

COUNCIL ASSESSMENT REPORT

Panel Reference	2017SNH085
DA Number	327/15/8
LGA	North Sydney Council
Proposed Development	To modify Consent 327/15 for the construction of a 4-6 storey mixed use building, in respect of the number, mix and configuration of apartments, and construction of new awnings and façade changes
Street Address	101-111 Willoughby Road, CROWS NEST
Applicant/Owner	Ionic Management Pty Ltd / CN Plaza No.1 Pty Ltd
Date of DA lodgement	21 November 2017
Number of Submissions	Nil
Recommendation	Approval
Regional Development Criteria	Council-related development with Capital Investment Value (CIV) exceeding \$5 Million. Original consent was granted by the former Sydney East Joint Regional Planning Panel.
List of all relevant s4.15(1)(a) matters	<ul style="list-style-type: none"> • SEPP 65 Design Quality of Residential Apartment Development • SEPP (BASIX) 2004 • Sydney REP (Sydney Harbour Catchment) 2005 • North Sydney Local Environmental Plan 2013 • North Sydney Development Control Plan 2013
List all documents submitted with this report for the Panel's consideration	<ul style="list-style-type: none"> • Attachment A – Approved / proposed floor plans • Attachment B – Market analyses (unit mix)
Report prepared by	Susanna Cheng, Senior Assessment Officer
Report date	3 April 2018



<p>Summary of s4.15 matters</p> <p>Have all recommendations in relation to relevant s4.15 matters been summarised in the Executive Summary of the assessment report?</p>	Yes
<p>Legislative clauses requiring consent authority satisfaction</p> <p>Have relevant clauses in all applicable environmental planning instruments where the consent authority must be satisfied about a particular matter been listed, and relevant recommendations summarized, in the Executive Summary of the assessment report? <i>e.g. Clause 7 of SEPP 55 - Remediation of Land, Clause 4.6(4) of the relevant LEP</i></p>	Yes
<p>Clause 4.6 Exceptions to development standards</p> <p>If a written request for a contravention to a development standard (clause 4.6 of the LEP) has been received, has it been attached to the assessment report?</p>	Not Applicable
<p>Special Infrastructure Contributions</p> <p>Does the DA require Special Infrastructure Contributions conditions (S94EF)? <i>Note: Certain DAs in the Western Sydney Growth Areas Special Contributions Area may require specific Special Infrastructure Contributions (SIC) conditions</i></p>	Not Applicable
<p>Conditions</p> <p>Have draft conditions been provided to the applicant for comment? <i>Note: in order to reduce delays in determinations, the Panel prefer that draft conditions, notwithstanding Council's recommendation, be provided to the applicant to enable any comments to be considered as part of the assessment report</i></p>	Yes

REPORT TO SYDNEY NORTH PLANNING PANEL

ADDRESS/WARD: 101-111 Willoughby Road, Crows Nest

APPLICATION No: DA 327/15/8 / (2017SNH085)

PROPOSAL: To modify Consent 327/15 for the construction of a 4-6 storey mixed use building, in respect of the number, mix and configuration of apartments, and construction of new awnings and façade changes

PLANS REF: Drawings by Nettleton Tribe 3844 DA003, DA010, DA011-015, DA015a, DA016-022, DA031-035, DA041 & 042, DA061-064 received by Council on 9/3/17 & 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: 3 April 2018

DATE LODGED: 21 November 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 to modify the number, mix and configuration of apartments by removing all studios, increasing 2- & 3-bedroom units, reducing 70 apartments to 60 apartments, and construction of new awnings and façade changes.

The application is reported to Sydney North Planning Panel for determination as the Capital Investment Value (CIV) of the development affecting Council land 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 development as proposed to be amended is generally consistent with the planning controls for the site. The minor variation to the Building Height development standard, associated with a small awning, is minor and will not result in any adverse built form or residential amenity impacts.

The development will provide for appropriate housing diversity, despite the reduction in, and change in mix, of units, in consideration of current market demand and projected future demographic trends as outlined in market analyses submitted by the applicant, and the transport and employment accessibility of the site. Although the development will not contain any studios, the development will nonetheless maintain a DCP-compliant proportion of 1-bedroom units.

The reconfiguration of apartments allows for improved residential amenity. The numeric non-compliance of cross-ventilated units is considered acceptable in this instance as the identified units are compliant or exceed minimum criteria in other respects, and generally provide for a high level of amenity overall, including solar access and unit size.

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

LOCATION MAP



Property/Applicant ● Submitters (nil) - Properties Notified (hatched)

DESCRIPTION OF PROPOSAL

The proposal seeks to modify development consent **DA327/15** for the construction of a 4- to 6-storey mixed use development, with regard to the number, mix and configuration of apartment units, and external façade changes.

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

- Alter the number, mix and configuration of apartment units, by removing all studios, increasing 2- and 3-bedroom units, and thus reducing the approved seventy (70) apartments to sixty (60) apartments;
- Construction of new awnings over the Level 4 terrace on Building 1 and in front of the lift on Level 4 of Building 2; and
- Other minor external changes, including relocating the main switch room on ground level, and facade changes as a result of the apartment reconfiguration.

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

	Approved DA327/15/5	Proposed	Modification
Studio	19 units (27%)	Nil	- 19 units
1-bedroom	16 units (23%)	16 units (26%) ^a	No change
2-bedroom	28 units (40%)	34 units (57%) ^b	+ 6 units
3-bedroom	7 units (10%)	10 units (17%) ^c	+ 3 units
	70 units	60 units	- 10 units
	a. 11 x 1-bed + 5 x 1-bed with study b. 31 x 2-bed + 3 x 2-bed with study c. 8 x 3-bed + 2 x 3-bed with study		

The proposal involves an increase in **residential gross floor area**, as follows:

	Approved DA327/15/5	Proposed	Modification
Total Residential GFA (Buildings 01 & 02*)	6,297.61m ²	6,354.45m ²	+ 56.84m ²
BUILDING 01			
Upper Ground	383.02m ²	381.05m ²	- 1.97m ²
Level 1	1,735.90m ²	1,745.84m ²	+ 9.94m ²
Level 2	1,776.78m ²	1,793.38m ²	+ 16.6m ²
Level 3	1,728.70m ²	1,755.57m ²	+ 26.87m ²
Level 4	662.35m ²	667.75m ²	+ 5.4m ²
* No change to GFA of Building 02			+ 56.84m ²

The application does not seek to change approved car parking for 273 car spaces comprising 206 non-residential spaces and **67 residential spaces**; however, it is proposed to reallocate approved spaces to the modified unit mix.

