

**NSLPP MEETING HELD ON 06/09/23****Attachments:**

1. Site Plan
2. Architectural Plans
3. Clause 4.6 Request
4. Submission SEPP (Housing) 2021

**ADDRESS/WARD:** 24 East Crescent Street McMahons Point**APPLICATION No:** 5/22

**PROPOSAL:** Demolition of an existing residential flat building and construction of a 5 storey residential flat building of 5 dwellings with basement parking for 7 vehicles, landscaping and associated works, and strata subdivision of the completed development.

**PLANS REF:**

Plan No.	Rev No.	Description	Prepared by	Dated
DA101	G	Basement Floor Plan	PBD Architects	19/06/2023
DA102		Lower Ground Floor Plan		
DA103		Ground Floor Plan		
DA104		Level 1 Plan		
DA105		Level 2 Plan		
DA106		Level 3 Plan		
DA107		Roof Plan		
DA200		North Elevation		
DA201		East Elevation		
DA202		South Elevation		
DA203		West Elevation		
DA300		Section A/A		
DA301		Section B/B		
DA302		Section C/C		
DA400		Schedule of Materials		
-	-	Arboricultural Impact Assessment Report	Jacksons Nature Works	22/06/2023
ESM1	3	Notes & Legend	Jones Nicholson	09/06/2023
ESM2	3	Typical Details		
ESM3	3	ESM Ground Plan		
CSK01	3	Notes & Legend		
CSK02	3	Typical Details Sheet 1		
CSK03	3	Typical Details Sheet 2		
CSK04	4	Basement Stormwater Plan		
CSK06	4	Lower Ground Stormwater Plan		
CSK07	3	Ground Stormwater Plan		
CSK08	3	Level 1 Stormwater Plan		
CSK09	3	Level 2 Stormwater Plan		
CSK10	3	Level 3 Stormwater Plan		
CSK11	2	Level 3 Stormwater Plan		
34101SBprt	5	Geotechnical Investigation	JK Geotechnics	19/06/2023
L-01	1	Lower Ground Floor Landscape Plan	Site Design+ Studios	20/06/23
L-02		Ground Floor Landscape Plan		
L-03		Level 3 Landscape Plan		
L-04		Planting Details		
L-05		Notes		
L-06		Specification		
Sheets 1-4	-	A plan of redefinition of lot 2 in DP 303346	Copland C Lethbridge	14/06/23
N0210883-SLTR.03A	-	Temporary Shoring	Jones Nicholson	20/12/21
SW21/12553	-	Site Waste Management Report	Senica Consultancy Group	12/07/2022

**OWNER:** DAP Queenscliff Pty Ltd

**APPLICANT:** Lighthouse Project Management Pty Ltd

**AUTHOR:** Jim Davies Executive Planner

**DATE OF REPORT:** 29 August 2023

**DATE LODGED:** 4 January 2022

**RECOMMENDATION:** Approval

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## EXECUTIVE SUMMARY

This development application seeks approval for demolition of a 3 storey, 13 unit residential flat building and replacing it with a 5-storey residential building with an apartment on each level, above a single-level basement for parking and other facilities, and strata subdivision of the development.

The application is reported to the North Sydney Local Planning Panel for determination as the proposal is the subject of more than 10 submissions, a request to exceed the building height development standard by more than 10% and because SEPP 65 – Design Quality of Residential Apartment Development applies to the development.

Notification of the proposal has attracted 67 submissions from 37 correspondents raising particular concerns about:

- the height breach proposed,
- inadequate front, side and rear setbacks,
- impacts on privacy, views and solar access,
- vehicular access, traffic impacts and parking,
- impact on trees overhanging the site from adjacent land, and
- the proposal being out of character with local development and having adverse effects on local heritage.

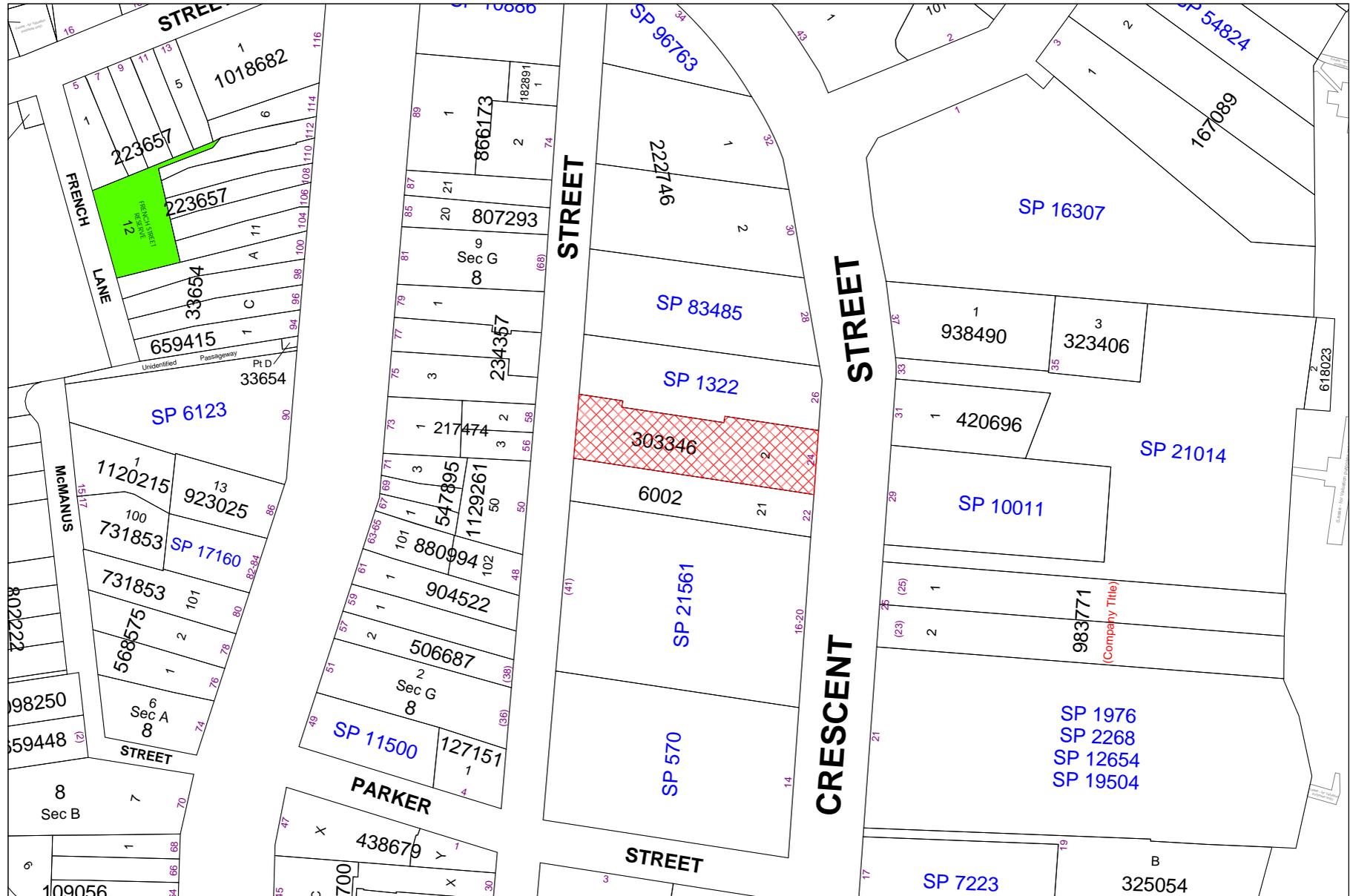
This assessment has considered these concerns and the performance of the application against Council's planning requirements.

Since being lodged in January 2022, the application has undergone considerable public scrutiny. The application was notified on four separate occasions due to the proposed development undergoing design refinement following the North Sydney Design Excellence Panel's review and subsequent fine tuning of the design, in response to issues raised by public submissions and feedback from Council's assessment team.

Several site meetings involving Council staff and the applicant were held with the aim of resolving specific matters during the assessment process. The assessing planner also visited neighbouring properties either side of the site to assist in the assessment of the proposal's potential impacts.

Resulting from this process, this report concludes the proposed residential flat building is acceptable and its potential impacts reasonable. In these circumstances, the application is recommended for **approval** subject to conditions.

LOCATION MAP



Property/Applicant    ● Submitters - Properties Notified

## **DESCRIPTION OF PROPOSAL**

The application is for approval to demolish the existing residential building of 13 flats and to replace it with a building of 5 storeys and a single-level basement for 7 cars (4 spaces using double stackers), lift access and storage. An apartment on each level is proposed, a 2 bedroom + study dwelling on the lower ground floor, and a 3 bedroom abode on each of the 4 levels proposed above. Approval is also sought for strata subdivision once the development is completed.

## **STATUTORY CONTROLS**

North Sydney LEP 2013

- Zoning – R4 High Density Residential
- Item of Heritage - No
- In Vicinity of Item of Heritage – Yes, 23-25 East Crescent St & 26 East Crescent St, sandstone retaining wall (divides carriageway)
- Conservation Area – No, and site is adjacent to McMahons Point South Conservation Area, west of Middle Street

Environmental Planning & Assessment Act 1979 - Local Development

SEPP (Biodiversity and Conservation) 2021

SEPP (Resilience and Hazards) 2021

SEPP (Housing) 2021

SEPP (Building Sustainability Index: BASIX) 2004

SEPP 65 – Design Quality of Residential Apartment Development & ADG

## **POLICY CONTROLS**

North Sydney DCP 2013

Apartment Design Guide (ADG)

North Sydney Local Infrastructure Contributions Plan 2020

## **SITE & LOCALITY**

The site, lot 2 DP 303346, is on the eastern side of McMahons Point, on the western, high side of East Crescent Street, and commands views over Lavender Bay toward Milsons Point and the Bridge. Sloping steeply toward the harbour, the land drains eastward to East Crescent Street and has a double frontage, with Middle Street forming the site's western boundary. Extensive vistas over the Harbour and harbourside suburbs are available to the west, over the street and adjacent dwellings, with many garages facing the carriageway, in Middle Street. A garage is located on the site's southern side on the frontage to East Crescent Street, and no vehicle access is available from Middle Street. With an area of 679m<sup>2</sup>, the subject land is rectangular.

There are 13 units in the building that have been used for residential purposes. There were previously 14 units, and two had been consolidated and leased as a single unit, when the applicant purchased the site. The units are best described as 1 bedroom units or bedsits, with no car parking available on-site. The building is not strata subdivided. The units have been rented, according to information submitted with the application, and have provided affordable accommodation during the five year period before the application was made.

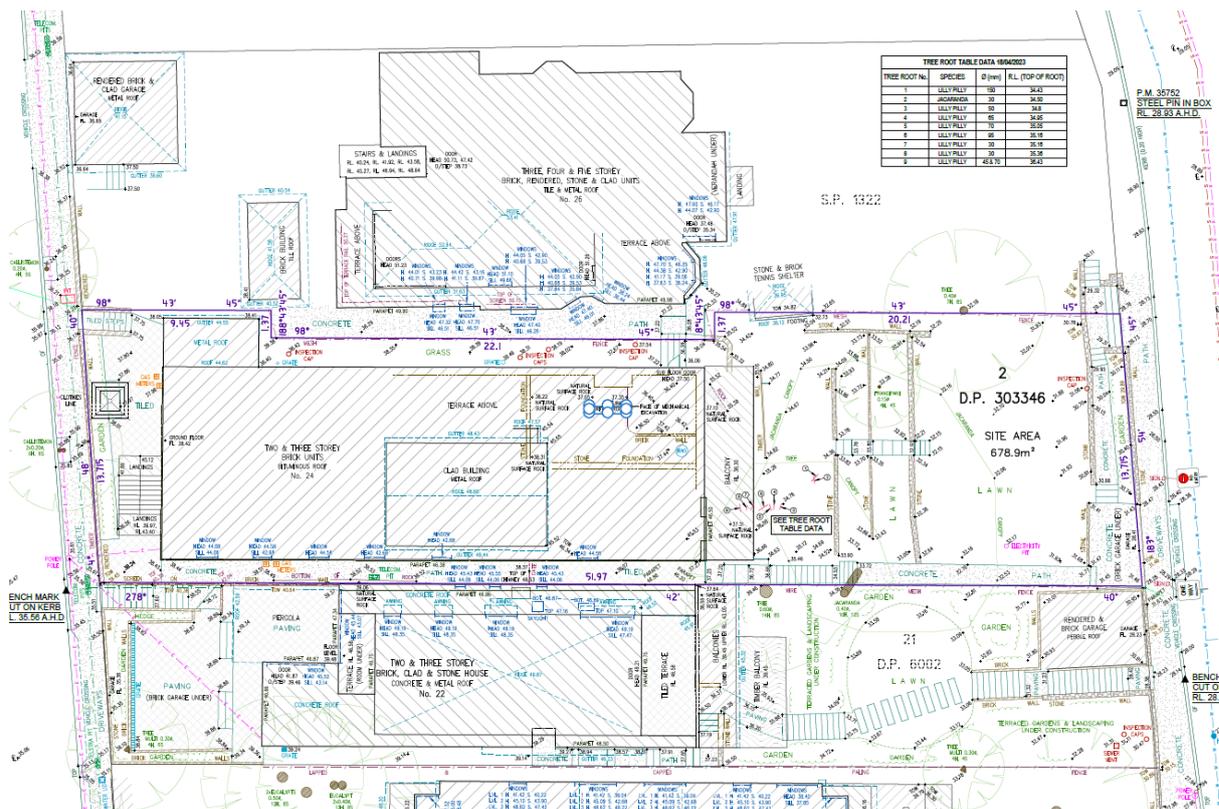
The site having frontage to both East Crescent Street and Middle Street, the building presents 3 storeys to the former and 2 storeys to the latter thoroughfare.

Like its neighbours, the building proposed to be demolished sits well above East Crescent Street, and Middle Street. All three buildings are setback some 20m from the East Crescent Street footpath. The site and neighbouring lots are narrow, varying in width from about 9m to 14m. Mainly a result of the setbacks, the apparent height and bulk of extant buildings on the site and two lots either side is not overbearing, despite the relatively tall buildings being sited close to or on side boundaries.

Assisting to reduce apparent building scale are two large trees in No 22's front yard, which lean over and partly screen the subject building. These can be seen in the aerial image and other images below. Also shown in the aerial are the setbacks of the subject building and its immediate neighbours, which are similar to the east, while the existing building on the site is located considerably closer to Middle Street. The aerial also indicates that balconies/terraces (enclosed on the building at No 26) on all three buildings sit forward or their main building line. This is confirmed by the survey plan (figure 2) submitted with the application, below the aerial image.



