

## SYDNEY SOUTH PLANNING PANEL

<b>Panel Reference</b>	2017SSH011
<b>DA Number</b>	MA17/0087
<b>LGA</b>	Sutherland Shire
<b>Proposed Development:</b>	Section 96(2) Modification to DA15/1254 - Additional 3 units and window modifications
<b>Street Address:</b>	Lots 28, 29 & 30 DP 11987, Lots 8, 9 & 10 DP 31029 (Nos. 16 – 20 & 40 - 44) Pinnacle Street, Miranda
<b>Applicant/Owner:</b>	E Haddad
<b>Date of DA lodgement</b>	13 March 2017
<b>Number of Submissions:</b>	NIL
<b>Regional Development Criteria (Schedule 4A of the Act)</b>	The approved development has a capital investment value of more than \$20 million and as such is nominated under Schedule 4A (3) of the Environmental Planning and Assessment Act 1979. Modifications under Section 96(2) are required to be returned to the SSPP for determination.
<b>List of all relevant s79C(1)(a) matters</b>	<p>State Environmental Planning Policy No. 55 – Remediation of Land (SEPP 55)</p> <p>State Environmental Planning Policy No. 65 – Design Quality of Residential Flat Development (SEPP 65)</p> <p>State Environmental Planning Policy (Infrastructure) 2007 (Infrastructure SEPP)</p> <p>State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004</p> <p>Greater Metropolitan Regional Environmental Plan No. 2 – Georges River Catchment</p> <p>Sutherland Shire Local Environmental Plan 2015</p> <p>Sutherland Shire Development Control Plan (SSDCP 2015)</p> <p>Apartment Design Guide (ADG)</p> <p>Section 94 Developer Contribution Plans</p> <ul style="list-style-type: none"> <li>- Shire Wide Open Space and Recreation Facilities 2005</li> <li>- Section 94 Community Facilities Plan</li> </ul>
<b>Does the DA require Special Infrastructure Contributions conditions (S94EF)?</b>	No
<b>Have draft conditions been provided to the applicant for comment? Have any comments been considered by council in the assessment report?</b>	No
<b>List all documents submitted with this report for the Panel's consideration</b>	<ul style="list-style-type: none"> <li>• Draft Reasons of Refusal</li> <li>• Architectural Review Advisory Panel (ARAP) comments</li> </ul>
<b>Recommendation:</b>	Refusal
<b>Report prepared by:</b>	Amanda Treharne, Development Assessment Planner Sutherland Shire Council
<b>Report date:</b>	18 July 2017

### Summary of s79C matters

Have all recommendations in relation to relevant s79C matters been summarised in the Executive Summary of the assessment report?

**Yes**

**Legislative clauses requiring consent authority satisfaction**

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?

**Yes**

*e.g. Clause 7 of SEPP 55 - Remediation of Land, Clause 4.6(4) of the relevant LEP*

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**Clause 4.6 Exceptions to development standards**

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?

**Not Applicable**

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**Special Infrastructure Contributions**

Does the DA require Special Infrastructure Contributions conditions (S94EF)?

**Not Applicable**

*Note: Certain DAs in the Western Sydney Growth Areas Special Contributions Area may require specific Special Infrastructure Contributions (SIC) conditions*

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**Conditions**

Have draft conditions been provided to the applicant for comment?

**No**

*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*

## REPORT SUMMARY

### REASON FOR THE REPORT

The application is referred to the SSPP as it is a modification submitted under Section 96(2) of the Environmental Planning and Assessment Act 1979 to a Development Application (DA15/1254) approved by the Sydney East Joint Sydney Regional Planning Panel (JRPP). The JRPP has been superseded by the South Sydney Planning Panel (SSPP). SEPP 2011 requires that modification applications made under Section 96(2) are required to be reported back to and determined by the SSPP.

### PROPOSAL

Modification of DA15/1254 pursuant to Section 96(2) of the Environmental Planning and Assessment Act 1979 (as amended) to construct an additional 3 units on the roof terraces of the approved northern building.

### THE SITE

The site comprises 6 parcels of land identified as Lots 28, 29 & 30 in DP11987 (Nos 16 – 20 Pinnacle Street, Miranda) and Lots 8, 9 & 10 in DP31029 (Nos 40 - 44 Pinnacle Street, Miranda). The amalgamation of lots results in a rectangular shaped site with a total area of 3,495.25m<sup>2</sup>.