External modifications are illustrated in **Figure 1** and a floor-by-floor summary of modifications to the internal layout is provided in **Attachment 1**.

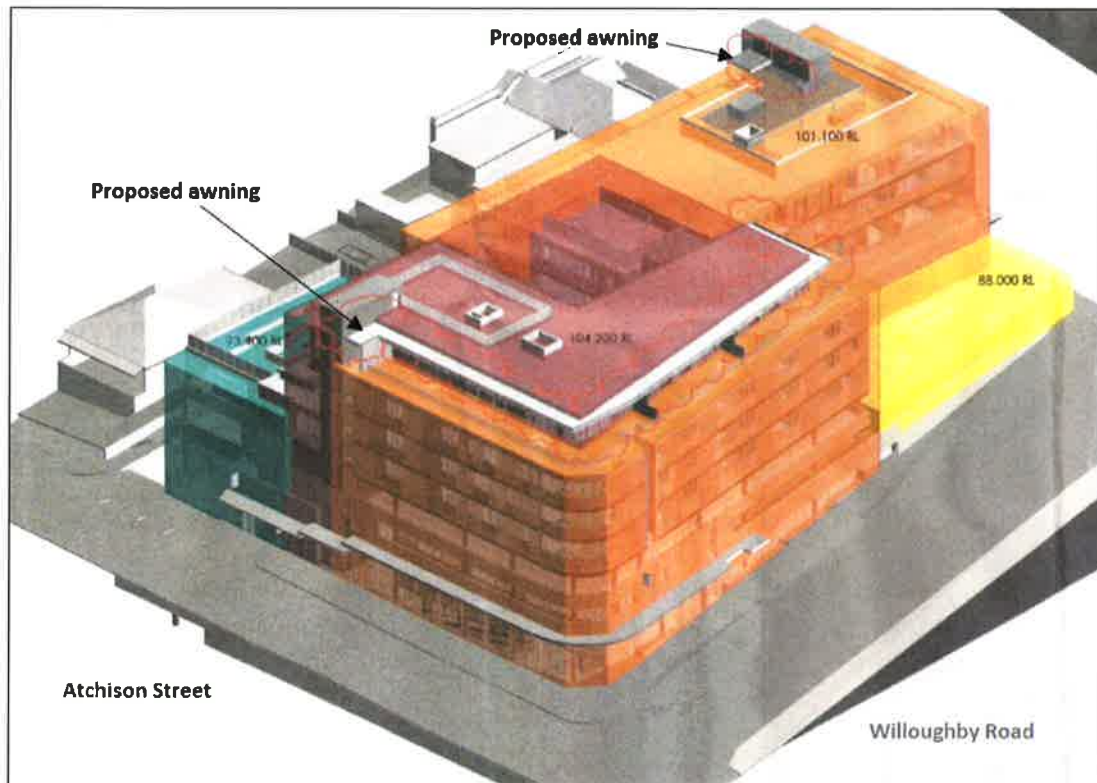


Figure 1 – Proposed modifications

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 7.11 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 2).

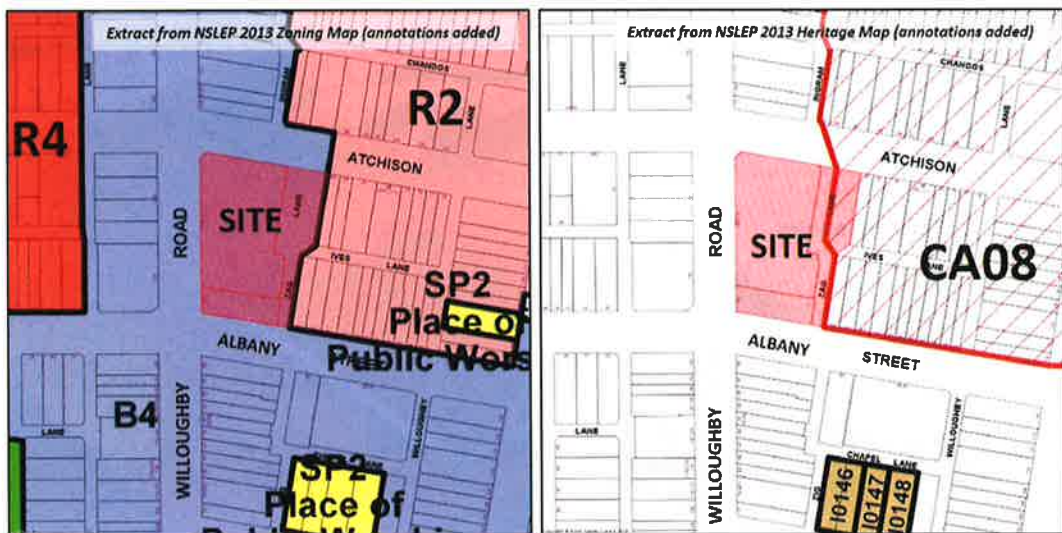
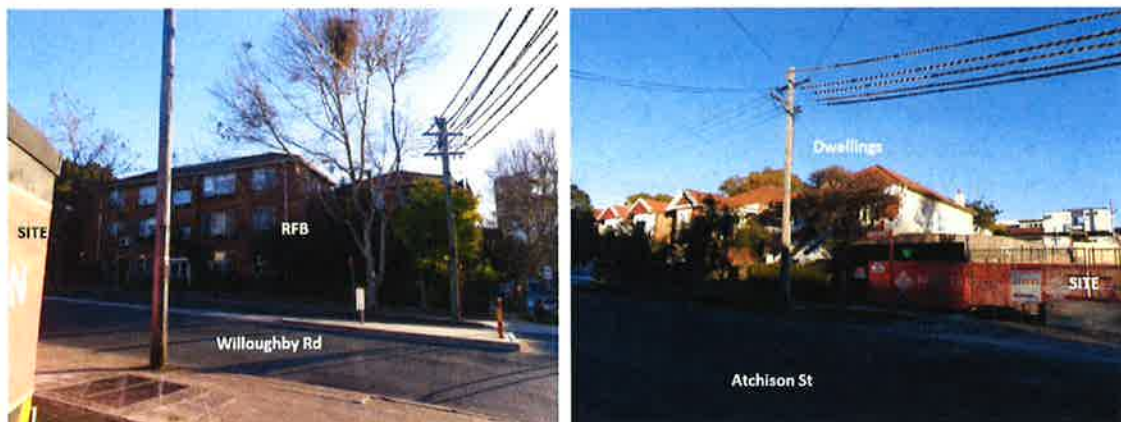


