

# SUTHERLAND SHIRE COUNCIL ASSESSMENT REPORT

<b>Panel Reference</b>	2018SSH015
<b>DA Number</b>	DA18/0323
<b>LGA</b>	Sutherland Shire
<b>Proposed Development</b>	Demolition of existing structures and construction of a residential apartment building containing 32 apartments and 3 basement parking levels
<b>Street Address</b>	S/P 545, S/P 9336, S/P 48254, S/P 67206 Nos. 5, 7 and 9 Ozone Street, Cronulla
<b>Applicant/Owner</b>	Ozone Cronulla Pty Ltd
<b>Date of DA lodgement</b>	22 March 2018
<b>Number of Submissions</b>	62 households
<b>Recommendation</b>	Approval
<b>Regional Development Criteria (Schedule 7 of the SEPP (State and Regional Development) 2011)</b>	General Development over \$30 million
<b>List of all relevant s4.15(1)(a) matters</b>	<ul style="list-style-type: none"> <li>• State Environmental Planning Policy (State and Regional Development) 2011</li> <li>• State Environmental Planning Policy (Coastal Management) 2018</li> <li>• State Environmental Planning Policy No. 55 (Remediation of Land)</li> <li>• State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004</li> <li>• State Environmental Planning Policy No. 65 (Design Quality of Residential Flat Development)</li> <li>• Apartment Design Guide</li> <li>• Sutherland Shire Local Environmental Plan 2015</li> <li>• Sutherland Shire Development Control Plan 2015</li> <li>• Sutherland Shire Section 94 Development Contributions Plan 2016</li> </ul>
<b>List all documents submitted with this report for the Panel's consideration</b>	<ul style="list-style-type: none"> <li>• Architectural plans, landscape plans, stormwater plans and supporting documentation</li> <li>• Pre-Application Discussion (PAD) letter dated 1 February 2018</li> <li>• Report from Pre-DA Design Review Forum (DRF) dated 1 March 2018</li> <li>• Report from Design Review Forum dated 1 June 2018</li> <li>• Report from Design Review Forum dated 25 October 2018</li> <li>• List of public submissions</li> <li>• SEPP 65 compliance table</li> </ul>

	<ul style="list-style-type: none"> <li>• Apartment Design Guide (ADG) compliance table</li> <li>• Sutherland Shire Development Control Plan 2015 compliance table</li> <li>• WaterNSW General Terms of Approval</li> </ul>
<b>Report prepared by</b>	Martin Southwell, Major Projects Planner Sutherland Shire Council
<b>Report date</b>	8 November 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 THE REPORT

This development application (DA) is referred to the Sydney South Planning Panel (SSPP) as the development has a capital investment value (CIV) of more than \$30 million and is nominated under Schedule 7 "Regionally significant development" of State Environmental Planning Policy (State and Regional Development) 2011. The Registered Quantity Surveyor's report submitted to Council with the DA nominates the CIV of the project as \$33,448,348.00.

### PROPOSAL

The DA is for the construction of a residential flat building (RFB) comprising 32 apartments with 3 basement levels containing 62 residential car spaces and one visitor car space. The building has a curvilinear façade with two to four apartments on each level. Pedestrian access to the ground floor entry foyer is from Ozone Street and vehicle access to the basement levels is from Cecil Monro Avenue.

### THE SITE

The subject site is located on the western side of Ozone Street, Cronulla and also has frontages to Ocean Grove Avenue and Cecil Monro Avenue. It is irregular in shape and has an area of 1,592m<sup>2</sup>. The land is relatively flat. It is currently occupied by three residential apartment buildings that are each three storeys in height. The site adjoins two mixed use buildings immediately to the west at 14 and 18 Gerrale Street. The locality is characterised by residential flat buildings ranging in heights of 3 – 13 storeys. The site is at the eastern periphery of the Cronulla commercial centre.

### ASSESSMENT OFFICER'S RECOMMENDATION

THAT:

That Development Application No. DA18/0323 for the demolition of existing structures and construction of a residential apartment building containing 32 apartments and 3 basement parking levels at 5, 7 and 9 Ozone Street, Cronulla (S/P 545, S/P 9336, S/P 48254, S/P 67206) be approved, subject to the draft conditions of consent contained in **Appendix A** of the Report

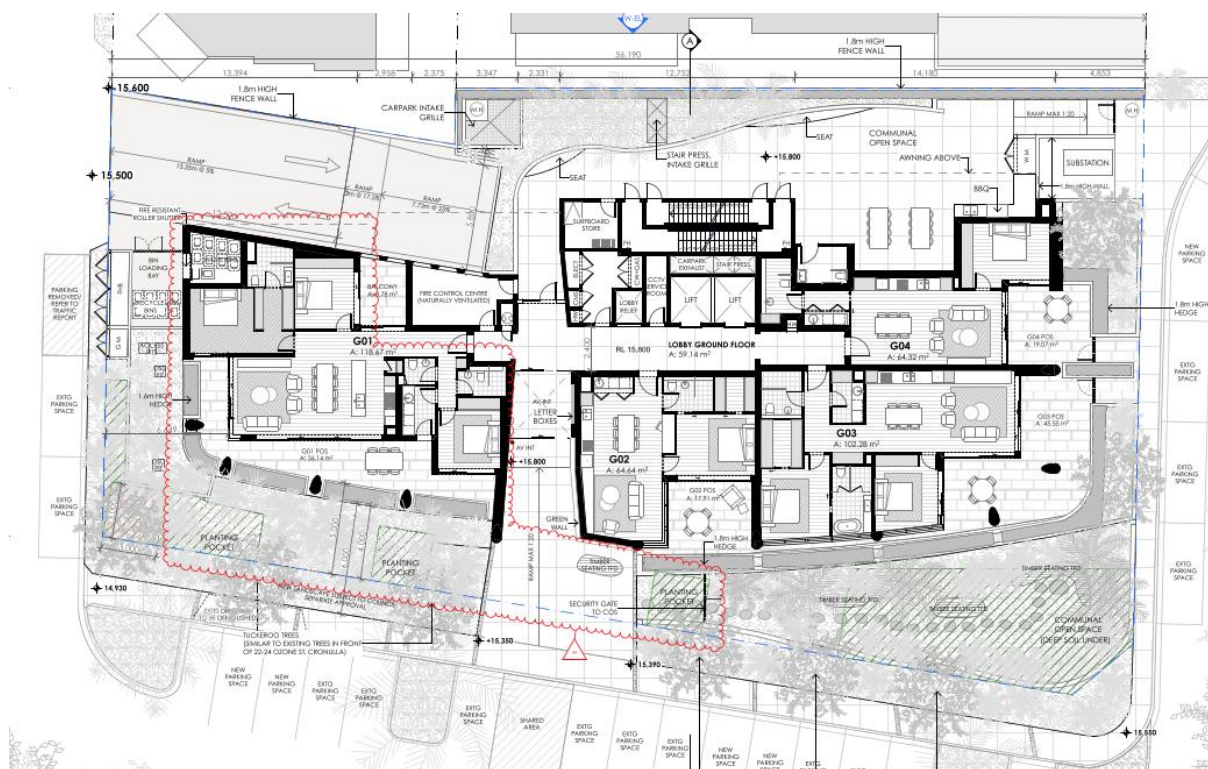
### ASSESSMENT OFFICER'S COMMENTARY

#### 1.0 DESCRIPTION OF PROPOSAL

The proposal is for the demolition of all existing structures and the construction of a nine-storey residential apartment building containing 32 apartments. The development includes a mix of 1, 2 and 3 bedroom apartments. Three levels of basement car parking accommodate 63 parking spaces including 62 residential spaces and 1 visitor space. A carwash bay is also proposed. The basement is accessed from a new driveway at the south-western corner of the site on Cecil Monro Avenue.

The building has a curvilinear facade which, according to the project architect, “follows prominent Art Deco public buildings in Cronulla such as the Surf Club and Bank Building”. The built form of all nine storeys is generally symmetrical, with a relatively central entry foyer at ground level accessed from Ozone Street, central lift cores and two penthouse apartments that enjoy sole use of the rooftop as an extension of their private open space. The principal useable area of Communal Open Space (COS) is located within the western building setback, whilst supplementary COS is located in the north-eastern corner of the site within the Ozone Street setback.

The proposal’s Ground Floor Plan is included at Figure 1 below.



**Figure 1 – Proposed Ground Floor Plan**

The building has a setback of 4m from its northern and southern boundaries adjoining Ocean Grove Avenue and Cecil Monro Avenue. From Ozone Street and excluding minor point encroachments, the building has a variable setback ranging from 4m near the south-eastern corner of the site to about 8.7m near the north-eastern corner.

