

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

1. Site Plan
2. Architectural Plans & Landscape Plans
3. Site Survey
4. Clause 4.6 Statement (Building Height)

ADDRESS/WARD: 40 Brightmore Street, Cremorne**APPLICATION NO:** DA409/22**PROPOSAL:** Demolition of an existing apartment building and construction of a new four (4) storey apartment building with associated parking and landscaping**PLANS REF:**

Plan No./Rev	Description	Prepared by	Date
A1050 Rev DA03	Demolition	ESS	02 May 23
A2201 Rev DA03	Plan: General Arrangement Roof	ESS	18 August 23
A2202 Rev DA04	Plan: General Arrangement Level 01	ESS	18 August 23
A2203 Rev DA04	Plan: General Arrangement Ground	ESS	27 February 24
A2204 Rev DA02	Plan: General Arrangement Ground - 1	ESS	02 May 23
A2205 Rev DA02	Plan: General Arrangement Ground - 2	ESS	02 May 23
A2206 Rev DA04	Plan: General Arrangement Ground - 3	ESS	18 August 23
A3101A Rev DA01	Elevation: South Elevation (Brightmore Street)	ESS	22 May 23
A3101 Rev DA03	Elevation: South Elevation (Brightmore Street)	ESS	02 May 23
A3102 Rev DA04	Elevation: North Elevation (Fence)	ESS	18 August 23
A3103 Rev DA04	Elevation: North Elevation	ESS	18 August 23
A3104 Rev DA04	Elevation: East Elevation (Fence)	ESS	18 August 23
A3105 Rev DA04	Elevation: East Elevation	ESS	18 August 23
A3106 Rev DA04	Elevation: West Elevation (Fence)	ESS	18 August 23
A3107 Rev DA04	Elevation: West Elevation	ESS	18 August 23
A3108 Rev DA04	Elevation: North Elevation (Fence, No Landscape)	ESS	18 August 23
A3109 Rev DA04	Elevation: North Elevation (No Landscape)	ESS	18 August 23
A3110 Rev DA04	Elevation: East Elevation (Fence, No Landscape)	ESS	18 August 23
A3111 Rev DA04	Elevation: East Elevation (No Landscape)	ESS	18 August 23
A3112 Rev DA04	Elevation: West Elevation (Fence, No Landscape)	ESS	18 August 23
A3113 Rev DA04	Elevation: West Elevation (No Landscape)	ESS	18 August 23
A3201 Rev DA04	Section: Section A	ESS	18 August 23
A3202 Rev DA03	Section: Section B	ESS	18 August 23
A3203 Rev DA04	Section: Section C	ESS	18 August 23
A3206 Rev DA03	Section: Section F	ESS	18 August 23
A3207 Rev DA04	Section: Section G	ESS	18 August 23
A3208 Rev DA03	Section: Section H	ESS	02 May 23
A3209 Rev DA04	Section: Section I	ESS	18 August 23
A3210 Rev DA04	Section: Section J	ESS	18 August 23
A3211 Rev DA04	Section: Section K	ESS	18 August 23
A8201 Rev DA02	Finishes Materiality	ESS	02 May 23

OWNER: Pankay Pty Ltd**APPLICANT:** ABC Planning Pty Ltd**AUTHOR:** Report of Robin Tse, Senior Assessment Officer**DATE OF REPORT:** 22 May 2024**DATE LODGED:** 3 January 2023**DATE AMENDED:** 9 November 2023**RECOMMENDATION:** Approval (Deferred Commencement)

EXECUTIVE SUMMARY

This development application seeks consent for demolition of an existing residential flat building and the construction of a four (4) storey residential flat building containing four (4) apartments, a mechanical parking system for six (6) cars and associated landscaping works on land at No. 40 Brightmore Street, Cremorne.

The application is reported to the North Sydney Local Planning Panel for determination as the application seeks a variation to a development standard by more than 10% and attracted more than 10 submission by way of objection. A public determination meeting is required in accordance with the Ministers Direction.

The subject site is located on land zoned R2 (Low Density Residential) where residential flat building is a form of development prohibited within the zone. However, the subject site benefits from existing use rights because the circumstances of the subject site and the proposed development are generally consistent with Sections 4.65 - 4.70 of the EP&A Act 1979 and Sections 162 -167 in Part 7 of EP&A Regulations 2021.

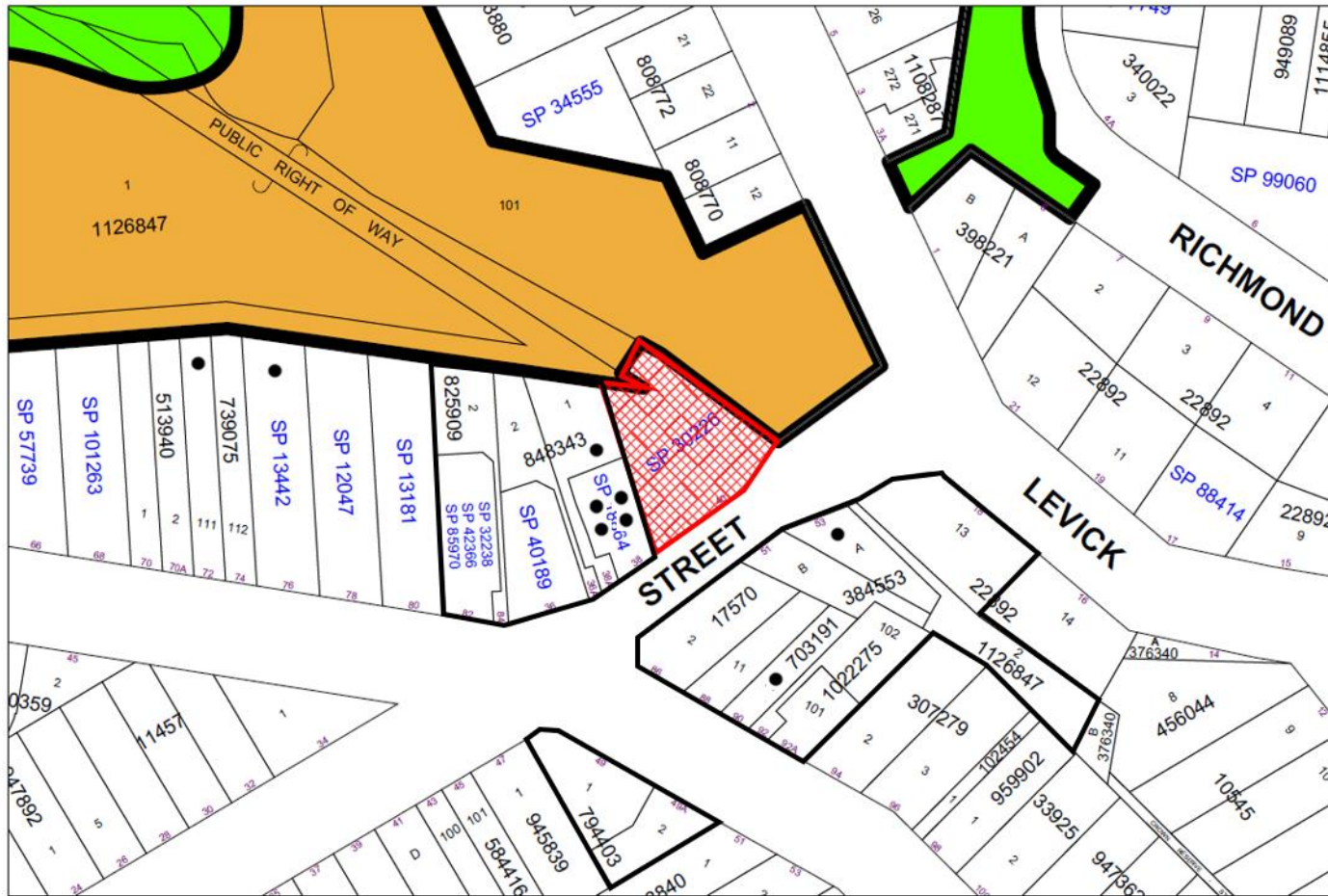
Consideration has been given to the relevant planning controls and the submission seeking a variation to the LEP maximum building height control for the proposed works. It is concluded that the proposal is unlikely to give rise to material amenity impacts, including significant views as seen for the adjoining properties subject to the imposition of a deferred commencement condition requiring design modifications to the height of the apartment building and a reduction in the bulk/scale, height and setback of the garbage bin enclosure adjacent to the western property boundary. The design, height, bulk and scale of the proposed development, as amended by conditions, are considered to be acceptable and is reasonably consistent with potential outcomes anticipated by the relevant controls.

In addition, a further deferred commencement condition is recommended requiring the submission of a works and management plan detailing the type of works and protection measures for Trees T1 and T2 during all phases of demolition, excavation and construction works and a revised arborist report incorporating an assessment of the proposed works/protection measures affecting Trees T1 and T2 to ensure the protection of significant trees (**Condition AA2**).

Notification of the original and amended proposals has attracted sixteen (16) submissions raising particular concerns about the bulk/scale, amenity impacts, traffic/parking, impacts on existing vegetation and drainage. The assessment has considered these concerns as well as the performance of the application against Council's planning requirements.

Following this assessment the development application is recommended to be approved subject to the imposition of deferred commencement conditions and appropriate standard/site specific conditions.

LOCATION MAP



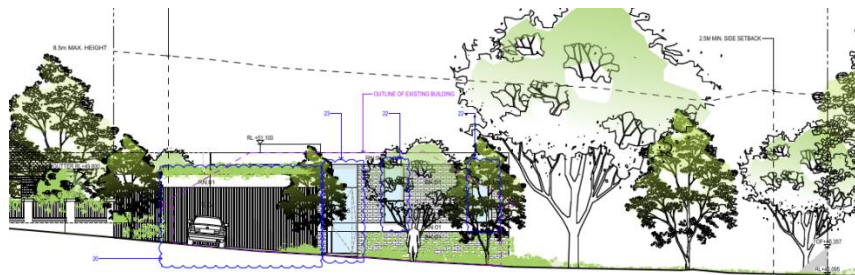
 Property/Applicant ● Submitters - Properties Notified 

DESCRIPTION OF PROPOSAL

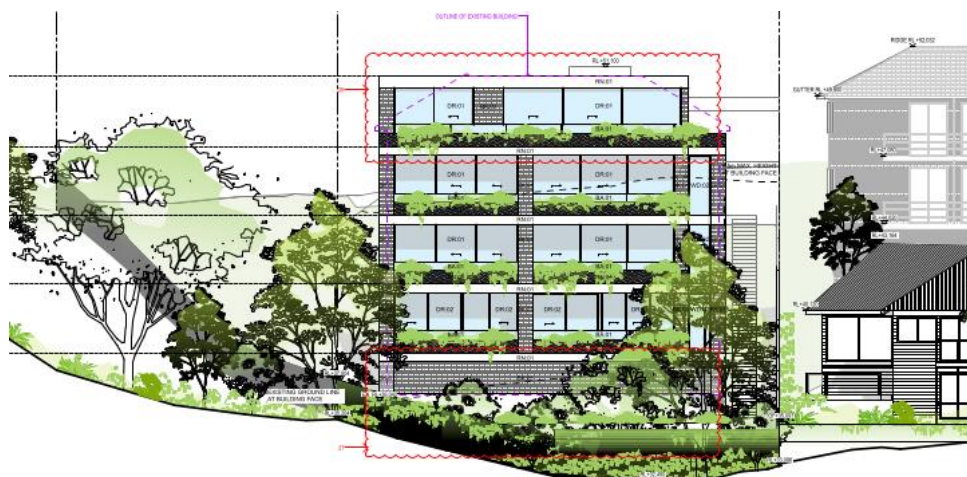
The applicant seeks NSLPP approval for demolition of the existing residential flat building and the construction of a four (4) storey residential flat building containing four (4) apartments, a mechanical parking system for six (6) cars and associated landscaping works.

