

SUTHERLAND SHIRE COUNCIL ASSESSMENT REPORT

Panel Reference	2018SSH003
MA Number	MA17/0575
LGA	Sutherland Shire Council
Proposed Development	Section 4.55(2) Modification of DA15/1178 – Increase building height, amendments to roof terraces, new façade treatments, minor internal and external modifications to the building and changes to landscaping.
Street Address	7 Dianella Street, Caringbah
Applicant/Owner	Pier Property Corporation
Date of DA lodgement	14 December 2017
Number of Submissions	Zero (0)
Recommendation	Approval
Regional Development Criteria (Schedule 7 of the SEPP (State and Regional Development) 2011	The original application was \$21,208,000.00 and constituted development in Schedule 7 of SEPP 2011. The current modification does not change the nature of the development for the purposes of Schedule 7. The Regional Planning Panel powers in respect to modification applications previously set out in SEPP 11 have been repealed and are now found within Division 12A of the EP&A Regs (as amended). Section 4.55 (1 and 1A) modification applications can continue to be determined by Council with s4.55(2) modification applications being required to be determined by the SSPP.
List of all relevant s4.15(1)(a) matters	<ul style="list-style-type: none"> • State Environmental Planning Policy No. 55 - Remediation of Land (SEPP 55) • State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 • Greater Metropolitan Regional Environmental Plan No. 2 - Georges River Catchment • State Environmental Planning Policy No. 65 - Design Quality of Residential Flat Development (SEPP 65) • Apartment Design Guide (ADG) • Sutherland Shire Local Environmental Plan (SSLEP) 2015 • Draft Sutherland Shire Development Control Plan (DSSDCP) 2015 • Shire-Wide Open Space and Recreation Facilities 2005 • Section 94 Community Facilities Plan
Report prepared by	Teille Whiteman – Environmental Assessment officer Sutherland Shire Council
Report date	03 August 2018

Summary of s4.15 matters

Have all recommendations in relation to relevant s4.15 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

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

Special Infrastructure Contributions

Does the DA require Special Infrastructure Contributions conditions (S7.24)?

No

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

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

EXECUTIVE SUMMARY

REASON FOR REPORT

The application is referred to the SSPP as it is a modification submitted under section 4.55(2) of the Environmental Planning and Assessment Act 1979 to a Development Application (DA15/1178) approved by the Joint Regional Planning Panel (now known as SSPP). The provision formerly under State Environmental Planning Policy (State and Regional Development) 2011 (SEPP 2011) related to the delegation for modification applications is no longer contained in the instrument and is now found in Division 12A of the Environmental Planning & Assessment Regulation 2000 (EP&A Regs).

PROPOSAL

The proposed modifications include various internal and external changes to the buildings and landscaping with the most significant being changes to the building height and reconfiguration of the roof top terraces areas. The main issues identified are as follows:

- Non-compliance with building height
- Communal roof terraces
- Rear setback
- Building design

THE SITE

The subject site is regular in shape and is located off the north side of Dianella Street directly west of the Caringbah oval car park. The site has a total area of 4,292m² and falls some 7m from the west to the east.

ASSESSMENT OFFICER'S RECOMMENDATION

THAT:

That pursuant to the provisions of Section 4.55(2) of the Environmental Planning and Assessment Act 1979, the requested modification to Development Consent No. DA15/1178 dated 17 February 2016 for demolition of existing structures and construction of two new residential flat buildings at Lot 100 DP 1221677, 7 Dianella Street, Caringbah, be supported.

1. That Development Application No. 15/1178 for demolition of existing structures and construction of two new residential flat buildings at Lot 100 DP 1221677, 7 Dianella Street, Caringbah be modified and in accordance with the amended conditions of consent in “**Appendix A**” of this report.

ASSESSMENT OFFICER'S COMMENTARY

1.0 APPROVED DEVELOPMENT

Council by Development Consent No. DA17/1178 issued on 17 February 2016 granted approval for the demolition of existing dwellings and the construction of a residential flat building containing 57 apartments. The original approval was subsequently modified on 21 April 2017 (MA16/0107) and 9 August 2017 (MA17/0463) with the most significant change being the addition of 2 apartments altering the envelope and façade design of each building.

2.0 DESCRIPTION OF PROPOSAL

An application has been received under the provisions of Section 4.55(2) of the Environmental planning and Assessment Act 1979 (EP&A Act) to modify the terms of Development Consent No.DA17/1178.