All existing trees on the site are proposed to be removed. The basement has a nil street setback for the majority of the Ozone Street boundary and a nominal variable setback of between 400mm and 1m from Ocean Grove Avenue. Three “planting pockets” are proposed along the Ozone Street frontage (with a 3.4m soil depth equivalent to one basement level deep) and will accommodate canopy trees to ameliorate the scale of the building at street level and provide a landscaped setting. The broadly proportioned deep soil landscaped area in the north-eastern corner of the site will also accommodate canopy trees and other vegetation, along with three timber seats.



The DA has been assessed as an “Integrated Development” application on the basis that excavation for the basement levels would intercept groundwater. The DA was forwarded to WaterNSW as detailed in Section 8.1 of this report.

## 2.0 SITE DESCRIPTION AND LOCALITY

The site is irregular in shape and has a total area of 1,592m<sup>2</sup>. It has a primary eastern frontage to Ozone Street of 53.42m, a northern frontage to Ocean Grove Avenue of 30.225m and a southern frontage to Cecil Monroe Avenue of 24.375m. Its western boundary adjoining 14 & 18 Gerrale Street has a length of 56.38m, excluding a 3.06m return of a “dog leg” part way along the boundary. The site has a slight fall of just over 1m from its north-western corner (RL16.5) to its south-eastern corner (RL15.46). Refer to Figures 2 and 3 for location and aerial photographs of the site.



Figure 2 – Site Location



Figure 3 – Aerial Photograph

The site is currently occupied by three detached apartment buildings. Each building is three storeys in height, containing car parking on the ground floor and residential apartments within the two storeys over. There are five trees on the site and a further two that straddle the street boundary of Cecil Monro Avenue. Directly adjacent to the site on Ozone Street are ten parking spaces angled at 90 degrees to the kerb, interspersed by two large palm trees and a third smaller tree.

Adjoining the site immediately to the west are two sites with street addresses of 14 Gerrale Street and 18 Gerrale Street. The former is occupied by a four-storey mixed use building known as “Maré Blu”, containing ground floor commercial with residential apartments over. The latter is presently occupied by a three storey apartment building known as “Angelo House”, but is the subject of a current development application (DA18/0349) that proposes the demolition of the existing building and construction of a mixed use development with a height of 9 storeys plus rooftop communal open space and swimming pool.

The site is located at the eastern periphery of Cronulla Centre and is within close proximity to major public transport nodes, community facilities and public services. Cronulla railway station is a 5 – 6 minute walk from the site. The development site was “up zoned” under Sutherland Shire Local Environmental Plan 2015 (SSLEP 2015) from a maximum height of 6 storeys (*i.e.* about 18m) and Floor Space Ratio (FSR) of 2:1 to a maximum height of 30m and FSR of 3:1.

The site is surrounded by residential apartment buildings and mixed use developments of varying scale. “The Cecil Apartments” directly to the south at 20 Gerrale Street is the largest nearby building at 14 storeys high, with the ground floor containing the residential lobby and commercial tenancies that face Gerrale Street. Of particular note, the basement levels of The Cecil Apartments extend below the road pavement Cecil Monro Avenue up to the southern boundary of the subject site. This is because Cecil Monro Avenue was originally private land but was dedicated as public roadway upon construction of The Cecil Apartments in the late 1980s.

The waterfront residential apartment buildings to the east range in height from three to five storeys. Other notable buildings nearby are “The Belgrave” and “Breeze” on the western side of Gerrale Street to the west of the site, each being nine storeys in height with ground floor commercial uses, “Drift” apartments to the north on the opposite side of Ocean Grove Avenue, which is six storeys in height, and 1 Ocean Grove Avenue which is seven storeys high with ground floor commercial uses. Residents of these apartment buildings and The Cecil Apartments presently enjoy water views over the development site.

### **3.0 BACKGROUND**

A history of the development proposal is as follows:

- A Pre-Application Discussion (PAD) was held on 28 November 2017 regarding a similar proposal. As a result of this a formal letter of response was issued by Council dated 1 February

2018. A full copy of the advice provided to the Applicant is contained within **Appendix B** of this report and the main points contained in this letter are as follows:

- 100% residential use of the building is appropriate in the context.
- The design is well composed but should be considered at a Pre-DA Design Review Forum (DRF) meeting prior to DA lodgement.
- The proposed 10% variation to Floor Space Ratio (FSR) is unlikely to be supported.
- The proposed variations to the 4m street setbacks, particularly within the eastern setback from Ozone Street, are not suitable in the residential context of the site.
- The proposed areas of Communal Open Space (COS) do not have a high level of amenity in terms of functionality and solar access.
- Canopy trees are to be provided.
- A geotechnical investigation is required and the DA must be lodged as Integrated Development due to the potential for excavation to encounter groundwater.
- A contamination assessment should be undertaken prior to DA lodgement.
- A Pre-DA Design Review Forum (DRF) meeting (application number ARAP18/0001) was held on 15 February 2018. The design reviewed by the DRF was the work of a different architect compared to the design reviewed in the aforementioned PAD meeting. The DRF report was sent to the applicant on 2 March 2018. A copy is attached to this report at **Appendix C**. The report concludes that *“A questionable strategy with some significant design quality issues has been proposed, and these should be addressed in accordance with the comments made in this report, summarised as follows:*
  - *Further urban analysis is required to create appropriate setbacks and a building form for the site that will be more consistent with the existing scale and landscape quality of the precinct.*
  - *In doing so it may not be possible to realise the maximum FSR of the site.*
  - *The quality of common open space needs to be improved.*
  - *Deep soil planting should be increased.*
  - *The streamlined minimalist aesthetic may be appropriate if the built form is more articulated and reduced in bulk so that it can be integrated into a more generous landscape setting.”*
- The current DA was submitted on 22 March 2018.
- The application was placed on exhibition with the last date for public submissions being 25 May 2018. Submissions were received from 62 households.
- An Information Session was held on 16 May 2018 and 48 parties attended.
- The DA proposal was considered by Council’s DRF on 24 May 2018. The Report from DRF is attached at **Appendix D** and is also discussed in Section 8.3 below.
- Council officers wrote to the Applicant on 24 July 2018 and raised the following issues:
  - A graphic site design analysis has not yet demonstrated that the adopted building footprint and site layout is the most logical response to the site’s context, as raised within the Report from DRF.
  - The single monolithic built form is visually dominant when viewed from the public domain.

- The non-compliant and inadequate building setbacks from all three streets are not supported, as previously advised within the PAD letter.
- There is no opportunity to plant canopy trees along Ozone Street and Ocean Grove Avenue due to the nil basement setbacks. At the very least, “cut outs” in the basement walls should be provided, with sufficient soil depth to sustain appropriate coastal tree species such as Cook Island Pine, Tuckeroo etc.
- The proposal does not meet the minimum 7% deep soil design criterion of the Apartment Design Guide (ADG).
- The proposal exceeds the maximum Floor Space Ratio by 5.4%.
- Further information is required to confirm building height compliance.
- The Apartment 01 stack at the southern boundary does not comply with the ADG requirements for solar access.
- The site does not achieve the minimum 25% COS area. An additional rooftop COS area should be provided.
- The amenity of the COS area in the north-western corner is poor, with minimal facilities proposed for residents’ use.
- Further information with respect to fire hydrant location compliance is required.
- A view loss assessment from Breeze (19 Gerrale Street) and The Belgrave (31-33 Gerrale Street) should be provided.
- At least 10% of apartments must be “livable” as required by the DCP.
- A structural engineers report must be prepared and submitted to detail potential adverse impacts of excavation and construction on the basement wall of The Cecil Apartments.
- Waste collection from Cecil Monro Avenue is not supported. The waste truck must be wholly located within the site during collection, e.g. within the driveway, and the driveway widened to 6m to facilitate single-way residential and visitor vehicle access during collection time.
- A 3x3m splay must be provided in the south-eastern corner of the site and dedicated to Council, to improve sightlines.
- Draft amended architectural and landscape plans were lodged on 6 August 2018, along with draft amended stormwater plans, advice from a civil and structural engineer, further traffic advice, fire safety strategy report, contaminated land advice and a crime risk assessment.
- The Sydney South Planning Panel (SSPP) was briefed in relation to the proposal on 22 August 2018 at Sutherland Shire Council. The following key issues were discussed:
  - “Need for next set of revised plans to be considered by the Design Review Panel, and importance of compliance with their advice”
  - Height breaches
  - Setbacks
  - Relationship of the building to surrounding existing and future developments
- A Class 1 Application was filed to Land and Environment Court of NSW on 24 August 2018 under s8.7(1) of the Environmental Planning and Assessment Act 1979.
- A “without prejudice” meeting was held with the proponent on 27 September 2018. Council identified a number of outstanding concerns in the draft amended proposal received on 6 August 2018 including the following:



- Non-compliant FSR
  - Inadequate street setback to the building from Ozone Street, including its imposing (monolithic) built form and view corridor impacts
  - Deficient deep soil landscaping and inadequate opportunities for tree planting in Ozone Street due to inadequate building setback
  - The building's defensive western façade treatment facing 14 and 18 Gerrale Street
  - Internal ADG solar access issues
- An amended proposal was submitted to Council on 7 October 2018. These plans did not propose a sufficient Ozone Street setback (2.8m proposed) or adequately demonstrate compliance with the ADG solar access provisions.
  - The amended proposal was considered by Council's DRF on 25 October 2018. The Report from DRF is attached at **Appendix E** and is also discussed in Section 8.3 below.
  - An additional meeting was held on 5 November 2018. Council staff reiterated the need for the proposal to achieve a minimum 4m setback from Ozone Street and ADG-compliant solar access.
  - The latest amended architectural plans were received on 6 November 2018 and the latest landscape plans were received on 8 November 2018.

