



### NSLPP MEETING HELD ON 06/09/23

#### Attachments:

1. Site Plan
2. Architectural Plans
3. Landscape Plans
4. Clause 4.6 Request
5. Housing economic analysis

**ADDRESS/WARD:** 20-22 Waruda Street, Kirribilli

**APPLICATION No:** 358/22

**PROPOSAL:** Alterations and additions to residential flat building to convert 27 strata titled flats into 7 apartments, landscaping and associated works.

#### PLANS REF:

Plan No.	Rev No.	Description	Prepared by	Dated
DA000	E	Cover	Nettleton Tribe Architects	21 08 2023
DA001	D	Site Analysis		27 06 2023
DA002	E	Site Plan		21 08 2023
DA004	D	Site Survey		27 06 2023
DA005	D	Demolition Site Plan		27 06 2023
DA006	D	Demolition Plans		27 06 2023
DA008	D	Demolition Elevations North and South		27 06 2023
DA009	D	Demolition Elevations East and West		27 06 2023
DA010	D	Demolition Section		27 06 2023
DA100	E	Plan Ground		21 08 2023
DA101	E	Plan Upper Ground		21 08 2023
DA102	F	Plan Level 1		21 08 2023
DA103	E	Plan Level 2		21 08 2023
DA104	E	Plan Level 3 (to 6) Typical		21 08 2023
DA108	E	Plan Level 7		21 08 2023
DA109	F	Plan Roof		21 08 2023
DA110	F	Plan Plant		21 08 2023
DA203	E	Elevation North		21 08 2023
DA204	F	Elevation South		21 08 2023
DA205	E	Elevation East		21 08 2023
DA206	F	Elevation West		21 08 2023
DA301	D	Section AA		27 06 2023
DA302	D	Section BB		27 06 2023
DA304	E	Adaptable Unit Plans Level 1		21 08 2023
DA305	E	Adaptable Unit Plans Level 2		21 08 2023
DA421	E	Section Threshold Detail		21 08 2023
DA500	E	Materials Board – Exterior Finishes		21 08 2023
LP01-D4422	L	DA Cover Page	Dangar Barin Smith	29 08 2023
LP02-D4422	L	Ground Landscape Plan	Dangar Barin Smith	29 08 2023
LP03-4422	L	Upper Ground Landscape Plan	Dangar Barin Smith	29 08 2023

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LP04-4422	L	Level 1 Landscape Plan	Dangar Barin Smith	29 08 2023
LP05-4422	L	Level 2 Landscape Plan	Dangar Barin Smith	29 08 2023
LP06-4422	L	Roof Landscape Plan	Dangar Barin Smith	29 08 2023
-	3	Disability Access Report	Inclusive Places	14 11 2022
-	-	Acoustic DA Assessment	Acouras Consultancy	09 11 2022
-	-	BCA Assessment Report	BCA Logic	09 11 2022
-	C	Fire Engineering Services Letter	Holmes Australia LP	07 11 2022
-	0	Desktop Geotechnical Study Report	Douglas Partners	15 03 2022
-	-	Structural Design Report	MPN Structural Design and Engineering	November 2022
-	C	Waste Management Plan	Elephants Foot	10 11 2022

**OWNER:** Strata Plan 58872

**APPLICANT:** The Trustee for the Stable Innovations Sydney Harbour Unit Trust

**AUTHOR:** Jim Davies, Executive Assessment Planner

**DATE OF REPORT:** 29 August 2023

**DATE LODGED:** 22 November 2022

**RECOMMENDATION:** Authority be delegated to the Manager Development Services to grant consent to the application, upon submission of design amendments to the Manager's satisfaction and any conditions considered necessary, and subject to the recommended conditions of consent, appended to this report.

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## EXECUTIVE SUMMARY

This development application seeks approval for alterations and additions to a strata-subdivided residential flat building. The application proposes to create 7 x 3-bedroom dwellings with parking for 11 cars and bicycle storage for residents and visitors. The existing, 60's vintage residential building accommodates 27 units and several parking spaces in 2 levels. Vehicle access is from Waruda Street and Beulah Street, for the existing building and the proposed scheme.

Determination of the application by the North Sydney Local Planning Panel is required due to the application being subject to the provisions of SEPP 65 – Design Quality of Residential Apartment Development, the proposed development exceeding the height of buildings development standard.

Notification of the proposal attracted 17 submissions. 9 objected, raising key these issues:

- Non-compliance with the building height development standard,
- Likely impacts on views, of the Sydney Opera House, Circular Quay, the Sydney Harbour Bridge and the Royal Botanic Garden, from residences north of the building proposed to be renovated.
- The refurbished building will be out of character with the 'village' character of Kirribilli and incompatible with nearby heritage-listed buildings and the Conservation Area in which the site is situated.

A comprehensive summary of issues raised by submitters is included in this report.

The development entails a substantial reworking of the building, including removal of the building's façades and inner walls with only structural columns and the floor slabs remaining. Legal opinion was provided with the application, submitting the application is for alterations and additions to an existing building as a matter of fact, and is not development for the purpose of constructing a new building.

This was a key concern at Pre-DA stage when a meeting was held and advice provided to the applicant, and when the application was first lodged. As a matter of principle, more stringent application of planning controls is applied to a new building and for alterations and additions, a more flexible approach is typically taken.

Based the legal opinion provided, the applicant seeks no "concessions", in that the application should be assessed on merit, in accordance with applicable controls of State and local planning frameworks.

Structural engineering advice has been provided, indicating the partial demolition and redevelopment of the building may be safely completed. A sustainability assessment submitted with the application concluded that the proposal more sustainable, mainly in terms of saving of embodied energy in the remaining structure and transport emissions and energy, compared with completely demolishing the building and erecting a new one.

Key planning matters addressed in this report include:

- Consideration of the height exceedance and the applicant's request to vary the height development standard,
- The replacement of 27 dwellings with 7 dwellings, and the economic analysis submitted in support of the proposal,
- Impacts of the proposed development being in a sensitive harbourside location and its impacts on the scenic qualities of Sydney Harbour and the surrounding cityscape,
- Impacts on neighbours' views, and other amenities,
- Setbacks, site coverage, landscaped area and unbuilt upon area, and landscaping,
- Heritage, streetscape and local character compatibility, and
- Vehicular and pedestrian access to the building.



## DESCRIPTION OF PROPOSAL

In seeking consent for the subject application, the applicant has two main aims:

- To address a Council-issued fire safety order which has not been resolved, and
- To achieve a remodelled, highly sustainable and attractive residential building comprising seven high-quality apartments.

The application submits that compliance with the order on its own would not be feasible, although it becomes so, when combined with a substantial renovation of the building to provide housing of a standard commensurate with its 'dress circle' location.

The proposal comprises:

- Demolition of the existing building except structural columns and floor slabs.
- Excavation is required to enlarge the lower parking area and place it underground, in the site's northern section, along the eastern side boundary, where the structure extends the extant two-level 'plinth' to the eastern boundary, over an underutilised area, currently used for drainage and parking access.
- A few insignificant trees require removal (none was noticeable when the site was inspected in April 2023).
- Alterations and additions to the building to create 7 x 3-bedroom apartments, with generous areas for living and associated domestic activities.
- Balconies facing south and west, with generously sized windows to the south and southeast, with smaller and discreetly positioned windows to bedrooms and bathrooms to the north, east and west, to enable ventilation and maintain privacy.
- Parking for 11 cars (none for visitors) and storage for 8 bicycles (1 for visitors).
- Roof top viewing and leisure facilities, for the uppermost apartment on level 7.
- Architectural plans show where the building's current footprint is located, in dotted red line. The proposed enlargement of the building, by filling the western side of the "L" shape and by extending the glass-line forward to be parallel with Waruda Street to form a roughly triangular floor plate, is evident.
- A series of structures is proposed between the western extent of the building and the Beulah Street boundary, and along the Waruda Street frontage, to provide for landscaping and to house utility services. These have been reduced considerably in height and scale via amendments made following assessment of the first-submitted design, to align more closely with the Beulah Street footpath level and have a more human scale, and not tower over the public domain. Instead of dominating the streetscape, these structures will give scale to the subject, renovated building, while adding amenity and improving micro-climatic conditions of the building's frontages and the adjacent public domain.

The photomontage and drawings below illustrate the proposed building. A full set of architectural drawings accompanies this report (Attached).



***Figure 1: Photomontage of proposed development, as viewed from across Waruda Street (Nettleton Tribe Architects).***

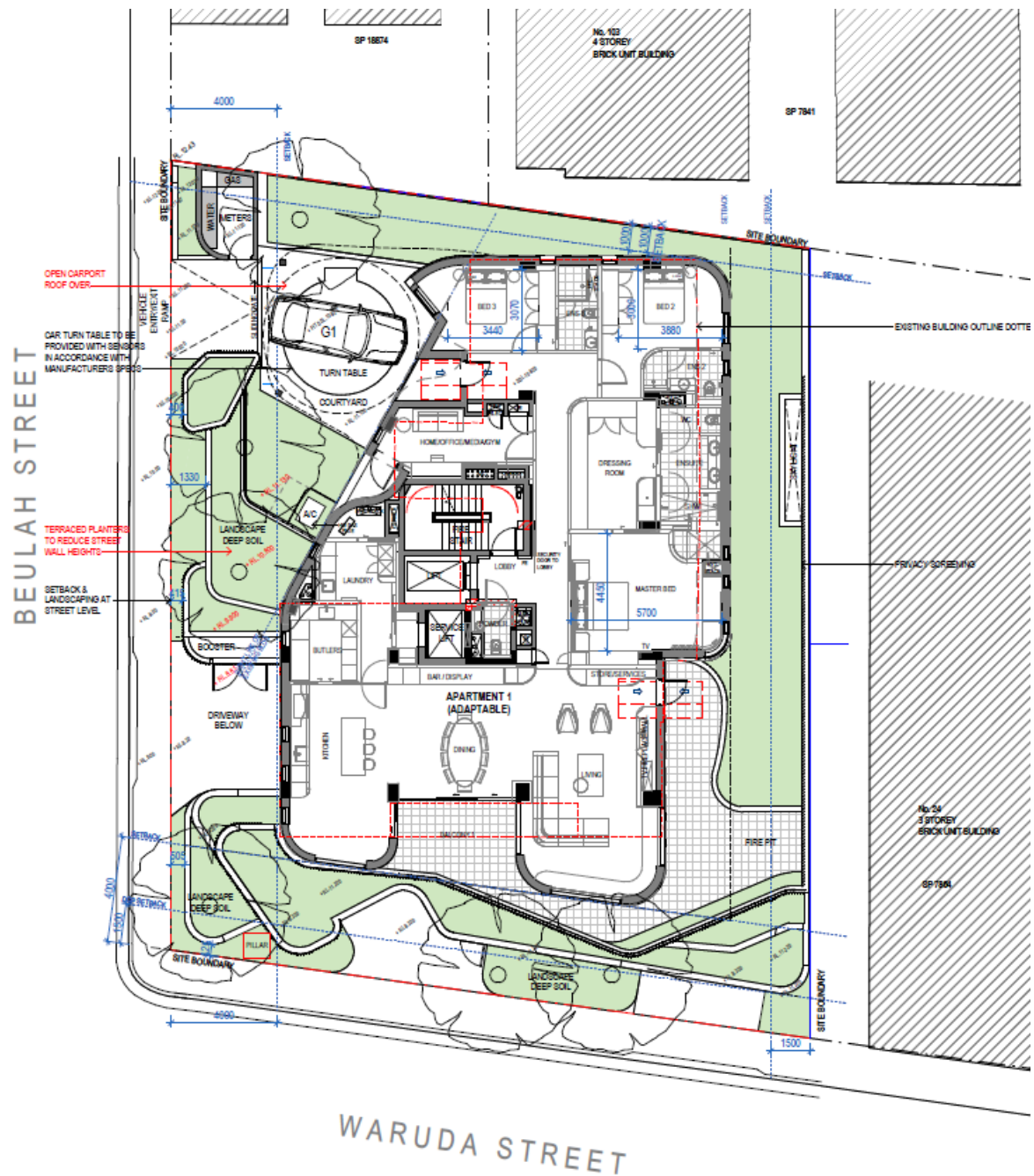
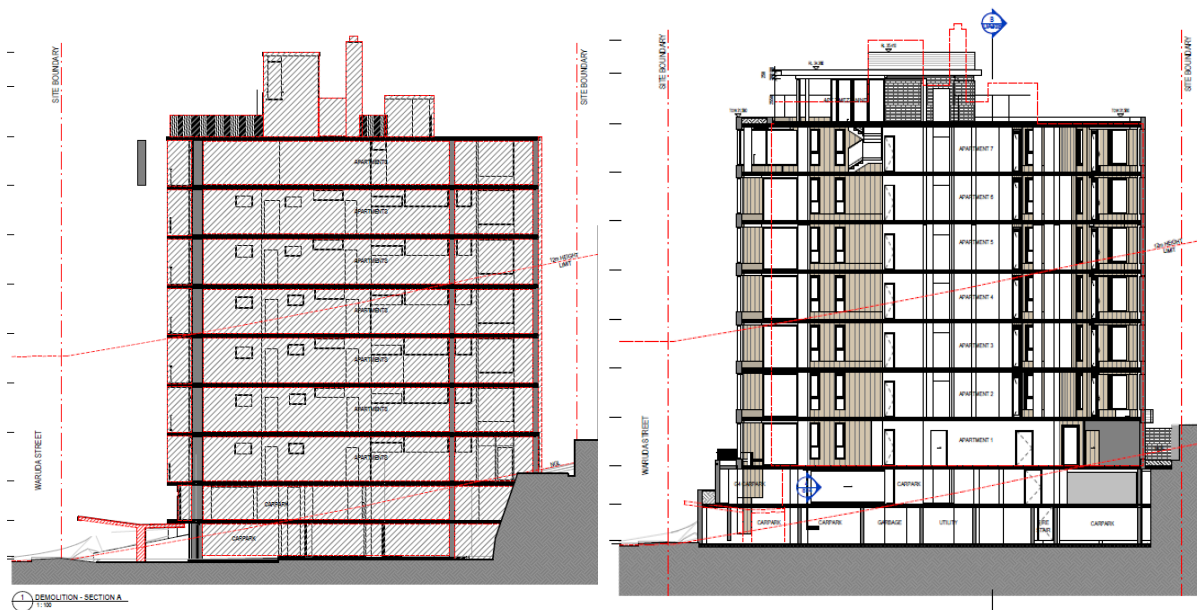


Figure 2: Site and Level 1 floor plan (Nettleton Tribe Architects).





