

**SYDNEY NORTH PLANNING PANEL
ASSESSMENT REPORT**

SNPP No:	2017SNH037
DA No:	327/15/5
ADDRESS:	101-111 Willoughby Road, CROWS NEST
LGA:	North Sydney Council
PROPOSED DEVELOPMENT:	To modify consent DA327/15 for a 4- to 6-storey mixed use development with regard to new commercial space on mezzanine and upper ground floor, converting balconies to wintergardens, façade changes, level changes, unit layout changes and carpark modifications
APPLICANT:	Ionic Management Pty Ltd
OWNER(S):	CN Plaza No.1 Pty Ltd
REPORT BY:	Susanna Cheng, Senior Assessment Officer



REPORT TO SYDNEY NORTH PLANNING PANEL

ADDRESS/WARD: 101-111 Willoughby Road and a portion of Zig Zag Lane, Crows Nest

APPLICATION No: DA 327/15/5 / (2017SNH037)

PROPOSAL: To modify consent DA327/15 for 4- to 6-storey mixed use development with regard to new commercial space on mezzanine and upper ground floor, converting balconies to wintergardens, façade changes, level changes, unit layout changes and carpark modifications

PLANS REF: Drawings by Nettleton Tribe 3844_DA003 (C), 3844_DA010 (E), 3844_DA011 (D), 3844_DA012 (C), 3844_DA013 (C), 3844_DA014 (C), 3844_DA015 (D), 3844_DA015a (D), 3844_DA016 (F), 3844_DA018 (F), 3844_DA019 (E), 3844_DA020 (C), 3844_DA032 (C), 3844_DA033 (C), 3844_DA035 (A), 3844_DA061 (C), 3844_DA062 (D), 3844_DA063 (C), 3844_DA064 (A) received on 9/3/17; 3844_DA017 (H), 3844_DA021 (F), 3844_DA022 (F), 3844_DA031 (D), 3844_DA041 (F), 3844_DA042 (F) received 16/5/17

OWNER: CN Plaza No.1 Pty Limited

APPLICANT: Ionic Management Pty Limited
c/- Chris Ryan

AUTHOR: Susanna Cheng, Senior Assessment Officer

DATE OF REPORT: 24 July 2017

DATE LODGED: 28 February 2017

SUBMISSIONS: Nil

RECOMMENDATION: Approval

EXECUTIVE SUMMARY

This development application seeks Council's approval to modify consent DA327/15 for 4- to 6-storey mixed use development with regard to new commercial space on mezzanine and upper ground floor, converting balconies to wintergardens, façade changes, level changes, unit layout changes and carpark modifications.

The application is reported to Sydney North Planning Panel for determination as the Capital Investment Value (CIV) of the development exceeds \$5 Million and the original consent was granted by the former Sydney East Joint Regional Planning Panel.

Council's notification of the proposal has attracted no submissions.

The assessment has considered the performance of the application as against relevant planning controls and the proposed development is considered to be satisfactory.

The modifications include an increase in building height to accommodate additional commercial floor space, however, remains compliant with the maximum building height controls and minimum non-residential floor space requirements in North Sydney Local Environmental Plan. The increase in building height will not result in any material shadow impacts on residential properties or approved public plaza.

The form, massing and character of the development will remain consistent with the approved development and as envisaged by the controls. The modifications provide for increased articulation of the podium level and modulated façade and is supported by Council's Design Excellence Panel.

The proposed residential units are substantially compliant with the requirements of SEPP 65 in relation to apartment design. Solar access, and internal and balcony sizes meet minimum criteria.

The proposed reduction in the number of cross ventilated units is considered acceptable in the circumstances as the shortfall is relatively minor and all affected units are north-facing and will maintain satisfactory residential amenity. The development will maintain satisfactory levels of privacy by means of wintergardens, balcony balustrades, and distance separations as approved.

Following this assessment, the development application is considered to be reasonable in the circumstances and is recommended for **approval** subject to conditions.

Re: 101-111 Willoughby Road and a portion of Zig Zag Lane, Crows Nest

LOCATION MAP



Property/Applicant ● Submitters - Properties Notified

DESCRIPTION OF PROPOSAL

The proposal seeks to modify development consent **DA327/15** for the construction of a 4- to 6-storey mixed use development including 4 basement levels, supermarket, specialty retail tenancies, 70 residential units and public plaza, with regard to new commercial space on mezzanine and ground floor levels, level changes, conversion of balconies to wintergardens, façade changes, unit layout changes and carpark modifications (**Figure 1**).

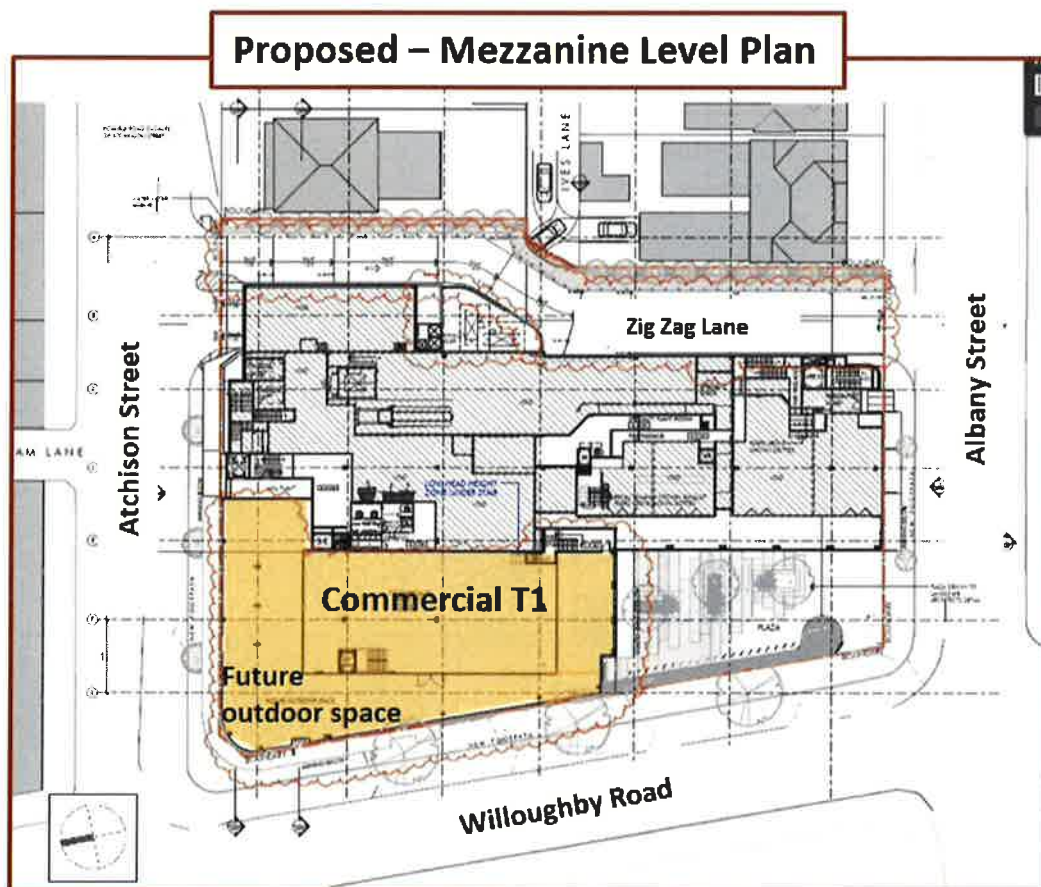
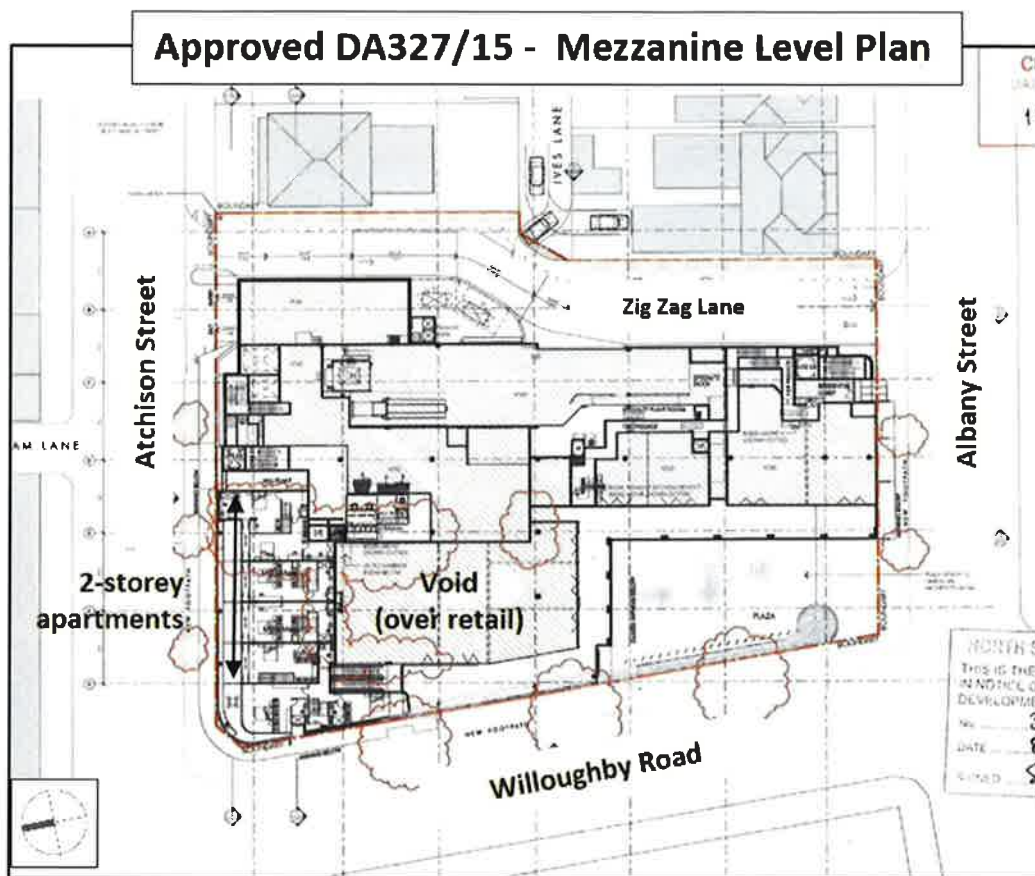