#### **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 Council to enable an assessment of this application.

#### **5.0 PUBLIC PARTICIPATION**

The application was advertised in accordance with the administrative provisions of Chapter 42 of Sutherland Shire Development Control Plan 2015 (SSDCP 2015). Council notified 296 adjoining or affected owners of the proposal and submissions were received from 62 households. The main issues identified are as follows:

- Traffic and Parking
- Overdevelopment in Cronulla
- Bulk and scale
- View loss
- Overshadowing

A full list of the locations of those who made submissions, the dates of their letters and the issues raised is contained within **Appendix F** of this report.

#### **6.0 STATUTORY CONSIDERATIONS**

The subject land is located within the B3 Commercial Core zone pursuant to the provisions of Sutherland Shire Local Environmental Plan 2006. 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 (EPIs), Development Control Plans (DCPs), Codes or Policies are relevant to this application:

- State Environmental Planning Policy (State and Regional Development) 2011
- State Environmental Planning Policy No. 55 (Remediation of Land) (SEPP 55)
- State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004
- State Environmental Planning Policy No. 65 (Design Quality of Residential Flat Development)
- Apartment Design Guide (ADG)
- Sutherland Shire Local Environmental Plan 2015 (SSLEP 2015)
- Sutherland Shire Development Control Plan 2015 (SSDCP 2015)
- Draft State Environmental Planning Policy (Coastal Management) 2018
- Sutherland Shire Section 94 Development Contributions Plan 2016

## **7.0 COMPLIANCE**

### **7.1 State Environmental Planning Policy (State and Regional Development) 2011**

State Environmental Planning Policy (State and Regional Development) 2011 identifies State and Regionally Significant development in NSW. Schedule 7 of the SEPP identifies this application as regionally significant development as it has a capital investment of more than \$30 million. As such, the application is referred to the South Sydney Planning Panel for determination.

### **7.2 State Environmental Planning Policy (Coastal Management) 2018**

State Environmental Planning Policy (Coastal Management) 2018 (CM SEPP) seeks to balance social, economic and environmental interests by promoting a coordinated approach to coastal management consistent with the Coastal Management Act 2016. The CM SEPP applies to land within the coastal zone across NSW. All foreshore land within the Sutherland Shire is identified as being within the coastal zone, in some instances the coastal zone extends beyond waterfront properties. In addition, much of the Sutherland Shire foreshore is identified as being within the coastal environment area and the coastal use area.

Before granting development consent on any land within the coastal zone the consent authority must be satisfied that the proposed development is not likely to cause increased risk of coastal hazards on that land or other land. Council is satisfied that the proposed residential flat building is unlikely to cause increased risk of coastal hazards on that land or other land. It is noted at this stage Council does not have any certified coastal management programs which require consideration.

The subject site is within the coastal zone and is also identified on the CM SEPP map as coastal use area. The site is about 90m from the foreshore located to the east.

#### *Development on land within the coastal use area (clause 14)*

The site is identified as being land within the “coastal use area” on the CM SEPP map. This requires the consent authority to consider certain factors and be satisfied of certain requirements before development consent is granted.

Specifically, the consent authority must consider whether the proposed development is likely to cause an adverse impact on existing, safe access to and along the foreshore, beach, headland or rock platform for members of the public, including persons with a disability; overshadowing, wind funneling and the loss of views from public places to foreshores; the visual amenity and scenic qualities of the coast, including coastal headlands; Aboriginal cultural heritage, practices and places, and cultural and built environment heritage.

These factors have been considered in the assessment of this application, including the bulk, scale and size of the proposed development and its impact on the surrounding coastal and built environment. The proposal is acceptable with regard to most of the above considerations including access to the foreshore and overshadowing and will have negligible impact on views from public places to the foreshore. The building has generally compliant setbacks from all streets and will respect the existing character and visual qualities of the public domain. The proposal will not adversely impact the visual amenity of this coastal locality and is consistent with relevant considerations of the CM SEPP.

### **7.3 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.

A search of Council's records including the contaminated land register revealed that the adjoining site to the west (14 Gerrale Street) is listed as potentially contaminated due to the former use of that site as a service station between approximately 1955 and 1996. Council's Environmental Scientist reviewed the initial contaminated land documentation submitted with the DA and requested a supplementary “review” from the applicant's environmental consultants. Further information was received from the consultant on 6 August 2018.

Based on the review of all information submitted and a review of Council's historical files regarding adjoining previous land uses, Council's Environmental Scientist has concluded that the site is suitable for the proposed residential use. Suitable conditions of consent have been included in Appendix A as a “precautionary” approach, to address the unlikely scenario that unexpected soil contamination is detected during waste classification works or as identified by the unexpected finds protocol during construction.

### **7.4 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. BASIX certificates accompany the development application addressing the requirements for the proposed

building. The BASIX Certificate submitted with the DA indicated that the original proposal achieved the minimum performance levels and targets associated with water, energy and thermal efficiency. At the time of writing, a revised BASIX Certificate has not been submitted in support of the latest amended plans. However, a letter from EMF Griffiths Consulting Pty Ltd dated 7 November 2018 has been provided advising that the amended proposal will comply with BASIX benchmarks and confirming that an updated BASIX Certificate, NatHERS certificates and stamped architectural drawings will be furnished to Council prior to the SSPP determination meeting.

## 7.5 State Environmental Planning Policy No. 65 – Design Quality of Residential Apartment Development – Design Quality Principles

State Environmental Planning Policy No. 65 – Design Quality of Residential Flat Development (SEPP 65) and the accompanying Apartment Design Guide (ADG) seeks to improve the design quality of residential flat development through the application of a series of 9 design principles. The proposal is affected by SEPP 65. An assessment of the proposal having regard to the design quality principles of SEPP 65 is set out in **Appendix G** to this report. Sutherland Shire Council engages its Design Review Forum (DRF) to guide the refinement of development to ensure design quality is achieved in accordance with SEPP 65. All three DRF reports are attached at **Appendices C – E**.

## 7.6 Apartment Design Guide

The applicable design guidelines for the proposed development are contained within the ADG, which is based on the nine design quality principles set out in SEPP 65. The ADG illustrates good practice and these guidelines are largely replicated in Council's DCP. A table with a compliance checklist of the proposal against the ADG design criteria is attached at **Appendix H**. Whilst the proposal does not meet the minimum design criteria in relation to solar access to the principal useable area of communal open space, it is nonetheless acceptable on merit as detailed in Section 9.3 below.

## 7.7 Sutherland Shire Local Environmental Plan 2015

The proposal has been assessed for compliance against Sutherland Shire Local Environmental Plan 2015 (SSLEP 2015). A compliance table with a summary of the applicable development standards is contained below:

Sutherland Shire Local Environmental Plan 2015			
CLAUSE	REQUIRED	PROPOSAL	COMPLIANCE
cl.4.3 - Height of Building	30m	30m	Yes
cl.4.4 - Floor Space Ratio	3.0:1 (4,776m <sup>2</sup> )	2.98:1 (4,735.4m <sup>2</sup> )	Yes

## 7.8 Sutherland Shire Development Control Plan 2015

The proposal has been assessed for compliance with the Sutherland Shire Development Control Plan 2015 (SSDCP 2015). A compliance table with a summary of the applicable development controls is contained in **Appendix I**.

## 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 WaterNSW

The DA was referred to WaterNSW as an Integrated Development item under s4.46 of the Environmental Planning & Assessment Act 1979. WaterNSW determined that groundwater would be encountered during the excavation process and therefore the proposal is subject to a Water Supply Work Approval under the *Water Management Act 2000* for dewatering during the construction phase. As such, WaterNSW advised that *“if there is ongoing take of groundwater during the post construction phase, a Water Supply Work Approval and a Water Access Licence will be required”*. WaterNSW issued General Terms of Approval (GTAs), which are attached at **Appendix J**. A condition is included in Appendix A requiring compliance with the GTAs.

### 8.2 NSW Department of Industry – Lands and Water

The DA was reviewed by the NSW Department of Industry – Lands and Water and advised that a Controlled Activity Approval is not required under s91(2) of the *Water Management Act 2000*.

