

# Koichi Takada Architects

184b – 190 Kurraba Road, Kurraba Point

## DA Re-submission - Design Change Schedule

5<sup>th</sup> February 2024

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Royal Australian Institute of  
Architects 25286  
Royal Institute of British  
Architects 1041159

Item No.	Sheet Ref.	Change Description
1.	A101, A102, A103, A104, A304	Plans amended to show the foreshore building line as provided by LTS. The foreshore access stairs have been pulled back from the foreshore zone, ensuring there is no building element encroaching on the foreshore building line.
2.	A104, A105, A106, A107, A108, A109, A303, A304, A401, A403, A458,	Buildings A & B built form has been compressed, improving the landscaping, unbuilt upon and site coverage compliance for each lot in both R2 and R4 zones.
3.	A009, A010, A012, A013, A014, A105, A106, A107, A108, A109, A200, A202, A203, A204, A205, A206, A401, A403, A410, A412, A414, A421, A455, A456, A458	Car lift integrated into building B to accommodate waiting bay within the site. Entries from Kurraba Rd for building A & B have been rearranged to consolidate the landscaping and unbuilt upon area compliance.
4.	A001, A401, A403	KTA has amended site calculation diagrams, demonstrating each lot to be assessed individually in reference to the landscaping, unbuilt upon and site coverage.
5.	A452, A453	Shadow diagrams updated to reflect the integration on the car lift for building B.
6.	A475, A476	Units A001 and B001 - Adaptable apartments plans updated to reflect overall building changes.
7.	A481, A482, A483, A484.	The additional height plane diagrams have been prepared demonstrating the height blankets based on Merman for both R2 and R4 zones.

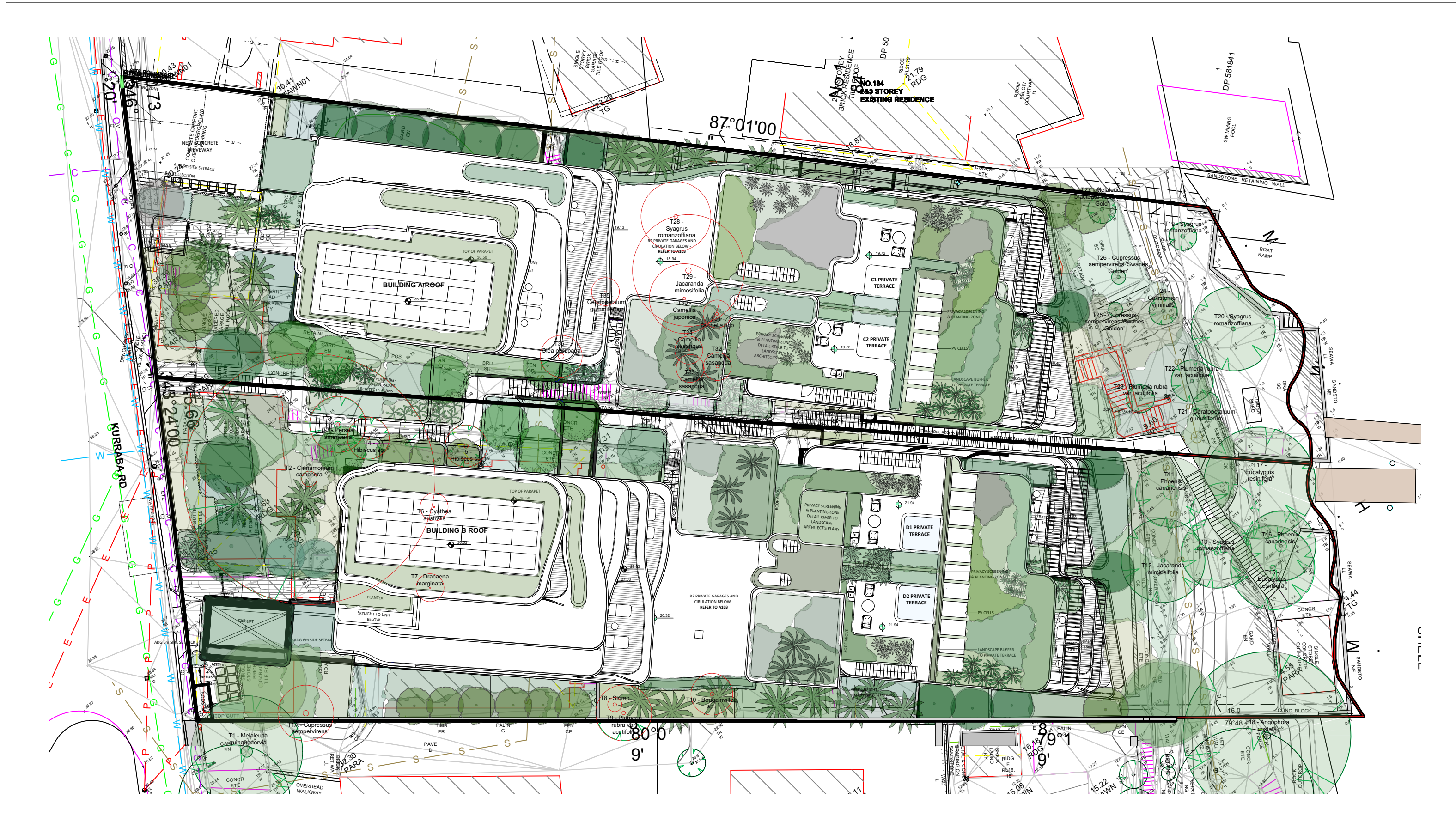
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# 190 Kurraba Rd, Kurraba Point

## DEVELOPMENT APPLICATION



### PLANT SCHEDULE

Botanic Name	Common Name	Mature Height	Pot Size	Qty
Agave gypsophila	Gypsum Century Plant	0.7m	300mm	33
Agave weberi	Magvey Liso	1m	400mm	5
Aloe 'Baby Bush Yellow'	Baby Bush Yellow	0.4m	200mm	540
Alpinia nutans	Dwarf Cardamom	1.2m	200mm	217
Angophora costata	Smooth-barked Apple	10-20m	100Ltr	1
Banksia integrifolia	Coastal Banksia	5-10m	200Ltr	15
Cissus 'Ellen Danica'	Grape Ivy	0.3m	200mm	402
Correa alba	White Correa	1.2m	200mm	104
Crassula ovata minima	Jade	0.6m	200mm	55
Cyathea australis	Rough Tree Fern	3-7m	100Ltr	12
Delosperma cooperi	Hardy iceplant	0.1m	200mm	60
Doryanthes excelsa	Gymea Lily	1-3m	300mm	43
Dracaena 'Janet Craig'	Janet Craig	1-3m	200mm	231
Eucalyptus piperita	Sydney Peppermint	12-20m	100Ltr	1
Ficinia nodosa	Knobby Club-Rush	0.8-1m	300mm	175
Ficus rubiginosa	Port Jackson Fig	15m	advanced	4
Hibbertia scandens	Guinea Flower	Climber	200mm	564
Howea forsteriana	Kentia Palm	5-12m	advanced	20
Jacaranda mimosifolia	Jacaranda	10-15m	advanced	1
Juniperus horizontalis	Creeping Juniper	0.1-0.3m	200mm	120
Leptospermum laevigatum	Coastal Tea Tree	2-5m	200mm	40
Livistona australis	Cabbage Tree Palm	10-20m	advanced	9
Lomandra sp.	Mat Rush	0.4-1m	200mm	2036
Macrozamia communis	Burrawang	1.5-2m	400mm	8
Magnolia 'Teddy Bear'	Teddy Bear Magnolia	3-6m	200Ltr	2
Monstera deliciosa	Fruit Salad Plant	0.5-1.5m	200mm	316
Pandorea pandorana	Wonga Wonga Vine	Climber	200mm	393
Pennisetum 'Nafray'	Dwarf Fountain Grass	0.6m	200mm	59
Philodendron selloum	Philodendron	1.5-2.5m	300mm	12
Philodendron 'Xanadu'	Xanadu	0.7m	200mm	97
Portulacaria afra	Elephant Bush	2.5-4m	140mm	278
Rhaphiolepis indica	Indian Hawthorn	2-3m	400mm	78
Rhapis excelsa	Lady Palm	4-5m	100Ltr	20
Rhapis excelsa	Lady Palm	4-5m	400mm	73
Rosmarinus prostratus	Prostrate Rosemary	Groundcover	200mm	75
Sansevieria 'Uganda'	Snake Plant	0.6m	200mm	60
Syzygium 'Resilience'	Resilient Lilly Pilly	2-4m	400mm	58
Trachelospermum jasminoides	Star Jasmine	Climber	200mm	24
Tristaniaopsis 'Luscious'	Luscious Water Gum	4-6m	100Ltr	16
Viola hederacea	Native Violet	0.2m	140mm	325
Westringia fruticosa	Coastal Rosemary	2m	200mm	65
Zamia furfuracea	Cardboard Cycad	0.7-1m	400mm	16

Locally Occurring Native Species  
NOTE: 54.33% of proposed plants are native

### GENERAL NOTES:

**GRAPHIC ILLUSTRATION**  
Please note that the plant graphics are indicative sizes only and not an accurate representation at time of purchase. Do not scale from drawings.  
All dimensions in mm unless otherwise stated.  
Figure dimensions shall take precedence over scale.  
Contractors must verify all dimensions on site before commencing any work or making shop drawings.  
All works shall be carried out in accordance with ASA, BCA and Local Government Regulations.  
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**SITE PREPARATION**  
All existing plants marked for retention shall be protected for the duration of works. Remove from site all perennial weeds and rubbish before commencing landscape works.

**SOILWORKS**  
Thoroughly cultivate the subsoil to a depth of 200mm. Supply and install to a depth of 300mm quality garden soil mix to all planting beds and 150mm turf underlay to lawn areas.

**MULCH**  
Supply and install a 75mm layer of hardwood horticultural grade mulch to all planting beds set down 25mm from adjacent paving or garden edge.

**MAINTENANCE**  
All failed or defective plant species to be replaced by landscaper for a 3 months period following completion of work.  
Further maintenance during and after this period should include watering, weeding, fertilising, pest and disease control, pruning and hedging, reinstatement of mulch and keeping the site neat and tidy.

### GENERAL PLANTING NOTES:

**NOTE:** It is recommended that all plants used be subject to an establishment period. During this period maintenance work carried out will include; watering, mowing, weeding, fertilising, pest and disease control, reseeding, returfing, staking and tying, replanting, cultivating, pruning, hedge clipping, aerating, reinstatement of mulch, top dressing and keeping the site neat and tidy.

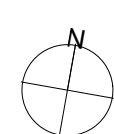
**NOTE:** Plants shall be vigorous, well established, of good form consistent with species or variety, not soft or forced, free from disease and insect pests, with large healthy root systems and no evidence of having been restricted in growth or damaged. Root system shall be well balanced in relation to the size of the plant.

**NOTE:** install 'root barrier' or equivalent to manufacturers specifications to protect nearby structures and services.

