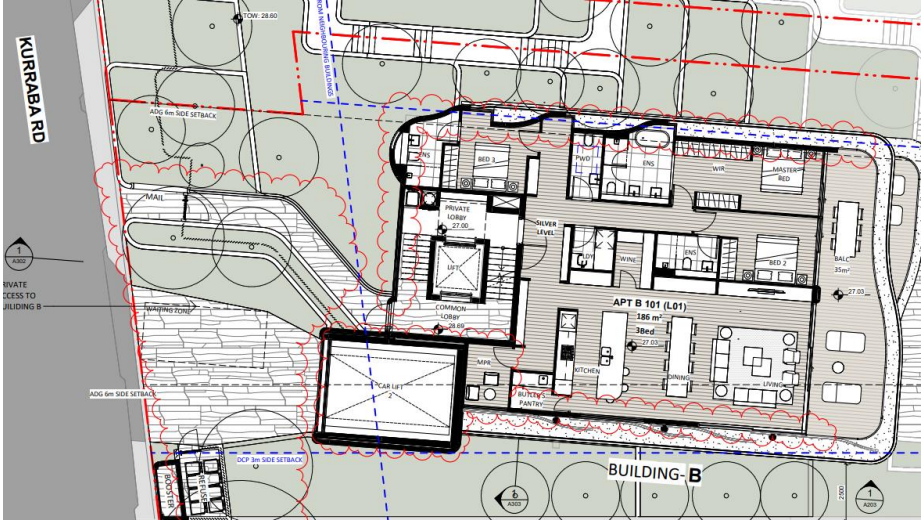
R2 NORTH SITE AREA:	924m ²
R2 SOUTH SITE AREA:	1012m ²
R2 TOTAL SITE AREA:	1936m ²