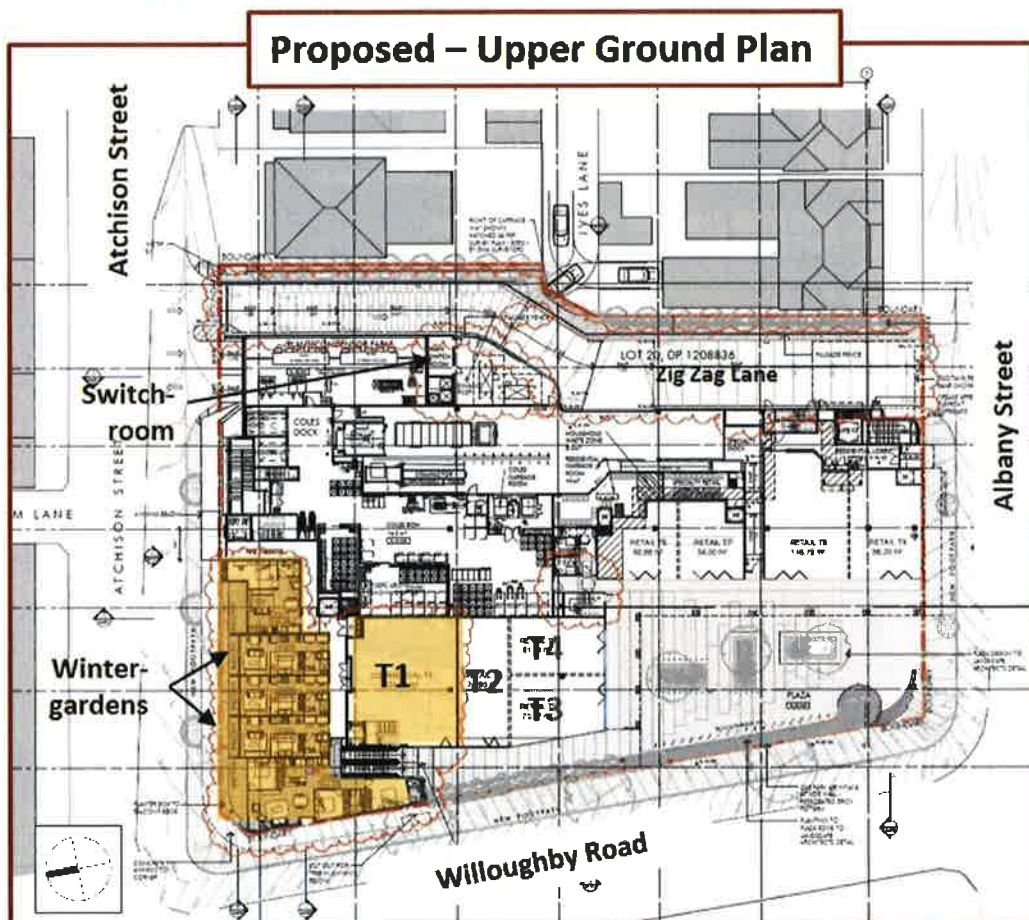
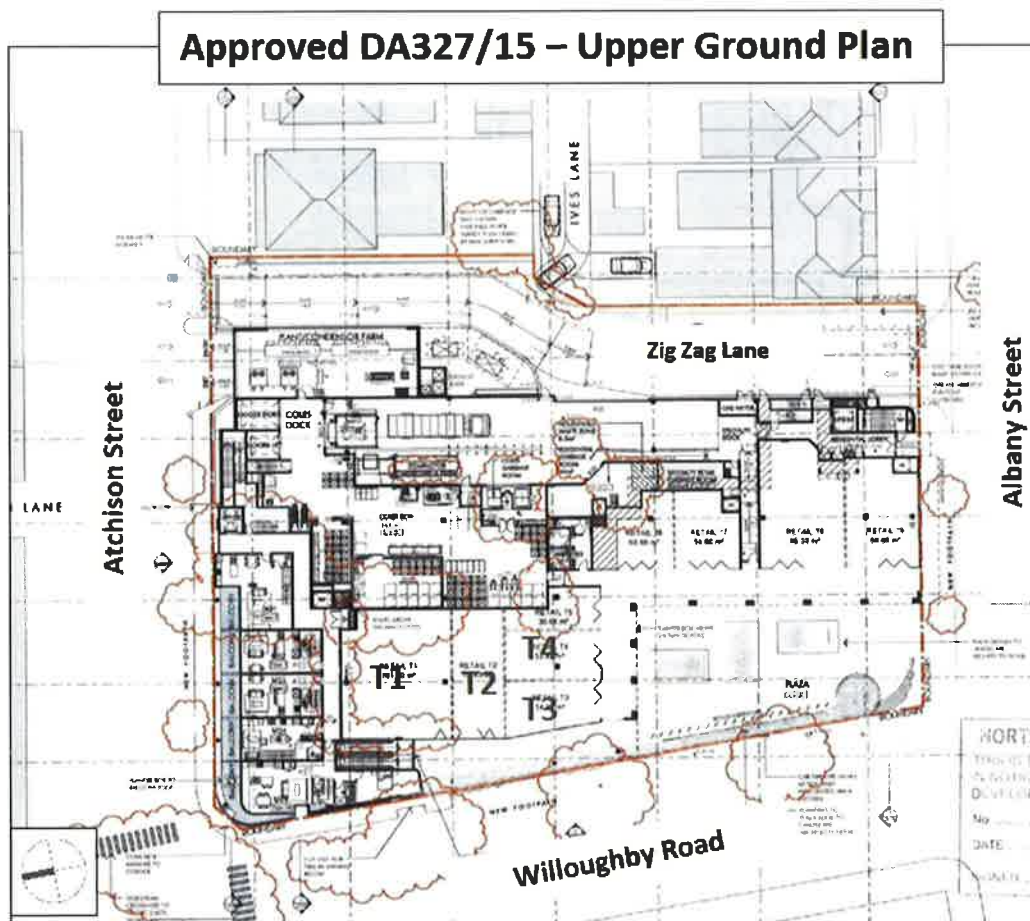
Figure 1 – Photomontage of approved & proposed development

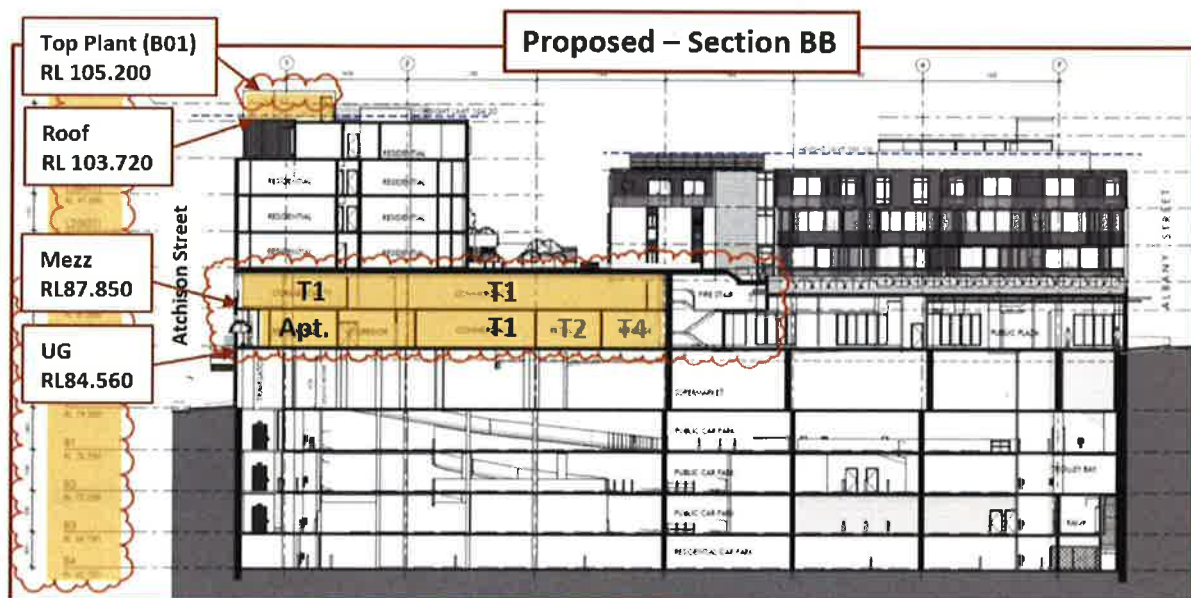
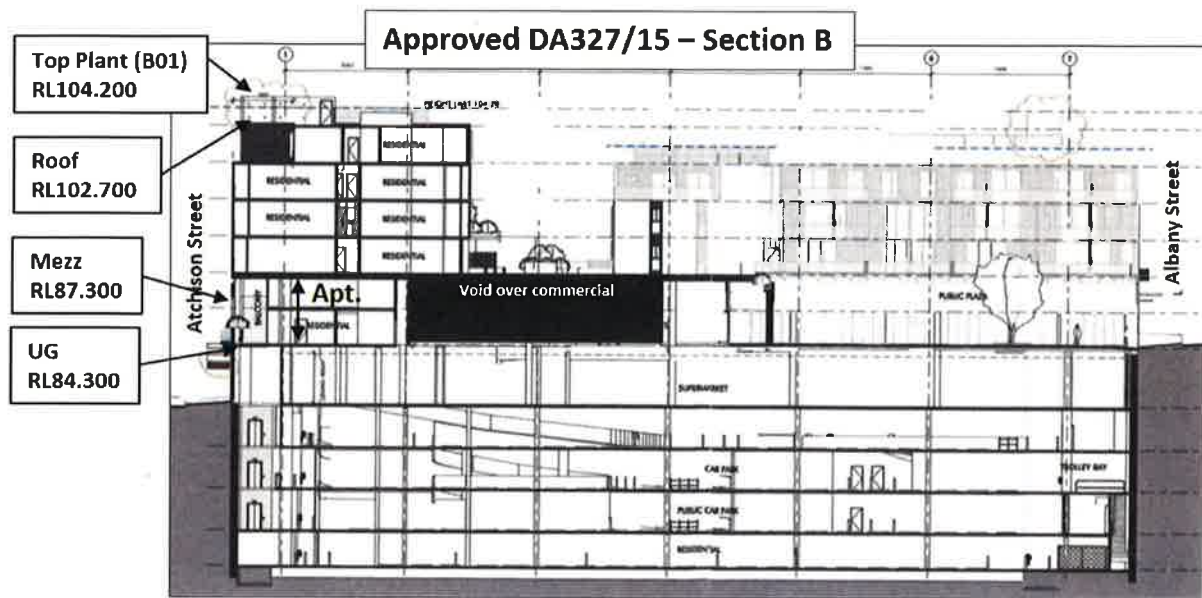
In particular, the application seeks the following modifications to the approved drawings:

