

SUTHERLAND SHIRE COUNCIL ASSESSMENT REPORT

Panel Reference	2018SSH014
DA Number	MA17/0523 (modification to DA14/0598)
LGA	Sutherland Shire Council
Proposed Development	Clause 4.55 modification to DA14/0598 - installation of storage cages rearrangement of car parking spaces and modify condition 14 relating to car parking space heights.
Street Address	475B Captain Cook Drive Woollooware (Lot 2 DP1218707)
Applicant/Owner	Bluestone Capital Ventures No. 1 Pty Ltd
Date of DA lodgement	10 November 2017
Number of Submissions	Not notified
Recommendation	Approval
Regional Development Criteria (Schedule 7 of the SEPP)	General Development over \$30 million
List of all relevant 4.15 matters	• State Environmental Planning Policy (State and Regional Development) 2011 • Environmental Planning and Assessment (Savings, Transitional and Other Provisions) Regulation 2017 • 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 (Building Sustainability Index: BASIX) 2004 • Apartment Design Guide (ADG) • Greater Metropolitan Regional Environmental Plan No. 2 – Georges River Catchment • Sutherland Shire Local Environmental Plan 2015 (SSLEP2015) • Sutherland Shire Development Control Plan 2015 (SSDCP 2015)
List all documents submitted with this report for the Panel's consideration	• Draft Conditions of Development Consent • Applicants Legal Advice re: Non-compliance with Concept Plan GFA (Sparke Helmore)
Report prepared by	KRO
Report date	19 March 2018

Summary of 4.15 matters

Have all recommendations in relation to relevant 4.15 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 (S94EF)?

Not Applicable

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?

Yes

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 THE REPORT

This report is referred to the Sydney South Planning Panel (SSPP) because it is outside the authorised delegations of Council staff.

Clause 21 of State Environmental Planning Policy (State and Regional Development) 2011 previously excluded regional panels from exercising consent authority functions for modification applications for regional developments subject to section 96 (now clause 4.55) (1) and (1A) of the Act. Under the recent legislative changes adopted on 1 March 2018, clause 21 was amended to remove these exclusions. The application is therefore returned to the SSPP for determination.

APPROVED PROPOSAL

The development application to which the subject modification relates is Development Application 14/0598.

DA14/0598 was issued consent on 11 December 2014 (following determination by the JRPP) for the second stage of residential development on the site comprising, two residential flat buildings above podium level containing 178 dwellings, provision of infrastructure and services including access roads, associated landscaping and public domain works on the subject property.

The detailed development application report in relation to this development under Section 4.15 (formally Section 79C) of the EP&A Act is attached to File No. DA14/0598 (Appendix “B”)

PROPOSED MODIFICATION

An application has been made under the provisions of Section 4.55(1A) (formally Section 96(1A)) of the Environmental Planning and Assessment Act, 1979 (EP&A Act) to modify the terms of Development Consent No. 14/0598.

The application seeks consent for the installation of storage cages, rearrangement of car parking spaces, and modification condition 14 relating to adaptable car parking space heights.

THE SITE

The subject site is part of a larger development known as Woollooware Bay Town Centre which is located on the northern side of Captain Cook Drive at the southern end of Woollooware Bay. The Woollooware Bay Town Centre (WBTC) site contains the Stadium (Shark Park) and the Cronulla Sutherland Leagues Club building and has been approved for a new town centre comprising a residential precinct, and a retail centre integrated with the Leagues Club. The first stage (Stage 1 Residential) of the residential precinct in the western part of the site is complete. The second stage (Stage 2 Residential) is almost completed. Stage 3 has yet to be commenced. Stage 2 Residential is the subject of this application.

Stage 2 Residential is located in the north western quadrant of the Residential Precinct within the Woollooware Bay Town Centre site. The legal description of the Stage 2 Residential is Lot 2 DP 1218707 and it is known as 475B Captain Cook Drive, Woollooware. The site has a total area of 6,621m².



Figure 1: Cronulla Sharks Concept Plan and site location for the stage 2 building (outlined in red).