**Figures 3 & 4: Sections through the building, showing demolition to the left and proposed development to the right (Nettleton Tribe Architects).**



**Figure 5: Southern elevation showing pedestrian and vehicular access to the semi basement level from Waruda Street (Nettleton Tribe Architects).**





**Figure 6: Western elevation showing pedestrian and vehicular access to the carport (left) and the upper ground parking level from Beulah Street, and an indication of proposed landscaping. Also shown in both drawings is linework to compare the existing building envelope (red dotted line), the originally submitted design (blue outline, for changes to roof only), and the current design (Nettleton Tribe Architects).**

## STATUTORY CONTROLS

### North Sydney LEP 2013

- Zoning – R4 Medium Density Residential
- Item of Heritage – No
- In Vicinity of Items of Heritage – 107 Kirribilli Avenue – St Julian residence, 109 Kirribilli Avenue – Admiralty House, 29 Waruda Street – Regent Apartments
- Conservation Area – Kirribilli Heritage Conservation Area
- Foreshore Building Line – N/A
- Environmental Planning & Assessment Act 1979 – Local Development
- SEPP (Precincts—Eastern Harbour City) 2021
- SEPP 65 Design Quality of the Residential Apartment Development (and the Apartment Design Guide)
- SEPP (BASIX) 2004
- SEPP (Biodiversity and Conservation) 2021, Chapter 10 Sydney Harbour Catchment
- SEPP (Resilience and Hazards) 2021, Chapter 4 Remediation of Land

## POLICY CONTROLS

- North Sydney DCP 2013
- North Sydney Local Infrastructure Contributions Plan 2020

## DESCRIPTION OF SITE & LOCALITY

The site is occupied by a 9 storey residential block of 27 flats (including 2 semi-basement levels of parking, with 7 residential levels) erected in the mid-'60s. Situated on the corner of Waruda and Beulah Streets, the land falls and drains from north to south, to Waruda Street. The site has an area of 721m<sup>2</sup>, and an irregular shape. Respective frontages to Waruda and Beulah Streets are 24.4m and 29.9m.

The existing strata subdivided (SP 58872) building is in poor condition and unoccupied. There is next to no vegetation on the site, which is mostly paved, where not covered by the building. Vehicle access is provided by two driveways from Beulah Street, one to the upper parking level, the other to an open concrete parking area. The lower parking area is several garages accessed via a series of 6 driveways off Waruda Street.



**Figure 7: View of the subject building to the right, looking westwards up Waruda Street, the steepness of Beulah Street is indicated and reflected in the tall sublevel of the building in the centre of the image, to the left of the subject building.**

The site is flanked on all sides by other residential flat buildings of varying sizes, ranging in height from 3 to 5 storeys. A selection of nearby buildings is shown below, also giving an impression of the character of the Kirribilli Heritage Conservation in which the site and its neighbours are located.



**Figure 8: Residential buildings east and south of the subject unit block, either side of Waruda Street**





**Figure 9: Northeasterly view across Waruda Street toward Beulah Street showing residential buildings to the north, which face Kirribilli Avenue.**



**Figure 10: Inter-war blocks of flats west of the site, up Waruda Street.**



**Figure 11: Axial vista from Beulah Street between two buildings, the one to the left behind a tree is opposite the site. In the foreground is the Beulah Street Wharf, now disused for ferry services, a popular fishing spot.**

**RELEVANT HISTORY**

**Current Application**

<b>Date</b>	<b>Action</b>
18 07 2022	Pre-DA Meeting held. Key advice provided to the applicant: <ul style="list-style-type: none"> <li>• A comprehensive submission under cl. 4.6 of the LEP to justify the height of works above the 12m height standard.</li> <li>• "...any new works above the existing height and outside the existing envelope are unlikely to be supported, given that the existing building is already significantly higher than the LEP maximum building height limit."</li> <li>• A geotechnical report being submitted.</li> <li>• Submission of a view impact assessment, referencing the importance of harbour views' contribution to Kirribilli's character.</li> <li>• Structures on the rooftop being removed should be considered to minimise view impacts.</li> <li>• Submission of 3D sun-view and shadow diagrams due to potential solar access impacts.</li> <li>• Rooftop communal space has potential to cause unwanted noise and nuisance for neighbours, and visually invade their privacy.</li> <li>• Bulk and scale should be considered, including the degree of demolition in terms of the Court's Coorey v Hunter's Hill decision and "the appropriateness of the design, particularly in terms of the built form and fenestration details, in the context of the conservation area."</li> <li>• Although constrained by the building setbacks, building separation of the Apartment Design Guide should be observed for new elements.</li> <li>• The proposal should not increase non-compliance with site coverage.</li> <li>• Consideration should be given to rationalising the number of vehicle crossings to a maximum of 2.</li> <li>• Street tree planting along both frontages is an opportunity to consider.</li> </ul>

	<ul style="list-style-type: none"> <li>The design considered at the meeting was not supported as it included elements considered to be uncharacteristic, or undesirable (Cl. 8.4.7 Part C North Sydney DCP 2013).</li> <li>Landscaping should provide canopy trees, with green walls and spillover planting considered.</li> <li>Engineers noted requirements for providing a construction traffic management plan, the site being on school emergency evacuation routes, maintaining footpath levels on both streets and that no onsite detention is required.</li> <li>"...any additional building elements on the roof level are unlikely to be supported because of the significant non-compliance with the LEP maximum building height limit."</li> <li>Improve the interface along both frontages, including adequate setbacks and soft landscaping, to enhance the streetscape.</li> </ul>
19 09 22	Previous DA (DA 282/22) lodged.
30 09 22	DA 282/22 rejected, as plans were incomplete, and a comprehensive visual (view) impact assessment was not provided.
22 11 2022	Subject application lodged.
09 12 2022 – 18 01 2023	First notification period extended due to the Christmas/New Year holiday period. 11 submissions received.
24 01 2023	DA considered by North Sydney Design Excellence Panel (DEP).
03 04 2023	Site inspected, with applicant.
April – June 2023	Submission of unsolicited amended plans and other documents, responding to DEP design critique and discussions at site inspection.
May & June 2023	Three emails sent to the applicant requiring addressing of several planning and heritage-related issues with the proposal.
14 06 23	Conducted view analysis from property near corner of Upper Pitt and Peel Streets.
14 07 23	Formal request for information sent to applicant (uploaded to Portal), based on previous emails and subsequent assessment.
19 07 23	Amended application formally submitted.
31 07 23 – 04 08 23	Amended application renotified for 14 days.
16 08 23	Inspected the site from the Opera House, Campbells Cove, and the Bridge, to help determine the proposed development's visual impact.
18 08 23	<p>Following exhaustive assessment of plans submitted in July, advice was conveyed to the applicant, regarding necessary fine-tuning of the application:</p> <ul style="list-style-type: none"> <li>Reviewing the request to vary the height control.</li> <li>Reducing size and height of rooftop structures</li> <li>Changing the colour scheme</li> <li>Reducing the height and bulk of landscaping structures along each frontage and increasing the height and density of landscaping</li> <li>Removing the driveway and carport from the Beulah Street frontage</li> <li>Increasing the floor to ceiling clearance for at least two accessible parking spaces, on either parking level</li> <li>Increasing landscaped area and reducing paved (unbuilt upon) areas</li> <li>Further reducing glazing on the southern façade</li> <li>Demonstrating that adequate daylight would be available to all units, noting the proposed floor to ceiling height of 2.55m (due to limitations of using the existing structure)</li> <li>Considering planting street trees</li> <li>Providing more than one unit type to comply with DCP population/housing mix requirements.</li> </ul>
21 08 23	Amended plans submitted resolving most of the above matters, except dwelling mix (a report was agreed to be submitted following completion of this report, for the Panel's consideration (attached)), the carport and driveway between the building's western elevation and the Beulah Street boundary and height clearance in the parking area for accessible parking spaces.



## INTERNAL REFERRALS

### Building

Council's senior building surveyor reviewed the submitted BCA compliance report, which concluded the proposal can comply with the BCA. Conditions are recommended.

## WASTE MANAGEMENT

Council's waste management officer advised:

- Properties with a lift must have a garbage chute and recycling bin on each level
- Recycling bins should be provided on each floor next to the garbage chute.
- The residential waste bins need a temporary bin holding area for collection off the street and within 2 meters of the street alignment. The proposed holding bay is not large enough to fit the minimum 6 x 240L bins.
- There needs to be functional bulky waste storage area to hold household clean up material.

**Planning comment:** Proposed waste management facilities accommodate these requirements.

## HERITAGE

The site is the Kirribilli Heritage Conservation Area and several heritage items are close by. The Conservation Planner's report follows:

### 1. Heritage Status and Significance

The subject property is an 'Uncharacteristic' item located within the Kirribilli Conservation Area. The existing seven storey reinforced concrete and brick masonry, c1965 residential flat building was designed in the post-modern style with some American Post War Googie style detailing along the Ground and Upper Ground Levels on the Waruda Street frontage. It has a flat roof with a balustrade, and balconies located on its southern, eastern and western façades. The building is generally intact and retains its original form and character.

The Kirribilli Conservation Area is significant:

- (a) as a consistent early 20th century residential area with a mix of Federation and one or two storey Inter War dwelling houses and two or three storey residential flat buildings on large allotments with a strong orientation to the water.*
- (b) as a largely intact early 20th century suburb retaining much of the urban detail and fabric seen in gardens, fencing, street formations, use of sandstone and later reinforced concrete "naturale" fencing, sandstone kerbing, natural rock faces, wide streets and compatible plantings.*
- (c) for its unity derived from its subdivision history which is still clearly seen in the development of the area.*
- (d) as containing the important government buildings Kirribilli House and Admiralty House.'*

The building does not contribute positively to the character and heritage significance of the Kirribilli Conservation Area as it is not from the core period of development, is modernist in style, it is monolithic in character, is over-scaled compared to characteristic buildings and is constructed from an uncharacteristic pale orange-brown brick.



## 2. Heritage Impact Assessment

### a) Sydney Opera House Buffer Zone

Policy 2.2 in the Conservation Management Plan for the UNESCO listed Sydney Opera House requires that:

*'All agencies of government involved in planning, assessing and overseeing the continued development of areas within the Sydney Opera House World Heritage Area Buffer Zone have a statutory obligation to protect the significant World, National and State Heritage Values of the Sydney Opera House.*

*No development either temporary or permanent within this Buffer Zone should adversely affect these values. This includes:– respect for the deliberate contrast of the white shells of the Opera House with the darker tones of its setting and the city; – its distinctive form, silhouette and visual isolation on Bennelong Point from all other structures and landforms.'*

The specified wall cladding is Spectraview 4234 'Chalk White Matt' and will be used extensively on the facades. This does not comply with the requirement of the UNESCO world heritage listing. It is recommended that a sample board will a different wall cladding to ensure that the building assists in providing a dark tone to contrast the white sails of the Sydney Opera House.



**Figure 12: Sydney CBD from harbour ferry on approach from east.**



**Figure 13: Kirribilli from ferry: Dark buildings in OperaHouse Buffer Zone as per UNESCO requirements. There are some pale rendered Interwar buildings in Kirribilli but these are heritage colour schemes. A new development should be able to comply with the UNESCO requirements despite architectural fashion.(Google Maps)**

b) North Sydney LEP 2013 Clause 5.10

As the building does not contribute to the early twentieth century streetscape, no objection is raised to its adaptation into seven apartments. The proposal does not comply however, with the *Section (1) (b) to conserve the heritage significance of heritage items and heritage conservation areas, including associated fabric, settings and views,* in that the setting of the building will not be consistent with the character of the Kirribilli Conservation Area.

The character statement for the Kirribilli Conservation Area notes that gardens are a strong feature in the streetscape. The proposal however, has a poor landscape setting dominated by tall retaining walls and fences. The height of the walls to the Waruda and Beulah Street frontages is of particular concern as these will contribute bulk and hardscape close to the boundary. The podium height on the southern and eastern elevation will be one / two storeys and will be inconsistent with the single storey height of the garaging to 24 and 26 Waruda St frontage. The podium level of the building still presents as a fortress. Whilst 28 Waruda Street has a very tall sub-base, this does not mean it is an appropriate or desirable outcome for the street. A better transition can be achieved.



**Figure 15: The new development will present a blank wall on its East Elevation to 24-26 Waruda St adjacent to its staircase.**

c) North Sydney DCP 2013

An assessment of the amended proposal, with reference to Part B, Section 13 of the North Sydney DCP 2013 has been made with the following controls in the DCP being of note:

**13.4 Development in the Vicinity of Heritage Items-** There will be no additional impact to the UNESCO world heritage listed Sydney Opera House as a result of the proposed form, massing and scale. The proposed Chalk White tile however, requires substitution with a darker toned material to comply with the buffer zone requirements. Similarly, its impact upon the nationally listed (DCCEEW) Sydney Harbour Bridge, Admiralty House, Garden and Lodge and Kirribilli House, Garden and Grounds, the locally listed apartment building at 29 Waruda Street and dwelling at 107 Kirribilli Avenue, is considered to be acceptable due to adequate physical separation.

**13.6.1 General Objectives O1 Ensure that new development is designed to retain and complement the character and significance of the conservation area-** The proposal does not comply as it will provide inadequate soft garden setting in the front and side setbacks and will have a hardened edge to the western and southern boundaries. The character of the building will be one of a modern infill building which is defined as 'uncharacteristic'. Recommendations are provided below to improve its character.

**13.6.2 Form, Massing and Scale - Objective O1 To ensure new development has a compatible and complimentary building form and scale to that which characterises the conservation area-** - The proposal will not be able to adopt a characteristic bulk and scale as the original core structure of the post-modern building will be retained.

**P9 New work may adopt a contemporary character, provided the development is not likely to have a detrimental impact on the characteristic built form of the area, particularly in terms of bulk, scale, height, form or materials-** The proposed facades will present as modern infill development which is defined as 'uncharacteristic'. Characteristic development should use materials that form part of the palette of materials used in the conservation area or at the very least, materials that are visually submissive. The proposed white wall cladding will not achieve this as the conservation area is characterised by dark brick Interwar apartment buildings and Federation brick houses.

**13.6.6 Infill Development – Objective O1 To ensure that new development is consistent in terms of materials, bulk, scale, character and setback with significant buildings in the heritage conservation area-** As noted above, the proposal will not be able to adopt a characteristic bulk and scale as the original core structure of the post-modern building will be retained. As previously noted, the character of the building facades, particularly at street level requires further amendment.

**13.8 Demolition –P7 Council will only consider the demolition of uncharacteristic items if the applicant can satisfactorily demonstrate: (a) that the replacement building will allow the site to be reclassified from at least “uncharacteristic” to “neutral”-** Contrary to the consultants' comments, the proposal will not adopt a 'Neutral' status as a result of the proposed works. The development will retain its 'Uncharacteristic' status because of its scale and massing. If it were reduced to three or four storeys, then it could become a 'Neutral' item. This control cannot be achieved in this particular circumstance.