Amended architectural plans have been submitted in support of the application. The specific modifications sought to the approved development include the following:

- Increasing the maximum building height of the eastern building from 19.081m to 19.131m and the western building from 18.820m to 18.920m. This is a result of increasing the floor to floor height of each storey and reducing the height of the lift and lift overrun.
- Relocation of the car park exhausts from within the service core to on top of the building service cores to comply with the Building Code of Australia.
- A reduction of gross floor 5555m² to 5544.5m² by minor internal changes.
- A new service area for condenser units on level 2 - 4 of the western building.
- Reconfiguration of the communal rooftop terraces.
- Modification to landscaped areas:
 - The use of the western side boundary as private open space to apartments.
 - Access improvements from Dianella Street.
 - Changes to the finished ground level of private courtyards.
 - Minor changes to the side and rear boundary fencing in response to changes to levels within private courtyards.
- Increasing the width of the northern balconies on both buildings.
- Changes to façades treatment and materials including new aluminium louvers and windows.
- Reconfiguration of the ground level service area within the western building.
- New piles along the northern side of the basement to stabilise the land.

The original modification included an increase in the basement car park to accommodate 13 additional car parking spaces. These spaces have since been deleted.

3.0 SITE DESCRIPTION AND LOCALITY

The subject land is located at 7 Dianella Street (previously 1 – 13 Dianella Street), Caringbah. The land is rectangular in shape and is located off the northern side of Dianella Street near the intersection with Willarong Road. The site has a primary southern frontage to Dianella Street of 117.35m and a depth of 36.58m for a total area of 4,292.12m². The northern boundary adjoins playing fields owned by Sutherland Shire Council. Access and parking for the playing fields is located directly to the east of the site while the western boundary adjoins residential land.

The site falls approximately 7m from the west to the east along the road frontage. The site also falls in a northerly direction by some 1m along the western boundary and 200mm along the eastern boundary.

The site is located close to Caringbah Centre and is therefore within close proximity to major public transport nodes, community facilities and public services. The site is within the Caringbah North Precinct which has recently been “up zoned” under Sutherland Shire Local Environmental Plan 2015 from low density residential to R4 High Density Residential.

North Caringbah oval is directly north of the site with a childcare centre and North Caringbah Public School located directly east of the oval. A small Council owned car park for the oval is located directly east of the site followed by a large park which extends some 140m further east. Residential dwellings are currently located directly west of the site and along the western boundary of the oval address Willarong Road. These properties are currently under assessment or have approval for residential flat building developments. The southern side of Dianella Street consists of 2 storey medium density developments.



Aerial of site and immediate locality

4.0 BACKGROUND

A history of the development proposal is as follows:

- DA15/1178 was submitted on 8 October 2015 and approved by under delegation after being assessed by the Joint Regional Planning Panel on 17 February 2016 subject to suitable conditions of development consent which included the requirement for roof top communal open space increasing the maximum building height to 19.2m.
- MA16/0107 was approved by the Land and Environment Court through a Section 34 Conciliation Conference on 21 April 2017. The Section 96(2) application was for the addition of 2 apartments requiring other modifications to the building envelope, façade design and an internal replanning of the building. This application approved an overall maximum height of 19.081m and floor space ratio at 1.29:1 (5555m²) which are both variations to the respective development standards.
- MA17/0463 was approved under delegation on 9 August 2017. The Section 96(1A) application was for changes to the waste collection operations.
- The current modification application was submitted on 14 December 2017.
- The South Sydney Planning Panel attended a site inspection and briefing on 21 February 2018.
- Council requested revised plans and information including the deletion of the 13 new car parking spaces which are additional to Council's car parking requirements. The applicant submitted revised plans on 20 June 2018 including the deletion of the 13 proposed car parking spaces.

5.0 NATURE OF MODIFICATION SOUGHT

This application proposes the modification of Development Consent No. DA15/1178 pursuant to Section 4.55(2) of the EP&A Act.

An assessment of the type of modification proposed has been carried out in accordance with the provisions of the Environmental Planning and Assessment Regulation 2000 (EP&AR 2000) and a Section 4.55(2) is the appropriate type of modification application.