**Figure 1: Centrally located in the image, are the existing building on the site and its southern and northern neighbours either side. The two trees growing over the site's southern boundary are clearly visible. Although partly obscured, there is a deck at either end of the recently approved top-level extension at No 22. At No 26 the top level is occupied by a single dwelling with a rooftop terrace.**

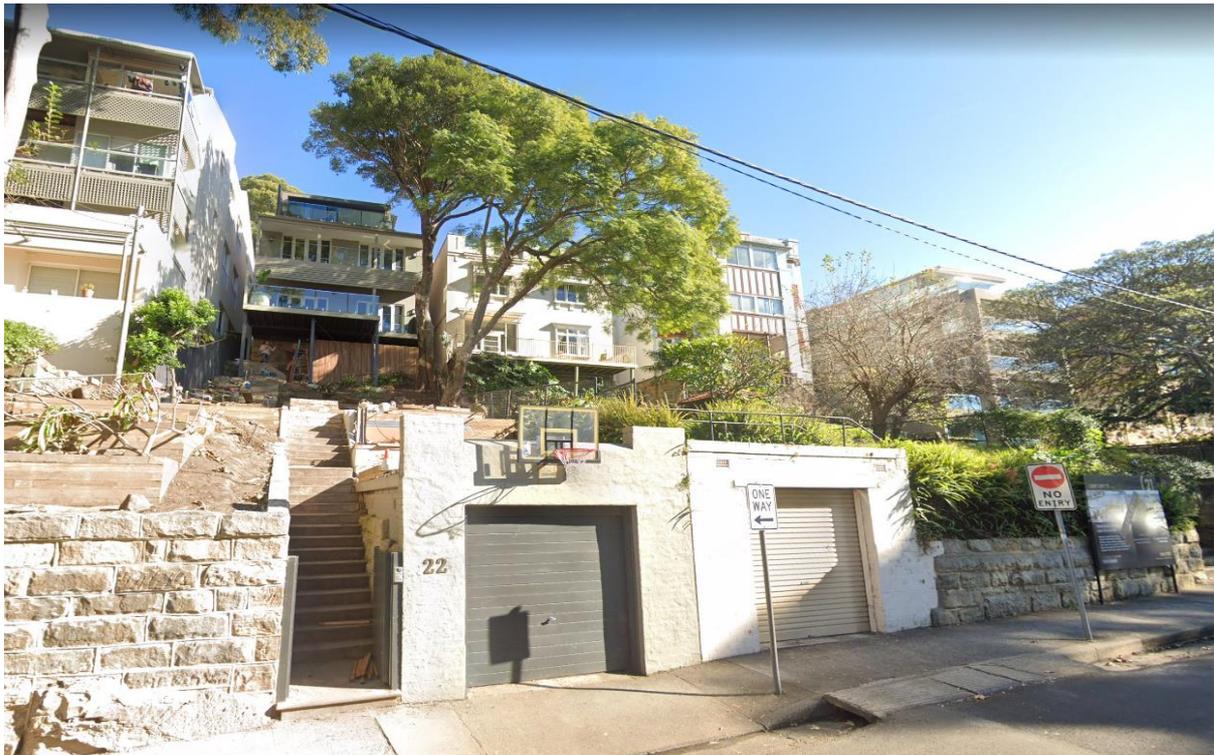


**Figure 2: Submitted survey drawing, the site is the central lot of the three depicted (Bee & Lethbridge, 21.06.21). The main building lines of the three buildings are similar to the right (East Crescent Street to the east) and varied to the left (westwards, to Middle Street). Setbacks to boundaries between buildings on the three lots also vary, from zero (No22) to between about 1.0m and 1.5m on the site and the northern neighbour No 26.**

The dwelling house at No 22 has three storeys on an undercroft of an equivalent height of about 1 storey. This residence has undergone recent alterations and additions (DA 159/18) and is positioned on the site’s southern boundary, except it’s top level which is set back 1.56m from this boundary. At the rear, this dwelling presents three storeys with a double garage, with a terrace on the garage roof, which is built to the street boundary. The house is screened by a hedge and trees.

North of the site at No 26 East Crescent Street, is a heritage-listed residential building (of local heritage value) which once shared land with the building on the subject site. In front of both buildings was a tennis court, and a small pavilion related to the tennis court remains in the front yard of No 26. The two buildings were at a later time sited on their own lots by subdivision, which may have caused the court’s demise. The two buildings still share a common stairway providing access from East Crescent Street.

The three buildings are also of a like height and are relatively close to each other, with little separation to offer visual or acoustic privacy. Also being setback on similar building lines, they enjoy views of Sydney and Port Jackson, depicted in the panorama below (image 4), with variable intrusion from other structures and trees nearby, directly across the street and at oblique angles across each other’s front yards.



**Figure 3:** *In the centre of the image is the site, behind the One Way sign, the existing flat building partly obscured from view by the trees leaning over the boundary from the neighbouring property at No 22, to the left. To the site's right is the heritage-listed flat building at No 26 East Crescent Street. Left of No 22 is a relatively new block of units, which is setback much closer to the street than Nos 22, 24, and 26, which are setback similar distances from their eastern boundary (Google Maps).*

The site is located in the McMahons Point Neighbourhood of the Lavender Bay Planning Area of Part C, North Sydney DCP 2013. The area's character statement cites these key elements as contributing to the neighbourhood's character:

- Steep topography,
- Views of the harbour and beyond,
- A mix of low, medium and high density, mainly residential development,
- Sandstone retaining walls,
- Minimum boundary setbacks with alignments skewed to the respective street frontage,
- Split carriageways, and
- Desired character being generally of medium density in the north and high density in the south, according to zone.



**Figure 4:** *A 'panoramic' view from the roof of the building at 26 East Crescent Street, immediately to the site's north. At the right-hand extremity of the image is part of the site's existing building's top level. To the left of this part of the building, are the trees growing over the site from No 22. Also visible is the second level balcony (No 22) from which the next image was taken.*



**Figure 5: View north from the second level balcony at No 22, to the North Sydney skyline, indicating siting of the existing building (foreground) and No 26 (centre) in relation to one another.**



**Figure 6: Eastward view from the balcony at No 22. Due to the trees on the site and adjacent land, and buildings on the eastern side of East Crescent Street, partial views are available of the Bridge and Milsons Point.**



**Figure 7:** In the foreground is a garage at No 26, sited to the Middle street boundary. To the right is the site's existing building with a tree behind it, growing in No 22's backyard.



**Figure 8:** The Middle Street streetscape, No 26's garage, the subject building and No 22's backyard tree are to the left, and a row of garages, flanked by dwellings (just out of shot), to the right.



**Figure 9: View from No 24 over the roof of the site's building, indicating the relative heights of the two buildings at Nos 24 & 26. These and other images show the proximity and levels of privacy available between parts of the site and its neighbours.**



**Figure 10: View from a window on the southern wall of the 'rooftop' dwelling at No 26, over the side boundary it shares with the site.**



**Figure 11: Similar view available from the rear, western terrace and living room of the same dwelling as in the preceding image.**

## RELEVANT HISTORY

### Previous applications

No previous applications are relevant to the subject DA. Site inspection confirmed that the building, prior to it having been vacated in June 2022 by its tenants, was used for residential purposes.

### Current Application

<b>Date</b>	<b>Action</b>
05.08.21	Pre-lodgement meeting held, key points discussed included: <ul style="list-style-type: none"> <li>- A height above the 12m maximum building height may not be supported, although the minutes noted a request to vary the standard must provide justification and sufficient planning grounds for the contravention, and have regard to the standard's objectives.</li> <li>- That the current building and the building at No 26 both appear to exceed the height standard.</li> <li>- Need for a geotechnical report.</li> <li>- Submission of a design verification statement, addressing amenity, one unit being below existing ground level, and privacy.</li> <li>- Views, solar access, a detailed merit assessment to support proposed setbacks to each street, vehicle access and site coverage/landscaped area and excavation were also identified as key issues.</li> </ul>
04.01.22	Application lodged.
24.01.22	Application notified for 14 days. 26 submissions received.
06.02.22	Site and locality inspected from East Crescent Street and Middle Street.
08.03.22	North Sydney Design Excellence Panel considered the application. Key points of the Panel's assessment are outlined below.
01.07.22	Additional information requested, mainly in relation to matters raised by the Panel and internal referrals, including: <ul style="list-style-type: none"> <li>- Waste management,</li> <li>- Access and bicycle parking, and</li> <li>- Impact on trees at No 22 East Crescent St.</li> </ul>
25.07.22	Additional information submitted.
12.08.22	Application notified for 14 days. 19 submissions received.

<b>Date</b>	<b>Action</b>
01.12.22	Further information requested from the applicant. Key issues related to: <ul style="list-style-type: none"> <li>- Landscaping and Amenity Design Principles, SEPP 65, including impact of design on trees at No 22 East Crescent St,</li> <li>- Visual privacy, excavation/deep soil zones, revised access and parking arrangements, natural ventilation and sunlight, and unit size per the ADG,</li> <li>- Height – a clause 4.6 request had not been made, and</li> <li>- DCP provisions for excavation, views and setbacks – street, side and lane.</li> </ul>
14.12.22	Site meeting held with applicant’s team, Council’s executive planner and conservation planner, to inspect the existing building and discuss matters requiring resolution.
28.02.23	Additional information received.
17.03.23	Application notified for 14 days. 18 submissions received.
05.04.23	Forwarded Landscape Development Officer’s comments to applicant’s planner, via email.
12.04.23	Site meeting (matters confirmed by email the same date) to discuss: <ul style="list-style-type: none"> <li>- Root mapping and impact on neighbouring trees,</li> <li>- Visitor parking (to double as a car wash bay),</li> <li>- Glazing to solid ratios of street façade,</li> <li>- Bulk of the rear of the building, to Middle Street,</li> <li>- Potential overshadowing extent of rear open space at No 22 East Crescent Street,</li> <li>- Potential to increase proposed landscaped area,</li> <li>- Revised heritage conditions, and</li> <li>- Altering the layout of the lower ground floor unit to prevent the study being used as a third bedroom.</li> </ul>
13.04.23	Inspected site from 22 and 26 East Crescent Street.
24.04.23	Final site meeting with applicant.
04.07.23	Additional information submitted.
21.07.23	Application renotified for 14 days. 4 submissions received.

## INTERNAL REFERRALS

### Building

The proposed works the subject of this application have not been assessed in accordance with compliance with the National Construction Code of Australia. Conditions are recommended requiring assessment per the Code including requirements for universal access. It is noted the building is accessible via Middle Street with a graded path and platform lift providing access to the entrance from the street.

## WASTE MANAGEMENT

A temporary bin storage area is located at the eastern end of the driveway (Drawing No DA 101), which satisfies the DCP, although it is more than 2.0m from the kerb. This is a practical solution, given the constraints of level differences between the building and the street, and the narrowness of the site.

Bulk waste and bin storage rooms are provided on the lower ground floor (Drawing No DA 102) . The submitted waste management plan (Senica Consultancy Group 12.07.22) specifies waste management for demolition, construction and operational phases of the development. A condition requires submission of a detailed waste management plan with the construction certificate application,

On merit with regard to the above circumstances, proposed waste management facilities and procedures satisfy Council’s requirements.

## HERITAGE

The conservation planner's assessment is reproduced below:

### **HERITAGE STATUS**

*The subject site is not a heritage listed property nor is it in a conservation area. It is however, adjacent to the eastern boundary of the McMahons Point South Conservation Area. No 24 East Crescent St was previously a scheduled heritage item (10595) in NSLEP 2001. The property was reviewed in 2007 by Council's heritage consultant Architectus in association with John Oultram Heritage and Design and it was found to meet the NSW Heritage Office's criteria for aesthetic and historic heritage significance. At Councils' 3520<sup>th</sup> meeting held on 25 May 2009 it was however resolved to remove the property from NSLEP 2001 despite meeting the heritage listing criteria at that time.*

*There is an existing two storey Interwar style painted brick building known as Wenham Hall, sitting on a rock-faced sandstone sub-base on the subject site. The building has a flat roof with a parapet wall with a small, pitched roof addition that formed apartment No 14 (which, it is understood, has not been used for residential purposes). The building and the adjacent heritage item at 26 East Crescent Street were both designed by Dr Edgar and Ann Caro in 1917-1918. The primary façade of the building faces east and it forms a pair of "Interwar" apartment buildings with No 26.*



**subject Interwar building**



**Adjacent heritage item at No 26.**

The rear elevation addresses Middle Street which has a very eclectic streetscape.

### **DEMOLITION OF THE EXISTING BUILDING**

*Although the building is over 100 years of age and is designed in the "Interwar" style, it is considered to fail the criterion for historic significance as it has been modified by the addition of a large unsympathetic deck on the front elevation and the primary fenestration has been altered as there is a larger opening on the lower level south-eastern apartment. The building also fails to meet the criterion for aesthetic significance for similar reasons. An examination of the interior of apartments Nos 1, 4 and 5, plus a review of images on the internet, indicates that the interior of the building is very modest with plain or battened ceilings, low skirting boards and timber picture rails. Many of the apartments have had detracting kitchenettes installed. The interior retains the original timber staircase in the common area. At least one apartment has an Arts and Crafts style brick arched fireplace. It is not a fine or rare example of the Interwar style and there are many better examples of the style in Kirribilli, Neutral Bay and Cremorne. The building does not meet the other criteria in the Guidelines for Assessing Heritage Significance.*

*No objection is therefore raised with regard to clause 5.10 in NSLEP 2013 to the building's demolition.*

### **IMPACT TO THE ADJACENT HERITAGE ITEM**

*The proposed development has been assessed against the following control in Part B Section 13 in NSDCP 2013 as 26 East Crescent Street is a scheduled heritage item and is located adjacent to the subject site to the north.*

#### **13.4 Development in the Vicinity of Heritage Items**

*Development near heritage items is required to consider the potential for new work to impact on the heritage item's setting. This requires an understanding the role of the site in the streetscape, and in relation to the heritage item.*

*O1 Ensure that new work is designed and sited so as to not detrimentally impact upon the heritage significance of the heritage item and its setting- The amended proposal does not have a front setback equal or greater than that of the adjacent heritage item, but neither does the existing building. The amended proposal has a stepped front setback and it is considered that it is now acceptable as there will be adequate curtilage and setting provided to the adjacent heritage item.*

#### **Provisions**

*P1 Respect and respond to the curtilage, setbacks, form, scale and style of the heritage item in the design and siting of new work - The amended development is considered to be sympathetic in bulk, massing and scale to the heritage item. The style of the new development will be contemporary, however no objection is raised as the streetscape contains many buildings that are less than 50 years of age and is very eclectic as a result of the differing scale of the buildings and the variety of building styles.*

*The style of the proposal makes a nod to the "Interwar" style with its curved balconies. The Area Character Statement however, requires buildings to be 'constructed of timber, sandstone, face brick, masonry and/or painted render.' The immediate streetscape in the visual catchment of the subject site has buildings constructed in accordance with the Character Statement, although one building located at 34 East Crescent Street does use metal wall cladding on its highest level. It is recommended that the upper and lower levels be amended to utilise compliant materials as these will be more sympathetic to the adjacent heritage items, being more traditional in character.*

*No objection is raised to the use of glazed balustrades adjacent to the heritage item as this will be a contemporary building and it is not located in a conservation area with a limited materials palette. There are glazed balustrades located on the building immediately to the north of the heritage item and these do not detrimentally detract from the item's significance. The subject site is not located within the Sydney Opera House buffer zone, so pale coloured Bowral Chillingham White brickwork is acceptable.*

*P2 Maintain significant public domain views to and from the heritage item- The amended proposal retains adequate views to and from the heritage item.*

*P3 Ensure compatibility with the orientation and alignment of the heritage item- The east/west alignment and orientation to the two streets is acceptable.*

*P4 Provide an adequate area around the heritage item to allow for its interpretation- The heritage item will remain interpretable.*

*P5 Retain original or significant landscape features that are associated with the heritage item or that contribute to its setting- The amended proposal has satisfactorily interpreted the now defunct tennis court that straddled the subject site and No 26 East Crescent Street, as a portion of the eastern garden is now at grade with the adjacent garden at No 26.*

*Sandstone retaining walls are significant street features in McMahons Point, many being heritage listed including items I0426, I0410, I0470, I0467 and I0483. They also are noted as 'Significant Landscape Elements' in the McMahons Point Planning Area. The majority of the remnant sandstone front boundary wall will be retained in the amended proposal and the existing garage will be demolished. Whilst it would be preferred to have the vehicular access from the rear of the site, it is acknowledged that the terrain makes it more efficient to have the garage entry on the eastern boundary and the front boundary wall does not benefit from any heritage protection. It is recommended that the sandstone removed from the front boundary wall be salvaged for re-use.*

*It is also acknowledged that the original pergola entry cannot easily be re-instated as it straddles both Nos 24 and 26 East Crescent Street and would require owners' consent. The piers to the shared entry will be retained.*



**Original pergola entry**

*P6 Protect and allow interpretation of archaeological features (as appropriate and relevant)- There is low potential for archaeological relics as the existing building has a large footprint and the front garden setback has been terraced.*

#### **RECOMMENDATIONS**

*It is recommended that the outstanding heritage issues be resolved by condition as below:*

#### **Heritage Requirements:**

*C44 The following heritage requirements are to be met:*

- a) For the existing building:
  - i) Demolished sandstone from the front boundary wall and elsewhere on site is to be salvaged for re-use in constructing the splayed garage wall reveals. New sandstone is to match in dimension, colour and texture. Any additional sandstone that is not used for the garage is to be re-used elsewhere on the site or is to be offered to Council in the first instance.*
  - ii) The original Interwar style staircase and doors to the Inter-war apartment building are to be salvaged for re-use in the community.**
  
- b) For the new development:
  - i) The metal wall cladding is to be substituted with materials as described in the McMahons Point Neighbourhood Area Character Statement at Part C Section 9.6.3 Provision P3.*
  - ii) No artificial turf is to be utilised in the eastern gardens.*
  - iii) The side boundary fences within the eastern front setback are to be metal palisade with a maximum height of 1.1m or the existing open mesh side boundary fences may be retained.**

*(Reason: To be sympathetic to the heritage resources in East Crescent Street.)*

### ***Archival Recording***

*D1. Unless access is provided to Council's Historian to undertake a photographic survey of the building and site prior to any works commencing, a photographic survey also prior to any works commencing must be undertaken by the developer. The survey is to record the building and the site, in accordance with the NSW Heritage Office Guidelines "Photographic recording of Heritage Items using file or digital capture", to the satisfaction of Council's Historian. Two (2) copies of the photographic survey must be provided to Council's Local Studies Section at the Stanton Library in a digital/electronic format acceptable to Council, such as a PDF or Microsoft Word file.*

*(Reason: To provide a historical record of the Interwar building designed by Dr Edgar and Ann Caro for archival purposes)*

### **TRANSPORT & TRAFFIC**

The application was reviewed by Council's Traffic and Transport Engineer, who is satisfied with the proposal, except for the application not including a visitor space capable of being used as a carwash bay.