*(b) that sustainability outcomes of the proposed replacement development reasonably justify the change-* The applicant has submitted sustainability information that outlines that it is a better environmental income to modify the existing building than to demolish and build a new structure. This control is now satisfied.

**13.9.3 Verandahs and Balconies- Provision P6 Glass balustrades are not appropriate on pre-1970's buildings or where visible from the public domain-** The proposal includes non-compliant glazed balustrades that will not contribute to the character of the conservation area. It is recommended that flat steel or steel palisade balustrades be utilised as balustrades in conservation areas add detail to buildings whilst glazed balustrades create a stark façade.

**13.9.4 Materials - Objective O1 To ensure that materials and finishes are consistent with the characteristic elements of the heritage item or heritage conservation areas-** A materials board is requested. The Chalk White wall cladding is not supported (as discussed above) as it does not comply with the UNESCO Sydney Opera House requirements.

**13.9.5 Garages and Carports- Objective O1 To ensure that vehicular accommodation does not detrimentally impact upon the significance of the heritage item or heritage conservation area-** The building will have three garage openings and driveway crossings and these limit the potential for street trees and a soft landscape setting. It is recommended that the northern parking area be deleted and be replaced with soft landscaping on the ground plane.

**13.9.7 P2 Do not develop front garden areas for carparking or pave extensively. P6 Maintain traditional driveway widths and settings-** As noted above, the parking egress points detract from the provision of a soft landscape setting.

### Part C

**8.4.4 Significant Elements – Streetscape P4 Street Trees** – The proposal has the opportunity to include new street trees as inadequate numbers of canopy trees have been provided. It is recommended that Council’s Landscape Officer provide a recommendation for these giving consideration to potential view loss.

**8.4.6 Characteristic Built Elements- Car accommodation P18 Parking at rear off laneways or set back behind the main building line-** The proposal is not compliant with regard to the number of driveway crossings.

**8.4.7 Uncharacteristic elements P1 Over-scaled additions; dormers and skylights to front roof slopes; roof terraces; carports and garages in front setbacks; high solid fences to the street; rendering and painting of face brick; paving of front gardens; extensive glazing; glazed balustrades; loss of original detail; modern infill development and residential flat buildings-** The character of the facades presents as a modern infill building largely as a result of the proposed materials and the extensive use of glazing. It is requested that the glazed balustrades be amended to have some solid material and that the extent of glazing be reduced as these are defined as Uncharacteristic (meaning ‘undesirable’ ) elements in the Area Character Statement.

### 3. Conclusion

The amended submission has made few changes to address the previously raised heritage issues. The sustainability submission has resolved control 13.8 in NSDCP 2013.

Further information is required:

- Provide an Exterior Finishes Samples Board to ensure that the building will have dark exterior tones in accordance with Policy 2.2 of the UNESCO Sydney Opera House Buffer Zone. Matt finishes are requested to be consistent with the character of the Kirribilli Conservation Area. Shiny surfaces and extensive glazing are to be avoided. The proposed Spectraview Chalk White tile 4234 does not comply.

The following requires amendment to improve the streetscape presentation of the building:

- i. The northern parking space and turntable be deleted and replaced with additional soft landscape and street trees. The applicant may need to consider providing less parking spaces than is usually expected for apartments of this size.
- ii. Provision of more soft landscape setting on the Beulah and Waruda Street frontages on the ground plane to provide a greater sense of a building in a garden that is visible from the public domain. This may require additional demolition of the existing structure, relocation of the gas and water meters, reduction in height of the booster cupboard and car park exhaust.
- iii. Reduce the height of the retaining walls to the garden beds in the south-western corner. Ideally, while acknowledging site constraints arising from previous excavation and geology, deep soil zones should not be created by using new retaining walls but created at ground level especially close to the boundary.

- iv. Remove the fluted walls to the Waruda St frontage on the Upper Ground Level to the void space and delete G4 storage area as the two storey presentation to the street close to the southern boundary is not characteristic and contributes too much hardscape.
- v. Reduce the scale of the walls on the Waruda Street frontage on the Ground and Upper Ground Levels by introducing openings that provide additional 'dialogue between the street and the building. There is little passive surveillance to the street.
- vi. Introduce more solid material onto the glazed balustrades as balustrades in conservation areas typically provide detail and visual interest. Vertical flat steel or steel palisade balustrades are recommended. This will also reduce the perceived extent of glazing on the South Elevation.
- vii. Spectra view tile wall cladding to be amended to a dark tone to contrast the white colour of the Sydney Opera Sails as per Policy 2.2 of the UNESCO World Heritage Listing Conservation Management Plan.

**Planning comments:**

*Regarding the conservation planner's recommendations, negotiations with the applicant yielded the following results:*

- i. *The applicant submits this parking space is essential to the accessibility of the unit in level 1, one of two adaptable units. The parking space and driveway should be removed and replaced with landscaping. While the number of vehicle crossings has been reduced from eight to three, the starting point being 6 crossings on Waruda Street (5 of them requiring reversing onto or from the street) and two on Beulah Street is far from ideal and would never have been approved since the introduction of current planning controls, or even earlier. Two driveways are the maximum permitted per the DCP and this position is supported by the Design Excellence Panel, the Traffic Engineer and the Landscape Development Officer, as well as planning and heritage assessments.*

*The applicant submits this aspect of the proposal is important in accommodating people with disability, the level 1 and level 2 apartments being adaptable to allow people to age in-place.*

*While the worthiness of this objective of the application is acknowledged, it must be weighed against the potential costs to the community in terms of:*

- *consistently upholding the DCP,*
- *foregoing the opportunity to plant shade-trees,*
- *not regaining an on-street parking space,*
- *improving the public domain and pedestrian comfort, and*
- *the opportunity cost for future residents of the development, foregoing use of the area as an outdoor space for the use of residents and their guests, instead of a car parking space, with pedestrian access to the building from the street. Alternatively, the space could be as a private garden for the level 1 residence.*

*Having regard to the foregoing, amended plans should be submitted, removing the driveway and carport, and replacing them with a footpath to the level 1 unit from the Beulah Street footpath and landscaping, including a shady, screened seating area. Also required are plans to show at least 2 accessible parking spaces on the ground or upper ground levels, with adequate dimensions, including vertical clearance.*

*For these amendments to be made it is recommended that the Panel delegate authority to Council's Manager Development Services to grant consent to the application, subject to plans satisfactorily accommodating these necessary design refinements, and other conditions appended to this report.*

- ii. Planting has been intensified along both frontages.*
- iii. Plans submitted on 21 August 2023 have acceptably reduced the size and bulk of planting structures, thus creating a finer grained and detailed platform to increase groundcover, shrubs and small, shady trees. Landscaping plans (attached) complement the architectural drawings.*
- iv. This alteration to the design is no longer possible, as the design has removed the storage area.*
- v. The design is amended by including fluted sandstone to the upper ground (parking) level replacing brickwork on the Waruda Street (southern elevation), and a 'hit and miss' brick screen, replacing the solid face brickwork at ground level. Although an improvement, it does not provide an impression of informal surveillance of the street with improving the appearance and compatibility of the lower levels with the Waruda Street streetscape,, as is envisaged by the recommendation. It is however noted, the terrace of the level 1 unit provides informal surveillance of Waruda Street and windows and balconies on the western elevation perform the same function for Beulah Street, which is acceptable.*
- vi. Glass balustrades to the balconies on southern and western elevations remain, however their visible area is reduced with the design amended to include a 400mm concrete upstand at the bottom of each balustrade. On the roof, the glass balustrade is replaced by stainless steel fencing with horizontal cabling, which will acceptably reduce visual impact and complement the reduced rooftop-built form,*
- vii. Cladding previously proposed to be off-white is now a pale brown/tan tone, which is more analogous with the colour of other buildings in the locality and would not contribute to the further 'bleaching' of Kirribilli, already begun by a few buildings being repainted in whitish hues. The former dark brown metal bands which clad each floor level have been lightened to a lighter bronze colour.*



*Should the predominant use of off-white glossy ceramic cladding have remained for the development on its own, not providing contrast with the Opera House's sails would not have been significant. However, if this and future development were to be finished in a similar way to the Opera House, as was proposed, then collectively, development of the part of Kirribilli closest to the Opera House (the site's immediate locality) could well compete with, and not give contrast to the celebrated sails, as envisioned by the UNESCO heritage controls and Council's DCP.*

## **TRAFFIC**

Based on the plans submitted, the traffic assessment concluded the proposal is satisfactory, except:

- i. A car wash bay is required in the basement.
- ii. The third driveway (northern driveway on western side) is excessive and should be removed allowing an additional on-street parking space.
- iii. The submitted swept path diagrams for vehicles entering from Beulah street would collide with vehicles parked on the western side of the street.

### ***Planning comments:***

*As discussed, the third driveway and carport should be removed. The traffic report that accompanied the application submitted that there are two car-wash facilities within 650m of the site, which is deemed appropriate for the small number of units proposed. Regarding swept path diagrams colliding with vehicles parked in the street, it is noted that the diagram in question shows a vehicle leaving the lower driveway on Beulah Street and travelling up the street to the north. This is not permitted, as the street is one-way, from north to south. Given the narrowness of the street and its steepness, local streets form a low-speed environment, and it would be acceptable for cars to make more than one turn to manoeuvre in and out of garages. This is likely to occur for other buildings in the locality and is an improvement on the current situation with six driveways providing parking access off Waruda Street.*

## **DEVELOPMENT ENGINEERING**

The application was assessed and conditions recommended by Council's Development Engineer, for:

- Excavation and stability of adjoining buildings,
- Structural adequacy of the existing building and adjacent buildings,
- Geotechnical conditions,
- Traffic management, during and following construction,
- Parking,
- Basement design,
- Stormwater management, and
- Erosion and sediment control.

## **LANDSCAPING**

The amended application was considered by Council's Landscape Officer, who made the following remarks:

- i. Amend landscape treatment to gardens along the southern and western street frontages, in order to minimise bulk and scale and soften built form of the proposal. Landscaping shall include the use of suitable canopy trees (some of which may require directional pruning), shrubs and perennials. The use of creepers and spill over plantings shall be as secondary treatment of walls, with a mixed palate of trees and shrubs being used to provide primary screening.
- ii. The streetscape would be improved by replacing the driveway and car port off Beulah Street with landscaping.

***Planning comments:***

*As mentioned above in relation to the heritage assessment, the proposed landscaping has been suitably modified in a manner consistent with these comments. Landscaping plans show an appropriate selection of plant species, including canopy trees. Amended plans are required to give effect to the changes required in the Beulah Street frontage.*

**DESIGN EXCELLENCE PANEL**

The original application was considered at the Design Excellence Panel's meeting held 24 January 2023. The Panel exercises the functions of a Development Review Panel, as specified by Part 3 SEPP 65 – Design Quality of Residential Apartment Development. Several inconsistencies with the Apartment Design Guide (ADG) were apparent.

Key issues identified by the Panel included:

- i. The height of the building is excessive and out of character with its immediate context.
- ii. Landscaping must be increased, as the current frontages are "...excessively 'hard' and require softening, especially on Waruda Street and Beulah Street. Site coverage and unbuilt upon area should be reduced to increase landscaped area, as much as possible,"
- iii. Deep soil areas appear inadequate and should be increased.
- iv. The communal room on the ground floor should be relocated to the corner of Beulah and Waruda Streets, to be open to sunlight.
- v. The parking space and driveway accessible from Beulah Street and replace with landscaping and used for either private or communal open space.
- vi. A single vehicle crossing should be adequate for 7 units.
- vii. No apartment receiving compliant solar access was deemed unacceptable. The Panel did not accept the applicant's submission that loss of this amenity is adequately compensated for by the other exceptional amenities afforded by the site.
- viii. The lack of apartment mix, particularly in the context of reducing 27 dwellings to 7, should be addressed in any revised proposal.
- ix. West-facing windows should be provided protection from westerly summer sun.

***Planning comments:***

- i. *Building height is discussed relating to the LEP and the applicant's request to vary the height standard.*
- ii. *Landscaping has been acceptably increased.*
- iii. *Deep soil planting has been optimised, accepting the site's constraints having already been excavated and local geology.*

- iv. *The meeting room remains where it is, albeit in a less-than-ideal location.*
- v. *The northern driveway and parking space off Beulah Street have been discussed.*
- vi. *Reducing the number of vehicle crossings from three to two would be acceptable, due to the two separate parking levels, existing accesses from Beulah Street and Waruda Street, reduction from the 8 existing crossings, and this being acceptable (subject to design amendment) to the Traffic Engineer.*
- vii. *The applicant has maintained their position regarding solar access, this is examined later in relation to the ADG.*
- vii. *A single type of unit being provided, when more than one unit type is required is discussed in relation to the DCP.*
- ix. *Shading of west-facing windows has not been addressed in the amended design. A condition recommending details being submitted with a construction certificate application is recommended.*

## **EXTERNAL REFERRALS**

### **AUSGRID**

The local electricity distribution body raised no objection to the proposal, Council having consulted with them as required by SEPP (Transport and Infrastructure) 2021.

### **SYDNEY WATER**

Council also consulted with the statutory water and sewer supply agency per the abovementioned SEPP. No objection to the application was raised.

Consultation with or concurrence of other agencies was unnecessary.

## **SUBMISSIONS**

### **Original proposal**

The application was notified for an extended period from 9 December 2022 to 18 January 2023 and renotified for 14 days from 21 July to 4 August 2023. Combined from both periods, 18 submissions were made. 10 object to the proposal, 7 support the development and 1 is neutral, requesting that stormwater flows from upstream properties over site be addressed as part of the site's redevelopment.

Issues raised by supporters and objectors are summarised below and objections are 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 reasons by objectors:**

- Breaches height standard of 12metres and is non-compliant with clause 4.3 of the LEP.
- The building blocks views from the roof of and dwellings within the block of flats at 122 Kirribilli Avenue, of the Opera House, Circular Quay and the Bridge, and is inconsistent with clause 1.3.36 – P2 of the DCP.
- Considering the existing building height is already more than what is currently permitted, and would not be approved as a new building, it seems unjustified to further minimise existing views from surrounding properties by increasing the bulk and scale of the addition on the top floor.
- Additional massing and scale on the top of the building diminish and impact views from the top floor of the building at 122 Kirribilli Avenue. (See viewpoint No 5 Urbaine Design Group's report).
- Views from some windows in 120 Kirribilli Avenue of the Opera House will be severely affected.