## ASSESSMENT OFFICER'S RECOMMENDATION

THAT:

That Section 96(2) Modification No. 17/0087 to DA15/1254 to increase the number of units from 99 to 102 at Lots 28, 29 & 30 DP 11987, Lots 8, 9 & 10 DP 31029 (Nos 16 - 20 & 40 – 44) Pinnacle Street, Miranda be refused for the following reasons:

1. The application is considered unacceptable pursuant to the provisions of Section 79C(1)(a)(i) of the Environmental Planning and Assessment Act 1979, in that the proposed development fails to comply with the maximum Floor Space Ratio development standard and zone objectives 4.4(a), (b) and (c)(ii) contained within Clause 4.4 of Sutherland Shire Local Environmental Plan 2015.
2. The application is considered unacceptable pursuant to the Design Quality Principles contained in Schedule 1 of State Environmental Planning Policy 65 and the relevant guidelines of the Apartment Design Guide with respect to building separation, residential amenity and the provision of communal open space.
3. The application is considered unacceptable pursuant to the guidelines of the Sutherland Shire

Development Control Plan 2015 in that the proposed development:

- (a) Does not comply with the Pinnacle Street Building Envelope Plan set out in Chapter 7.6.2; and
  - (f) Does not provide sufficient on-site car parking to meet the requirements of the proposed development contrary to Chapter 7.17.2.
4. The application is considered unacceptable pursuant to the provisions of s.79C(1) (e) of the Environmental Planning and Assessment Act 1979 in that it is considered that in the circumstances of the case approval of the development would set an undesirable precedent for similar inappropriate development and is therefore not in the public interest.

## ASSESSMENT OFFICER'S COMMENTARY

### 1.0 DESCRIPTION OF PROPOSAL

An application has been received for modification of DA15/1254 pursuant to Section 96(2) of the Environmental Planning and Assessment Act 1979 (as amended) at the above property. DA15/1254 granted approval for 2 separate residential flat buildings on the site. The proposed modifications relate to the building on the northern side of the site and are detailed as follows:

- The provision of 2 new apartments (2 x 2 bedroom) on the western side of Level 4 in place of the approved rooftop communal terrace.
- The provision of a new roof terrace on Level 5 above the 2 new units on Level 4.
- The provision of an additional unit (1 x 3 bedroom plus study) on part of Level 6, reducing the area of approved rooftop communal terrace.
- The provision of a new pergola above the remaining rooftop terrace area.

The proposed modification will result in an increase in the gross floor area (GFA) by 278m<sup>2</sup> and a decrease in the provision of communal open space by 164m<sup>2</sup>.

The modifications sought to the approved development involve amendment of the following change to the description of the development and conditions of consent:

- Description of the development – from 99 to 102 units.
- Condition 3 – revised plan numbers.
- Condition 4A(iv) design changes to the roof terrace.
- Conditions 6, 7 and 8 to adjust the Section 94 Contributions.

### 2.0 SITE DESCRIPTION AND LOCALITY

The subject site is located at 16 – 20 and 40 – 44 Pinnacle Street, Miranda. The site comprises 6 parcels of land identified as follows:

- Lots 28 – 30 in DP11987 (No's 16 – 20 Pinnacle Street, Miranda).
- Lots 8 – 10 in DP31029 (No's 40 – 44 Pinnacle Street, Miranda).

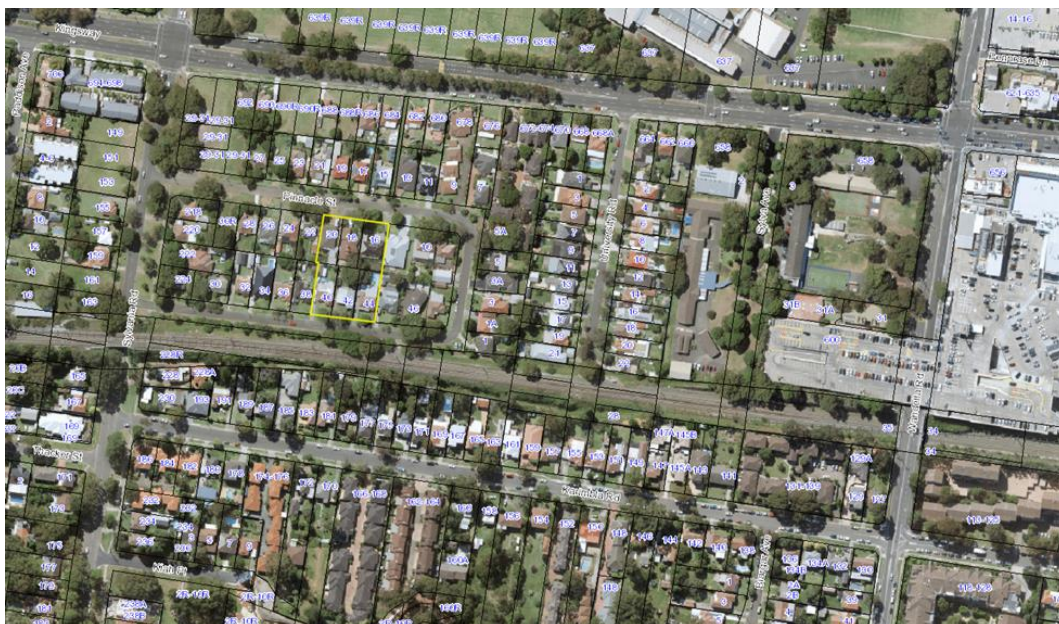
Pinnacle Street forms a U-shape, with Sylvania Road to its west. The arrangement of lots means that the site extends from the northern side of Pinnacle Street through to the southern side, opposite the rail line.