This matter was referred to the applicant, who responded as follows:

*The application proposes to replace a residential flat building containing 13 × 1 bedroom apartments with a residential flat building containing 4 x 3 bedroom and 1 x 2 bedroom apartments. There is currently no off-street carparking on the site.*

*The application proposes basement car parking accommodation for 7 vehicles including 2x2 car stackers and 3 single at-grade car parking spaces. The car stackers will need to be allocated to single units leaving a single car space to be allocated to each of the remaining apartments. The geometry of the site and the required setbacks to trees T3 and T4 prevent the provision of any additional off-street carparking on the site.*

*We consider the allocation of available car parking to the residential apartments provides a superior net outcome in relation to on-street carparking demand compared to the circumstance where one of the proposed car spaces was allocated for visitor parking. Given that there is currently no off-street carparking for 13 apartments the proposal will significantly reduce on street carparking demand even when any demand associated with visitor parking is taking into consideration. Under such circumstances we do not consider the provision of a visitor car space to be reasonably justified in this instance (Boston Blyth Fleming, Town Planners).*

In these circumstances, the development as proposed is satisfactory, although the quantum of travel demand reduction may be less than submitted, as it is common for lower income households to have lower car ownership rates than other households. Car ownership is relatively low in North Sydney, as the area is highly accessible by almost all modes of public transport available in metropolitan Sydney.

Conditions have been included as recommended to address bicycle storage and preparation of a traffic construction management plan.

## **DEVELOPMENT ENGINEERING**

A Development Engineer has assessed the application and recommends conditions to address civil design and engineering, geotechnical conditions including protection of adjoining property and public infrastructure, drainage and stormwater, sediment and erosion control, traffic and parking.

## **LANDSCAPING**

The Landscape Development Officer has advised as follows:

*"...although concern remains regarding potential impact of the development on T3 and T4, the trees leaning over the site from No 22 East Crescent Street, with imposition of and adherence to them, under strict supervision of a project arborist, the amended proposal may be supportable".*

*With these reservations, conditions are recommended for:*

- *Commissioning an AQF 5 Level consulting arborist to assist the design development, contract documentation and overseeing of construction works on the site for their duration by undertaking regular inspections of the works in progress and providing advice in relation to tree matters.*
- *Protection of trees to be retained, including two trees in Middle Street, two at No 22 and four trees at No 26 East Crescent Street.*
- *Payment of a bond of \$16,000 to protect the public trees in Middle Street.*
- *Removal of one tree from the site's front yard.*
- *Providing details of tree pruning.*
- *Root mapping within the tree protection zone of T3 and T4.*
- *Certification of the retained trees' condition upon the development being completed.*
- *Maintenance of landscaping following occupation.*

## **DESIGN EXCELLENCE PANEL**

The North Sydney Design Excellence Panel considered the application when first submitted and made comments as summarised hereunder. Where not commented upon here, the matter is noted or addressed in other parts of this report.

- Height and scale of the proposed building is considered compatible with the locality.
- The East Crescent façade should align with the average setback of the two neighbouring buildings.
- Balconies should only project 2.0m forward of this line and be screened at either end to protect privacy.
- Side setbacks are acceptable being similar to the existing building's footprint.

- Visual privacy will need to be achieved via other means, as building separation per the ADG cannot be complied with.
- Setback and presentation to Middle Street is acceptable.
- Lot consolidation is impractical, to achieve a larger site and hence improved compliance with the ADG.
- The applicant agreed to investigate solar panel installation.

*Comment: The applicant advised this was considered however not proceeded with, as installation would have further breached the height standard and potentially have reduced view sharing.*

- Passive shading and sunlight access could be improved.

*Comment: This was also considered and it was decided no further design refinement was necessary as BASIX targets had been satisfied.*

- To conserve the trees growing over the boundary with No 22 appears to be very challenging.
- A staggered cross-section or part balconies on the eastern façade should be considered if satisfactory impact on views from and sunlight to No 22 can be demonstrated.
- The unit on the lower ground floor will likely have poor amenity, probably lacking natural ventilation and sunlight. Its size should be reduced.

*Comment: Amended plans submitted reduce this unit from 3 to 2 bedrooms (Drawing No DA 102) and reconfigure the layout to improve ventilation, overall utility and sunlight into the dwelling.*

- Access on the southern side to the pedestrian entry should be widened if possible.

*Comment: The applicant considered this and concluded the narrow width of the lot prevented widening of the southern path, which will be suitably paved and landscaped. Amended plans (Drawing No DA 103) indicate bedroom and ensuite windows have been removed from the southern wall, to improve privacy.*

- Access to the communal open space should be removed from the basement and relocated from the pedestrian entry at the southern side of the building.

*Comment: This change is shown in amended plans (Drawing Nos 102 & 103) . A 'drop-in' prefabricated staircase will provide access between sections of the paths between the entry to the building and the communal open space in front of the building (on the East Crescent Street side). As submitted, universal access is not provided to the common open space and this is required by a recommended condition, as is approval of the prefabricated staircase by the project arborist, before a construction certificated is issued.*

- Inclusion of BBQ and covered seating in the communal space was recommended.

*Comment: This was considered and not provided, as each dwelling has its own generous balcony with adequate space for outdoor cooking and dining.*

- Regarding excavation, the Panel noted the lower ground floor unit was more than 1.0m below existing ground level, and that slots/lightwells and courtyards should only be used as a secondary light source for habitable rooms.
- *Comment: The design of the lower ground floor unit has been altered, to reduce the depth of the floor plate and improve exposure to east-facing windows for habitable rooms (Dwg No DA 102). Rooms facing east on the north side of the building are about 1.0m or less below natural ground level. The 2<sup>nd</sup> bedroom has a single 1.0m wide floor to ceiling window for light, which is openable to enable ventilation.*
- Privacy with No 22 could be problematic.

*Comment: Amended plans indicate privacy measures include screening devices on levels ground, 1 and 2. The front setback has also been reduced by between approximately 0.5m and 1.1m, to fit within the setback of the existing building and align as closely as possible with buildings either side of the site. These design refinements will reasonably maintain visual privacy between occupants of the proposal and neighbouring development.*

- Alternative fenestration on the northern façade should be considered to maintain privacy.

*Comment: In addition to the design amendments above, the plans show window positioning in the proposed building in relation to windows in the southern side of the building at No26, and the northern walls of No 22's highest level. These drawings indicate there is no direct line of sight between existing neighbours' and proposed windows (Drawing Nos DA 200 & 202). Vertical and horizontal separation of windows reasonably maintain privacy.*

- East-west orientation and topography are challenging factors in limiting overshadowing and providing acceptable levels of midwinter sunlight.

*Comment: Amended and more detailed sun-view and shadow diagrams for the winter solstice (Drawing Nos DA 601 & DA 603) were submitted. These indicate acceptable sunlight for the proposal and reasonable impacts on the top-level windows and rear courtyard (on the garage roof) at No 22. The applicant submits the degree of overshadowing is acceptable in terms of cl. 1.3.7 Part B Section 1 NSDCP 2013, in that development south of a site is especially vulnerable to overshadowing. That the southern, south-eastern and south-western edges of the proposal comply with the height control, is noted as well.*

- Additional high-level windows could be included to the north façade to improve solar access.  
*Comment: Sun-view diagrams (Drawing No DA 603) have been submitted, which indicate sunlight is provided to the proposal as required by the ADG.*
- Views will be impacted by building siting and large balconies projecting forward of the glass line.

*Comment: As mentioned, the proposed building has been sited to align with neighbouring buildings in compliance with the DCP, siting the building at the average setback of the two buildings either side, to East Crescent Street, and within the existing building's envelope. Balconies have been reduced in depth to improve privacy and view sharing over side boundaries.*

*Protecting views over side boundaries is often impractical and unreasonable according to Land & Environment Court view sharing principles, especially when the proposed building complies with applicable height and setback controls. In this case, the section of the building that exceeds the height limit of 12m does not unreasonably impact on views. View impacts are discussed in more detail later in this report, examining the effect of height and setbacks, as part of the proposal's assessment against the DCP.*

## **EXTERNAL REFERRALS**

### **UTILITY SERVICES**

Sydney Water and Ausgrid were consulted and neither raised any objection to the development proposed. Other legislation requires separate approvals from each agency.

## **SUBMISSIONS**

### **Original proposal**

Council notified nearby properties and the Lavender Bay Precinct Committee of the proposed development seeking comment between 24 January 2022 and 4 February 2022. Council received 26 submissions. The matters raised in the submissions are listed below.

The issues raised in the submissions are summarised below and addressed later in this report. The original submissions may be viewed by way of DA tracking on Council's website [https://www.northsydney.nsw.gov.au/Building\\_Development/Current\\_DAs](https://www.northsydney.nsw.gov.au/Building_Development/Current_DAs) and are available for review by NSLPP members.

### **Basis of Submissions**

- Information submitted with the application was inaccurate and incomplete and did not allow proper assessment. Geotechnical, stormwater, noise, arboricultural, traffic and planning reports were cited.
- Inconsistencies and inaccuracies were cited from examination of the architectural plans, meaning that the actual height of the proposal could be greater than proposed, increasing non-compliance with the height standard, include:
  - Thin floor slabs,
  - Inadequate height shown for the lift over-run,
  - Excavation and height proposed were queried as a result.
- Excavation is proposed within 1.0m of each side boundary, which is inconsistent with the DCP, potentially having significant structural impacts on neighbouring buildings.
- Privacy screens would block neighbour's views.
- Tree protection measures recommended by the arborist report will prevent use and enjoyment of the property where Trees 3 and 4 are located, at 22 East Crescent Street.
- The overall height of the proposed building was not measured in accordance with the building height definition of the LEP. Consequently the proposed height exceeds the maximum height of 12m prescribed for the site and a request to vary the height standard is required by the LEP.
- Consent cannot be granted without a written request made per cl. 4.6 of the LEP.
- The proposal does not step with the site's terrain, and will cause loss of amenity, causing overshadowing, view and privacy loss, meaning inconsistency with relevant objectives of the maximum building height standard.
- The five-storey building proposed is not in character with local development and will have unacceptable impact on the streetscape.
- Setbacks to front and rear boundaries do not comply with the DCP, causing the proposal to be an "...obtrusive and overwhelming presence...".

- The top level's setback is only greater than lower levels, measured from the eastern boundary. The DCP requires all levels to have larger setbacks, one submission noting the proposed does not comply with cl. 1.4.7 P8, which, for a flat roof, requires the roof of the top-most level to be established by a line drawn at 36 degrees from the rooftop of the level immediately below.
- The proposal will overshadow the top level of the dwelling at No 22, which presently has unrestricted solar access. As this dwelling is sited to the northern boundary and has no openings on this side (except at the top level, it is noted), maintaining solar access is important. Non-compliance with building height and envelope controls cause this impact.
- Solar access to the east-facing front rooms and balconies of the dwelling at No 22 will be caused by proposed building siting, too far forward on the site, in breach of the DCP.
- A breach of the ADG's building separation for visual privacy is proposed.
- The Design Statement does not demonstrate how relevant objectives of the ADG have been considered or achieved.
- Narrow areas for landscaping may not sustain healthy plant growth.
- A queuing space should be provided on-site for the car-stacker, off Middle Street.
- Vehicle access should be provided from East Crescent Street.
- On-site parking is insufficient as proposed, generating additional demand for on-street parking. Alternatively, apartment sizes should be reduced.
- Various requests for extension of time to consider the proposal were made by neighbours, due to the time of the year (January/February), difficulty in obtaining expert advice, time made available, and the pandemic.
- The submitted heritage report makes no attempt to assess the heritage significance of the site or the heritage values of adjoining properties, and its former historical relationship with No 26 East Crescent Street.
- The proposal is incompatible with design features of prominent inter-war apartment buildings and will "...diminish the aesthetic values of the neighbourhood as a whole."
- Redevelopment of the site will reduce the amount of affordable housing in the area at variance with the SEPP.
- Council's Design Excellence Panel should specifically address non-compliances of this development application.
- The site survey may not have shown all relevant information regarding ground levels.
- If the proposal complied with setback and height controls, views from adjacent properties could be protected.
- Conditions should be imposed to:
  - Ensure the roof is non-trafficable, and not used as open space,
  - Establish the maximum reduced level of the proposed roof, and
  - No mechanical air-conditioning plant is to be sited on the roof.*Comment: a condition is recommend restricting access to the roof, except for maintenance purposes, which also requires installation of suitable safety equipment for personnel.*
- The proposal may cause the loss of two trees located in front of the dwelling at No 22, next to the site, these trees should be protected by conditions of consent.

### **1<sup>st</sup> amendment to application**

The applicant submitted amended plans that were renotified to nearby properties and the Lavender Bay Precinct for 14 days between 12 August 2022 and 26 August 2022. Council received 19 submissions. Matters raised in addition to matters identified above, are listed below:

### Basis of Submissions

- The building does not satisfy certain objectives of the maximum height development standard.
- Where the building extends further west than the building at No 22, windows could be opaque or have screens fitted. West facing balconies (to Middle Street) could have screens fitted to protect privacy of rooms and private open space. As these measures would affect views, the only solution is to increase the setback of the building from Middle Street.
- The methodology of the visual impact assessment submitted with the DA is inconsistent with the “Tenacity Principles” of the NSW Land and Environment Court.
- Non-compliance with the front setback causes significant and unreasonable impact on views from No 22, views to the northwest have not been considered by the applicant’s visual impact analysis.
- The minimum landscape area required has not been provided.
- The 3.0m wall proposed at the East Crescent Street frontage adjoins a level lawn in the front yard of No 22, having unreasonable visual and overshadowing impacts.  
*Comment: The submitted survey plan shows the lawn in question is at level 34.6m. Adjacent open space on the site is between 35.2m and 36.8m. The proposed level adjacent No 22’s front yard is 33.98m. Any impacts will be reasonable, with the proposed ground level being about 600mm lower than the neighbouring land.*
- The proposal should be refused as issues raised have not been adequately addressed by amendments to the application.
- Balconies are excessive, with a depth of more than 2.0m.
- The entry to the carpark appears to encroach onto No 22 and is at a dangerous location where East Crescent Street and Bay View Street intersect.  
*(Comment: amended plans relocated vehicular access from Middle Street to East Crescent Street, using a ramp instead of a car lift to access the basement.*
- The proposal adversely effects the adjoining heritage item and conservation area, west of Middle Street.
- Views of Barangaroo, the city and the ANZAC Bridge are affected, from dwellings north of the site.
- Neighbours have been contacted, seeking approval to install rock anchors beneath their properties. “the owners could not be expected to approve this...Council is requested to require the applicant to clarify its intentions for this aspect of the proposed development...”  
*Comment: The applicant’s planner advised (by email 11 April 23) the application no longer proposes to use rock anchors. An amended geotechnical report was submitted recommending other means (shoring) of protecting adjoining property.*
- The revised vehicle entrance off East Crescent Street will dominate the streetscape.
- Building bulk to Middle Street is excessive.
- Demolition of the building is objected to.
- Reconstruction of the front wall to East Crescent Street should include reconstruction of the timber pergola over the pedestrian entry and use original sandstone.
- No terraces or balconies should be forward of adjoining buildings.
- The setback to Middle Street should be increased to 5.5m for the lower levels and to 10.0m for the top level, to comply with the DCP (cll. 1.4.6 & 10.4.7).
- Lowering the development by 1.23m and increasing setbacks would resolve several issues:
  - Eliminate the need for platform lifts,
  - Improve the scale with neighbouring buildings,
  - Reduced view loss and overshadowing,
  - Retention of the front garden,
  - Improved sunlight and ventilation, and
  - Lower the grade to the basement.