### 8.3 Design Review Forum (DRF)

The application was initially considered by the DRF during the DA assessment process on 24 May 2018. The DRF made the following recommendation (full report held at **Appendix D**):

*“The applicant is commended for addressing some of the issues raised by the previous DRF. The panel, however, is still of the opinion that for a satisfactory outcome, further improvement is required through satisfactorily addressing and resolving the issues highlighted above.*

*The onus is on the applicant to demonstrate that the proposal can be designed to achieve acceptable built form and mitigate amenity impacts on adjacent sites at the maximum permissible density. It may be that an appropriate built outcome cannot achieve strict compliance with the maximum numerical FSR available for this site. Therefore, in its current form, the panel is of the view that the proposal has still not reached acceptable outcomes and cannot be supported.”*

The proposal's “monolithic and bulky” appearance and its “minimal setbacks to the streets at southeast” were particularly highlighted by the DRF.

As requested by the South Sydney Planning Panel at the briefing meeting held on 22 August 2018, the amended design was considered by the DRF on 25 October 2018. The following conclusion was reached by DRF (full report held at **Appendix E**):

*“The revised submission goes some way to addressing issues noted previously, however, there remain concerns with significant aspects of the proposal:*

- *the response to context;*

- *the problems of scale, mass and articulation of the street frontages and the rear elevation;*
- *adequacy of the front setback, and tree planting within the setback;*
- *ADG requirements for solar access.*

*Further design development should be undertaken to respond to the issues noted.*

*In its current form the Panel does not support the proposal.”*

The latest Report from DRF states that *“The Panel believes that ideally the street setback should be 6m, but given the constraints of the site, a minimum of 4m should be provided with consolidated areas of adequate depth for tree planting”*.

This 4m setback has been achieved in the latest design with the result that the building has a better relationship to Ozone Street and canopy trees planted within the “planting pockets” will have adequate clearance for their canopies.

#### **8.4 NSW Police Force**

In accordance with the *Crime Risk Assessment – Police & SSC Protocol 2010* the application was referred to the NSW Police Force for review in relation to CPTED and other relevant considerations. Various matters raised by the NSW Police Force were taken into account by the project architect in the amended plans, including relocation of the letter boxes to inside the entry foyer. A number of recommendations of the NSW Police Force that relate to lighting, CCTV etc. form the basis of draft recommended conditions included in Appendix A.

#### **8.5 Engineering (Assessment Team)**

The application was referred to Council’s Assessment Team Engineer who reviewed the proposal in relation to the construction and site management plan, vehicle access and parking, stormwater management, pedestrian access, waste management, road works and potential for damage to the basement of The Cecil Apartments. The engineer raised no objection to approval of the amended proposal subject to the issue of suitable conditions of consent. These conditions have been included in the draft recommended conditions in Appendix A.

#### **8.6 Civil Assets**

The application was referred to Council’s Civil Assets Team who raised no objection to approval of the proposal subject to the following:

- Vehicle access via Cecil Monroe Avenue is supported,
- Waste collection shall occur within the driveway and not from Cecil Monroe Avenue
- Cecil Monroe Avenue will require widening due to increased intensity, which will result in the loss of four street parking spaces.
- Four new street parking spaces will be provided in Ozone Street due to the removal of two existing vehicle crossings. As such, no overall loss of street parking will occur.
- Street trees are not permitted in Cecil Monroe Avenue due to the impact of their roots on existing basement structures below, belonging to The Cecil Apartments.



- A 3m x 3m splay is required on the south-eastern corner of the site to be dedicated as road to Sutherland Shire Council in Stratum to improve vehicle sight lines.

Appropriate draft conditions have been recommended in Appendix A to address these issues where relevant.

## **8.7 Environmental Science**

The application was referred to Council's environmental scientist who reviewed the proposal in relation to land contamination. No objection to approval of the DA was raised by the Environmental Scientist upon receipt of additional information from the applicant. Further discussion on land contamination may be found under Section 7.2 above.

## **8.8 Building Surveyor**

No objection was raised by Council's building surveyor to approval of the DA subject to the imposition of a condition stipulating that no consent is granted for a radiant heat shield around the fire hydrant boosters on the Cecil Monroe Avenue frontage. The building surveyor advised that, in his opinion, the proposal may be able to be supported by Fire and Rescue NSW without the need for a radiant heat shield at the boundary.

## **9.0 ASSESSMENT**

Following a detailed assessment of the application having regard to the Heads of Consideration under Section 4.15 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 Site Analysis and Building Massing**

The construction of a residential apartment building on the site is consistent with the desired character of Cronulla as per the B3 Commercial Core zoning of the locality, the 3:1 FSR and 30m building height development standards and the supporting SSDCP 2015 Chapter 19, "B3 Commercial Core – Cronulla". The DCP states that "more quality units" will meet some of the unmet demand for more Shire residents to enjoy the amenities that Cronulla enjoys, whilst providing more customers for local businesses. It was accepted by Council officers at the PAD stage that the provision of commercial floor space in this location is inappropriate given the exclusively residential character of Ozone Street, being at the periphery of the commercial centre.

There is no amalgamation plan specified for this block of land bounded by Gerrale Street, Ozone Street, Ocean Grove Avenue and Cecil Monro Avenue. As such, there is no specific requirement that the entire block be amalgamated. The DCP states that *"For developments to be feasible at the permissible height and FSR it will be necessary for some sites to be amalgamated. Amalgamation will partly be dictated by the practicality of a car park plan and providing convenient and safe vehicular access to on-site parking"*. This proposal involves the amalgamation of three sites and the basement car park is appropriate for the site with efficient ingress and egress. Due to the amalgamation of three sites, the full 3:1 FSR has all but been realised apart from 40m<sup>2</sup>.

The diagram on p12 of Chapter 19 of SSDCP 2015 states that a “detailed analysis” is required for this site. This diagram was primarily developed in order to encourage appropriate building heights and massing on either side of the public mall on Cronulla Street, to avoid adversely impacting the valuable public domain in that area. As such, the sites along Cronulla mall have preferred building envelopes specified in this diagram. However, there is no specific requirement for the subject site on the diagram as it is located at the periphery of the B3 centre and its redevelopment will not overshadow Cronulla mall. Moreover, the required “detailed analysis” has essentially been carried out as part of the DA assessment process including consideration by Council’s Design Review Forum.

Council’s assessment staff are satisfied that the latest amended built form is suitable for the site and its context. The building is now fully compliant with street setbacks and achieves the visual privacy objectives of the ADG. Its massing and breadth is compatible with other nearby buildings in the Cronulla centre such as 1 McDonald Street (“Cote D’Azur”), 1 Abel Place (“Quest Cronulla Beach”) and 10-12 Gerrale Street (“Drift”). The eastern façade has been broken up into two primary elements (including protruding balconies and a split in the roof line) on the axis of the vertical alignment of the main pedestrian entry in order to provide additional façade articulation and minimise bulk.

## **9.2 Streetscape and Landscaping**

The amended building achieves the DCP-required minimum 4m setback from Ozone Street at its south-eastern corner to all parts of the building except for some minor (900mm) point encroachments. These are limited to a single column on Ground and Level 1, the central planter box on Levels 2 – 5 and the central balcony on Levels 6 and 7. These minor encroachments with a setback of 3.1m will not adversely impact the streetscape encroachments and are readily offset by the fact that the building’s curved façade is set back from Ozone Street by over 8.8m at the northern end of the site. Furthermore, the encroachments provide visual interest and articulation to the façade compared to the earlier design iterations. The addition of greenery spilling over the front of the planter boxes and a green wall at Ground and Level 1 will be a positive design outcome that softens the façade.

There are three deep soil “planting pockets” proposed in the south-eastern corner on Ozone Street. These combined with the compliant street setback of the amended proposal will enable the planting of canopy trees along the Ozone Street frontage to ameliorate the scale of the building at street level. A condition has been recommended requiring the provision of an additional 3m x 3m planting pocket within the northern setback adjacent to Ocean Grove Avenue. This will require the deletion of one residential car parking space but the proposal will remain well over the minimum parking rates required by the DCP.

The DRF has supported a minimum setback of 4m with consolidated areas of adequate depth for tree planting. In particular, the building’s generous setback of over 8.8m and the 150m<sup>2</sup> deep soil landscaped area in the NE corner (with a width of between 2.7m and 9.3m) will provide for a broad area of trees and plants that will improve the amenity, open nature and visual qualities of the public domain.

The proposal is technically deficient with the ADG design criteria requiring a minimum deep soil zone of at least 7% (111.4m<sup>2</sup>) of the site's area. Whilst the proposal technically has a deep soil area of 6.2% (99m<sup>2</sup>), only 5.8% (92.4m<sup>2</sup>) meets the deep soil zone objectives of the ADG. The balance consists of multiple narrow strips along the northern street frontage between the basement wall and planter box walls that are unlikely to support healthy plant and tree growth to improve residential amenity and promote management of water and air quality. However, despite the numeric non-compliance, the proposal has provided three planting pockets in the Ozone Street setback, having a combined area of 49.4m<sup>2</sup>. The aforementioned additional planting pocket will add another 9m<sup>2</sup>, taking the total area to 58.4m<sup>2</sup>. These planting pockets will be at least 3.4m deep (just over one basement level) which exceeds the ADG-recommended minimum soil depths even for large trees. As such, they will more than compensate for the relatively minor 19m<sup>2</sup> deep soil zone deficiency.