The proposal is summarised as follows:

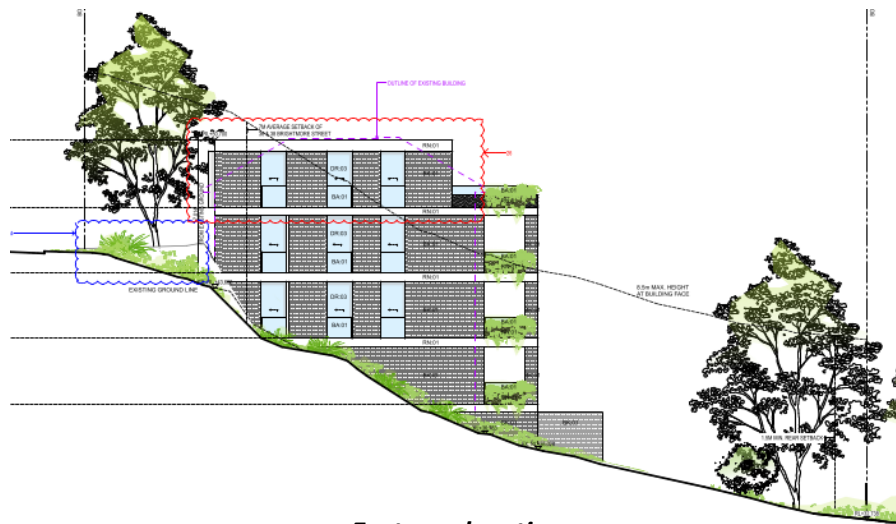
- **Level - 2** – 1 x 3B (Unit -2.01) 159sqm
- **Level - 1** – 1 x 3B (Unit -1.01) 161sqm
- **Ground Level** – 1 x 3B (Unit G.01) 152sqm
- **Level 01** – 1 x 2B (Unit L1.01) 109sqm
- **Mechanical parking system** – 6 parking spaces – vehicular access and entrance building on Brightmore Street frontage.
- **Associated landscaping works** – protection of existing trees to be retained and planting of new trees/vegetation within the subject site, around the main apartment building and along the Brightmore Street frontage



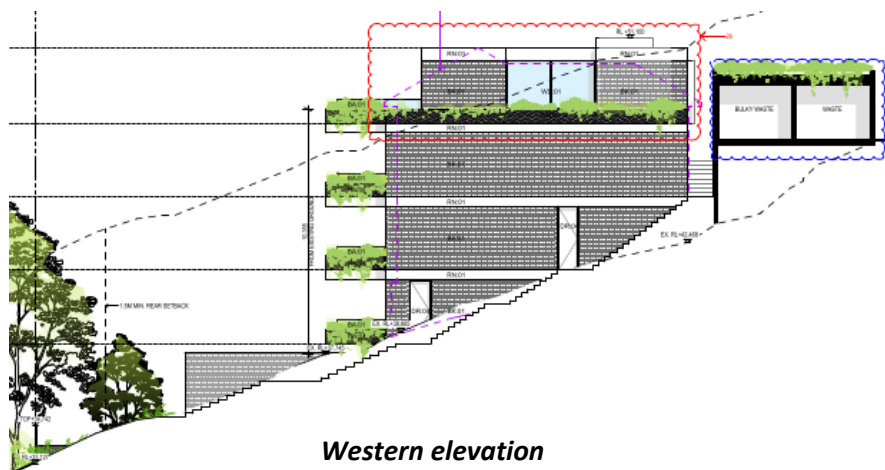
Southern (Brightmore Street) elevation



Northern (Brightmore Reserve) elevation



Eastern elevation



Western elevation

Figures 1 – 4: Proposed Development

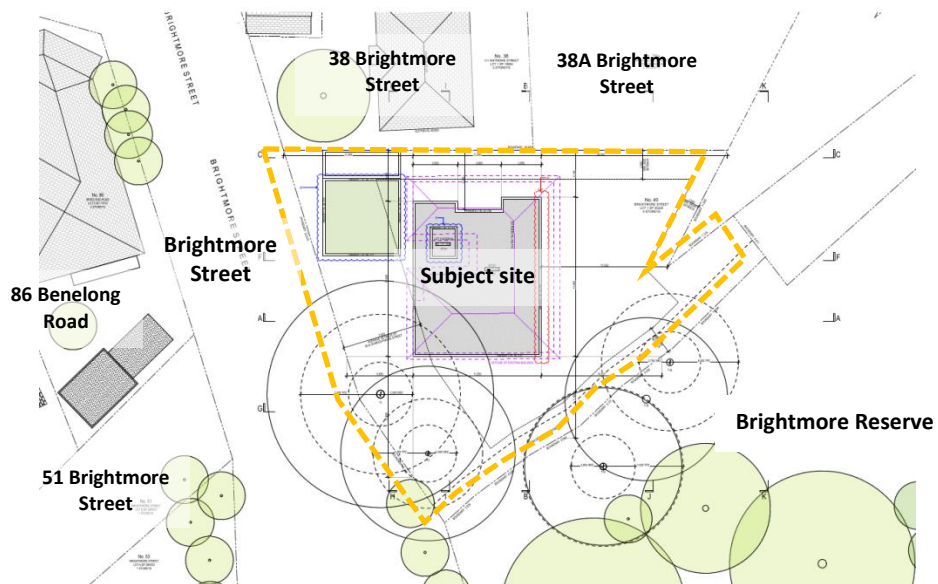


Figure 5: The Locality

STATUTORY CONTROLS

North Sydney LEP 2013

- Zoning –R2 (Low Density Residential)
- Item of Heritage - No
- In Vicinity of Item of Heritage - No
- Conservation Area - No
- FSBL - No

Environmental Planning & Assessment Act 1979

Environmental Planning and Assessment Regulation 2021

SEPP (Biodiversity and Conservation) 2021

SEPP (Housing) 2021

SEPP (Resilience and Hazards) 2021

SEPP (Sustainable Buildings) 2022

Local Development

POLICY CONTROLS

NORTH SYDNEY DCP 2013

Apartment Design Guidelines (ADG)

North Sydney Local Infrastructure Contributions Plan 2020

Sydney Harbour Foreshores & Waterways Area DCP 2005

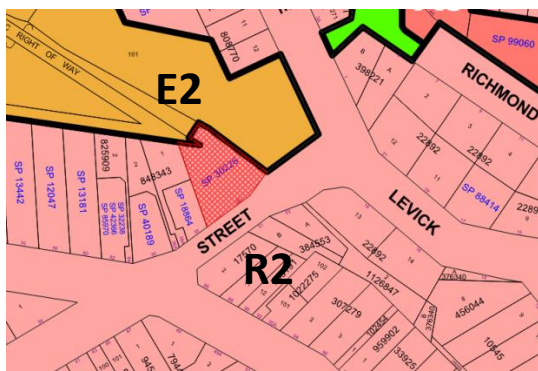


Figure 6 : Zoning

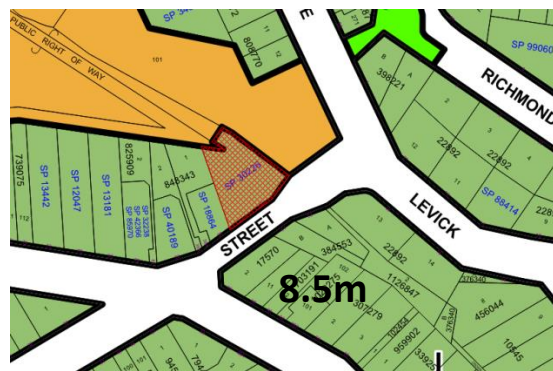


Figure 7 : Building height

DESCRIPTION OF LOCALITY

The subject site is legally described as Lots 1-8, SP 30226, and is known as No. 40 Brightmore Street, Cremorne (**Site**). The site has an area of 842.1m² and is irregular in shape. The site falls steeply to the rear from the Brightmore Street frontage, from RL 46.77 to approximately RL 33.0 over approximately 36m. With the irregular geometry of the site it presents a shape with a street frontage to Brightmore Street.

The site is located to the eastern end of Brightmore Street, on the northern side of the street, with the sites northern and eastern boundaries adjoining Brightmore Reserve.

Existing development on the site comprises a part three/ four storey red brick residential flat building with a pitched roof, containing eight (8) x one (1) bedroom dwellings with parking at street level for no more than six (6) cars. The street elevation of the existing building has a single storey appearance to Brightmore Street. The rear elevation of the existing building is approximately 10.5m in height.

The existing natural features of the Site consist of large canopy trees and rocky outcrops which, with no boundary fences, provides the existing trees and landscaping on the site have a seamless transition to the sensitive E2 Zoning of Brightmore Reserve which shares the natural features of the Site.

The surrounding locality comprises a range of residential development, being predominantly dwelling houses, one to two storeys in height, but including a number of older style residential flat buildings.

The following neighbouring properties are located to the west of the subject site:

- a) 38 Brightmore Street, Cremorne (SP18864)–a two (2) storey apartment building consisting of four (4) units with no on-site parking.
- b) 38A Brightmore Street, Cremorne– a two (2) storey dwelling house with a single garage on Brightmore Street frontage.
- c) 36 Brightmore Street, Cremorne (SP40189)–a part two/three storey apartment building consisting of five (5) units, a double garage and two car spaces.
- d) 36A Brightmore Street, Cremorne –a two (2) storey dwelling house with a single garage on Brightmore Street frontage.
- e) 82 Benelong Road, Cremorne (SP32238)– a dual occupancy with a single garage and a double garage. The double garage is shared with 84 Benelong Road.

Across Brightmore Street to the south of the subject site are the following properties:

- a) 86 Benelong Road, Cremorne – a part single/two storey dwelling house.
- b) 51 Brightmore Street, Cremorne – a single storey dwelling house.
- c) 53 Brightmore Street, Cremorne – a single storey dwelling house
- d) 18 Levick Street, Cremorne – a three (3) storey dwelling house.

The subject site adjoins Brightmore Reserve to the north and east which is zoned part E2 Environmental Conservation (where it directly adjoins the Site and other residential development which backs onto the Reserve), and part RE1 Public Recreation further north.





Figures 8 – 9: Existing apartment building



**Figure 10: Aerial photo of the locality
(Source: NearMap)**

RELEVANT HISTORY

Previous applications

- **26 February 1986** – Registration of Strata Plan (SP30226) for the existing apartment building.
- **18 August 2018** – The NSW Land and Environment Court dismissed an appeal against Council's deemed refusal for **DA333/17** for the demolition of an existing residential flat building and its replacement with a new residential flat building containing 28 apartments (including basement car-parking accessed by a car lift) at 40 Brightmore Street, Cremorne. This application was refused.

- **11 October 2019** – An appeal was lodged with the NSW Land and Environment Council against the deemed refusal of Development Application (**D224/19**) for the demolition of an existing residential flat building and its replacement with a new six (6) storey residential flat building containing 11 x 3 bedroom apartments with basement. This appeal was discontinued in September 2020.

Current Application

- **3 January 2023** – The subject Development Application (**D409/22**) for demolition of the existing apartment building and the construction of a five (5) storey apartment building containing five apartment was formally lodged with Council.
- **20 January to 3 February 2023** – The adjoining properties and the Brightmore Precinct was notified about the proposed development. The notification of the application has attracted thirteen submissions including submissions from Brightmore and Willoughby Bay Precinct Committees.
- **7 March 2023** – Council Officer carried out an inspection of the subject site.
- **14 March 2023** – The proposal was considered by the Design Excellence Panel.
- **3 April 2023** – A teleconference was held with the applicant and applicant's consultants to discuss the comments from the Design Excellence Panel.
- **5 June 2023** – The applicant provided further information about the operation of the car stacker associated with the proposed revised design.
- **26 July 2023** – Comments were provided to the applicant in relation to a proposed revision to building height.
- **13 October 2023** – Amended plans featuring a revised development with 4 x 3 bedroom units and a car stacker replacing the existing open car stands along the Brightmore Street frontage.
- **9 November 2023** – The applicant submitted a revised arborist report.
- **17 November to 1 December 2023** – The adjoining property owners and the Brightmore Precinct were notified about the amended proposal. Council received a total of seven (7) submissions including five (5) submission from one household.
- **14 March 2024** – The applicant revised the design of the garden on Brightmore Street frontage to accommodate a waiting bay as requested by Council's Traffic engineer.