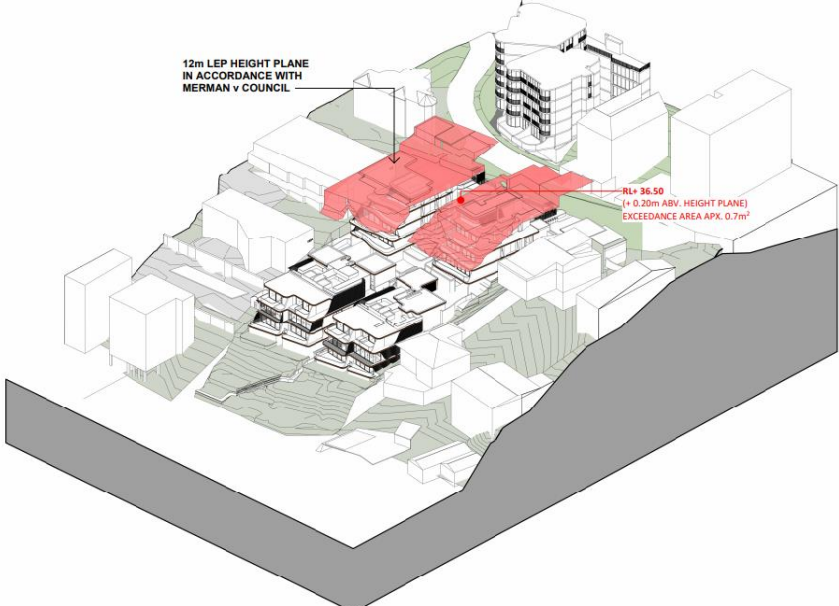
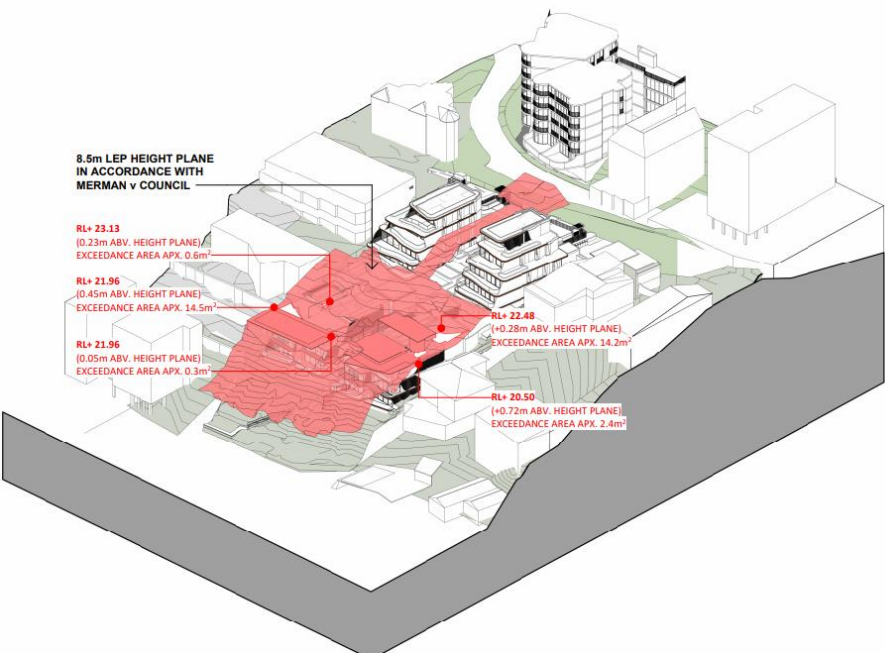
	PROPOSED R2 NORTH	PROPOSED R2 SOUTH	COMBINED R2	R2 CONTROL
SITE COVERAGE	400.1m ² = 43.3%	430.0m ² =42.5%	830.1m²=42.9%	North: Max 45% = 416m ² South: Max 45% = 455m ²
LANDSCAPE	421.8m ² = 45.7%	434.3m ² =42.9%	856.1m²=44.2%	North: Min Total Landscape 40% = 370m ² South: Min Total Landscape 40% = 405m ²
UNBUILT UPON AREA	102.1m ² = 11%	147.7m ² =14.6%	249.8m² = 12.9%	North: Max 15% = 139m ² South: Max 15% = 152m ²
SITE AREA	924 m ²	1012 m ²	1936 m²	

The individual lots of the proposal, as amended, largely comply with the development controls, in particular landscaping and site coverage. The proposal results in a minor non-compliance of 0.8% over the maximum for the R4 north site in the R4 Zone un-built upon area, however this is offset by the R4 south site which achieves max 14.6% un-built upon land; thus, the proposal almost achieves compliance for the total R4 zoned land, with a minor 0.2% over provision. It should be noted that the recent approval of the neighbouring property 184 Kurraba Road at the NSLPP meeting dated 06/12/23 was approved with a 0.2% under provision on landscaping provision, which is not too dissimilar from the minor 0.2% over provision of un-built upon area in this application. This minor non-compliance for the north site will be negligible when viewed from the public and private domains, especially since the southern site provides less than what is permitted. Other than this the proposal, as individual lots, strictly comply with the Council DCP provisions and objectives of these controls, and therefore this matter has been addressed. This results in the buildings' appearance being consistent with the requirements of bulk and scale expected for the immediate area under the provisions of the North Sydney DCP 2013 in relation to built form character, form, massing and scale.


The plans submitted with the RFI package has deducted the built form on the ground as required by Council, including that located within the Foreshore Area. It has not deducted the overhead slabs of elevated levels, as landscaping is still achieved below these. Also, it has excluded the existing ROW for the site to the north.