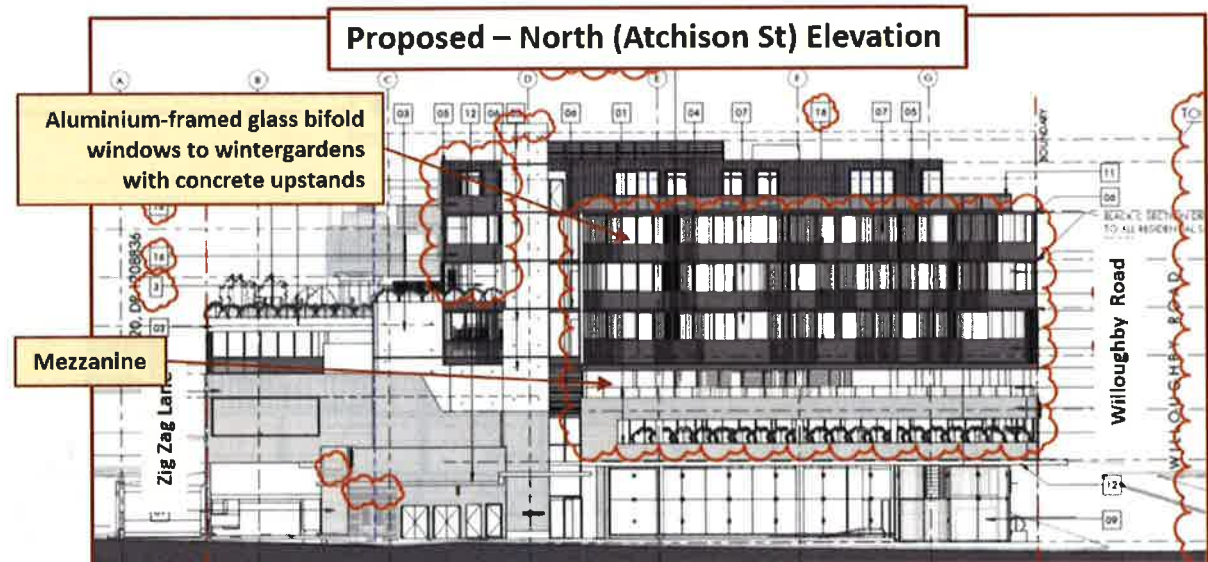
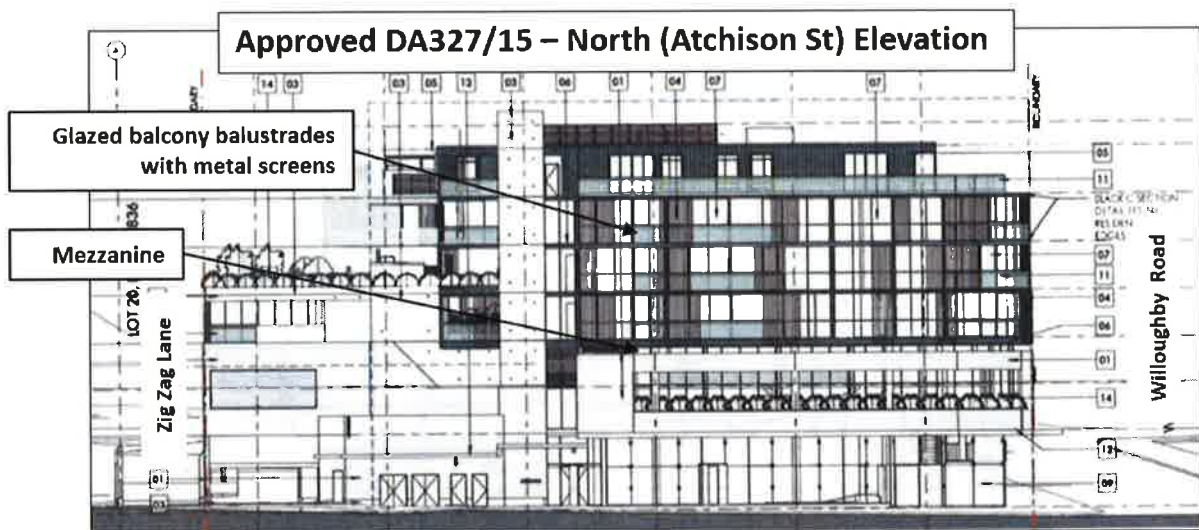
- Reduction of the approved specialty retail floor space by 172.58m², from 719.24m² to 546.66m²;
- Introduction of 535.72 m² of commercial floor space within the Upper Ground and Mezzanine levels (net increase in non-residential floor space of 373.81m²);
- Converting the majority of balconies that face public areas to wintergardens with stacking bifold windows (increase in residential floor space by 337.94m²);
- Glass balustrades of superseded balconies converted to concrete upstands with Nawkaw stain finish in black;
- Lower Ground Level (LG), Upper Ground Level (UG), Mezzanine Level (ML) and Building 1 Levels (from Level 1 to Roof) raised to allow for the Commercial T1 floor to ceiling height on the Mezzanine Level;
- Building 1 Stair 01 lid raised an additional 220mm for waterproofing purposes (creating a step down onto roof); in order to maintain alignment adjacent Lift 02 lid is also raised;
- The basement RL levels increased in height (50mm) as a consequence of design development, and satisfaction of conditions relating to the alignment of the footpath; this results in marginally less excavation;
- Zig Zag Lane grades modified to allow for compliant substation service truck access & prevent vehicle scraping at Albany Street;
- Main Switchroom relocated from Basement 1 to Zig Zag Lane to sit beside substations;
- Carpark exhaust riser raised to maintain a 3m vertical distance from the raised Level 1 communal terrace;
- General unit layout improvements;
- Carpark layout modifications relating to size of Coles plant room, cold water pump room, grease arrestors and security office;
- Minor changes to brick and window extents on the curved façade between UG and ML, at the corner of Willoughby Road and Atchison Street; and
- General façade changes associated with the commercial premises.

Key modifications are highlighted in **Figure 2** on the following pages.









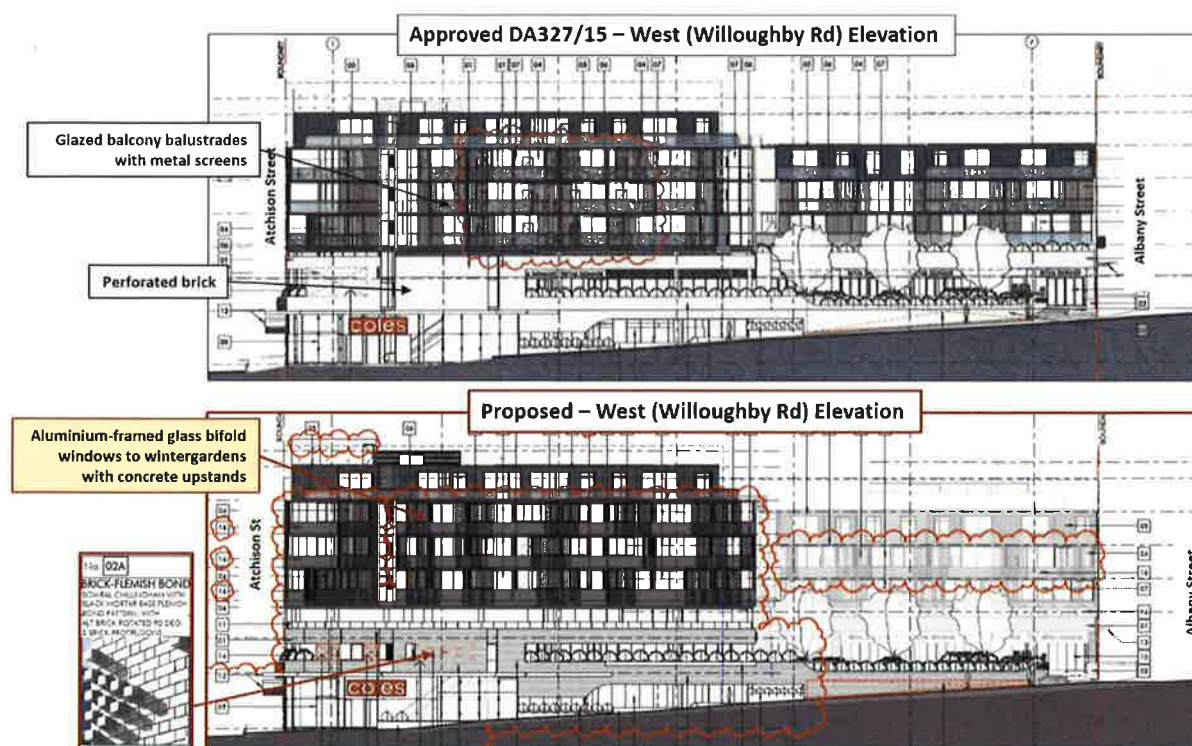


Figure 2 – Proposed modifications

The proposed change in **residential & non-residential floor area** is summarised as follows:

	Approved	Proposed	Modification
Non-residential			
• Supermarket (incl. BoH)	3,737.5m ²	3,748.17m ²	+ 10.67m ²
• Retail	719.24m ²	546.66m ²	- 172.58m ²
• Commercial	-	535.72m ²	+ 535.72m ²
Total non-residential	4,456.74m²	4,830.55m²	+ 373.81m²
Residential	5,959.67m²	6,297.61m²	+ 337.94m²
Total	10,416.41m²	11,128.16m²	711.75m²

The proposed change in **apartment unit mix** is as follows:

	Approved	Proposed	Modification
Studio	16 units (23%)	19 units (27%)	+ 3 (4%)
1-bedroom	18 units (26%)	16 units (23%)	- 2 (3%)
2-bedroom	29 units (41%)	28 units (40%)	- 1 (1%)
3-bedroom	7 units (10%)	7 units (10%)	No change
	70 units	70 units	

The application does not seek to change **approved car parking for 273 car spaces** comprising 206 non-residential spaces and 67 residential spaces; however minor reconfiguration of some spaces is proposed in basement level B4.