Figure 2 – Site is zoned B4 Mixed Use and adjoins Holtermann Estate B conservation area

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 3).



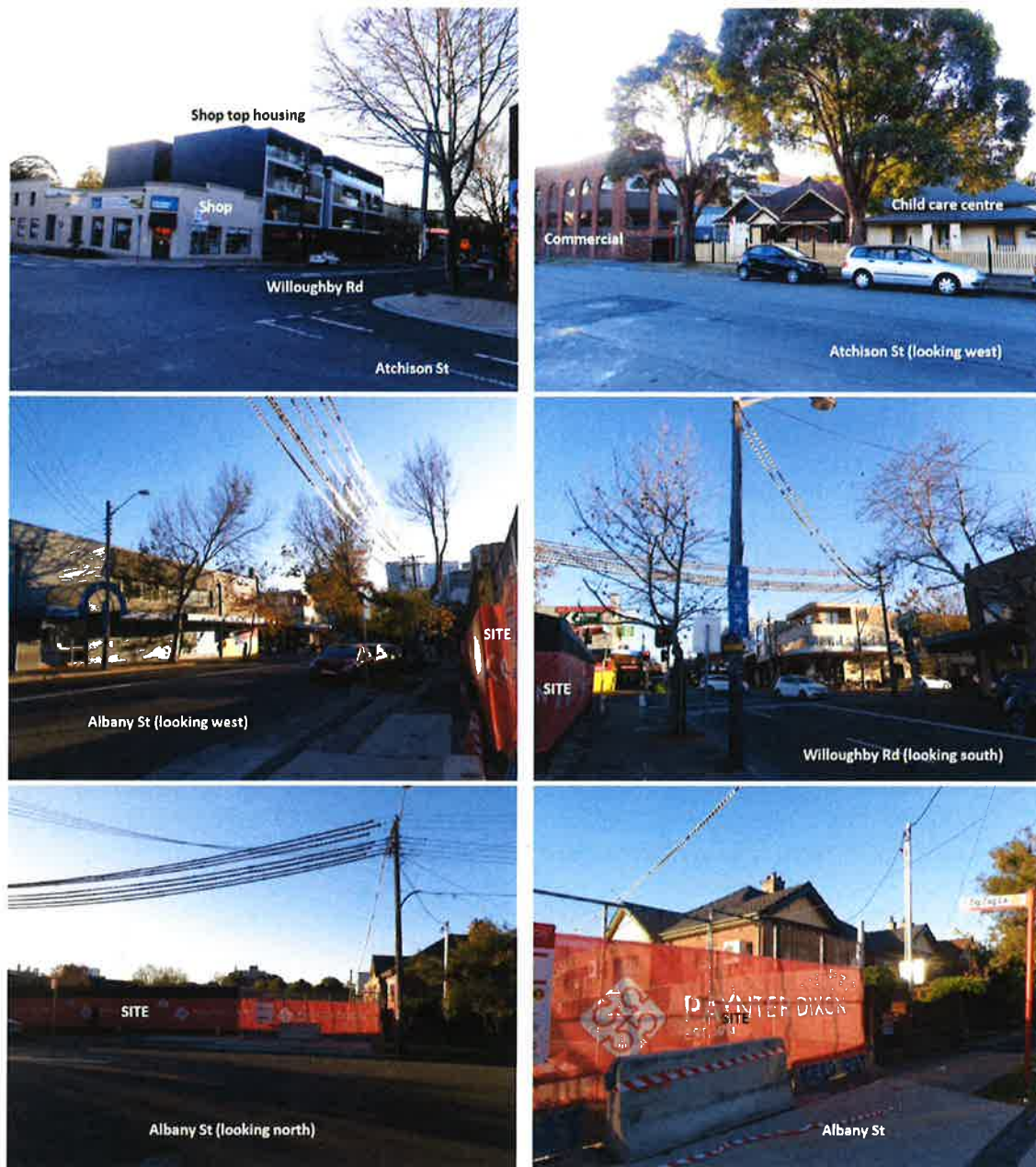


Figure 3 – Surrounding development

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 (now 4.55) **modifications**, as follows:

- 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.

- **DA327/15/3** to modify condition C42 in regard to relocation of Ausgrid power pole M089508 was lodged on 31/1/17 was approved on 22/12/17.
- **DA327/15/4** to was lodged on 17/2/17, however rejected due to incorrect and inadequate information.
- **DA327/15/5** to modify consent with respect to converting balconies to wintergardens, façade changes, level changes, unit layout changes and carpark modifications was approved by Sydney North Planning Panel on 7/8/17 (**2017SNH037**).
- **DA327/15/6** to modify construction hours was withdrawn.
- **DA327/15/7** to modify basement levels was approved on 10/11/17.
- The subject **DA327/15/8** was lodged on 21/11/17. Amended drawings were received on 19/2/18 to rectify errors in submitted drawings and to include perimeter planter boxes on Level 4 of Building 01. Market opinions and analyses on unit mix were received on 14 & 27 February 2018.