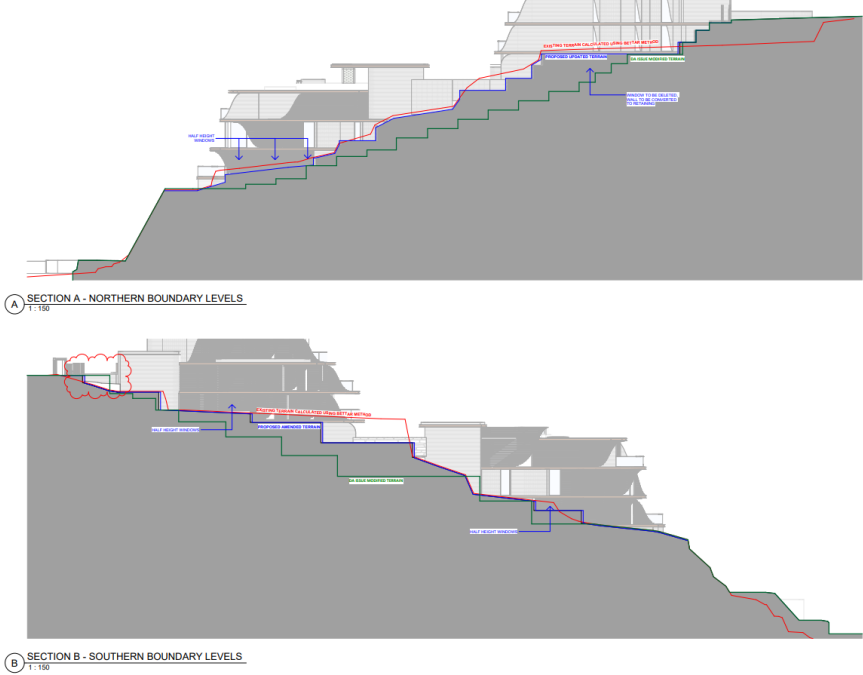
The existing access handles for the R2 zoned land have been included as the development site encompasses all 4 titles as one integrated development.

Issues Raised	How the matter has been addressed
	<p>They do not operate as a typical “battle-axe” handle within the integrated development, and as such should be included in the site area calculation. Therefore, it is considered that this matter has been addressed.</p>
<p>2. On-street waiting bay serving Buildings B and D</p>	<p>Council and the Panel’s concern regarding the on-street waiting zone adjacent to Building B is acknowledged. In consideration of this the design has been amended to integrate the car lift into Building B to make room for an off-street waiting zone. Refer to attached drawings A104 and A105. An extract is included below which shows the amended design.</p>  <p>It is therefore considered that this matter has been addressed through the amended design of Building B.</p>
<p>3. Building Height</p>	<p>The original application submitted to Council calculated the height based on the Merman principles, including the Clause 4.6.</p> <p>Council’s RFI dated 15 August 2023, requested the applicant “to provide a 3D height blanket diagram as measured from the extrapolated topography in accordance with <i>Bettar v Council of the City of Sydney</i> [2014] NSWLEC 1070”.</p> <p>The amended plans submitted with the RFI reduced the physical height of the buildings, stepped the buildings away from the side boundaries, and provided a revised height blanket diagram based on Bettar, as requested by Council, refer to sheet A110. Consequently, the Clause 4.6 had to be amended to reflect the Bettar calculations. This was provided as part of the RFI package.</p> <p>A diagram showing the survey points which were used to generate the height blanket was provided, refer to sheet A630. The applicant believes the amended plans submitted with the RFI package were addressing Council’s requests. After review of the Council report, revised diagrams have been prepared demonstrating the height blankets based on Merman for the revised scheme. (Refer to drawings A481 and A483). As can be seen with this, the height variation is minimal with:</p> <ul style="list-style-type: none"> - The R4 zoned land exceeding the 12m height by 0.2m (RL36.5) - The R2 zoned land exceeding the 8.5m height limit by 0.05m (RL21.96) – max 0.72m (RL20.5). Refer to extract below.