The amalgamation of lots results in a rectangular shaped site with a northern frontage of 48.79m, a southern frontage of 46.14m, an eastern boundary of 72.74m and a western boundary of 71.82m. It has a total site area of 3,495.25m<sup>2</sup>.

The site has a fall of approximately 1.5m from the northern frontage to the southern boundary.

Work on the approved development has started, with all of the buildings / structures having been demolished, excavation completed and construction of the basement underway.

The majority of development surrounding the subject site comprises low density residential dwellings on single allotments. This existing character is undergoing change as a result of recent approvals for residential flat developments in Pinnacle Street and other nearby streets. The approvals have been granted under Sutherland Shire Local Environmental Plan 2015 (SSLEP 2015). SSLEP 2015 resulted in a rezoning of the area from low density residential to R4 High Density Residential, and allows for up to 8 storey residential flat buildings within the 'Pinnacle Street Precinct' identified under Sutherland Shire Development Control Plan 2015 (SSDCP 2015).



**Figure 1:** An aerial photo showing the location of the site.



**Figure 2:** Approved developments in the Miranda Pinnacle Street Precinct.

### 3.0 BACKGROUND

The Development Application to which the subject modification relates is DA15/1254.

DA15/1254 was determined by the JRPP on 15 June 2015 for demolition of 6 existing dwellings and construction of a 7 storey and an 8 storey residential flat building containing 99 units with basement car parking at the above property.

Subsequent to the approval 3 modification applications under Section 96(1) and (1A) have been approved by Council. These are outlined in the Table below.

MA No.	Description of Modification	Approval Date
MA16/0257	Amend description of development, delete condition 14 regarding car spaces, amend Part 1 Deferred Commencement conditions relating to roof terrace	10 August 2016
MA16/0276	Amend proposal to increase the number of car parking spaces, decrease the provision of deep soil landscaping and deferral of s94 contributions from Construction Certificate to Occupation Certificate	7 December 2016
MA16/0307	Amend deferred commencement condition relating to lift overrun and delete condition 41 regarding car spaces	2 September 2016

- The current application was submitted on 13 March 2017.
- The application was placed on exhibition with the last date for public submissions being 11 May 2017. No submissions were received.
- An information session between Council Officers and interested residents was arranged to be held during the exhibition period on 3 May 2017 however no one attended the meeting.

- Council officers sent the applicant a letter on 16 May 2017 advising of the following concerns and additional information required:
  - Streetscape montage of the proposed northern building in the context of the neighbouring approved developments to the east and west in Pinnacle Street (DA15/1007 and DA16/1623 respectively).
  - Suns-eye diagrams showing the extent of the impact from the proposed additional units on the approved southern building.
  - Updated landscape plans which reflect the subject proposal rather than the approved development.
  - The proposed additional floor area above the maximum 2:1 and the resultant building bulk is not supported by Council.
  - Two of the proposed units are below the minimum internal areas set out in the ADG for 2 and 3 bedroom units.
  - No additional parking is proposed to cater for the additional floor area, nor has this been addressed in the Statement of Environmental Effects submitted with the application.
- Amended plans were lodged on 23 May 2017 addressing some of the concerns including compliant apartment sizes; updated landscape plans, a streetscape montage and solar access diagrams.

#### **4.0 ADEQUACY OF APPLICANT'S SUBMISSION**

In relation to the Statement of Environmental Effects, plans and other documentation submitted with the application or after a request from Council, the applicant has provided adequate information to enable an assessment of this application.

#### **5.0 PUBLIC PARTICIPATION**

The application was advertised in accordance with the provisions of SSDCP 2015.

Fifty-nine adjoining or affected owners were notified of the proposal and no submissions were received.

#### **6.0 STATUTORY CONSIDERATIONS**

The subject land is located within Zone R4 High Density Residential pursuant to the provisions of Sutherland Shire Local Environmental Plan 2015. Residential flat buildings are a permissible landuse activity with consent within the R4 zone. Consent was granted to DA15/1254 by the JRPP on 15 June 2016. The proposed modification to the approved residential flat building has been made pursuant to Section 96(2) of the EP & A Act.

The following Environmental Planning Instruments (EPI's), Development Control Plans (DCP's), Codes or Policies are relevant to this application:

- State Environmental Planning Policy No. 55 – Remediation of Land (SEPP 55).
- State Environmental Planning Policy No. 65 – Design Quality of Residential Flat Development (SEPP 65).
- State Environmental Planning Policy (Infrastructure) 2007 (Infrastructure SEPP).