A key objective of the B3 zone under the LEP is to create an attractive, vibrant and safe public domain with a high standard of urban design and public amenity. SSDCP 2015 also states that *"A key consideration when determining the appropriate building form for a site is assessing the likely impact on the public domain"*. The amended proposal with compliant street setbacks (apart from a minor point encroachment on each of Levels G – 7 as described above) meets these LEP zone and DCP objectives. The proposal will make a positive contribution to the amenity of the public domain.

The 30m high scale of the building is as envisaged by SSLEP 2015. The building predominantly has a nine storey appearance, with the facilities on the roof terrace level technically comprising a tenth storey. This is compatible with other nearby apartment buildings such as the 9 storey high *"Breeze"* at 19 Gerrale Street, the 9 storey high *"The Belgrave"* at 31-33 Gerrale Street and the 13 storey high *"The Cecil Apartments"* at 20 Gerrale Street. Council is also presently considering a proposal for an RFB immediately adjacent to the development site, at 18 Gerrale Street, which is proposed to be 9 storeys high with a roof terrace.

### **9.3 Communal Open Space (COS)**

The proposal will have two separate areas of COS. The principal useable portion ("COS 2" on Drawing No. DA06.44) is located in the north-western corner (*i.e.* rear setback) of the site. This is supplemented by a second area of COS in the north-eastern corner of the site within the street setback ("COS 1" on Drawing No. DA06.44).

The quality of COS 2 in the north-western corner of the site is improved in the amended proposal. It includes meaningful seating areas for groups and individuals, a large covered undercroft area for weather protection and a toilet. Though it is sandwiched between buildings and therefore does not have the most ideal context, this area would nevertheless provide a useable area that is in addition to each apartment's generous balcony sizes and nearby public parks of high amenity, including Cronulla Park (on Cronulla Beach) only 80m to the south of the site. However, a condition of consent has been recommended in Appendix A that limits the use of this area to between 8am and 10pm, 7 days a week (including public holidays, in order to mitigate potential noise impacts to the adjacent building immediately to the west. The condition also requires that prominent signage must remain affixed to all entry points of this communal open space to clearly alert residents and visitors to this restriction.

COS 1 also now has improved usability, including low curved walls along its street edge to define the edge of public and private space in a visually interesting manner, and a security gate at its southern end with stepping stone access leading to multiple timber seats. This area is not expected to be the primary useable area of COS but will supplement COS 2. As such, there are unlikely to be significant adverse privacy impacts between users of this area and the adjacent ground floor terrace of Unit G03. Moreover, there is a substantial landscape visual screen and acoustic buffer between the two areas.

The ADG requires two hours of sunlight to at least 50% of the principal useable part of the COS between 9am and 3pm in mid-winter. The proponent has applied this requirement to COS 1 rather than COS 2. However, that area is not the principal useable portion of COS as it has the least facilities. Rather, the principal useable portion is COS 2, which does not receive at least 2 hours of sunlight to its area as shown within the table on Drawing No. DA06.44. However, COS 1 will nonetheless receive a good level of solar access and remains useable. Furthermore, as mentioned above the site is in close proximity to public parks that receive a high level of sunlight such as Cronulla Park. Therefore the proposal is acceptable on merit given the high amenity of the location.

#### **9.4 Solar Access**

The proposal meets with the ADG design criteria for 2 hours mid-winter solar access to the living rooms of at least 70% of apartments, with 23 out of 32 apartments (72%) complying. However, whilst technically compliant, the sunlight in the living rooms of six apartments (Units G02, 102, 203, 303, 403 & 503) is marginal at 11am as shown on the bottom two rows on Drawing No. DA06.03.1.

The proposal also achieves 2 hours of mid-winter solar access to the balconies (private open space) of 23 of 32 apartments, which equates to a compliant 72%. However, only 17 of these 23 apartments' balconies (*i.e.* 53%) receive "direct beam radiation from the sun" as per the ADG's definition of sunlight. The remaining six apartments (Units 201 – 701) rely on sunlight that will be filtered through translucent glass louvres to a small 4.4m<sup>2</sup> rear balcony accessed from a bedroom and a bathroom. The glass louvres exist for visual privacy reasons. This outcome is not the optimum but nonetheless can be supported on merit as the 4.4m<sup>2</sup> balconies will receive natural daylight and heat transmission in mid-winter.

Furthermore, the ADG design guidance states that "Achieving the design criteria (*of 2 hours direct beam sunlight*) may not be possible on some sites (including) where significant views are oriented away from the desired aspect for direct sunlight". In this situation, the proposal will enjoy significant views generally to the east albeit across a boundary that is angled slightly towards the south-east which is not the optimal aspect for direct sunlight.

The difficulty in achieving optimal solar access is a consequence of the site orientation coupled with a design in which the curvature of the eastern elevation serves to severely limit opportunities for high quality solar access. It must be recognised that an alternative design approach from the onset could have resulted in an improved outcome by orientating more units in a north / north-easterly aspect.

## 9.5 View Loss

The issue of view loss has been raised in 27 of the 62 submissions received. Following is an assessment of the view loss in accordance with the planning principle established by Senior Commissioner Roseth in *Tenacity Consulting v Warringah* [2004] NSWLEC 140. For clarity, the assessment is split up into the five nearby residential apartment buildings that are potentially affected, as shown in Figure 4 below. These are, in no particular order:

- 20 Gerrale Street (“The Cecil Apartments”)
- 19 Gerrale Street (“Breeze”)
- 31 – 33 Gerrale Street (“The Belgrave”)
- 14 Gerrale Street (“Maré Blu”)
- 1 Ocean Grove Avenue

View loss diagrams may also be found on Drawings Nos. DA06.21, DA06.22, DA06.42 and DA06.43. These have been tested for accuracy against photographs taken from the balconies of affected buildings (along with real estate photos available online) and their accuracy may be relied upon.