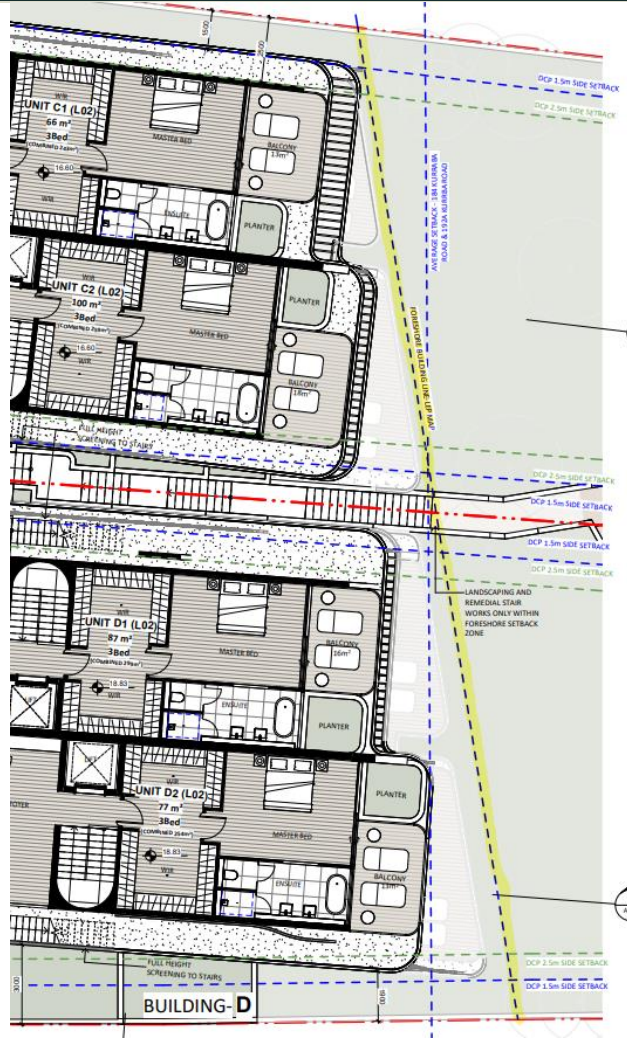
Issues Raised	How the matter has been addressed
	 <p data-bbox="534 1019 853 1064">R4 HEIGHT PLANE DIAGRAM - 12m ABOVE EXISTING GROUND LEVEL (VIEW 1)</p>
	 <p data-bbox="526 1892 869 1937">R2 HEIGHT PLANE DIAGRAM - 8.5m ABOVE EXISTING GROUND LEVEL (VIEW 1)</p>

Issues Raised	How the matter has been addressed
	<p>The Clause 4.6 has subsequently been updated to reflect the amended design changes and also the calculation based on Merman, not Bettar. This is attached with this letter.</p> <p>Council’s report on page 35 states “...the non-compliances with building height are relatively minor and are generally acceptable”.</p> <p>We believe this issue has now been resolved.</p>
<p>4. Heritage (the proposal does not address the associative significance relating to Trygve Halvorsen)</p>	<p>The site is not identified as a heritage item nor within a heritage conservation area.</p> <p>A revised Heritage Impact Statement (HIS) dated 22 August 2022 prepared by Urbis, was submitted as part of the RFI package to Council. Page 6, 10 and 11 of that report discusses the Associative Significance of the Trygve Halvorsen house and that it has been heavily modified and limited associate remains. Halvorsen previously lived at 186 Kurraba Road before selling in c. 1960. The house was heavily modified as part of 1970s, 1980s and 2005.</p> <p><i>“...significant alterations and additions were undertaken to the dwelling during the 1960s and 70s which involved the removal of original features including flooring, cornices, skirting, corbels, and ceiling roses. It is understood that these works removed the original interior and established a contemporary interior, now reflecting the 1970s rather than Halvorsen’s time of residence in the 1940s. Similar interior works were carried out again in the 1980s and in following decades. The significant amount of works undertaken to the dwelling have removed any personal inflection that Halvorsen may have incorporated to his former home.”</i></p> <p><i>“Further, the exterior of the house is also highly modified and whilst it maintains some elements of the Inter-War Functionalist architectural style, it maintains little integrity overall. The subject dwelling does not hold aesthetic significance as an example of Inter-War architecture on its own merit, nor has it been encapsulated by a greater heritage conservation area to date. Halvorsen did not commission any known architect to construct his home and whilst the extent to which Halvorsen’s personal taste influenced the style of the house is unknown, it is clear that the alterations and additions undertaken by later owners have diminished the original design intent. The existing condition of the dwelling, both internally and externally, does not demonstrate a continued, tangible link between the property and Halvorsen.”</i></p> <p>This HIS concludes that in relation to Associative Significance, “The subject site does not reach the threshold of local significance under this criterion.”</p> <p>In response to Council’s report further heritage advice has been received which states:</p> <p><i>“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.</i></p> <p><i>Interpretation of Halvorsen’s occupation of the place may be suitably demonstrated through the implementation of a short sign or plaque within the</i></p>