Construction Certificate was issued by Private Certifier on 3/8/17. Construction is underway.

CHECKING OF MODIFICATIONS

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

SUBMISSIONS

The owners of adjoining properties and the **Holtermann Precinct** were notified of the proposed development for a 14-day period, between **1 to 15 December 2017**, in accordance with section A4 of NSDCP 2013. The notification resulted in **no submissions**.

CONSIDERATION

Section 4.55(2) of the Environmental Planning and Assessment Act, 1979

Section 4.55(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, type, distribution and intensity of uses.

2. It has consulted with the relevant Minister, public authority or approval body (within the meaning of Division 4.8) 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. The amended drawings received on 19/2/18 were not required to be notified as the amendments were to rectify errors, and to include changes that do not affect the building envelope or amenity impacts of the development as advertised.

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 4.15(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, any development control plan, any planning agreement

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 proposed unit mix responds to social and economic conditions, including emerging demographic profile of Crows Nest. The addition of awnings, planters and façade changes associated with the change in unit mix will not materially change the relationship and contribution of the approved development to the streetscape and neighbourhood.
2. Built form & scale	External modifications are generally within the approved building envelope and compliant with the height limit with the exception of a small awning which does not materially alter the built form and scale of the approved development. The height, massing, street alignments, and overall built form of the approved development will be generally maintained.

Design Quality Principles	Comment
3. Density	The applicant has adequately demonstrated that the proposed density of development (60 units, down from approved 70 units) is consistent with the area's existing and projected demographics and appropriately accommodated within the approved building envelope.
4. Sustainability	An underprovision of units with natural cross ventilation has been identified, however, the development overall achieves BASIX requirements and compliant solar access, and an overall high level of liveability in terms of unit size, private open space and solar access.
5. Landscape	The proposal includes the addition of a perimeter landscape planter to the top level apartment terraces in Building 01, integrated into the architecture of the building and softening built form.
6. Amenity	The proposed units generally provide for a high level of amenity in terms of access to sunlight, natural ventilation, functional dimensions and layout. Any underprovision in one aspect of unit design is adequately compensated for by another aspect exceeding minimum requirements. Consolidated units will maintain the orientation and outlook of previously approved units. The addition of awnings to roof terraces will provide improved weather protection.
7. Safety	The development as proposed to be modified provides for similar levels of passive surveillance and relationship between the private and public domain as the approved development.
8. Housing diversity & social interaction	The apartment mix is appropriate, taking into consideration current market demands and projected future demographic trends, and transport and employment accessibility of the site.
9. Aesthetics	The changes in façade treatment associated with the change in unit mix will provide for a balance of solid, void and glazed composition, similar to the design language of the approved development.

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.

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.

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, including 67 residential car spaces.

NORTH SYDNEY LEP 2013

The application has been assessed against the zoning and zone objectives contained in Part 2, principal development standards in Part 4, and relevant miscellaneous in Part 5 of North Sydney LEP 2013.

(1) Land use table & zoning

The site is identified under LEP 2013 as being included within the **B4 Mixed Use** zone. The proposed modifications, in relation to the approved *shop top housing*, are permissible in the zone.

The development as proposed to be modified satisfy the zone objectives; in particular, to provide high quality urban environment and residential amenity.

(2) Building height

Clause 4.3 of LEP 2013 sets a variable maximum height for the subject site as shown below, with a maximum RL104.2 towards the north western corner of the site (in the location of approved Building 01), and maximum RL101.1 towards the south eastern corner of the site (in the location of approved Building 02) (Figure 4).