- The view of the Botanic Gardens from 118 Kirribilli Avenue would be affected by the wider built form proposed on the roof.
- Privacy, both visual and acoustic of nearby residents will be affected particularly by the pool and the dining area proposed on the roof of the subject building.
- The building should remain within the existing envelope, at and above roof level.
- This is a “monstrosity totally out of character for the area. It’s all glass and wrapping, totally unlike the beautiful older structures around it.” The development will reduce the charm and village (atmosphere/character) of Kirribilli.
- The visual impact assessment (Viewpoint 12) uses a wide-angle image which lessens the impact, making the Opera House look more distant than it is. This viewpoint is closer to the 4<sup>th</sup> storey than the 3<sup>rd</sup>, in the building at 5-7 Peel Street.
- North Sydney Council’s development guidelines cover a broad range of considerations, and the proposal requests many exceptions to them without providing good reasons.
- The visual impact will be greater than it is now and will affect views from many buildings in the locality.
- The proposal is out of character with other development and the heritage qualities of the locality, being in a conservation area and adjacent to a heritage item listed by the LEP, and is therefore inconsistent with the heritage provisions of the LEP and DCP.
- A condition to address management of stormwater from upstream properties is requested, in respect of 103, 105 and 107 Kirribilli Avenue, immediately upstream from the site, which discharge on to the site, according to the submission.

***Basis of reasons for support:***

- The development will improve the building, described as “ugly”, an “eyesore”, and “dangerous”.
- The overall quality of the design is supported.
- The new design is suited to “such a globally recognized setting”.
- Reduced number of units will reduce on-street parking demand.
- Universal access to the roof should reduce the number of parties held.
- The streetscape will be more effective.
- Redevelopment as proposed “...makes good use of the current structure to reduce the environmental impact of the change.”

***Basis of reasons for objection***

- Breach of the height limit and inadequacy of the request to contravene the standard.
- Departure from many DCP provisions, without adequate reason.
- Impact on local, high quality views, of the Harbour Bridge, the Sydney CBD and Circular Quay, the Royal Botanic Garden, and of the Harbour itself.
- Impacts on neighbours’ privacy and solar access.
- Contrary to the character and heritage of the locality.
- Visual impact of the development, particularly of the proposed rooftop structures.

***Stormwater drainage of adjoining land***

Two submissions from a building directly north of the site, 103 Kirribilli Avenue, one from a unit owner and the other from the building’s executive committee, mention a long-standing drainage problem involving stormwater run-off from lots at 103, 105 and 107 Kirribilli Avenue traversing the site. Consequently, the correspondents, while not objecting to the proposal, indicates this matter requires resolution before proposed redevelopment proceeds. Legal advice was being sought at the time of making the submission, although whether this will be forwarded to Council is unknown.

**Planning Comment:** *The proposal would not oblige the applicant/owner to do anything to resolve this matter, although it seems addressing the issue would be in the applicant's interests. The applicant has confirmed in writing that contacting the neighbours is planned, to resolve the stormwater traversing the site from land above, following approval being granted.*

## **CONSIDERATION**

Relevant matters for consideration under Section 4.15 of the *Environmental Planning and Assessment Act 1979* (as amended), are assessed below.

### **SEPP (Precincts—Eastern Harbour City) 2021**

Clause 1, Appendix 1 of the SEPP requires the consent authority to consider the views of and between the Opera House and other development is its 'buffer zone' which comprises land within the world heritage listed site's visual catchment. The principles of the SEPP have been discussed in the earlier heritage assessment, by Council's conservation planner and subsequent commentary by this report's author.

### **SEPP (Biodiversity and Conservation) 2021**

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

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

The site is not in the Foreshores and Waterways Area, so assessment is not required in accordance with the SEPP's provisions and the complementary development controls plan that apply to this area.

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

The provisions of the SEPP's Chapter 4 require Council to consider the likelihood that the site has been contaminated and to address methods to remediate the site if required. The site is known to have only been used for residential purposes and as such is unlikely to contain any contamination. The requirements of the SEPP are deemed to have been satisfied.

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

A valid BASIX Certificate, No. 1306195M\_04, has been submitted with the application to satisfy the SEPP.

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

The proposal involves the construction of a residential flat building of more 3 storeys and more than 4 dwellings and SEPP 65 consequently applies to the application. Selectively quoted/paraphrased below is the Design Verification Statement submitted with the application.

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

“The proposed building, with its soft organic form and sophisticated finishes will enhance the eclectic character of the precinct. A clearly defined podium of brick and sandstone with new areas of landscape planting draws materials typically used in the precinct and will soften the harsh edge of the existing site and improve the streetscape character.”

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

“Generally, the proposal will maintain the mass of the existing concrete structure, maintaining current floor levels, while reducing the height of the protruding lift overrun structure at the roof level, and extending the floor plates to the South and West facades where neighbour’s views are not impacted. The East façade sits within the existing building line so as not to adversely impact views and amenity to the existing surrounding buildings.”

### **Principle 3 – Density**

“This size of apartments, together with their quality and sustainable characteristics, is rare and as a result, will add further to the product diversity in this precinct, supporting identified demand.”

### **Principle 4 – Sustainability**

“The development is designed to embrace ESD principles as follows.

- Recycling and re purposing of existing building structure
- Full floor apartments including natural daylight and cross ventilation
- Deep soil zones with tree planting
- Landscaped roof gardens
- Screening to provide visual privacy to neighbours
- Photovoltaic power system and sustainable battery storage reduces dependence on electrical grid
- All strategies aim to promote thermal comfort, reduce dependence on AC and mitigate precinct urban heat island effect
- Targeting minimum Basix/6 star NatHERS rating
- Mould & Algae reinstate low maintenance facade materials
- Water harvesting
- EV charging points to carparking
- Community space for residents on the ground floor
- Heritage interpretation plaque honouring and reflecting the Indigenous history, together with a profile of the recent European history in the immediate area.”

### **Principle 5 – Landscaping**

The landscape scheme has a clear definition of private and public areas, with emphasis on providing a green streetscape to both Beulah Street and Waruda Street. The design provides for planting, seating and paved areas which are integrated into the architecture of the building design.



### **Principle 6 – Amenity**

Although constrained by the re purposing of the existing structure, the existing position and orientation and the proximity of neighbouring buildings, the proposed development aims to provide good amenity as follows:

- Maximising views
- Large areas of glazing
- Balconies of at least 2.0m depth
- Separation between apartments for acoustic privacy
- Low ceiling heights compensated for by large living areas and extensive glazing
- Storage in both the apartments and parking areas
- Solid walls east and west to protect privacy
- Universal accessibility
- Communal space
- Two lifts to minimise impacts during breakdowns.

### **Principle 7 – Safety**

“The proposal provides for clear pedestrian routes to enable safe access within the site. Safety has been considered by providing:

- A clear but discrete entry point to the building facing the primary (Waruda) street frontage, identified by recessed built form. Entry lobby is visible from the footpath and secured access control.
- There will be appropriate lighting to all external areas.
- The building will utilise a security system at all entry points, and within the lifts.
- Residential car park will be secured by sliding gates accessed by secured control and intercom.
- Concierge / Reception Facilities.”

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

“The apartment typology is targeted to a very distinctive occupier who demands luxury, privacy and innovations in sustainable living.

The 3+ bedroom apartment sizes are 233m<sup>2</sup>, which are generous but expected in this sector of the market.

Although there is no apartment mix proposed in the scheme, the large 3 Bed apartments will fill a demand which is limited in the current market in this precinct.”

### **Principle 9 – Aesthetics**

“The proposed architectural language, being respectfully conscious of the sensitivities within the Heritage Conservation Area of Kirribilli, is contemporary with an emphasis on simple expression of forms and materials, a layering of elements to add texture and visual interest.

The overall architectural and material expression is simple, a juxtaposition to the adjacent buildings and sympathetic to its contextual surrounds through the use of high-quality materials and architectural aesthetics, helping with building identity and contributing to a varied streetscape within the existing urban fabric.

The facade articulation is through contrast of materials, simple forms and planes. The sophisticated palette of colours and materials such as profiled glazed tiles, glass balustrade metal spandrels and brickwork.

Traditional materials of brickwork and sandstone are re-interpreted to create a sculptural podium to the building.

The street interface and corners of the podium introduce sculptural curve forms to soften the edges between the adjacent buildings and the street.

The outcome is a distinctive development of high design quality that will contribute positively to the desired future character of the precinct and streetscape.”

#### APARTMENT DESIGN GUIDE

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

Design Objective	Design Criteria	Comment	Compliance
<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>	<p>Setbacks to boundaries are proposed:            East: Level 1 – 1.3m, Levels 2-7- 4.35m – 5.5, Roof (Level 8 )            North: levels 1 – 7 - 1.0m – 1.8m, Roof – 6.3m – 7.0m</p> <p>2.8m Northern building separation            25.2 m Eastern building separation</p>	<p>Acceptable on merit.</p> <p>See discussion re Objective 3F below.</p>
<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>Minimum area required: 180.25m<sup>2</sup></p>	<p>No.</p> <p>Communal open space is not provided, the applicant submitting that each unit is provided generous private open space in the form of a terrace for the level 1 apartment and balconies for the apartments above.            A landscaped communal area could be provided in place of the carport, as already discussed and recommended.</p> <p>However, there is an alternative to this recommendation. Given the nature of the proposal and other development in the area, provision of communal space could be waived. There are also two reserves within an easy walk of the site, the Beulah</p>

			Street Reserve opposite and the Dr Mary Booth Reserve, about 170m to the west, at the end of Waruda Street.
<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>	<p>The existing site is mostly paved with a small area of “landscape area” over unbuilt upon area on the western boundary and northern and eastern sides of the site, making up a claimed 16.1% according to the architectural drawings (DA412).</p> <p>Site inspection indicated these areas to be planters/tops of stone or masonry ledges or walls and did not appear to be ‘deep soil’.</p> <p>Any deep soils would have to be ‘created’, by building up soil over rock or by replacing paving. This seems to occur with the proposed structures in the southern and western setbacks shown as having landscaping in them, serving as planters of varying sizes.</p> <p>Whether the areas mapped on the plan constitute deep soil is unknown and arguable, although could be acceptable given the state of the site being previously excavated and almost completely paved. The geotechnical report submitted notes that only minor excavation is required, and that sandstone (bedrock) is already exposed or only 1-2m below the surface, suggesting that soils will likely need to be imported for landscaping.</p> <p>Also suggesting the site has little or no ‘natural deep soil’ is the predominant use of small plants. Two species of tree are proposed which grow to no more than 4-6m.</p>	<p>Acceptable on merit.</p> <p>Due to the site having been excavated and there being little or no ‘natural’ areas remaining, as discussed, proposed landscaping is acceptable.</p>
<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>	<p>Applicant submits that to the east, setbacks are 3.0m – 5.5m towards a mainly blank wall at No 24 Waruda, this separation is acceptable.</p> <p>At upper levels the separation setback is numerically non-compliant and is adequate as the rooms are bedrooms and bathrooms. At the roof level, planter boxes compensate for the up to 7.0m setback being 2.0m short of the 9.0m required, the applicant submits.</p>	<p>Acceptable on merit.</p>

		To the north almost blank walls are presented, except for narrow floor to ceiling bedroom windows to the neighbouring development, which likely have habitable rooms facing south, toward the Harbour. Blank walls do not require separation, so the minimum 1.0m setback is considered satisfactory, also noting the existing building's renovation will not appreciably alter current conditions.	
<b>3G – Pedestrian Access &amp; Entries</b>	<i>Building entries and pedestrian access connects to and addresses the public domain Access, entries and pathways are accessible and easy to identify</i>	The main pedestrian entry from Waruda Street is safe and secure and offers informal surveillance of the street.  Should the northern driveway and car port off Beulah Street be removed and replaced with a landscaped private or communal space, a pathway into the level 1 unit could be provided.	Yes.
<b>3H – Vehicle Access</b>	<i>Vehicle access points are designed and located to achieve safety, minimise conflicts between pedestrians and vehicles and create high quality streetscapes</i>	The two driveways into respective levels of sub-basement parking are acceptable.  However, the second drive off Beulah Street at the northern end of the site is not, as it eliminates one regained on-street parking space, from reducing the number of driveways on Waruda Street. It also increases potential for pedestrian/vehicle conflict with two driveways on Beulah Street which would be relatively close to one another. Exacerbating this condition is the location of tall planters flanking each driveway. The northern-most driveway and accessible parking space to the level 1 unit are provided at the cost of foregoing the opportunity to increase landscaped area, providing an private or communal/informal open space, softening the building's appearance, bulk and scale, potentially providing another pedestrian access into the building and shading the footpath and site with additional trees.	Yes, subject to removal of northern driveway and carport on Beulah Street and replacing it with potential features, as discussed.
<b>3J – Bicycle and Car parking</b>	<i>For development in the following locations:</i>  <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</i></li> </ul>	11 car spaces are provided, which is the maximum number permitted.  No visitor parking is proposed.  The minimum parking number for bicycles is 8, including one for visitors. This issue could be addressed by a condition.	No, the driveway off Beulah Street and the carport for the unit on level 1 should be removed and this area be landscaped, with suitable species and a satisfactory number of shade-providing trees, for use as an area of informal landscaping or a usable area for the level 1 unit or as a communal space for all residents of the building.

	<p><i>minimum car parking requirement for residents and visitors is set out in the Guide to Traffic Generating Developments, or the car parking requirement prescribed by the relevant council, whichever is less</i></p> <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>Regarding earlier discussion about removal of the garage and driveway for the level 1 apartment from the Beulah Street frontage:</p> <ul style="list-style-type: none"> <li>- Every unit is accessible and the bottom two are adaptable.</li> <li>- Removal of the garage reduces the total number of parking spaces 10, which is ample in the locality.</li> <li>- Each adaptable unit must be provided an accessible parking space.</li> <li>- There is space to provide these in the basement, provided adequate floor to ceiling height can be provided in accordance with Australian Standards. This would require additional excavation of the ground level, accessed from Waruda Street.</li> <li>- removal of this driveway especially improves safety for pedestrians,</li> <li>- removal would correct inconsistency with the local character statement, which discourages parking in the street frontage, and</li> <li>- as discussed above, removal provides additional space for landscaping and planting of shady trees and a private/communal space, improving amenity for the development's occupants and members of the public using the adjacent footpath.</li> </ul>	<p>The latter option is recommended.</p>
<p><b>Amenity</b></p>	<p><b>Design Criteria</b></p>		
<p><b>4A - Solar and daylight access</b></p>	<p><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></p>	<p>No units have the minimum required, being oriented southwards to optimise exposure to the view of the Harbour and associated celebrated landmarks. The applicant submits that the ADG excuses strict compliance when valuable vistas vie for attention.</p> <p>However, what the ADG states, is that "providing for the enjoyment of significant views" must be balanced with "designing the site layout to maximise north orientation", an important consideration.</p> <p>Whether such balance is achieved is questionable, as only bedrooms face north and upper level units (levels 5-7, according to sun eye diagrams (DA406)) would receive adequate winter sunlight.</p> <p>These diagrams also indicate eastern and western living area windows receive about an hours' sunlight, in the morning and afternoon. However, these windows are narrow to maintain</p>	<p>Acceptable on merit.</p> <p>With design changes as described, the scheme is deemed to be deemed adequate. Amended plans include a diagram indicating that habitable rooms receive more than the minimum daylight requirements of the BCA (DA419).</p>

		<p>reasonable privacy and are deemed to provide insufficient direct sunlight to living areas.</p> <p>On levels 5-7 only rearrangement of the units' floor layout would improve natural light to these dwellings in mid-winter.</p> <p>Despite being less than meritorious on these counts, the development is like others in the locality, given the views available.</p> <p>The proposed development could certainly be improved by having some judiciously (larger) sized, located and angled windows to the western, northern and eastern façades, provided protection from summer sun, to provide sunlight and improve passive climate control while reducing energy consumption in each unit.</p>	
<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>	All dwellings are capable of being naturally ventilated (see DA407).	Yes.
<b>4C - Ceiling Heights</b>	<p><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>	<p>The architect's design statement noted floor to ceiling heights of 2.55m.</p> <p>In view of the large apartment sizes and adequate ventilation as proposed, with increasing fenestration as considered above, this reduction could be acceptable, noting the design satisfies minimum requirements of the BCA.</p>	<p>Acceptable on merit.</p> <p>With increased fenestration to improve natural light, and the fact 2.4m is the absolute minimum floor to ceiling height for habitable spaces per the BCA, the lower ceiling heights are acceptable, with diagrams showing BCA compliant daylight submitted.</p>
<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>	All units exceed the required minima.	Yes.