INTERNAL REFERRALS

BUILDING

The proposed works the subject of this application have not been assessed in accordance with compliance with the National Construction Code of Australia. This would need to be undertaken prior to the issue of a Construction Certificate. Should significant changes be required to achieve compliance with NCC standards, a Section 4.55 application would be necessary.

ENGINEERING

The application, including the amended proposal and the relevant engineering reports, has been referred to Council's Senior Development Engineer who raised no in-principle objection to the proposal subject to the imposition of appropriate engineering conditions.

It is noted that consideration has also been given to potential stormwater drainage/flooding impacts resulting from proposed development and is considered acceptable subject to the imposition of appropriate engineering conditions.

In addition, site specific conditions have also been recommended requiring compliance with the recommendations of the following reports:

- (a) Geotechnical report;
- (b) Flood study;
- (c) Hydrogeological assessment.

TRAFFIC

The application has been referred to Council's Traffic Engineer who raised no in-principle objection to the proposal, as amended by the application including the provision of a waiting bay adjacent to the car stacker structure to minimise any impacts of traffic movements and road users' (Including cyclists) safety along Brightmore Street.

LANDSCAPING

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

The amended architectural plan and landscape plans are considered to be generally satisfactory.

The construction traffic management plan (CTMP) requires updating to ensure protection of T1 & T2 (including canopy) prior to any DA approval. An updated arborist report that includes assessment of above issues shall be required.

A project arborist shall be required to physically supervise all demolition/excavation and construction works within TPZ of T1 & T2, including bank stabilisation landscaping works.

Comment:

The comments from Council's Landscape Officer are noted. It is also noted that Council's Development Engineer has recommended a condition requiring the submission of a CTMP prior to the issue of any construction certificate for the proposed development.

It is recommended that a deferred commencement condition requiring the submission of a works and management plan detailing the type of works and protection measures for Trees T1 and T2 during all phase of demolition, excavation and construction works and a revised arborist report incorporating an assessment of the proposed works/protection measures affecting Trees T1 and T2 to ensure the protection of significant trees (**Condition AA2**).

BUSHLAND

The subject site adjoins Council's bushland reserve (Brightmore Reserve). Therefore, the application has been referred to Council's Bushland Management Co-ordinator who raised no in-principle objection to the proposed landscape plans and the choice of planting, subject to imposition of conditions restricting site access from Brightmore Reserve and control of noxious and environmental weeds for a period of three (3) years after the issue of the final Occupation Certificate (**Conditions E1 and I1**).

DESIGN EXCELLENCE PANEL

Council's Design Excellence Panel considered the original proposal on 14 March 2023. The Panel provided the following comments:

Principle 1: Context and local character

The proposal is compatible in terms of its residential character, however, the non-compliance with the height limit is not supported. The Panel recommends that the height of the building be reduced by at least one storey to provide a more compatible bulk and scale with the adjoining properties that are mostly single storey in height.

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

As indicated above, the height, bulk and scale of the building is not supported given that it is likely to have an impact upon the reserve at the rear of the building also on the residential amenity of adjoining properties in terms of its visual mass as seen from the adjoining properties. The height of the lift overrun should be minimised to be no higher than the front parapet when viewed from Brightmore Street to reduce the bulk and scale of the building.

The car spaces within the front setback would have a detrimental impact on the public domain. Any future parking should be provided via a car lift to a basement car park. If the car spaces are to remain at the front of the building, the car parking area should be well landscaped to improve its presentation to the streetscape. A garage within the front setback would not be supported for the reasons stated above.

The facade of the building needs further architectural interest to provide a more appropriate presentation to the streetscape. The main doors of the building are not compatible with the character of the neighbourhood that has a more low density residential character. Furthermore, there is no entry canopy for weather protection for future residents entering and/or leaving the building.

There is no satisfactory bin storage area within the front setback to minimise visual clutter within the front setback.

The Panel would have preferred the adaptable re-use of the existing building in the interests of sustainability also to maintain a more characteristic built form within a low density residential zone. A more traditional roof form would have been preferred to provide a more compatible built form. Nevertheless, the proposed flat roof also requires some treatment in the way of landscaping.

Comment:

The applicant has revised the original proposal with the following design changes:

- (a) Deletion of the lowest level in the original proposal. The amended proposal contains a four (4) storey apartment building (Ground - 2, Ground - 1, Ground and Level 01);
- (b) Increase setback of rear building line for the top level (Level 01) from the rear (northern) property boundary by 1.5m;
- (c) Reduction in the number of apartments from five (5) to four (4);

- (d) Revised unit mix from 4 x 3 Bedroom units to 3 x 3 Bedroom unit and 1 x 2 Bedroom unit;
- (e) Revised design of the front (Brightmore Street) elevation with additional windows and a façade featuring red brick with rendered horizontal bending;
- (f) Removal of six car spaces within the front building setback along Brightmore Street and replace with soft landscaping;
- (g) A mechanical car stacker system with a new entrance building to be located on the western side of the Brightmore Street frontage including a new car waiting bay to the east of this structure; and
- (h) An enclosure for garbage bin storage and bulk waste storage to be located to the west of the car stacker entrance building.

The amended proposal has addressed the Panel concerns in relation to the treatments along the Brightmore Street frontage, including the removal of the existing car spaces and replacement soft landscaping, revised external treatments with a textured/articulated building façade on Brightmore Street elevation and a top floor with additional rear boundary setback to provide a stepped building design to be more consistent with the landform of the subject site.

It is however noted that the overall height of the proposed apartment building has not changed. In addition, it is noted that there would be some scope for lowering the overall height of the building by 500mm whilst maintain the amenity/liveability of the unit on the lower levels as well as maintaining a complying pedestrian access ramp to the building entry.

Furthermore, the height and the size of the garbage bin enclosure can be modified to provide an improved transition of building height and built forms between the proposed structures within the subject site and the adjoining property at No. 38 Brightmore Street.

It is therefore recommended that a deferred commencement condition (**Condition AA1**) be imposed requiring the following:

- (a) The overall building height of the proposed apartment building to be lowered by 500mm to RL50.200 for the roof parapet and RL50.600 for the lift overrun;
- (b) The design of the garbage bins and bulky waste storage enclosures are to be modified to provide an integrated storage facility for waste materials/bins with a maximum height of the roof parapet at RL49.50 and an external length of the structure not exceeding 4m.

The proposed design modifications would reduce the height, bulk and scale of the proposed development.

Principle 3: Density

The proposed density is satisfactory, however, a greater mix of apartment sizes with the inclusion of one and/or two bedroom apartments should be provided to maintain a mix of dwelling sizes.

Comment:

The applicant has reduced the density of the proposed development with the deletion of an apartment resulting a total of four (4) apartments. Furthermore, the unit mix has also been revised to provide 1 x 2 Bedroom unit and 3 x 3 Bedroom units.

Principle 4: Sustainability, building performance and adaptability

As indicated above, the adaptative re-use of the building is preferred from a sustainability viewpoint.

Comment:

Whilst the adaptive re-use of the existing apartment building may provide a more sustainable outcome for the subject site, the adaptation process is likely to require the substantial removal of existing fabric as well as an extensive amount of new works in order to meet the current planning and building standards due to the age and condition of the existing building.

Principle 5: Landscape

More landscaping should be provided within the front setback to help soften the built edges of the front façade. The landscaping within the rear setback should have regard to the nature of the adjoining bushland Reserve with native species to complement the vegetation in Brightmore Reserve

Comment:

The applicant has amended the design for the front setback by replacing the open car spaces with a car stacker and soft landscaping that complements the landscape settings within the locality.

Principle 6: Building configuration, planning, and amenity

Apartment configuration

Generally, the apartment design is satisfactory providing good amenity with views to Brightmore Reserve. However, the lower units would provide poor livability given their location below ground level and their reliance upon the northern windows only for natural light and ventilation. The kitchens located towards the rear of the units would also experience poor amenity. Consequently, the lower units should be re-design to improve their livability for future occupants.

Solar access/Natural Ventilation

The proposed development would comply with the ADG in terms of solar access and natural light and ventilation.

Noise and Acoustic Privacy

Given that there are few windows on the eastern and western elevations and the windows and/or glass doors on the northern elevation would overlook Brightmore Reserve not into adjoining properties, there would be no unreasonable privacy impacts arising from the proposal.

Building Entry

The proposed building entry requires further consideration as discussed above where it was found that the main entry is uncharacteristic of the locality. Further thought should be given to providing some additional fenestration on the front elevation with possibly a varied setback and/or more compatible main entry doors in terms of their proportions and/or materiality,

Awning

An awning needs to be provided over the main front entry to provide weather protection for residents entering and/or leaving the building.

Setbacks

There is a non-compliance with the setback controls arising from the western side setback of only 5 metres to No. 38 Brightmore Street that is likely to have a detrimental impact upon that property.

Comment:

Apartment configuration:

The applicant has deleted the unit on the lowest level in the original design which is supported due to the undesirable subterranean nature of the apartment.

The layout of other apartments has been revised including the relocation of kitchen for the majority of the units closer to the northern openings to improve the access of daylight and liveability of the apartments.

Solar access/Natural Ventilation:

The amended proposal would comply with the ADG in terms of solar access and natural light and ventilation.

Noise and Acoustic Privacy:

The amended proposal would have no material impacts on the surrounding properties in terms of privacy due to the orientation and locations of windows/openings away from the adjoining residential properties.

The proposed communal area would be located at the northern end of the rear garden away from the residential properties to the west, therefore, any privacy impacts would be minimised.

Building Entry/Awning

The applicant has revised the design of the building entry and provide additional fenestration to mark the building entry with a stronger sense of address as seen from Brightmore Street.

An awning is proposed above the main front entry to provide weather protection for residents entering and/or leaving the building.

Setbacks

The applicant has proposed an increase rear boundary setback for the top level (Level 01) of the building by 1.5m. In addition, the further design modifications as required by the deferred commencement conditions as outlined earlier in this report would reduce the building height, bulk and scale of the proposed development as seen from the adjoining properties and along Brightmore Street.

Principle 7: Safety

The proposal provides good natural surveillance.

Comment:

The amended proposal would improve natural surveillance given that the revised design would incorporate additional windows on the southern (Brightmore Street) elevation overlooking the street.

Principle 8: Housing diversity and social interaction

Dwelling Mix

As indicated above, the proposed development does not provide any one-bedroom and/or two bedroom apartments. The dwelling mix should be amended to provide a mix of unit sizes as required by NSDCP 2013.

Communal Open Space

The proposed development does not provide any designated communal open space and/or communal facilities for future residents. The size of the development warrants the provisions of communal open space for use by the residents.

Comment:

The amended proposal would improve natural surveillance given that the revised design would incorporate additional windows on the southern (Brightmore Street) elevation overlooking the street.

As indicated above, the applicant has amended the design of the proposal to provide 1 x 2 Bedroom unit and 3 x 3 Bedroom units.

The applicant has also proposed a communal area within the rear yard to provide more amenity for the residents.

Principle 9: Architectural expression and materiality

The façade requires further consideration to provide a more appropriate residential presentation to Brightmore Street.

Comment:

The applicant has revised external treatments with a textured/articulated building façade on Brightmore Street elevation and a top floor with additional rear boundary setback to provide a stepped building design to be more consistent with the landform of the subject site.

The presentation of the development on Brightmore Street would be improved significantly with the removal of the parking spaces in front of the building with the replacement car stacker structure and new soft landscape along the front building setback.