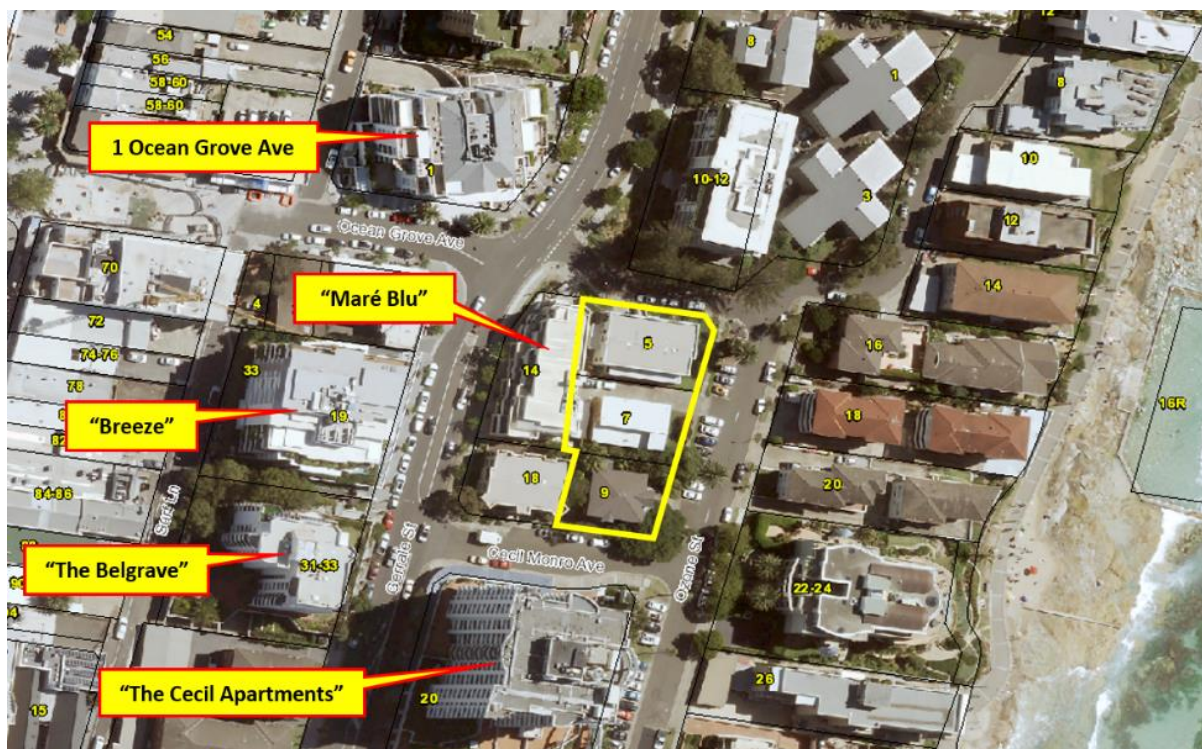


Figure 4 – Locality map showing nearby residential apartment buildings

### ***20 Gerrale Street (“The Cecil Apartments”)***

#### Step 1 - The first step is the assessment of views to be affected

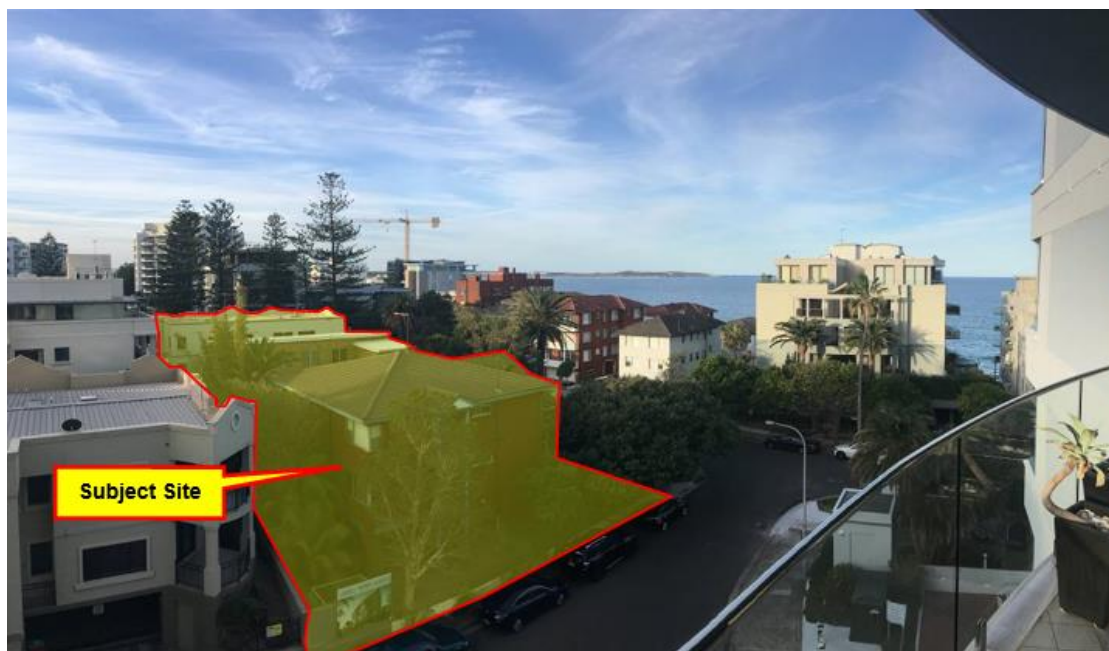
There are 33 apartments situated on Levels 3 – 13 with openings in the northern elevation of The Cecil Apartments. These apartments are aligned in three vertical apartment “stacks”, referred to herein as the “Unit 1 Stack” (north-western corner apartments), “Unit 2 Stack” (central north-facing apartments) and the “Unit 3 Stack” (north-eastern corner apartments).

The Unit 1 Stack and Unit 2 Stack apartments have north-facing balconies and living room windows, whilst the Unit 3 Stack apartments each have an east-facing balcony and north-facing bedroom windows.

The affected views vary depending on vantage point (i.e. “stack” and elevation above ground). Unit 2 and 3 Stack apartments have better views than Unit 1 Stack apartments. Generally speaking, the views to be affected consist of water views of the ocean and the land and water interface, including North Cronulla Beach, Elouera Beach, Wanda Beach and the coastline as it continues away towards Boat Harbour and the Kurnell peninsula.

The water and land and water interface views from the Unit 1 Stack are of relatively high value, increasing to very high value from the Unit 3 Stack.

Refer to Figures 5 – 8 below for photographs from various levels of The Cecil Apartments.



**Figure 5 – Existing views from Unit 402 (i.e. Level 4, Unit 2 Stack) of The Cecil Apartments**

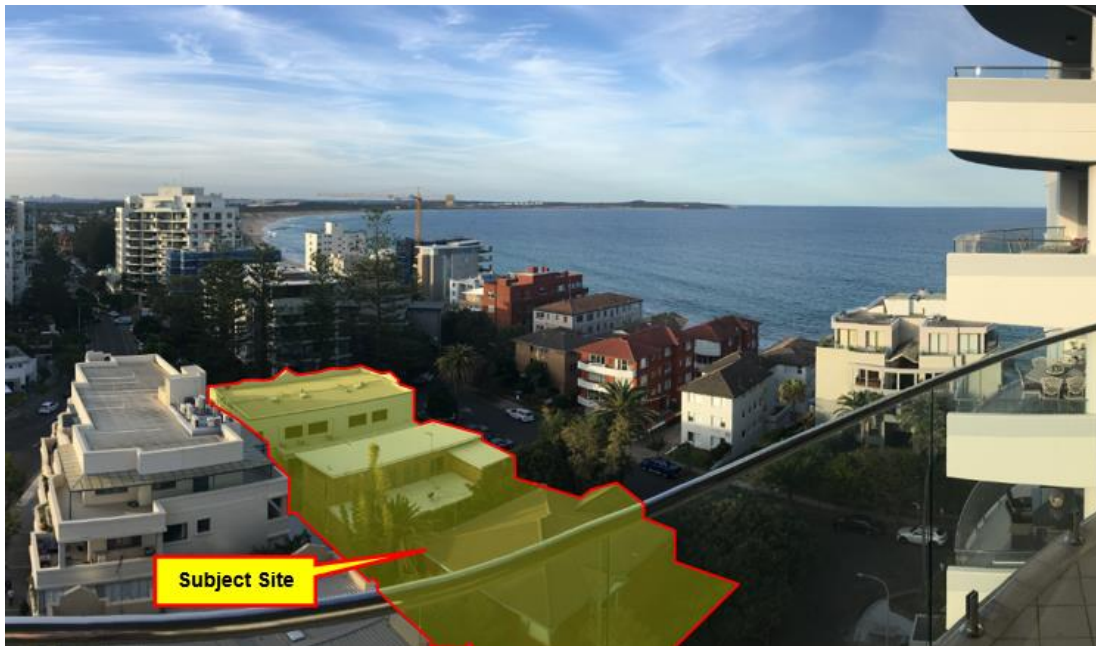




**Figure 6 – Existing views from Unit 601 (i.e. Level 6, Unit 1 Stack) in The Cecil Apartments**

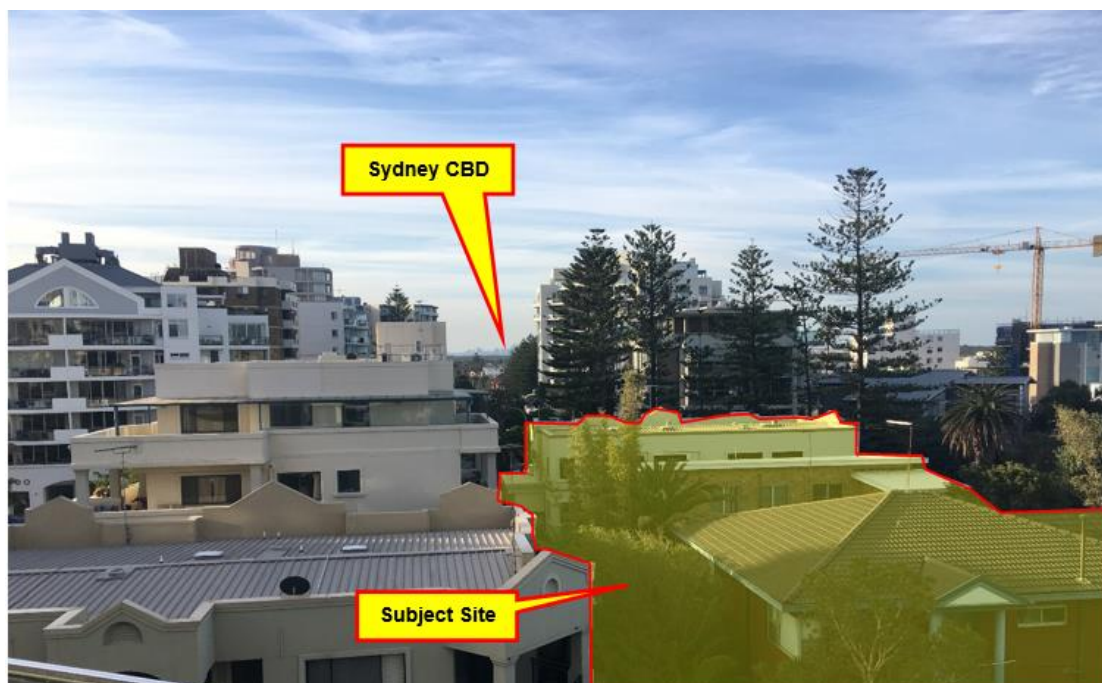


**Figure 7 – Existing views from Unit 801 (i.e. Level 8, Unit 1 Stack) of The Cecil Apartments**



**Figure 8 – Existing views from Unit 1001 (i.e. Level 10, Unit 1 Stack) of The Cecil Apartments**

Apartments in the Unit 2 Stack on Levels 4 – 13 and apartments in the Unit 3 Stack on Levels 11 – 13 presently enjoy distant Sydney CBD skyline views. These are partial views in the case of the former and whole views in the case of the latter, albeit at a considerable distance of over 20 kilometres which somewhat reduces their clarity and therefore value. Upper level apartments in the Unit 1 Stack also enjoy CBD skyline views but these will not be affected.