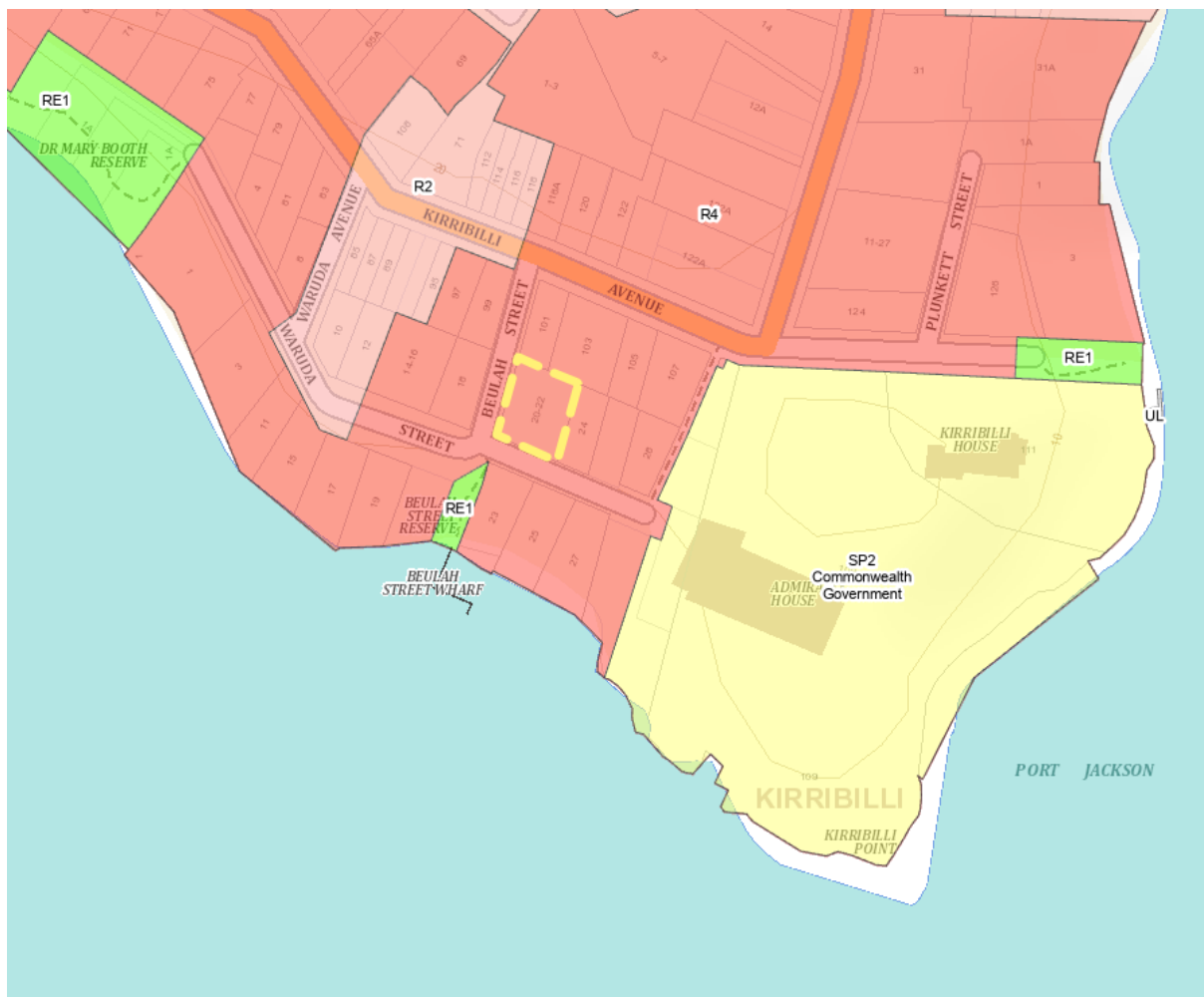
	<i>Every habitable room must have a window in an external wall with a total minimum glass area of not less than 10% of the floor area of the room. Daylight and air may not be borrowed from other rooms</i>		
<b>4D 2 - Apartment size and layout</b>	<ol style="list-style-type: none"> <li>1. <i>Habitable room depths are limited to a maximum of 2.5 x the ceiling height</i></li> <li>2. <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>	Rooms sizes and dimensions exceed the minima required.	Yes.
<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>	Bedroom and living room sizes exceed or meet the required minima.	Yes.
<b>4E - Private open space and balconies</b>	<p><i>All apartments are required to have primary balconies as follows:</i></p> <p><i>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>	Primary balconies for each unit satisfy the minimum depth and area standards.	Yes.

	<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>		
<b>4F - Common circulation and spaces</b>	<p>1. <i>The maximum number of apartments off a circulation core on a single level is eight.</i></p>	The lobby is adequate and each unit has it's own secure access to the passenger and service lifts.	Yes.
<b>4G -Storage</b>	<p><i>Studio apartments- 4m3</i>  <i>1 bedroom apartments- 6m3</i>  <i>2 bedroom apartments- 8m3</i>  <i>3+bedroom apartments- 10m3</i></p>	Storage areas appear to exceed the required minima.	Yes.

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

**1. Permissibility**

The site is zoned R4 High Density Residential. Residential flat buildings, including alterations and additions thereto, are permitted with consent.



**Figure 16: Zoning of the site and land in the locality (DoPE Spatial Viewer)**



## 2. Objectives of the zone

The objectives for the R3 zone are stated below:

- *To provide for the housing needs of the community within a medium density residential environment.*
- *To provide a variety of housing types within a medium 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 medium density housing if such development does not compromise the amenity of the surrounding area or the natural or cultural heritage of the area.*
- *To provide for a suitable visual transition between high density residential areas and lower density residential areas.*
- *To ensure that a high level of residential amenity is achieved and maintained.*

The proposal's consistency with zone objectives is discussed below, as part of the review of the applicant's request to vary the maximum building height standard.

## Part 4 – Principal Development Standards

### Height of Building

The following objectives for the building height development standard pursuant to clause 4.3 NSLEP 2013 are stated below:

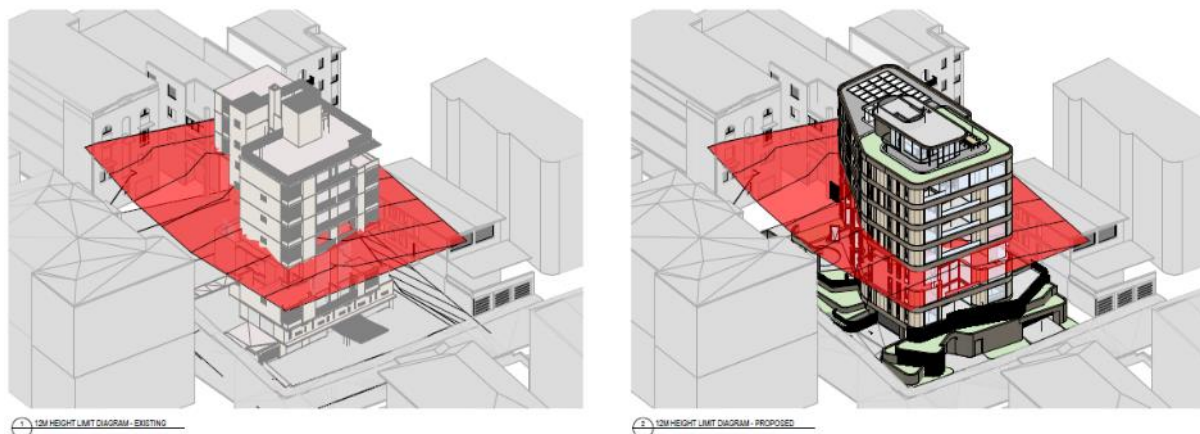
- (a) *to promote development that conforms to and reflects natural landforms, by stepping development on sloping land to follow the natural gradient,*
- (b) *to promote the retention and, if appropriate, sharing of existing views,*
- (c) *to maintain solar access to existing dwellings, public reserves 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.*
- (g) *to maintain a built form of mainly 1 or 2 storeys in Zone R2 Low Density Residential, Zone R3 Medium Density Residential and Zone E4 Environmental Living.*

The application proposes to breach the height limit. A request seeking approval despite being the building being taller than permitted has been made by the applicant and is examined below, including whether the development is consistent with these objectives.

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

The applicant's written request (attached) is made pursuant to Clause 4.6 of NSLEP 2013. Details of the variation proposed, quoting the applicant's request:

- **Maximum permitted height:** 12.00m.
- **Proposed maximum height:** 28.08m.
- **Proposed contravention:** 17.08m or 142%.



**Figures 17: & 18: The left-hand diagram shows the height breach of the existing building, and to the right is the proposed development (Nettleton Tribe Architects).**

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 (attached) submits that the proposal is not inconsistent with the objectives of the standard, which are discussed later. This is most-often used of the methods suggested by the Land and Environment Court to establish that compliance with a development standard is unnecessary or unreasonable.

The applicant also submits that strict compliance with the standard is unreasonable, in that:

"...it (the maximum height standard) applies to land that should not have been included in the zoning. That is, at the time the NSLEP 2013 was adopted, the existing development on the site, and numerous developments within the surrounding locality, did not comply with the maximum building height of 12m. The adopted NSLEP 2013 did not take into account the height of existing built forms, and importantly, that it is improbable that existing buildings of this scale would be demolished and rebuilt with a compliant building height of 12m. If the NSLEP 2013 was prepared with detailed consideration of the existing building heights in the locality, it would have included controls which are more reflective of that already established on-site and within the surrounding locality."

**Planning comment:** *Having considered the applicant's request, its conclusion that compliance with the building height standard is unreasonable, in the circumstances described above, is concurred with.*

#### **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:

##### *Building height has been established for the site*

- The building's height is part of the Kirribilli character.
- "Whilst a 12m standard applies to the subject site, this control has been varied by the subject building and surrounding developments, which contain an eclectic mix of heights and built forms. As such and for the subject application, flexibility to the standard should be applied as the built forms on site and within the locality have varied this control."

- The increased footprint does not increase height and does not change the setbacks to the south and east.
- Additional structures on the roof are lower than the existing structures, and increase the amount of built form that exceeds the height limit. This additional building will be "...predominantly obscured as viewed from Waruda and Beulah Street."
- Comparing the existing building with a built form compliant with the LEP and DCP indicates:
  - o The proposal (being 500-600mm lower than the existing building) does not adversely impact resident-amenity in the locality,
  - o Future occupant amenity is improved compared to that offered by the existing building,
  - o Proposed landscaping, design and character can only be achieved by the proposal,
  - o The demolition and construction is not a sustainable outcome, as discussed later.

***Planning comment:*** *The changed floor plate increases the bulkiness of the building and changes its relationship with the Beulah Street streetscape, to a minor degree. Viewed from the north, the existing building appears less bulky due to the smaller, L-shaped footprint and the earthy tone of the brickwork. However, the apparent bulk of the building is reduced by the amended application using a more natural, analogous and less contrasting colour scheme, compared to the predominant use of off-white and very dark-toned contrasting materials in the application, as first submitted.*

*The height of the building will make additional rooftop structures difficult to see from the street. In contrast, as originally submitted additional roof top structures would have added to the visual intrusiveness of the building., especially when viewed from above (Harbour Bridge), and from the southeast and west, (from the Harbour).*

*Amendments to the design result in the proposal having acceptable impacts on the landscape in the site's sensitive harbourside locale. The visual impact of the building is examined following the DCP assessment table.*

***Non-compliance contributes to character of the locality***

This part of the request uses a similar argument as the preceding part, in that the proposal will be more complementary to other buildings in the neighbourhood and the height of the building more acceptable due to the improved appearance of the building. The request submits the development is consistent with Object 1 (3) (g) of the Act, "to promote good design and amenity of the built environment."

IN the context of no-compliance with the height standard that is apparent in the locality, the improved building design, when compared with the existing building, considered by the submission to be "visually obtrusive and jarring."

***Sustainability is facilitated by the proposed, non-compliant development.***

The proposal is complemented by a report that refurbishing the building as proposed is more sustainable than demolition and erecting a new building. To summarise, the 4.6 request states:

“As detailed in this (sustainability) Report, it is found that the proposed scheme will result in superior ecologically sustainable benefits, particularly as the scheme will result in significantly lower energy and embodied carbon output. The proposed retention and major refurbishment of the existing building will provide for a demonstrable saving, as follows:

- ”• Electricity: Significant saving in electricity equating to approximately 87 family homes for a year. This results in 20.67% less electricity usage when compared to full demolition and reconstruction; and
- “• Carbon: The proposal will result in 20.07% less carbon emissions and content than a development which will seek to fully demolish and construct a new building.”

Orderly and economic use of land

Costs of demolition and rebuilding exceed those of the proposal, which would make the proposal “...uneconomic and disorderly”.

Demand for high quality housing

That the provision of high-quality housing satisfies demand for the type of dwellings proposed should be considered, the request submits.

A compliant envelope would only provide four units of comparable size, requiring demolition at additional cost and at a lower level of amenity due to reduced height and the topography resulting in two levels being partly below (an assumed) ground level. Regardless the rear, lower levels of a compliant building would have solar access and views compromised.