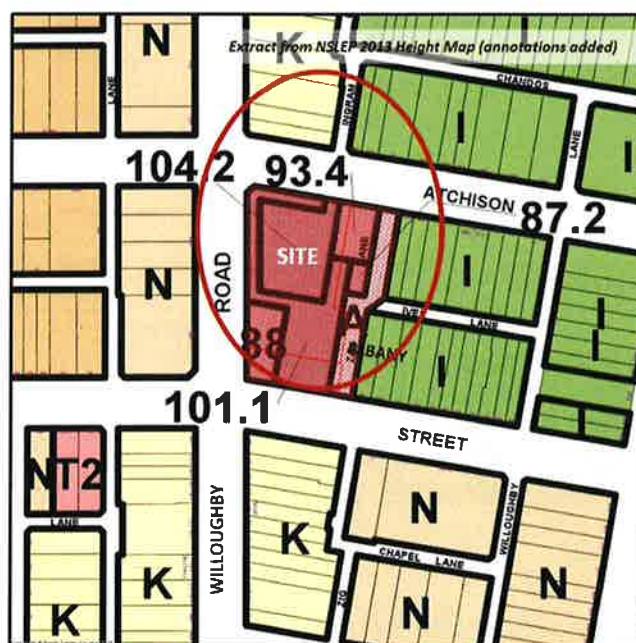
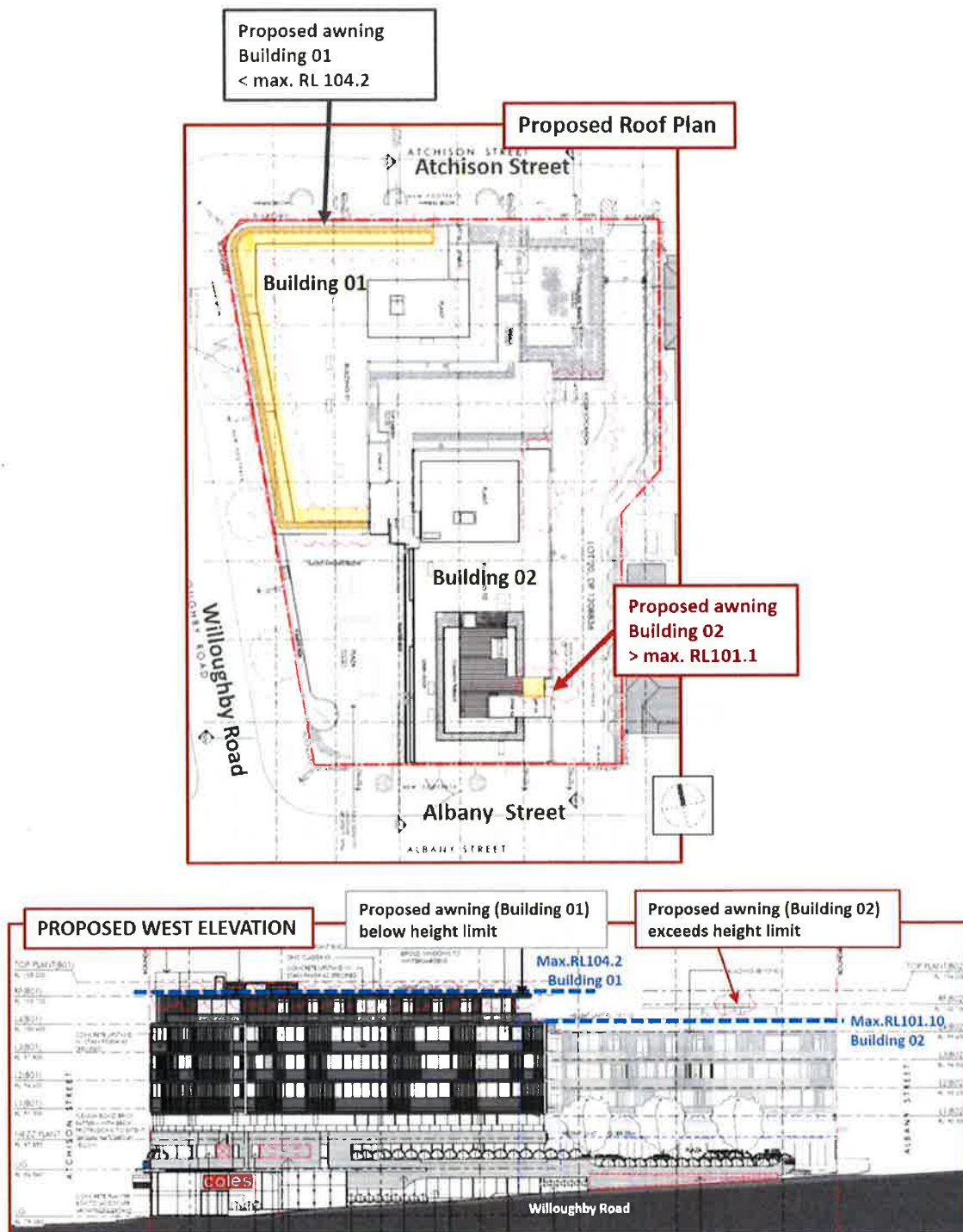


Figure 4 – Proposed modifications to the height of Building 01

The proposed modifications comply with the maximum height of buildings controls, with the exception of the proposed awning in front of the approved lift on Level 4 of Building 02 (**Figure 5**).



**Figure 5 – Building 01 awning complies with maximum building height
Building 02 exceeds height control**

The development as proposed to be modified will give rise to an additional height breach in the location of the new awning on the roof level of Building 02, as detailed in the table below.

	LEP Max RL	Approved Height	Proposed	
			Height	Complies
Building 01	RL104.2	RL103.72 (roof) RL101.6 (balustrade)	RL103.72 (new awning) RL 101.6 (planter)	Yes
Building 02	RL101.1	RL104.2 (top of plant) RL102.2 (roof terrace pergola) -	(no change) (no change) RL102.6 (new awning)	No

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 4.55 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 section 4.55(4) of the Act which distinguishes between the modification of a development consent pursuant to section 4.55 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 section 4.55(3) & section 4.15(1) 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 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 height in the location of the proposed awnings.
- (c) *to maintain solar access to existing dwellings, public reserves and streets, and to promote solar access for future development* – The proposed awnings will project over and afford sun protection to the approved roof terrace/balconies and not result in any shadow impacts on adjoining properties.
- (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.
- (e) *to ensure compatibility between development, particularly at zone boundaries* – The additional height breach in relation to an awning will not impact on the compatibility of the approved 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 area of additional breach of the height control is limited to a small awning to be attached to an approved lift/stair overrun. The proposed awning does not result in any material change to 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 breach of the height control is minor and associated with an awning that does not give rise to any significant increase in the approved building envelope which remains substantively compliant with the height control. The proposed awnings give weather protection to approved roof level facilities and there is no public benefit in maintaining the control on the site in this instance. Compliance of the modifications with the height control is unnecessary and unreasonable as the development satisfies the objectives of the control despite the variation.

(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 LEP 2013. No change is proposed to the non-residential floor space of the development as approved under DA327/15/5, being **4,830.55m²** over a site area of 4,013.9m², with a non-residential **FSR of 1.2.:1**, which complies.

(4) Heritage conservation

The site is located outside of, however, adjoins Holtermann Estate A conservation area (CA07) under LEP 2013 (refer to **Figure 2** in this report). 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. The eastern interface of the development will generally be maintained in terms of building envelope and façade treatment and will not result in any unacceptable impacts on the character of the conservation area.

NORTH SYDNEY DCP 2013

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		
<i>Mixed Use Development</i>	<i>Complies</i>	<i>Comments</i>
B2.2 Function		
Diversity of activities, facilities, opportunities & services	Yes	The proposed modifications do not change the commercial and retail floor space as approved in DA327/15/5.