*Comment: This concept would require increased excavation and probably increase potential to damage the trees at No 22. How the open space and the lower ground level unit would relate to one another is also unclear. Access from Middle Street and levels would need to be reconsidered. IN view of the design having acceptable amenity impacts despite setback variations and deemed height compliance,*

## **2<sup>nd</sup> amendment to application**

The applicant submitted amended plans that were renotified to nearby properties and the Lavender Bay Precinct for 14 days between 17 March 2023 and 31 March 2023. Council received 18 submissions. Matters raised in addition to those listed above, are listed below:

### **Basis of Submissions**

- Owners of No 22 advise they will not consent to tree protection works occurring on their property.
- The submitted cl. 4.6 submission is flawed, as the proposal is inconsistent with objectives of the maximum height standard, as:
  - The building does not step with topography,
  - Views are not shared,
  - Privacy is not maintained,
  - Solar access is not retained,
  - The building is out of character with the area, its bulk being exacerbated by an inadequate setback to Middle Street.
- Insufficient planning grounds have been submitted and do not support the proposed variation of the height standard:
  - The degree of variation (14%) is not “minor”, and
  - The proposal is inconsistent with R4 zone objectives.

## **3<sup>rd</sup> amendment to application**

The applicant submitted amended plans that were renotified to nearby properties and the Lavender Bay Precinct for 14 days between 21 July 2023 and 4 August 2023. Council received 4 submissions and the matters raised in submissions, in addition to matters listed above, are listed below:

### **Basis of Submissions**

- The applicant has had several opportunities to amend the proposal and has only made “token” amendments in response to concerns of the community.
- The plans indicate the building is not within the existing envelope – the balconies extend beyond the envelope, affecting privacy and views of residents of the dwelling at No 22 East Crescent Street.

*Comment: As can be seen on the architectural plans, the survey plan (image 2, above) and in several of the images in this report, many buildings, including all buildings at Nos 20 – 28 East Crescent Street have balconies and terraces extending forward of their main building line.*

*For the purposes of this assessment, the building line is taken to be the line formed by the main part of the building (sometimes called a ‘glass line’). This is because the DCP is unclear on whether projections should be within or are able to extend beyond the main building line, and due to the local context as described here. That the Design Excellence Panel adopted this approach, while noting the balconies (since reduced in depth) may effect privacy, and that the Conservation Planner raised no objections to proposed setbacks/building envelope, are noted.*

*Further, the survey plan indicates siting of the existing building is slightly forward of No 22 and almost level with the building at No 26. Siting of the building as proposed is consistent with the objectives of the setback guidelines of the DCP (cl. 1.4.6 Section 1 Part B of the DCP).*

- Additional sun view diagrams indicate the top living areas and the main living room and adjoining balcony to the east, are significantly impacted.

## **CONSIDERATION**

The relevant matters for consideration under Section 4.15 (1) of the *Environmental Planning and Assessment Act 1979* (as amended), are assessed hereunder.

### **SEPP Biodiversity and Conservation 2021**

The land to be developed is in the Sydney Harbour Catchment as defined by this policy. The proposed development is not inconsistent with the following provisions as they apply to the site and the proposed development.

- 6.6 Water quality and quantity
- 6.7 Aquatic ecology
- 6.8 Flooding

The site is in the Foreshores and Waterways Area as defined by the SEPP. No further provisions therefore apply to the land or the proposed development.

### **SEPP (Resilience and Hazards) 2021**

Past use of the site for residential purposes is unlikely to have caused contamination to an extent that would require remediation. Neither is any change to the current use proposed that necessitates investigation or remediation. The application can be approved, as applicable requirements of the policy have been considered.

### **SEPP (Building Sustainability Index: BASIX) 2004**

A valid BASIX Certificate (No. 1269170M\_02, 13 July 2022) for a residential flat building has been submitted with the application which satisfies the SEPP.

### **SEPP (Housing) 2021**

The applicant proposes payment of a contribution of \$563,550.00 in accordance with Part 3 of the SEPP, as the development will cause the loss of 13 affordable dwellings. Details are provided in the submission prepared for the applicant (Attachment 4), prepared by Boston Blyth Fleming Town Planners, of 20 January 2022.

### **SEPP 65 Design Quality of Residential Apartment Development**

The proposal involves the construction of a residential flat building of more than three (3) storeys and more than 4 dwellings. Consequently, SEPP 65 applies to the application.

Summarised below are the key points made by submitted Design Verification Statement to demonstrate consistency of the proposal with the policy's design quality principles.

### **Principle 1 – Context and neighbourhood character**

The design responds to its context and local character by:

- Maintaining a similar building footprint as the existing building, including alignment with adjoining buildings,
- Increasing the eastern and western setbacks of the top level,
- Side setbacks of 1.5m and 3.0m are apt due to the constraint of a narrow site,
- Maintaining similar bulk and scale to the west, while slightly increasing the glass line setback to the west compared to the existing building's setback to Middle Street.

### **Principle 2 – Built form & scale**

This principle has been observed, as:

- Articulation is designed to reduce the building's scale,
- Scale is also reduced by setting back the top level from East Crescent Street,
- Recessed windows and metal banding complementing the design,
- As do curved corners, and
- The top floor will contrast in colour and material being clad in a bronze tone metal.

### **Principle 3 – Density**

The density is similar to the existing building and other flat buildings in the locality, and:

- Site coverage complies with the DCP, 39% is proposed and the maximum is 45%,
- The proposal takes advantage of available transport and facilities, and
- The density is appropriate in McMahons Point and in the site's immediate context.

### **Principle 4 – Sustainability**

In addition to satisfying BASIX criteria, the proposal:

- Provides good natural light and ventilation,
- Offers sun protection from balcony depths and overhangs,
- Includes rainwater harvesting for reuse in the grounds, and
- Will install energy efficient appliances.

### **Principle 5 – Landscaping**

Proposed landscaping includes:

- Private open spaces that optimise orientation and outlook,
- Perimeter planting that improves on the high ratio of paved areas that exist on the site,
- Plant selection that is low maintenance and blends in with the surroundings,
- Deep soil zones and allowance for the protection zones of trees on adjoining land, and
- Landscape design that complements and seeks to protect the significant trees that contribute to East Crescent Street's character.

### **Principle 6 – Amenity**

A good level of amenity, future residents being provided with:

- Generous layout and configuration of apartments,
- Subtle separation spaces to capture northern light,
- Cross ventilation exceeding the minimum 60% of apartments,
- Internal and external living spaces that are directly accessible from each other,
- Communal open space that is well designed, accessible and with northerly orientation, and
- Natural sunlight to all habitable rooms.

**Principle 7 – Safety**

Safety and security will be available to residents, in that the development:

- Has clearly identifiable entries,
- Provides keyed security entry,
- Has a secure basement for parking, storage and other utilities, and
- Clear definition between public and private spaces, with adequate lighting of common areas for pedestrians and drivers.

**Principle 8 – Housing diversity and social interaction**

The application is consistent with current housing and social trends, in that the proposal:

- Replaces older affordable units with luxury apartments befitting the modulating tone of the neighbourhood (and attendant property values),
- Offers high amenity befitting the qualities of accessibility of the area, and
- Includes dwellings that meet housing accessibility and adaptability standards.

**Principle 9 – Aesthetics**

Contemporary architecture is used in creating the proposed building, which functionally and aesthetically:

- Responds to local climate and site conditions,
- Responds to both eastern and western streetscapes with a layered approach to landscaping,
- Articulated, incorporating carefully design elements such as curved, natural-toned brickwork, Art Deco detailing, and clear glass balustrades,
- Is consistent with the colours and textures of its surroundings, including natural sandstone with the above materials, with
- Light and shade breaking up the building’s mass, using reveals, planes and recesses in its composition.

The proposal has also been assessed against the relevant provisions of the ADG as follows:

<b>Amenity</b>	<b>Design Criteria</b>	<b>Comment</b>	<b>Compliance</b>
<b>2F - Building Separation</b>	<p><i>Minimum separation distances for buildings are: Up to four storeys (approximately 12m):</i></p> <ul style="list-style-type: none"> <li>• 12m between habitable rooms/balconies (6m to boundary)</li> <li>• 9m between habitable and non-habitable rooms (4.5m to boundary)</li> <li>• 6m between non-habitable rooms (3m to boundary)</li> </ul>	Discussed below table.	Satisfactory on merit.
<b>3D- Communal Open Space</b>	<p><i>Communal open space has a minimum area equal to 25% of the site.</i></p> <p><i>Developments achieve a minimum of 50% direct sunlight to the principal usable part of the communal open space for a minimum of 2 hours between 9 am and 3 pm on 21 June (mid-winter)</i></p> <p><i>Communal open space is designed to allow for a range of activities, respond to site conditions and be attractive and inviting</i></p> <p><i>Communal open space is designed to maximise safety</i></p>	<p>169m<sup>2</sup> min. required.</p> <p>32% (217m<sup>2</sup>) of the site is the landscaped area shown on Drawing No DA 501.</p>	Yes.

<b>3E – Deep Soil Zones</b>	<p><i>Deep soil zones are to meet the following minimum requirements:</i></p> <ul style="list-style-type: none"> <li>• <i>3m minimum width</i></li> <li>• <i>Minimum 7% of the site area</i></li> </ul>	8% (55m <sup>2</sup> ) provided.	Yes.
<b>3F - Visual privacy</b>	<p><i>Separation between windows and balconies is provided to ensure visual privacy is achieved. Minimum required separation distances from buildings to the side and rear boundaries are as follows:</i></p> <p><i>6m (between habitable rooms and balconies to boundaries)</i>  <i>3m (between non-habitable rooms)</i></p>	Discussed below table.	Satisfactory on merit.
<b>3G – Pedestrian Access &amp; Entries</b>	<p><i>Building entries and pedestrian access connects to and addresses the public domain Access, entries and pathways are accessible and easy to identify</i></p>	<p>From Middle St – a stairway and platform lift provide universal access. The ramp grade is 1:20 which is universally accessible.          From East Crescent St – paths and a stairway provide access.</p> <p>A condition is recommended to provide universal access from the building (main pedestrian entry) to the communal open space.</p>	Yes.
<b>3H – Vehicle Access</b>	<p><i>Vehicle access points are designed and located to achieve safety, minimise conflicts between pedestrians and vehicles and create high quality streetscapes</i></p>	Discussed below table.	Yes.

<b>3J – Bicycle and Car parking</b>	<p><i>For development in the following locations:</i></p> <ul style="list-style-type: none"> <li>• <i>on sites that are within 800 metres of a railway station or light rail stop in the Sydney Metropolitan Area; or</i></li> <li>• <i>on land zoned, and sites within 400 metres of land zoned, B3 Commercial Core, B4 Mixed Use or equivalent in a nominated regional centre the minimum car parking requirement for residents and visitors is set out in the Guide to Traffic Generating Developments, or the car parking requirement prescribed by the relevant council, whichever is less</i></li> </ul> <p><i>The car parking needs for a development must be provided off street</i></p> <p><i>Parking and facilities are provided for other modes of transport</i></p>	<p>Proposed car parking does not exceed the maximum permitted by the DCP.</p> <p>Parking/storage for at least 6 bicycles is required for the development. A condition is recommended to this effect.</p>	Yes.
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<b>4A - Solar and daylight access</b>	<i>Living rooms and private open spaces of at least 70% of apartments in a building receive a minimum of 2 hours direct sunlight between 9 am and 3 pm at mid-winter in the Sydney Metropolitan Area and in the Newcastle and Wollongong local government areas</i>	Discussed below table	Yes.
<b>4B - Natural ventilation</b>	<p><i>All habitable rooms are naturally ventilated.</i></p> <p><i>The layout and design of single aspect apartments maximises natural ventilation.</i></p> <p><i>The number of apartments with natural cross ventilation is maximised to create a comfortable indoor environment for residents – At least 60% of apartments are naturally cross ventilated</i></p>	<p>All units are capable of adequate natural ventilation, however the capability of the lower ground floor unit is lower than those above. This is acceptable due to the easterly orientation. Habitable rooms face east and will be open to cooling summer north-easterly breezes, while being protected from stronger and often unwelcome southerly and westerly winds.</p> <p>80% of the units have acceptable natural ventilation.</p>	Yes.
<b>4C - Ceiling Heights</b>	<i>Ceiling height achieves sufficient natural ventilation and daylight access - Minimum 2.7m (habitable rooms), 2.4m for second floor where it does not exceed 50% of the apartment area.</i>	<p>Floor to floor heights are 3.1m.</p> <p>All habitable rooms appear capable of complying with the 2.7m minimum required.</p>	Yes.

<b>4D 1 - Apartment size and layout</b>	<p><i>Apartments are required to have the following minimum internal areas: 50m<sup>2</sup> (1B), 70m<sup>2</sup> (2B), 90m<sup>2</sup> (3B)</i></p> <p><i>Additional bathrooms increase the minimum internal area by 5m<sup>2</sup> each. A fourth bedroom and further additional bedrooms increase the minimum internal area by 12m<sup>2</sup> each</i></p> <p><i>Every habitable room must have a window in an external wall with a total minimum glass area of not less than 10% of the floor area of the room. Daylight and air may not be borrowed from other rooms</i></p>	All units comply with the minima required, for 2 and 3 bedroom dwellings, with additional bathrooms.	Yes.
<b>4D 2 - Apartment size and layout</b>	<ol style="list-style-type: none"> <li><i>Habitable room depths are limited to a maximum of 2.5 x the ceiling height</i></li> <li><i>In open plan layouts (where the living, dining and kitchen are combined) the maximum habitable room depth is 8m from a window</i></li> </ol>	<p>All apartments are satisfactory.</p> <p>Four of five units have more than one aspect to gain adequate light and air. The exception is the lower ground floor unit, which has a single aspect. It's open living space is just over 9.0m deep. This is deemed</p>	<p>Yes.</p> <p>Acceptable, on merit, and taking site constraints into consideration.</p>

		acceptable, due to the space having large east-facing windows and doors, for adequate natural light and ventilation.	
<b>4D 3- Apartment size and layout</b>	<ol style="list-style-type: none"> <li>1. <i>Master bedrooms have a minimum area of 10m<sup>2</sup> and other bedrooms 9m<sup>2</sup> (excluding wardrobe space)</i></li> <li>2. <i>Bedrooms have a minimum dimension of 3m (excluding wardrobe space)</i></li> <li>3. <i>Living rooms or combined living/dining rooms have a minimum width of:</i> <ul style="list-style-type: none"> <li>• <i>3.6m for studio and 1 bedroom apartments</i></li> <li>• <i>4m for 2 and 3 bedroom apartments</i></li> </ul> </li> </ol>	All rooms are adequately sized and dimensioned.	Yes.
<b>4E - Private open space and balconies</b>	<p><i>All apartments are required to have primary balconies as follows: Studio apartments - 4m<sup>2</sup></i></p> <p><i>1 bedroom apartments - 8m<sup>2</sup>, minimum depth 2m</i></p> <p><i>2 bedroom apartments 10m<sup>2</sup> minimum depth 2m</i></p> <p><i>3+ bedroom apartments 12m<sup>2</sup> minimum depth 2.4m</i></p> <p><i>The minimum balcony depth to be counted as contributing to the balcony area is 1m</i></p> <ol style="list-style-type: none"> <li>2. <i>For apartments at ground level or on a podium or similar structure, a private open space is provided instead of a balcony. It must have a minimum area of 15m<sup>2</sup> and a minimum depth of 3m</i></li> </ol> <p><i>Primary private open space and balconies are appropriately located to enhance liveability for residents.</i></p> <p><i>Private open space and balcony design is integrated into and contributes to the overall architectural form and detail of the building.</i></p> <p><i>Private open space and balcony design maximises safety.</i></p>	All units have compliant balconies and terraces, complemented by the communal open space.	Yes.