STATUTORY CONTROLS

North Sydney LEP 2013

- Zoning – B4 Mixed Use
- Item of Heritage – No
- In Vicinity of Item of Heritage – No
- Conservation Area – Yes eastern portion of site (Zig Zag Lane) located within Holtermann Estate conservation area (CA08)

Section 94 Contribution

Environmental Planning & Assessment Act 1979

SEPP 65 (Design Quality of Residential Apartment Development)

SEPP (Infrastructure)

POLICY CONTROLS

NSDCP 2013

SITE & SURROUNDS

The site is located on the eastern side of Willoughby Road bounded by Atchison Street to the north, Albany Street to the south, and Zig Zag Lane (private laneway) to the east. The site is zoned B4 Mixed Use and is located in part within the Holtermann Estate B conservation area (CA08) (Figure 3).

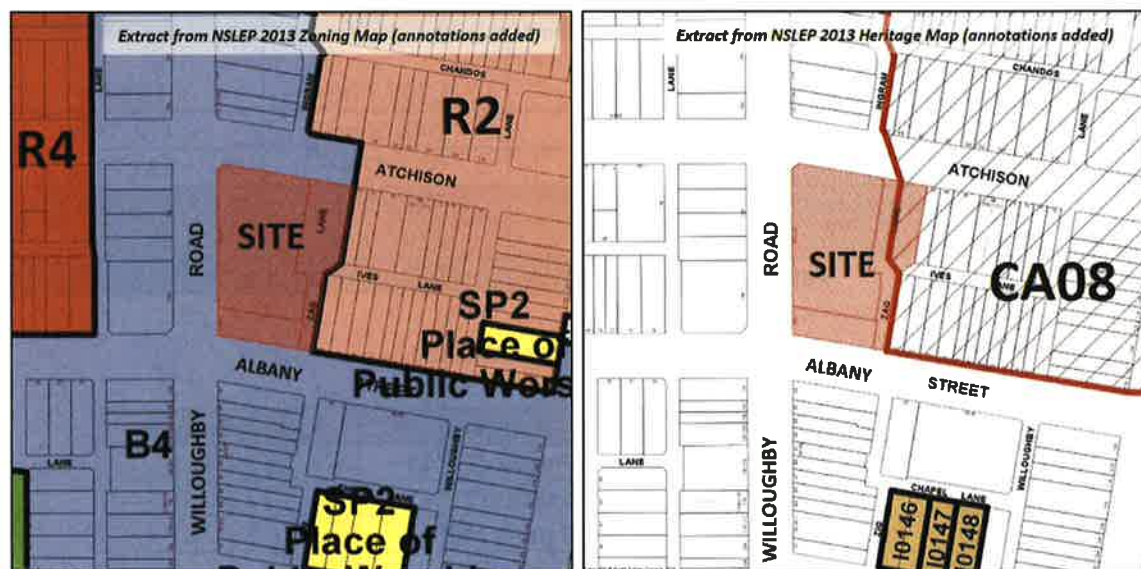


Figure 3 – Site is zoned B4 Mixed Use and adjoins Holtermann Estate B conservation area

The amalgamated site forms an irregular rectangle shape with a combined area of 4,013.9m². The site has frontages of 76m to Willoughby Road, and 61m and 43.5m to Atchison and Albany Streets, respectively. The site slopes down towards Atchison Street with a fall of approximately 4.8m.

The site is located along the main retail strip of Crows Nest Town Centre. Surrounding development comprises a mix of commercial and residential development including 3-storey walk up units to the west and semi-detached houses to the east (Figure 4).

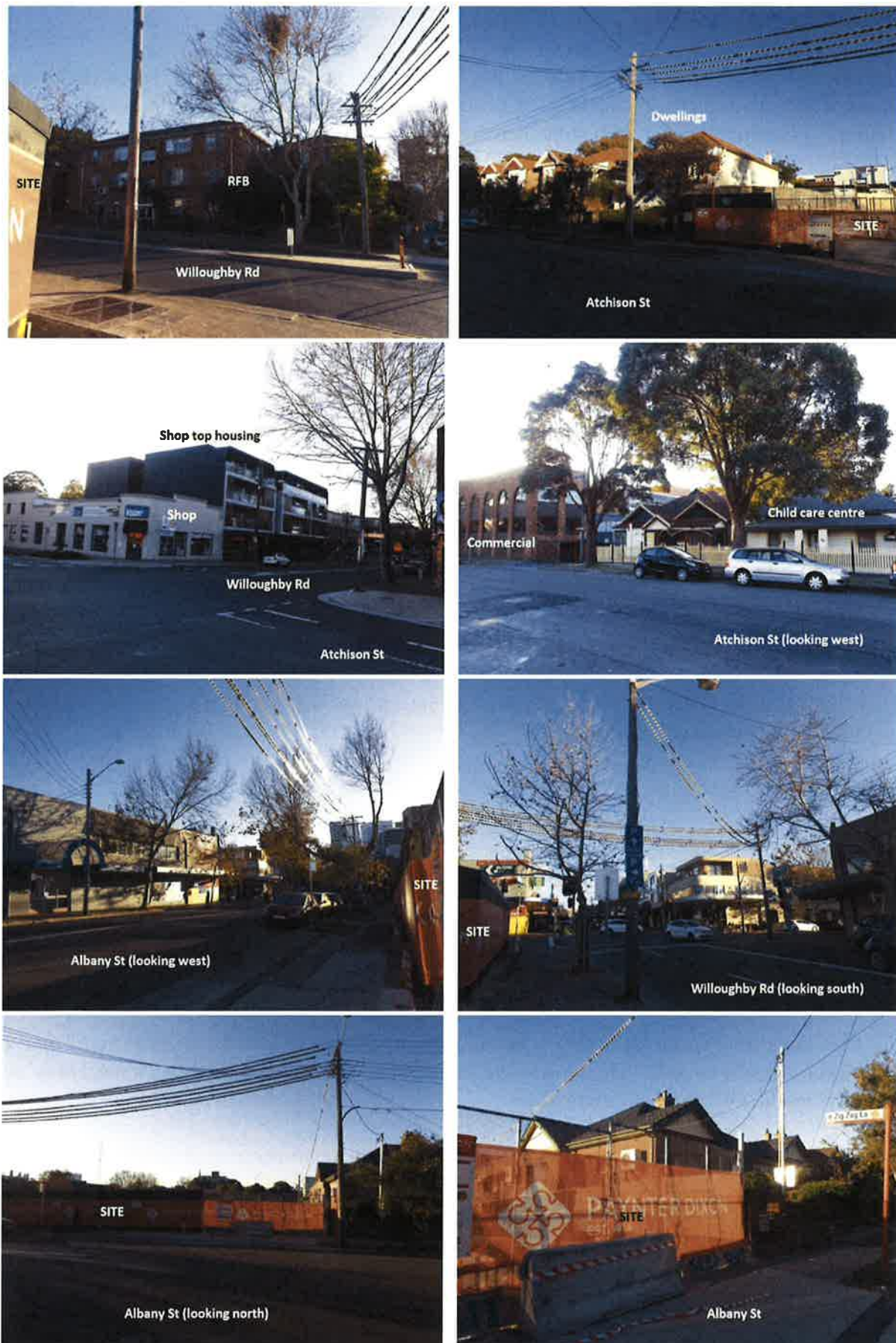


Figure 4 – Surrounding development

RELEVANT HISTORY

DA327/15 for excavation of site, construction of mixed use building including 4 basement levels, supermarket, specialty retail tenancies, 70 residential units & public plaza was approved by Joint Regional Planning Panel (JRPP) at its meeting on 8 June 2016.

The consent has been the subject of various section 96 modifications, as follows:

- Section 96 application **DA327/15/2** to change the timing of works required under conditions D5 & L1 pertaining to works in relation to traffic management and control was approved under delegated authority on 7/12/16.
- Section 96 application **DA327/15/3** to modify condition C42 in regard to relocation of Ausgrid power pole M089508 was lodged on 31/1/17 and is currently being assessed.
- Section 96 application **DA327/15/4** to was lodged on 17/2/17, however rejected due to incorrect and inadequate information.

The subject DA327/15/5 was lodged on 28/2/17. A briefing to the Sydney North Planning Panel was provided on 19 July 2017.

It is noted that existing structures on the site are now demolished, pursuant to **demolition DA328/15**.

CHECKING OF MODIFICATIONS

This application has been checked to ensure that the changes being sought are the only changes included in the approved development.

REFERRALS

Design Excellence Panel

The proposal was referred to Council's Design Excellence Panel at its meeting on 9 May 2017 and the following comments and recommendation were provided:

Panel's Comments

The Panel noted that there was a minor reduction in cross ventilated apartments and a slight increase in solar access with the amendments. The Panel accepts the variation as reasonable under the circumstances.

The Panel recommends the vertical screening on the northern and western bedroom windows to be increased for solar protection. Installation of film on the glazing at a later stage must be avoided by resolving the issue in the original design.

The Panel queried the extent of Coles signage at the corner and was advised that the smaller sign as per the elevation was correct rather than the montage showing an excessive signage.

The Panel felt that adequate WC provision should be made to both communal spaces.

The Panel raised no objection to the modification of condition requiring additional privacy treatment to the east facing apartments on the basis of the 10m separation being sufficient.

The Panel supported the mezzanine area with terrace at the corner with possible use as a child care centre or other commercial use.

Recommendation

The Panel supports the proposed changes under the Section 96 application subject to the above concerns being addressed.

Planner's comment: Council received amended drawings on 16 May 2017, generally addressing the matters raised by the Panel.

Engineer

The proposal was referred to Council's Development Engineer who has not raised any objection to the modifications on engineering grounds, noting that any internal works, including driveway grades, would be required to meet relevant standards and operational requirements to the satisfaction of the Principal Certifier.

SUBMISSIONS

The owners of adjoining properties and the **Holtermann Precinct** were notified of the proposed development for a 14-day period, between **24 March to 7 April 2017**, in accordance with section A4 of NSDCP 2013. The notification resulted in **no submissions**.