Issues Raised	How the matter has been addressed
	<p><i>proposed new development. A brief Heritage Interpretation Strategy should be prepared as a Condition of Consent of an approved Development Application.</i></p> <p>We believe this matter has been addressed as part of the RFI. A condition of consent could be imposed which states: <i>“A short sign or plaque within the proposed new development is to be implemented. Details of this are to be shown at Construction Certificate Stage.”</i></p> <p>To note, this issue was not raised at the Panel meeting dated 06 December 2023.</p>
<p>5. Extent of Excavation</p>	<p>The site is a steeply sloping site, as such requires excavations to achieve vehicular and equitable pedestrian access to the dwellings.</p> <p>Dwg A661 (Rev 2) shows that the proposal complies with the maximum 70% of the site area allowed for parking and access, etc with the proposal providing 48.7% of the site as excavated area. Refer to the red section in the extract below.</p>  <p>The proposal was amended with the RFI package (reviewed by the Panel), whereby a level of basement was actually deleted, and the buildings were moved further inwards from the side boundaries. Further, the buildings have been stepped down to follow the topography. Drawing A650 (Rev 2) shows the original extent of excavation in green, and the blue line depicts the revised extent of excavation, compared against the existing terrain calculated using Bettar method, as required by Council. (See extract below).</p>

Issues Raised	How the matter has been addressed
	 <p data-bbox="518 600 762 627">SECTION A - NORTHERN BOUNDARY LEVELS 1:150</p> <p data-bbox="518 958 762 985">SECTION B - SOUTHERN BOUNDARY LEVELS 1:150</p> <p data-bbox="491 1037 1326 1099">We believe the proposal complies with the objectives of the excavation requirements.</p>
<p data-bbox="167 1193 451 1256">6. Development within the foreshore area</p>	<p data-bbox="491 1193 1406 1256">Concern was raised in the report that the survey shows works within this area and makes reference to survey dated 08.07.23.</p> <p data-bbox="491 1263 1417 1413">This survey was to show the proposed future easements and was intended as schematic only. These plans overlay the existing survey (which shows existing works within the foreshore area) and the proposed works. We believe the confusion may occur from both existing and proposed being overlaid on this survey.</p> <p data-bbox="491 1420 1417 1570">The amended plans submitted with the RFI package pulled the buildings back to ensure that NO building works are within this area. Refer to the architectural Dwgs A101-A104 which make this clear, see extract below with the yellow highlight identifying the foreshore building line. (The other blue line shows the average setback between 184 Kurraba and 192A Kurraba).</p>

Issues Raised **How the matter has been addressed**



To further assure Council and the public, a condition of consent could be imposed which states:

“No building works, expressed or implied, are permitted within the foreshore area.”

Therefore, we believe this issue has been resolved.

7. Setbacks

Concern was raised with the rear setback of the R4 zoned land as measured from the adjusted internal boundary as they would be non-compliant, however they were considered acceptable from the existing internal boundaries. This measurement is irrelevant, as the proposal will be viewed as an integrated development.