**Figure 9 – Sydney city skyline views from Unit 402 (i.e. Level 4, Unit 2 Stack) of The Cecil Apartments**

#### Step 2 - The second step is to consider from what part of the property the views are obtained

The views are obtained from all balconies from both sitting and standing positions to the glass balustrade on all balconies. From a standing position, the views are obtained from within the living rooms and kitchens of all affected apartments. However, sitting views are limited at best from within the lower Unit 1 Stack apartments due to the angle at which the views are obtained. Internal sitting views are much improved from Levels 8 – 13.

#### Step 3 - The third step is to assess the extent of the impact

Unit Stack 1: The view loss impact varies from moderate to severe from Levels 3 to 5, as the majority of the Kurnell peninsula land and water interface is lost and about 50% of the water views will remain visible. From Levels 6 – 9, the view loss impact will be severe as the majority of the extensive Kurnell peninsula land and water interface visible will be lost. From about Level 10 and upwards, the majority views to the Kurnell peninsula land and water interface will be maintained over the top of the proposal and therefore the view loss impact will be minor.

Unit Stack 2: The view loss impact will be minor from Levels 3 – 6, with well over 90% of the water views and the Kurnell peninsula land and water interface remaining visible. Distant views of the CBD skyline will be maintained through the western building setback of the proposal. From Levels 7 – 13 which obtain beach views, the views loss impacts will be moderate as those beach views will be obscured by the proposal.

Unit Stack 3: The view loss impact will be negligible from all levels. At worst (Levels 6 to 9), only a small portion of the coastline of North Cronulla to Wanda Beaches will be obscured, with the vast majority of the remainder of the expansive views being retained. The distant CBD views obtained from about Level 10 and up will be maintained over the roof of the proposal.

#### Step 4 - The fourth step is to assess the reasonableness of the proposal that is causing the impact

The proposal is reasonable in the context of the view loss impacts to The Cecil Apartments. The building complies with the 4m southern setback from Cecil Monro Avenue, and the building's non-compliance from Ozone Street will have negligible impact (if none whatsoever) to views from The Cecil due to the angle at which the views are obtained across the subject site. It is unreasonable for residents of the Unit 1 Stack apartments (primarily oriented towards the north) to expect the same level of view retention as from the Unit 2 and 3 Stacks.

### **19 Gerrale Street ("Breeze")**

#### Step 1 - The first step is the assessment of views to be affected

Breeze apartments consists of 10 apartments situated on Levels 3 – 8 that have generally east-facing balconies, living rooms and kitchens. The views affected from Levels 3 – 6 are water views (excluding beaches) and a small portion of the south-eastern coast of the Kurnell peninsula in the distance including Doughboy Head and Potter Point. The views are of moderate to high value but are somewhat compromised by the fact that they are obtained over a relatively high number of other buildings and the land and water interface views are partially obstructed by buildings and trees. In



addition, Levels 7 and 8 enjoy more unimpeded views of the coastline and the Kurnell peninsula in a north-easterly direction, *i.e.* further to the north of the subject site. Refer to Figures 10 – 12 below.



**Figure 10 – Existing views from the kitchen window of Unit 502 (Level 5) in Breeze**



**Figure 11 – Existing views from the primary balcony of Unit 603 (Level 6) in Breeze**



**Figure 12 – Existing views from the primary living room of Unit 603 (Level 6) in Breeze**

Step 2 - The second step is to consider from what part of the property the views are obtained

The views from the “Breeze” apartment building are obtained from the east-facing balconies and internal rooms of 10 apartments situated on Levels 3 – 8. In the case of the apartments at the north-eastern corner of this building (excluding Level 8), the views are obtained over a planter box containing landscaping (which also functions as a solid balustrade) and through a kitchen window. These apartments are primarily oriented towards the north, with their living room doors and balconies facing north. The views are obtained over the site’s front street boundary, two public roads and the rooftops of multiple private properties between Gerrale Street and the coastline in addition to the subject site.

Step 3 - The third step is to assess the extent of the impact

Refer to Drawing No. DA06.42. The view loss impacts to all affected apartments on Levels 3 – 6 of Breeze will be severe. Their residents will lose the majority of their existing water views and land and water interface views, and (in the case of Level 6) will retain only a narrow view corridor to the ocean immediately to each side of the proposal. From Levels 7 and 8, the extent of view loss will be reduced to a moderate impact as those apartments will retain water views (including the land and water of Kurnell peninsula) to the north of the subject site and also water view corridors to the south of the proposal, between the subject site and The Cecil Apartments.

Step 4 - The fourth step is to assess the reasonableness of the proposal that is causing the impact

The expectation to retain views across the subject site from Breeze Apartments is unrealistic on the basis that Breeze is located some 160m from the foreshore, coupled with the fact that the subject site is located within the Cronulla Centre and has been upzoned to a 30m height limit with a 3:1 FSR. Any views across the site from Breeze will likely be obscured from most levels of Breeze by future 8 or 9 storey redevelopment of 14 Gerrale Street or 6 storey redevelopment of the buildings on the eastern side of Ozone Street. The proposal’s side setbacks from both Cecil Monro Avenue and Ocean Grove

Avenue have been increased to 4m (as required by the DCP) so as to maximise the retention of existing views along these public road corridors.

### **31 – 33 Gerrale Street (“The Belgrave”)**

#### Step 1 - The first step is the assessment of views to be affected

The views affected are water views (excluding beaches) and the south-eastern corner of the Kurnell peninsula in the distance including Doughboy Head and Potter Point. Where the views contain the land and water interface (i.e. from the upper levels), the views are of moderate value. The views are of slightly higher value than Breeze as more of the Kurnell Peninsula is visible (land and water interface), at no significantly greater distance.

#### Step 2 - The second step is to consider from what part of the property the views are obtained

The views from “The Belgrave” apartment building are obtained from the east and north-east facing balconies and internal rooms of 16 apartments situated on Levels 3 – 8 (plus rooftop courtyard). They are obtained over its front street boundary, two public roads and the rooftops of multiple private properties between Gerrale Street and the coastline in addition to the subject site.

#### Step 3 - The third step is to assess the extent of the impact

Refer to Drawing No. DA06.43. The view loss impacts to all affected apartments on Levels 3 – 6 of The Belgrave will be severe. Their residents will lose the majority of their existing water views and land and water interface views, and will retain only a narrow view corridor to the ocean between the proposal and The Cecil Apartments, either over or to either side of the seven storey RFB at 22-24 Ozone Street. Levels 7 and 8 are likely to retain some water and land and water interface views further to the north, between the buildings at 1 McDonald Street and 10-12 Gerrale Street (“Drift”).

#### Step 4 - The fourth step is to assess the reasonableness of the proposal that is causing the impact

The expectation to retain views across the subject site from Breeze Apartments is unrealistic on the basis that The Belgrave is also located some 160m from the foreshore, coupled with the fact that the subject site is located within the Cronulla Centre and has been upzoned to a 30m height limit with a 3:1 FSR. To retain the views across the site from The Belgrave would essentially sterilise the subject site to an unreasonable degree. The proposal now complies with the minimum 4m side setbacks required from Cecil Monro Avenue so as to maximise the retention of existing views along this public road corridor.

### **14 Gerrale Street (“Maré Blu”)**

#### Step 1 - The first step is the assessment of views to be affected

The views affected are water views of the ocean, which are of moderate value as they are compromised by the fact that they do not include the foreground of the ocean near the coast, or the land and water interface of any foreshore area of the coastline. Furthermore, they are primarily obtained over the rooftops of existing development on the eastern side of Ozone Street and the subject site.



Step 2 - The second step is to consider from what part of the property the views are obtained

The views from the “Maré Blu” apartment building are obtained from the east-facing balconies and the kitchen, dining and living room windows of six apartments on Levels 1 – 3. In the case of Levels 1 and 2 (4 apartments), these views are obtained along a view corridor between the existing two northernmost buildings on the subject site (5 and 7 Ozone Street). The views from Level 3 (2 apartments) are obtained over the rooftops of these existing buildings and/or along the aforementioned view corridor between them.