ASSESSMENT OFFICER'S RECOMMENDATION

THAT:

- A. That pursuant to the provisions of Section 4.55 of the Environmental Planning and Assessment Act 1979, the requested modification to Development Consent No. 14/0598 dated 11 December 2014 for Stage Two Residential Development comprising 178 Dwellings within Two (2) Residential Flat Buildings (Buildings G & H), Cafe, Construction of Part of Central Boulevard, Site Preparation Works and Associated Works at Lot 2 DP 1218707 (No. 475B) Captain Cook Drive, Woollooware be supported.
- B. That Development Application No. 14/0598 for Stage Two Residential Development comprising 178 Dwellings within Two (2) Residential Flat Buildings (Buildings G & H), Cafe, Construction of Part of Central Boulevard, Site Preparation Works and Associated Works at Lot 2 DP 1218707 (No. 475B) Captain Cook Drive, Woollooware be modified as follows (deleted text in ~~strike through~~ and new text in **bold italics**):

- Amend Condition 1 to update Plan Table with revised plans.

1. **Approved Plans and Documents**

The development must be undertaken substantially in accordance with the details and specifications set out on the Plan / Drawings:

A-DA-110-001	S	Lower Ground Level	10.03.17
A-DA-110-001	T		09.10.17

- Amend Part(vii) in Condition 14

14. **Car Parking and Access**

A. Design

All vehicular access, parking and maneuvering areas including loading areas must be designed and constructed to comply with AS2890.1, AS2890.3, AS2890.2, AS2890.6, and AS4299. The following specific requirements must be incorporated into the design:

- vii) *The minimum height clearance for all vehicular parking spaces for ~~Adaptable and~~ Disability Parking shall be 2.5m*

ASSESSMENT OFFICER'S COMMENTARY

1.0 DESCRIPTION OF PROPOSED MODIFICATION

An application has been made under the provisions of Section 4.55 of the Environmental Planning and Assessment Act, 1979 (EP&A Act) to modify the terms of Development Consent No.14/0598.

The specific modification sought to the approved development involves:

- Installation of storage cages

Storage cages are proposed to be installed in the existing void at the Lower Ground Parking level for the use of residents of Stage 2. Figure 2 below shows the location and arrangement of the storage cages.

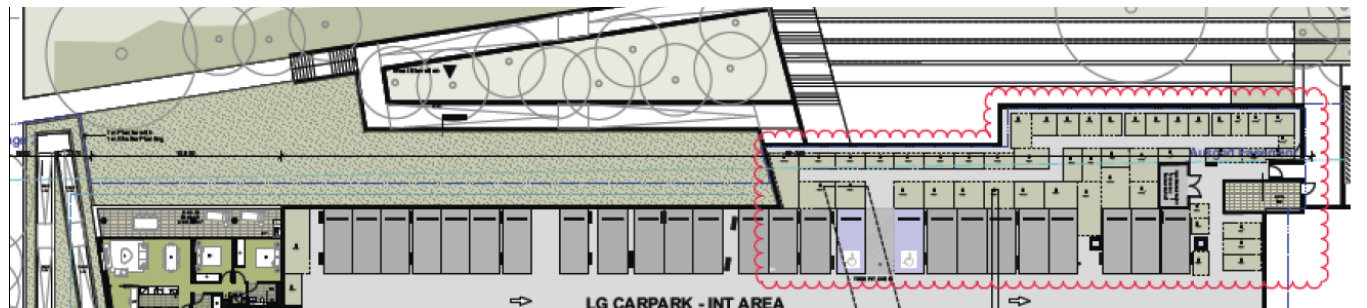


Figure 2: Storage cages at Lower Ground Level.

- Rearrangement of car parking spaces

To accommodate access and fire egress arrangements to the storage cages, the arrangement of car parking at Lower Ground is proposed to be modified. This results in two adaptable spaces being relocated to the north bay of spaces at the Lower Ground, and three regular car parking spaces being relocated in the central bay. The approved and proposed arrangement is shown at Figure 3 below. There is no change to the volume of car parking spaces proposed.