**NOTE:** Install temporary drip irrigation system under mulch in tree protection zones and water on allotted days.



LOCATION MAP



Project:  
190 Kurraba Rd, Kurraba Point

Client:  
Kurraba Rd

Dwg no:  
LP01-D1622

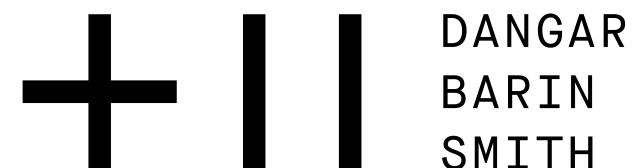
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Date: 07.02.2024

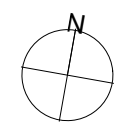
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Botany NSW 2019

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# R2 GROUND LANDSCAPE PLAN



Project:  
190 Kurraba Rd, Kurraba Point

Client:  
Kurraba Rd

Dwg no:  
LP01-D1622

Title:  
R2 G Landscape

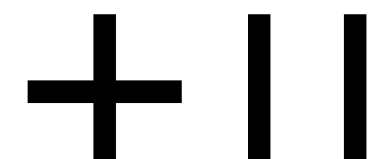
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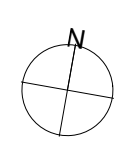
DANGAR  
BARIN  
SMITH







# R4 LOWER GROUND LANDSCAPE PLAN



Project:  
190 Kurraba Rd, Kurraba Point

Client:  
Kurraba Rd

Dwg no:  
LP03-D1622

Title:  
R4 LG/ R2 Roof Landscape

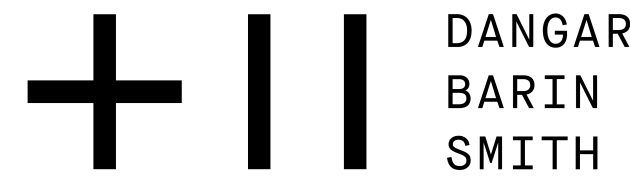
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Date: 07.02.2024

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# R4 GROUND LANDSCAPE PLAN

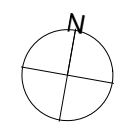


NO.184  
2&3 STOF  
EXISTING

- 32/200mm *Monstera deliciosa*
- 30/200mm *Lomandra* sp.
- 2/advanced *Livistona australis*
- 66/200mm *Pandorea pandorana*
- 9/400mm *Zamia furfuracea* w/  
70/200mm *Hibbertia scandens* under
- 42/200mm *Pandorea pandorana*
- 36/200mm *Cissus 'Ellen Danica'*
- 3/200Ltr *Banksia integrifolia*
- 32/200m *Alpinia nutans*

- 7/300mm *Doryanthes excelsa* w/ 30/200mm  
*Hibbertia scandens* under
- 30/200mm *Lomandra* sp.
- 60/200mm *Delosperma cooperi*
- 40/200mm *Isolepsis nodosa*
- 80/200mm *Aloe 'Bush Baby Yellow'*
- 45/200mm *Juniperus horizontalis*
- 3/400mm *Macrozamia communis* w/ 50/200mm  
*Hibbertia scandens* under
- 80/140mm *Portulacaria afra*
- 38/140mm *Portulacaria afra*
- 3/400mm *Macrozamia communis* w/ 40/200mm  
*Hibbertia scandens* under
- 35/200mm *Juniperus horizontalis*
- 110/200mm *Aloe 'Bush Baby Yellow'*
- 40/200mm *Juniperus horizontalis*
- 23/200mm *Lomandra* sp.
- 60/140mm *Portulacaria afra*
- 2/400mm *Macrozamia communis* w/ 60/200mm  
*Hibbertia scandens* under

- 64/200mm *Dracaena 'Janet Craig'*
- 6/200Ltr *Banksia integrifolia*
- 45/200mm *Alpinia nutans*
- 40/200mm *Monstera deliciosa*
- 100/200mm *Cissus 'Ellen Danica'*



Project:  
190 Kurraba Rd, Kurraba Point

Client:  
Kurraba Rd

Dwg no:  
LP04-D1622

Title:  
R4 G Landscape

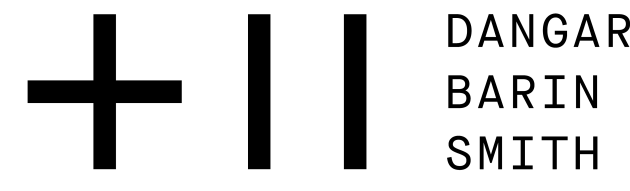
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Revision: F  
Date: 07.02.2024

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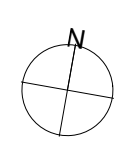
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# R4 LEVEL 1 LANDSCAPE PLAN



Project:  
190 Kurraba Rd, Kurraba Point

Client:  
Kurraba Rd

Dwg no:  
LP05-D1622

Title:  
R4 L1 Landscape

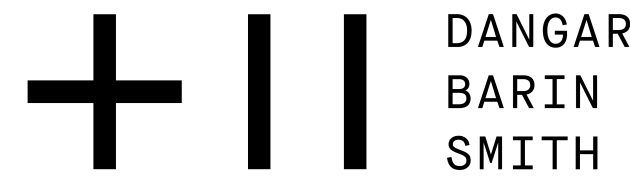
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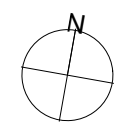
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# R4 LEVEL 2 LANDSCAPE PLAN



Project:  
190 Kurraba Rd, Kurraba Point

Client:  
Kurraba Rd

Dwg no:  
LP06-D1622

Title:  
R4 L2 Landscape

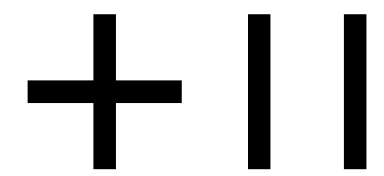
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Revision: F  
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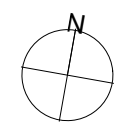
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# R4 LEVEL 3 LANDSCAPE PLAN



Project:  
190 Kurraba Rd, Kurraba Point

Client:  
Kurraba Rd

Dwg no:  
LP07-D1622

Title:  
R4 L3 Landscape

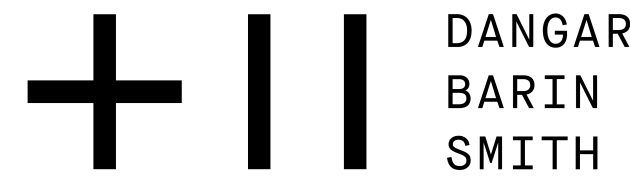
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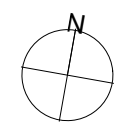
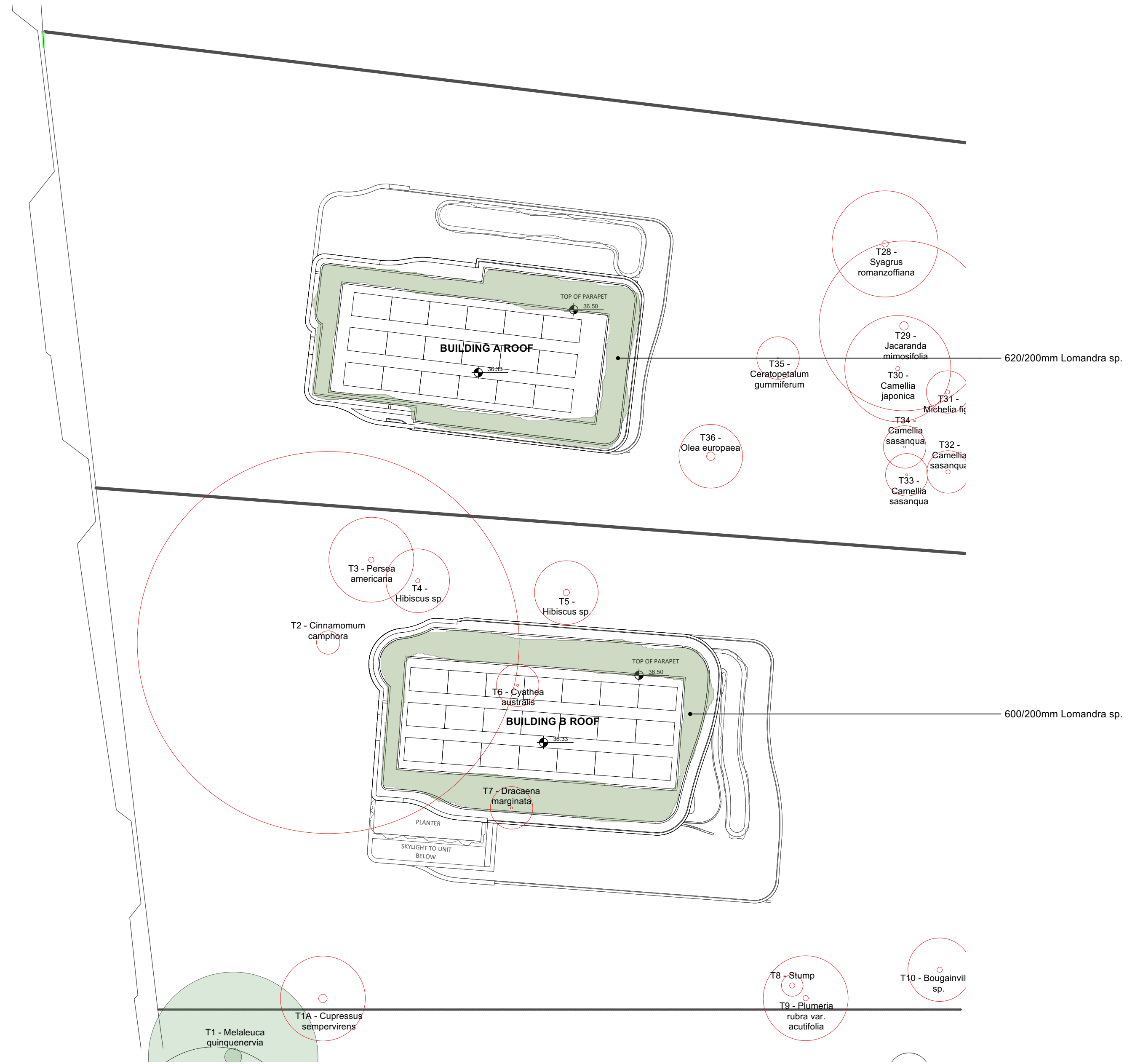
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# R4 ROOF LANDSCAPE PLAN



Project:  
190 Kurraba Rd, Kurraba Point

Client:  
Kurraba Rd

Dwg no:  
LP08-D1622

Title:  
R4 Roof Landscape

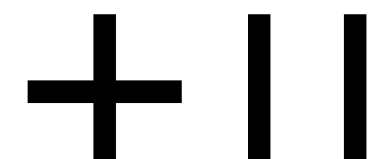
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**DANGAR  
BARIN  
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07 February 2024

North Sydney Council  
DA Application: DA 343/22

To whom it may concern,

**RE: LANDSCAPE DESIGN STATEMENT FOR 184B-190 KURRABA POINT ROAD, KURRABA POINT**

This letter is to address North Sydney Council's concern that the development proposed at the aforementioned address does not satisfy the provision of State Environmental Planning Policy (Resilience and Hazards) 2021. Specifically, the concern that the development has insufficient landscaped area, does not protect or enhance terrestrial vegetation, and the concern of visual privacy from the lack of adequate screening in the landscape design.

The development has maximised available landscape area through generous green rooves and planters where deep soil planting is not achievable, to increase the amount of soft landscaping throughout the site. These along with the existing deep soil foreshore area ensure there is adequate green amenity to soften the visual impact of the built form as well as enhance the biodiversity of the site.

The proposed landscaping strategy for this project intends to protect and enhance the existing terrestrial vegetation through the retention of significant mature trees along the foreshore and building upon the native ecological community to bolster the biodiversity of the local area. A predominantly native plant palette has been proposed to promote the existing vegetative community that occurs in the area. The addition of native trees and palms throughout the entirety of the site including palms such as *Howea forsteriana*, *Livistona australis*, *Cyathea australis* and *Cyathea cooperi* and trees including *Tristaniopsis Luscious*, *Banksia sp.* and *Ficus rubiginosa* seeks to continue the native dialogue of the foreshore throughout the development.

Research into the SEED mapping tool (NSW Government) has highlighted the naturally occurring terrestrial species of surrounding sites across the bay. Although there are no specific terrestrial species listed on this particular site, we have amended our landscape plans to include a selection of *Angophora costata*, *Banksia integrifolia* & *Eucalyptus piperita*, as listed on the SEED mapping website for the bay area to further promote and enhance terrestrial vegetation.

Visual privacy concerns have been addressed using a planting palette that is sympathetic to the surrounding character of Kurraba Point Road and the wider Kurraba Point and Sydney Harbour precinct. The design takes into consideration North Sydney Council's requirement to ensure visual privacy within the site and from neighbouring properties. Trees and palms are strategically positioned at key locations across site to provide appropriate screening whilst still maintaining key views to the water. The proposal is wrapped in screening species to soften the visual impact of the built form and provide privacy between residences and surrounding neighbours.

Yours sincerely,

Naomi Barin  
DIRECTOR  
DANGAR BARIN SMITH



# GYDE

# Clause 4.6

# Variation Request

Height of buildings (CI 4.3)

184B-190 Kurraba Road, Kurraba Point

submitted to North Sydney Council  
on behalf of PB & Co



## Clause 4.6 Variation Request

---

### This report was prepared by:

**Director:** Sue Francis  
**Associate Director:** Tina Christy  
**Project:** Clause 4.6 Variation request  
**Report Version:** Final - Amended post lodgement

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## 1. EXECUTIVE SUMMARY

This request has been prepared to justify a variation to Clause 4.3 Height of Buildings of the North Sydney Local Environmental Plan 2013 (NSLEP) that is proposed in a Development Application (DA) for residential flat buildings (RFB) and dual occupancies at 184B-190 Kurraba Road, Kurraba Point (the site).