<b>4F - Common circulation and spaces</b>	1. <i>The maximum number of apartments off a circulation core on a single level is eight</i>	Circulation spaces are acceptable, each level only having one unit.	Yes.
<b>4G -Storage</b>	Studio apartments- 4m <sup>3</sup> 1 bedroom apartments- 6m <sup>3</sup> 2 bedroom apartments- 8m <sup>3</sup> 3+bedroom apartments- 10m <sup>3</sup>	Lower ground floor storerooms and areas are compliant for each dwelling.	Yes.

**Vehicle access**

Revised vehicle access from East Crescent St is preferred over the previously proposed arrangement with access from Middle Street using a car lift. Proposed access involves using the existing garage aperture in the sandstone retaining wall facing the street and tunnelling the driveway into the basement, curving away from the root zone of the two trees growing into the site from the south.

Council’s traffic engineer is satisfied with the vehicle access arrangement, subject to recommended conditions being applied.

Despite concern being expressed by some submissions regarding potential road safety issues due to the location of the vehicular access to the basement, the traffic engineer has not considered it necessary to impose conditions or modify the proposed design, as the entry is considered safe, with splays included for visibility, for motorists and pedestrians.

**Building separation**

Available separation is limited due to the site’s 13.7m width and adjacent buildings being built to the site’s southern boundary (No 22), and the building to the north (No 26) being setback between about 1.5m and 1.9m from the boundary. With the minimum side setbacks proposed at 1.5m, largely based on the existing building’s footprint, building separation varies between 1.5m and about 3.4m.

This siting is consistent with other development in the locality, noting recent apartment developments have wider side setbacks on wider blocks for vehicular access, from Middle Street mainly, to basements along the side boundary.

In these circumstances and given the proposal has reasonable amenity impacts on neighbours, as discussed elsewhere, building separation performance is adequate.

This is achieved by adopting other design measures to achieve reasonable visual privacy for occupants of the proposed development and their neighbours, as illustrated in the architectural plans.

**Visual privacy**

Amended plans indicate privacy measures, including screening devices on levels ground, 1 and 2. The front setback has also been increased by between approximately 0.5m and 1.1m, to align as closely as possible with buildings either side of the site. These design refinements will reasonably maintain visual privacy between occupants of the proposal and neighbouring development.

Additionally, the plans show window positioning in the southern side of the building at No 26, and the northern walls of No 22, showing window-location in relation to windows in the proposed building. These drawings indicate there is no direct line of sight between existing neighbours’ and proposed windows (Drawing Nos DA 200 & 202).

### ***Solar access and daylight access***

Solar access diagrams indicate all dwellings receive at least 2 hours of direct midwinter sunlight.

Solar access diagrams (Drawing Nos DA 607 & DA609) indicate additional overshadowing to the south (No 22), of side windows to a rumpus and a bedroom on the upper level, on the winter solstice. This is acceptable, given the diagrams show that at least half of the windows will receive direct sunlight, and because the rooms have large windows facing east and west, being at either end of the building. Windows in the western half of northern façade receive full sun from between 1.00pm and 1.30pm, likely until after 3.00pm.

Shadow diagrams indicate some overshadowing to the open spaces in the rear west-facing yard throughout the day.

Overshadowing is already caused by the current building in the morning and until the afternoon. The rear yard has additional shadows cast on it by the proposal and the quantum of additional shadow is estimated to be less than 20%. This is consistent with the guidance provided by ADG Objective 3B-2, when the neighbouring space already does not receive the minimum sunlight required (DA 603 – DA606). This objective also notes upper level setbacks should be increased to reduce overshadowing. While this is possible, it is unnecessary, due to the proposed design having reasonable amenity impacts.

Furthermore, the applicant has submitted, as shown in submitted midwinter shadow and solar access diagrams (DA 601-DA602 & DA607 - DA609), that the west-facing courtyard (on the garage roof) at No 22 will retain three hours of sunlight from noon until 3.00pm, over a reasonable extent of its area. Although the area receiving direct sun reduces as the afternoon proceeds, the overall impact of the proposal is reasonable.

A compliant setback may not improve this situation. Although taller elements of the proposed building are setback closer to the boundary than guidelines of the DCP stipulate, these elements of the proposed building stop casting shadows on this open space after 12.00pm. It appears that fencing and landscaping (not the proposed building) may cause overshadowing in the afternoon.

The applicant also submits that east-west orientation of the site and No 22, the neighbouring lot to the south, is an extenuating factor in these site-specific circumstances.

## **NORTH SYDNEY LOCAL ENVIRONMENT PLAN (NSLEP 2013)**

### **Permissibility**

A residential flat building is proposed, as defined by the LEP, a permissible form of development in the R4 High Density Residential zone.

### **Objectives of the zone**

The objectives of the R4 zone are stated below:

- *To provide for the housing needs of the community within a high density residential environment.*
- *To provide a variety of housing types within a high density residential environment.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*

- *To encourage the development of sites for high density housing if such development does not compromise the amenity of the surrounding area or the natural or cultural heritage of the area.*
- *To ensure that a reasonably high level of residential amenity is achieved and maintained.*

The proposal is consistent with relevant zone objectives, a subject examined in relation to the applicant's request to breach the height standard.

#### **Part 4 – Principal Development Standards**

Maximum building height is the only principal standard applicable. The standard is breached and a request to vary the standard has been submitted and is evaluated below.

#### **Height of Building**

The following objectives for the permissible height limit of 12.0m of clause 4.3 of the LEP are stated below:

- (a) *to promote development that conforms to and reflects natural landforms, by stepping development on sloping land to follow the natural gradient,*
- (b) *to promote the retention and, if appropriate, sharing of existing views,*
- (c) *to maintain solar access to existing dwellings, public reserves and streets, and to promote solar access for future development,*
- (d) *to maintain privacy for residents of existing dwellings and to promote privacy for residents of new buildings,*
- (e) *to ensure compatibility between development, particularly at zone boundaries,*
- (f) *to encourage an appropriate scale and density of development that is in accordance with, and promotes the character of, an area.*

The proposed building has a maximum height of 13.67m thus failing to comply with the height limit of 12m.

The applicant's written request has adequately addressed the 'tests' of this clause and the development is consequently held to be in the public interest because it is consistent with development standard and zone objectives.

#### **Clause 4.6 – Request to contravene the height of building development standard**

The applicant's written request (attachment 3) is made pursuant to Clause 4.6 of NSLEP 2013.

Details of the variation proposed:

- Maximum permitted height: 12.0m.
- Proposed maximum height: 13.67m.
- Proposed contravention: 1.67m or 13.9%.

As the panel would be aware, numerous decisions of the Land & Environment Court assist in the interpretation and application of clause 4.6, a provision common to most, if not all LEPs in NSW. That there is no need to provide commentary on this topic is assumed.

### **Criteria for approval under clause 4.6**

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

1. The consent authority must be satisfied, according to cl. 4.6 (2):
  - (a) the provision for which non-compliance is sought is a development standard as defined by section 1.4 Environmental Planning and Assessment Act 1979 (the Act), and
  - (b) the development standard in question is not excluded from being varied, by cl. 4.6 (6) or (8) of the LEP.
2. The applicant's written request must, according to cl. 4.6 (3):
  - (a) demonstrate that compliance is unreasonable or unnecessary in the circumstances of the case, and
  - (b) demonstrate that there are sufficient environmental planning grounds to justify contravention.
3. As required by cl. 4.6 (4) (a), the consent authority must be satisfied that:
  - (a) the applicant's request has satisfactorily addressed these matters, and
  - (b) that the development is in the public interest, being consistent with the objectives of the standard and the zone in which the development is proposed.
4. Concurrence must be obtained from the Secretary for Planning and Environment (cl. 4.6 (4) (b)). As a delegate of the Secretary, in accordance with cl. 4.6 (5), the consent authority must consider the following in deciding whether to grant concurrence:
  - (a) If a matter of State or regional significance is raised by the standard's contravention,
  - (b) the benefit in maintaining the standard, and
  - (c) any other matters.

### **Evaluation of the applicant's written request**

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

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

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

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

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

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

The applicant's written request (Attachment 3) submits that the proposal is not inconsistent with the objectives of the standard. This is one of the methods (and the most commonly used) suggested by the Land and Environment Court to establish that compliance with the standard is unnecessary or unreasonable.

Having considered the applicant's request, summarised below, its conclusion that compliance with the building height standard is unreasonable and unnecessary, is concurred with.

Objectives of the building height maximum are:

- (a) *to promote development that conforms to and reflects natural landforms, by stepping development on sloping land to follow the natural gradient,*
- (b) *to promote the retention and, if appropriate, sharing of existing views,*
- (c) *to maintain solar access to existing dwellings, public reserves and streets, and to promote solar access for future development,*
- (d) *to maintain privacy for residents of existing dwellings and to promote privacy for residents of new buildings,*
- (e) *to ensure compatibility between development, particularly at zone boundaries,*
- (f) *to encourage an appropriate scale and density of development that is in accordance with, and promotes the character of, an area,*
- (g) *to maintain a built form of mainly 1 or 2 storeys in Zone R2 Low Density Residential, Zone R3 Medium Density Residential and Zone E4 Environmental Living.*

Key elements of the applicant's request, which demonstrate compliance with the standard is unreasonable or unnecessary, include:

#### Objective (a) - Topography:

- The height breach is caused by a localised decrease in the existing ground level beneath the north-eastern corner of the existing building.
- Otherwise, the building is excavated into the landform, which without excavation would have a crescent or crest form between Middle Street and East Crescent Street.

The excavation "...facilitates floor levels which strike a contextually appropriate balance having regard to the levels established to both street frontages with the ground floor level proposed providing a greater level of streetscape consistency compared to the levels currently established on-site."

#### Objective (b) View retention and sharing:

- An analysis has been undertaken using the Court's Planning Principles for View Sharing in the applicant's request to vary the standard. The analysis focuses on "...potential view loss associated with the non-compliant elements of the development from both the public and private domains."
- The request notes an inspection of the locality did not reveal that any public view would be impacted by the part of the building which breaches the height limit.
- The remaining analysis addresses potential view impacts of the proposal's height exceedance, when viewed from No 22 and No 26.

- The views from each property are identified, referring to the visual impact analysis submitted with the application by Urbaine Architectural. (The most relevant images from this report are reproduced below in the section of this report that considers the DCP's provisions for assessing impacts on views and view sharing.)
- The request notes each of these properties have views to the east (Lavender Bay, Luna Park, Milsons Point and a northern portion of the Bridge) that are unaffected by the proposed development. Other views are available across the site to the south east towards the CBD, and southwest towards Glebe, Balmain and Birchgrove.
- In summary, the only views potentially impacted by the non-compliant section of the building are from the upper level (rooftop) dwelling at No 26 (see various images of existing views, above).
- In conclusion, the request submits that "...a view sharing scenario is maintained between adjoining properties in accordance with the principles established..." by the Court.

Objective (c) Solar access to existing dwellings and the public domain:

- Referring to solar access diagrams (Attachment 1) the solar access resulting from the proposal is demonstrated to be acceptable.
- The DCP's requirements are satisfied, as the "...quantum of solar access is considered acceptable..." noting that No 22 is vulnerable to overshadowing by "...any development on the subject property." The request also observes that the part of the development that is not compliant with the height standard does not cause additional overshadowing of the residence at No 22.

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

- The request submits the architectural plans indicate the section of the building non-compliant with the height controls when considered regarding the position of adjoining development, reasonably maintains sonic and visual privacy.

Objective (e) Compatibility between development:

- The applicant's request refers to the Court's decision in Project Joint Venture Developments v Pittwater Council [2005] NSWLEC 191, regrading compatibility of built forms. In doing so, the submission concludes that impacts of the proposal are acceptable, in that "...most observers would not find the building height proposed, in particular the non-compliant building height element, offensive, jarring, or unsympathetic in a streetscape context or incompatible with the built form characteristics of development within the site's visual catchment."

Objective (f) Appropriate scale and density:

- Referring to the DCP's character statement for McMahons Point, the submission concludes the development, despite the height breach:
  - o Is consistent with the desired character for the area, "...which generally conforms to the provisions contained within the DCP and which includes natural materials and colours consistent with those established by surrounding development."
  - o Has a height and number of storeys that complement and are compatible with those of adjoining development.
  - o Has front and side setbacks that are "...consistent with those established by the existing residential flat building on the site and compatible with those established by adjoining development as viewed from both street frontages."
  - o Proposes a quantum of floor space that is acceptable because proposed setbacks and height are "...contextually appropriate".

- And as submitted, the proposal is visually compatible with development in the site's immediate catchment.

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

- This objective does not apply to the R4 zone.

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

In summary, the applicant's written request submits the following to demonstrate adequate environmental planning grounds to contravene the standard:

- The height breach is "...a consequence of a small and localised variation in ground level (existing) created by an accessible subfloor area located below the existing residential flat building. If this subfloor area was inaccessible (or did not exist), ground level (existing) would be measured from the existing ground floor level slab whereby the entire development would comply with the 12 metre height of buildings standard."
- "The extent of the building height breach is confined to the north-eastern corner of the development which as a percentage of the overall building footprint is considered to be quantitatively and qualitatively minor." This is consistent with other Court decisions and the objects of the EP&A Act.
- In accordance with the EP&A Act's objects, the development, despite the height breach is an orderly and economic development of land, given the proposal's consistency of "...parapet height and alignment with East Crescent Street."
- The absence of serious or unreasonable environmental impacts concerning streetscape, heritage and residential amenity also warrant approval of the height breach, the request submits.

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

As outlined, the applicant's written request satisfies these criteria. Compliance has been demonstrated to be unnecessary in the circumstances of the case and has established sufficient environmental planning grounds to justify the non-compliance.

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

***Standard's objectives***

Approval would be in the public interest, as the proposal is not inconsistent with relevant objectives of the standard. The applicant's appraisal of the proposal having regard to the height of building standard's objectives is concurred with.

**Zone's objectives**

The proposal is consistent with relevant zone objectives:

*To provide for the housing needs of the community within a high-density residential environment.*

- A residential building is proposed, which aligns with community expectations and requirements, compared to those that existed when the existing building was erected in the early 20th Century. The local environment is of an arguably high density and the proposed development is compatible with the density of development in the neighbourhood, and it's eclectic character, as noted by Council's Conservation Planner.

*To provide a variety of housing types within a high-density residential environment.*

- The proposal will add to the variety of housing types available in the area.

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

- A residential use is proposed and this objective does not apply. However, occupants of the building would support local economic exchange by patronising neighbourhood businesses.

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

- The density of the proposal reflects the site's environmental capacity and does not compromise local amenity or environmental qualities.

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

- As demonstrated by this report in relation to applicable provisions of SEPP 65 and the Apartment Design Guide, the North Sydney LEP and DCP, a high level of residential amenity will be achieved by the proposal, whilst reasonably maintaining residential amenity in the site's vicinity.

#### **Granting of concurrence**

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

Despite the proposed building height exceeding the maximum permitted, the development's height is not inconsistent with that intended in the locality, a locality of diverse architecture in terms of age, bulk and vernacular, typical of harbourside suburbs in the North Sydney municipality. Matters of state or regional significance are not raised.

##### **Criteria 4 (b): Benefit of maintaining the standard**

As the proposed development reasonably maintains amenity and has acceptable and manageable impacts on natural and built environments, there is no public benefit in maintaining the standard. This is of relevance as many older, existing residential buildings appear to exceed applicable height standards, noting the locality has a distinct pattern of R3 and R4 zones and corresponding height maxima (either 8.5m or 12.0m) in the site's vicinity.

##### **Criteria 4(c): Other matters to be considered**

Breaching the height standard in this instance requires no matters to be considered in addition to those addressed by this assessment.

##### **Approval, despite contravening the development standard**

Should the Panel so resolve, consent may be granted to the development, subject to conditions, as the criteria or preconditions of cl.4.6 have been satisfied.

In summary:

- maximum building height is a development standard as defined by the Act and is capable of being contravened, and it is not excluded from the application of cl. 4.6,
- the applicant's written request to contravene the maximum building height has demonstrated that compliance is unnecessary and that there are sufficient environmental planning grounds to justify building above the permitted height,
- the proposal is in the public interest, as the development is consistent with the development standard's and the zone's objectives, and
- the Secretary's concurrence may be assumed, as:
  - o there is no benefit in the proposed development maintaining the standard,
  - o there are no matters of regional or state planning significance raised, and
  - o no other matters are raised that require consideration.