DEVELOPMENT CONTROL PLAN 2013						
Mixed Use Development	Complies		Comments			
Maximise use of public transport	Yes		The proposal involves redistribution of residential car parking spaces, as approved, with no increase in car spaces.			
Mixed Residential Population	No		The proposed unit mix do not comply with the DCP rates in Section B2.2.3 P4, as shown in the table below:			
	DCP	Approved DA327/15/5	Complies	Proposed	Variation	Complies
Studio	10-20%	19 units (27%)	No	Nil	- 10%	No
1-bed	25-35%	16 units (23%)	No	16 units (26%) ^a	-	Yes
2-bed	35-45%	28 units (40%)	Yes	34 units (57%) ^b	+ 12%	No
3-bed	10-20%	7 units (10%)	Yes	10 units (17%) ^c	-	Yes
		70 units		60 units		
a. 11 x 1-bed + 5 x 1-bed with study; b. 31 x 2-bed + 3 x 2-bed with study; c. 8 x 3-bed + 2 x 3-bed with study						
				<p>DCP section B1.2.1 P5 however allows consideration of variations to the dwelling mix where the applicant can adequately demonstrate by an authoritative analysis of current and future market demand that the suggested mix is not reasonable.</p> <p>The proposed unit mix variation is supported by the following market opinions provided by the applicant:</p> <ul style="list-style-type: none"> • Boston Marketing (licensed real estate agency) dated 13/2/17, which states that the proposed apartment mix is generally in line with current market demand and projected demographics in the area; and • Charter Keck Cramer (Certified Practising Valuers) dated 26/2/18, which provides a demographic profile of Crows Nest and consideration of buyer profile and future housing demand that would support the proposed removal of studio apartments from the approved unit mix, on the basis of the following in particular: <p><i>“1. New studio apartments in Crows Nest will be offered at a high price point and as such will not appeal to purchasers seeking more affordable accommodation, these purchasers will be more attracted to older style existing one and two bedroom apartments in the area as they offer greater accommodation, often have parking and are available at a more affordable price point.</i></p> <p><i>2. Couple families with and without children are the dominant household type in Crows Nest. These groups typically seek one, two and bedroom apartments as they offer greater space and functionality.</i></p> 		

DEVELOPMENT CONTROL PLAN 2013					
Mixed Use Development	Complies	Comments			
Mixed Residential Population (continued)		<p>3. Downsize (including empty nesters and some lone persons) are typically moving from houses or large apartments and prefer one and two bedroom apartments.</p> <p>4. Renters with affordability constraints will typically seek two and three bedroom apartments or houses where two or more "housemates" can share the rental. This is more cost effective approach than renting a studio.</p> <p>Whilst studios may appeal to small parts of the market from time to time, they are the least popular accommodation type as they offer low functionality, have a higher price point to larger existing stock and do not meet the needs of the Crows Nest demographic which has as a high portion of families."</p> <p>Having regard to the above, and on balance of the following considerations, the proposal is assessed to be satisfactory with regard to the objective of a mixed residential population, despite the variation in unit mix:</p> <ul style="list-style-type: none"> Ten of the units include a separate study area (5 x 1-bed with study, 3 x 2-bed with study and 2 x 3-bed with study), adding to the amenity and adaptability of the units; The proposal amounts to an 11% variation from the minimum rate of 35% for Studios & 1-bedroom units combined, however, the proportion of 1-bedroom units is compliant; Eleven of the 16 x 1-bedroom units do not include a separate study, which assists with affordability of this unit type; and A survey of recent approvals for residential flat buildings on Atchison Street one block to the west of the site in R4 zone, and smaller scale shop top housing to the east of the site in Alexander Street, reveals that Council has applied the unit mix rates in a flexible manner, including developments with zero provision of studios but compliant provision of 1-bedroom units, as shown in the table below: 			
	DCP rate:	10-20%	25-35%	35-45%	10-20%
41-49 Atchison St (DA422/16) RFB (34 units RFB)		Nil (0%)	11 (32%) √	17 (50%) √	6 (18%) √
53-57 Atchison St (DA138/16) RFB (18 units)		Nil (0%)	4 (22%) √	13 (72%)	1 (6%)
84-90 Atchison St (DA363/14) RFB (45 units)		11 (24%)	18 (40%)	16 (36%) √	Nil (0%)
160 Willoughby Rd (DA127/17) Shop top housing (9 units)		4 (44.4%) √		4 (44.4%) √	1 (11.1%) √
118 Alexander St (DA90/16) Shop top housing (12 units)		Nil (0%)	6 (50%)	6 (50%) √	Nil (0%)
88-90 Alexander St (DA488/15) Shop top housing (16 units)		2 (12.5%) √	7 (43.8%)	5 (31.3%)	2 (12.5%) √
104-106 Alexander St (DA453/16) Shop top housing (10 units)		1 (10%) √	4 (40%)	2 (20%)	3 (30%)
121 Alexander St (DA164/15) Shop top housing (8 units)		2 (25%)	2 (25%) √	4 (50%)	Nil (0%)

DEVELOPMENT CONTROL PLAN 2013		
<i>Mixed Use Development</i>	<i>Complies</i>	<i>Comments</i>
Mixed Residential Population (continued)		<ul style="list-style-type: none"> The provision of a high proportion of 2-bedroom units (12% variation) to some extent makes up for the under provision of 2-bedroom units within the smaller scale shop top housing developments approved on Alexander Street; The proposed development contains 9 x adaptable units (15%) which complies with the DCP and ADG minimum provision of 15%; A variety of apartment types is provided appropriate to the accessibility of the site to transport, cultural facilities and Crows Nest Village; The development provides for 67m² gross site area per apartment, which is in between the 90m² for residential flat buildings and 240m² for attached dwelling or multi-dwelling housing as provided for in section B1.2.1 P1, and considered to be a reasonable yield for the shop top housing as determined by the envelope controls in the LEP; The development as proposed to be modified is generally consistent with Council's <i>Residential Development Strategy 2009</i> (adopted 20/6/11), which it is noted, does not make any specific reference to "Studio" units. <p>Having regard to the above, it is considered that the objectives of the Mixed Residential Population section are achieved despite the variation; in particular, the development will provide for a mix of household sizes, including adaptable units, a dwelling yield that is appropriate to the envelope controls for the site, and maintain a high level of residential amenity.</p>
B2.3 Environmental criteria		
Noise	Yes	The proposed reduction in the number of units is associated with an overall reduction in the number of balconies, in particular, on the western elevation of Building 01 and eastern elevation of Building 02 facing toward residential properties.
Reflectivity	Yes	The building as proposed to be modified will continue to provide for a balance of solid to void on all facades, including recessed winter gardens
Awnings	Yes	The proposed awnings are associated with approved balconies and roof terrace; 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. Additional shadows will fall Willoughby Road on midwinter morning but will not impact on the primary living or outdoor space of any nearby residence, or on the approved public plaza on the south western corner of the development site, as illustrated in the submitted shadow diagrams in Figure 6 .