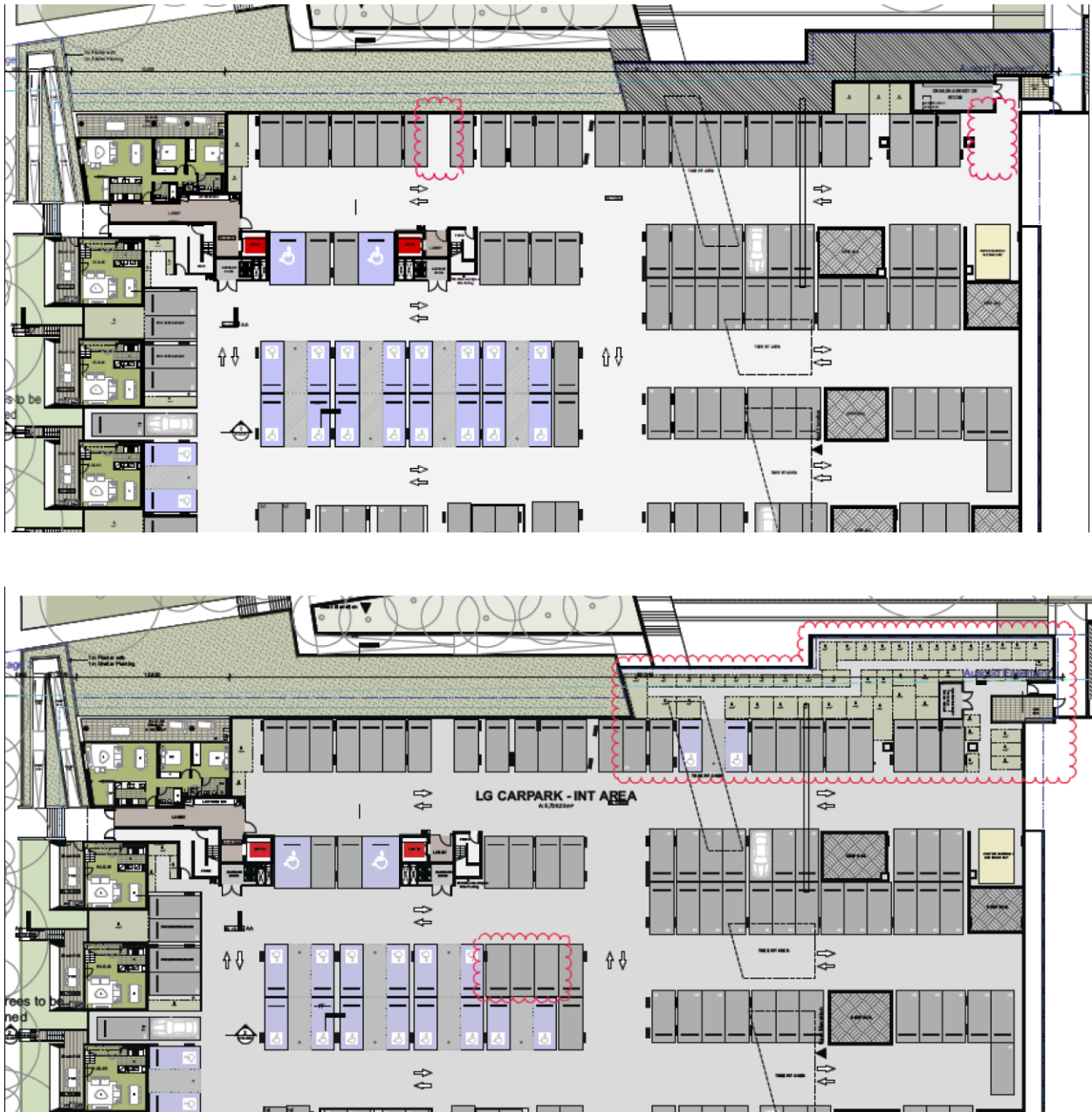


Figure 3 – Comparison of approved (top) and proposed (bottom) arrangement of car parking at Lower Ground Level.