The objectives of Clause 4.6 are to provide an appropriate degree of flexibility in applying development standards to achieve better outcomes for, and from, development. As the following request demonstrates, a better planning outcome would be achieved by exercising the flexibility afforded by Clause 4.6 in the particular circumstances of this application.

Clause 4.3 of the NSLEP prescribes two maximum building heights to the site being 8.5m (R2 zoned land) and 12m (R4 zoned land). The proposed development has maximum building heights as follows:

- 8.55m - 9.2m in the R2 zone where the 8.5m maximum building height applies. This equates to a maximum 0.72m (8.4%) variation of the 8.5m development standard.
- 12.2m in the R4 zone where the 12m maximum building height applies. This equates to a maximum 0.2m (1.6%) variation of the 12m development standard.

The majority of the bulk and scale of the development is located under the height of building development standard and the extent of the variations proposed relate to minor parts of the roof slab and awnings.

In brief terms, the requirement to comply with the HoB development standard is unreasonable and unnecessary in the circumstances because:

- The proposal satisfies the objectives of the HoB development standard.
- The built form has been designed to step down across the site responding to the steep topography of the land.
- The variation is primarily due to the steep topography of the site.
- The proposal is in harmony with adjoining developments and the character of the wider street.
- The proposal facilitates the orderly and economic development of the site and in particular in the R4 zoned part of the site which currently contains two x dual occupancies.
- The proposed variation is limited to minor parts of the roof level structures and roof slab and does not contribute to any habitable floor space.
- The proposed development is compatible with adjoining residential development, is articulated and features a mix of materials, colours and landscaping which make it visually sympathetic to neighbouring buildings. Importantly, the variation to the height of building development standard does not result in any unreasonable impacts to residential amenity, solar access, views or privacy, particularly with the reductions made to the heights.

This request has been prepared under clause 4.6 of the NSLEP and demonstrates that compliance with the HoB development standard is unreasonable and unnecessary in the circumstances of this case, and there are sufficient environmental planning grounds to justify the variations. Further, the proposal is consistent with the objectives of the zone for the site and the development standard, and is therefore, in the public interest. This request also addresses the requirement for the concurrence of the Secretary.

## 2. INTRODUCTION

This is a formal request that has been prepared in accordance with clause 4.6 of the North Sydney Local Environmental Plan 2013 (NSLEP) to justify a variation to the Height of Building development standard proposed in a DA submitted to North Sydney Council for residential flat buildings and dual occupancies at 184B-190 Kurraba Road, Kurraba Point.

The objectives of clause 4.6 are to provide an appropriate degree of flexibility in applying development standards to achieve better outcomes for, and from, development.

As the following request demonstrates, a better planning outcome would be achieved by exercising the flexibility afforded by Clause 4.6 in the particular circumstances of this application.

This request has been prepared having regard to the Department of Planning and Environment's Guidelines to Varying Development Standards (August 2011) and various relevant decisions in the New South Wales Land and Environment Court and New South Wales Court of Appeal (NSWLEC / Court).

Clause 4.6 requires that a consent authority be satisfied of three matters before granting consent to a development that contravenes a development standard (see *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118, *RebelMH Neutral Bay Pty Limited v North Sydney Council* [2019] NSWCA 130, *Al Maha Pty Ltd v Huajun Investments Pty Ltd* (2018) 233 LGERA 170; [2018] NSWCA 245) at [23] and *Baron Corporation Pty Limited v Council of the City of Sydney* [2019] NSWLEC 61 at [76]-[80] and *SJD DB2 Pty Ltd v Woollahra Municipal Council* [2020] NSWLEC 1112 at [31]:

1. That the applicant has adequately demonstrated that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case [clause 4.6(3)(a)];
2. That the applicant has adequately demonstrated that there are sufficient environmental planning grounds to justify contravening the development standard [clause 4.6(3)(b)];
3. That the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out [clause 4.6(4)]

This request also addresses the requirement for the concurrence of the Secretary as required by clause 4.6(4)(b)



### 3. STANDARD TO BE VARIED

The standard that is proposed to be varied is the Height of Building development standard which is set out in Clause 4.3 of the North Sydney Environmental Plan 2013 (NSLEP) as follows:

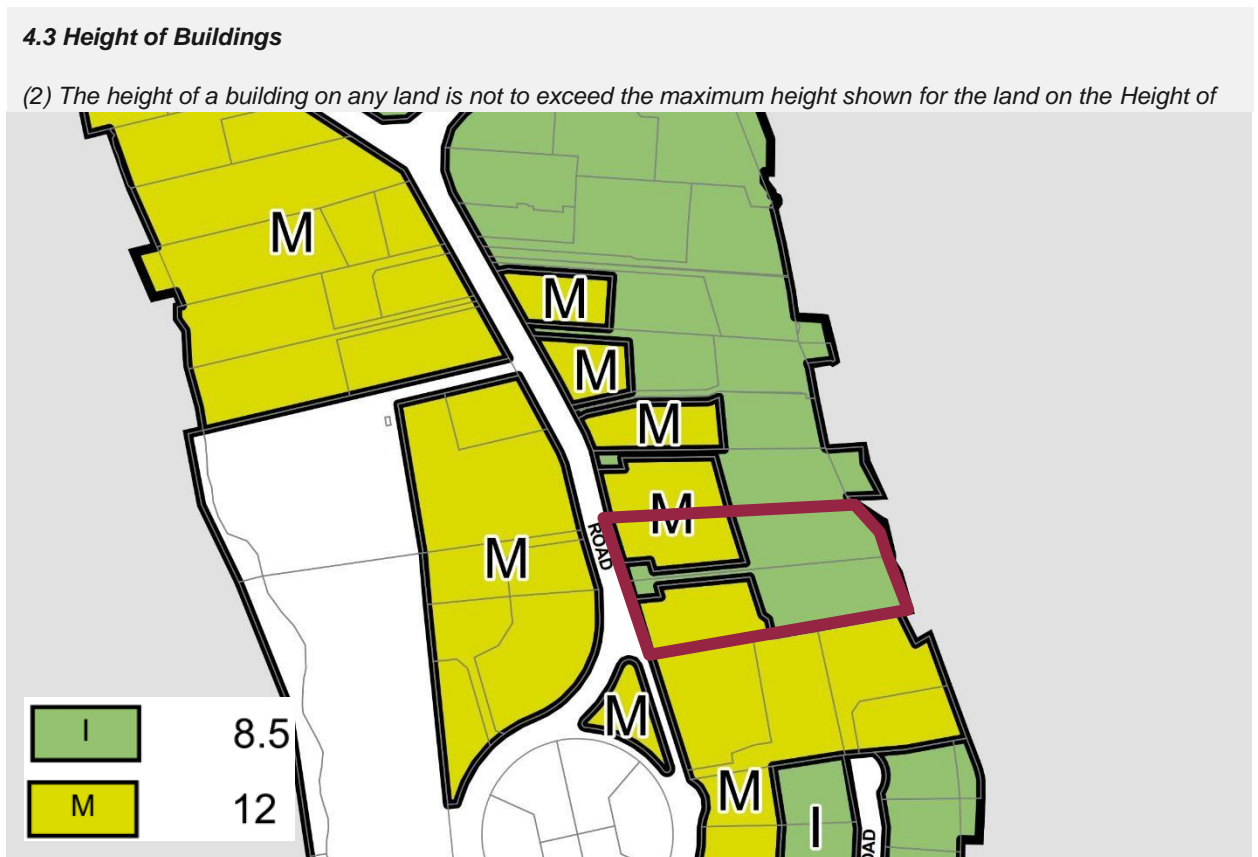


Figure 1: NSLEP Height of Buildings Map, location of the site outlined in red (Source: NSW Legislation)

The numerical values of the development standard applicable in this instance are 8.5m (R2 zoned land) and 12m (R4 zoned land).

The development standard to be varied is not excluded from the operation of clause 4.6 of the NSLEP.

## 4. EXTENT OF VARIATION

### 4.1. Measuring Ground Level (Existing)

The maximum building height is to be measured in accordance with the following NSLEP 2013 definition:

**building height** (or **height of building**) means—

(a) in relation to the height of a building in metres—the vertical distance from ground level (existing) to the highest point of the building, or

(b) in relation to the RL of a building—the vertical distance from the Australian Height Datum to the highest point of the building,

including plant and lift overruns, but excluding communication devices, antennae, satellite dishes, masts, flagpoles, chimneys, flues and the like.

We have considered the various court cases (Stamford Property Services Pty Ltd v City of Sydney & Anor [2015] NSWLEC 1189, Merman Investments Pty Ltd v Woollahra Municipal Council [2021] NSWLEC 1582 and Bettar v Council of the City of Sydney [2014] NSWLEC 1070),

### 4.2. Proposed Height Exceedances

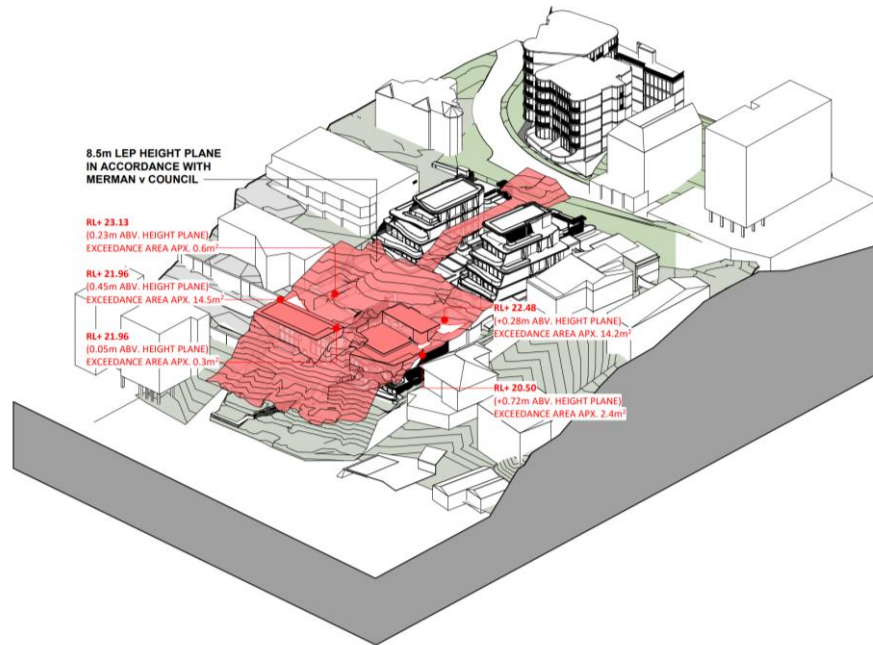
Clause 4.3 of the NSLEP prescribes a maximum height of building of 8.5m for the R2 zoned part of the site and 12m for the R4 zoned part of the site. The proposed development has maximum building heights as follows:

- 8.55m – 9.2m in the R2 zone where the 8.5m maximum building height applies. This equates to a maximum 0.72m (8.4%) variation of the 8.5m development standard.
- 12.2m in the R4 zone where the 12m maximum building height applies. This equates to a maximum 0.2m (1.6%) variation of the 12m development standard.