It is considered that the issues raised by the DEP have been adequately addressed by the amended proposal and the further design modifications as required by the deferred commencement conditions. The proposal exhibits sufficient design excellence to warrant approval and a further referral to the DEP would not be necessary.

EXTERNAL REFERRALS

AUSGRID

The application was referred to Ausgrid, no in-principal objection was raised to the proposal subject to the requirements for compliance with the relevant Ausgrid Network standards/SafeWork NSW Code of Practice during construction and no encroachment of the building to existing Ausgrid infrastructure.

Appropriate conditions of consent are to be imposed in accordance with Ausgrid's recommendations (**Condition C42**).

SYDNEY WATER

The proposal was referred to Sydney Water, where the authority no in-principal objection was raised to the proposal subject to the Section 73 Compliance Certificate and building plans approval process as well as various requirements for the commercial component of the proposed development.

Appropriate conditions of consent are to be imposed in accordance with Sydney Water's recommendation (**Condition C43**).

Aboriginal Heritage

Council has previously been advised by the Aboriginal Heritage Office (**AHO**) that the AHO considered there to be no Aboriginal heritage issues for the proposed development, but that works should cease if any were uncovered via condition consent (**Condition E26**).

SUBMISSIONS

Original proposal

Council notified adjoining properties and the Brightmore Precinct of the proposed development seeking comment between 20 January to 3 February 2023. Council received thirteen (13) submissions including one (1) submission in support of the proposal and two (2) submissions from one submitter. The matters raised in the submissions are listed below:

Basis of Submission

- Adverse impacts from earthworks on stormwater drainage affecting adjoining properties.
- The apartment on the lowest floor should not be habitable due to the risk of flooding.
- The hydrogeological report does not address the management of water during construction.
- Excessive bulk and scale of the proposed apartment building.
- Adverse privacy and shadowing impacts on the adjoining properties.
- Adverse streetscape impacts with a blank wall on Brightmore Street façade.
- The absence of proper garbage storage facilities.
- The loss of housing diversity with 5 x 3 bedroom apartments replacing 8 x 1 bedroom apartments.
- Adverse impacts on the root zone of an established gum tree on Brightmore Street frontage.
- Concerns on traffic impacts due to the location of the proposed development on a narrow and curved section of Brightmore Street.
- Inappropriate blank wall on Brightmore Street.
- The proposed building should be moved to minimise impacts on the established gum tree on Brightmore Street frontage.
- The proposed excavation works below the existing water table may have adverse impacts on the adjoining properties.
- Concerns raised about no additional on-site parking.
- Concerns raised about the likelihood of the apartments used for short term rental.
- The lack of information on internal layout.
- Concerns raised about access and impacts on traffic (motor vehicles and bicycles) during the construction period with movements of heavy vehicles in and out of the subject site.
- The land zoning of the subject site prohibits apartment development.
- The proposal is not compatible with the desired future character of the locality.
- Adverse impacts on streetscape.
- Adverse privacy and shadowing impacts.
- Excessive bulk and scale for a five storey building height.
- Poor amenity for the subterranean apartments.
- Inadequate parking.
- Adverse noise and stormwater drainage impacts from excavation for neighbouring properties and the nature reserve.
- Excessive bulk and scale causing overshadowing of neighbouring properties.
- Adverse privacy impacts for the adjoining properties.
- Adverse impacts from excavation works on the adjoining properties.
- The subterranean apartments may subject to flooding due to an existing watercourse.
- Adverse streetscape impacts resulting from the blank Brightmore Street façade.
- Potential damage to an established gum tree within the front setback.
- Inappropriate blank wall on Brightmore Street.
- The proposed building should be moved to minimise impacts on the established gum tree on Brightmore Street frontage.
- The proposed excavation works below the existing water table may have adverse impacts on the adjoining properties.
- Excessive bulk and scale of the proposed development encroaching onto the nature reserve.
- Increase noise to the adjoining natural reserve.
- Lack of parking due to scale of the development and shortage of on-street parking nearby.
- Excavation works affecting the water table.
- Adverse privacy and shadowing impacts on the adjoining properties.
- Overdevelopment of the site with larger 3 bedroom apartments.
- Adverse streetscape impact with a blank front building façade on Brightmore Street frontage.
- Excessive bulk and scale.
- Encroachment onto the nature reserve.

- Adverse noise and shadowing impacts on the adjoining properties.
 - Inadequate parking for the proposed development.
 - Excavation may compromise adjoining properties.
 - Unsightly front façade design.
 - Excessive development for subject site.
 - Excessive noise and overshadowing of the adjoining properties.
 - Excessive excavation would compromise the structural integrity of the adjoining properties.
 - Inadequate on-site parking.
 - Inappropriate development on a small site and a narrow street with high volume of through traffic.
 - Proposed development inconsistent with the general objectives of the DCP in terms of the impacts on residential amenity, the context and the character/style of the surrounding development.
 - Proposed development would cause the loss of privacy and overshadowing of the adjoining property to the west of the subject site.
 - Poor design quality of the proposed building with a blank façade on Brightmore Street frontage.
 - The proposed removal of trees at the rear of the subject site would reduce passive privacy screening for the adjoining property.
 - The proposed excavation would alter the existing landform and result in subterranean apartments with poor amenity.
 - Concerns raised about the structural integrity of an adjoining property due to the proposed excavation works.
 - Construction hours should be reduced to minimise impacts from noisy excavation works.
 - Likely adverse impacts on the adjoining bushland due to the site's proximity to the nature reserve.
 - Adverse noise impacts on the adjoining properties.
 - Adverse impacts on views to vegetation and the sky as seen from an adjoining property.
 - Adverse shadowing Impacts.
 - Adverse visual privacy impacts due to overlooking onto an adjoining property.
 - Excessive bulk and scale and excessive glazing on the northern elevation.
 - Uncharacteristic built form for the character of the locality.
 - Balconies of the proposed apartment building should be contained within the building envelope.
 - Retention of existing parking inadequate for the new development.
 - Concerns raised about traffic safety for drivers, cyclists and pedestrians due to the location of the subject site and a curved section of the road.
 - Excessive excavation would compromise the structural integrity of neighbouring buildings, the natural slope and the natural drainage pattern of the locality.
 - Adverse impacts due to alterations to natural drainage patterns within the locality and the increased risk of flooding of the adjoining properties.
-
- Concerns raised about impacts from construction activities and construction vehicles.
 - Uncharacteristic and incompatible design on the southern elevation.
 - Insufficient parking provision.

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.

Amended Proposal

The applicant submitted amended plans that were renotified to adjoining properties and the Brightmore precinct for 14 days between 17 November and 1 December 2023. Council received three (3) submissions and the matters raised in submissions are listed below:

Basis of Submission

- The proposed car lift structure is excessive in bulk and scale due to its proximity to the adjoining property to the west of the site.
- The new structure would cause obstruction to the outlook as seen from the kitchen of an adjoining property.
- The design of the car lift structure is incompatible with the existing buildings on the adjoining properties.
- Adverse traffic impacts from the proposed car lift structure.
- Concerns raised about the proposed car stacker and garbage storage structures in close proximity to the adjoining property to the west.
- The new structure would cause obstruction to the outlook as seen from the kitchen of an adjoining property.
- Reduction in landscape buffer between the subject site and the adjoining property to the west.
- Adverse impacts on access to sunlight and ventilation resulting from the proposed structures.
- The relocation of the new structure to east should minimise the impacts.
- Concerns raised about the proposed car stacker and garbage storage structures in close proximity to the adjoining property to the west.
- The new structures do not comply with setback requirements.
- Adverse impacts on the adjoining property to the west in terms of access to sunlight and ventilation.
- Adverse impacts on kitchen and bathroom windows of two apartments.

CONSIDERATION

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

Environmental Planning and Assessment Act 1979 (as amended)

Existing Use Rights (Sections 4.65 - 4.70)

The subject site is zoned R2 (Low Density Residential) and development for the purpose of a residential flat building is prohibited within the zone.

Notwithstanding such prohibition, where 'existing use' rights can be satisfactorily established for the land affected by the proposed development, then the consent authority may approve a development application (subject to meeting the relevant requirements applying to existing uses under Sections 4.65 - 4.70 of the EP & A Act 1979, the Regulation under the Act, and considering the impacts of the proposal).

Comment:

The existing apartment building was constructed in early to mid 1960's. As indicated earlier in this report, the strata plan for the subject apartment building was registered on 26 February 1986.

Furthermore, the subject building has continuously been used as an apartment building.

In light of the above, it is considered that the existing development satisfies the definition and the relevant provisions relating to an existing use under Sections 4.65-4.70 of the *EP&A Act 1979*.

Environmental Planning and Assessment Regulations 2021

Consideration has been given to the relevant provisions/requirements under Sections 162 - 167 of the *EP&A Regulations 2021* in relation to existing use rights. The proposal seeks the redevelopment of the subject site with the construction of a new four (4) storey apartment building. The proposal is consistent with Section 166 of *EP&A Regulations 2021* because the proposal maintains the use of the subject site as a residential flat building and the works are contained within the subject site.

It is concluded that the subject site benefits existing use rights because the circumstances of the subject site and the proposed development are generally consistent with Cl. 13. ss 4.65 - 4.70 of the EP&A Act 1979 and ss 162-167 in Part 7 of EP&A Regulations 2021.

Section 4.15 Considerations

The decision of Chief Judge Preston in *Saffioti v Kiama Council* [2018] NSWLEC 57 outlined that certain development standards would not derogate from the incorporated provisions of existing use rights and therefore would not prevent their operation.

On this basis, the proposed development should comply with any development standard or be subject to a written request to vary the development standard pursuant to clause 4.6 in *NSLEP 2013*. In addition, it also concluded that the proposed development should be assessed against the relevant DCP provisions as a DCP is not an environmental planning instrument and therefore could not derogate from the incorporated provisions.

Therefore, any future development on the subject site must have regard to the relevant development standards and controls as contained in the relevant EPI, LEP and DCP which are assessed below.

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

SEPP (Biodiversity and Conservation) 2021

Chapter 2 – Vegetation in Non-Rural Areas

The proposal generally meets the objectives of the SEPP because the proposal would have no significant impact on native vegetation as indicated earlier in this report.

Furthermore, appropriate conditions have been recommended to ensure that the landscape quality of the subject site, the locality and the adjoining bushland reserve would be maintained and protected.

Chapter 6 - Sydney Harbour Catchment

Having regard to the provisions of Chapter 6 of the SEPP and the Sydney Harbour Foreshores and Waterways Area DCP 2005, the proposed development would not be highly visible from Sydney Harbour. Therefore, the proposal is not considered to be detrimental to general scenic quality and the ecology of the Harbour and will not unduly impose upon the overall character of the foreshore given that the scale and the localised nature of the proposed modified development. Furthermore, the proposal would not adversely affect the environmental processes, including in relation to water quality and biodiversity.

As such, the development is generally acceptable having regard to the provisions contained within Chapter 6 of the above SEPP and the Sydney Harbour Foreshores and Waterways DCP 2005.

SEPP (Resilience and Hazards) 2021

The provisions of *SEPP (Resilience and Hazards)* require Council to consider the likelihood that the site has previously been contaminated and to address the methods necessary to remediate the site. The subject site has only previously been used for residential purposes and as such is unlikely to contain any contamination; therefore, the requirements of the above SEPP have been satisfactorily addressed.

SEPP (Sustainable Buildings) 2022

A valid BASIX Certificate has been submitted with the application to satisfy the Aims of the SEPP. (**Condition No. C38, G12**)

SEPP (Housing) 2021

Chapter 2 – Affordable Housing

Consideration has been given to the relevant provisions/requirements under Chapter 2 of the SEPP, in particular Part 3 of the SEPP in relation to “Retention of existing affordable rental housing”.

It is noted that the subject building does not apply to Part 3 in Chapter 2 of the SEPP because the existing apartment building has been strata subdivided in accordance with Clause 46 (2)(a) of the SEPP.