However, it should also be noted that the levels used to determine the rear incline plane do not differ between the height plane calculation methods (Bettar or Merman) as they are taken from areas outside any existing on-site building pads. (Refer to drawing A620(Rev 3)) which demonstrates where the rear height incline was taken from overlaid on the survey) and drawings A301 and A302 (Rev 9) which shows the R4 buildings as compared to the rear setback.

Issues Raised	How the matter has been addressed
	<p>The design is stepped to follow the topography, and the ‘Residential Flat Building’ and ‘dual occupancy’ dwellings have been designed to specifically preserve the privacy between internal development dwellings and adjoining neighbours. The change in levels combined with the landscaping beds and location of windows ensures this privacy is maintained.</p> <p>The apparent non-compliance with the future boundaries of a Strata Plan and Body Corporate is not a reason for refusal.</p>
<p>8. Amalgamation with adjoining No. 184A Kurraba Road to the north</p>	<p>Drawings A690 - A691 show a feasibility option of No. 184A Kurraba Road if it were to be developed on its own. Drawings A692-A694 show an option if Nos 184A and 184 were developed together. These drawings provide plans and concept elevations for both options. They include the required setbacks and existing easements and demonstrate that a RFB with parking can reasonably be achieved in either option 1 or 2.</p> <p>As such, the site is not considered “isolated” and an offer to buy No. 184A Kurraba Road is not required. Hence this matter has been addressed.</p>
<p>9. View Analysis</p>	<p>A detailed view analysis was prepared by Jane Maze-Riley for Urbis dated June 2022 and a further detailed analysis dated August 2023. The reports considered the potential impacts on oblique, north-easterly and south-easterly views from southern, northern and western neighbouring dwellings which adjoin the site. All view impacts ratings relate to impacts of views from the whole dwelling not solely on the isolated view used for analysis.</p> <p>This analysis concluded:</p> <ul style="list-style-type: none"> - No. 143 – the minor non-compliances are unlikely to generate any significant view impacts due to the oblique angle of potential views, location of east elevation relative to the proposal and relative viewing heights. (Initial report dated June 2022). - No. 145 – the non-compliant parts of the R2 massing are either not visible in north-easterly views or easterly views from the upper level apartments, or do not cause view loss in relation to scenic or highly valued features as defined in Tenacity. - The minor non-compliances in relation to the R2 side setback and LEP height control do not cause view loss of scenic and highly valued features as defined in Tenacity. - The composition of views to be lost predominantly includes limited areas of open water, background residential development and vegetation. - Some units will receive enhance views. - View sharing is considered reasonable and acceptable using the Tenacity scale. <p>Concern was raised specifically to any impacts on No. 182. This building is situated 2 allotments away from the subject site at its closest point and any views would be over 2 side boundaries. The following comments have been received from Jane Maze-Riley in relation to this property:</p> <p><i>It was not identified as being at risk of potential view impacts due to its location, orientation and spatial separation from the subject site. Given that it is separated from the site by two existing residential developments, both of which impact potential views to the south-east towards the site.</i></p> <p><i>We note that potential views from the new development (under construction at 182 Kurraba Road) towards the site could be blocked by any compliant 4 storey built form on the adjoining site or on the subject site, which would cause a level of visual change already contemplated by those controls. In other words, the extent of</i></p>