The majority of the bulk and scale of the development is located under the development standard and the extent of the variations proposed are shown in Figure 2 and Figure 3 and summarised below:

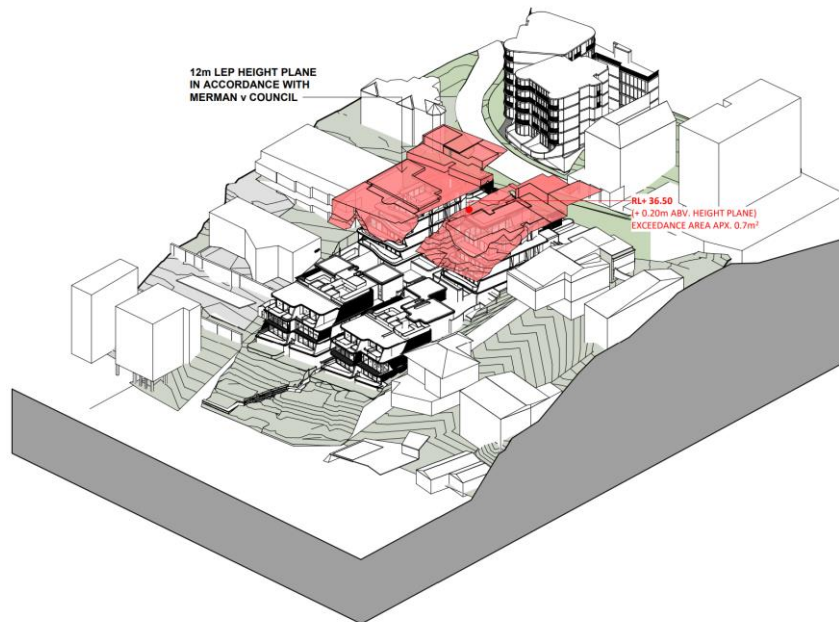
- In the R2 Zone (maximum 8.5m height standard) the following height variations are proposed:
  - 0.05m (area approximately 0.3sqm) relating to parts of the roof level structure for building D.
  - 0.23m (area approximately 0.6sqm) relating to parts of the roof level structure for building D.
  - 0.45m (area approximately 14.5sqm) relating to parts of the roof level structure for building D.
  - 0.28m (area approximately 14.2sqm) relating to parts of the roof level structure for building C.
  - 0.72m (area approximately 2.4sqm) relating to parts of the roof level structure for building C.
- In the R4 Zone (maximum 12m height standard) the following height variations are proposed:
  - 0.2m (area approximately 0.7sqm) relating to minor parts of the roof level structure of Building A.





R2 HEIGHT PLANE DIAGRAM - 8.5m ABOVE EXISTING GROUND LEVEL (VIEW 1)

Figure 2: Drawing A483(Rev 8) R2 8.5m Height Plane Diagram (Source: KTA)



R4 HEIGHT PLANE DIAGRAM - 12m ABOVE EXISTING GROUND LEVEL (VIEW 1)

Figure 3: Drawing A481(Rev8) R4 12m Height Plane Diagram (Source: KTA)

## 5. UNREASONABLE OR UNNECESSARY

In this section it is demonstrated why compliance with the development standard is unreasonable or unnecessary in the circumstances of this case as required by clause 4.6(3)(a) of the NSLEP.

The Court held that there are at least five (5) different ways, and possibly more, through which an applicant might establish that compliance with a development standard is unreasonable or unnecessary. See *Wehbe v Pittwater Council* [2007] NSWLEC 827 (Wehbe).

The five (5) ways of establishing that compliance is unreasonable or unnecessary are:

1. The objectives of the development standard are achieved notwithstanding non-compliance with the standard;
2. The underlying objectives or purpose is not relevant to the development with the consequence that compliance is unnecessary;
3. The objectives would be defeated or thwarted if compliance was required with the consequence that compliance is unreasonable;
4. The development standard has been virtually abandoned or destroyed by the Council's own actions in granted consents departing from the standard hence the standard is unreasonable and unnecessary; and
5. The zoning of the land is unreasonable or inappropriate.

It is sufficient to demonstrate only one of these ways to satisfy clause 4.6(3)(a) (*Wehbe v Pittwater Council* [2007] NSWLEC 827, *Initial Action Pty Limited v Woollahra Municipal Council* [2018] NSWLEC 118 at [22] and *RebelMH Neutral Bay Pty Limited v North Sydney Council* [2019] NSWCA 130 at [28]) and *SJD DB2 Pty Ltd v Woollahra Municipal Council* [2020] NSWLEC 1112 at [31].

We have considered each of the ways as follows.

### 5.1. The objectives of the development standard are achieved notwithstanding non-compliance with the standard.

In Table 1 we consider whether the objectives of the development standard in Clause 4.3(1) of the NSLEP are achieved notwithstanding the proposed variation (Test 1 under Wehbe).



Table 1: Achievement of Objectives of Clause 4.3 of the North Sydney Local Environmental Plan 2013

<b>ACHIEVEMENT OF OBJECTIVES OF CLAUSE 4.3 OF THE NSLEP 2013</b>
<p><b>(a) to promote development that conforms to and reflects natural landforms, by stepping development on sloping land to follow the natural gradient,</b></p>
<p>The topography of the site is steep, starting from RL28.18 at the west (Kurraba Road) boundary and stepping down the site to the foreshore at RL 1.5. This represents a step down across the site by approximately 27.3m from the street level to the interface with the water.</p> <p>The proposed RFBs are 3 to 4 storeys above the existing ground level and the upper levels are setback from eastern building edge. This creates a step in the RFB building mass which then reduces to a 2 to 3 storey built form in the R2 zone where the dual occupancies are proposed.</p> <p>The proposal requires excavation however the design of buildings A, B, C &amp; D has been amended to significantly reduce the amount of excavation required. An entire level of basement excavation has been deleted under buildings A and B, with the car parking now limited to R2 level 2 / R4 lower ground. To accommodate this change, the R2 zone private garages have been raised and now sit approximately level with the car parking level of the R4 RFBs.</p> <p>The elements of the proposal that contravene the development standard are minor and relate to the roof level. The proposal, notwithstanding the height variations, reflects the natural landform by stepping down the site from Kurraba Road to the waterfront.</p>
<p><b>ACHIEVEMENT OF OBJECTIVES OF CLAUSE 4.3 OF THE NSLEP 2013</b></p>
<p><b>(b) to promote the retention and, if appropriate, sharing of existing views,</b></p>
<p>From the outset, it is important to note that the objective of the height standard requires the promotion of the retention and, if appropriate, sharing of existing views. The objective does not require the 'preservation' or minimisation of impact of existing views such that no impact to views can be had by the proposed development.</p> <p>In this regard, an assessment has been made of the potential effects on views from surrounding dwellings and the extent of view sharing utilising the guidance provided by Senior Commissioner Roseth of the Land Environment Court of NSW in the judgement in Tenacity Consulting v Warringah [2004] NSWLEC 140 – Principles of view sharing: the impact on neighbours. The impact on views has been of the area of non-compliance with height and have been updated to reflect the most recent changes.</p> <p>Tenacity is specific to view loss and provides a method of assessment, applying a four-step view sharing analysis. An assessment of the proposal on the potentially affected surrounding development utilising each of the four steps in Tenacity as summarised below.</p> <p><b>STEP 1 - Existing views to be affected, STEP 2 – from where the view is available, STEP 3 the extent of the impact and STEP 4 the reasonableness of impact</b></p> <p>The existing views which are to be affected, albeit minimally, are outlined below and modelled views have been prepared for each to show the extent of view loss.</p>

**ACHIEVEMENT OF OBJECTIVES OF CLAUSE 4.3 OF THE NSLEP 2013**

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

**Viewpoint 1: Unit 1, 192A Kurraba Road**



Figure 4: Unit 1, 192A Kurraba Road - existing and proposed views (Source: Urbis and KoichiTakada Architects) red highlights extent of height variation

The non complying parts of the R2 zoned development component is the south-east trailing edge of the roof. It blocks a minor amount of open water and land-water interface and shoreline vegetation from the living area of Unit 1, 192A Kurraba Road. Whilst these are part of the scenic and highly valued features of the view as defined in Tenacity, in quantitative and qualitative terms the view loss is minor and Unit 1, 192A Kurraba Road will still enjoy existing views of land and water, shoreline and extensive views. In terms of step 4, the reasonableness of impact, the minor view impact for the whole dwelling, when considering all views available is minor or less and reasonable, equitable and supported.

**Viewpoint 2: Unit 3, 192 Kurraba Road**

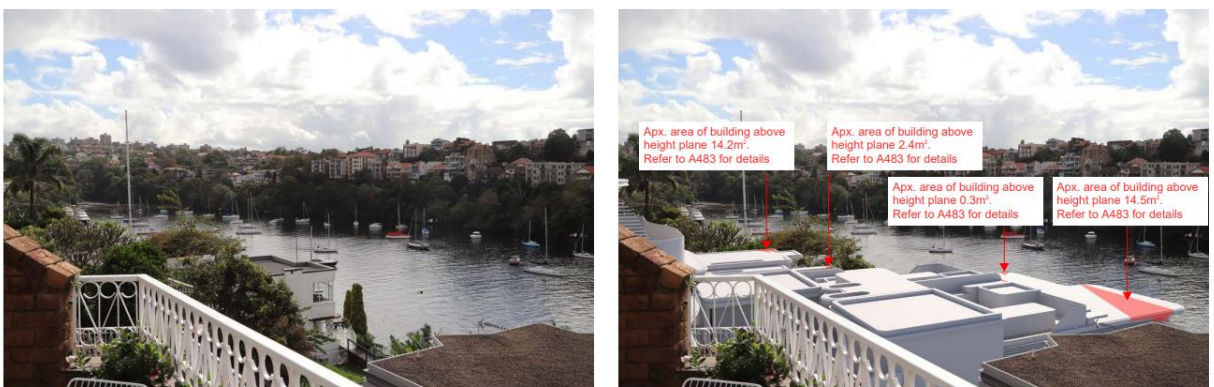


Figure 5: Unit 3, 192 Kurraba Rd - existing and proposed views (Source: Urbis and KoichiTakada Architects) red highlights extent of height variation



**ACHIEVEMENT OF OBJECTIVES OF CLAUSE 4.3 OF THE NSLEP 2013**

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

The non complying roof form in Figure 5 above blocks a minor extent of open water in Shell Cove from the east balcony of Unit 3, 192 Kurraba Road but does not block features considered to be scenic and highly valued features as defined in *Tenacity*. In quantitative and qualitative terms the view loss is minor and Unit 3, 192 Kurraba Road will enjoy existing open water views of Shell Cove. The extent of view impacts is negligible as the views affected are highly oblique, across a side boundary and occupy only a minor part of all views available from the dwelling. The negligible view impact for the whole dwelling is reasonable, equitable and supported.

**Viewpoint 3: Unit 1, 192 Kurraba Road**



*Figure 6: Unit 1, 192 Kurraba Rd - existing and proposed views (Source: Urbis and KoichiTakada Architects) red highlights extent of height variation*

The area of variation creates minor view blocking, including the minor non compliances from the east balcony of Unit 1, 192 Kurraba Road which do not create any significant view loss. The four storey massing is visible immediately north of this end unit, where it blocks background residential development. In this regard the extent of the view loss as shown in this view, is contemplated by those combined controls and could be generated by any complying R4 development. The composition to be lost by the compliant R4 proposal is not predominantly characterised by scenic and highly valued features as defined in *Tenacity*. Therefore, in quantitative and qualitative terms the view loss is minor. Unit 1, 192 Kurraba Road will continue to have open sky and open water views. In terms of steps 3 and 4, the view impact is considered minor for the whole dwelling and as only a short section and minor amount of view would be lost. It is therefore reasonable, equitable and supported.

**ACHIEVEMENT OF OBJECTIVES OF CLAUSE 4.3 OF THE NSLEP 2013**

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

**Viewpoint 4: Unit 2, 192A Kurraba Rd**



Figure 7: Unit 2, 192A Kurraba Rd - existing and proposed views (Source: Urbis and KoichiTakada Architects ) red highlights extent of height variation

The built form in Figure 7 will block areas of open water and sections of a 'whole view' formed by the combination of land-water interface, shoreline vegetation and open water from the existing view north from the central door to balcony of Unit 2, 192A Kurraba Road which together are considered to be scenic and highly valued features as defined in Tenacity. In quantitative and qualitative terms however, the view loss from the height variation is minor and reasonable. This is because the substantive view loss occurs from the complying part of the built form. The height non compliance only affects a small part of that view from the existing view north on balcony Unit 2. The retention of some existing open water views, open sky and land-water interface views will remain from Unit 2, 192A Kurraba Road. The view impact is considered minor as the majority of the view loss includes areas of open water which is considered of less value in Tenacity terms. It is therefore considered reasonable.