DEVELOPMENT CONTROL PLAN 2013		
Mixed Use Development	Complies	Comments
Figure 6 – Midwinter shadows		
Views	Yes	There are no identified significant or iconic views that would be materially affected by the proposed modifications.
Acoustic privacy	Yes	The number and location of approved windows, balconies, and wintergardens will generally be maintained.
Vibration	Yes	The proposed modifications do not result in any greater exposure of apartment units to road noise and vibration.
Visual privacy	Yes	Perimeter planters on Level 4 of Building 01 will generally improve privacy. The repositioning of the balconies of the south eastern units in Building 02 toward Albany Street will improve privacy.
B2.4 Quality built form		
Context	Yes	The proposed modifications provide for appropriate responses to the context of the site in relation to unit mix, as discussed in the Population Mix section in this DCP Compliance Table.
Site consolidation Setbacks Podiums	Yes	The development as proposed to be modified will generally maintain the approved building envelope.
Building design	Yes	The building design will generally be maintained as approved.
Skyline	Yes	The proposed awnings will not materially alter the skyline profile of the building as approved.

DEVELOPMENT CONTROL PLAN 2013		
<i>Mixed Use Development</i>	<i>Complies</i>	<i>Comments</i>
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.
Balconies – apartments	Yes	The approved balconies and wintergardens will be maintained for the modified unit mix, providing for 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 proposed modifications do not alter the approved public pathway along the eastern alignment of the site along Zig Zag Lane.
Streetscape	Yes	The development as proposed to be modified will contribute to visual interest in built form.
Entrances & exits	Yes	No change is proposed to residential entry lobbies in the locations of Lift 02 & 03 on Atchison & Albany Streets.
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. A minimum of 15% of apartments will be adaptable.
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	No	Internal & balcony sizes The majority of apartment units comply with the minimum internal unit and balcony size requirements in section 4D-1 of the <i>Apartment Design Guide</i> under SEPP 65. Non-compliances are however identified for 6 out of the 60 units proposed (10%). The residential amenity of these units are nonetheless assessed to be satisfactory, having regard to compensatory characteristics of these apartments, detailed as follows:
	Underprovision	Compensating amenity
Unit 203 (3-bed)	11.05m ² wintergarden is 0.95m ² (7.9%) short of the min. 12m ²	<ul style="list-style-type: none"> • 114.3m² apartment size, being 24.3m² (27%) larger than min. 90m² • Dual orientation corner adaptable unit • Achieves 2 hours' midwinter solar access
Unit 303 (3-bed)	As above	As above
Unit 309 (1-bed)	7.73m ² wintergarden is 0.27m ² (3.4%) short of the min. 8m ²	<ul style="list-style-type: none"> • 61.6m² apartment size, being 11.6m² (23.2%) larger than min. 50m²
Unit 314 (2-bed)	9.1m ² wintergarden is 0.9m ² (9%) short of the min. 10m ²	<ul style="list-style-type: none"> • 76m² apartment size, being 6m² (8.5%) larger than min. 70m² • Dual orientation corner unit • Achieves 2 hours' midwinter solar access

DEVELOPMENT CONTROL PLAN 2013		
<i>Mixed Use Development</i>	<i>Complies</i>	<i>Comments</i>
Unit 403 (3-bed)	11.05m ² wintergarden is 0.95m ² (7.9%) short of the min. 12m ²	<ul style="list-style-type: none"> • 114.3m² apartment size, being 24.3m² (27%) larger than min. 90m² • Dual orientation corner adaptable unit • Achieves 2 hours' midwinter solar access
Unit 411 (2-bed)	66.6m ² apartment size is 3.4m ² (4.9%) short of the min. 70m ²	<ul style="list-style-type: none"> • 12m² balcony, being 2m² (20%) larger than the min. 10m² • Dual orientation corner adaptable unit • Achieves 2 hours' midwinter solar access
High quality residential accommodation (continued)	Yes	<p>Solar access</p> <p>The living rooms and balconies/courtyards of 51 of 60 apartments (85%) will receive at least 2 hours' solar access in midwinter between 9am & 3pm, which complies with the minimum 70% under the ADG.</p>
	No	<p>Cross ventilation</p> <p>The proposed modifications result in 32 of 60 apartments (53%) achieving natural cross ventilation, which is 10 units (16.7%) short of the minimum ADG requirement. This compares to the approved development containing 45 cross-ventilated units out of 70 units, being 4 units short of ADG requirements.</p> <p>The variation is nonetheless considered to be satisfactory in the circumstances, on balance of the following:</p> <ul style="list-style-type: none"> • All but one unit (Unit 309) of the non-cross ventilated apartments achieve or exceed minimum required internal and balcony/wintergarden sizes; with Unit 309 being an oversized 1-bedroom unit; • The apartments provide an overall high level of residential amenity in terms of unit size, private open space and solar access; • The living rooms and balconies/courtyards of 51 of 60 apartments (85%) will receive at least 2 hours' solar access in midwinter between 9am & 3pm, which exceeds the minimum 70% under the ADG; • The development overall achieves BASIX requirements; • The numeric variation is in large part attributable to the overall reduction in the number of units and consolidation of studios into larger apartments within the constraints of the approved building floorplates and envelopes.;
	Yes	<p>Corridors</p> <p>Each residential lift services a maximum of 9 apartments, which complies with the maximum 10 units per lift.</p>
Lightwells & ventilation	Yes	All apartments will have access to natural daylight and airflow through operable windows and do not rely on skylights and lightwells as a primary source of amenity.