- Modification to Part (vii) in Condition 14. Car Parking and Access

Condition 14(vii) is worded as follows:

14. Car Parking and Access

A. Design

All vehicular access, parking and manoeuvring areas including loading areas must be designed and constructed to comply with AS2890.1, AS2890.3, AS2890.2, AS2890.6, and AS4299. The following specific requirements must be incorporated into the design:

..

vii) The minimum height clearance for all vehicular parking spaces for Adaptable and Disability Parking shall be 2.5m

Condition 14(vii) requires a 2.5 metre clearance height for *adaptable and disability parking spaces*. The applicant contends that a 2.5m clearance height cannot be achieved for the adaptable spaces proposed to be relocated to the northern bay, due to the presence of a beam above. As a result, it is proposed to amend Condition 14 to remove the reference to *adaptable* car parking spaces.

2.0 APPROVED DEVELOPMENT

Development Application 14/0598 was issued consent on 11 December 2014 (following determination by the JRPP) for the second stage of residential development on the site comprising two residential flat buildings above podium level containing 178 dwellings, provision of infrastructure and services including and access road, landscaping and public domain works on the subject property.

The detailed development assessment report in relation to this development is attached to DA14/0598 (Appendix “B”).

DA14/0598 has been modified once through MA17/0049 (Appendix “A”) issued by Council on 19 September 2017. The modification granted consent for internal and external design changes to both Building G and H, amendment to Condition 1 regarding the approved plans and documents, Condition 14 relating to car parking and access and amendment to Condition 48 relating to the ceiling colour in the carpark.

At present stage 2 is under construction, and near completion.

3.0 BACKGROUND

A brief history of the Woollooware Bay Town Centre development is provided as follows:

Concept Plan Approval

The site is subject to a Concept Plan (Concept Plan) approval issued on 27 August 2012 by the NSW Planning Assessment Commission (PAC) (MP10_0229). The Concept Plan is broken into three elements, relating to construction of residential apartment buildings- to be delivered in three stages (western portion of the site), redevelopment of the football stadium (central portion), and the retail/redevelopment of the existing club (eastern portion). The approval issued by the PAC incorporates

specific terms of approval, required amendments and future environmental assessment requirements, in addition to the proponent's statement of commitments.

On 14 July 2014 the Department of Planning and Environment (DP&E) approved a modification to the concept plan (MP10_0229MOD1). This modification related to design and administrative amendments and the facilitation of ongoing design changes.

Six further applications to modify the concept plan (MP10_0229MOD2, MOD3, MOD4, MOD5, MOD6 and MOD7) were then lodged with DP&E. The details of these modifications are contained in the Table below.

Proposal	Status / Approval Date	Council Reference	Department Reference
<u>MOD2</u> • Include building envelopes for three new residential flat buildings, a serviced apartment/hotel building, function rooms, community rooms, additional car parking and a landscaped podium to the eastern precinct. • New Sharks Centre of Excellence is also proposed to be added to the western grandstand with new administration, training and sports-related facilities.	Project is being assessed by Department of Planning & Environment.	DN17/0008	MP10_0229 MOD2
<u>MOD3</u> • increase the maximum gross floor area (GFA) in the residential precinct from 58,420sqm to 61,370sqm; • increase the maximum gross building area (GBA) in the residential precinct from 104,419sqm to 115,402sqm; and • amend the height and building envelopes for Building B and Building C in the residential precinct	Approved 16.03.16	DN15/0015	MP10_0229 MOD3
<u>MOD4</u> • amendment of the visitor and non-residential parking rates to allow for a sharing of parking spaces; and provide a car parking rate for a childcare use.	Approved 26.10.15	DN15/0013	MP10_0229 MOD4