### **Heritage Conservation**

The subject site is not listed as a Heritage Item and neither is it located in a Conservation Area under Schedule 5 in NSLEP 2013. However the site is adjacent to two heritage items and a conservation area, and the following planning objectives apply to the site:

- (a) *to conserve the environmental heritage of North Sydney,*
- (b) *to conserve the heritage significance of heritage items and heritage conservation areas, including associated fabric, settings and views,*
- (c) *to conserve archaeological sites,*
- (d) *to conserve Aboriginal objects and Aboriginal places of heritage significance.*

Being adjacent to two heritage items, one next door and another across the street, and being immediately east of the McMahons Point South Conservation Area, a heritage assessment has been completed. The assessment was addressed above in the referral section, Council's Conservation Planner finding the proposal to be satisfactory in terms of the LEP's and DCP's heritage provisions, subject to recommended conditions being included in the consent, should the application be approved.

### **Earthworks**

The application involves considerable excavation so an assessment has been carried out under matters raised in clause 6.10 in NSLEP 2013 as follows:

The submitted geotechnical and structural engineers' reports are of sufficient detail in their analysis and recommendations to satisfy requirements of the LEP and DCP.

Observations in these reports consider groundwater (there is no aquifer on the site) and removal/importation of any material being subject to waste control laws and regulations.

Provided the reports' recommendations are implemented and works carried out accordingly, potential risks to the structural integrity of adjoining land and structures thereon will be minimised.

Building and landscape design have been amended to provide increased curtilage for the tree roots of T3 and T4, the trees situated near the site boundary, their trunks situated on No22 to the site's south. Existing ground levels have been retained within the root zones of these trees. To achieve this, the building's footprint has been reduced involving partial reduction of the basement and lower ground floor unit's internal floor area and adjacent terrace.

A revised geotechnical assessment has been submitted which considers the revised design, including the amendments made above, site sampling and testing. Inclusion of this assessment in the consent and the structural engineer's report is recommended, thus requiring implementation of the geotechnical recommendations.

### Residential flat buildings

Clause 6.12 of the LEP aims to prevent isolation of other sites in the R4 zone that would prevent their redevelopment at a higher density (i.e. able to support construction of a residential flat building). Flanked by a well-maintained and recently renovated and extended house and a heritage-listed apartment block, redevelopment by inclusion of either or both sites would have been unlikely.

The LEP stipulates that if a lot less than 900m<sup>2</sup> is left with lower density development (in this case a dwelling house at No 22) consent may not be granted. In November 2021, the applicant made an offer in writing to purchase this property at a value estimated by a registered valuer. The proprietors of No 22 had not replied when the application was made, or since (as far as the author knows).

In any event, adjoining land is capable of redevelopment for high density housing, the applicant submits, presumably because the site at 678m<sup>2</sup> is considerably less than the 900m<sup>2</sup> postulated by the LEP as a site area suitable for residential flats.

### NORTH SYDNEY DEVELOPMENT CONTROL PLAN 2013

In the following table, the proposal is considered having regard to applicable provisions of the DCP.

<b>DEVELOPMENT CONTROL PLAN 2013 – Part B Section 1- Residential Development</b>		
<i>Provision</i>	<i>Complies</i>	<i>Comments</i>
<b>1.2 Social Amenity</b>		
<b>1.2.1 Population Mix</b>	Yes	There are 4 x 3 bedroom dwellings and 1 x 2 bedroom dwelling proposed.
<b>1.2.2 Universal Design</b>	N/A	Adaptable housing is only required when more than 5 dwellings are proposed.
<b>1.2.3 Maintaining Residential Accommodation.</b>	No	The number of residences is not maintained. The contribution to be paid as required by the Housing SEPP helps lessen the impact of reducing the number of dwellings on the subject site.
<b>1.2.4 Affordable Housing</b>	Yes	Assessed above with regard to the Housing SEPP. A contribution is offered to offset the loss of affordable housing.
<b>1.2.5 Housing for Seniors/Persons with disability</b>	N/A	
<b>1.3 Environmental Criteria</b>		
<b>1.3.1 Topography</b> <ul style="list-style-type: none"> <li>• Rock outcrops should not be removed or covered.</li> <li>• Finished ground level should not be higher or lower than 500mm than existing ground level</li> </ul>	Yes.	The geotechnical report indicates rock outcrops may be impacted by the development, however those known to exist on-site have already been affected by the existing development, being underneath the existing building. Bedrock was encountered at relatively shallow depths

<ul style="list-style-type: none"> <li>• 50% of a habitable room's floor area should not be more than 1.0m below existing ground level.</li> <li>• Excavation within 500mm of a property boundary must not be approved unless satisfied there will be no adverse impact on the structural integrity of (buildings on) adjoining land</li> <li>• RFB – No more than 70% of site</li> <li>• Min 50% unexcavated area at the rear</li> <li>• Min 30% unexcavated area at the front</li> <li>• Provision of min 1.5 wide landscaped strip alongside boundaries</li> </ul>		<p>between 0.2m and 1.5m, and up to 2.4m below the surface on the northern boundary.</p> <p>Elevations and sections (Drawing Nos DA200, DA202, 300 and 301) at the building's centre and at the eastern end of the building show the proposed floor levels are more than 1.0m below existing ground level. Southern and northern elevations indicate that earthworks exceed 0.5m.</p> <p>As originally submitted, several habitable rooms in the lower ground floor unit were more than 1.0m below ground level. Amended plans have reasonably addressed this, by reducing the floor area of the unit and shifting all habitable rooms to the north-eastern corner, and improving openings to these rooms, for adequate ventilation and light. On merit, amenity for this unit is consistent with ADG objectives and design guidance.</p> <p>Plans indicate excavation is planned for 69% of the site. Excavation is also proposed within 500mm of all boundaries.</p> <p>The submitted geotechnical and structural engineers' reports are of sufficient detail in their analysis and recommendations to satisfy Council.</p> <p>Observations are also made about groundwater (no aquifer on the site) and removal/importation of any material being subject to waste control laws and regulations.</p> <p>Provided recommendations are implemented and works carried out accordingly, potential risks to the structural integrity of adjoining land and structures thereon will be minimised.</p> <p>The building's and landscaped area's designs east of the building have been amended to provide increased curtilage for the roots of T3 and T4, the trees situated near the site boundary, their trunks situated on No22 to the site's south. Existing ground levels have been retained within the root zones of these trees. To achieve this, the building's footprint has been reduced involving partial reduction of the lower ground floor unit's internal area and it's terrace, this reducing the amount of excavation.</p> <p>A revised geotechnical assessment has been submitted which considers the design assessed by this report, including the amendments made above, site sampling and testing. Inclusion of this assessment in the consent is recommended, thus requiring implementation of the geotechnical recommendations.</p>
<p><b>1.3.2 Bushland</b></p>	<p>N/A</p>	
<p><b>1.3.3 Bush Fire Prone Land</b></p>	<p>N/A</p>	
<p><b>1.3.4 Foreshore Frontage</b></p>	<p>N/A</p>	
<p><b>1.3.6 Views</b></p>	<p>Yes</p>	<p>View sharing and impacts are considered below this table.</p>
<p><b>1.3.7 Solar Access</b></p> <ul style="list-style-type: none"> <li>• RFB – 70% of dwellings 2hrs solar access</li> </ul>	<p>Yes</p>	<p>As noted in the ADG assessment table.</p>
<p><b>1.3.8 Acoustic Privacy</b></p> <ul style="list-style-type: none"> <li>• Living areas Day/Night <math>\leq 40</math> dBA</li> <li>• Sleeping areas Day/Night <math>\leq 35</math> dBA</li> </ul>	<p>Yes</p>	<p>A condition is recommended to ensure compliance.</p>
<p><b>1.3.9 Vibration</b></p>	<p>Yes</p>	<p>Addressed in the submitted geotechnical report, its recommendations are to be implemented via a condition of consent.</p>
<p><b>1.3.10 Visual Privacy</b></p>	<p>Yes</p>	<p>Eastern and western balconies for the top-level apartment have similar privacy relationships with adjoining development as the existing rooftop terrace.</p>

<ul style="list-style-type: none"> <li>Roof top terraces less than 50% of the floor area below or &gt; than 18m<sup>2</sup></li> </ul>		<p>On the ground level and levels 1 and 2, a condition is recommended that on northern and southern elevations the privacy screening at the sides of the balconies be removed.</p> <p>This will maintain sufficient privacy for living areas of the proposed units and adjacent dwellings while improving view-sharing and solar access for No 22, (noting that privacy relationships between balconies will remain like those that exist, albeit there will be additional balconies on the site, above existing ground level).</p>									
<p><b>1.4 Quality built form</b></p>											
<p><b>1.4.1 Context</b></p>	<p>Yes</p>	<p>The character of the building is satisfactory, the eastern setback having been increased to align more closely with adjacent buildings and be within the existing building footprint. The scale and shape of the building is compatible with other buildings in the locality.</p>									
<p><b>1.4.2 Subdivision Pattern</b></p>	<p>N/A</p>	<p>Strata subdivision will not affect the lot layout of the locality.</p>									
<p><b>1.4.3 Streetscape</b></p>	<p>Yes</p>	<p>The proposal's contribution to the streetscape is acceptable. Although the proposed basement entry via the front boundary (the same space already occupied by a single garage) affects the appearance of the street, it is preferable to the alternative access from Middle Street (impractical due to limited accessibility from the street and potential for queuing to use the car lift) and includes adequate safety measures with splays to allow visibility of cars entering and leaving the site for motorists and pedestrians. Re-use of existing sandstone for the basement entry as proposed, will complement local character, compared to using another material such as concrete, tiles or brickwork.</p>									
<p><b>1.4.4 Laneways</b></p>	<p>N/A</p>	<p>The site has been deemed to have a double frontage for the purposes of this assessment, as both streets are fronted by dwellings.</p>									
<p><b>1.4.5 Siting</b></p>	<p>Yes.</p>	<p>Setbacks are considered below.</p>									
<p><b>1.4.6 Setback – Side</b></p>		<table border="1" data-bbox="858 1312 1433 1518"> <thead> <tr> <th>Control</th> <th>Proposed</th> <th>Compliance</th> </tr> </thead> <tbody> <tr> <td colspan="3"><b>Zone R4 (High Density Residential)</b></td> </tr> <tr> <td>Land with 12m high limit – 1.5 &amp; 3.5m Building Height Plane</td> <td>Refer to Heigh Plane Diagram (DA507)</td> <td>No. Acceptable on merit.</td> </tr> </tbody> </table> <p>Non-compliance is acceptable as:</p> <ul style="list-style-type: none"> <li>Siting of the building is consistent and compatible with siting of other buildings in the immediate locality, being within the existing building's footprint and having reasonable amenity impacts,</li> <li>Height and setbacks combine to reasonably limit impacts on neighbourhood amenity, particularly amenity of occupants of buildings either side of the site, and</li> <li>The proposal's bulk and scale, being similar to the extant building (except for an additional storey above the extant height), is expected to have similar environmental impacts and to maintain the neighbourhood's character.</li> </ul>	Control	Proposed	Compliance	<b>Zone R4 (High Density Residential)</b>			Land with 12m high limit – 1.5 & 3.5m Building Height Plane	Refer to Heigh Plane Diagram (DA507)	No. Acceptable on merit.
Control	Proposed	Compliance									
<b>Zone R4 (High Density Residential)</b>											
Land with 12m high limit – 1.5 & 3.5m Building Height Plane	Refer to Heigh Plane Diagram (DA507)	No. Acceptable on merit.									
<p><b>P1 Front setback</b></p> <ul style="list-style-type: none"> <li>To match or equal the average setbacks of adjoining properties.</li> </ul> <p><b>P5 Rear Setback – Rear</b></p>	<p>Yes, on merit.</p>	<p>The amended architectural plans (DA 103) show that the proposed front setback is the average of the setbacks of the primary facades of the buildings on adjoining properties, the design having been amended to not exceed the building line of the existing building (not the existing ground floor balcony) to the eastern boundary.</p>									

<ul style="list-style-type: none"> <li>• To match adjoining properties.</li> </ul> <p><b>P7 Laneways</b></p> <p><b>P8 Building Separation</b></p>		<p>Although the ground level terraces and three eastern balconies project forward of the building line, their impact is reasonable in terms of views, privacy and solar access. Amendments to the design reduced the depth of balconies when the building line was adjusted, to acceptably curtail their potential impacts.</p> <p>Terraces and balconies of other buildings adjacent to and near the site also project in front of the main building line.</p> <p>To the western, Middle Street boundary, Drawing DA 103 shows the building is setback further than the existing building and that the western façade is proposed to stagger backwards from the boundary.</p> <p>This approach is acceptable and complements the streetscape. As the garage with rooftop terrace at No 22 is built to the street (shown as “Courtyard” on DA 103), and the proposed building is positioned to be level with a small outbuilding in the rear yard at No 26, the building’s siting combined with the modulation of the façade, achieves a diagonal transition back from the street, from south to north.</p> <p>Western elements of the building have reasonable overshadowing impacts, notwithstanding the setback not complying. Building separation (side setbacks) has been addressed in relation to the ADG and is satisfactory.</p>
<p><b>1.4.7 Form Massing Scale</b></p>	<p>Yes</p>	<p>As discussed, setbacks and height are acceptable forming an envelope for a building with satisfactory scale and mass. Floor to ceiling heights are capable of compliance, per the ADG.</p>
<p><b>1.4.8 Built Form Character</b></p>	<p>Yes</p>	<p>As above.</p>
<p><b>1.4.9 Dwelling Entry</b></p>	<p>Yes</p>	<p>The central side entry to the building is appropriate given the narrowness of the site and the need for pedestrians to access the site from both Middle St and East Crescent St via the lobby and centrally located lift and stairs..</p>
<p><b>1.4.10 Roofs</b></p>	<p>Yes</p>	<p>The flat roof proposed is consistent with roofs of other unit blocks in the locality.</p>
<p><b>1.4.11 Dormers</b></p>	<p>N/A.</p>	
<p><b>1.4.12 Materials</b></p>	<p>Yes.</p>	<p>Colours and materials are broadly consistent with the character of the area, being like other relatively contemporary buildings in East Crescent St and Middle St.</p> <p>Using materials other than metal cladding is required by recommended conditions, to be more consistent with local character as described by Part C of the DCP.</p> <p>The site not being in a conservation area or readily visible from the Harbour or significant public vantage points, the solid to void ratio proposed is satisfactory.</p>
<p><b>1.4.13 Balconies – Apartments</b></p> <ul style="list-style-type: none"> <li>• Min depth – 2m</li> <li>• Min area – 8m2</li> </ul>	<p>Yes.</p>	
<p><b>1.4.14 Front Fences</b></p> <ul style="list-style-type: none"> <li>• No greater than 1m from front building line &amp; along front boundary</li> <li>• Transparent fences no greater than 1.5m with 50% solid construction</li> </ul>	<p>On merit.</p>	<p>The front entry adaptively uses the existing sandstone wall and stairs from East Crescent Street.</p> <p>On Middle Street the proposed fence is about 1.5m to 2.0m high due to the north to south slope along the boundary, and to screen a hydrant booster. A separate gate and landing provide access via a platform lift. Fencing is of a palisade style and is more than half-open.</p>

1.5 Quality Urban Environment																			
1.5.1	<b>High Quality Residential Accommodation</b>	Yes.	All rooms, balconies and common areas are generously proportioned and satisfy the ADG.  Some main living areas are up to 9.0m deep. As these exceed the minimum width of 4.0m and have openings on eastern and northern sides for light and ventilation, this is acceptable.																
1.5.2	<b>Lightwells &amp; Ventilation</b>	Yes	Light and ventilation comply with the ADG.																
1.5.3	<b>Safety and Security</b> <ul style="list-style-type: none"> <li>No more than 10 dwellings per entry/lobby</li> </ul>	Yes	Each unit has its own entry from a lobby on each level.																
1.5.4	<b>Vehicle Access and Parking</b> <ul style="list-style-type: none"> <li>Part B – Section 10 – Car parking</li> </ul> Limit width of vehicle access to 2.5m	On merit.	7 car spaces, complies. No visitor parking is provided, which is reasonable due to site constraints, access to public transport and access to the site. Parking/storage for 6 bikes is required by a recommended condition.																
1.5.5	<b>Site Coverage</b>	Yes.	Table below.																
1.5.6	<b>Landscape Area</b>	On merit.	<table border="1"> <thead> <tr> <th>Control</th> <th>Required</th> <th>Proposed</th> <th>Compliance</th> </tr> </thead> <tbody> <tr> <td>Site coverage max</td> <td>45%</td> <td>39%</td> <td>Yes</td> </tr> <tr> <td>Landscaped area min</td> <td>40%</td> <td>32%</td> <td>No</td> </tr> <tr> <td>Unbuilt-upon area max</td> <td>15%</td> <td>29%</td> <td>No</td> </tr> </tbody> </table> <p>The rear frontage to Middle Street is primarily an access and service area, in both new and existing development.</p> <p>The high proportion of paving at the building's rear is off set by the maintaining the landscaped area at the East Crescent Street frontage. Although the green roof of the garage entry does not qualify as landscape area, it will complement the landscape area/common open space in the front yard.</p> <p>As the footprint leaves narrow passages at the sides of the building, landscaping is limited on the southern side to take advantage of the existing path and to enable landscaping on the northern side.</p> <p>The paving to landscape ratio is also acceptable, being similar to other development in the locality and being compatible with the streetscape on East Crescent and Middle Streets.</p>	Control	Required	Proposed	Compliance	Site coverage max	45%	39%	Yes	Landscaped area min	40%	32%	No	Unbuilt-upon area max	15%	29%	No
Control	Required	Proposed	Compliance																
Site coverage max	45%	39%	Yes																
Landscaped area min	40%	32%	No																
Unbuilt-upon area max	15%	29%	No																
1.5.7	<b>Excavation</b> <ul style="list-style-type: none"> <li>RFB – No more than 70% of site</li> <li>Min 50% unexcavated area at the rear</li> <li>Min 30% unexcavated area at the front</li> </ul>	Yes	Discussed in relation to cl. 1.3.1.  Proportions of unexcavated areas are varied and are satisfactory as the amount of paving is similar to existing conditions and other development, in a relatively high density locality.																
	<ul style="list-style-type: none"> <li>Provision of min 1.5 wide landscaped strip alongside boundaries</li> </ul>	.	Paving and excavation is limited as much as possible at the front of the site, to preserve the root and tree protection zones of the trees in No 22's front yard, and provide ample common open space and landscaping as already discussed .																