DEVELOPMENT CONTROL PLAN 2013																	
<i>Mixed Use Development</i>	<i>Complies</i>	<i>Comments</i>															
Private open space	Yes	The proposed apartments substantially comply with ADG minimum balcony dimension and size requirements. Where undersized balcony/wintergardens are identified (refer to High quality residential accommodation section above), the variations are relatively minor and adequately compensated by other aspects of the affected units. No change is proposed to the size of the approved communal terraces spaces.															
Vehicular access	Yes	No change is proposed to approved vehicular access on Atchison Street. The switch room relocation/reorientation will not affect vehicular access in Zig Zag Lane.															
Car parking	Yes	The approved basement car park is capable of accommodating the mix of uses as proposed to be modified, as discussed in the B10 Car Parking & Transport section further below in this report.															
Garbage storage	Yes	The approved dedicated residential garbage room (44m ²) is capable of accommodating 30 bins, calculated at 1 x 240L garbage & 1 x 240L recycling bins per 4 dwellings @ 60 dwellings.															
Site facilities	Yes	Site facilities, including communal terraces, residential garbage room and car parking, as approved will adequately service the modified development.															
B2.6 Efficient use of resources																	
Energy efficiency	Yes	A BASIX certificate has been submitted for the development as proposed to be modified; condition C57 BASIX is to be modified to refer to the updated certificate.															
B2.7 Public domain																	
Street furniture, landscaping works, utilities & equipment	(no change)	The proposed modifications will not impact on the approved public domain elements, including public plaza and Zig Zag Lane footpath.															
B10 Car Parking & Transport																	
Quantity requirements	(as per condition)	<p>No change is proposed to the approved 67 residential car parking spaces, which will continue to be allocated in accordance with consent condition I8, which states as follows:</p> <p>Car Parking Allocation I8. Car parking shall be allocated as follows, including in any strata subdivision of the development: Residential parking maximum 67 spaces Maximum 1 space per studio/1 bed/ 2 bed apartment Maximum 2 spaces per 3 bed apartment Accessible parking spaces are only to be allocated to adaptable apartments, with a maximum of 1 per apartment. (Reason: To ensure adequate parking is provided)</p> <p>A compliant residential car parking allocation for the proposed unit mix is illustrated below:</p> <table border="1"> <thead> <tr> <th>No. units</th> <th>Condition I8 (max)</th> <th>Parking allocation</th> </tr> </thead> <tbody> <tr> <td>16 x 1-bed</td> <td>1 space/dwelling</td> <td>13 spaces</td> </tr> <tr> <td>34 x 2-bed</td> <td>1 space/dwelling</td> <td>34 spaces</td> </tr> <tr> <td>10 x 3-bed</td> <td>2 spaces/dwelling</td> <td>20 spaces</td> </tr> <tr> <td colspan="2">Approved residential spaces</td> <td>67 spaces</td> </tr> </tbody> </table>	No. units	Condition I8 (max)	Parking allocation	16 x 1-bed	1 space/dwelling	13 spaces	34 x 2-bed	1 space/dwelling	34 spaces	10 x 3-bed	2 spaces/dwelling	20 spaces	Approved residential spaces		67 spaces
No. units	Condition I8 (max)	Parking allocation															
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Approved residential spaces		67 spaces															

DEVELOPMENT CONTROL PLAN 2013		
<i>Mixed Use Development</i>	<i>Complies</i>	<i>Comments</i>
Loading & unloading	(no change)	The proposed development will not affect the functioning of the approved Coles' loading dock or "Specialty dock".
Bicycle parking	Yes	No change is proposed to consent condition C3 which states as follows: C3 Amended Plans/Additional Information h. 118 occupant bicycle parking spaces (minimum Class B); 21 visitor bicycle parking spaces (minimum Class C); and end of trip facilities in accordance with North Sydney Council DCP and AS2890.3 shall be provided. The approved residential parking provision is based on 70 units and will adequately service the modified development containing 60 units.

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.

(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

The development as proposed to be modified will not result in any material impacts on the local environment, as assessed in this report. The modifications will not result in any adverse built form or amenity impacts.

(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 the objectives of relevant development controls and policies.

SECTION 7.11 CONTRIBUTIONS

Consent condition C19 requires the payment of **\$872,012.66** in Section 7.11 contributions based on the approved commercial floor space and apartment mix, as amended in DA327/15/5. The proposed development results in a change in unit mix, being deletion of 19 x studios, and addition of 6 x 2-bedroom and 3 x 3-bedroom units.

The change in unit mix has been assessed as against Council's Fees and Charges Schedule 2017/18, and it is determined that there is no net change in Section 7.11 contributions, in total or by line item, and the contributions payable are as indicated in condition C19.

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

CONCLUSION

The proposed modifications to the approved development are supported as they will not have any material adverse built form or residential amenity impacts. The development as proposed to be modified will provide for a high level of residential amenity and maintain a diversity of uses. The development 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, Crows Nest**, under the provisions of section 4.55 of the Environmental Planning and Assessment Act only in so far as will provide for the following:

(A) To **add** the following condition :

Development in Accordance with Plans (S4.55 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
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)

(B) To **modify** the following condition: so as to read as follows:

BASIX

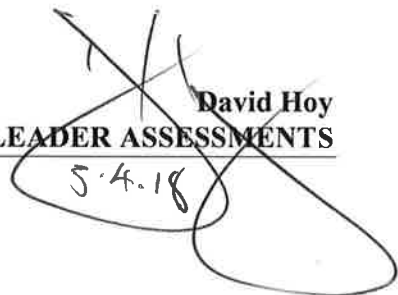
C57. Under clause 97A(3) of the Environmental Planning & Assessment Regulation 2000, it is a condition of this development consent that all the commitments listed in BASIX Certificate No. (732954M_03) for the development are fulfilled. Plans and specifications complying with this condition must be submitted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

3.4.18


David Hoy
TEAM LEADER ASSESSMENTS

5.4.18