Chapter 4 - Design Quality of Residential Apartment Development

SEPP 65 (Design Quality of Residential Apartment Development) was repealed on 14 December 2023 and is now replaced by *SEPP (Housing) 2021*.

Under the initial agreements, there were no express savings or transitional provisions preserving the operation of SEPP 65 (for existing applications) beyond its repeal.

On 15 March 2024, the State Environmental Planning Policy Amendment (Housing) 2024 was published, which revised the transitional provision set out in section 8(1) of Schedule 7A of the Housing SEPP. This resulted the following:

- A new provision applies to the new Chapter 4 (Design of Residential Apartment Development) of the Housing SEPP to any development application or modification application, including those lodged before 14 December 2023.

This provision is set out in Section 8(2A) of Schedule 7A of the Housing SEPP.

Subsequently, consideration has been given to the relevant provisions as contained in Chapter 4 of *SEPP (Housing) 2021*. The provisions of the SEPP and ADG do not derogate from the existing use rights, and the standards which ordinarily apply to residential flat building.

The modified proposal is generally consistent with the relevant aims of Chapter 4 of *SEPP (Housing) 2021* pursuant to Clause 142 of the SEPP as demonstrated in this report.

Furthermore, consideration has been given to the requirements of Clause 147 in relation to the matters of consideration for modifications for residential apartment development as detailed in report below:

Clause 147(1)(a) – Design Principles for Residential Apartment Development (Schedule 9 of SEPP (Housing) 2021)

As detailed in the discussion under the heading (Design Excellence Panel), the proposal has been assessed against the nine (9) Design Quality Principles. It is also concluded that the proposal has satisfactorily addressed these design principles subject to the imposition of appropriate conditions.

Clause 147(1)(b) – Apartment Design Guide (ADG)

The proposed development have also been considered against the Apartment Design Guide and is considered to be generally acceptable as detailed in the table below:

Amenity	Design Criteria	Comment	Compliance
2F - Building Separation	<p>Minimum separation distances for buildings are: Up to four storeys (approximately 12m):</p> <ul style="list-style-type: none"> 12m between habitable rooms/balconies (6m to boundary) 9m between habitable and non-habitable rooms (4.5m to boundary) 6m between non-habitable rooms (3m to boundary) 	<p>Southern (Brightmore Street) Elevation</p> <p>The proposed apartment building would provide a variable setback from the street (between 5.835m and 11.355m) due to the alignment of Brightmore Street.</p> <p>This is considered to be acceptable because the separation between the proposed building and the existing residential property on the opposite side of Brightmore Street would be in excess of 20m.</p>	Yes
		<p>The proposed car stacker building would provide a street boundary setback between 550mm and 2.704m. This is also considered to be acceptable given that the setback of this non-habitable building (a garage) would be similar to the front boundary setbacks of other garage structures along Brightmore Street.</p>	Yes
		<p>Western Elevation</p> <p>The proposed building would provide a variable setback, between 2.5m (Levels - 02 to Ground) and 4.1m (Level 01) from the western property boundary.</p>	Yes (via conditions)
Amenity	Design Criteria	Comment	Compliance
		<p>It is noted that the proposed building setback is consistent with the setback of the existing apartment building currently occupying the subject site.</p> <p>The applicant has not proposed any openings on the western elevation, therefore, building separation having regard to visual privacy for the adjoining property to the west (no. 38 Brightmore Street) is considered to be acceptable.</p>	

		<p>The imposition of deferred commencement conditions seeking design changes to reduce the height, bulk and scale of the building would further minimise the impacts on the amenity of the surrounding properties.</p> <p>Northern (rear) and Eastern Elevation</p> <p>The northern and eastern elevations of the proposed apartment building adjoin the Brightmore Reserve a variable setback of 6.7m to 15.5m from the northern (rear) property boundary due to the irregular property boundary alignment and a minimum building setback of 5.443m from the eastern property boundary.</p> <p>It is considered that sufficient separation is provided given that the subject site adjoins a bushland reserve and not a residential use.</p> <p>The proposal is therefore considered to be acceptable in this regard.</p>	Yes
3D- Communal Open Space	<p><i>Communal open space has a minimum area equal to 25% of the site.</i></p> <p><i>Developments achieve a minimum of 50% direct sunlight to the principal usable part of the communal open space for a minimum of 2 hours between 9 am and 3 pm on 21 June (mid-winter)</i></p> <p><i>Communal open space is designed to allow for a range of activities, respond to site conditions and be attractive and inviting</i></p> <p><i>Communal open space is designed to maximise safety</i></p>	<p>The applicant has proposed a communal open space including a communal terrace with table and seating to the north of the subject apartment building.</p> <p>The area of the communal area to the north of the proposed apartment building would be in excess of the minimum 25% requirement.</p> <p>The northern location of the communal space would ensure that the required minimum 2 hours requirement during mid-winter despite the filtering of sunlight by vegetation within the adjoining bushland.</p> <p>The design of the communal area would allow for a variety of activities including passive recreation activities with seating at the terrace.</p>	Yes
3E – Deep Soil Zones	<p><i>Deep soil zones are to meet the following minimum requirements:</i></p> <ul style="list-style-type: none"> • 3m minimum width • Minimum 7% of the site area 	<p>The proposed development would provide a total of 450sqm (53.6%) of deep soil planting area within the building setbacks and the communal open space to the south of the apartment building.</p> <p>The proposal complies with the ADG requirements.</p>	Yes
3F - Visual privacy	<p><i>Separation between windows and balconies is provided to ensure visual privacy is achieved. Minimum required separation distances from buildings to the side and rear boundaries are as follows:</i></p> <p><i>6m (between habitable rooms and balconies to boundaries)</i></p>	<p>The proposed windows/openings on the northern (rear) and eastern elevations would be facing the bushland reserve and no visual privacy impacts on the adjoining properties are envisaged.</p> <p>There would be no windows on the western elevation of the proposed apartment building that would cause overlooking of the adjoining properties to the west at Nos. 36 and 38 Brightmore Street.</p>	Yes

	<i>3m (between non-habitable rooms)</i>	The windows on the southern elevation overlooking Brightmore Street would have no material visual privacy impacts on nearby residential properties given that distance of separation from the property boundary of the nearest residential property in excess of 20m.	
3G – Pedestrian Access & Entries	<i>Building entries and pedestrian access connects to and addresses the public domain Access, entries and pathways are accessible and easy to identify</i>	The proposal would provide secured and accessible pedestrian entrance to the lift foyers via the building entrance off Brightmore Street.	Yes
3H – Vehicle Access	<i>Vehicle access points are designed and located to achieve safety, minimise conflicts between pedestrians and vehicles and create high quality streetscapes</i>	The proposed vehicular access to the car lift would be located on the western side of Brightmore Street frontage. Council’s Development Engineer and Traffic & Transport Engineer have raised no in-principle objection to the proposal subject to the imposition of appropriate conditions of consent.	Yes (via conditions)
3J – Bicycle and Car parking	<i>For development in the following locations:</i> <ul style="list-style-type: none"> • <i>on sites that are within 800 metres of a railway station or light rail stop in the Sydney Metropolitan Area; or</i> • <i>on land zoned, and sites within 400 metres of land zoned, B3 Commercial Core, B4 Mixed Use or equivalent in a nominated regional centre the minimum car parking requirement for residents and visitors is set out in the Guide to Traffic Generating Developments, or the car parking requirement prescribed by the relevant council, whichever is less</i> <p><i>The car parking needs for a development must be provided off street.</i></p> <p><i>Parking and facilities are provided for other modes of transport</i></p>	The applicant has proposed six (6) car parking spaces to be accommodated by the mechanical car stacker system. The proposal complies with the DCP parking requirements. The proposal is considered to be generally satisfactory in this regard.	Yes

4A - Solar and daylight access	<i>Living rooms and private open spaces of at least 70% of apartments in a building receive a minimum of 2 hours direct sunlight between 9 am and 3 pm at mid-winter in the Sydney Metropolitan Area and in the Newcastle and Wollongong local government areas</i>	All four (4) proposed apartments (100%) would receive a minimum of 2 hours of direct solar access to living spaces and/or balconies.	Yes
4B - Natural ventilation	<i>All habitable rooms are naturally ventilated.</i> <i>The layout and design of single aspect apartments maximises natural ventilation.</i> <i>The number of apartments with natural cross ventilation is maximised to create a comfortable indoor environment for residents – At least 60% of apartments are naturally cross ventilated</i>	A total of three apartments (75%) would achieve cross natural ventilation. The proposal therefore complies with the relevant ADG requirement.	Yes
4C - Ceiling Heights	<i>Ceiling height achieves sufficient natural ventilation and daylight access - Minimum 2.7m (habitable rooms), 2.4m for second floor where it does not exceed 50% of the apartment area.</i>	2.7m (minimum)	Yes
4D 1 - 3 - Apartment size and layout	<i>Apartments are required to have the following minimum internal areas:</i> <i>50m² (1B),</i> <i>70m² (2B),</i> <i>90m² (3B)</i> <i>All bedrooms have a minimum area of 10 m²</i> <i>All secondary bedrooms have a minimum width of 3m</i> <i>Living rooms have a minimum width of 3.6m (S and 1B) and 4m (2B and 3B)</i> <i>The maximum habitable room depth is 8m from a window</i>	1B: N/A 2B: 109m ² 3B: 152m ² -161m ² All master bedrooms are suitably sized in excess of 10 m ² The secondary bedrooms comply with the minimum width of 3m. N/A 2B/3B – 4m (min) All habitable areas would be within 8m from windows.	N/A Yes Yes Yes Yes Yes Yes
4E - Private open space and balconies	<i>All apartments are required to have primary balconies as follows:</i> <i>Studio apartments - 4m²</i> <i>1 bedroom apartments - 8m², minimum depth 2m</i>	N/A N/A 2B - 46 m ²	N/A Yes Yes

	<p><i>2 bedroom apartments 10m² minimum depth 2m</i></p> <p><i>3+ bedroom apartments 12m² minimum depth 2.4m</i></p> <p><i>The minimum balcony depth to be counted as contributing to the balcony area is 1m</i></p> <p><i>For apartments at ground level or on a podium or similar structure, a private open space is provided instead of a balcony. It must have a minimum area of 15m² and a minimum depth of 3m</i></p>	<p>3B – minimum 34m²</p> <p>Depth of balconies in excess of 1m</p> <p>The private open space for the 3 bedroom units on Level - 02 would be in excess of the minimum 34m² requirement.</p>	<p>Yes</p> <p>Yes</p> <p>Yes</p>
4F - Common circulation and spaces	<i>The maximum number of apartments off a circulation core on a single level is eight</i>	Only one (1) apartment would be served by each circulation core on each level.	Yes
4G -Storage	<p><i>Studio apartments- 4m³</i></p> <p><i>1 bedroom apartments- 6m³</i></p> <p><i>2 bedroom apartments- 8m³</i></p> <p><i>3+bedroom apartments- 10m³</i></p>	Sufficient internal storage facility would be provided within each apartment given the generous sizes of the proposed apartment well in excess of the minimum ADG requirement.	Yes

NORTH SYDNEY LOCAL ENVIRONMENT PLAN (NSLEP 2013)

Residential Zone Objectives

The proposal is generally consistent with the objectives for the R2 (Low Density Residential) zone.

Height of Building

The existing apartment building has a maximum height of 13.82m and breaches the LEP's 8.5 m maximum building height limit for the subject site by 5.32m (62%). The proposed apartment building would reach a maximum height of 13.76 m resulting a breach of the LEP maximum height limit by 4.86m and as illustrated in the building height blanket diagram below (**Figure 11**).