<b>1.5.8 Landscaping</b> <ul style="list-style-type: none"> <li>Planters – 110mm (diameter) x depth 135mm</li> <li>Trees should provide 50% canopy cover over landscaped areas at maturity</li> </ul>	Yes.	See the Landscape Development Officer’s comments in the Landscaping referral section earlier in this report.
<b>1.5.9 Front Gardens</b>	Yes.	Discussed above.
<b>1.5.10 Private and Communal Open Space</b> <ul style="list-style-type: none"> <li>Private open space at ground level – 4m min dimension &amp; 2m above ground level</li> <li>Must be provided off living areas</li> <li>Min communal open space between 25% &amp; 30% of the site area</li> </ul>	Yes.	All units have ample balconies and the lower ground unit a deep terrace for private use.  The communal open space at the front of the building improves upon the existing space, by formalising it into two levels with stairs for pedestrian access from the street and the building.  As mentioned, details of this open space being made universally accessible are required by a recommended condition.
<b>1.5.11 Swimming Pools</b>	N/A.	
<b>1.5.12 Tennis Courts</b>	N/A.	
<b>1.5.13 Garbage Storage</b>	Yes.	Waste management facilities are acceptable, despite not having a garbage chute which is considered unnecessary for a small unit development, as proposed.
<b>1.5.14 Site Facilities</b>	Yes.	Storage internal and external to each unit satisfies ADG design objectives.
<b>1.5.15 Servicing of new lots</b>	N/A.	
<b>1.6 Efficient Use of Resources</b>		
	Yes.	BASIX requirements are satisfied with a valid certificate having been submitted.

### View impact assessment

The Land and Environment Court’s Planning Principles for View Sharing (Tenacity Consulting v Warringah [2004] NSWLEC 140) have been used to evaluate the proposal.

The images presented in this report aim to depict a range of vistas, to provide Panellists an adequate basis for their evaluation of the proposal. That the views represented in these static images and the impacts of proposed development on them, cannot replace the benefits obtained from a site inspection, was kept in mind when conducting this examination. Also noted is the fact that a step or two in any direction, or turning to face another direction, can dramatically alter a view and the perceived impact of a proposed development on that view.

Submissions have been received from residents either side of the site, at 22 and 26 East Crescent Street, objecting on grounds the proposed development will impact their views. The impact of the proposal on views from these properties is assessed below. Views from other nearby properties are not unreasonably affected by the proposal. As noted in the applicant’s height variation request, public views are not affected, by that part of the building that breaches the height standard. Based on the author’s visits to the site and surrounds, this observation is also germane to the whole development.

### 22 East Crescent Street

#### ***Principle 1 – the views to be affected***

*Matters to consider include:*

- *A whole or partial view.*
- *View subjects – e.g. famous or significant landmarks, land and/or water, shorelines of harbours, estuaries or beaches.*
- *The value, or quality of the view.*

**Comment:** As the site and the adjoining premises straddle the McMahons Point ridge, they enjoy views to the east and west. To the east, Lavender Bay, Milsons Point and part of the Harbour Bridge can be seen. Northwards from the front of No 22, the North Sydney CBD is visible. There is no view over the southern boundary as the building south of No 22 is located well forward of the subject residence.

To the west the view is in a broad arc (over neighbours' boundaries) from the western side of the North Sydney CBD to St Leonards on the horizon, to Waverton, Balls Head the western harbour and the harbour's southern shore. These views from No 22 are shown below.



**Figure 12: Easterly view from the top level deck of No 22, directly over East Crescent Street. Behind the eucalypt to the right, is part of the large block of flats that obscures the Bridge-view.**



**Figure 13: View to the west from the top storey balcony at No 22 over the Middle Street frontage toward Balls Head, the western harbour and Balmain beyond.**



**Figure 14: View from the lower level balcony at No 22 over the northern side boundary and the deck in front of the building on the site, No 24, toward the North Sydney skyline in the distance. The image indicates the close alignment of the buildings north from No 22, with the alignment interrupted by the balconies of a flat building located at 28 East Crescent Street. It is worth noting that the timber-with-metal-railing-deck on the site is about 1.0m higher and about 0.5m narrower than the proposed ground floor balcony proposed. Consequently, the proposed balcony will have a reasonable effect on views and privacy between neighbours. This is shown in Figure 17.**



**Figure 15: View from the top floor of No 22 across the site to the northwest, over McMahons Point towards Waverton and Balls Head. This view will be affected by the proposal, to the right of the corner of the existing building, shown in the lower right section of the image.**

***Principle 2 – from where views are obtained***

- *Over front or rear, or side boundaries.*
- *View from standing or sitting positions.*
- *Retaining side views and sitting positions is difficult and often unrealistic.*

**Comment:** Views above are available over front and rear boundaries (images 12 and 13) and side boundaries (images 14 and 15). The images of all views shown were taken standing, and would also be available from a sitting position. While of varying quality, these views would probably be available from all east-facing windows and from upper level windows facing west.

***Principle 3 – extent of impact on views***

- Views from living areas (indoor – kitchens, lounges, rumpus, dining, and outdoor – decks, terraces, balconies) are more significant.
- Consider the qualitative impact.

**Comment:** These views are from relatively high-use locations, being balconies and indoor living spaces. The verandahs and decks take advantage of the dwelling's height and location. View-quality over the front boundary is moderate, due to partial blocking by vegetation and a tall building. Over the rear boundary the vista is of a high quality. The north-westerly vista (image 15) is also a high-quality view, although it is not of the same standard, and relies upon being over the side boundary and the existing building being lower than that permitted. As with views from the front (eastern side) of the dwelling, available panoramas are of a high quality, although they are also reliant on views over side the side boundary. The impact is reasonable, as the proposal is setback a similar distance as the dwelling at No 22 and balcony depths have been reduced. Removal of privacy screens as recommended also help to 'strike a balance' between privacy and view sharing.

Views to the east and west, of respectively moderate and high quality are unaffected, while the impact to the north is minor. To the south-west, the view is obscured by larger trees and is of low to moderate quality.

***Principle 4 – assess the reasonableness of the development***

- *A development which complies fully with planning controls is more reasonable than one which does not.*
- *Increasing degrees of non-compliance contribute to the impact being less reasonable.*
- *For a compliant development, whether the design could be altered to lessen the impact on neighbour's views and still maintain the amenity and development potential of the subject site, should be considered.*

**Comment:** The applicant's request has demonstrated the impacts of the height variation to be reasonable. It follows therefore, that the proposed development is also reasonable, in terms of its overall height. Even though setbacks do not comply numerically, their performance is satisfactory, as demonstrated with regard to the DCP and the ADG. The effect of the building envelope on views and consideration of its impact on neighbours' views are examined in detail, at the conclusion of this view assessment.

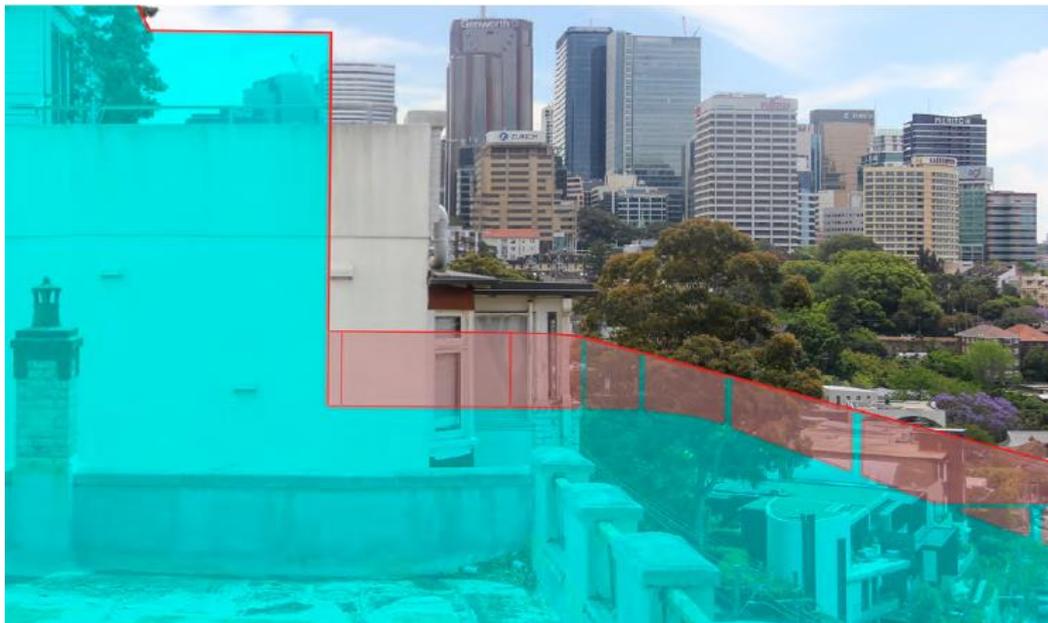
***The severity of impact on views***

- *The severity of the impact on a view is derived from considering the previous four principles:*
  - *Are the views of a high or low quality, or somewhere between?*
  - *Are the views direct or indirect, from standing or sitting positions?*
  - *Are the views from regularly used living spaces or those less regularly used?*
  - *Is the development compliant with development controls?*
  - *Can the design be altered to achieve or improve view-sharing without impacting development potential or amenity of the site and proposed development?*

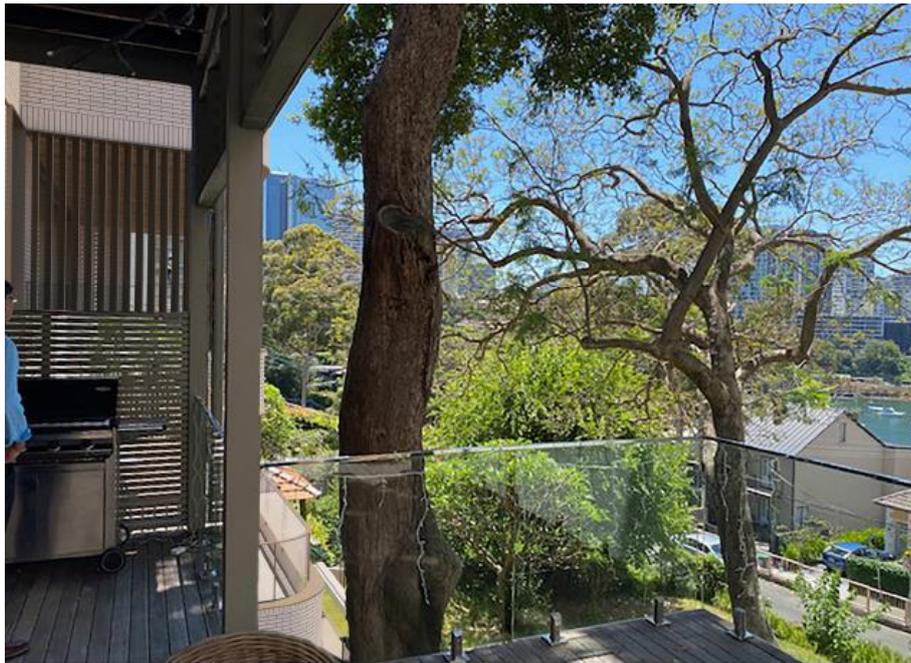
**Comment:** Views to the east from No22 are partial and obscured by trees deemed worthy of conservation. The views are of a moderate to high quality and are available from indoor and outdoor living areas, from standing and sitting positions, over the front (East Crescent Street) boundary and the Middle Street boundary to the west. The proposal has no impact on these views.

To the north the view is over a side boundary. How the northerly view is affected by the proposal is shown below.

Views are available from each level to the east and more-so upper levels on the western side of the dwelling, from indoor and outdoor living areas, from standing and to a lesser extent sitting positions.



***Figure 16: View from top level of No 22 to the north, the area of the proposed building in blue and glass balustrades of the proposed rooftop deck in red.***



**Figure 17: View to the north/north-east from the lower deck at No 22, indicating the position of the ground floor balcony proposed (central, lower part of image, just left of the tree in the centre) (Urbaine Architectural).**

The impact of the development is deemed low to moderate. When the view in an arc from north to east is considered, the impact is somewhere between minor and moderate and closer to minor.

The westerly vista is of a high quality and the proposal's impact is more toward the moderate end of the scale, as relatively higher-quality parts of the view are maintained – views of the harbour and shores either side are unaffected, while views of urban development north of the harbour will be affected.

In the analysis of the impact potentially caused by non-compliant height and side setbacks, which concludes this view impact assessment, the proposal is considered reasonable, despite proposed variations to building envelope controls.

## **26 East Crescent Street**

Most if not all dwellings in this building have vistas that vary in quality, depending on which level of the building they are on and in which direction they face.