- State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004.
- Greater Metropolitan Regional Environmental Plan No. 2 – Georges River Catchment.
- Sutherland Shire Local Environmental Plan 2015.
- Sutherland Shire Draft Development Control Plan (SSDCP 2015).
- Apartment Design Guide (ADG).

## 7.0 COMPLIANCE

The statement of compliance below contains a summary of applicable development standards and controls and a compliance checklist relative to these:

### 7.1 State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004

State Environmental Planning Policy (Building Sustainability Index) 2004 (BASIX) aims to establish a scheme to encourage sustainable residential development across New South Wales. A revised BASIX certificate accompanies the s96 modification addressing the proposed new units within the northern building. The proposal achieves the minimum performance levels / targets associated with water, energy and thermal efficiency.

### 7.2 State Environmental Planning Policy (Infrastructure) 2007 (Infrastructure SEPP)

The original application DA15/1254 was referred to Sydney Trains with respect to Clause 86 (excavation in, above or adjacent to rail corridors) of State Environmental Planning Policy (Infrastructure) 2007 (Infrastructure SEPP). Sydney Trains granted concurrence by way of deferred commencement. The applicant satisfied these conditions and the consent became operable on 5 September 2016. The subject modification relates to the approved northern building on the site, and at the upper levels of the building. No design changes are proposed to the southern building or the basement entry / underground works.

Notwithstanding the above the application was referred to Sydney Trains as part of the concurrence requirements under the Infrastructure SEPP. Sydney Trains responded by stating that the original conditions of its concurrence remain valid, with no changes sought.

Clause 102 of the SEPP (*impact of road noise or vibration on non-road development*) was also considered with the original DA15/1254 given the location of the southern building is in close proximity to the rail line. As the subject modification relates to the northern building, no acoustic considerations are necessary and the existing conditions of consent regarding acoustic treatment for the southern building remain valid.

### 7.3 State Environmental Planning Policy (State and Regional Development) 2011

State Environmental Planning Policy (State and Regional Development) 2011 (SEPP 2011) sets out the functions of regional panels in determining applications for regional development. The original application DA15/1254 was determined by the JRPP. Clause 21 of SEPP 2011 specifies that modification applications subject to section 96(2) of the Act must be referred back to the regional panel for determination. Applications for s96(1) and s96(1A) are not conferred onto a regional panel as



the consent authority and for this reason the previous modifications to DA15/1254 (as outlined above) were determined by Council. The subject s96(2) application will be determined by the SSPP.

#### **7.4 State Environmental Planning Policy No. 65 – Design Quality of Residential Apartment Development – Design Quality Principles (SEPP 65)**

The proposed modification to the design of the approved residential flat development is affected by SEPP 65. A brief assessment of the proposal having regard to the design quality principles of SEPP 65 is set out below:

<b>Design Quality Principles</b>	<b>Assessment</b>
Principle 1: Context and neighbourhood character	Notwithstanding that the site is located within a precinct intended to facilitate high density residential development the proposed modification to the approved development has the potential to set an undesirable precedent within the precinct. The Pinnacle Street Precinct has been designed to facilitate amalgamated parcels of land, specific development forms and typologies and integrated landscape proposals which work as a precinct – not just on a site by site basis. The increased FSR sought above the maximum results in a built form contrary to the precinct plan, and contrary to the approved developments adjacent the site. The proposed design also fails to meet the required ADG setbacks and amenity guidelines as well as those for communal open space. The increased yield results in additional parking demand which cannot be accommodated by the development. The modification will not result in good design or a building which contributes positively to its context as envisaged under SSDCP 2015.
Principle 2: Built Form and Scale	The proposed arrangement of the additional three units on the roof terraces of the approved development is a poor outcome. It results in a further deviation from the desired built form set out in SSDCP 2015 and has the potential to result in an adverse streetscape outcome.
Principle 3: Density	The proposed modification will result in an additional 278m <sup>2</sup> of GFA and an FSR in excess of the maximum density permitted under SSLEP 2015. The incremental erosion of the planning controls has potential precinct wide implications.
Principle 4: Sustainability	A revised BASIX Certificate has been submitted with the application. If the proposal is to be approved compliance with this revised Certificate will be required to ensure the appropriate sustainability requirements are met.
Principle 5: Landscape	The proposed modification does not change the ground level provision of landscaped area for the approved development. The proposed additional units will result in a reduction in the approved provision of communal open space for the development at the upper levels. This

	diminishes the area of useable terrace area, creates privacy implications and reduces opportunities for podium planting. The result is a diminished residential amenity.
Principle 6: Amenity	The residential amenity afforded to the proposed new units is less than ideal as a result of unit design, layout and separation from adjacent approved buildings. Both visual and aural privacy concerns are raised. The increased density sought is only achieved by a reduction in communal terrace areas for the future resident which is a less than desirable amenity impact.
Principle 7: Safety	The proposed modification does not impact on the approved development in terms of the principles of Crime Prevention Through Environmental Design (CPTED).
Principle 8: Housing Diversity and Social Interaction	The modified design would result in an additional 2 x 2 bedroom units and 1 x 3 bedroom unit. This mix is consistent with the approved development which provides a mix of apartment types (studios, 1, 2 & 3 bedrooms). More than sufficient adaptable and liveable housing is provided as part of the approved development. The development includes facilities to encourage social interaction including the central landscaped courtyard and roof terrace areas on both buildings, albeit the proposal results in a reduction in the area of roof terrace provided.
Principle 9: Aesthetics	The proposed additions do not contribute to a desirable built form outcome within Pinnacle Street.