**Viewpoint 7: (Survey point 9A) Unit 2, 184A Kurraba Road**

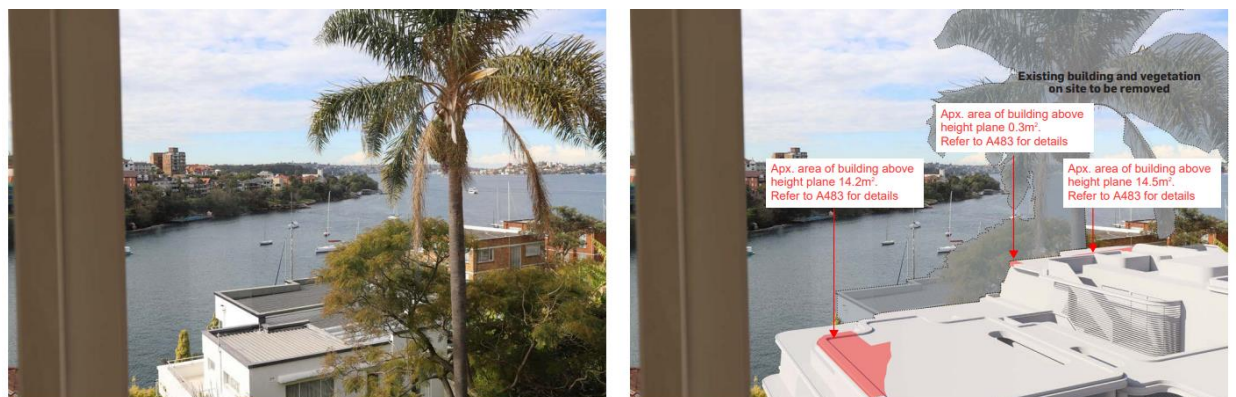


Figure 8: Survey point 9A, 184A Kurraba Rd - existing and proposed views (Source: Urbis and KoichiTakada Architects) red highlights extent of height variation

The height variation in quantitative and qualitative terms is minor and will not affect existing views southeast of the dining area of Unit 2, 184A Kurraba Road. In relation to step 3, the view impact is deemed as minor – negligible and in terms of step 4, the minor section of non compliant development blocks neighbouring residential development and



**ACHIEVEMENT OF OBJECTIVES OF CLAUSE 4.3 OF THE NSLEP 2013**

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

does not block scenic or highly valued features as defined by Tenacity. The view impact is therefore considered as reasonable, equitable and is supported.

**Viewpoint 8: (Survey point 9B – 184A Kurraba Road**



Figure 9: Survey point 9B, 184A Kurraba Rd - existing and proposed views (Source: Urbis and KoichiTakada Architects ) red highlights extent of height variation.

The height variation when viewed from the living room of Unit 2, 184A Kurraba Road will not affect the extent of existing views available. The view impact is considered minor – negligible as the views affected are across a side boundary. The majority of the view loss is not characterised by scenic and highly valued features as defined in Tenacity with only a minor extent of open water blocked. The minor-negligible view impact for the whole dwelling is reasonable, equitable and supported.

**Viewpoint 9: (Survey point 10) – 184A Kurraba Road (downstairs unit)**



Figure 10: Survey point 10, 184A Kurraba Rd - existing and proposed views (Source: Urbis and KoichiTakada Architects ) red highlights extent of height variation.

The height variation when viewed from the existing view southeast from the outdoor area of 184B Kurraba Road will not affect the retention of views as shown in Figure 10. The removal of the existing building and vegetation will help

**ACHIEVEMENT OF OBJECTIVES OF CLAUSE 4.3 OF THE NSLEP 2013**

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

retain existing views at 184B Kurraba Road. In terms of Tenacity step 3, the view impact is minor as the section of non compliant development currently blocks a minor extent of Sydney Harbour, land-water interface and open sky and largely replaces existing built form with new built form. The removal of buildings and vegetation on site reveals a section of Shell Cove and land-water interface at Cremorne Place that was previously blocked from view. The view impact is therefore reasonable and supported in relation to step 4.

**Viewpoint 11: (Survey point 14) – Sub-Penthouse Level 4, 147 Kurraba Road**



Figure 11: (Survey point 14) – Sub-Penthouse Level 4, 147 Kurraba Road - existing and proposed views (Source: Urbis and KoichiTakada Architects) red highlights extent of height variation

A minor section of the roof form is 0.2m above the height plane across an area of approximately 0.7sqm. From the master bedroom of sub penthouse, the non compliant section is on an oblique angle which blocks a section of Cremorne Point tree canopy and residential development, neither of which are defined as scenic or highly valued features by Tenacity. In quantitative and qualitative terms the view loss is minor-negligible for the whole dwelling at Level 4, 147 Kurraba Road. In terms of step 4 reasonableness, the minor view impact for the whole dwelling is reasonable, equitable and supported.

Urbis concludes the following in relation to view sharing as a result of the proposal:

- The extent of view loss for the majority of dwellings inspected ranges from negligible to minor and in one case for the adjoining neighbour at 184, 184A Kurraba Point, to minor-moderate. All view impacts ratings relate to impacts of views from the whole dwelling not solely on the isolated view used for analysis.
- The non compliant parts of the R2 massing are either not visible in north-easterly views or easterly views from upper level apartments at 145 Kurraba Road, or do not cause view loss in relation to scenic or highly valued features as defined in Tenacity
- The minor non-compliances as modelled, in relation to the R2 side setback and LEP height control do not cause viewloss of scenic and highly valued features as defined in Tenacity.
- The majority of view loss shown in photomontages is caused by fully complying built form and as such the quantum of visual change created by the proposed R4 and R2 massing envelopes, is anticipated by the LEP and DCP.
- The composition of views to be lost predominantly includes limited areas of open water, background residential development and vegetation. In five views (unit 1/192a and unit 1/192 Kurraba Road, Unit 2. 192A Kurraba Road, Unit 1. 184a Kurraba Road & Level 4 Sub-Penthouse at 147 Kurraba Road) a short



**ACHIEVEMENT OF OBJECTIVES OF CLAUSE 4.3 OF THE NSLEP 2013**

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

section of land-water interface is affected). For Unit 2/192a a wider section of land-water interface will be blocked all of which is caused by fully complying parts of the proposed development.

- Overall, all dwellings assessed will be affected by a limited extent of potential view loss, in one direction over a side boundary where all other scenic and highly valued features as defined in Tenacity views in all other directions including those that are arguable more scenic whole views of Sydney Harbour will remain unaffected.
- This extent of view loss is low using the Tenacity scale and other factors reduce the overall view impacts for each whole dwelling, to an extent that view sharing is reasonable and acceptable.
- The proposed development can be supported on view impacts grounds.

Further to the above, the proposed height variations do not restrict the proposed view corridor through the site from Kurraba Road to the water which will create views from the public domain.

**ACHIEVEMENT OF OBJECTIVES OF CLAUSE 4.3 OF THE NSLEP 2013**

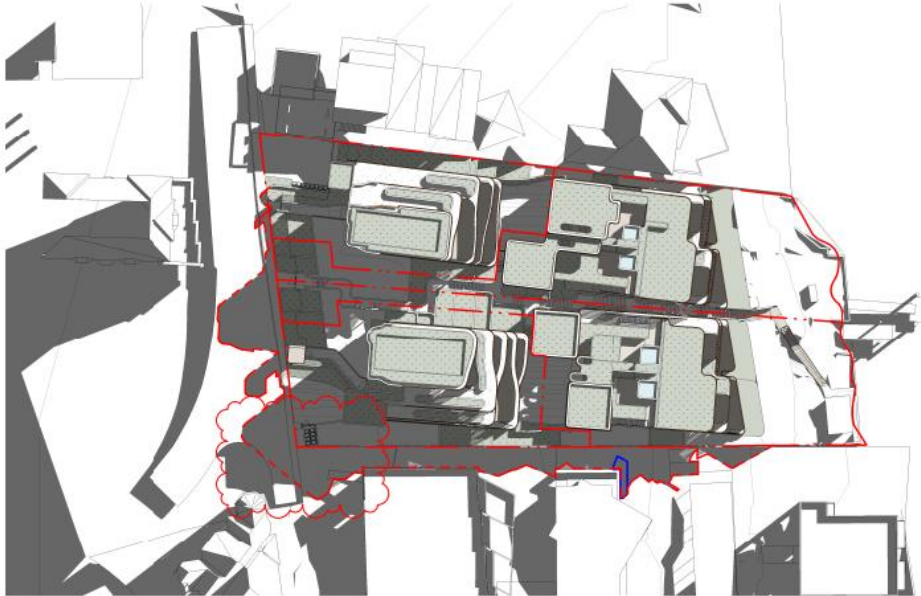
**(c) to maintain solar access to existing dwellings, public reserves and streets, and to promote solar access for future development**

The portions of the development which contravene the development standard do not cause any unacceptable solar access impacts to adjoining dwellings, public reserves or streets.

**Maintaining Solar Access to Existing Dwellings**

Part B Section 1.3.7 of the DCP requires a minimum 3 hours solar access be provided to adjoining residential properties between 9am and 3pm mid-winter. The proposed departure to the standard is illustrated by the blue outline on the shadow diagrams. The shadow cast as a result of the height variation falls on the building at 192A Kurraba Road at 9am. From 10am to 11am the shadow falls partly on ground level open space but then moves to the hardstand car park area from midday to 2pm mid-winter. The proposed departure to the standard, causes negligible additional shadowing to surrounding existing dwellings.

Considering the shadow impact as a result of the whole development, the main balconies at 192 Kurraba Road will receive a minimum 3 hours solar access in the morning mid-winter. The same applies to 192A Kurraba Road. However, in the afternoon the buildings to the south will be overshadowed by the proposed building which is unavoidable. The level of solar access provided to neighbours in the morning mid-winter is considered reasonable given their location immediately to the south of the subject site. Further, both buildings at 192 and 192A will overshadow themselves in the afternoon in mid-winter as the sun moves to the west on the opposite side of Kurraba Point.



JUNE 21 9AM WINTER SOLSTICE

Figure 12: Drawing A452 – June 21 9am Shadow Winter Solstice (Source: KTA)



JUNE 21 12PM WINTER SOLSTICE

Figure 13: Drawing A452 – June 21 12pm Shadow Winter Solstice (Source: KTA)



**ACHIEVEMENT OF OBJECTIVES OF CLAUSE 4.3 OF THE NSLEP 2013**

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



JUNE 21 3PM WINTER SOLSTICE

Figure 14: Drawing A453 – June 21 3pm Shadow Winter Solstice (Source: KTA)

**Maintaining Solar Access to Public Reserves**

Not applicable - the site is not located in close proximity to any public reserves and therefore will not cause any additional overshadowing of any.

**Maintaining Solar Access to Streets**

The proposed development casts shadows on Kurraba Road at 9am and partly shadows the road at 10am and 11am. However, by midday mid-winter the proposal does not cast any shadows on Kurraba Road allowing the road to maintain areas of solar access from 9am to 2pm mid-winter.

**ACHIEVEMENT OF OBJECTIVES OF CLAUSE 4.3 OF THE NSLEP 2013**

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

The proposed development seeks to maximise visual privacy within the site and externally to neighbouring developments. This has been achieved through the provision of setbacks and building separation distances that generally comply with theDCP. Tapered, solid masonry walls are strategically placed to create privacy between residences where needed. The side elevations show that window openings have been minimised where possible to avoid direct overlooking of neighbouring properties. Screening is also proposed on the internal elevations.

The portions of the proposed development which contravene the HoB development standard primarily relate to non-trafficable roof areas which do not cause any unacceptable privacy impacts to residents of existing dwellings or potential future development. Figure 15 below illustrates the setback and landscaping around the D1 and D2 roof terraces.



Figure 15: Landscape Plan – D1 and D2 terraces (Source: DBS Landscape Plan)



**ACHIEVEMENT OF OBJECTIVES OF CLAUSE 4.3 OF THE NSLEP 2013**

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

The site is zoned part R2 Low Density Residential and part R4 High Density Residential and adjoins R2 and R4 zoned land. Also located in close proximity to the site is R3 Medium Density Residential and RE1 Public Recreation zoned land (refer to 22).