CONSIDERATION

Section 96(2) of the Environmental Planning and Assessment Act, 1979

Section 96(2) of the Environmental Planning and Assessment Act, 1979 enables a consent authority to modify a development consent upon application being sought by the applicant or any person entitled to act on the consent, provided that the consent authority is satisfied as to the following requirements:

- 1. It is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which consent was originally granted and before that consent as originally granted was modified (if at all)**

The proposal is considered to be generally within the scope of the approved development, being for a mixed use development essentially and materially the same in terms of built form and mix and intensity of uses.

2. It has consulted with the relevant Minister, public authority or approval body (within the meaning of Division 5) in respect of a condition imposed as a requirement of a concurrence to the consent or in accordance with the general terms of an approval proposed to be granted by the approval body and that Minister, authority or body has not, within 21 days after being consulted, objected to the modification of that consent

The original application and the subject modification do not require the concurrence of the Minister, public authority or approval body.

3. It has notified the application in accordance with the regulations, if the regulations so require, or a development control plan

The application was notified in accordance with section A4 of NSDCP 2013.

4. It has considered any submissions made concerning the proposed modification

Council did not receive any submissions concerning the proposed modifications.

In determining an application for modification of a consent under this section, the consent authority must take into consideration such of the matters referred to in section 79C (1) as are of relevance to the development the subject of the application.

MERIT ASSESSMENT

(a) The provisions of any environmental planning instrument or draft environmental planning instrument that is or has been placed on public exhibition and details of which have been notified to the consent authority

SEPP No.65 – Design Quality of Residential Apartment Development

The application has been assessed and found to be generally consistent with the objectives and criteria set out in the *Apartment Design Guide* (ADG) under SEPP 65. It is considered that the proposal satisfies the design quality principles in the SEPP, as discussed in the table below.

Design Quality Principles	Comment
1. Context and neighbourhood character	The development as proposed to be amended remains consistent with the Planning Proposal and amended LEP height controls, and appropriate having regard to the desired future character of Crows Nest Town Centre.
2. Built form & scale	The proposed modifications strengthen podium expression and maintains a strong street edge and façade modulation.
3. Density	No change is proposed to the number of approved apartments. The site is capable of accommodating the proposed unit mix and additional commercial floor space, in consideration of the parking and site amenities as approved, and central location of the site in proximity to transport services.
4. Sustainability	The development as proposed to be amended achieves satisfactory residential amenity in terms of solar access and cross ventilation. The proposal meets BASIX provisions.
5. Landscape	No change is proposed to approved landscaping.

Design Quality Principles	Comment
6. Amenity	58 units (83%) will receive a minimum 2 hours' direct midwinter sunlight. However, only 38 units (54%) will be naturally cross ventilated which falls short of the 60% minimum; the shortfall of 4 units (6%) arises from the conversion of maisonette units to studio apartments on Mezzanine level, all of which have primary orientation to the north and will maintain a high standard of amenity. All 1+ bedroom units have balconies or wintergardens with minimum depth of 2m. Acoustic amenity for the units adjacent the enlarged tenancy T1 can be achieved with the proposed floor to floor height at Upper Ground & Mezzanine levels. Wintergardens will provide for improved weather control and privacy.
7. Safety	The proposed development will maintain sightlines and passive surveillance opportunities, generally as approved.
8. Housing diversity & social interaction	The proposed change in unit mix affecting three units will not materially change the diversity of housing choice. A range of studios, 1-, 2- & 3-bedroom units, 11 (15.7%) of which adaptable, will be maintained. Social interaction will be facilitated by landscaped communal areas and public plaza as approved.
9. Aesthetics	The development as proposed to be modified will continue to reinforce the corner of Willoughby Road & Atchison Street. The podium will be better accentuated compared to the approved development. The façade will be modulated with different materials, textures, moveable screens, with detailing generally to the satisfaction of the Design Excellence Panel.

In consideration of the above, it is concluded that the development satisfies the objectives of the SEPP; in particular, achieving quality built form, residential amenity and relationship to the public domain.

SEPP (BASIX) 2004

A valid BASIX certificate has been submitted and commitments where relevant have been reflected on the amended plans as submitted. The development is acceptable in this regard.

SEPP (Infrastructure) 2007

Clause 104 applies to traffic generating development and applies to parking areas for 200 or more vehicles. It is noted that no change is proposed to the approved parking for 273 spaces.

SREP (Sydney Harbour Catchment) 2005

The site falls within the Sydney Harbour Catchment Boundary Area to which the Policy applies. The development is not visible from the Harbour, and will thus not have any detrimental impact on the character or scenic quality of foreshores and waterways.

NORTH SYDNEY LEP 2013

The application has been assessed against the relevant zoning, zone objectives contained in Part 2, principal development standards in Part 4 of NSLEP 2013.

(1) Land use table & zoning

The site is identified under the LEP as being included within the **B4 Mixed Use** zone. The proposed modifications, in relation to the approved car park, commercial premises and shop top housing, are permissible in the zone. The development as proposed to be modified satisfy the zone objectives; in particular, provide for commercial floor space within a compatible mixture of land uses in close proximity to public transport, create interesting and vibrant mixed use centres and high quality urban environment and residential amenity.

(2) Building height

Clause 4.3 of NSLEP sets a variable maximum height for the subject site as shown below, with the height control varying from RL87.2 adjoining Zig Zag Lane to RL104.2 towards the north-western corner of the site. The proposed modifications to building height are in the location of “**Building 01**” of the approved development within the north western sector the site for which a maximum building height of RL104.2 applies (**Figure 5**).



Figure 5 – Proposed modifications to the height of Building 01

The proposed modifications to slab levels are highlighted on key levels in **Figure 6**.

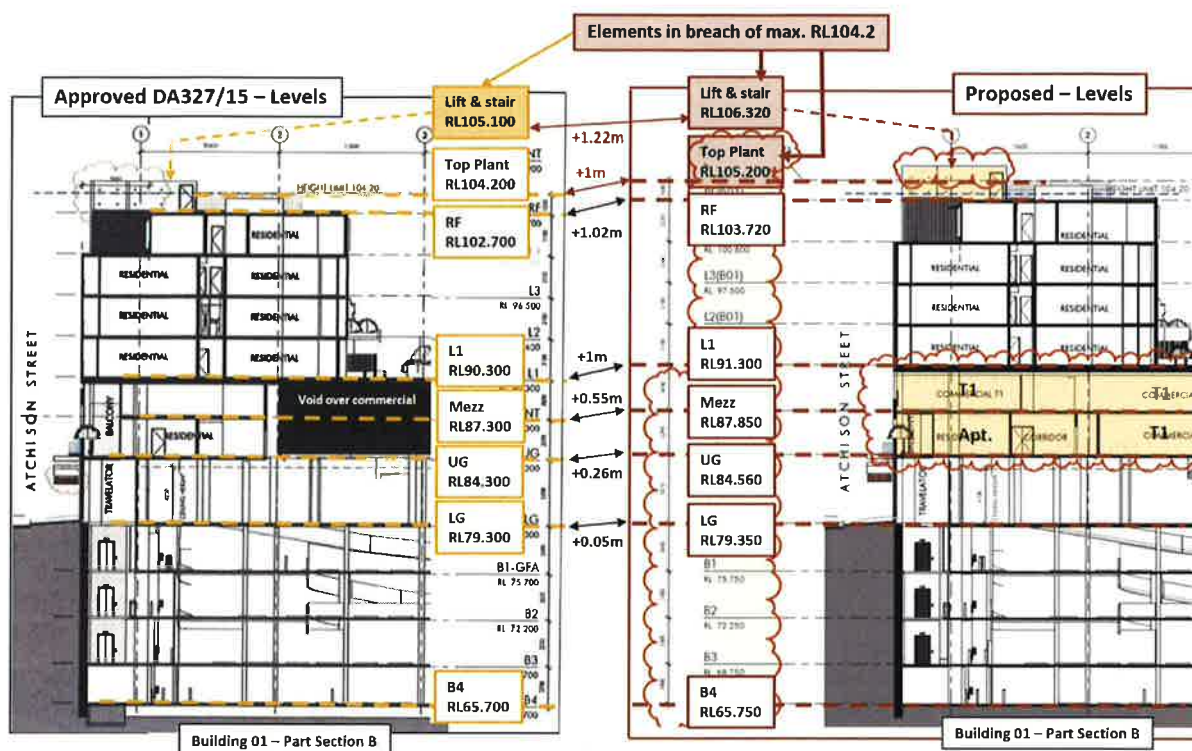


Figure 6 – Proposed height breaches at top of plant & lift overrun & stair of Building 01

The height of the lift overrun and stair of Building 01, as approved, exceeds the maximum height of RL104.2. The development as proposed to be modified will give rise to additional breaches in the location of the lift overrun and stair, as well as to the top of roof plant, as detailed in the table below.

Max.RL104.2 (Building 01)	Approved		Proposed change	Proposed	
	Height	Variation		Height	Variation
Lift overrun & stair	RL105.100	+0.9m (0.9%)	+ 1.22m (+1.17%)	RL106.320	2.12m (2%)
Top of Plant	RL104.200	(Complies)	+ 1m (0.96%)	RL105.200	1m (0.96%)

In accordance with the findings by Justice Lloyd in *Gann & Anor v Sutherland Shire Council [2008] NSWLEC 157*, the modification of a development consent pursuant to Section 96 which results in a new or modified variation to a development standard, does not require the submission of a request for variation of a development standard under clause 4.6 of the LEP. In this regard, reference is made to the provisions of s.96(4) of the Act which distinguishes between the modification of a development consent pursuant to s.96 and the granting of development consent. Notwithstanding, Council must still consider the proposed modifications and any new breaches to relevant development standard as against the provisions of the development standard, under the requirements of s.96(3) & s.79C of the Act.

Accordingly, the proposed modifications have been considered and assessed to be satisfactory as against the objectives of the building height development standard in clause 4.3 of the LEP, discussed as follows:

(a) to promote development that conforms to and reflects natural landforms, by stepping development on sloping land to follow the natural gradient – The relationship between the approved buildings and the fall of the land will generally be the same as the approved development.

(b) to promote the retention and, if appropriate, sharing of existing views – There are no iconic or significant views identified that would be materially affected by the proposed modified building heights.

(c) to maintain solar access to existing dwellings, public reserves and streets, and to promote solar access for future development – The areas of the building that exceed the height control, in particular, the lift overrun and stair and top of plant of Building 01 located adjacent the northern boundary of the site, do not result in any material additional shadow impacts. Shadow impacts arising from the proposed changes in levels to Building 01 are discussed in the **Solar Access** section of the **DCP Compliance Table** in this report.