## 7.5 Apartment Design Guide (ADG)

The proposal is affected by the ADG. The following table contains an assessment of the proposal against key controls of the ADG. Refer to the Assessment section of this report for further details with respect to performance of the proposal against the ADG.

Apartment Design Guide				
Standard / control	Required	Approved DA15/1254	Proposed	Complies? % variation
Building separation	12 – 25m: 4.5m non habitable 9m habitable	N/A  15m	N/A  6m (Level 4 balcony to boundary and 12m to roof terrace on adjacent approval DA15/1623)	N/A  No – see below
Communal Open Space	25% (873.8m <sup>2</sup> )	Ground level: 592m <sup>2</sup> Level 4: 195m <sup>2</sup> Level 6: 262.7m <sup>2</sup> Level 8: 84m <sup>2</sup> Total: 1133m <sup>2</sup> (32%)	29% (1009m <sup>2</sup> )	Yes / no – see below
Apartment size	2br: 70m <sup>2</sup> (75m <sup>2</sup> for 2 bathrooms) 3br: 90m <sup>2</sup>	Complied with ADG requirements	2br: 72 - 78m <sup>2</sup> 3br: 107m <sup>2</sup>	Yes Yes

## 7.6 Local Controls – SSLEP 2015 and SSDCP 2015

The compliance table below contains a summary of applicable development controls:

Standard / control	Required	Approved DA15/1254	Proposed	Complies? % variation
<b>Sutherland Shire Local Environmental Plan 2015</b>				
Floor Space Ratio (Clause 4.4)	2:1 (6990m <sup>2</sup> )	2:1 (6990m <sup>2</sup> )	2.08:1 (7268m <sup>2</sup> )	No – 278m <sup>2</sup> (4% variation)
<b>Draft Sutherland Shire Development Control Plan 2015</b>				
Car parking	Total required 157 spaces  1 x Studio x 7 units (7 spaces)  1 x 1 bed x 44 units (44 spaces)  1.5 x 2 bed x 43 units (64.5 spaces)  2 x 3 bed x 8 units (16 spaces)  1 space per 4 units for visitor parking x 102 units (25.5 spaces)	135 spaces as modified under MA16/0276	No additional parking proposed	No - 22 spaces less than SSDCP 2015

## 8.0 SPECIALIST COMMENTS AND EXTERNAL REFERRALS

The application was referred to the following internal and external specialists for assessment and the following comments were received:

### 8.1 Sydney Trains

Sydney Trains responded by email to advise that the proposed modifications to the building did not change the existing concurrence granted under DA15/1254.

### 8.2 Architectural Review Advisory Panel (ARAP)

Sutherland Shire Council engages its ARAP to guide the refinement of development to ensure design quality is achieved in accordance with SEPP 65. The application was considered by Council's ARAP on 25 May 2017. In general terms ARAP indicated that the applicant's justification for the additional FSR was insufficient and that the rationale for design changes was focussed on private benefit at the expense of common amenity and public interface. Minimal thought appears to have been given to the streetscape impact of the additional building bulk or the likely adverse amenity impacts for the additional units. No reason was provided for the departure from the SSDCP 2015 building envelope and insufficient consideration had been given to the loss of communal terrace area for the overall development in order to simply attain a further 3 apartments.

### 8.3 Architect

Council's Architect has undertaken an assessment of the application and advised the following:

*A building envelope plan has been developed for the Pinnacle Street precinct, which forms part of councils DCP controls. To develop the plan building forms were modelled, solar studies analysed and built form concepts reviewed and refined by ARAP. Through this process a strategy was developed that provided buildings of a lower scale fronting the northern section of Pinnacle Street. This was seen as a strategy to provide solar access to open spaces between buildings and allow good solar access and outlook to the buildings located on the southern section of Pinnacle Street. Providing streets of a lower scale within the precinct was also seen as an important factor in developing the character of this residential neighbourhood.*

*This proposal seeks to further erode this character, by increasing the bulk of the building fronting the northern section of Pinnacle Street. This will reduce solar access to the open space between buildings and reduce solar access and outlook to buildings on the southern side of Pinnacle Street. The intended pattern of development outlined in councils DCP is simply ignored. The precedent that this will set with other developments in this precinct is further cause for concern.*

### 9.0 ASSESSMENT

Following a detailed assessment of the application having regard to the Heads of Consideration under Section 79C(1) of the Environmental Planning and Assessment Act 1979 and the provisions of relevant environmental planning instruments, development control plans, codes and policies, the following matters are considered important to this application.