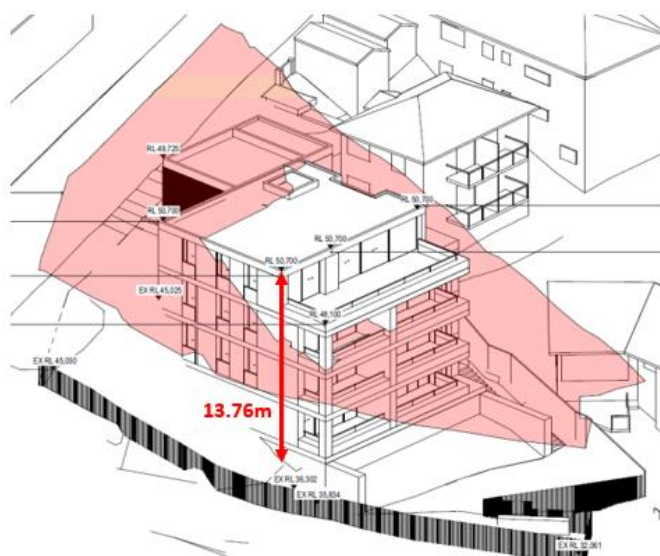


Figure 11: Building height blanket diagram

The applicant has submitted a written request to justify the proposed variation to the building height control. The proposed breach has been assessed in accordance with the requirements of Clause 4.6 (3) and (4), the objectives of the control and the zone. These matters have been considered below:

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

The proposal generally reflects the sloping landform of the subject site with a stepped built form.

- (b) To promote the retention and, if appropriate, sharing of existing views,**

Whilst the proposal would exceed the LEP maximum building height, the proposal is unlikely to cause material loss of significant views as seen from the adjoining properties for the following reasons:

- (a) The easterly location of the subject site would have no material impacts on the significant view towards the north (Willoughby Bay/Middle Harbour) as seen from the adjoining properties to the west of the subject site;
- (b) The height of the proposed apartment building would not be higher than the existing apartment building. Therefore, there would be no material view loss as compared to existing for the properties on the southern side of Brightmore Street; and
- (c) The proposal would have no material impacts on views as seen from Brightmore Street given that the proposed apartment building would be similar to the existing apartment building in terms of building height, the building footprint and the overall building setbacks.

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

An examination of the submitted sun eye shadow diagram has revealed that solar access to the windows on the eastern elevation of No.38 Brightmore Street would generally be maintained during mid-winter (**Figure 12**). Therefore, the proposed variation to the LEP maximum building height limit would have no material shadowing impacts onto the adjoining/nearby properties.

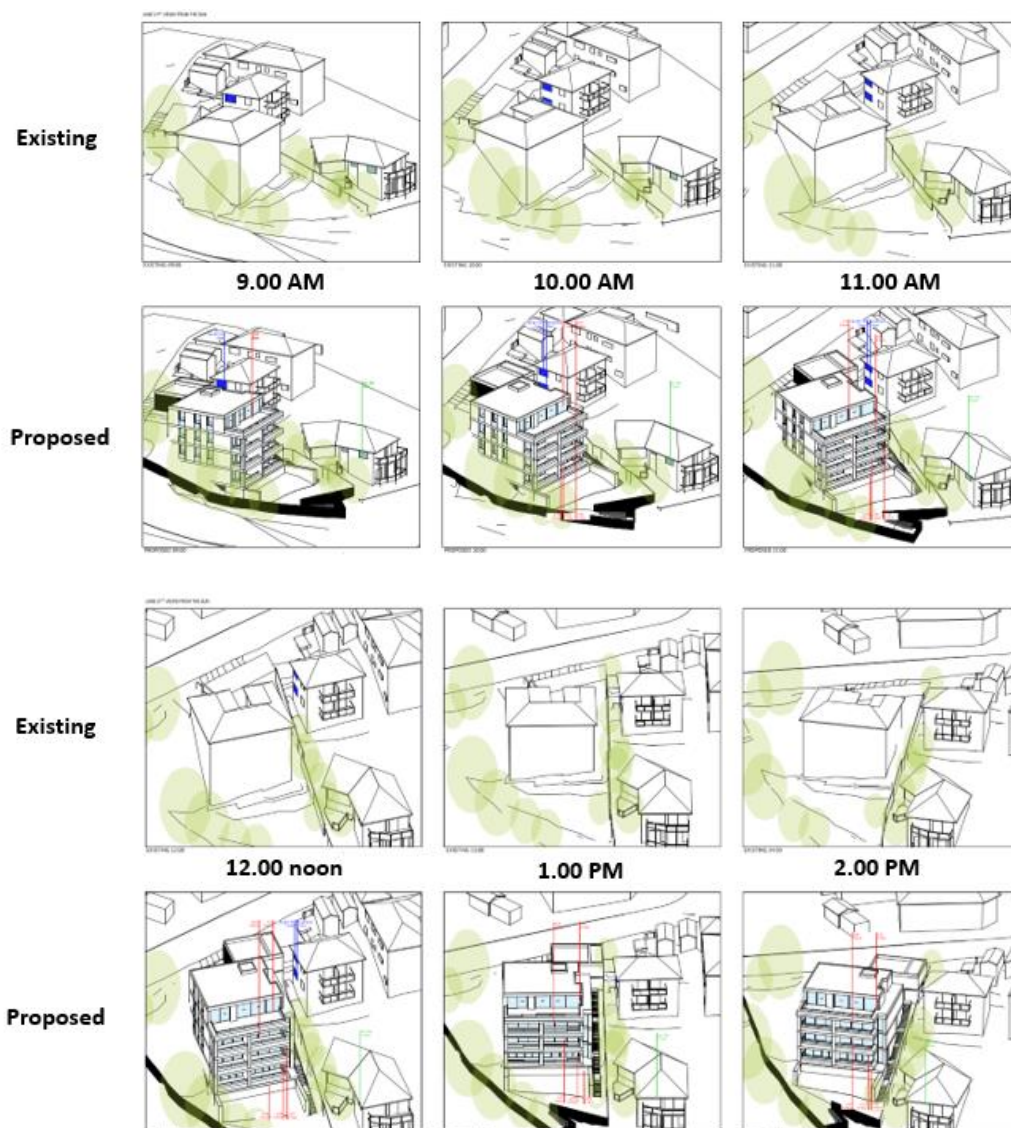


Figure 12: Shadow Diagrams (Mid winter)

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

As indicated earlier in this report, the proposed windows/openings above the LEP maximum building height limit would be located on the northern (rear) and eastern elevations. They would be facing the bushland reserve and no material privacy impacts on the adjoining residential properties are envisaged.

- (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

The proposed four (4) storey apartment building would replace an existing part 3/4 storey apartment building with a similar building height and building footprint. In addition, the proposal would not significantly change the density within the subject site because of the changes to the number and mix of apartments from 8 x 1 Bedroom units to 1 x 2 Bedroom unit + 3 x 3 Bedroom units.

The building elements in breach of the LEP building height limit would not cause a material loss of solar access, adverse privacy loss and/or view loss as detailed throughout this report. Consequently, the variation to the LEP maximum building height limit is supported given that it would be unreasonable for Council to insist upon strict compliance when the objectives of the development standard are satisfied by the proposal.

Notwithstanding the above, the design modifications as recommended in the deferred commencement conditions would further reduce the building height, bulk and scale of the proposed development and would improve the transitioning of building height and built form for developments along Brightmore Street.

That compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and

Strict compliance with the building height control is considered to be unreasonable and unnecessary as the elements in breach of the height control will not have a material impact upon the character of the locality and/or the amenity of adjoining properties.

The building elements above the LEP height limit would not result in any unacceptable loss of significant views, overshadowing or privacy impacts.

That there are sufficient environmental planning grounds to justify contravening the development standard.

The proposal would result in a development similar to the building height, building footprint and setbacks of the existing apartment building. Furthermore, the non-complying building elements are unlikely to cause material impacts on the amenity of the adjoining properties as discussed throughout this report.

Conclusion

The proposed variation to Clause 4.3(2) in NSLEP 2013 is considered to be acceptable in the site circumstances. Compliance with the maximum building height control is therefore considered to be unreasonable and unnecessary in the circumstances, as the objectives of the zone and the control are achieved despite the non-compliance subject to the imposition of appropriate conditions of consent.

Earthworks

The proposal involves substantial earthworks particularly the excavation require to accommodate the proposed mechanical car stacker and the rear of the proposed apartment on the lower levels.

Council's Senior Development Engineer has raised no objection to the proposal in engineering terms subject to the imposition of appropriate conditions. In addition, appropriate conditions have been recommended to minimise the likely impacts during the construction phase of the development.

The applicant has submitted a number of technical reports including a geotechnical report, a flood study and a hydrogeological report. Appropriate conditions are recommended requiring the submission of structural adequacy certificates, dilapidation surveys, geotechnical report and compliance with the requirements/recommendations of various technical reports to minimise impacts from the proposed development.

In particular, the hydrogeologist considered that the potential impacts of the proposed development on the hydrogeology of the area would be low with a number of recommendations including monitoring of water level during excavation and monitoring of inflows and discharge volumes during excavation. It is recommended that these measures are to be applied throughout the construction phase of the proposed development.

NORTH SYDNEY DEVELOPMENT CONTROL PLAN 2013

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

DEVELOPMENT CONTROL PLAN 2013 - Part B Section 1- Residential Development		
	Complies	Comments
1.2 Social Amenity		
1.2.1 Population Mix	Yes	The proposal would have no significant impacts on the overall population mix and the supply of residential accommodation within the locality given the scale and nature of the proposed development for four (4) apartment units.
1.2.2 Maintaining Residential Accommodation		
1.2.3 Affordable Housing		The proposal would result in the replacement of 8 x 1 Bedroom units with 3 x 3 Bedroom and 1 x 2 Bedroom units with off street parking. It is noted that the existing has been strata subdivided and the provisions of SEPP (Housing) 2021 in relation to retention of low-rental housing do not apply. Furthermore, there are a number of older style apartment developments within the locality (including Nos 36 and 38 Brightmore Street) that have a high proportion of one bedroom units. This would maintain the local supply of potential replacement accommodation for existing residents currently living in the subject apartment building.
1.2.4 Housing for Seniors/Persons with disability		
1.3 Environmental Criteria		
1.3.1 Topography	Yes	The proposed development with a stepped building profile generally reflects the landform of the subject site on a steep slope. The apartment on the lowest level (Level - 02) has been designed to locate the main habitable spaces within 500mm of the existing ground level. The proposal is therefore considered to be acceptable having regard to the sloping landform of the subject site.

1.3.6 Views	Yes	As mentioned earlier in this report, the proposed development would maintain the building height of the existing apartment building, therefore, the proposal is therefore unlikely to have material impacts on significant views as seen from surrounding properties.
1.3.7 Solar Access	Yes	<p>An examination of the submitted sun eye diagram has revealed that the proposal would generally maintain the access of sunlight for the adjoining property to the west at No. 38 Brightmore Street during mid winter.</p> <p>Furthermore, the imposition of a deferred commencement condition requiring a reduction in the height of the apartment building by 500mm would further improve solar access to the adjoining property particular during mid-morning till noon during mid winter.</p>
1.3.8 Acoustic Privacy 1.3.10 Visual Privacy	Yes	<p>The proposal would have no material privacy impacts on the neighbouring properties given that the proposed opening, decks terraces would be located on the northern and eastern elevation of the proposed apartment building away for the adjoining properties.</p> <p>In addition, the existing established planting along the perimeter of the subject site would generally retained and would provide further screening and visual privacy protection for the adjoining properties.</p> <p>Furthermore, a condition is recommended restricting the operating hours of the communal area to ensure privacy protection for the adjoining properties.</p>
1.4 Quality built form		
1.4.1 Context	Yes	<p>The proposal is considered to be generally appropriate in the context and the setting within the locality given that the proposed development would be similar to the existing apartment building in terms of building height, building footprint and setbacks.</p> <p>In addition, the design modifications as required by the deferred commencement conditions would further moderate the building height bulk and scale of the proposed building.</p>
1.4.2 Subdivision Pattern 1.4.5 Siting	Yes	The proposal would not change the size, shape and configuration of the subject site nor this would not significantly change the siting of building nor the subdivision pattern within the locality.
1.4.6 Setbacks - Side	No (acceptable on merit/ via condition)	<p>Eastern Elevation:</p> <p>The eastern elevation of the proposed apartment building adjoins Council's Briughtmore Reserve with a minimum building setback of 5.443m from the eastern property boundary.</p> <p>It is considered that sufficient separation is provided given that the eastern property boundary of the site adjoins a bushland reserve.</p> <p>Western Elevation:</p> <p>The proposed building would provide a variable setback, between 2.5m (Levels - 02 to Ground) and 4.1m (Level 01) from the western property boundary.</p> <p>It is noted that the proposed building setback is consistent with the setback of the existing apartment building currently occupying the subject site.</p> <p>The applicant has not proposed any openings on the western elevation, therefore, building separation having regard to visual privacy for the adjoining property to the west (no. 38 Brightmore Street) is considered to be acceptable.</p> <p>The imposition of deferred commencement conditions seeking design changes to reduce the height, bulk and scale of the building would further minimise the impacts on the amenity of the surrounding properties.</p>

It is noted that the proposed garbage bin storage enclosure/car stacker entrance structure would have zero setback from the western property boundary. Consideration has been given to the provisions in P3 Section 1.4.6 in Part B of NSDCP 2013 as well as the L&E Court planning principle established in *Galea v Marrickville Council [2003] NSWLEC 113* to ascertain the appropriateness of the proposal:

(a) Is the street characterised by terrace building?