6.0 PUBLIC PARTICIPATION

As the application involves modification under Section 4.55(2) of the EP&A Act advertising and notification are at Council's discretion. In the case of this application advertising and notification were required. The adjoining or affected owners were notified of the proposal and no submissions were received.

7.0 STATUTORY CONSIDERATIONS

The subject land is located within Zone R4 High Density Residential pursuant to the provisions of Sutherland Shire Local Environmental Plan 2015. The proposed development, being a *residential flat building*, is a permissible land use within the zone with development consent from Council.

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 (Building Sustainability Index: BASIX) 2004
- Greater Metropolitan Regional Environmental Plan No. 2 - Georges River Catchment

- State Environmental Planning Policy No. 65 - Design Quality of Residential Flat Development (SEPP 65)
- Apartment Design Guide (ADG)
- Sutherland Shire Local Environmental Plan (SSLEP) 2015
- Draft Sutherland Shire Development Control Plan (DSSDCP) 2015
- Shire-Wide Open Space and Recreation Facilities 2005
- Section 94 Community Facilities Plan

8.0 STATEMENT OF COMPLIANCE

8.1 State Environmental Planning Policy No. 55 - Remediation of Land (SEPP 55)

SEPP 55 requires a consent authority to consider whether the land is contaminated and, if so, whether the land will be remediated before the land is used for the intended purpose. The property is not listed in Council's Contaminated Land Register. A site inspection and search of Council records has revealed that the subject site is also unlikely to be contaminated and is therefore fit for its intended use. Suitable conditions are recommended in relation to demolition and asbestos removal.

8.2 Greater Metropolitan Regional Environmental Plan No. 2 - Georges River Catchment

Greater Metropolitan Regional Environmental Plan No. 2 (GMREP2) includes a number of aims and objectives for the environment and water quality within the catchment. Appropriate stormwater management and water quality measures are proposed and there will be minimal likely adverse impacts on water quality. The proposal would be consistent with the aims and objectives of GMREP2 subject to suitable conditions of consent.

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

BASIX aims to establish a scheme to encourage sustainable residential development across New South Wales. BASIX certificates accompany the development application addressing each building within the development. The proposal achieves the minimum performance levels / targets associated with water, energy and thermal efficiency.

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

The proposal is affected by SEPP 65. The original DA was considered by Council's Architectural Review Advisory Panel (ARAP) and was found to be acceptable and consistent with the design quality principles of SEPP 65. The proposed modifications will not affect the proposal's compliance with SEPP 65.

8.5 Apartment Design Guide (ADG)

The proposal is subject to assessment under the ADG. The original proposal and modification applications were considered against the detailed controls within the ADG and found to be supportable. The following table contains an assessment of the proposal against key controls of the ADG which are impacted by the proposed modifications.

Standard/Control	Required	Approved	Proposed	Complies? (% variation)
Apartment Design Guide (ADG) – Key Controls				
Rear setback	Up to 12m: 6m habitable 12 – 25m: 9m habitable	5.6m 6.7m (to Level 3 balcony of the eastern building) 5.6m (to blade walls on the eastern building)	5.6m (no change) 5.6m (to Level 3 balcony of the eastern building) 4.6m (to the blade walls of the eastern building).	No (6.6%) No (37.7%) No (48.9%)
Communal open space (COS): Size:	25% of site area (1,073m ²)	8.8% (380m ²)	9% (392m ²)	No (64%)

8.6 Local Controls – SSLEP 2015 and DSSDCP 2015

The compliance table below contains a summary of applicable development controls which are impacted by the proposed modifications:

Standard/Control	Required	Approved	Proposed	Complies? (% variation)
Sutherland Shire Local Environmental Plan 2015				
Building Height	16m	19.081m	19.131m	No (19.56%)
FSR	1.2:1 (5,150.5m ²)	1.294:1 (5555m ²)	1.291:1 (5544.5m ²)	No (7.5%)
Landscaped Area	30% (1,287.63m ²)	32.8% (1,409m ²)	32.8% (1407m ²)	Yes

9.0 SPECIALIST COMMENTS

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

9.1 Architect

Council's Architect deems that the majority of the proposed changes are reasonable. But does not support increasing the floor to floor height of each level to 3.15m as it is in excess of ADG requirements and industry standards of 3.1m.

9.2 Landscape Architect

The Landscape Architect is supportive of the revised roof terraces, however recommends that facilities are provided for each roof top terrace.