#### 9.1 Floor Space Ratio

Clause 4.4 of SSLEP 2015 stipulates a maximum floor space ratio (FSR) for the site of 2:1 (6990m<sup>2</sup>). The approved development (DA15/1524) sought to maximise the FSR for the site. The subject modification now seeks to increase the GFA of the development by 278m<sup>2</sup>. The additional floor area is to be split between 3 new units on the upper levels of the northern Pinnacle Street building and would result in a total FSR for the development of 2.08:1. This represents a 4% variation to the FSR development standard.

The objectives of the floor space ratio development standard set out in clause 4.4(1) of SSLEP 2015 are as follows:

- (a) *to ensure that development is in keeping with the characteristics of the site and the local area,*
- (b) *to ensure that the bulk and scale of new buildings is compatible with the context of the locality,*
- (c) *to control development density and intensity of land use, taking into account:*
  - (i) *the environmental constraints and values of the site, and*
  - (ii) *the amenity of adjoining land and the public domain, and*
  - (iii) *the availability of infrastructure to service the site, and*

- (iv) *the capacity of the road network to accommodate the vehicular and pedestrian traffic the development will generate, and*
- (v) *the desirability of retaining the scenic, visual, and landscape qualities of the area.*

The applicant has submitted an argument in support of the variation to the FSR. The key point put forward is that the proposed additional floorspace does not alter the building footprint or height and that the development maintains its relationship with the character of the site and the local area. The applicant considers that the architectural treatment of the building is such that the additional building bulk and scale is appropriate. In summary they consider that the proposal meets the objectives of the FSR development standard and will create negligible environmental impacts.

Contrary to the applicant's position, the additional building bulk and scale is not consistent with the objectives of the FSR development standard. The proposed increase in GFA will result in a built form which is not in keeping with the characteristics of the site or the local area. The approved development is already contrary to the desired built form set out in the precinct specific DCP. The proposed additional floor area adds building bulk to the upper levels of the northern building further eroding the desired stepped building form and varied building heights north to south across the Precinct as set out in the SSDCP 2015. This will exacerbate the incongruous relationship with the approved adjacent built forms. Added to the above, the design and siting of the proposed new apartments will result in adverse amenity impacts for the future occupants in terms of visual and aural privacy and a reduction in communal open space.

Objective (c) specifies the role of the FSR development standard to control the density and intensity of development. As stated earlier, the subject site sits within a wider precinct which has been up-zoned to facilitate a specifically designed high density residential precinct. The density and intensity of development appropriate for the precinct was determined through careful modelling to establish a precinct of well-designed buildings within a heavily landscaped setting. The objectives of the R4 High Density zone are relevant to the assessment of the proposal and are outlined as follows:

- *To provide for the housing needs of the community within a high density residential environment.*
- *To provide a variety of housing types within a high density residential environment.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*
- *To encourage the supply of housing that meets the needs of the Sutherland Shire's population, particularly housing for older people and people with a disability.*
- *To promote a high standard of urban design and residential amenity in a high quality landscape setting that is compatible with natural features.*
- *To minimise the fragmentation of land that would prevent the achievement of high density residential development.*

When SSLEP 2015 was introduced 2 years ago it increased the allowable density for the site from 0.45:1 to 2:1. This equates to an additional 5,418m<sup>2</sup> of floor space potential for the site. The applicant

sought the maximum floorspace for the development under the original application DA15/1254 and the JRPP granted consent for this on the basis of a largely compliant scheme (except for SSDCP 2015 car parking). A subsequent s96 application (MA16/0276) also resulted in a diminished and non-compliant landscaped area in seeking additional parking.

The change in zoning and increased development yield within the Precinct has resulted in take up of almost all of the sites within the Precinct. Seven consents have been granted, 1 refused and other sites have had pre-DA meetings or have DAs pending determination. In all cases, the maximum FSR has not been exceeded. The DA which was refused had a compliant FSR but had not addressed the desired amalgamation pattern.

Each of the consents granted have taken into account the Precinct-wide strategy for Pinnacle Street. The basis for the strategy is to develop an appropriate character for each street, maximise amenity for each development and create a specific relationship between buildings across the different sites in an orderly and consistent manner. Throughout the assessment process for each development, the same intent and objectives (with a level of flexibility where appropriate) has been applied to each site within the Precinct.

The application to increase the floor space beyond the control for the site shows no appreciation for the circumstances in which the development consent was granted or the nature of the strategy for the wider Precinct within which the site is located and will diminish faith in the planning process. The approved development already departs from the desired building envelope for both buildings on the site. Ultimately, the development was supported but on the basis of consent conditions to ensure that the development complied with the development controls of the site and was consistent with the expectations of these controls within the design presented.