There are a number of similar structures along Brightmore Street and Tobruk Avenue with zero side boundary setback.

(b) What is the height and length of the wall on the boundary

The new wall along the boundary would be 6.8m long and a variable height of 3.7m to 6.9m as measured from the southern building line of the structure.

It is recommended that the design of the garbage bin/bulky waste storage enclosure be modified as follows to minimise the bulk and scale of the structure:

- (a) The length of the garbage bin/bulky waste storage enclosure be reduced to 4m;
- (b) The maximum building height of the garbage bin/bulky waste storage enclosure shall be 2.7m maximum as measured from the floor level; and
- (c) The western wall of the garbage bin/bulky waste storage enclosure be setback from the western property boundary by 500mm.

The proposed design modifications would result in a smaller building that would improve the transition of building bulk and scale between the subject site and the adjoining property to the west of the subject site, particularly No. 38 Brightmore Street (**Condition AA1**).

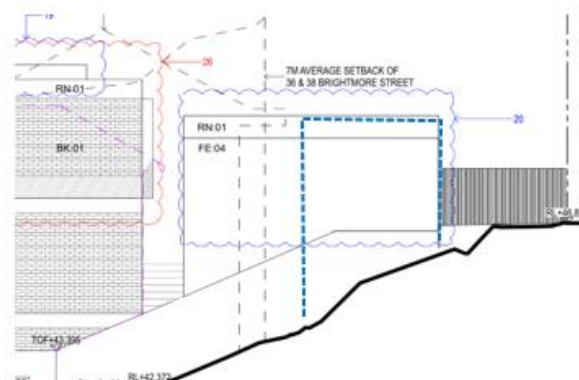


Figure 13: Proposed design modifications

(c) Has the applicant control over the adjoining site or the agreement of their owners

It is noted that consent from the owners of the adjoining property at No.38 Brightmore Street has not been submitted with the subject application.

The recommended design modifications requiring a building setback of 500mm from the western property boundary would minimise any encroachment onto the adjoining property to the west of subject site (**Condition AA1**).

A further condition is recommended that any works must not encroach onto the adjoining properties (**C1**).

		<p>(d) What are the impacts on the amenity and/or development potential of the adjoining sites</p> <p>The proposal would not cause material impacts on the amenity of the adjoining properties in terms of overshadowing, view or privacy loss as detailed earlier in this report subject to imposition of appropriate conditions.</p> <p>(e) Are there arrangements in place for the maintenance of the wall or gutters</p> <p>Whilst no details have been provided by the applicant with regard to maintenance of the walls and gutters of the adjoining property, it is considered that the issue of access and maintenance of the structure adjacent to the property boundaries would be a civil matter between the property owners.</p> <p>The proposal, as amended by conditions of consent, is considered acceptable having regard to boundary setbacks from the side elevations of the proposed building.</p>
<p>1.4.6 Setbacks - Front</p>	<p>Yes</p>	<p>The proposed apartment building would provide a variable setback from the street (between 5.835m and 11.355m) due to the alignment of Brightmore Street.</p> <p>This is considered to be acceptable because the proposed street boundary setback is generally consistent with those of the adjoining properties to the west of the subject site.</p> <p>It is also noted that the proposal complies with the 3m front setback as indicated in the DCP Character Statement.</p> <p>The proposed car stacker building would provide a street boundary setback between 550mm and 2.704m. This is also considered to be acceptable given that the setback of this non-habitable building (a garage) would be similar to the front boundary setbacks of other garage structures along Brightmore Street.</p>
<p>1.4.6 Setbacks - Rear</p>	<p>No (acceptable on merit)</p>	<p>The proposed apartment building adjoins Council's Brightmore Reserve at the rear and provides a variable setback of 6.7m to 15.5m from the northern (rear) property boundary due to the irregular property boundary alignment.</p> <p>Whilst the proposal does not comply with the DCP Character Statement requiring a 10m setback from the rear property boundary, the proposal is considered to be acceptable because of the irregular nature of the rear property boundary alignment with an average building setback in excess of 11m.</p>
<p>1.4.7 Form Massing Scale 1.4.8 Built Form Character</p>	<p>Acceptable on merit</p>	<p>The proposal is for demolition of the existing apartment building and the construction of a new apartment building that generally maintains the footprint of the existing apartment and its building height. The proposed apartment building also adopts a stepped building profile in response to the sloping landform of the subject site. It is noted that the subject site benefits from existing use rights as indicated earlier in this report.</p> <p>Furthermore, the recommendation requiring design changes to the proposed building result in further height reduction and minimisation of the impacts from the bulk and scale of the new building.</p> <p>In addition, the proposal also removes the existing open car spaces along Brightmore Street frontage and replaces with a mechanical car stacker and additional soft landscaping. The proposed car stacker entrance structure would have an appearance similar to a double garage which is characteristic within the locality.</p> <p>A condition is recommended requiring modifications to the design of the car stacker/waste storage structure to minimise the bulk and scale of this structure and its impacts on the adjoining property to the west at No. 38 Brightmore Street (Condition AA1).</p>

1.4.10 Roofs	Yes	The proposed apartment building would have a flat roof form. Whilst this would be a departure from a traditional pitch roof form of the existing apartment building, the proposed roof form is acceptable because contemporary roof forms are featured in recently completed development within the locality along Tobruk Avenue and Levick Street. In addition, the subject site is not located within a conservation area.																
1.4.12 Materials	Yes (via condition)	The proposed materials and finishes are considered to be acceptable. A standard condition is recommended to ensure that the materials featured in the proposed development would be consistent with the submitted schedule of materials/finishes (Condition A4).																
1.5 Quality Urban Environment																		
1.5.4 Vehicle Access and Parking	Yes	<p>Vehicular access is to be provided via Brightmore Street to the entrance of the proposed mechanical car stacker. Council's Development Engineer has raised no objection to the proposal subject to the imposition of appropriate engineering conditions.</p> <p>The proposed mechanical car stacker would provide parking for six (6) cars and is compliant with the DCP car parking requirement.</p> <p>Whilst the proposal would reduce the total number of apartments by one (1) space and would technically reduce the DCP parking requirement by 1.5 cars. However, adequate parking spaces have been allocated to all units within the existing apartment building and the application does not request further changes to the car parking layout within the basement and vehicular access and on-street parking arrangement of Milson Road.</p>																
1.5.5 Site Coverage 1.5.6 Landscape Area	Yes	<p>The proposed development complies with DCP's requirements for site coverage, unbuilt upon area and landscape area as detailed below.</p> <table border="1" data-bbox="735 1151 1385 1550"> <thead> <tr> <th>Site Area: 842sqm</th> <th>Proposed</th> <th>Control</th> <th>Compliance</th> </tr> </thead> <tbody> <tr> <td>Site coverage (Max 45%)</td> <td>317sqm (38%)</td> <td>379sqm (45%)</td> <td>Yes</td> </tr> <tr> <td>Unbuilt Upon Area (Max 15%)</td> <td>85sqm (10%)</td> <td>126sqm (15%)</td> <td>Yes</td> </tr> <tr> <td>Landscaped Area (Min 40%)</td> <td>440sqm (52%)</td> <td>337sqm (40%)</td> <td>Yes</td> </tr> </tbody> </table>	Site Area: 842sqm	Proposed	Control	Compliance	Site coverage (Max 45%)	317sqm (38%)	379sqm (45%)	Yes	Unbuilt Upon Area (Max 15%)	85sqm (10%)	126sqm (15%)	Yes	Landscaped Area (Min 40%)	440sqm (52%)	337sqm (40%)	Yes
Site Area: 842sqm	Proposed	Control	Compliance															
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Landscaped Area (Min 40%)	440sqm (52%)	337sqm (40%)	Yes															
1.5.8 Landscaping	Yes (via condition)	The proposal, including the amended plans, has been referred to Council's Landscape Development Officer and Bushland Management Co-ordinator. Appropriate conditions, including a deferred commencement condition requiring the submission of a works and management plan detailing the type of works and protection measures for Trees T1 and T2 during all phase of demolition, excavation and construction works and a revised arborist report incorporating an assessment of the proposed works/protection measures affecting Trees T1 and T2, have been recommended to ensure a desirable landscaping outcome for the subject site and the locality (Condition AA2).																
1.6 Efficient Use of Resources																		
1.6.1 Energy Efficiency	Yes	The applicant has submitted a valid BASIX Certificates for the proposed development to demonstrate the efficient use of resources.																

CHARACTER STATEMENTS - PART C

North Cremorne Planning Area (Benelong and Northern Foreshore Neighbourhoods)

Consideration has been given to the relevant provisions as contained in Section 5 of the Character Statement for the North Cremorne Planning Area and Section 5.4 for Benelong and Northern Foreshore Neighbourhoods in Part C of North Sydney DCP 2013.

It is noted that the proposal involves the demolition of an existing apartment building and the construction of a new apartment building. Whilst the proposal is for a high density development and may not be consistent with the desired future character of the neighbourhood for primarily low density development, the subject site benefits from existing use rights and the proposed development generally maintains the footprint of the existing apartment and its building height. Furthermore, there would be no significant change in the density of the subject site as the result of the proposed development. The proposed apartment building also adopts a stepped building profile in response to the sloping landform of the subject site.

Furthermore, the recommendation requiring design changes to the proposed building result in further height reduction and minimisation of the impacts from the bulk and scale of the new building.

In addition, the proposal also removes the existing open car spaces along Brightmore Street frontage and replaces with a mechanical car stacker and additional soft landscaping. It is considered that this aspect of proposal would improve the streetscape and traffic safety with fewer parking bay to be accessed via Brightmore Street.

It is therefore considered the proposal, as amended by conditions of consent, is considered to be acceptable having regard to the DCP Character Statement for Benelong and Northern Foreshore Neighbourhoods.

NORTH SYDNEY LOCAL INFRASTRUCTURE CONTRIBUTION PLAN 2020

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 have been calculated in accordance with Council's Contributions Plan as follows:

Contribution amounts payable

Applicable contribution type		
s7.12 contribution details	Development cost:	\$4,400,000.00
<i>(payment amount subject to indexing at time of payment)</i>	Contribution: (1% of the development cost)	\$44,000.00

Accordingly, a condition requiring the payment of contributions at the appropriate time is recommended (**Condition C36**).

ENVIRONMENTAL PLANNING AND ASSESSMENT (HOUSING AND PRODUCTIVITY CONTRIBUTION) ORDER 2023

The requirements of Environmental Planning and Assessment (Housing and Productivity Contribution) Order do not apply to the subject proposal because the subject development application was lodged prior to the commencement of the Order on 1 October 2023.