9.3 Building Surveyor

Council's Building Surveyor raised no objection to the approval of this application.

9.4 Environmental Health

Council's Environmental Health Officer does not raise any objection to the proposed changes subject to replacing Condition 21 Noise Control - Design of Plant and Equipment with a more comprehensive noise control condition which is to be incorporated in the development consent.

10.0 ASSESSMENT

A detailed assessment of the application has been carried out having regard to the Heads of Consideration under Section 4.15(1) of the EP&A Act. The following matters are considered important to this application.

10.1 Height of buildings

Clause 4.3(2) of SSLEP 2015 stipulates a maximum building height of 16m for the site. The applicant proposes to increase the approved height of the western building from 19.081m to 19.131m which exceeds the maximum allowed by 19.56% (3.131m in excess of the standard) and the eastern building from 18.820m to 18.920m which exceeds the maximum height allowed by approximately 18.25% (2.920m in excess of the standard). The change in height is attributed to increasing the floor to floor height from 3.10m to approximately 3.15m per level and reducing the height of the lift shaft from 4.3m to approximately 4m in order to reduce the impact of the increase in floor to floor heights.

At the time of the DA, the JRPP approved a maximum 19.2m height limit as a result of requiring roof top communal open space above both of the buildings. In their determination the JRPP noted:

‘... that the proposed Condition 2(iii) results in a breach of the height standard in respect of the lift overrun and stairs. The applicant has provided a clause 4.6 variation to address a numerical breach of a maximum 3.2m to facilitate the overrun and stairs. The Panel considers that the provision of the roof terrace as communal open space is a desirable and better planning outcome; and this provides sufficient environmental planning grounds in this case to vary the height standard.’

The proposed maximum building height of 19.131m is within the 19.2m height limit deemed acceptable by the JRPP at the time. The breach in height limit remains within the centre of the building and provides essential facilities to future tenants. The increase in height is also relatively minor and will not change the overall appearance of the buildings or result in any significant additional overshadowing or overlooking of the neighbouring residential properties. For these reasons, the building remains consistent with the objectives of the height development standard and the R4 High Density Residential zone. As such, the building height is supported.

10.2 Service areas

The building service cores on both buildings have been increased by 850mm as the car park exhausts need to sit on-top of the cores to comply with the Building Code of Australia. The visual impact is mitigated as the cores are setback from the perimeter of the building and will not be perceivable in the overall bulk and scale of the development, particularly from the street and park.

The proposal also includes a new service area for condenser units on levels 2 to 4 of the western building. These service areas are located behind the vertical louvers on the front elevation of the building. The new service areas are supported as they do not increase the gross floor area or encroach on the front setback.



Location of new service area on level 2 to 4

The proposal is also for the reconfiguration of the internal service rooms on the ground floor of the western building. This modification does not increase the footprint of the building or decrease the size of the adjoining apartment or corridor and is therefore supported.

10.3 Communal roof terraces

The western building's roof top terrace has been reconfigured increasing the area from 65m² to 70m² and the eastern building's roof top terrace has been reconfigured reducing the area from 74m² to 67m². The awning over the western building's roof top terrace has been revisited as result of the roof top changes and is now a more compact and central element of the building. The awning over the eastern building's roof top terrace has not been altered and a condition of consent is included requiring a reduction in the size of the awning which is causing an unnecessary breach in the height over a larger area on the roof top. The condition seeks the awning to be a more compact element reducing the visual scale of the development when viewed from the public domain.

The revised roof top terraces have been reconfigured into more functional spaces, particularly the western buildings communal space which is now not as lineal, providing a useable footprint that can accommodate BBQ, basic kitchen facilities and outdoor furniture which is encouraged by the ADG. Although the statement of environmental effects addresses these types of facilitates and recognised their importance, a condition of consent is included on the modified consent to provide these facilities.

The roof top terraces are well integrated and remain setback from the perimeter of the building to mitigate privacy impacts.

The relocation of the roof top terrace being slightly closer to the northern edge of the building also results in raising the height of the roof over the Level 3 (eastern building) and Level 4 (western building) northern balconies by approximately 800mm as it acts as the balustrade to the sunken communal space. No objection is raised to this change as the roof is an unobtrusive and reasonable adjustment in the context of the overall building and is unlikely to result in unacceptable or offensive visual impacts when viewed from the adjoining park.