The applicant has since 'watered' down the approved application by reducing the provision of required landscaped area (MA16/0276). They are now seeking to increase the FSR on the site by reducing the approved communal terrace areas on the northern building which will result in further non-compliance with the planning controls and relevant design guidelines.

The increase in FSR sought by the applicant equates to 3 additional apartments (1 x 3 bedroom and 2 x 2 bedroom). The incremental increase in density will erode the allowable floor space created to respond to the context of the site. The subject site does not present a unique set of circumstances that would warrant a variance of the FSR control. If granted, the subject proposal would set a precedent for other buildings within the Pinnacle Street Precinct to exceed the planning controls. The careful planning and development behind the strategy for the Precinct would then be compromised and the potential for the cumulative impacts of development to exceed what was allowed for under the new planning regime. There is no convincing planning argument as to why the FSR control should be varied for the individual site.

The modified development is not consistent with the objectives of the R4 High Density Residential development standard as the additional density is not in keeping with the characteristics of the desired

built form for the site or the precinct and the bulk and scale is not compatible with the context of the locality. The proposal does not effectively control development density and intensity of land use as envisaged by the control.

In a physical sense, the proposed modified development is obviously different. As stated above, the additional floor space is not well distributed across the approved development, resulting in a less desirable development than that approved. The additional apartments increase the bulk of the building as it presents to the street. The location of the additional apartments adds to the perceived height of the building and further reduces the desired stepped form set out in the SSDCP 2015. The expression of the northern building within the streetscape was an issue in supporting the initial development and the proposed modifications exacerbate the concern.

The additional floor space equates to 3 additional apartments within the development but a reduction in the provision of communal open space in the order of 200m<sup>2</sup>. The extra apartments therefore increase the occupancy potential of the development whilst cumulatively diminishing the residential amenity of the development. The amenity concerns for 2 of the 3 proposed apartments, as a result of ADG non-compliance, are a further indication that the modification represents an overdevelopment of the site.

The modified development seeks to incrementally erode not just the development standard as it relates to the site but also the Precinct. It is contrary to the objective of the R4 High Density zone. Existing and intended residents rely on the consistent application of the Council's planning controls to protect their amenity and to make informed decisions when considering residing in the area. The proposal does not present a better planning outcome compared to the approved development and is not supported.

## **9.2 Built Form**

The subject site is located within the Miranda Pinnacle Street Precinct set out in SSDCP 2015. One of the urban design principles behind the precinct is the Building Envelope Plan (BEP). The BEP was developed on the basis of modelled built forms, solar access studies and built form concepts reviewed and refined by ARAP. Through this process a strategy was developed that provided buildings of a lower scale fronting the northern section of Pinnacle Street. This strategy was intended to provide solar access to open spaces between buildings and enable solar access and outlook to the buildings located to the south. Providing streets of a lower scale within the precinct was also seen as an important factor in developing the character of this residential neighbourhood.

Nearly all of the recently approved developments within the precinct have followed the built form pattern within the BEP, with the exception of this site. In this instance, Council officers sought to get the applicant to more closely follow the BEP, but they preferred the tiered building form for both the northern and southern building. Council officers sought to have design changes made to the northern building as part of the approval process but the JRPP considered that the application was acceptable at the time and approval was granted.

The proposed additions further exacerbate the BEP non-compliance, resulting in a part 5 and part 7 storey centrally tiered building (instead of a well-defined stepped part 4 and part 6 storey building). The proposed units infill the approved Level 4 terrace and part of the Level 6 terrace, which adds building bulk whilst reducing residential amenity.

### **9.3 Building Separation**

The ADG requires an 18m separation between buildings between 12 and 25m high, with the separation being equitably shared between sites (when possible). The approved development (DA15/1524) maintains the required separation distance for the northern Pinnacle Street building to both the east and west side boundaries.

The proposed modification changes the compliant building separation on the western side by replacing the approved roof terrace on top of Level 4 with two new units. The edge of each of the balconies for these units will be 6m from the western side boundary instead of the required 9m specified in the ADG. The non-compliance is less than desirable from a built form / streetscape point of view but also from an amenity point of view. The proposed new units will directly face the communal roof terrace on the opposite approved development (DA15/1623). This is the only roof terrace for the building and will comprise an outdoor kitchen and BBQ facilities, tables and chairs to facilitate frequent use and large groups of people.

The layout and orientation of the proposed new units is such that the private balconies of these will directly face this communal terrace area 12m away. Whilst privacy screens could be conditioned on the western side of the balconies, this would be less than desirable in terms of solar access and outlook for these apartments and will not assist with aural privacy concerns.

The majority of the approved developments within the Precinct have been designed to work not only for their site but to relate to the neighbouring sites. DA15/1254 and DA15/1623 are one such example where the design of the upper level communal open space was complementary. The proposed modification alters this relationship to the detriment of the amenity of future occupants.