ALL LIKELY IMPACTS OF THE DEVELOPMENT

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

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

SUBMITTERS CONCERNS

Council notified adjoining properties and the Brightmore Precinct of the proposed development seeking comment between 20 January and 3 February 2023. Council received thirteen (13) submissions including one (1) submission in support of the proposal and two (2) submissions from one submitter.

The amended plans that were renotified to adjoining properties and the Brightmore precinct for 14 days between 17 November and 1 December 2023. Council received three (3) submissions.

The concerns relating to permissibility, view loss, privacy and overshadowing have been addressed earlier in the report.

In relation to the building height, bulk and scale, built form character of the proposed apartment building and the car stacker/garbage bin enclosure, it is noted that the subject site benefit from existing use right from the existing apartment development.

The proposed car stacker/garbage bin storage structure is supported because this aspect of the proposal would remove the existing open car spaces along Brightmore Street within an improved streetscape outcome with additional soft landscape within the front (southern) building setback area. The proposed location on the western side of the street frontage is also considered to be appropriate in order to ensure protection of established vegetation on the eastern side of the street frontage.

Furthermore, design modifications have been recommended requiring a reduction in the height of the apartment building and the garbage bin enclosure to minimise the bulk and scale and visual impacts as seen from the adjoining properties and to improve the transition of built forms between the subject site and the adjoining properties (**Condition AA1**).

The other matters raised in submissions are listed and addressed below:

- ***Concerns on traffic impacts due to the location of the proposed development on a narrow and curved section of Brightmore Street.***
- ***Adverse traffic impacts from the proposed car lift structure.***
- ***Inadequate parking.***

Comment:

The proposal has been referred to Council's Traffic and Transport Engineer who raised no in-principle objection to the proposal subject to the imposition of appropriate conditions. It is noted that a waiting bay has been added adjacent to the car stacker entrance building to minimise disruption to traffic flow on Brightmore Street and to ensure traffic safety.

As indicated earlier in this report, the proposal complies with Council's parking requirements. It is also noted that there is a reduction in the number of apartments within the proposed development resulting in a decrease in demand for parking.

- ***Adverse impacts on the root zone of an established gum tree on Brightmore Street frontage.***
- ***Removal of trees at the rear of the subject site would reduce passive privacy screening for the adjoining properties to the west.***

Comment:

The landscape plan and arborist report have been referred to Council's Landscape Development Officer and Bushland Management Co-ordinator and were found to be generally acceptable subject to imposition of appropriate conditions.

It is recommended that a deferred commencement condition be imposed requiring the submission of a works and management plan detailing the type of works and protection measures for Trees T1 and T2 during all phase of demolition, excavation and construction works and a revised arborist report incorporating an assessment of the proposed works/protection measures affecting Trees T1 and T2 to ensure the protection of significant trees (**Condition AA2**).

The applicant has proposed the removal of six (6) trees, including one (1) dead tree, within the subject site and retain seventeen trees on site. In addition, the submitted landscape plan indicates screen planting along the western property boundary.

As indicated earlier in this report, a condition is recommended to modify the design of the car stacker/garbage storage enclosure including reduction in the size, bulk and scale and setback of this proposed structure. An additional requirement for a revised landscape plan to provide further screen planting along the western property boundary is recommended to ensure that a suitable buffer is provided between the subject site and the adjoining properties to the west at No. 38A Brightmore Street (**Condition C3**).

- ***Adverse impacts on the adjoining bushland including the proximity of the proposed development and noise impacts.***

Comment:

The proposal, including the amended plans, has been referred to Council's Bushland Management Co-ordinator who raised no in-principle objection to the proposal subject to the imposition of appropriate conditions.

- ***Excessive excavation would compromise the structural integrity of neighbouring buildings, the natural slope and the natural drainage pattern of the locality.***
- ***The proposed excavation works below the existing water table may have adverse impacts on the adjoining properties.***
- ***Adverse impacts due to alterations to natural drainage patterns within the locality and the increased risk of flooding of the adjoining properties.***

Comment:

The applicant has submitted a number of technical reports including geotechnical report, a flood study and a hydrogeological report. Appropriate conditions are recommended requiring the submission of structural adequacy certificates, dilapidation surveys, geotechnical report and compliance with the requirements/recommendations of various technical reports to minimise impacts from the proposed development.

In particular, the hydrogeologist considered that the potential impacts of the proposed development on the hydrogeology of the area would be low with a number of recommendations including monitoring of water level during excavation and monitoring of inflows and discharge volumes during excavation. It is recommended that these measures are to be applied throughout the construction phase of the proposed development.

- ***Poor amenity for the subterranean apartments.***
- ***The subterranean apartments may subject to flooding due to an existing watercourse.***

Comment:

The applicant has amended the original proposal with the deletion of the apartment on the lowest level. This modification is supported because the apartment on the lowest level in the original scheme would have suffered from poor amenity due to the subterranean nature of this unit. The deletion of the unit on the lowest level would also reduce the risk of flooding (if any) due to the apartment's elevated location.

- ***Concerns raised about access and impacts on traffic (motor vehicles and bicycles) during the construction period with movements of heavy vehicles in and out of the subject site.***
- ***Concerns raised about impacts from construction activities and construction vehicles.***

- ***Construction hours should be reduced to minimise impacts from noisy excavation works.***
- ***Adverse noise and stormwater drainage impacts from excavation for neighbouring properties and the nature reserve.***
- ***The hydrogeological report does not address the management of water during construction.***

Comment:

The applicant is required to submit a construction traffic management plan to ensure that appropriate measures have been considered for the site access, storage and the operation of the site during all phases of the demolition/construction process and minimising impacts on the adjoining properties and the community as a whole.

A standard condition is recommended restricting the construction hours including restricted hours for demolition/excavation works to minimise nuisance for the surrounding properties (**Condition E21**).

As indicated earlier in this report, the hydrogeologist has recommended a number of measures during the excavation of the site. It is recommended that that the same be applied to the construction phase of the development to minimise the impacts of the proposed development.

PUBLIC INTEREST

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

SUITABILITY OF THE SITE

Whilst the subject site is on land zoned R2 (Low Density Residential), the existing apartment development benefits from existing use rights. The proposal has been assessed against the relevant L&E Court Planning Principle/caselaws relating to existing use rights and the relevant planning instrument in order to ascertain its performance.

The proposal is considered to be satisfactory subject to the imposition of appropriate conditions. Consequently, the proposal is considered to be suitable for the site having regard to the merits of the proposal as described in the above report.

HOW WERE THE COMMUNITY VIEWS TAKEN INTO CONSIDERATION?

Council notified adjoining properties and the Brightmore Precinct of the proposed development seeking comment between 20 January and 3 February 2023. The amended plans that were renotified to adjoining properties and the Brightmore precinct for 14 days between 17 November and 1 December 2023. Council received a total of sixteen (16) submissions. The issues raised in the submissions have been addressed throughout this report.

CONCLUSION

The proposal was considered under the relevant Environmental Planning Instruments and policies including *NSLEP 2013 and NSDCP 2013* and general found to be generally satisfactory subject to the imposition of appropriate conditions.

The subject site is located on land zoned R2 (Low Density Residential) where residential flat building is a form of development that is originally prohibited within the zone. However, the subject site benefits from existing use rights which under the Incorporated Provisions in the Regulations confers a development right to rebuild the existing building. The circumstances of the subject site and the proposed development are generally consistent with Sections 4.65 - 4.70 of the EP&A Act 1979 and Sections 162 -167 in Part 7 of EP&A Regulations 2021.

Consideration has been given to the relevant planning controls and the submission seeking a variation to the LEP maximum building height control for the proposed works. It is concluded that the proposal is unlikely to give rise to material amenity impacts, including significant views as seen for the adjoining properties subject to the imposition of a deferred commencement condition requiring design changes to the lower the overall height of the apartment building by 500mm to reduce the bulk/scale, height and setback of the garbage bin enclosure adjacent to the western property boundary. The design, height, bulk and scale of the proposed development, as amended by conditions, are considered to be acceptable and is reasonably consistent with potential outcomes anticipated by the relevant controls.

In addition, a deferred commencement condition is recommended requiring the submission of a works and management plan detailing the type of works and protection measures for Trees T1 and T2 during all phase of demolition, excavation and construction works and a revised arborist report incorporating an assessment of the proposed works/protection measures affecting Trees T1 and T2 to ensure the protection of significant trees (**Condition AA2**).

The issues raised in the submissions received have been addressed throughout the report.

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

RECOMMENDATION

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

THAT the North Sydney Local Planning Panel, exercising the functions of Council, as the consent authority, assume the concurrence of the Director General of the Department of Planning and invoke the provisions of Clause 4.6 in *NSLEP 2013* with regards to the non-compliance with Clause 4.3 of *NSLEP 2013* and grant deferred commencement consent to Development Application No. 409/22 for 40 Brightmore Street, Cremorne, subject to the following site specific and attached standard conditions

AA. Deferred Commencement Condition

This consent shall not operate until the following deferred commencement condition(s) has/have been satisfied.

The applicant must satisfy Council as to the matters specified in the deferred commencement conditions within 12 months of the date of the grant of this consent.

If the applicant fails to satisfy Council as to the matters specified in the deferred commencement conditions within 12 months from the date of this consent. It will lapse in accordance with Section 4.16(3) of the Environmental Planning and Assessment Act 1979.

Deferred Commencement Matters

Design Modifications

AA1. The design of the proposed development must be modified as follows:

Apartment Building:

- (a) The height of the proposed apartment building be lowered by 500mm to minimise the building height and bulk/scale of the building with the roof parapet at to RL50.200 and the lift overrun at RL50.600; and
- (b) The floor levels/RLs of the lower levels of the proposed apartment building be revised accordingly.

Garbage Bin Storage Enclosure:

- (c) The design of garbage bin storage and bulky waste storage enclosures, located to the west of the proposed mechanical car stacker facility be modified to provide an integrated waste materials store room;
- (d) The western wall of this modified structure shall provide a minimum 500mm setback from the western property boundary;
- (e) The external length of this modified structure shall not exceed 4m maximum as measured from the southern (front) building line; and
- (f) The maximum height of this modified structure shall not exceed RL 49.50.

Plans/drawings showing the modified design must be submitted for the written approval of Council's Manager Development Services.

(Reason: To minimise building height, bulk and scale of the proposed development)

Works and Management Plan for Tress T1 and T2 and Addendum to Arborist Report

AA2. The preparation and submission of a plan detailing the following:

- (a) The types and scope of works to be carried out affecting Trees T1 and T2 during all phase of demolition, excavation and construction works (such works include, but not limited to, changes to the existing ground levels within the TPZ, encroachment of any works within the TPZ etc);
- (b) Any pruning or similar works to Trees T1 and T2 during all phases of demolition, excavation and construction works;
- (c) Use of the ground surface within the TPZ of Trees T1 and T2 including, but not limited to, temporary storage/stockpiling of materials/equipment during all phases of demolition, excavation and construction works;
- (d) Tree protection measures for Trees T1 and T2 during all phases of demolition, excavation and construction works;
- (e) No suspended loading platform shall not be located in close proximity to Trees T1 & T2; and
- (f) Stockpile location adjacent to Tree 10 shall be relocated to provide at least 1m from the boundary fence avoid potential damage to roots of Tree 10.

The submission of an addendum to the submitted arborist report, prepared by Urban Forestry Australia dated October 2023, including an assessment of the likely impacts on Trees T1, T2 and T10 during the demolition, excavation and construction phase of the development with recommendations detailing the necessary actions required to adequately protect Trees T1, T2 and T10.

(Reason: To protect existing significant vegetation)

ROBIN TSE
SENIOR ASSESSMENT OFFICER

ISOBELLA LUCIC
TEAM LEADER ASSESSMENTS

DAVIS HOY
A/MANAGER DEVELOPMENT SERVICES