**Comment:** *The proposed approach does not deliver housing diversity as would compliance with the DCP. The applicant has submitted market analysis supporting the proposal, demonstrating that apartments of the size proposed are in low supply on the lower north shore and demand is relatively high. In meeting this demand, the number of large dwellings will be increased, and the number of smaller units decreased. This will improve housing mix and choice if it is submitted, because smaller dwellings are over-represented in Kirribilli and other parts of the North Sydney area.*

*However, the life of the building will extend well-beyond the current market cycle. Ageing of the population for instance is a sustained and ongoing trend, and there will always be demand for smaller dwellings from smaller households, even though they will not be affordable. All echelons of society need housing choice, as the DCP seeks to accommodate.*

*A compliant building could provide a building with a greater number of units. That the top two or three levels, that command views mainly to the south and west over the harbour and beyond would remain as proposed, is assumed. The four lower levels say, could readily accommodate 2 units on each floor. With each floor being slightly larger than 230m<sup>2</sup>, each unit would still exceed 100m<sup>2</sup>, which can accommodate a spacious 2 bedroom, or a more modest 3 bedroom apartment. Such a scheme would yield 11 apartments. As long as each unit had dual frontages, which is possible, acceptable amenity would be likely achieved.*

*This issue has also been discussed with the applicant, who contends that smaller units would not find a market in Kirribilli.*

*In compliance with the DCP, when departure from providing the required housing mix is proposed, an economic analysis report has been submitted, and is attached for the Panel's consideration.*

*The range of amenity impacts have been established by the existing building*

Amenity impacts have been addressed in relation to the ADG and DCP, and are acceptable.

*Non-compliance achieves a high level of design excellence*

The argument presented on this topic is unconvincing, a complying development would still need to attain 'design excellence', by satisfying the Design Quality Principles of SEPP 65 - Design Quality of Residential Apartment Development.

*Topography contributes to the extent of non-compliance*

The key points made by the submission are that the site has already been substantially excavated and that the development aims to lessen the abrupt impact this and the current building have on the streetscape, due to the building's overall height.

***Planning comment:***

*The request submits the above as features of the design which aim to mitigate impacts of the building's height. In the originally submitted design, the so-called "podium" was considered to satisfy this aim.*

*Before the latest design amendments, the structures were bulky and had unacceptable impacts on local streetscape and character, including the qualities of the Heritage Conservation Area in which the site is situated. Reducing their scale and increasing density of planting has made these forms acceptable and are likely to contribute positively to the streetscape and amenity of the public domain, which is somewhat harsh in this part of Kirribilli, where street trees are few and far between, compared to other streets in the suburb.*





**Figure 19: Photomontage of previous design, submitted in July 2023 (Nettleton Tribe Architects) It should be noted that the actual colour of the cladding in this design was off-white and considerably brighter than indicated above, being closer in tone to the smaller, recently renovated building to the right of the subject.**



**Figure 20: Photomontage of the current design, submitted in August 2023 (Nettleton Tribe Architects). The landscaping structures are terraced, stepping down the slope and from the building to the footpath. The size and shape of the form on the corner is more articulated and allows a tree to be planted in front of it. Taller structures accommodate utility plant and emergency equipment.**

*Whether the submission demonstrates that the proposal "...conforms to and reflects natural landforms, by stepping development on sloping land to follow the natural gradient" is questionable. Additionally, the submission assumes "an extrapolated topography" which does not exist, and if it did, the building (extant and proposed) does not step with it anyway. The LEP's objective seeks to avoid the drastic two-storey deep excavation which occurred under a planning framework that also no longer exists, and for good reason.*

*To address this objective effectively calls upon a written request to ignore the standard, to address conditions as they exist. While the Land and Environment Court has on other occasions considered it appropriate to assume levels relating to those of the adjacent public domain, the circumstances of the site and the existing building render this approach as inappropriate.*

*However, it is accepted that the natural landform has been dramatically reshaped, and as amended, the additional forms between the western wall of the existing building and the Beulah and Waruda Street boundaries better-integrate the building's height and scale with the street level and local context.*

Meets aims and objectives of other planning instruments

**Planning comment:**

*The validity of this planning ground is questionable, as consistency with other applicable environmental planning instruments is required in any event. General, rather than specific statements of consistency and compliance do not necessarily apply to the specific circumstances of the subject building height breach.*

**Concluding comment, environmental planning grounds**

*Although not all grounds presented in the summary above and in the attached request to vary the height standard are concurred with, the submission demonstrates adequate grounds to approve the development application despite the departure from the height standard.*

**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 unreasonable in the circumstances of the case and the request 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**

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 consistency with the height standards' objectives follow:

Objective (a) - Topography:

- "The proposed alterations and additions are designed to improve the character of the existing building and its response to the topography of the site, as to ultimately limit the physical and visual impact of the non-compliance."
- the design provides "...a defined podium which will reduce the impact of the non-compliance."
- This "podium" conceals "...sheer building facades, unattractive and voids..." and will "improve the modulation and overall design of the development."

- "...the podium conceals (the building) and defines the streetscape as to reduce the perceived bulk of the non-complaint residential levels above."
- Landscaping, architectural approach and detailing "...ensures that the extent of non-compliance is acceptable."

**Comment:** *With design amendments made as illustrated in the attached plans, the development better responds to local terrain. The building's contextual fit with built form on and close the foreshore, are examined later, and found to be acceptable.*

Objective (b) View retention and sharing:

- The requests states: "...any loss of views is created by the existing site conditions" the existing building already exceeding 12 metres."
- Renovations have been "...sensitively designed as to mitigate any adverse view from the surrounding properties or public domain."
- "...additional building height which forms part of the level 8 lobby and rooftop services, this is similarly designed to ensure that there will be no loss of views to Sydney Harbour Bridge, Sydney Opera House, Sydney CBD and land and water interface." "...the proposal will increase the horizontal width, but reduce overall height, when compared to existing rooftop structures" "...resulting in a net zero impact from the surrounding properties."
- "...any potential view impact (referring to the submitted visual impact analysis by Urbaine Desing Group) the view impact created by the building height will be minor."

**Comment:** *View impact analysis follows the table assessing the application against DCP requirements. In summary, the size and shape of the rooftop additions have been modified to have less impact on views than originally proposed, and when compared to the existing building.*

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

- "...the proposal has been designed to align with the floorplate and envelope of the existing building as to ensure that the range of amenity impacts are consistent with those established by the existing building", including overshadowing to adjoining buildings south and east of the site.
- In comparing the proposed with existing shadows shown in architectural drawings (DA400), the proposal does not result in any significant increase in overshadowing.

**Comment:** *The proposed development has similar overshadowing impacts as the existing building. Reducing the rooftop structures has slightly reduced the building's winter overshadowing of other residences, south of the subject building.*

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

- "When considering the non-compliant elements as they oppose the northern and eastern boundaries, these are predominantly limited to blank facades and non-habitable openings. This ensures that any impact created by the non-compliant building height (per the revised building arrangement), will not impact the privacy of neighbouring properties or future residents."
- Bedroom windows also face east and north.
- Main habitable rooms are oriented to the south to capture Harbour views.

**Comment:** *This assessment is concurred with. Privacy impacts are acceptable, noting that smaller balconies on the western façade are angled toward the south and screened from view from across the street.*

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."
- The proposed "rebirthing" of the building makes it compatible with the heritage-listed and other buildings in the Kirribilli conservation area.

**Comment:** *Earlier in this report, the heritage assessment and examination of the applicant's submission regarding Objective (a) of the height standard concerning topography, the proposal's impacts on heritage and its effect on the qualities of Kirribilli as a harbourside locality were discussed.*

*The revised development is deemed to be compatible with its immediate and broader surrounds. The obtrusiveness of the existing building is reduced by the proposed renovations, principally due to the use of tones that complement other buildings in the area and reducing the proposed built form on the roof.*

Objective (f) Appropriate scale and density to promote the area's character:

- As discussed above, the written request submits the renovations proposed to update the building will make it more compatible with the streetscape and the character of the conservation area, even though the submission notes the building's height and bulk and scale detract from the neighbourhood's character.

**Comment:** *Regarding the building's scale, the earlier conservation planner's assessment observed:*

*"The proposal will not be able to adopt a characteristic bulk and scale as the original core structure of the post-modern building will be retained", and "The development will retain its 'Uncharacteristic' status because of its scale and massing. If it were reduced to three or four storeys, then it could become a 'Neutral' item. This control cannot be achieved in this particular circumstance."*

*The proposed development will not reduce the scale and density of the building. Rather, its density is increased by an enlarged floorplate and additional rooftop elements. In the eyes of a reasonable person the proposed development would be thought to improve the building's appearance, as the applicant's submission observes, as did several public submissions (with exceptions). The revised colours and materials and reduction in glazing make the development more compatible with its neighbours, even though it does remain as an 'uncharacteristic' element in the conservation area.*

*The applicant's submission contends that the addition of a new, modern 'skin' will reduce the impact of the building's height and bulk – this is achieved, despite the building's increased bulk, brought about by the larger footprint. As proposed the building will however have improved visual conformity with its neighbours, also noting it is slightly lower than the existing building.*

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

- This objective does not apply to the R4 zone.

**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 mid-60s. The local environment is of a high density and the proposed development is compatible with the density of development in the neighbourhood, and it's eclectic character.

Providing a mix of unit types would help maintain a degree of diversity in the local housing stock. However, the submitted economic analysis adequately supports the proposal, submitting the proposal contributes to housing choice, while providing a housing type of limited supply and in high demand, in the local area and the district.

*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, neither is it excluded from the application of cl. 4.6,
- the applicant's written request to contravene the maximum building height has demonstrated that compliance is unreasonable 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 it is located in a Conservation Area under Schedule 5 in NSLEP 2013. Several heritage items are nearby. The following planning objectives apply:

- (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.*

The objectives are satisfied by the heritage assessment, earlier in this report.

### **Earthworks**

The application involves some excavation, to enlarge the parking level on site's eastern side, proposing to extend the basement to the boundary. 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. Specifically, the reports address the stability of the proposed building and measures required to maintain structural integrity during demolition and construction, and structures on neighbouring land.

Observations in these reports consider groundwater 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. Conditions to this effect are recommended.

### **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).

The LEP stipulates that if:

- a lot less than 900m<sup>2</sup> is left with lower density development, or
- Council is not satisfied adjoining land can accommodate a residential flat building, consent may not be granted.

All surrounding residential land, including several lots that are less than the minimum specified, already have residential flat buildings erected on them. Council is therefore satisfied that each lot adjoining the site can accommodate a flat building. Neither will adjoining lots be left with a density lower than the existing flat buildings on them.

**NORTH SYDNEY DEVELOPMENT CONTROL PLAN 2013**

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

<b>DEVELOPMENT CONTROL PLAN 2013 – Part B Section 1- Residential Development</b>		
	<i>Complies</i>	<i>Comments</i>
<b>1.1.1 General Objectives</b>		
<b>O1 reinforces the local planning priorities and actions of Council's Local Strategic Planning Statement;</b>	<b>Yes</b>	The proposal is consistent with the statement's objectives regarding housing for a diverse community.
<b>O2 reinforces the actions and targets of Council's Local Housing Strategy;</b>	<b>On merit.</b>	<p>The applicant has submitted an appraisal of housing supply and demand that places the development in district and local contexts. This analysis demonstrates that across Kirribilli, the North Sydney Council area and the lower North Shore, that the proposal contributes to an appropriate housing mix, responding to an undersupply of large apartments, demonstrated by demand analysis in the attached report.</p> <p>The submitted market analysis demonstrates that apartments of the size proposed are in low supply on the lower North Shore and that demand is high. In meeting this demand, housing mix and choice will be improved, as smaller dwellings (studio and 1-bedroom units) are over-represented in housing supply, in Kirribilli, other parts of the North Sydney area and adjacent suburbs.</p> <p>As part of the argument submitted, the report makes the case for the current housing strategy requiring review, having been prepared pre-Covid, and therefore could not have contemplated the attendant upheaval of social and economic conditions the pandemic caused.</p>
<b>O3 is consistent with the principles contained within the Integrated Land Use and Transport Policy;</b>	<b>Yes</b>	Occupants of the development will benefit from the
<b>O4 provides a range of living opportunities that attract and cater for a diverse population;</b>	<b>Yes</b>	As discussed above.
<b>O5 does not have adverse impacts on residential amenity or environmental quality;</b>	<b>Yes</b>	As discussed in other parts of this assessment.
<b>O6 is in context with surrounding development;</b>	<b>Yes</b>	As demonstrated elsewhere in this report.
<b>O7 contributes to the garden setting and lower scale character of North Sydney's residential neighbourhoods;</b>	<b>Yes</b>	This objective's relevance to Kirribilli is questionable, and the proposal is compatible with surrounding development.
<b>O8 provides safe and comfortable accommodation;</b>	<b>Yes</b>	This is axiomatic when viewing the plans.

<b>O9 is consistent with the character that is described in the relevant area character statements;</b>	<b>Yes</b>	Addressed in the heritage assessment.
<b>O10 incorporates innovative sustainable design to reduce energy and water consumption, and meets or exceeds sustainability requirements,</b>	<b>Yes</b>	The sustainability report submitted with the application demonstrates superior environmental performance compared with demolition and construction of a new building.
<b>O11 minimise stormwater runoff, maintain or improve stormwater quality and encourage recycling where possible.</b>	<b>Yes</b>	Addressed elsewhere in this report.
<b>1.2 Social Amenity</b>		
<b>1.2.1 Population Mix</b>  In a residential flat building of less than 20 dwellings, at least two of these dwelling types must be provided: <ul style="list-style-type: none"> <li>- Studio</li> <li>- 1 bedroom,</li> <li>- 2 bedroom,</li> <li>- 3 bedrooms or more.</li> </ul>	Acceptable on merit.	All units have 3 bedrooms and exceed 230m <sup>2</sup> in floor area.  The DCP (P4) requires an “authoritative analysis of current and future market demand” to support a proposal. This letter provides no analysis, only an opinion.  In support, the applicant has submitted economic analysis by Hill PDA (attached), which adequately supports the proposal.
<b>1.2.2 Universal design and adaptable housing</b>  20% of housing in a development of more than 5 dwellings must be adaptable.	Acceptable on merit.	2 of 7 units are adaptable which exceeds 20% of the total. However parking areas on the ground floor (lower basement level) do not provide adequate floor to ceiling height for accessible parking spaces, which would require additional excavation.  A condition is imposed requiring minimum floor to ceiling heights for the parking areas, of 2.2m for standard parking spaces and 2.5m for accessible spaces. With the recommendation to relocate the accessible parking space for the level 1 unit to the basement, at least 2 accessible parking spaces must be provided on either basement level (ground and lower ground levels, as shown on the plans).  These details are recommended to be submitted to allow approval of the application, under authority delegated by the Panel to the Manager Development Services, subject to these details being addressed to the Manager’s satisfaction, and other conditions recommended, appended to this report.
<b>1.2.3 Maintaining Residential Accommodation</b>  Development must not reduce residential density, measured by number of units or number of beds.	Acceptable on merit.	The number of units is reduced from 27 to 7, a 74% reduction.  As mentioned, economic analysis is attached, to support the application.
<b>1.2.4 Affordable Housing</b>	N/A	As the building is strata subdivided the Housing SEPP (required to be considered by this DCP clause) does not apply.
<b>1.2.5 Housing for Seniors/Persons with disability</b>	Yes	Not specifically designed for seniors, the proposal includes 2 adaptable dwellings, to allow ageing in place and to accommodate people with disabilities.
<b>1.3 Environmental Criteria</b>		
<b>1.3.1 Topography</b> <ul style="list-style-type: none"> <li>• Finished ground level should not be higher or lower</li> </ul>	Yes.	As discussed in relation to the LEP, submitted geotechnical and structural engineering advice and recommendations adequately address geotechnical stability of the proposal and adjoining property.