(d) to maintain privacy for residents of existing dwellings and to promote privacy for residents of new buildings – The proposed development does not give rise to any privacy impacts by reason of any height breach. Privacy is discussed in the **Privacy** section of the **DCP Compliance Table** in this report.

(e) to ensure compatibility between development, particularly at zone boundaries – The areas of additional height breach in relation to ancillary elements will not impact the compatibility of the development with the adjoining properties.

(f) to encourage an appropriate scale and density of development that is in accordance with, and promotes the character of, an area – The areas of additional breach of the height control are limited to ancillary elements comprising a lift overrun and stair, and top of plant of Building 01, and do not contribute to additional scale or density and as such are consistent with the scale and density envisaged by the controls. Council has on a number of occasions allowed variations for lift overruns/stairs and rooftop facilities. The additional breaches of the height control will not be readily discernible as compared to the approved development and do not contribute to distinguishable additional bulk, scale or density compared to the approved scheme. The development overall will remain generally consistent with the built form considered appropriate and as identified in height zones in the height controls for the site.

The additional breaches of the height control are associated with internal floor level changes that would allow for the insertion of additional commercial space within Building 01 while maintaining a building envelope that remains substantively compliant with the height control. There is no public benefit in maintaining the control on the site for the proposed additional variations which are limited to ancillary building elements. Compliance with the height control is unnecessary and unreasonable in this instance as the proposal satisfies the objectives of the control despite the variations.

(3) Non-residential floor space

The minimum non-residential floor space ratio for the site is **0.5:1** pursuant to clause 4.4A(2) of NSLEP 2013. The application seeks to increase non-residential floor space area by 373.81m², from 4,456.74m² over a site area of 4,013.9m² (FSR 1.11:1) as approved, to 4,830.55m² resulting in a **proposed FSR of 1.2.:1**, which complies.

The development, as proposed to be modified, satisfies the objectives of the non-residential floor space control, discussed as follows:

(a) To provide the development with continuous and active street frontages on certain land in Zone B1 Neighbourhood Centre, Zone B4 Mixed Use and Zone SP2 Infrastructure. The modified development will continue to provide continuous and active frontages to all public streets bounding the site, being Willoughby Road, Atchison Street and Albany Street.

(b) To encourage an appropriate mix of residential and non-residential uses. The proposed increase in non-residential floor area of 373.81m² (FSR + 0.09:1) is relatively minor and will not result in any reduction in the number of approved apartment units. The proposed modifications will inject additional commercial mix of uses within the development, in addition to approved retail and supermarket uses.

(c) To provide a level of flexibility in the mix of land uses to cater for market demands. The proposed new non-residential floor space will provide flexibility in terms of size (535.72m²) and adjoining open undercroft area.

(d) To ensure that a suitable level of non-residential floor space is provided to reflect the hierarchy of commercial centres. The proposed increase in non-residential floor area is relatively minor and will not erode the local hierarchy of commercial centres, in particular in relation to St Leonards Town Centre further to the west.

(4) Heritage conservation

The site is located in the vicinity of Holtermann Estate A conservation area (CA07) under North Sydney LEP 2013. The development has been assessed in relation to the relevant heritage conservation provisions in clause 5.10 of NSLEP 2013 and found to be consistent with the relevant objectives.

The perceived bulk of the building as proposed to be amended and its relationship with the conservation area are comparable to the approved development. No change is proposed to the eastern laneway/driveway side setback interface with the conservation area. The proposed modifications will not result in any unacceptable impacts on the character of the conservation area.

(5) Earthworks

The proposed modifications on basement levels B1 to B3 are contained wholly within the approved basement excavations and do not necessitate any earthworks additional to that of the approved development. In this regard, it is considered that the development as proposed to be modified satisfies the objectives of the earthworks provisions in clause 6.10 of the LEP.

(6) Vehicle access

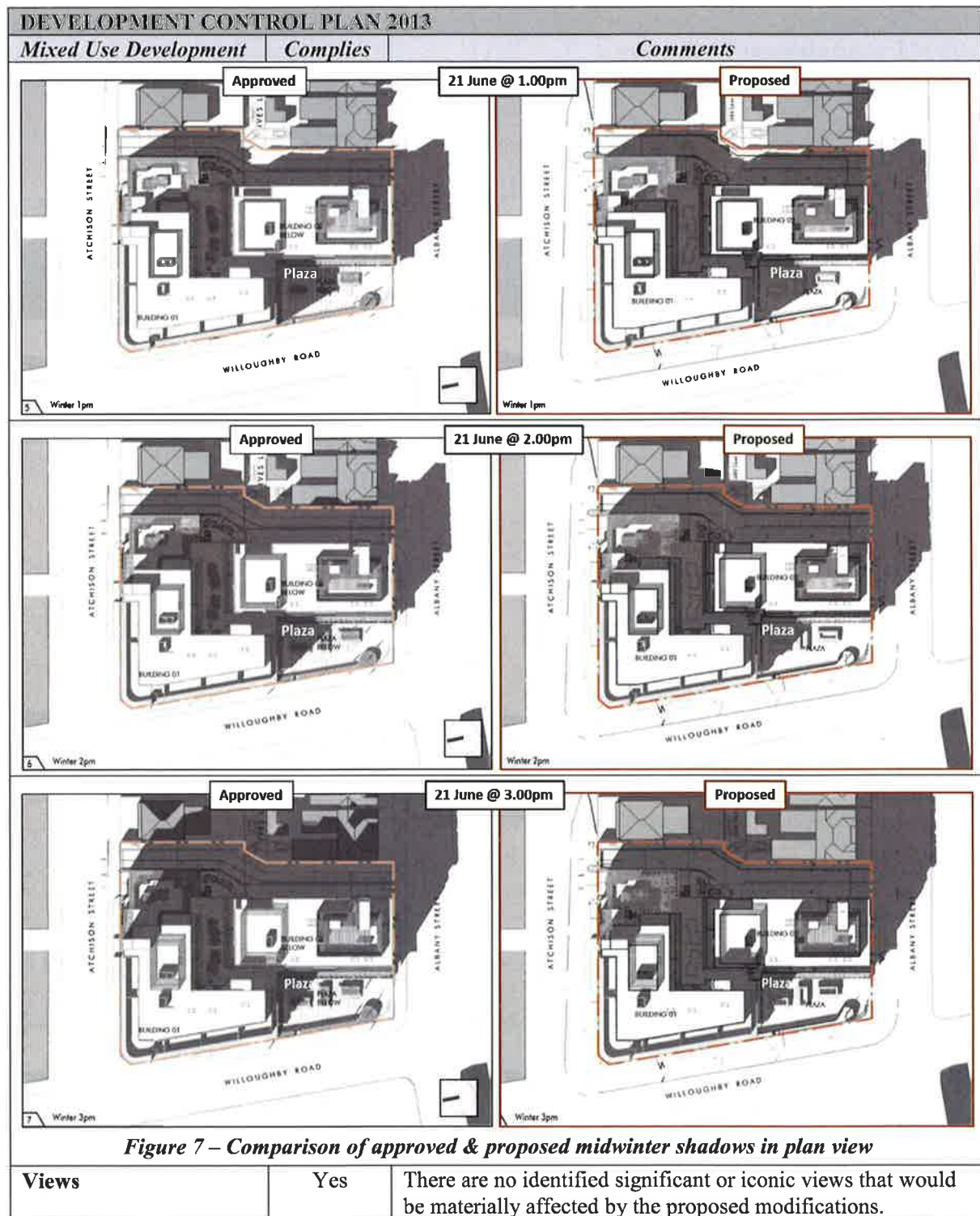
Development for the purposes of a driveway and vehicular crossing within a road reserve associated with a permissible use in an adjoining zone may be carried out with consent, pursuant to Clause 6.13 of the LEP. Council's Development Engineer has not raised any objections to the proposed modifications to the grades to Zig Zag Lane, would allow for compliant substation service truck access and prevent vehicle scraping at Albany Street.

(b) The likely impacts of that development, including environmental impacts on both the natural and built environments and social and economic impacts in the locality

In general, the proposed modifications do not further alter the building's compliance with the requirements contained within sections **B1 & B2** of the DCP relating to **residential and mixed use developments** and section **C3 & C3.2** being the character statement for **Crows Nest Town Centre** within the St Leonards / Crows Nest Planning Area; relevantly and in particular:

DEVELOPMENT CONTROL PLAN 2013		
Mixed Use Development	Complies	Comments
B2.2 Function		
Diversity of activities, facilities, opportunities & services	Yes	The proposed modifications will add commercial floor space to the approved supermarket and other retail floor uses.
Maximise use of public transport	Yes	The proposed additional commercial and residential floor space is located within Crows Nest Town Centre and in close proximity to transport and other services.
Mixed Residential Population	Yes	A balanced mix of residential units will be maintained despite a minor increase of studio/1-bedroom units from 49% to 50% within the mix.
B2.3 Environmental criteria		
Clean air	Yes	The proposed layout adjustments to approved plant will not result in any additional impacts on air quality compared to the approved development.
Noise	Yes	Acoustic amenity will generally be improved by the provision of wintergardens in place of balconies.
Wind speed	Yes	The overall building envelope as proposed to be amended and any wind effects would be comparable to the approved development.
Reflectivity	Yes	The proposed facades will provide for a balance of solid to void on all facades, including recessed winter gardens; a standard condition is recommended to ensure no nuisance glare from glazing.
Artificial illumination	Yes	(No change)
Awnings	Yes	No change is proposed to the awnings as approved on the Willoughby Road, and Atchison & Albany Street frontages.
Solar access	Yes	The proposed modifications do not give rise to any significant additional shadow impacts compared to the approved development, in particular, in relation to the approved public plaza on the south western corner of the site, as illustrated in the submitted shadow diagrams in Figure 7 .