<u>MOD5</u> amendment of the Concept Landscape Drawings; and amendment of Condition B2 relating to the riparian setback to Woollooware Bay.	Project is being assessed by Department of Planning & Environment.	DN15/0043	MP10_0229 MOD5
<u>MOD6</u> - Reconfiguration of tenancy layouts and mix - Increase to GFA, from 26,473.5m² to 27,740m² - Re-alignment of the pedestrian connection from Captain Cook Drive to the foreshore - Addition of a new child care centre tenancy and community/gallery spaces - Creation of a new streetscape on Level 3 - Relocation of the internal vehicular circulation ramp connection Level 1 to Level 3 from the southern façade to the north-eastern corner; - Maintain the approved quantum of car parking at 770 spaces; and Enlargement of the Leagues Club deck.	Approved 02.08.16	DN16/0010	MP10_0229 MOD6
<u>MOD7</u> Minor architectural design changes and additional detail relating to construction sequencing for the approved retail/club building within the Eastern Precinct of Woollooware Bay.	More information required.	DN17/0003	MP10_0229 MOD7

Stage 1- Residential Development

The first development facilitated by the Concept Plan was DA13/0270. This DA comprised

The stage 1 residential works including the construction of three residential flat buildings containing 220 dwellings, car parking, communal facilities, access roads, landscaping and public domain works on the subject site. DA13/0270 was determined by the Sydney East Joint Regional Planning Panel (JRPP) with a consent being issued by Council on 22 August 2013.

There have been seven subsequent modifications approved to the Stage 1 development (DA13/0270) being MA14/0071, MA14/0253, MA15/0043, MA15/0044, MA16/0133, MA16/0162 and MA16/0338.

Stage 2 Residential Development

On 11 December 2014, the JRPP approved Stage 2 of the residential component of the Woollooware Bay Town Centre (Buildings G and H) of the Concept Plan (DA14/0598). As discussed above, DA14/0598 has been modified once through MA17/0049 issued by Council on 19 September 2017. The current s96 modification application which relates to this Stage was submitted on 10 November 2017.

Subdivision

In 2016 the residential stage of the WBTC site was subject to a land subdivision which led to an alternative street address being allocated to the original Stage 2 application (then referred to as No. 471 Captain Cook Drive). The subject site is now known as 475B Captain Cook Drive, Woollooware, and forms part of Lot 2 DP1218707.

Stage 3 Residential Development

On 21 December 2017, the Sydney South Planning Panel (SSPP) approved Stage 3 of the residential component of the Woollooware Bay Town Centre (Buildings A, B, C and D) of the Concept Plan (DA16/1068). The consent approved the construction and use of 238 dwellings across 4 residential flat buildings including associated podium car parking for 319 vehicles, landscaping and communal open space areas, as well as 4 non-residential tenancies.

4.0 NATURE OF MODIFICATION SOUGHT

This application proposes the modification of Development Consent No. DA14/0598 pursuant to Section 4.55(1A) of the EP&A Act. Council may, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to and in accordance with the regulations, modify the consent if:

- (a) it is satisfied that the proposed modification is of minimal environmental impact, and*
- (b) it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which the consent was originally granted and before that consent as originally granted was modified (if at all) under this section, and*
- (c) it has notified the application in accordance with:*
 - (i) the regulations, if the regulations so require, or*
 - (ii) a development control plan, if the consent authority is a council that has made a development control plan under section 72 that requires the notification or advertising of applications for modification of a development consent, and*
- (d) it has considered any submissions made concerning the proposed modification within any period prescribed by the regulations or provided by the development control plan, as the case may be. Subsections (1), (2) and (5) do not apply to such a modification.*

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 Section 4.55 is the appropriate type of modification application.

5.0 PUBLIC PARTICIPATION

As the application involves modification under section 4.55 of the EP&A Act advertising and notification are at Council's discretion. In the case of this application the proposed amendments are relatively minor and would not have any adverse environmental or residential amenity impacts. Advertising and notification were therefore not required.

6.0 STATUTORY CONSIDERATIONS

The subject land is located within Zone B2 Local Centre pursuant to the provisions of Sutherland Shire Local Environmental Plan 2015. The approved development is considered to be *shop top housing* as defined in SSLEP 2015.