<p>than 500mm than existing ground level</p> <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>• 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><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>The development has reasonable view impacts. Views are considered below this table.</p>
<p><b>1.3.7 Solar Access</b></p> <ul style="list-style-type: none"> <li>• More than 3 hours between 9am – 3pm</li> <li>• RFB – 70% of dwellings 2hrs solar access</li> </ul>	<p>Acceptable on merit.</p>	<p>See previous assessment, relating to the ADG.</p>
<p><b>1.3.8 Acoustic Privacy</b></p> <ul style="list-style-type: none"> <li>• Living areas Day/Night <math>\leq</math> 40_dBA</li> <li>• Sleeping areas Day/Night <math>\leq</math> 35_dBA</li> </ul>	<p>Yes.</p>	<p>A condition is imposed to address this issue, referring to the submitted acoustic report.</p>
<p><b>1.3.9 Vibration</b></p>	<p>Yes.</p>	<p>A condition is imposed to address this issue.</p>
<p><b>1,3,10 Visual Privacy</b></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>Acceptable on merit.</p>	<p>The rooftop area is proposed to be the private domain of the apartment of level 7, immediately under the roof. As first proposed, the roof accommodated a communal garden, spa pool and fire stairs, which unacceptably added considerable bulk to rooftop structures.</p> <p>A hatch for emergency egress from the roof will replace the fire stairs, in accordance with the advice of the applicant's BCA consultant.</p> <p>The architectural plans outline existing and previously proposed structures which allow comparison.</p> <p>Impact on views and visual intrusion into the sensitive harbourside landscape are now acceptable as a result.</p> <p>Views and the impacts on the scenic qualities of the locality are examined below this table.</p>
<p><b>1.4 Quality built form</b></p>		
<p><b>1.4.1 Context</b></p>	<p>Acceptable on merit.</p>	<p>Refer to the assessment of the applicant's clause 4.6 required to vary the height standard, and discussion below this table.</p>
<p><b>1.4.2 Subdivision Pattern</b></p>	<p>N/A.</p>	<p>Subdivision is not proposed, although strata subdivision of the completed building is likely.</p>
<p><b>1.4.3 Streetscape</b></p>	<p>Acceptable on merit.</p>	<p>See previous assessment, with regard to the height standard.</p>
<p><b>1.4.4 Laneways</b></p> <ul style="list-style-type: none"> <li>• 2 storey building – 10m setback</li> </ul>	<p>N/A</p>	

	<ul style="list-style-type: none"> <li>• Carports/garages must not cover more than 50% of width to laneway</li> <li>• Fences/other structures – 1.2ms setback</li> </ul>		
<b>1.4.5</b>	<b>Siting</b> Buildings are to be sited as required by the area character statement. Buildings in the R3 zone are to have a single building form and address the street.	Acceptable on merit.	Siting is discussed respecting the ADG.
<b>1.4.6</b>	<b>Setback – Side</b>	Acceptable on merit.	Side setbacks are addressed in the ADG table above.
<b>P1</b>	<b>Front setback</b> <ul style="list-style-type: none"> <li>• To match adjoining properties.</li> </ul>	Yes.	The front setback is behind the building next door (No 24) and being on a corner block the new front setback, appears to be behind the average of the setbacks of No 24 and No 18, west of Beulah Street.
<b>P5</b>	<b>Rear Setback – Rear</b> <ul style="list-style-type: none"> <li>• To match adjoining properties.</li> </ul>	Yes.	
<b>P7</b>	<b>Laneways</b>	N/A.	The rear setback is maintained, which is acceptable.
<b>P8</b>	<b>Building Separation</b>	Acceptable on merit.	Addressed in the ADG assessment.
<b>1.4.7</b>	<b>Form Massing Scale</b> <ul style="list-style-type: none"> <li>• Floor to ceiling height 2.7m</li> </ul>	Acceptable on merit.	Addressed in the ADG assessment.
<b>1.4.8</b>	<b>Built Form Character</b>	Yes.	As discussed in relation to the applicant's 4.6 request.
<b>1.4.9</b>	<b>Dwelling Entry</b>	Yes.	As assessed regarding the ADG.
<b>1.4.10</b>	<b>Roofs</b>	Yes.	The roof is flat with leisure facilities and lift access, similar to the use previously permitted by access to the roof, albeit for the level 7 unit only.
<b>1.4.11</b>	<b>Dormers</b> <ul style="list-style-type: none"> <li>• Pitch of dormer roof &lt;36°</li> <li>• No more than 1/3 of the width of the roof plane</li> </ul>	N/A.	
<b>1.4.12</b>	<b>Materials</b>	Yes.	The change in colours and materials submitted in the amended plans are acceptable, being analogous in tone and materiality to be compatible with the characteristics of the heritage conservation area.
<b>1.4.13</b>	<b>Balconies – Apartments</b> <ul style="list-style-type: none"> <li>• Min depth – 2m</li> <li>• Min area – 8m<sup>2</sup></li> </ul>	Yes.	See ADG assessment.
<b>1.4.14</b>	<b>Front Fences</b> <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>	Yes.	See ADG assessment.
<b>1.5 Quality Urban Environment</b>			
<b>1.5.1</b>	<b>High Quality Residential Accommodation</b>	Yes.	These matters are considered in the ADG assessment.
<b>1.5.2</b>	<b>Lightwells &amp; Ventilation</b>	Yes.	See ADG assessment.
<b>1.5.3</b>	<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 security-controlled entry.
<b>1.5.4</b>	<b>Vehicle Access and Parking</b> <ul style="list-style-type: none"> <li>• Part B – Section 10 – Car parking</li> <li>• Limit width of vehicle access to 2.5m</li> </ul>	Yes.	Parking considered in relation to the ADG, having referred to the DCP's controls.

<b>1.5.5 Site Coverage</b>	Acceptable on merit.	46.8%%																
<b>1.5.6 Landscape Area</b>	Acceptable on merit.	<table border="1"> <thead> <tr> <th>Control</th> <th>Existing</th> <th>Proposed</th> <th>Compliance</th> </tr> </thead> <tbody> <tr> <td><b>Site coverage (45% max)</b></td> <td>36.3%</td> <td>46.8%</td> <td>Acceptable on merit.</td> </tr> <tr> <td><b>Landscaped area (40% min)</b></td> <td>5.5%</td> <td>33.3%</td> <td>Acceptable on merit.</td> </tr> <tr> <td><b>Unbuilt-upon area (15% max)</b></td> <td>63.5%</td> <td>19.9%</td> <td>Acceptable on merit.</td> </tr> </tbody> </table> <p>The table indicates that although site coverage is increased, the landscape and unbuilt upon areas have been redistributed in a manner much closer to compliance. Considering site conditions – mainly there being next to no soil on the site and the extent of paving in the current development, and that few other developments in the vicinity would likely achieve compliance with these controls.</p> <p>Landscaped area will be increased and unbuilt upon area and site coverage reduced, upon replacement of the carport and driveway off Beulah Street, as recommended.</p> <p>In considering these factors, the application's performance is satisfactory.</p>	Control	Existing	Proposed	Compliance	<b>Site coverage (45% max)</b>	36.3%	46.8%	Acceptable on merit.	<b>Landscaped area (40% min)</b>	5.5%	33.3%	Acceptable on merit.	<b>Unbuilt-upon area (15% max)</b>	63.5%	19.9%	Acceptable on merit.
Control	Existing	Proposed	Compliance															
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<b>Unbuilt-upon area (15% max)</b>	63.5%	19.9%	Acceptable on merit.															
<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.	Amended landscaping plans are satisfactory in the given existing site conditions and limitations.																
<b>1.5.9 Front Gardens</b>	Yes.	Landscaping of the main open space, between Beulah Street and the building, will be enhanced by replacing the driveway and carport with landscaping.																
<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>	Private: Yes.  Communal: No.	See previous assessment addressing the ADG, all units have POS that comply with or exceed ADG minima.  No communal space is proposed.  Communal space is recommended to be provided at ground level in place of the carport and driveway off Beulah Street. These details are recommended to be submitted for approval, in determination of the application by the Manager Development Services, under authority delegated by the Panel.																
<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.																
<b>1.5.14 Site Facilities</b>	Yes.																	
<b>1.5.15 Servicing of new lots</b>	N/A.																	
<b>1.6 Efficient Use of Resources</b>																		
<b>1.6.1 Energy Efficiency</b>	Yes.	These matters have been addressed via submission of a BASIX certificate 1306195M_04.																
<b>1.6.2 Passive Solar Design</b>	Yes.																	
<b>1.6.3 Thermal Mass and Insulation</b>	Yes.																	

### ***View sharing and visual impact assessment***

Location of views analysed in the Urbaine Design Group (July 2023) report are as shown in the following image. Objections were received from owners and occupiers of dwellings in these buildings, although not from dwellings in the same locations as the viewpoints described and shown. An objection was also received from the owner of 120 Kirribilli Avenue. The building the subject of this report is outlined in pink.

Viewpoint 1 – eastern topmost unit 122 Kirribilli Ave

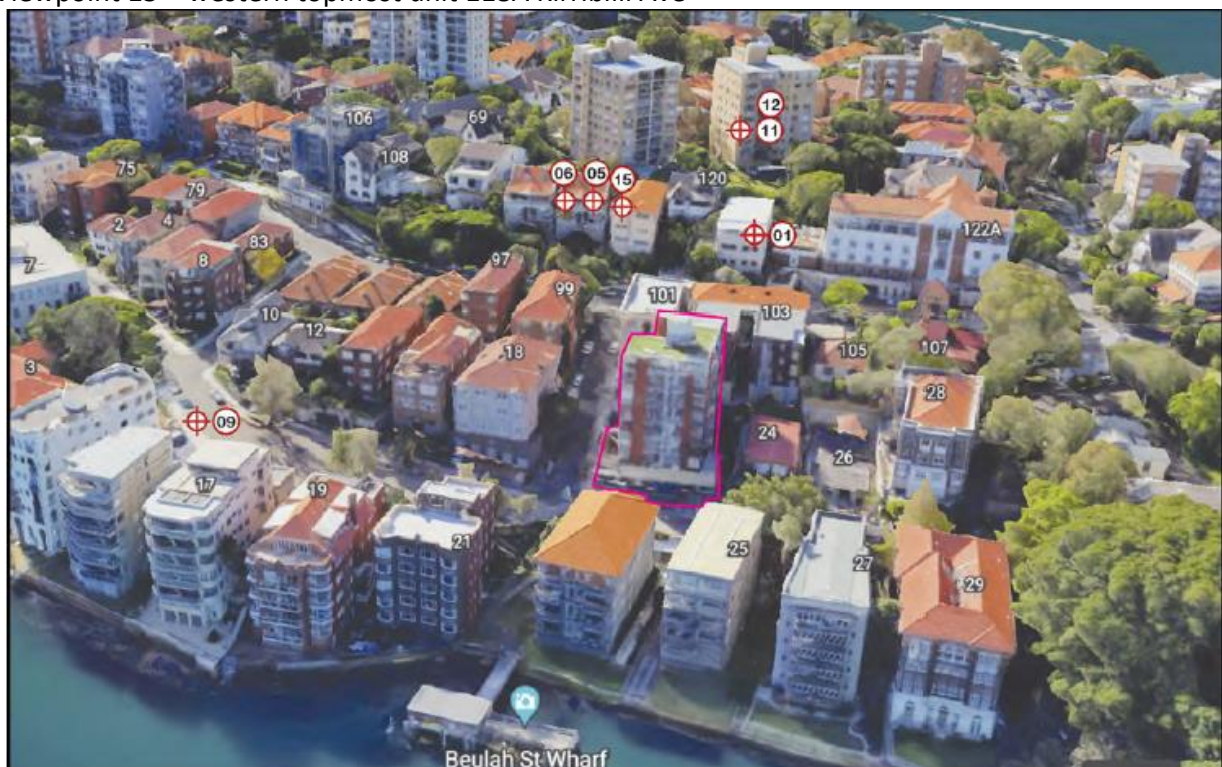
Viewpoint 5 – eastern topmost unit 116 Kirribilli Ave

Viewpoint 6 – western topmost unit 116 Kirribilli Ave

Viewpoint 11 – southeastern façade 4 or 5 levels below roof 1-3 Peel Street

Viewpoint 12 – southeastern façade 3 or 4 levels below roof 1-3 Peel Street

Viewpoint 15 – western topmost unit 118A Kirribilli Ave

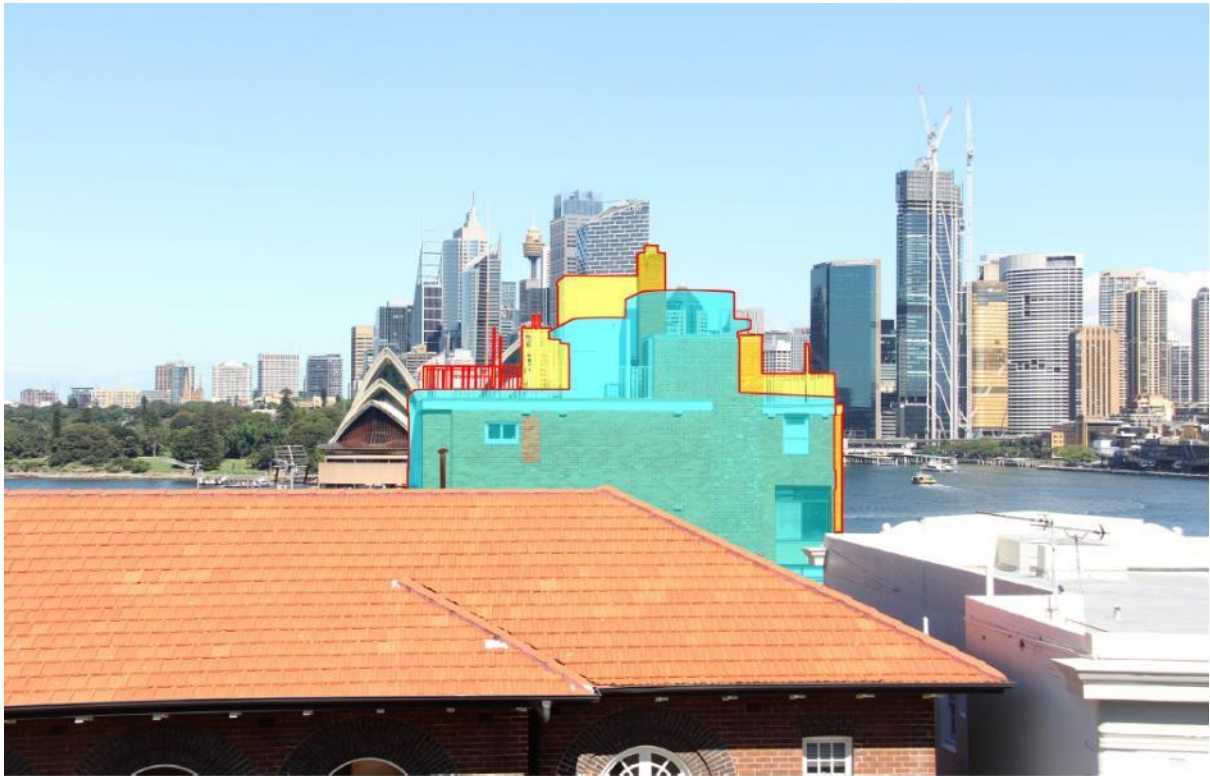


***Figure 21: Locations from where images taken for view analysis (Urbaine Design Group)***

Below are several images from Urbaine Design Group, submitted 22 August 2023, which show the amended proposal's impact on views from some of the locations identified in the above image. That views from closer to the subject building have not been assessed is noted, this being due to these buildings being generally lower than or only slightly higher than the proposed development, and the development not appreciably enlarging its footprint to significantly impact views from buildings nearby.