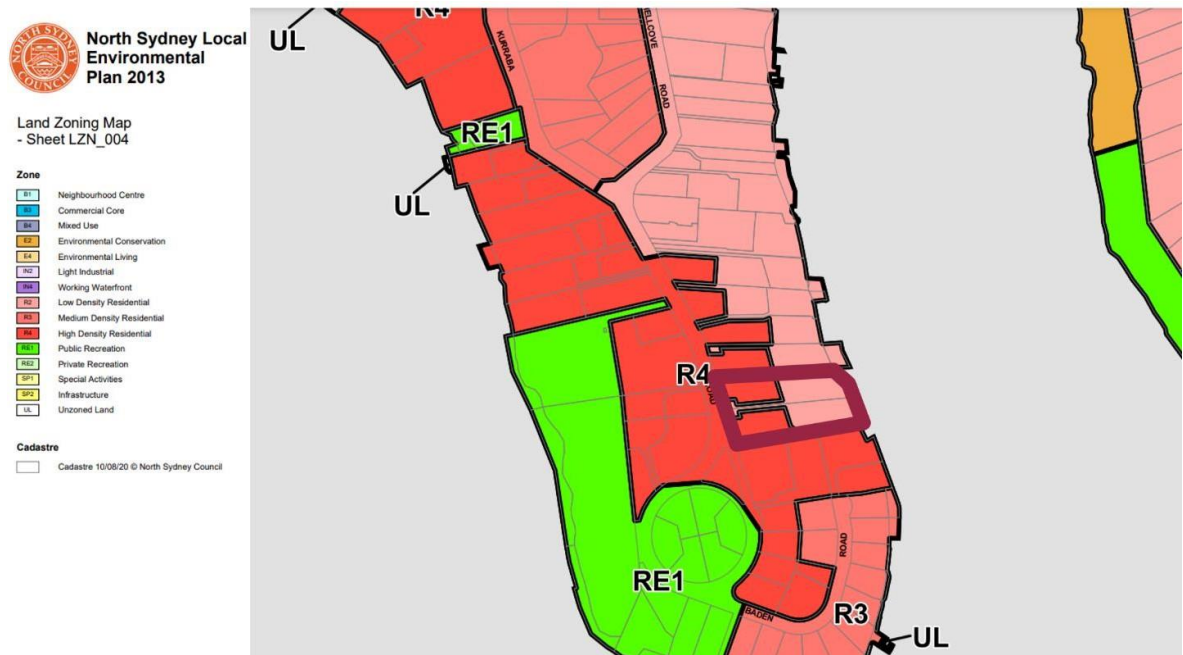


Figure 16: Land Zoning Map, site outlined in red (Source: NSLEP 2013)

When considering compatibility, reference is made to *Project Venture Developments Pty Ltd v Pittwater Council [2005]NSWLEC 191* which determines that “compatible” does not require “sameness”. “Buildings do not have to be the same height to be compatible. Where there are significant differences in height, it is easier to achieve compatibility when the change is gradual rather than abrupt. The extent to which height differences are acceptable depends also on the consistency of height in the existing streetscape”. Further, where compatibility between a building and its surroundings is desirable, its two major aspects are physical impact and visual impact. In order to test whether a proposal is compatible with its context, two questions should be asked.

*Are the proposal’s physical impacts on surrounding development acceptable? The physical impacts include constraints on the development potential of surrounding sites.*

*Is the proposal’s appearance in harmony with the buildings around it and the character of the street?*

In response to the first question, the proposal’s physical impacts on surrounding development (including overshadowing, privacy and views) are acceptable as discussed in detail in this Section of the Clause 4.6 Variation Request.

Consideration is given below to whether the proposal’s appearance is in harmony with the buildings around it and the character of the street.

**ACHIEVEMENT OF OBJECTIVES OF CLAUSE 4.3 OF THE NSLEP 2013**

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

The development that is immediately surrounding the site is limited to residential development of various types and scales. Immediately north of the site at 184A Kurraba Road is a three-storey dual occupancy with garage and car port, while also immediately north of the site at 184 Kurraba Road is a two and three storey dwelling house. Further north at 182 Kurraba Road a dual occupancy is being converted to a part 4 and part 5 storey residential flat building (DA 333/19).

Immediately south of the site fronting the street at 192 Kurraba Road is a two-storey multi dwelling housing development. Also located immediately south of the site at 192A Kurraba Road is a three-storey dwelling house. Fronting the water immediately south of the site at 23 Braden Road is a six-storey residential flat building. Further south of the site towards Kurraba point is a mix of dwelling houses, dual occupancies and residential flat buildings ranging from three to five storeys.

To the west of the site at 143 and 145 Kurraba Road is a nine-storey and four-storey residential flat building, respectively. Also, immediately west of the site at 147-153 Kurraba Road is an under construction 'Kurraba Residences', which comprises a six-storey residential flat building.

When viewed from Kurraba Road the proposal presents as two x two/three storey buildings setback behind the proposed car lifts. As discussed above, the existing residential development along Kurraba Road varies significantly from one to twostorey dwellings up to nine storey residential flat buildings. The three storey presentation to Kurraba Road will create an appropriate transition from the four to nine storey residential flat buildings on the west site of Kurraba Road then stepping down the site towards the water. Similarly, along the eastern side of Kurraba Road, the proposal creates an appropriate step in height between the adjoining sites as shown in Figure 17. A further height transition is created through the upper level setback which steps down to the side boundaries.

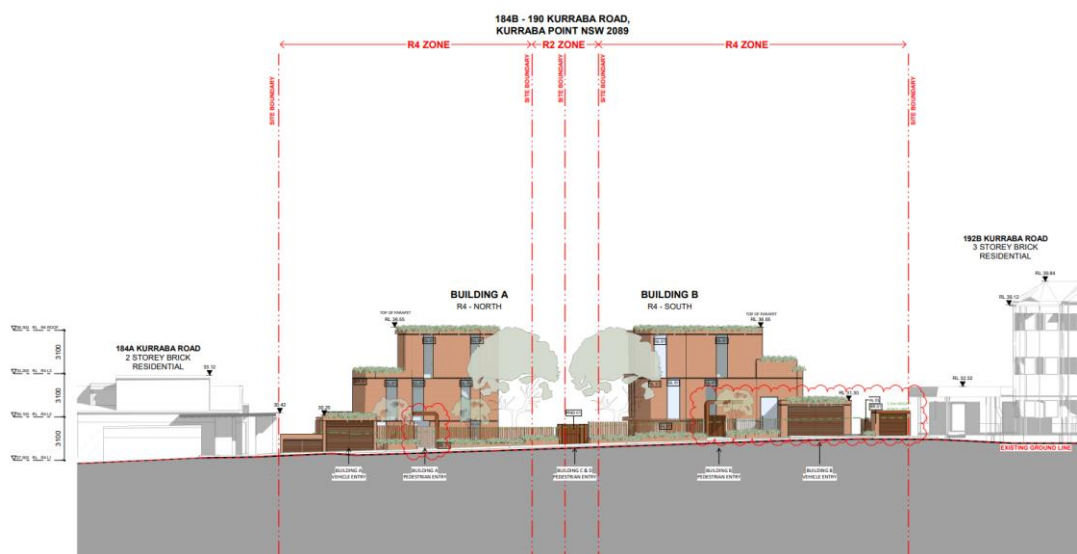


Figure 17: Drawing A204 - West Elevation (Source: KTA)



**ACHIEVEMENT OF OBJECTIVES OF CLAUSE 4.3 OF THE NSLEP 2013**

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

The proposed height variation in the R4 Zone is located away from the street frontage and will not be discernible when viewed from the public domain. In this regard, the proposed height variation in this part of the site does not impact on the proposal's overall appearance being in harmony with the buildings around it.

Consideration has also been given to the proposal's appearance with nearby buildings viewed from the water and Cremorne Point beyond. Figure 18 below is an extract of the east elevation which illustrates how the dual occupancies relate to the adjoining developments. The height of the dual occupancies is not dissimilar to development on surrounding sites including the two to three storey dwelling at 184 Kurraba Road and the six storey RFB at 23 Baden Road. Noting the RFB site lower and closer to the water compared to the proposed dual occupancies.

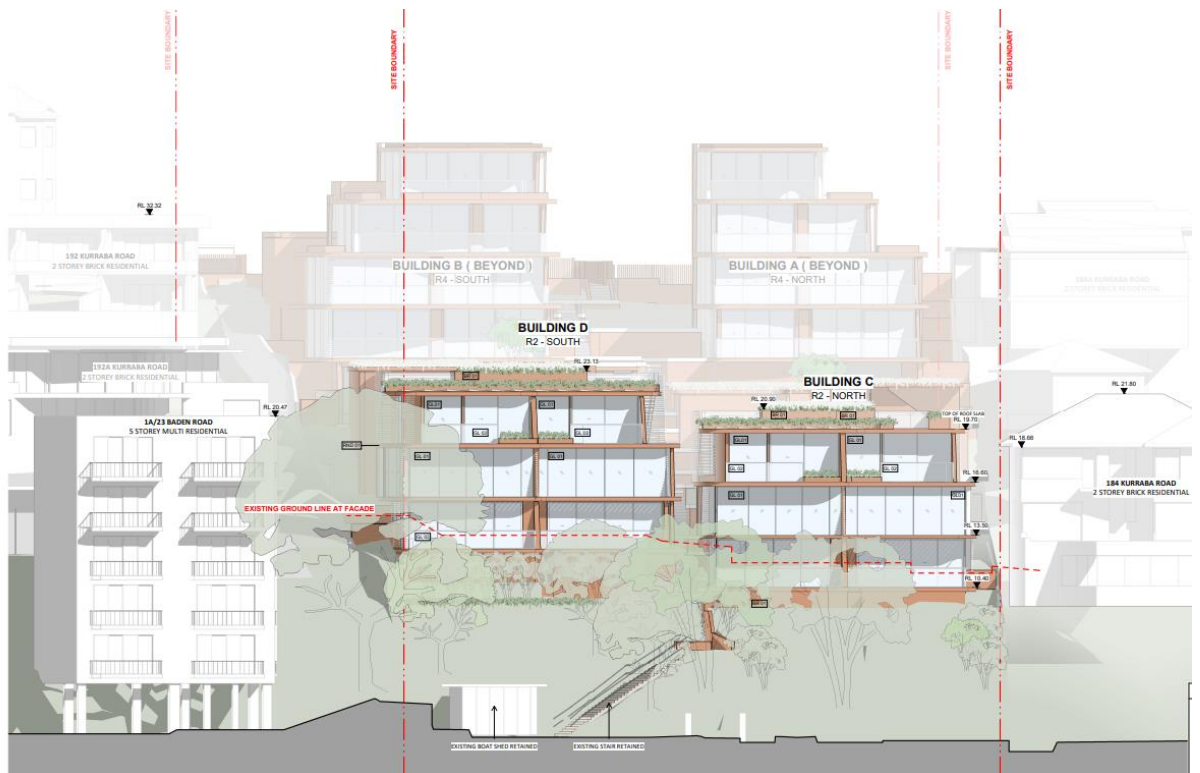


Figure 18: Drawing A201 - East Elevation (Source: KTA)

The proposed height variation in the R2 part of the site is restricted to minor parts of roof level structures. When looking at the east elevation of the site (from the water and beyond) the roof elements that exceed the height limit do not result in additional built form that impacts the harmony between the proposed building and adjoining development.

**ACHIEVEMENT OF OBJECTIVES OF CLAUSE 4.3 OF THE NSLEP 2013**

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

This objective also requires consideration to be given to compatibility particularly at zone boundaries. Within the site is a boundary between the R4 and R2 Zones. In this regard, the proposal has been designed to create an appropriate transition between the two zones by creating two separate built forms between the RFBs and dual occupancies.

The proposal's overall appearance is in harmony with the buildings around it and the character of the surrounding sites.

**ACHIEVEMENT OF OBJECTIVES OF CLAUSE 4.3 OF THE NSLEP 2013**

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

The proposed dual occupancies in the R2 Zone are part 2 and part 3 storeys and step down towards the waterfront. Although the built form exceeds two storeys in part, as demonstrated above, the proposed built form in the R2 Zone is in harmony with the buildings around it, notwithstanding the proposed height variation. Further, the existing dwelling located on the R2 Zoned part of the site is a two to three storey dwelling and the proposed dual occupancies seek to adopt a similar height.

- 5.2. The underlying objectives or purpose is not relevant to the development with the consequence that compliance is unnecessary.

The underlying objective or purpose is relevant to the development and therefore is not relied upon.

- 5.3. The objective would be defeated or thwarted if compliance was required with the consequent that compliance is unreasonable.

The objective would not be defeated or thwarted if compliance was required. This reason is not relied upon.

- 5.4. The development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and hence the standard is unreasonable and unnecessary.

The standard has not been abandoned by Council actions in this case and so this reason is not relied upon. Notwithstanding, it is noted that DA 333/19 for substantial alterations and additions to residential flat building at 182 Kurraba Road, Kurraba Point. DA 333/19 exceeded the 12m height limit by 0.6m (5%). The height variation related to parts of the roof and was approved by Council on 15 April 2020. 182 Kurraba Road is located two properties north of the subject site.

- 5.5. The zoning of the land is unreasonable or inappropriate.

The zoning of the land is reasonable and appropriate and therefore is not relied upon.



## 6. SUFFICIENT ENVIRONMENTAL PLANNING GROUNDS

In *Initial Action Pty Ltd v Woollahra Council* [2018] NSWLEC 118, Preston CJ observed that in order for there to be ‘sufficient’ environmental planning grounds to justify a written request under clause 4.6 to contravene a development standard, the focus must be on the aspect or element of the development that contravenes the development standard, not on the development as a whole.