The proposed amendments to Conditions 1 and 14 do not affect the permissibility of the approved development.

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

- Environmental Planning and Assessment (Savings, Transitional and Other Provisions) Regulation 2017.
- State Environmental Planning Policy (State and Regional Development) 2011.
- Sutherland Shire Local Environmental Plan 2015 (SSLEP 2015).
- Sutherland Shire Development Control Plan 2015 (SSLEP 2015).
- State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004.
- Greater Metropolitan Regional Environmental Plan No. 2 – Georges River Catchment.
- 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).
- S94A 2016 Plan - Sutherland Shire.

7.0 SPECIALIST COMMENTS AND EXTERNAL REFERRALS

Development Engineer

The application was referred to Council's Engineer who considered that the changes to the lower ground level car park are satisfactory and capable of meeting the Council's Development Control Plan controls and Australian Standards.

8.0 MAJOR ISSUES

The main issues identified are as follows:

- Consistency with concept plan.
- Clearance Height for disabled spaces.
- Parking Arrangement.

9.0 ASSESSMENT

A detailed assessment of the application has been carried out having regard to the Heads of Consideration under Section 4.15 of the EP&A Act.

The following matters are considered important to this application.

9.1 State Environmental Planning Policy (State and Regional Development) 2011

As discussed in Section 4, the PAC approved Concept Plan MP10_02229 for the WBTC development. Part 3A of the Act was repealed in October 2011 and as modified by Schedule 6A to the EP&A Act, continued to apply to transitional Part 3A projects. New State Significant Developments are now assessed under *State Environmental Planning Policy (State and Regional Development) 2011*. The DA the subject of the proposed modification (DA14/0598) is not a transitional Part 3A project and does not constitute State Significant Development.

On 1st March 2018, the Environmental Planning and Assessment Act 1979 was amended. As part of the amendments, the transitional arrangements relating to part 3A, contained in schedule 6A of the Act were removed, and transferred to the Environmental Planning and Assessment (Savings, Transitional and Other Provisions) Regulation 2017 as Schedule 2. Schedule 2 now applies to development for which a concept plan has been approved under the previous Part 3A. Clause 3B(2)(c) and (d) are relevant to the assessment and are reproduced below:

(2) After the repeal of Part 3A, the following provisions apply to any such development (whether or not a determination was made under section 75P (1) (b) when the concept plan was approved):

(c) any development standard that is within the terms of the approval of the concept plan has effect,

(d) a consent authority must not grant consent under Part 4 for the development unless it is satisfied that the development is generally consistent with the terms of the approval of the concept plan,

Schedule 2 of the approved Concept Plan (MP10_0229) sets out the Terms of Approval relevant to the assessment of the clause 3B provisions above. The consistency of the development with the concept plan relevant to the proposed modification are assessed under part 10.2 of this report.

Schedule 3 of the approved Concept Plan set out the Future Environmental Assessment Requirements (FEAR's). The proposed amendments do not affect the consistency of the stage 2 proposal with the schedule 3 requirements, which remain as previously approved.

9.2 Consistency with Concept Plan

Gross Floor Area

Term of Approval A3 in Schedule 2 of the approved Concept Plan includes Gross Floor Area (GFA) and Gross Building Area (GBA) restrictions for the Residential Precinct and the Retail / Club Precinct. The maximum GFA / GBA for the Residential Precinct are shown in the Table below having regard to the approved Stage 1 and 3 developments, and stage 2 as proposed to be modified by the subject application.