Issues Raised	How the matter has been addressed
	<p><i>potential view loss for the approved but not yet constructed 182 Kurraba Road would be the same or similar as per any complying built form proposed for the subject site. There is no material benefit in providing additional visual material in relation to this property.</i></p> <p><i>Based on the information available in our opinion, no scenic and highly valued primary views from 182 Kurraba Road would be significantly impacted by the proposed development and more importantly by the very minor non-compliances, in relation to roof forms or setbacks, within the scheme.</i></p> <p><i>Any potential views to the site from 182 Kurraba Road would be highly oblique and across side boundaries. We note that the proposed development is set back to the west from the FSBL so allow for the retention of oblique south-easterly views from 182 Kurraba Road if in fact they are available. Primary views from this new development are to the west and east across front and rear boundaries, all of which would be retained and would be unaffected by the proposed development.</i></p> <p>A detailed view analysis has been conducted for this proposal and this issue has been addressed.</p>
<p>10. Private open space for the dual occupancies</p>	<p>The question of reasonable private open space (POS) for the dual occupancies was raised in the Council Report.</p> <p>Due to the sloping nature of the site and the view to the harbour, the POS has been split over the levels of the dwellings with each part having direct access from the living areas. This is not unusual for sloping sites and allows different spaces to be used at different times.</p> <p>The total POS, including the roof-top terraces, exceeds Council’s minimum requirements of 40m², see below, excluding the planters and foreshore natural ground area;</p> <p>Unit C1 – achieves 49.1m², Unit C2 – achieves 55.4m², Unit D1 – achieves 54.5m², and Unit D2 – achieves 39.6m²</p> <p>The question of the roof terraces being used has been raised. These are appropriate in this context with the direct views to the harbour. The roof terraces have been pulled away from the side boundaries and now sit a min 3.5m to the side boundaries with the one closest to the south sitting approximately 5m from the side boundary. Privacy screening has been provided between the terraces of C1 and C2, and D1 and D2. The internal separation between the roof terrace of C2 and D1 is a minimum of 7m.</p> <p>To further alleviate this concern, a condition of consent could be imposed that <i>“Fixed louvre screens to a maximum of 1.8m in height are to be provided to the roof terrace along the northern side of unit C1 and the southern side of unit D2, to ensure privacy to the adjoining residents. Details are to be shown at Construction Certificate stage.”</i></p> <p>We believe this addresses this issue.</p>

Issues Raised	How the matter has been addressed
<p>11. SEPP (Resilience & Hazards) 2021</p>	<p>The Council report raised concerns that the application does not satisfy the provision of SEPP (Resilience & Hazards) 2021 due to the excessive site coverage and insufficient landscaped area. This has been addressed and outlined in No. 1 of this table and is considered acceptable.</p> <p>The Council report also noted that the development does not protect or enhance terrestrial vegetation. The proposed landscaping strategy for this project intends to protect and enhance the existing terrestrial vegetation through the retention of significant mature trees along the foreshore and building upon the native ecological community to bolster the biodiversity of the local area. Please refer to the updated landscaping plans and supporting letter from Dangar Barin Smith dated 7th February 2024 submitted alongside this letter which addresses the landscaping concerns in more detail.</p> <p>The proposed development will not alter the foreshore protection area and our stormwater is disposed of in a controlled manner in order to protect and ensure there are no direct, indirect or cumulative adverse impacts on terrestrial vegetation as required by Chapter 6, Division 2, cl.6.7(1)(a) and (2)(a) and cl. 6.28.</p> <p>It is therefore considered that the application meets the requirements of SEPP (Resilience and Hazards) 2021 with regards to protecting and enhancing terrestrial vegetation.</p>
<p>12. Amenity of the community and environment (Clause 1.2(2)(a))</p>	<p>The proposal is consistent with the surrounding development in terms of height, setbacks, design, scale and materials. It complies with the expected setbacks and height (apart from marginal variation for some small roof aspects) due to the steep topography of the site. It provides for a variety of housing types to suit the local community and thus is consistent with Clause 1.2(2)(a) of North Sydney Local Environmental Plan 2013.</p> <p>It is therefore considered that the proposal is appropriate to its context and enhances the amenity of the North Sydney community and environment.</p>

We respectfully seek the Council to forward this information to the Panel and would ask that the Panel consider this when determining the matter.

We believe all matters raised by Council and the Panel have now been addressed, and that the application with this additional information can be approved.

If you have any queries in relation to the above, please do not hesitate to contact myself or Ms Sue Francis, Executive Director on suef@gyde.com.au, 0404 011 469.

Yours sincerely



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CC Chair and Secretariate North Sydney Local Planning Panel