In *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 90, Plain J observed that it is within the discretion of the consent authority to consider whether the environmental planning grounds relied on are particular to the circumstances of the proposed development on the particular site.

The environmental planning grounds to justify the variation of the HoB development standard are set out in the preceding sections in detail. As discussed in Section 5, the non-compliant portions of the development do not result in any meaningful additional adverse environmental impact and instead provide a built form that is compatible with the desired future character of the area and consistent with the objectives of clause 4.3.

Additionally, the proposed development, notwithstanding the non-compliance with the HoB development standard, better achieves important statutory goals (when compared with a compliant development and the existing development). The superior outcome, in terms of statutory planning goals, combined with the absence of meaningful additional adverse environmental impacts are environmental planning grounds that justify the variation.

The relevant environmental planning grounds are as follows:

- The steep topography of the site, in part, contributes to the proposed height variation. The site slopes approximately 26m from Kurraba Road down to the waterfront. The proposed excavation (which has been significantly reduced) seeks to generally maintain the step down across the site while also accommodating basement parking below the RFBs. The built form has been designed to step down across the site responding to the topography. The RFBs are proposed to be four storeys with the upper level setback from the side boundaries. The built form then transitions at the zone boundary within the step down to two to three storey dual occupancies in the R2 zoned part of the site.
- As discussed in detail in Section 5, the proposal is in harmony with adjoining developments and the character of the wider street.
- The proposal facilitates the orderly and economic development of the site and in particular in the R4 zoned part of the site. At present the R4 zone is occupied by two x dual occupancies which undermines the objectives of the R4 Zone. The redevelopment of the site will provide for the housing needs of the community within a high-density residential environment in accordance with the first objective of the R4 Zone and low density dual occupancies in the R2 Zone which are facilitated by the minor variation of the height of buildings standard. Accordingly, the variation promotes objective 1.3 (c) of the EP&A Act.
- The proposed variation is limited to minor parts of the roof level structures and roof slab.
- The proposed development is compatible with adjoining residential development, is articulated and features a mix of materials, colours and landscaping which make it visually sympathetic to neighboring buildings. Importantly, the variation to the height of building development standard does not result in any unreasonable impacts to residential amenity, solar access, views or privacy. Accordingly, the proposal achieves objective 1.3 (g) of the EP&A Act, “to promote good design and amenity in the built environment”.

#### Clause 4.6 Variation Request

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Finally, the size of the variation (maximum 8.4%) is not in itself, a material consideration as whether the variation should be allowed. There is no constraint on the degree to which a consent authority may depart from a numerical standard under clause 4.6: *GM Architects Pty Ltd v Strathfield Council* [2016] NSWLEC 1216 at [85].

Having said this, the variation is relatively minor and will have no adverse impacts consequences.

## 7. PUBLIC INTEREST

In this section it is explained how the proposed development will be in the public interest because it is consistent with the objectives of the zones in which the development is proposed to be carried out. This is required by Clause 4.6(a)(ii) of the NSLEP.

Table 2 and Table 3 considers whether the proposal is also consistent with the objectives of the zones.

Table 2: Zone R2 Low Density Residential Objectives

OBJECTIVES OF THE R2 LOW DENSITY RESIDENTIAL ZONE	DISCUSSION
To provide for the housing needs of the community within a low density residential environment.	The proposal involves the redevelopment of the site to provide modern dual occupancies which are compatible with land uses in the locality and respond to a particular housing need.
To enable other land uses that provide facilities or services to meet the day to day needs of residents.	The proposal does not limit the provision of other land uses on other nearby sites.
To encourage development of sites for low density housing, including dual occupancies, if such development does not compromise the amenity of the surrounding area or the natural or cultural heritage of the area.	The proposed development in the R2 Zone is for dual occupancies. As detailed in this Clause 4.6 Request, the proposal does not result in any unreasonable amenity impacts on the surrounding area including privacy, overshadowing and views.
To ensure that a high level of residential amenity is achieved and maintained.	As discussed above, the proposal does not result in any unreasonable amenity impacts on the surrounding area including privacy, overshadowing and views.

Table 3: Zone R4 High Density Residential Objectives

OBJECTIVES OF THE R4 HIGH DENSITY RESIDENTIAL ZONE	DISCUSSION
To provide for the housing needs of the community within a high density residential environment.	The proposal involves the redevelopment of the site to provide a modern residential flat building on the R4 Zoned part of the site which is compatible with land uses in the locality and responds to a particular housing need.
To provide a variety of housing types within a high density residential environment.	The locality comprises a mix of large-scale dwelling houses, and high density residential flat buildings. The proposal contributes to the variety of housing types in the area and improves the housing quality and stock.
To enable other land uses that provide facilities or services to meet the day to day needs of residents.	The proposal does not limit the provision of other land uses on other nearby sites.
To encourage the development of sites for high density housing if such development does not compromise the amenity of the surrounding area or	The proposal is for a residential flat building which is permitted with consent within the R4 High Density zone and does not compromise the amenity of the surrounding



#### Clause 4.6 Variation Request

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As demonstrated in Table 2 and Table 3, the proposal is consistent with the objectives of the zones and in Section 5 it was demonstrated that the proposal is consistent with the objectives of the development standard. According to clause 4.6(a)(ii), therefore, the proposal is in the public interest.

## 8. STATE OR REGIONAL ENVIRONMENTAL PLANNING

This section considers whether contravening of the development standard raises any matter of significant for state or regional environmental planning, the public benefit of maintaining the development standard, and any other matters required to be taken into consideration by the Secretary before granting concurrence required by clause 4.6(5).

There is no identified outcome which would be prejudicial to planning matters of state or regional significance that would result as a consequence of varying the development standard as proposed by this application.

As demonstrated already, the proposal is consistent with the objectives of the zone, noting the absence of objectives of the development standard, and in our opinion, there are no additional matters which would indicate there is any public benefit of maintaining the development standard in the circumstances of this application.

Finally, we are not aware of any other matters required to be taken into consideration by the Secretary before granting concurrence.

## 9. CONCLUSION

This submission requests a variation, under clause 4.6 of the North Sydney Local Environmental Plan 2013 (NSLEP), to the Height of Building development standard and demonstrates that:

1. Compliance with the development standard would be unreasonable and unnecessary in the circumstances of this development,
2. The development achieves the objectives of the development standard and is consistent with the objectives of R2 Low Density Residential and R4 High Density Residential zones,
3. There are sufficient environmental planning grounds to justify the contravention.

The consent authority can be satisfied with the above and that the development is in the public interest because it achieves the objectives of the development standard and is consistent with the objectives of R2 and R4 zone.

The concurrence of the Secretary can be assumed in accordance with Planning Circular PS 18-003.

On this basis, therefore, it is appropriate to exercise the flexibility provided by clause 4.6 in the circumstances of this application.



07 February 2024

Ms Therese Manns  
General Manager  
North Sydney Council  
[NSLPP@northsydney.nsw.gov.au](mailto:NSLPP@northsydney.nsw.gov.au)

Attention: Ms Manns

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

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

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

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

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

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

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

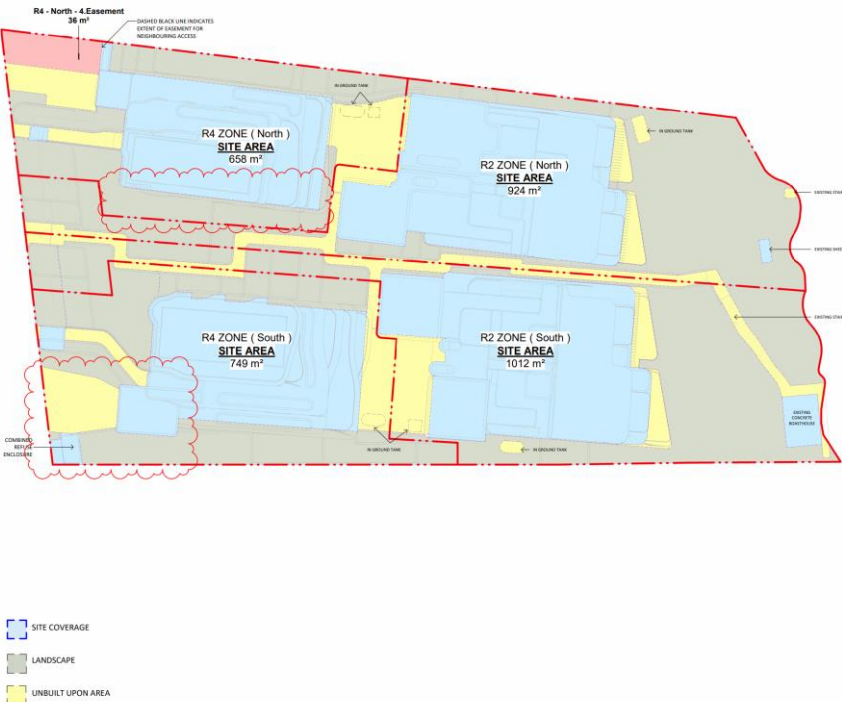
It would be appreciated if the Council could forward this information to the Panel so that they can review it as part of their determination in this matter.

**Overview:**

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

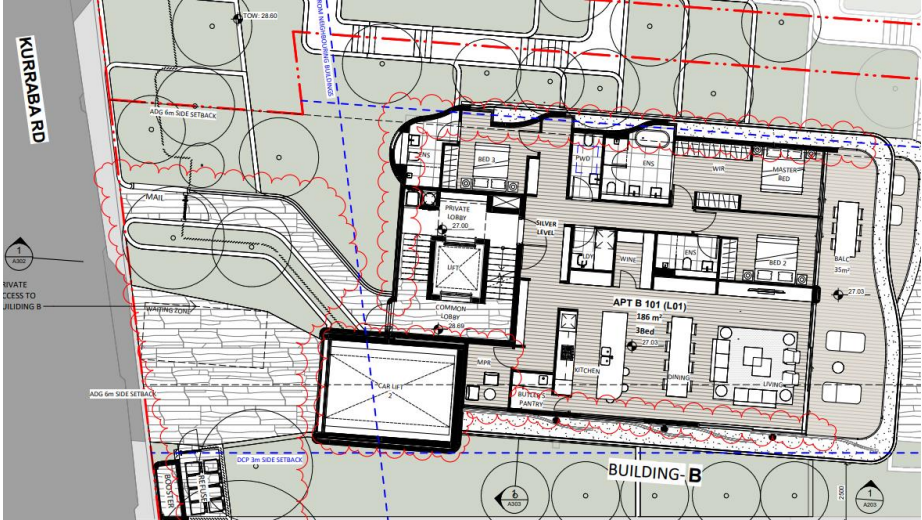
The amendments made following the Panel's deferral include:

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

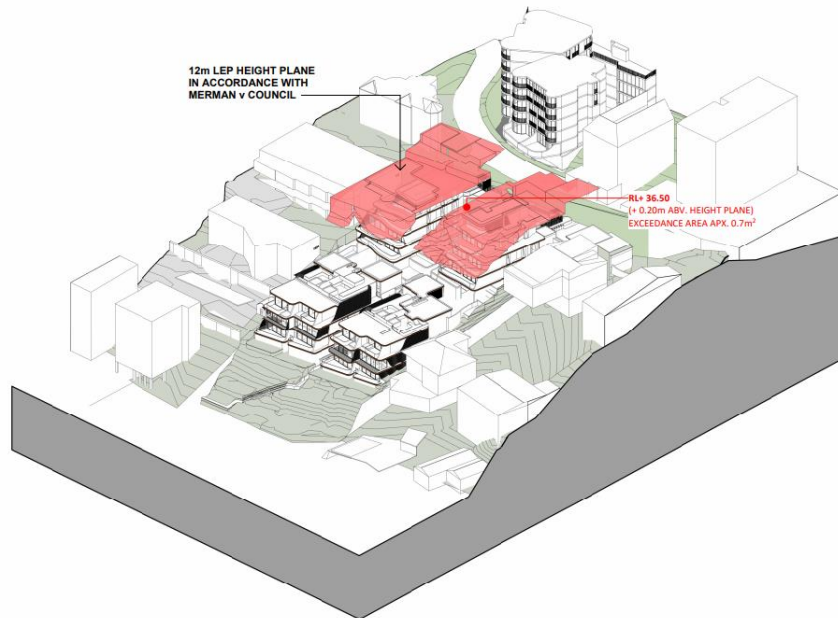
Issues Raised	How the matter has been addressed
<p>1. Site coverage, landscaped area, un-built upon area and desired future character</p>	<p>The Council report states the proposal does not comply with the relevant site coverage requirements for each individual allotment.</p> <p>It was resolved at the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