	Max Permitted under Concept Plan (as modified)	Approved under Stage 1	Proposed by stage 2	Approved under Stage 3	Total Remaining (%)
Gross Building Area - residential	115,402m ²	37,958m ²	27,419m ²	41,214m ²	8,811m ² (7.6%)
Gross Floor Area - residential	61,370m ²	21,271m ²	18,180m ² *	22,182m ²	Exceeds maximum GFA by 263m ² **

*** This calculation includes 382.7m² of storage area proposed in stage 2.**

**** GFA associated with storage spaces at podium level in stage 1 and 3 have not been included in the GFA total for the purposes of this assessment.**

The stage 2 storage areas bring the total GFA for the stage 2 residential development to 18,180m², which exceeds the maximum GFA allocated to the residential precinct under the Concept Plan by 263m². The additional GFA does not impact on the GBA so there is no change to this aspect of part A3 of the Concept Plan Term of Approval.

The applicant has submitted legal advice to Council (Sparke Helmore Lawyers, 15 February 2018) to address whether there is a need to apply to modify the Concept Plan GFA total:

20 There may be an argument that the maximum gross floor area contained in Condition A3 of the Concept Plan Approval is a development standard for the purposes of subparagraph (c). But if it is, it cannot be a bar to the approval application for modification.

21 Firstly, the Land and Environment Court has repeatedly held that the power to modify a development consent includes a power to permit a breach of a development standard. Even if Condition A3 is a development standard within the meaning of sub-paragraph (2)(c) of clause 3B of Schedule 6A of the EPA Act, this provision does not require strict compliance with that development standard. Accordingly, Council has the power to approve the modification application.

22 Secondly, as made clear above, the legislation requires that Council cannot grant any development consent to an application under Part 4 (following approval of a concept plan) unless the Council is satisfied that the development is “generally consistent with” the terms of the approval of the concept plan. See clause 3B(2)(d) of Schedule 6A. This requirement does not require strict compliance with the terms of a concept approval (such as condition A3), but instead a lesser requirement of being ‘generally consistent with’ that approval.

22 In my opinion, there is no need to seek to apply to modify the Concept Plan. Condition A2 of the Concept Plan approval is a term of the approval thereof. The New Plan will be generally consistent with the terms of Condition A2. Even if Condition A3 is construed as a development standard, subparagraph (2)(c) of clause 3B of Schedule 6A of the EPA Act does not prevent Council from approving an application under Part 4 (whether a modification application or a development application) that seeks to vary that development standard.

The merits of the proposed GFA variation are considered below.

Approval of the modification application will result in a small increase in gross floor area in the context of the overall development (0.6%). The increase in GFA is a technical increase due to calculation method, rather than a physical increase in the size of the building. The technical variance occurs due to the conversion of a space previously defined as a *void* (and not included in GFA calculations) to a space defined as *storage* (and included in GFA calculations, if not contained in a basement). The increase therefore occurs within the physical envelope approved by the Concept Plan, within the building envelope approved by the Stage 2 development consent, and entirely within the confines of the existing built structure.

The proposal will therefore constitute no change to the physical appearance of the building when viewed from the outside.

Importantly, when the landscape/earth works are completed, a portion of the building containing the storage cages will be buried beneath the earth and a portion will be positioned behind the external stair accessing the foreshore area. The portion of the building containing the storage cage element will be entirely beneath the road and associated paths which provide access and parking for pedestrians and vehicles accessing the residential buildings and foreshore land. The storage cage modification to the plan is therefore not associated with works which would contribute to bulk, scale or overall height of the building.

The storage cages will not intensify the development, constituting facilities which service existing units, rather than any habitable residential floor space that would increase the demand for parking, services or increase section 94 contributions payable to Council.

Given these unique circumstances, the variation to the GFA limit prescribed by the Concept Plan is accepted.

Parking

Term of Approval A4 in schedule 2 sets parking provisions for the residential precinct. The proposal remains unchanged in terms of parking volume, and therefore part A4 remains satisfied.

Generally Consistent Test

(Schedule 2 of the Environmental Planning and Assessment (Savings, Transitional and Other Provisions) Regulation 2017- previously Schedule 6A)

The proposed application, exhibits a 0.6% variation to the GFA limit prescribed for the residential precinct by Term of Approval A3 in the approved concept plan. This variation is considered acceptable based upon its location wholly within the confines of the existing building, and being a use which services existing units rather than floor area which would generate additional habitable space or parking. The proposal does not impact on the other terms of the Concept Approval and is therefore considered to be 'generally consistent with' the terms of approval.