### ***Principle 1 – the views to be affected***

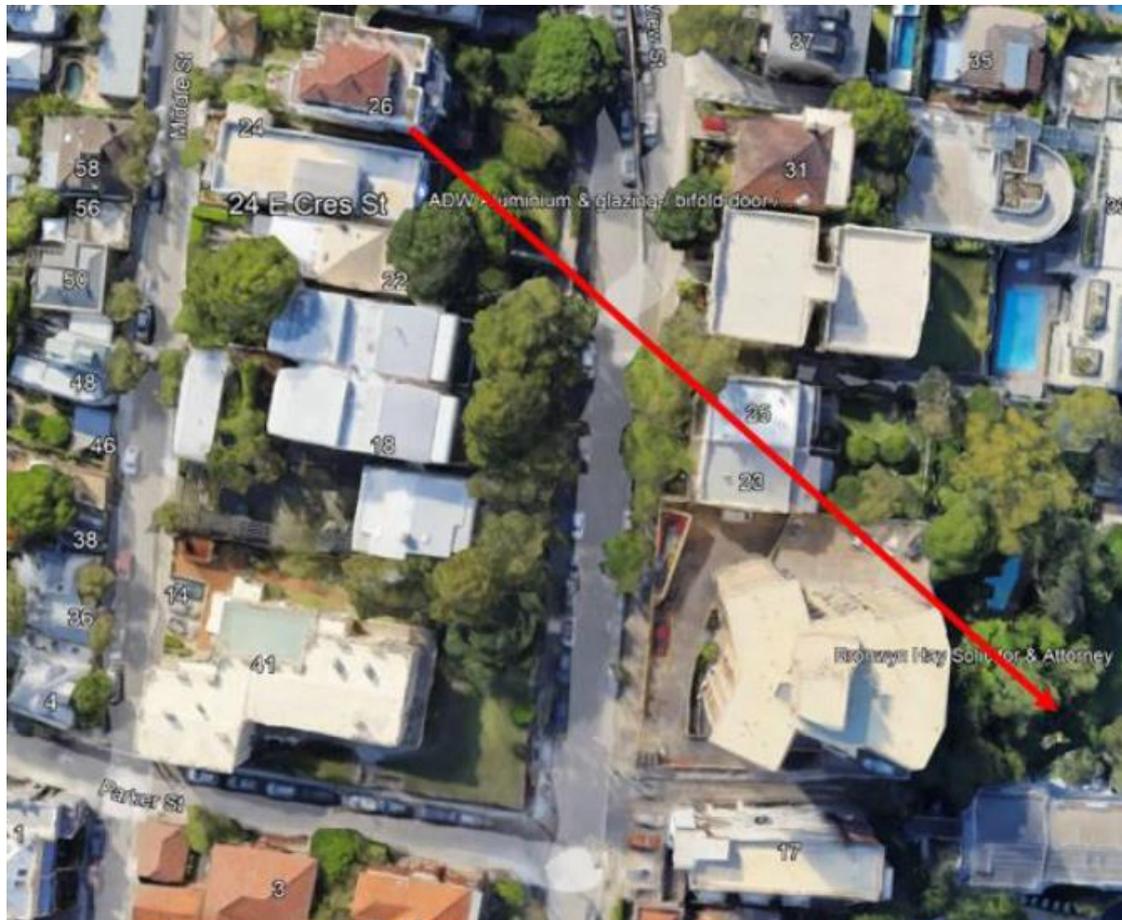
*Matters to consider include:*

- *A whole or partial view.*
- *View subjects – e.g. famous or significant landmarks, land and/or water, shorelines of harbours, estuaries or beaches.*
- *The value, or quality of the view.*

**Comment:** As with the dwelling at No 22, the block of flats at No 26 has views of varying quality to the east, north and west. Possible southward views are obscured by existing development and vegetation, including on the site and at No 22 and No 20.

To the east the view is partial, obscured by a large block of flats south east of the site (images 18 and 19, below). Harbour and waterside landmarks are visible in both directions. In an east to north arc, views are available of Lavender Bay, Milsons Point and the North Sydney CBD.

To the west, the view is whole and uninterrupted. Views of the harbour, Birchgrove, Balls Head and Waverton are available.



**Figure 18: The views from No 26 (top left) to the south east, of the Bridge, Harbour and the Sydney City skyline is interrupted by a large block of flats (bottom right). The 'view line' is represented by the red line. The proposal does not impact these views from the front of the flats in the building at No 26.**



**Figure 19: South east view indicating the view impact depicted by the 'view line' in the preceding image, taken standing in the site's front yard adjacent to the site's boundary with No 26.**



**Figure 20: View in an easterly direction from the rooftop unit terrace at No 26.**



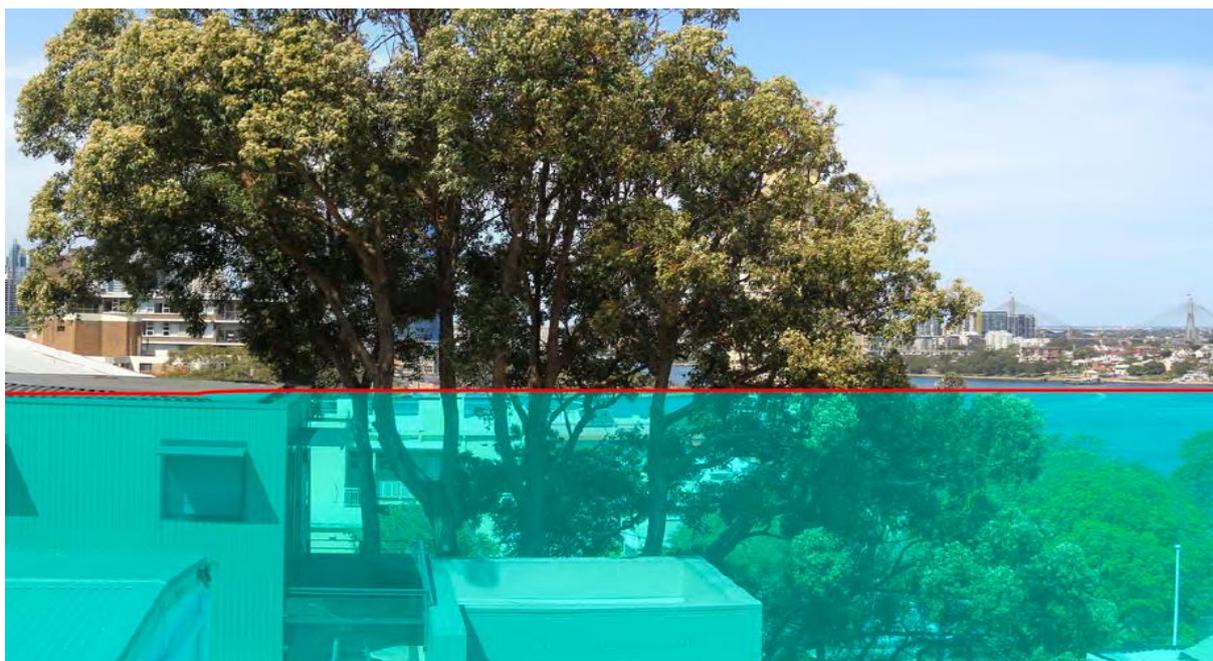
**Figure 21: Views from roof top dwelling at No 26, to the south east. As indicated by image 19, this vista reduces in quality when viewed from units below roof level.**



**Figure 22: Northeasterly view from the rooftop dwelling at No 26 East Crescent Street. Views similar to this would be available from lower levels, and would likely be partly obscured by vegetation and other buildings.**



**Figure 23: South westerly view from the western balcony of the rooftop dwelling at No 26. The view is across the site. The image was taken from a standing position.**



**Figure 24:** A similar view as above, showing the building envelope proposed, with the Balmain shore and the ANZAC bridge still visible. If the viewer changes their outlook to the south-west or west, to the right, the impact is significantly reduced.

**Principle 2 – from where views are obtained**

- Over front or rear, or side boundaries.
- View from standing or sitting positions.
- Retaining side views and sitting positions is difficult and often unrealistic.

**Comment:** The above views are reasonably representative of views from the front (east) and rear (west) of the building at No 26. Views in easterly and westerly directions are uninterrupted and would be available, at varying quality, from most if not all levels of the building. All images were taken from a standing position and the views would generally be available sitting down. Views to the south, southeast, and southwest rely on looking over the boundary with the site. Views to the northeast and northwest are over the neighbouring site boundary of the building at No 28 (no images of these views are provided, as they are not affected by the proposal).

**Principle 3 – extent of impact on views**

- Views from living areas (indoor – kitchens, lounges, rumpus, dining, and outdoor – decks, terraces balconies) are more significant.
- Consider the qualitative impact.

**Comment:** Views are available in the above-identified directions, from rooms of all types, depending on the unit and at which level. The author inspected a number of units in the building, sufficient to assess the impacts of the proposal. The quality of the views, as with those from No 22, depend on the height from where the view is observed and the direction in which the observer is looking.

In broad terms, views east and west as depicted above are of a higher value or quality from No 26 compared to No 22, being less obscured by vegetation, and these images having mostly been taken from the rooftop dwelling, a vantage point about 1 storey (approx. 3.0m) higher than the top level of the dwelling at No 22.

From No 26, views east and west are of the highest quality and remain unimpeded by the proposed development. The view to the south is impacted as shown above, this view having a lower quality than those from the front, being obstructed by existing development and vegetation.

**Principle 4 – assess the reasonableness of the development**

- *A development which complies fully with planning controls is more reasonable than one which does not.*
- *Increasing degrees of non-compliance contribute to the impact being less reasonable.*
- *For a compliant development, whether the design could be altered to lessen the impact on neighbour's views and still maintain the amenity and development potential of the subject site, should be considered.*

**Comment:** Reasonableness of the proposal is discussed below, at the conclusion of this visual impact evaluation, having regard to views from properties either side of the site. For the reasons proffered, redesign or modification is not warranted to improve view impacts.

**The severity of impact on views**

- *The severity of the impact on a view is derived from considering the previous four principles:*
  - *Are the views of a high or low quality, or somewhere between?*
  - *Are the views direct or indirect, from standing or sitting positions?*
  - *Are the views from regularly used living spaces or those less regularly used?*
  - *Is the development compliant with development controls?*
  - *Can the design be altered to achieve or improve view-sharing without impacting development potential or amenity of the site and proposed development?*

Views to the east and west are of a high quality or value. Views are available from high use and lower use rooms - living/lounge rooms, kitchens and bedrooms of various units were inspected. Views to the south-southwest are of a lesser quality, being over a side boundary and obstructed by buildings and vegetation.

Taking the previous steps of the analysis into account, and the analysis below, the severity of impact of the proposal on views from units at No 26 East Crescent Street is considered to be minor to moderate, and acceptable.

**In consideration of the proposed building envelope**

To decide whether the proposed height and setback variations constitute a 'reasonable' development in terms of the Court's view-sharing principles, impacts of the proposed envelope on views could be tested by comparing it with a compliant envelope. There are factors which make this exercise unnecessary.

Firstly, the clause 4.6 submission demonstrated the breach of the building height standard is limited to a small section of the north-eastern part of the building, and that the breach is 'technical' in nature. This is because the breach results from a localised and abrupt change in levels, also contributed to by the way the LEP defines building height. Notwithstanding, the development may only affect views from perhaps the upper two units at No 26 in a south easterly direction over the site, where the proposed building exceeds the height control. In any event, this view is partly blocked by the tall apartment building across the street as shown in image 18.

It appears likely that a development with compliant side setbacks would have a lesser impact on views and solar access than the proposed development. Examining the photos in this report and those in the submitted visual impact analysis, it appears there would only be a marginal improvement.

These views being over side boundaries the Tenacity Principles suggest there should be a lower expectation or likelihood that they can be reasonably maintained. This is because view sharing is held to be more difficult to achieve, with the bulk of a building typically being close to and along the majority of the length of side boundaries, compared to typically larger setbacks at the front and rear, where views are less-likely to be built out.

As discussed elsewhere in this report, the setbacks (side, front and rear) have been found to be acceptable, in terms of reasonably preserving residential amenity, and being compatible with the streetscape, local character and heritage. Expecting the applicant to alter the design to ameliorate minor view impacts over side boundaries, given other impacts of the building's siting, bulk and scale are acceptable with respect to other matters for consideration, would be unreasonable. If the view impacts were, using the words of Senior Commissioner Roseth in the Tenacity decision, severe or devastating, and other elements of amenity were to experience a greater qualitative impact, then the proposed development would be considered less reasonable. In these circumstances comparison with a compliant envelope and potentially requiring a proposal's amendment, would be justified.

As the dwellings at No 22 and No 26 both have views to the east and west (albeit of varying quality), which are not affected by the proposal, is pertinent. Being the primary views, as the VIA calls them, they cannot be built out under current planning controls.

#### ***View impact assessment conclusion***

The availability of these views not impacted by proposed development is seemingly contemplated by Roseth at the third step of the Tenacity planning principles. That is, to assess the extent of the impact for the whole property, not only for the view that is affected. Although Roseth only referred to views from various room types, this does not detract from the fact that better views can be obtained from verandahs and decks and other rooms in a dwelling, and from different levels and in different directions, when a site and building affords these options. These criteria are pertinent to the circumstances of the subject application's assessment, with the occupants of the site and buildings next door having vistas in more than one direction and from varying levels in the respective buildings (noting options are relatively limited in an apartment block compared to a dwelling house).

Availability of these uninterrupted high-quality or high-value views to the east and west lessens the impact of a development on another dwelling or building as whole. Accordingly, the degree of impact on other views partly taken (shared) by the proposal, over side boundaries, is arguably less significant. If the views affected by the proposal over side boundaries were the only views available to the neighbours, then the impact of the proposal would be of a higher or more severe degree, and the variation to setbacks would be deemed less reasonable, or even unreasonable, requiring amendment of the proposal.

Accordingly, taking all these factors into account, this assessment concludes that there is no need to further scrutinise the building envelope (height and setbacks) via comparison with a compliant proposal. The development in terms of its impact on views from neighbouring properties is reasonable, especially when considered with other amenity impacts being acceptable.

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### **Relevant Planning Area - Lavender Bay - McMahons Point Neighbourhood – Part C of NSDCP 2013**

Pertinent aspects of the development's complementing local character have been addressed by the Conservation Planner's assessment.

In terms of desired character for this area, the DCP promotes housing types as permitted by land use zone. For built form, development is to generally conform with Part B of the DCP, assessed above.

As assessed and recommended, materials to be used are timber, sandstone, face brick, masonry or painted render.

The proposal is consistent with these requirements.

### **LOCAL INFRASTRUCTURE CONTRIBUTIONS PLAN**

The subject application has been assessed against the North Sydney Local Infrastructure Contribution Plan 2020 and is subject to payment of contributions towards the provision of local infrastructure. The contribution payable is \$96,890.00, being 1% of the development's value, being \$9,689,000.

A condition requiring the payment of contribution at the appropriate time is included in the attached conditions.

### **ALL LIKELY IMPACTS OF THE DEVELOPMENT**

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

<b>ENVIRONMENTAL APPRAISAL</b>	<b>CONSIDERED</b>
1. Statutory Controls	Yes
2. Policy Controls	Yes
3. Design in relation to existing building and natural environment	Yes
4. Landscaping/Open Space Provision	Yes
5. Traffic generation and Carparking provision	Yes
6. Loading and Servicing facilities	N/A
7. Physical relationship to and impact upon adjoining development (Views, privacy, overshadowing, etc.)	Yes
8. Site Management Issues	Yes
9. All relevant section 4.15 (1) considerations of Environmental Planning and Assessment (Amendment) Act 1979	Yes

## **PUBLIC INTEREST**

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

## **SUITABILITY OF THE SITE**

The proposal is located in the R4 High Density Residential zone, where residential flat buildings are a permissible form of development. The proposal is considered to be suitable for the site having regard to the merits of the proposal as evaluated.

## **CONCLUSION + REASONS**

The proposed development has been considered under the relevant Environmental Planning Instruments and policies including NSLEP 2013 and NSDCP 2013 and is generally found to be satisfactory.

The application proposes a residential flat building, a permissible form of development in R4 High Density Residential zone.

The written request submitted by the applicant to breach the building height development standard has been evaluated and is acceptable.

Council received 67 submissions from 37 correspondents that raised concerns about building height, setbacks and density, impacts on local heritage and character, two existing trees that overhang the site from adjacent land, potential impacts on neighbours' views and privacy, and overshadowing of adjacent buildings and private open space. These matters are considered in this report and are addressed by recommended conditions of consent, as required.

As discussed, impacts of the proposal are satisfactory and the application is recommended for approval subject to recommended conditions of consent.

## **HOW WERE THE COMMUNITY VIEWS TAKEN INTO CONSIDERATION?**

The subject application was notified to adjoining properties and the Lavender Bay Precinct on four separate occasions, for 14 days each time. Issues of objection have been considered in this report. Conditions of consent are recommended to maintain the amenity of adjoining properties and the character of the streetscape.

## **RECOMMENDATION**

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

**THAT** the North Sydney Local Planning Panel, exercising the functions of Council, assume the concurrence of the Secretary of The Department of Planning and Environment and invoke the provisions of Clause 4.6, North Sydney Local Environmental Plan 2013 with regard to the non-compliance with Clause 4.3 and grant consent to Development Application No. 5/22 for demolition of the existing building and associated works and construction of a 5 storey residential flat building of 5 dwellings with basement parking for 7 vehicles, landscaping and associated works, and strata subdivision of the completed development, on land at 24 East Crescent Street McMahons Point, subject to the conditions appended to this report.

**J M DAVIES**  
**EXECUTIVE ASSESSMENT OFFICER**

**STEPHEN BEATTIE**  
**MANAGER DEVELOPMENT SERVICES**

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