The relationship between the private open space of the existing units B5.01 and B5.02 and the proposed communal open space on Level 5 is also less than desirable. It would appear that no design consideration has been given to these units with the decision to utilise the roof as a roof terrace. Design changes would need to be incorporated to relocate the private balconies to the south and north, or at least for proposed Unit B5.02 as a minimum should the SSPP resolve that the application is worthy of approval.

### **9.4 Communal Open Space**

Whilst the approved development incorporates communal open space in excess of the 25% ADG requirement (32%), only half of the area provided will receive sufficient solar access. The solar access compliance is achieved by the provision of roof terraces on both buildings - with the communal open space at ground level largely shaded during mid-winter.



The applicant is now seeking to reduce the area of the 2 roof terraces on the northern-most building by a total of approximately 220m<sup>2</sup>. The resultant site provision of communal open space will be 29% made up of approximately 620m<sup>2</sup> at ground level and 389.6m<sup>2</sup> within the 4 roof terraces (2 terraces per building). This provision is therefore compliant with the numeric area requirement of the ADG. The reduction of upper level communal open space however results in less area which receives solar access (38% achieved instead of 50%). The preferred arrangement of communal open space is that on Level 4 and Level 6 as approved.

## **9.5 Parking**

DA15/1254 was approved by the JRPP with the provision of 107 car spaces. This represented a shortfall of 45 car spaces from that required under SSDCP 2015 (152 spaces). The shortfall in parking was not supported by Council officers but was considered acceptable by the JRPP on the basis of compliance with the RMS parking requirement (97 spaces).

MA16/0276 modified the approval to increase the provision of on-site parking to 135 spaces.

The proposed new units (3) generate the requirement for 5 car parking spaces taking the overall requirement to 157 under SSDCP 2015. The shortfall of parking (22 spaces) has not been addressed as part of the applicant's proposal however the basement design is at capacity and it is not envisaged that the additional parking generated can be accommodated on the site.

The subject site forms part of a new high density residential precinct. All of the planning approvals issued to date are for compliant development schemes. This includes on-site parking provision compliant with SSDCP 2015 parking rates. The key objective of SSDCP 2015 with respect to parking seeks that new development must ensure it satisfies the demand for car parking generated by the development. The approved development falls short of the SSDCP 2015 requirements and the proposed increase in development yield on the site further exacerbates this.

It is noted that all of the other developments approved for the Precinct have incorporated the required SSDCP 2015 parking on-site. This is consistent with Council's strategy for the Precinct which is to create a high quality public domain and streetscape – one not dominated by on-street car parking.

## **10.0 SECTION 94 CONTRIBUTIONS**

The proposal for an additional 3 units will introduce additional residents to the area and as such will generate Section 94 Contributions in accordance with Council's adopted Section 94 Development Contribution Plan. As the proposal is recommended for refusal no contributions are relevant at this stage.

## **11.0 DECLARATION OF AFFILIATION**

Section 147 of the Environmental Planning and Assessment Act, 1979 requires the declaration of donations/gifts in excess of \$1000. In addition Council's development application form requires a general declaration of affiliation. In relation to this development application a declaration has been made that there is no affiliation.

## 12.0 CONCLUSION

The proposal involves a modification pursuant to the provisions of s96(2) of the EP & A Act to an approved residential flat development (DA15/1254) at 16 – 20 and 40 - 44 Pinnacle Street, Miranda. The proposal seeks to modify the approved development by locating an additional three units on the upper levels of the northern Pinnacle Street building.

The subject application represents an increase in the GFA of the building above and beyond that envisaged by SSLEP 2015. The existing 2:1 FSR is a significant uplift from that previously enabled under SSLEP 2006. The FSR control was specifically modelled to enable a precinct-wide planning outcome for Pinnacle Street rather than just site-specific considerations. The design and massing of the additional floorspace is contrary to Council's strategic policy for the Pinnacle Street Precinct in terms of the desired built form outcome and relies on the reduced provision of communal open space as part of the development to achieve it. The applicant has not demonstrated how the additional apartment yield can be met in terms of on-site parking provision. The location and orientation of the Level 4 units result in insufficient separation distance with the adjacent approved building which will impact on the residential amenity afforded to those residents. In summary, the applicant's rationale for the additional 278m<sup>2</sup> of GFA appears to be driven by private benefit at the expense of common amenity and public interface. It will result in an undesirable precedent that will serve to erode the integrity of the planning controls.

In response to public exhibition no submissions were received.

The development to which the consent as modified relates will remain substantially the same development as that originally granted consent. The necessary consultation has been undertaken with respect to any Minister, public authority or approval body and Sydney Trains has provided its response in respect to the modification sought by this application.

The application has been assessed having regard to the Heads of Consideration under Section 79C (1) of the Environmental Planning and Assessment Act 1979 and the provisions of Sutherland Shire Local Environmental Plan and all relevant Council DCPs, Codes and Policies. Following detailed assessment it is considered that Section 96(2) Modification No. 17/0087 should be refused for the reasons outlined in this report.