DEVELOPMENT CONTROL PLAN 2013		
Mixed Use Development	Complies	Comments
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<div> <div> <div>Approved</div> <div>21 June @ 12.00pm</div> </div> <div> <div>Proposed</div> <div>21 June @ 12.00pm</div> </div> </div>		



DEVELOPMENT CONTROL PLAN 2013		
Mixed Use Development	Complies	Comments
Acoustic privacy	Yes	<p>The proposed conversion of various balconies to wintergardens will generally reduce any noise impacts on adjoining development, including dwellings to the east separated by Zig Zag Lane as per the approved setback.</p> <p>The internal floor-to-floor height of 3.29m between the Upper Ground & Mezzanine levels provides for acoustic insulation between the proposed apartments on the Upper Ground Level and adjoining T1 commercial tenancy; a condition is recommended to ensure acoustic attenuation is provided for all residential units.</p>
Vibration	Yes	The proposed modifications do not result in any greater exposure of apartment units to road noise and vibration.
Visual privacy	Yes	The proposed modifications will adequately provide for visual privacy; in particular, on the eastern elevation adjoining dwellings, by virtue of the 10m setback across Zig Zag Lane (as approved) and provision of concrete balcony upstands and bi-fold windows to wintergardens (Figure 8).

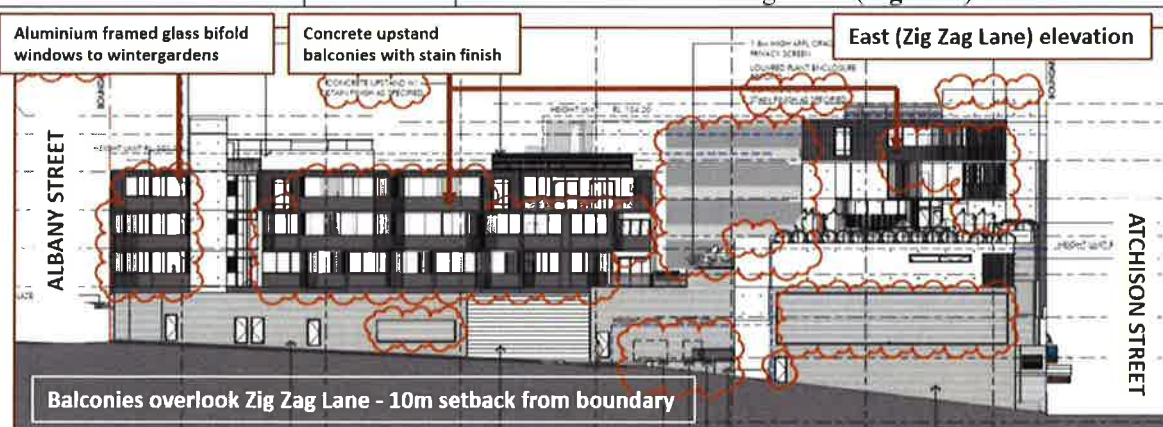


Figure 8 – Eastern wintergardens set back 10m from boundary across Zig Zag Lane

B2.4 Quality built form		
Context	Yes	The proposed modifications provide for appropriate responses to the context of the site, including improved privacy screening to the eastern (Zig Zag Lane) interface with low density residential and conservation area, and vertical blades for sunshading on the northern and western elevations as recommended by the Design Excellence Panel.
Site consolidation Setbacks Podiums	Yes	No change is proposed to building setbacks as approved.
Building design	Yes	The proposed mezzanine level in particular will provide a deep shadow line, providing a greater sense of separation from and articulating the base commercial podium levels as distinct from the residential levels above.
Skyline	Yes	The proposed skyline will be similar to the existing.
Junction & termination of streets	Yes	The development will continue to reinforce street corners, in particular, built to boundary on the corner of Willoughby Road and Atchison Street (refer to Figure 1 further above).

DEVELOPMENT CONTROL PLAN 2013		
<i>Mixed Use Development</i>	<i>Complies</i>	<i>Comments</i>
Balconies – apartments	Yes	The proposed wintergardens will provide functional private open space in terms of configuration and flexibility. Further discussion is provided in the High quality residential accommodation section further below.
Through-site pedestrian links	Yes	The approved public pathway along the eastern alignment of the site along Zig Zag Lane will be maintained.
Streetscape	Yes	The development as proposed to be amended will contribute to visual interest in built form.
Entrances & exits	Yes	Clear residential entry lobbies and sense of address will be maintained in the locations of Lift 02 & 03 on Atchison & Albany Streets, respectively.
Nighttime appearance	Yes	The proposed development will have a similar nighttime appearance as the approved development.
Public spaces and facilities	Yes	The development as proposed to be modified will maintain a commercial/retail edge to the approved public plaza on the corner of Willoughby Road and Albany Street.
B2.5 Quality urban environment		
Accessibility	Yes	The proposed development will provide for accessible paths of travel.
Safety & security	Yes	The proposed development provides for similar sightlines and secure access points as the approved development.
Illumination	Yes	Existing consent conditions provide for outdoor lighting to relevant standards.
High quality residential accommodation	Yes	<p>Apartment & balcony sizes</p> <p>The proposed apartments comply with numeric internal size requirements under the ADG, including width, depth and internal area.</p> <p>The proposed balcony comply with the numeric requirements in the ADG except for Unit 310 (Type 24) which falls short of the minimum balcony 12m² size for a 3-bedroom unit by 0.9m². This shortfall is considered to be minor and the unit will otherwise have good amenity, being a large unit of 103.1m², exceeding the ADG minimum 90m², and has outlook in three directions.</p> <p>Numeric compliances are detailed in the tables contained in Attachment 3 of this report.</p>
	Yes	<p>Solar access</p> <p>The living rooms and balconies/courtyards of 58 of 70 apartments (83%) will receive at least 2 hours' solar access in midwinter between 9am & 3pm, which complies with the minimum 70% under the ADG.</p>

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DEVELOPMENT CONTROL PLAN 2013		
Mixed Use Development	Complies	Comments
Garbage storage	Yes	<p>The submitted Waste Management Plan dated February 2017 by Waste Audit and received by Council on 9/3/17 indicates that waste storage will be adequately provided for in relation to the residential and commercial components of the development as proposed to be modified; in particular:</p> <ul style="list-style-type: none"> The proposed allocation of 44m² for residential waste & recycling bins exceeds the minimum allocation of 34.06m²; and The proposed allocation of 22.3m² for retail/commercial uses exceeds the minimum allocation by 18.79m². <p>The approved waste storage for residential and non-residential uses is shown in Figure 9; a condition is recommended to clarify that the “Specialty retail” dock and waste storage areas as notated on the approved plans are to be made available for use by the proposed new Commercial tenancy T1, to clarify the consent.</p>

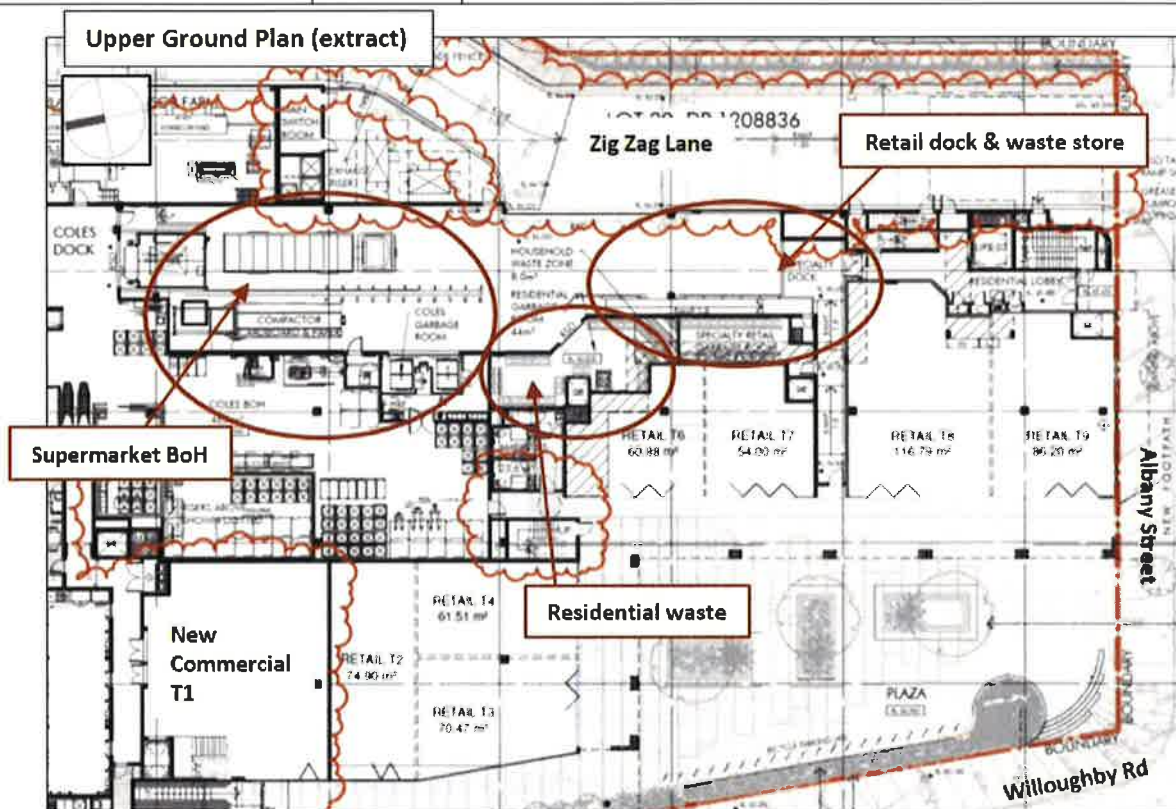


Figure 9 – Approved supermarket, residential and retail dock & waste storage areas

Site facilities	Yes	Site facilities as approved will adequately service the proposed development, including waste storage capacity to accommodate additional commercial waste (reduced retail waste), and car parking provision as discussed in the Car Parking & Transport section further below.
B2.6 Efficient use of resources		
Energy efficiency	Yes	A BASIX certificate has been submitted for the development as proposed to be modified.

DEVELOPMENT CONTROL PLAN 2013		
<i>Mixed Use Development</i>	<i>Complies</i>	<i>Comments</i>
B2.7 Public domain		
Street furniture, landscaping works, utilities & equipment	Yes	Approved public domain elements, including public plaza and Zig Zag Lane footpath, will be maintained.
B10 Car Parking & Transport		
Quantity requirements	Yes	The application proposes minor reconfiguration within the basement car park, however, does not seek to change the total approved 273 car parking spaces, comprising 206 commercial/public parking spaces and 67 residential , including accessible spaces. The approved car and bicycle parking provision as approved will cater to the proposed increase in commercial floor space and modified residential mix, as detailed in Attachment 4 .
Loading & unloading	Yes	The "Specialty dock" as approved is capable of servicing the proposed new Commercial tenancy T1; a condition is recommended to allow use of this dock for all non-residential users in the development, specialty retail as well as commercial.