10.4 Rear setback

This application proposes to increase the width of the top floor balcony on the eastern building by 1.1m and the width of the top floor balcony on the western building by 1m. This is proposed so the top floor balconies align with the balconies on the levels below and to provide additional private open space. The proposed changes reduce the rear setback to the top floors from 6.7m to 5.6m which is non-complaint with the ADG which specifies a minimum 9m rear setback to the top floors.

These changes are not supported as moving the top level balconies closer to the rear boundary and in line with the balconies below will take away the much needed relief and articulation of the monolithic façade which was originally raised by the Architectural Review and Advisory Panel (ARAP) during the assessment of the Development Application.

The proposal also seeks to increase the width of indented sections of the balconies in front of bedrooms on the lower levels by 300mm. No issues arise as a result of this change as this area of the balcony sits behind the larger area of balcony in front of living areas and there is no further encroachment on the rear setback. The balconies remain stepped to articulate the northern façade.

10.5 Building design

Changes are proposed to windows on the front façade of each building. In rationalising the building design, windows were added in the living room of 8 apartments and the bathroom of 5 apartments and windows were deleted from the kitchen of 5 apartments. This is supported as the changes will not create privacy impact or non-compliance with solar access or natural ventilation requirements of the Apartment Design Guideline.

Horizontal louvers are to be installed on the service core on the front façade of each building instead of concrete panels. This is supported as the louvers and more lightweight material and will articulate the front façade of the building and complement the overall architectural design of the building.

10.6 Landscape Design

Numerous changes are proposed to the landscaping on the Ground Level and the Terrace Level. The changes are generally minor and supported by Council. The most significant of the changes are discussed below.

The western side setback of the site is proposed to be used as private open space to Units 1.01 and 1.02. This requires new doors and stair cases to provide access from the apartments to the private open space areas. This is supported as the boundary fence and landscaping will prevent overlooking into the adjoining property which has an approval for a residential flat building with private courtyards located in the western setback.

The northern and eastern setback of the site is approved for private courtyards and communal open space. Changes are proposed to the finished ground levels of these areas to be consistent with the revised finished floor levels and to provide level courtyards. This is generally supported as the changes are minor and will not be perceivable from the public domain. However, the finished ground level of the courtyards in the north-eastern corner and eastern boundary requires up to 700mm fill. To retain the fill the fences on the eastern and northern boundary appear to have been increased from 1.8m to 3.2m. The fence height is excessive and unnecessary and therefore not supported. A condition is recommended to reduce the height of the fence to a maximum of 2.1m when measured from the adjoining public domain.

The applicant also wishes to delete access from the terrace level communal open space to the public park. No objection is raised as access was not initially supported by Council.

10.7 New shoring and piles

The applicants engineer has advised that additional piles are required to stabilise land in the northern portion of the site. This change is supported and will only result in a minor reduction in the deep soil landscaped area but 32.7% of the site remains deep soil landscaped area which is compliant with the 30% deep soil area requirement in the SSLEP 2015.

11.0 SECTION 7.11 CONTRIBUTIONS

Due to its nature, the proposed development, as modified, will not require or increase the demand for public facilities within the area. Accordingly, it does not generate any Section 7.11 contributions.

12.0 DECLARATIONS OF AFFILIATION, GIFTS AND POLITICAL DONATIONS

Section 10.7 of the EP&A Act 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 no declaration has been made.

13.0 CONCLUSION

The subject land is located within Zone R4 High Density Residential pursuant to the provisions of SSLEP 2015. The approved development, being a *residential flat building*, is a permissible land use within the zone with development consent. The modification does not increase the floor space ratio, but results in a minor increase in building height and a minor reduction in landscape area. This is discussed above and is considered acceptable as the proposed modifications will not result in adverse impacts to the public domain or adjacent properties.

This application satisfies the requirement that the development to which the consent as modified relates will remain substantially the same development as that originally granted consent.

The application has been assessed having regard to the Heads of Consideration under Section 4.15(1) of the EP&A Act, together with the provisions of SSLEP 2015 and all relevant Council DCPs, Codes and Policies. Following detailed assessment it is considered that the Modification Application No. 17/0575 can be supported.

RESPONSIBLE OFFICER

The officer responsible for the preparation of this Report is the Manager, Major Development Assessment (TW).