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	<p>The individual lots of the proposal, as amended, largely comply with the development controls, in particular landscaping and site coverage. The proposal results in a minor non-compliance of 0.8% over the maximum for the R4 north site in the R4 Zone un-built upon area, however this is offset by the R4 south site which achieves max 14.6% un-built upon land; thus, the proposal almost achieves compliance for the total R4 zoned land, with a minor 0.2% over provision. It should be noted that the recent approval of the neighbouring property 184 Kurraba Road at the NSLPP meeting dated 06/12/23 was approved with a 0.2% under provision on landscaping provision, which is not too dissimilar from the minor 0.2% over provision of un-built upon area in this application. This minor non-compliance for the north site will be negligible when viewed from the public and private domains, especially since the southern site provides less than what is permitted. Other than this the proposal, as individual lots, strictly comply with the Council DCP provisions and objectives of these controls, and therefore this matter has been addressed. This results in the buildings' appearance being consistent with the requirements of bulk and scale expected for the immediate area under the provisions of the North Sydney DCP 2013 in relation to built form character, form, massing and scale.</p> <p>The plans submitted with the RFI package has deducted the built form on the ground as required by Council, including that located within the Foreshore Area. It has not deducted the overhead slabs of elevated levels, as landscaping is still achieved below these. Also, it has excluded the existing ROW for the site to the north.</p> <p>The existing access handles for the R2 zoned land have been included as the development site encompasses all 4 titles as one integrated development.</p>																																	

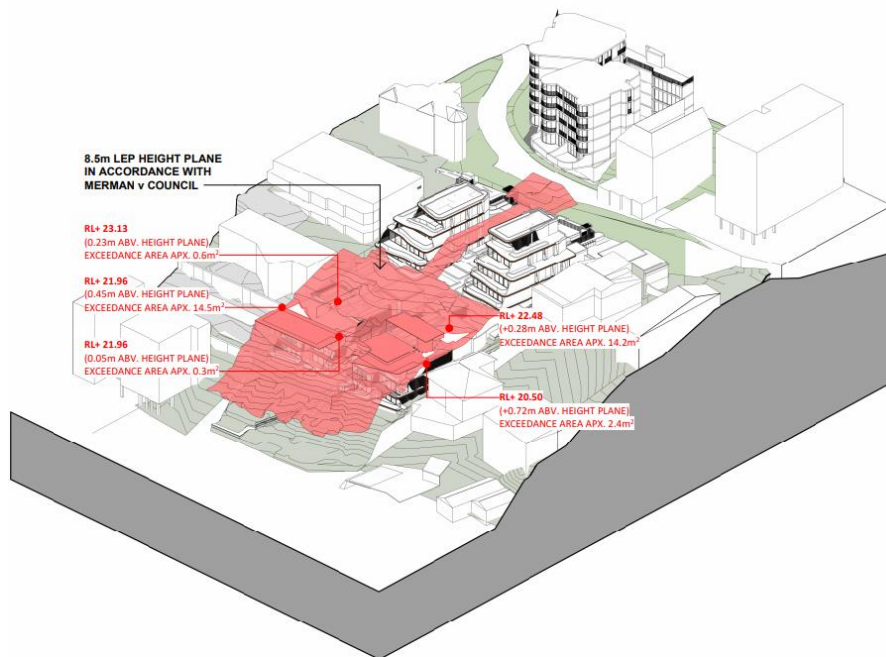


Issues Raised	How the matter has been addressed
	<p>They do not operate as a typical “battle-axe” handle within the integrated development, and as such should be included in the site area calculation. Therefore, it is considered that this matter has been addressed.</p>
<p>2. On-street waiting bay serving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

Issues Raised	How the matter has been addressed
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R4 HEIGHT PLANE DIAGRAM - 12m ABOVE EXISTING GROUND LEVEL (VIEW 1)

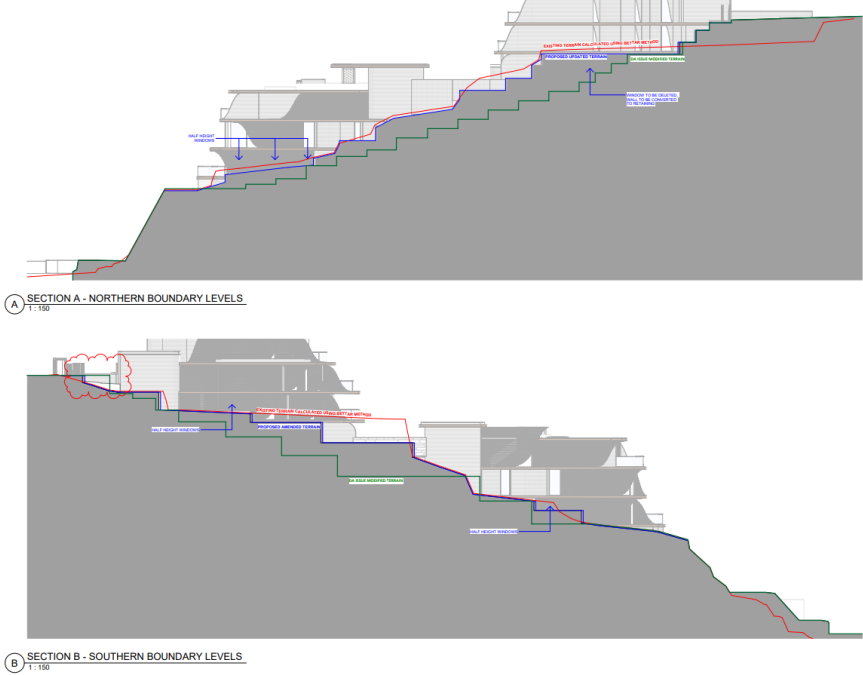


R2 HEIGHT PLANE DIAGRAM - 8.5m ABOVE EXISTING GROUND LEVEL (VIEW 1)

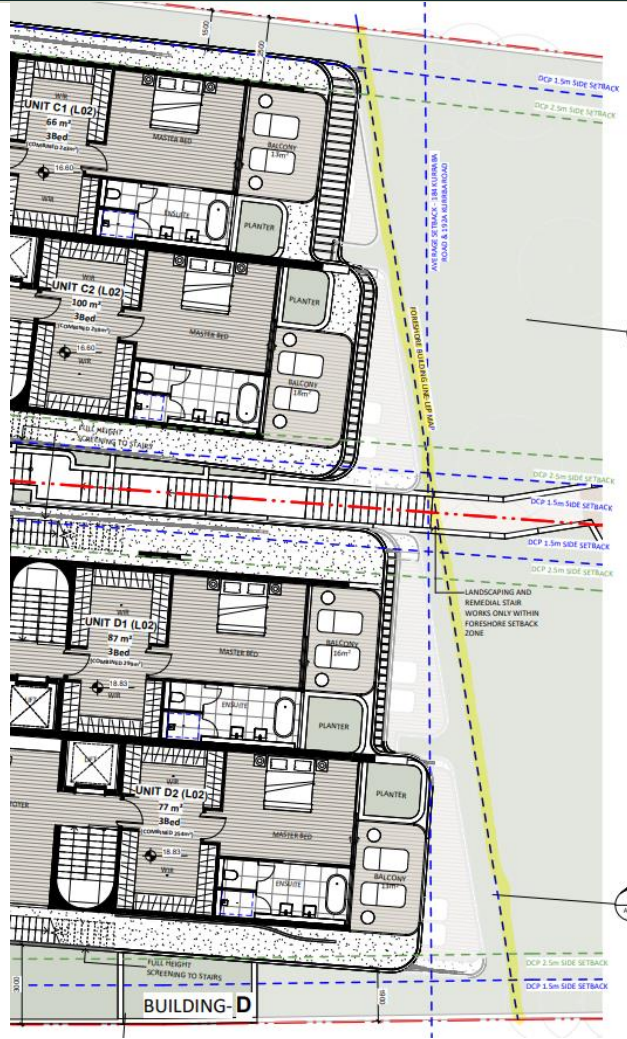
Issues Raised	How the matter has been addressed
	<p>The Clause 4.6 has subsequently been updated to reflect the amended design changes and also the calculation based on Merman, not Bettar. This is attached with this letter.</p> <p>Council’s report on page 35 states “...the non-compliances with building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



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

Issues Raised	How the matter has been addressed
	 <p data-bbox="518 600 762 627">SECTION A - NORTHERN BOUNDARY LEVELS 1:150</p> <p data-bbox="518 958 762 985">SECTION B - SOUTHERN BOUNDARY LEVELS 1:150</p> <p data-bbox="491 1037 1326 1099">We believe the proposal complies with the objectives of the excavation requirements.</p>
<p data-bbox="167 1193 451 1249">6. Development within the foreshore area</p>	<p data-bbox="491 1193 1406 1256">Concern was raised in the report that the survey shows works within this area and makes reference to survey dated 08.07.23.</p> <p data-bbox="491 1263 1417 1413">This survey was to show the proposed future easements and was intended as schematic only. These plans overlay the existing survey (which shows existing works within the foreshore area) and the proposed works. We believe the confusion may occur from both existing and proposed being overlaid on this survey.</p> <p data-bbox="491 1420 1417 1570">The amended plans submitted with the RFI package pulled the buildings back to ensure that <b>NO</b> building works are within this area. Refer to the architectural Dwgs A101-A104 which make this clear, see extract below with the yellow highlight identifying the foreshore building line. (The other blue line shows the average setback between 184 Kurraba and 192A Kurraba).</p>

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



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

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

Therefore, we believe this issue has been resolved.

**7. Setbacks**

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

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



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

Issues Raised	How the matter has been addressed
	<p><i>potential view loss for the approved but not yet constructed 182 Kurraba Road would be the same or similar as per any complying built form proposed for the subject site. There is no material benefit in providing additional visual material in relation to this property.</i></p> <p><i>Based on the information available in our opinion, no scenic and highly valued primary views from 182 Kurraba Road would be significantly impacted by the proposed development and more importantly by the very minor non-compliances, in relation to roof forms or setbacks, within the scheme.</i></p> <p><i>Any potential views to the site from 182 Kurraba Road would be highly oblique and across side boundaries. We note that the proposed development is set back to the west from the FSBL so allow for the retention of oblique south-easterly views from 182 Kurraba Road if in fact they are available. Primary views from this new development are to the west and east across front and rear boundaries, all of which would be retained and would be unaffected by the proposed development.</i></p> <p>A detailed view analysis has been conducted for this proposal and this issue has been addressed.</p>
<p>10. Private open space for the dual occupancies</p>	<p>The question of reasonable private open space (POS) for the dual occupancies was raised in the Council Report.</p> <p>Due to the sloping nature of the site and the view to the harbour, the POS has been split over the levels of the dwellings with each part having direct access from the living areas. This is not unusual for sloping sites and allows different spaces to be used at different times.</p> <p>The total POS, including the roof-top terraces, exceeds Council's minimum requirements of 40m<sup>2</sup>, see below, <b>excluding</b> the planters and foreshore natural ground area;</p> <p>Unit C1 – achieves 49.1m<sup>2</sup>,  Unit C2 – achieves 55.4m<sup>2</sup>,  Unit D1 – achieves 54.5m<sup>2</sup>, and  Unit D2 – achieves 39.6m<sup>2</sup></p> <p>The question of the roof terraces being used has been raised. These are appropriate in this context with the direct views to the harbour. The roof terraces have been pulled away from the side boundaries and now sit a min 3.5m to the side boundaries with the one closest to the south sitting approximately 5m from the side boundary. Privacy screening has been provided between the terraces of C1 and C2, and D1 and D2. The internal separation between the roof terrace of C2 and D1 is a minimum of 7m.</p> <p>To further alleviate this concern, a condition of consent could be imposed that <i>“Fixed louvre screens to a maximum of 1.8m in height are to be provided to the roof terrace along the northern side of unit C1 and the southern side of unit D2, to ensure privacy to the adjoining residents. Details are to be shown at Construction Certificate stage.”</i></p> <p>We believe this addresses this issue.</p>

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

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

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

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

Yours sincerely



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 Director  
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CC Chair and Secretariate North Sydney Local Planning Panel