DCP Compliance (Residential Development)

Section B1.1.2 of North Sydney DCP states that **section B1** in relation to **Residential Development** applies to all development applications for residential accommodation. Accordingly, the application for shop top housing has been assessed under section B1, and found to be generally consistent with provisions as relevant to the proposal and/or additional to those matters considered in the Mixed Use Development DCP Compliance Table above. The development as proposed to be modified satisfies the general objectives of the residential development provisions in section B1.1.1, in particular, in relation to built form character and residential amenity.

(c) The suitability of the site for the development

The proposed modifications are suitable for the site.

(d) Any submission made in accordance with this Act or the regulations

Council did not receive any submissions concerning the proposed modifications.

(e) The public interest

The proposed modifications are considered to be in the public interest as they are generally consistent with relevant development controls and policies.

SECTION 94 CONTRIBUTIONS

Consent condition C19 requires the payment of \$859,822.45 in Section 94 contributions based on the approved commercial floor space and apartment mix. The proposed development results in the creation of new commercial floor space and a change in unit mix. In accordance with Council's Fees and Charges Schedule 2017/18, the contribution amount for the development as proposed to be modified is **\$872,012.66**, as shown in the **table** below.

Section 94 Contributions	Consent Condition C94	Section 96 modification	Net contributions
Administration	8,964.61	+ 763.03	\$ 9,727.64
Child Care Facilities	17,703.27	+ 3,420.70	21,123.97
Community Centres	38,869.78	+ 1,700.51	40,570.29
Library Acquisition	7,287.07	+ 352.81	7,639.88
Library Premises & Equipment	22,520.29	+ 1,068.89	23,589.18
Multi Purpose Indoor Sports Facility	6,287.46	+ 425.61	6,713.07
Open Space Acquisition	232,718.35	-	232,718.35
Open Space Increased Capacity	461,287.67	-	461,287.67
Olympic Pool	20,480.68	+ 1,386.42	21,867.10
Public Domain Improvements	21,471.63	+ 3,072.24	24,543.87
Traffic Improvements	22,231.64	-	22,231.64
The total contribution is	\$859,822.45	+ 12,190.21	\$ 872,012.66

ENVIRONMENTAL APPRAISAL

CONSIDERED

- | | | |
|----|--|-----|
| 1. | Statutory Controls | Yes |
| 2. | Policy Controls | Yes |
| 3. | Design in relation to existing building and natural environment | Yes |
| 4. | Landscaping/Open Space Provision | Yes |
| 5. | Traffic generation and Carparking provision | Yes |
| 6. | Loading and Servicing facilities | Yes |
| 7. | Physical relationship to and impact upon adjoining development (Views, privacy, overshadowing, etc.) | Yes |
| 8. | Site Management Issues | Yes |
| 9. | All relevant S79C considerations of Environmental Planning and Assessment (Amendment) Act 1979 | Yes |

9. All relevant S79C considerations of Environmental Planning and Assessment (Amendment) Act 1979 Yes

CONCLUSION

The proposed modification to the approved development is supported as it will not have any material adverse heritage or residential amenity impacts, and is generally consistent with the planning controls for the site, and is considered to be acceptable.

RECOMMENDATION

THAT Council's Team Leader Assessments, under Delegated Authority from the General Manager of North Sydney Council, as the consent authority, resolve to modify its consent no. **327/15** dated 8/6/16 to construct a 4-6 storey mixed use building, including supermarket, public plaza and public carpark on land at identified as 101-111 Willoughby Road and a portion of Zig Zag Lane, Crows Nest, under the provisions of section 96 of the Environmental Planning and Assessment Act only in so far as will provide for the following:

- (A) To **add** the following conditions:

Development in Accordance with Plans (S96 Amendments)

A4. The development being carried out in accordance with plans identified in Condition A1 of the consent and endorsed with Council's approval stamp, except as modified by the modifications shown on:

Plan No.	Issue	Title	Drawn by	Received
3844_DA003	C	Site Plan	Nettleton Tribe	9/3/17
3844_DA010	E	Basement Level 4	Nettleton Tribe	9/3/17
3844_DA011	D	Basement Level 3	Nettleton Tribe	9/3/17
3844_DA012	C	Basement Level 2	Nettleton Tribe	9/3/17
3844_DA013	C	Basement Level 1	Nettleton Tribe	9/3/17
3844_DA014	C	Lower Ground Plan	Nettleton Tribe	9/3/17
3844_DA015	D	Upper Ground Plan	Nettleton Tribe	9/3/17
3844_DA015a	D	Mezzanine Level	Nettleton Tribe	9/3/17
3844_DA016	F	Level 1 Plan	Nettleton Tribe	9/3/17
3844_DA017	H	Level 2 Plan	Nettleton Tribe	16/5/17
3844_DA018	F	Level 3 Plan	Nettleton Tribe	9/3/17
3844_DA019	E	Level 4 Plan	Nettleton Tribe	9/3/17
3844_DA020	C	Roof Plan	Nettleton Tribe	9/3/17
3844_DA021	F	North & South Elevations	Nettleton Tribe	16/5/17
3844_DA022	F	East & West Elevations	Nettleton Tribe	16/5/17
3844_DA031	D	Section A & B	Nettleton Tribe	16/5/17
3844_DA032	C	Section C & D	Nettleton Tribe	9/3/17
3844_DA033	C	Section E	Nettleton Tribe	9/3/17
3844_DA035	A	Typical Wintergarden Section	Nettleton Tribe	9/3/17
3844_DA041	F	External Finishes Schedule 01	Nettleton Tribe	16/5/17

Plan No.	Issue	Title	Drawn by	Received
3844 DA042	F	External Finishes Schedule 02	Nettleton Tribe	16/5/17
3844 DA061	C	Unit Type Plans 01	Nettleton Tribe	9/3/17
3844 DA062	D	Unit Type Plans 02	Nettleton Tribe	9/3/17
3844 DA063	C	Unit Type Plans 03	Nettleton Tribe	9/3/17
3844 DA064	A	Unit Type Plans 04	Nettleton Tribe	9/3/17

except as amended by the following conditions and this consent.

(Reason: To ensure that the form of the development undertaken is in accordance with the determination of Council, Public Information)

Acoustic Privacy (Residential Apartments)

C61. Noise levels in sole occupancy units of residential apartments must not exceed the following:

Location	Maximum
Habitable Rooms other than Sleeping Areas	40 LAeq (1hr)
Sleeping Areas	35 LAeq (1hr)

The “Maximum” limits are to apply in any hour of a 24 hour period with the windows of the sole occupancy unit closed.

“habitable room” has the same meaning as in the Building Code of Australia.

A floor separating sole occupancy units shall have a weighted standardised impact sound pressure level $L'_{nT,w}$ not more than 55dB when measured in-situ in accordance with AS ISO 140.7-2006 “Field measurements of impact sound insulation of floors” and rated to AS ISO 717.2-2004 “Rating of sound insulation in buildings and of building elements. Part 2: Impact sound insulation”. This clause shall not apply to the floor of a kitchen, bathroom, toilet or laundry in a residential sole occupancy unit.

Mechanical equipment such as lift plant, air conditioning plant servicing the building and pumps shall not be located immediately adjacent bedrooms.

A statement from an appropriately qualified acoustical consultant eligible for membership of the Association of Australian Acoustic Consultants, certifying that the acoustic mitigation measures outlined above have been satisfied, must be submitted to the Certifying Authority for approval prior to the issue of any Construction Certificate.

(Reason: To comply with best practice standards for residential acoustic amenity)

(A)	(B)
Administration	\$ 9,727.64
Child Care Facilities	21,123.97
Community Centres	40,570.29
Library Acquisition	7,639.88
Library Premises & Equipment	23,589.18
Multi Purpose Indoor Sports Facility	6,713.07
Open Space Acquisition	232,718.35
Open Space Increased Capacity	461,287.67
Olympic Pool	21,867.10
Public Domain Improvements	24,543.87
Traffic Improvements	22,231.64
The total contribution is	\$ 872,012.66

The contribution MUST BE paid prior issue of any Construction Certificate.

The above amount, will be adjusted for inflation by reference to the Consumer Price (All Ordinaries) Index applicable at the time of the payment of the contribution.

A copy of the North Sydney Section 94 Contribution Plan can be viewed at North Sydney Council's Customer Service Centre, 200 Miller Street, North Sydney or downloaded via Council's website at www.northsydney.nsw.gov.au.

(Reason: To retain a level of service for the existing population and to provide the same level of service to the population resulting from new development)

Security Deposit/Guarantee Schedule

C21. All fees and security bonds in accordance with the schedule below must be paid or in place prior to the issue of the required Construction Certificate:

Security Bonds	Amount (\$)
Street Tree Bond (on Council Property)	\$ 10,000.00
Engineering Construction Bond	\$ 822,000.00
TOTAL BONDS	\$ 832,000.00
Section 94 contribution	\$ 872,012.66

(Reason: Compliance with the development consent)

BASIX

C57. Under clause 97A(3) of the Environmental Planning & Assessment Regulation 2000, it is a condition of this development consent that all the commitments listed in BASIX Certificate No. (732954M_03) for the development are fulfilled. Plans and specifications complying with this condition must be submitted to the Certifying Authority for approval prior to the issue of any Construction Certificate.

The Certifying Authority must ensure that the building plans and specifications submitted, referenced on and accompanying the issued Construction Certificate, fully satisfy the requirements of this condition.

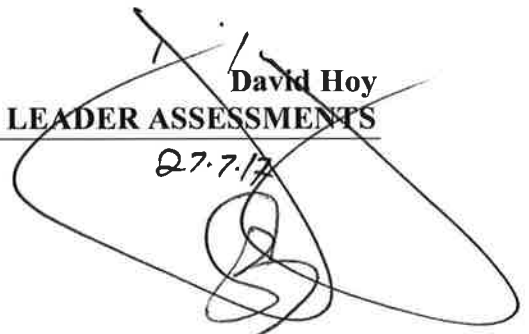
(Reason: To ensure the proposed development will meet the Government's requirements for sustainability and statutory requirements)



Susanna Cheng
SENIOR ASSESSMENT OFFICER

28.7.17

TEAM LEADER ASSESSMENTS



27.7.17

Stephen Beattie
MANAGER ASSESSMENTS