The proposed modifications are substantially the same as development consent DA14/0598, and therefore satisfy the section 4.55(1A) test. The proposal is also "generally in accordance with" the Concept Plan approval, with the amendments confined to the lower ground level podium comprising the rearrangement of car spaces, and modification of a void to usable storage space for residents.

9.3 Disabled Parking Space Clearance Height

Condition 14(vii) of DA14/0598 requires a 2.5 metre clearance height for *adaptable and disability parking spaces*. The applicant contends that a 2.5m clearance height cannot be achieved for the adaptable spaces which have been relocated to the northern bay, due to the presence of a beam above. As a result, it is proposed to amend Condition 14 to remove the reference to *adaptable* car parking spaces.

Sutherland Development Control Plan 2015 does not require a 2.5m clearance height for adaptable car parking spaces, and furthermore, the original development consent has been conditioned to require adaptable spaces to be provided in accordance with a Class C adaptable unit under AS4299, which does not require a 2.5m height (condition 40 of DA14/0598). A clearance height in accordance with AS4299 - Adaptable Housing is still achieved in the proposed location, and the proposed modification to condition 14 to delete the reference to adaptable spaces is acceptable.

9.4 Parking Rearrangement

The location of two disabled parking spaces is proposed to be modified to enable the storage spaces to utilise the wider gap between the adaptable spaces for pedestrian access. The rearrangement maintains the total volume of spaces originally approved under DA14/0598, and the proposal remains consistent with the parking rates required under the concept plan.

9.5 State Environmental Planning Policy No. 55 - Remediation of Land

State Environmental Planning Policy No. 55 - Remediation of Land (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. A Phase 2 Environmental Assessment has been undertaken as part of the original DA. The proposed modification involves design changes within the existing, built, structure and will not alter the extent of excavation or any other element that would alter the validity of the previous assessment. With the maintenance of the previous condition of consent relating to the management of contamination on the site, Council is satisfied that the proposal would be acceptable with regard to the provisions of SEPP 55.

9.6 State Environmental Planning Policy (Infrastructure) 2007

Schedule 3 of the State Environmental Planning Policy (Infrastructure) 2007 requires traffic generating developments to be referred to the Roads and Maritime Service (RMS). The proposed amendments to the approved buildings do not impact in any way on the conditions previously provided by the RMS. These remain relevant to the development, and re-referral is not warranted.

9.7 Sutherland Shire Local Environmental Plan 2015 (SSLEP2015)

DA14/0598 was assessed against the provisions of Sutherland Shire Local Environmental Plan 2006 (SSLEP2006). SSLEP2006 has since been superseded by SSLEP2015. As the subject application is wholly contained in the existing building envelope, the controls contained in the LEP need not be revisited. These aspects of the development were assessed and conditions of consent imposed on DA14/0598 and the proposal does not change these conditions.

The proposal is consistent with the objectives of the B2 - Local Centre zone and consistent with the approved future urban form established by the Concept Plan.

10.0 SECTION 94 CONTRIBUTIONS

S94 contributions were levied on the original DA14/0598. The proposed modification does not increase the demand for public facilities and therefore the Section 94 contributions remain unchanged.

11.0 DECLARATIONS OF AFFILIATION, GIFTS AND POLITICAL DONATIONS

Section 147 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.

12.0 CONCLUSION

The subject land is located within Zone B2 Local Centre pursuant to the provisions of SSLEP 2015. The proposed modifications to DA14/0598 are minor, and acceptable on merit.

The application remains generally consistent with the Concept Approval and satisfies the provisions of schedule 2 of the Environmental Planning and Assessment (Savings, Transitional and Other Provisions) Regulation 2017.

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 of the EP&A Act, together with the provisions of SSLEP2015 and all relevant Council DCPs, Codes and Policies. Following detailed assessment it is considered that the Modification Application No. 17/0523 can be supported.

RESPONSIBLE OFFICER

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