An evaluation of the proposal's impact on views using the Land and Environment Court's "Tenacity" view sharing principles follows.





**Figure 22: The view from viewpoint 1. The existing building is in yellow, and the proposed building is shown in blue. Visibility of the Opera House's sails is improved, and parts of the city skyline are in turn obscured and made visible. The net effect is acceptable.**



**Figure 23: The image allows comparison of the proposal (blue) with the existing building (yellow) from viewpoint 5. When viewed with the naked eye the existing white palisade fence around the subject building's accessible rooftop area is less prominent than shown by the yellow and red edging either side of the lift structure (tall yellow object). In terms of built form, a taller object is replaced with a slightly lower and wider object. The sky view is reduced and the view of the Royal Botanic Garden, less-so. The net impact is marginal.**



**Figure 24: From viewpoint 11, the proposal has a slightly improved view of the Opera House, as the rooftop element is lower and narrower than previously proposed. The alterations have little effect on the overall vista, mainly due to the distance between the viewpoint, the subject building and the prime elements of the vista. One submission noted that the Opera House and City appear closer than indicated, to the naked eye this true. The above image appears to have been corrected, to reduce the distortion caused by the original image being taken with a wide-angled lens.**

**As with all these viewpoints, turning 45 degrees to the left or right alters the view dramatically. To give an impression of this effect, below is the vista available from a dwelling located between Kirribilli Avenue and Lower Pitt Street, to the west of the viewpoints examined above. The subject building (pale blue lift structure on the roof) is to the left.**



### **Tenacity evaluation**

The images above indicate the views further from the site are less affected compared with the impact on views from vantage points closer to the site. It may therefore be deduced, for the purpose of this analysis, that the proposal's impact from the other viewpoints further away and at more oblique angles will be less than the impact when viewed from viewpoint 1.

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 also aim 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, has been considered in conducting this examination. As mentioned, 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.

Residents and occupants north of and uphill from the site have objected to the development on grounds their views will be adversely affected. Public views are not significantly affected by the proposed alterations and additions to the building.

### **Viewpoint 1 – eastern topmost unit, 122 Kirribilli Avenue**

#### ***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:** Firstly, the author of this report visited these premises and can attest to the accuracy of the images provided. The view is considered whole, although the existing building does protrude into the vista. That the view could be of anything more famous in Sydney and possibly the nation is difficult to imagine. Many people would probably consider the view to be of the highest quality and hence value, it is genuinely panoramic.

#### ***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 view is available over a front boundary, partly afforded by having a higher elevation than the subject building. The view is available from standing and sitting positions.

#### ***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:** The view is mainly available from the enclosed balcony that directly faces south, toward the Opera House and the City. To a lesser extent the view is available from the adjacent lounge room, although only available through a doorway, which restricts the view's panoramic 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 clause 4.6 request to depart from the maximum building height standard demonstrates that the existing building establishes the 'benchmark' for assessing the proposal's environmental impacts, despite the degree of departure from the height control. Accordingly, impacts of the proposed development can be determined by comparison with the existing building, not a compliant 'envelope' - a generalised shape drawn from applying maximum height and minimum setback controls to a development site.

In this context, as the images above show from viewpoint 1 and others, the difference between the existing and proposed built form is marginal, when viewed from the north. The height of proposed rooftop structures is reduced by about 500-600mm (comparing lift overruns, existing and proposed). The other main change is shifting rooftop building mass to the west, an additional 1.5m – 2.0m. The net difference as shown (DA204), is to reduce the overall size of rooftop structures.

The design, having been modified to arrive at the proposed configuration, represents an improvement in terms of the development's impact on views. Despite the noncompliance, the design's additional modification to further reduce view impacts without reducing the amenity offered, is arguably not readily or reasonably achievable. As originally submitted, rooftop facilities included a stairway, a spa pool, communal garden and seating areas, in addition to the facilities now proposed. These were removed, as they added appreciably to the visual intrusion of the building into the landscape and increased the negative impact on views.

#### ***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:** The severity of the impact on the views from affected properties, based on the foregoing analysis, is considered minor, noting that:

- The views are of a high quality,
- The views are (and will remain) direct from standing and sitting positions,
- The views are presumed to be from prime indoor and outdoor living areas, indicated by the image showing the Urbaine Design Group's viewpoint locations, which depicts all dwellings having windows and balconies facing the view,
- Although the development is non-complaint with height and setback controls, when compared with the existing building, the development is deemed to be reasonable, and
- Any further alteration to the design would be unlikely to yield improvement to the minor impacts caused by the proposal.

The foregoing analysis demonstrates the impact of the proposal on views is reasonable and view-sharing achieved, having observed the principles established by the Land and Environment Court.

#### ***Visual impact on the locality***

The preceding view analysis considered the visual effects of the proposal when viewed from the north. Perhaps more importantly when considered from the public-view perspective, is the effect of the proposal on the views of the building in its surroundings, from other directions.

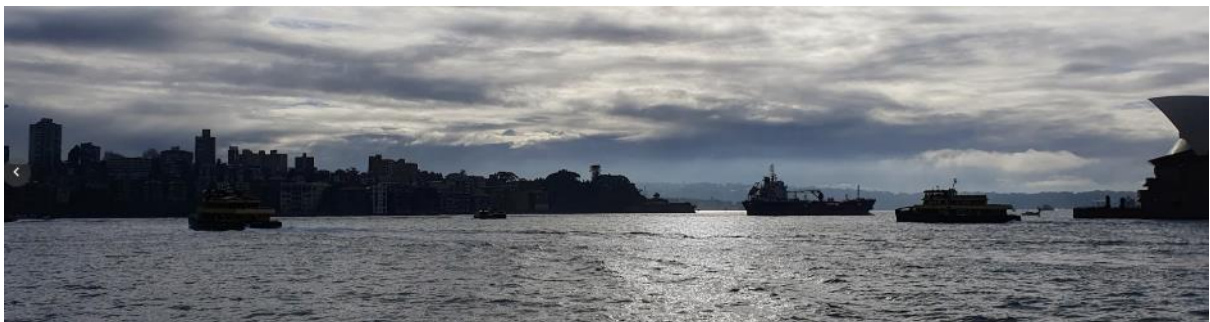
In a landscape context, the building's top levels rise above nearby development. Observation of the building in this context, from the City or the Bridge, indicates that individual buildings stepping up from the harbour is less visually significant than how the group of buildings in the site's immediate vicinity step gradually up the slope from the Harbour.



The proposal could be said to interrupt the rhythm of local built form, being two or three stories higher than its neighbours. Depending on the viewer's position, the subject building sits within this context and while from other vantage points the building rises above the prevailing height of Kirribilli's built form.

Compared with the existing building, the amended redesign and refurbishment achieves a reduction of this impact, by using colours and materials that blend, rather than contrast with that of the local built environment. Choosing more neutral and analogous tones and reducing the bulk and size of rooftop structure, as the current proposal does, compared with the originally submitted design, will result in the building being more compatible with and complementary to its highly urbanised, waterfront locality.

Below is a series of images that illustrate a range of views of the existing building in the broader context of the Harbour and surrounds.



***Figure 25: This silhouette shows how close Kirribilli appears to the Opera House. In fact, the Opera House is closer to Kirribilli Point (480m), than it is to the Bridge's north-eastern pylon (675m). At this distance and in early morning wintry conditions, the tall apartment blocks on Kirribilli's skyline dominate, not individual buildings below. The image was taken from the northern end of the Overseas Passenger Terminal, Circular Quay.***



***Figure 26: From the Opera House, and in a brighter light, individual buildings become apparent. Toward the centre of the image, the subject building can be identified by the blue lift structure on the roof. Although a dark photo, the colours of the existing building blend in, and the contrasting effect of white balconies and windows is clear. The prominence of the off-white building on the shore and left of the subject building, is evident. As discussed, if all buildings visible in this image were of similar white to pale grey hues, they would collectively compete, and not contrast with, the Opera House.***



***Figure 27: Again, the subject building is marked by its blue lift structure, seen against the backdrop of the trees in the grounds of Admiralty House and Kirribilli House. This view is from the Harbour Bridge's pedestrian walkway, almost due west of the site. Comparing the proposed colours with those of other buildings in the locality, the proposal is compatible with its surrounds. If the predominant off-white cladding originally proposed for the western and eastern façades remained, the building would contrast strongly with the tones of most nearby buildings, contradicting the DCP controls for the Kirribilli Heritage Conservation area, and those of the Opera House Buffer Zone of the Eastern Harbour City SEPP.***

### **Kirribilli Heritage Conservation Area– Part C of NSDCP 2013**

The heritage assessment has considered the DCP's requirements for development in this area.

### **LOCAL INFRASTRUCTURE CONTRIBUTIONS PLAN**

A local infrastructure contribution is required to be paid. As the proposal results in a net reduction of dwellings, a levy is recommended to be charged (should consent be granted) per section 7.12 of the Act. With a levy equating to 1% of the proposal's value, \$12,993,493.00 the contribution would be \$129,934.93.

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

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

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<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	Yes
7. Physical relationship to and impact upon adjoining development (Views, privacy, overshadowing, etc.)	Yes
8. Site Management Issues	Yes
9. All relevant S 4.15 (1) considerations of Environmental Planning and Assessment (Amendment) Act 1979	Yes

#### **PUBLIC INTEREST**

The proposal is in the public interest for the reasons stated throughout this report. The proposal is consistent with applicable objectives of the R4 High Density Residential zone, the building height development standard (Cl. 4.3(1) NSLEP) and the LEP's heritage conservation provisions. The development is also consistent with applicable provisions of SEPP 65 and the Apartment Design Guide, and the North Sydney DCP 2013.

#### **SUITABILITY OF THE SITE**

The site is suitable for the proposed renovations and extensions as detailed in the subject application. Plans and information submitted with the application demonstrate that the development has acceptable impacts on built and natural environments, and on the residential amenity and heritage qualities of the neighbourhood.

#### **CONCLUSION + REASONS**

The proposal has been considered under relevant Environmental Planning Instruments and policies including NSLEP 2013 and NSDCP 2013 and was generally found to be unsatisfactory.

The Clause 4.6 written submission submitted by the applicant is acceptable, adequately demonstrating that compliance would be unreasonable and that there are environmental planning grounds sufficient to justify variation of the standard.

Council received 18 submissions and 9 of them raised concerns about several issues, all of them considered in this report.



Having regard to the merits of the proposal, the application is recommended for approval subject to conditions. However, due to design amendments being required, it is recommended that authority be delegated to Council's Manager Development Services to determine the application, subject to the recommended conditions appended to this report, and the applicant submitting plans to satisfactorily address the following matters:

- Removing the carport and driveway from the setback area between the Beulah Street site boundary and the building, towards the site's northwestern corner.
- Replacing the existing vehicle crossing adjacent to this driveway with kerb and gutter to match existing, and making good the footpath to match levels of the existing footpath's surface and gradient.
- Landscaping the area where the carport and driveway are to be removed, including a pedestrian path to the building and a shady, vegetation-screened seating area for use of building occupants and visitors. Alternatively, the area could be landscaped and included in the passive landscaping between the building and its street frontages.
- Relocating the parking space to be removed from the Beulah Street frontage to the ground level parking area and to make it another parking space suitable for access by people with disability, in accordance with AS4299-1995, including a minimum floor to ceiling clearance of 2.5m, for the parking space and the adjacent shared space, to maintain a total 11 parking spaces. Alternatively, convert for accessible use 2 of the 10 car parking spaces on the ground and upper ground levels, in accordance with the cited Australian Standard.

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

The subject application was notified to adjoining properties and the Bradfield Precinct Committee for two separate periods of at least 14 days, in accordance with Council's Community Engagement Protocol. Issues raised have been considered in this report.

#### **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 delegate authority to Council's Development services manager to grant consent to Development Application No. 358/22 for alterations and additions to a residential flat building to convert 27 strata titled flats into 7 large apartments, landscaping and associated works, on land at 20-22 Waruda Street Kirribilli, subject to:

- a) the conditions appended to this report, and
- b) the applicant submitting plans, within 30 days of the date of this resolution, to satisfactorily address the following matters:
  - i. Removing the carport and driveway from the setback area between the Beulah Street site boundary and the building, towards the site's northwestern corner.
  - ii. Replacing the existing vehicle crossing adjacent to this driveway with kerb and gutter to match existing and making good the footpath to match levels of the existing footpath's surface and gradient.

- iii. Landscaping the area where the carport and driveway are to be removed, including a pedestrian path to the building and a shady, vegetation-screened seating area for use of building occupants and visitors. Alternatively, the area could be landscaped and included in the passive landscaping between the building and its street frontages.
- iv. Relocating the parking space to be removed from the Beulah Street frontage to the ground level parking area and to make it another parking space suitable for access by people with disability, in accordance with AS4299-1995, including a minimum floor to ceiling clearance of 2.5m, for the parking space and the adjacent shared space, to maintain a total 11 parking spaces. Alternatively, convert for accessible use 2 of the 10 car parking spaces on the ground and upper ground levels, in accordance with the cited Australian Standard.

**JIM DAVIES**  
**EXECUTIVE ASSESSMENT OFFICER**

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

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