Step 3 - The third step is to assess the extent of the impact

The view loss impacts to all six affected apartments on Levels 1 – 3 of Maré Blue will be devastating. Total water view loss will occur from every window and balcony apart from the northernmost apartment on Level 3, which will retain only a very narrow view corridor to the ocean along the northern street setback of the proposal.

Step 4 - The fourth step is to assess the reasonableness of the proposal that is causing the impact

The expectation to retain views from Maré Blu across its rear boundary and over the subject site is unrealistic. The view loss does not occur as a result of any non-compliance with planning controls but rather as a result of the subdivision of this block of land creating a narrow site along its western edge, which is now occupied by Maré Blue. An alternative built form consisting of two towers rather than one would retain the existing limited water views from the balconies of the three rear apartments on Levels 1 – 3 of Mare Blu until such time that the sites on the eastern side of Ozone Street are redeveloped to a height of 6 storeys.

**1 Ocean Grove Avenue**

Step 1 - The first step is the assessment of views to be affected

The views affected are water views of the ocean, which are of moderate value as they are compromised by the fact that they do not include the foreground of the ocean near the coast, or the land and water interface of any foreshore area of the coastline. Furthermore, they are obtained over a considerable number of built developments rather than being a direct relationship to the water.

Step 2 - The second step is to consider from what part of the property the views are obtained

The views from 1 Ocean Grove Avenue are obtained from the south, south-east and east-facing balconies and the south-east facing windows of 11 apartments situated on Levels 3 – 6 of 1 Ocean Grove Avenue. They are obtained over its front street boundary, two public roads and multiple other private properties between Gerrale Street and the coastline.

Step 3 - The third step is to assess the extent of the impact

The view loss impacts to the 11 apartments at 1 Ocean Grove Avenue will be severe as the majority of the existing ocean view will be lost.

#### Step 4 - The fourth step is to assess the reasonableness of the proposal that is causing the impact

The expectation to retain views across the subject site from Breeze Apartments is unrealistic on the basis that 1 Ocean Grove Avenue is located some 140m from the foreshore, coupled with the fact that the subject site is located within the Cronulla Centre and has been upzoned to a 30m height limit with a 3:1 FSR. An alternative built form consisting of two towers rather than one would not retain these views, due to the angle at which the views are obtained across the subject site. To retain the views across the site from 1 Ocean Grove Avenue would essentially sterilise the subject site to an unreasonable degree. The proposal has a generous setback of over 8m from Ozone Street at the north-eastern corner of the site, which will serve to improve retention of views from 1 Ocean Grove Avenue.

### **9.6 Visual Privacy**

The proposal has been designed to provide a high level of visual privacy to both 14-16 Gerrale Street and 18 Gerrale Street. Refer to the detailed analysis in the ADG Compliance Table at Appendix H. On Levels 2 – 7 there is a small 4.4m<sup>2</sup> rear balcony that does not meet the minimum required setback. However, this balcony is screened on each level with angled translucent glass louvres to afford visual privacy to 18 Gerrale Street.

On Levels 4 – 7, there is a bedroom window in each of Units 404, 504, 603 and 703 which has a setback of 6m from the western boundary. This does not technically meet the minimum 9m requirement but does meet the underlying objectives of the design criteria as it consists of fixed, translucent glass and will therefore not cause any adverse visual privacy impacts. Level 8 and the rooftop generally meet the minimum setbacks required apart from the Media Room in Unit 801 (with a setback of 4.4 – 5m). However, this media room has an angled translucent glass louvre privacy screen that will minimise overlooking of 18 Gerrale Street and therefore achieve the underlying visual privacy objectives.

The building readily complies with the separation requirements from The Cecil Apartments and is also offset from The Cecil Apartments due to that building's large setback from Ozone Street. As such, any privacy concerns raised by residents of that building are non-substantive.

### **9.7 Overshadowing**

The proposal complies with relevant overshadowing provisions of the DCP, relating to both the public domain and nearby and adjoining residential properties. The north-south alignment of the building means that shadows cast will not overshadow any single nearby or adjacent building by more than 2 hours between 9am and 3pm. The Cecil Apartments are located directly to the south of the subject site, albeit separated by Cecil Monro Avenue. The apartments on Levels 1 – 4 of the Unit 1 and 2 Stacks of The Cecil Apartments will be overshadowed between 9am and about 10.45am only (as shown on Drawing No. DA06.46). All apartments above Level 4 will be unaffected by the proposal. The three apartments on Levels 1 – 3 of the Unit 3 Stack will receive some shading to their balcony and bedroom window shortly after 9am until about 11am. In any case, the ease with which sunlight access can be protected is inversely proportional to the density of development. At higher densities

sunlight is harder to protect and the claim to retain it is not as strong. The locality is a high density area and therefore the extent of impact is reasonable given the overall scale of the building.

### **9.8 Acid Sulfate Soils**

The subject site is identified as within 'Class – 5' Acid Sulfate Soils (ASS) Maps and therefore the provisions of clause 6.1 of SSLEP 2015 are applicable. The objectives of this clause are to ensure that development does not disturb, expose or drain acid sulfate soils and cause environmental damage.

Within Class 5, the trigger under SSLEP 2015 is works within 500m of adjacent Class 1, 2, 3 or 4 land that is below 5m AHD and by which the watertable is likely to be lowered below 1m AHD on adjacent Class 1, 2, 3 or 4 ASS land.

The elevation of the site as shown on the survey plan is about RL 16m AHD across the site. This has resulted in the site being mapped as Class 5 ASS. However, in practice, ASS conditions will not be encountered at such high elevations. Construction of the basement levels will require excavation to about RL 6.4m AHD (about 9m below existing ground level), which is above the criteria for ASS conditions (*i.e.* 5m AHD under clause 6.1 of SSLEP 2015). Only the two lift shafts will extend to RL 4.9 AHD, which together equate to 0.97% of the total footprint of the basement excavation.

Council's environmental scientist has advised that the development is unlikely to lower the watertable in the adjacent Class 2 land to the south west (Tonkin Oval, 282m from the site) and Class 4 area to the north of the site (between Elouera Road and Prince Street, 240m away), as dewatering of the site will only occur during excavation and construction works. As such, a preliminary site investigation is not required. However, continual dewatering (*i.e.* pump-out) of the basement following construction could potentially lead to the lowering of the watertable in the area surrounding the development including the aforementioned Class 2 and 4 areas. Therefore, Council's environmental scientist has recommended that the basement be "tanked" in order to negate the need for ongoing dewatering of the basement levels and avoid any potential impacts arising from the lowering of groundwater levels in the Class 2 and 4 areas.

In addition, Council's Environmental Scientist has recommended that a precautionary condition should be imposed on the development consent. This precautionary condition is included in the recommended conditions at Appendix A.

### **9.9 Earthworks**

The proposal includes significant bulk excavation and therefore clause 6.2 of SSLEP 2015 requires certain matters to be considered in deciding whether to grant consent. These matters include impacts on drainage; future development; quality and source of fill; effect on adjoining properties; destination of excavated material; likely disturbance of relics; impacts on waterways; catchments and sensitive areas and measures to mitigate impacts. The relevant matters (including impacts to the adjoining basement of The Cecil Apartments) have been considered and the submitted structural engineering and geotechnical advice has been reviewed by Council's assessment team engineer. The proposed excavation is acceptable subject to suitable conditions of consent including that a detailed

geotechnical report must be prepared and submitted (and ensure no structural damage to adjoining properties including the basement of 20 Gerrale Street) and that all works must be undertaken under the supervision of a structural engineer. In addition, a dilapidation report must be prepared for the adjacent buildings at Nos 14, 18 and 20 Gerrale Street.

#### **9.10 Stormwater Management**

Clause 6.4 requires Council to be satisfied of certain matters relating to stormwater management prior to development consent being granted. These matters include maximising permeable surfaces; on-site stormwater retention minimising the impacts on stormwater runoff. These matters have been addressed to Council's satisfaction. Suitable stormwater conditions have been recommended by Council's assessment teams engineer and are included in Appendix A.

#### **9.11 Traffic and Parking**

A traffic and parking impact assessment report was lodged with the DA and reviewed by Council's traffic engineer. The traffic engineer concurred with the report's conclusion that the proposal would not have an adverse effect on any nearby intersections and would have minimal effect on traffic flow efficiency, amenity or road safety and is therefore reasonable.

Council's traffic engineer also noted that *"the site is well served by numerous routed bus services along Gerrale Street and is also within reasonable walking distance of the Cronulla railway station"*. The traffic engineer supported Council's Civil Assets engineer's recommendation that there should be improved provision for pedestrians through new, wider footpaths.

The proposal complies with Council's adopted residential parking rates specified in the SSDCP 2015. As required, each apartment has at least one car parking space and no more than two.

The proposal does not comply with the SSDCP 2015 in relation to visitor parking. The DCP requires no visitor parking, and one space has been provided. However, it is acceptable to provide one space in this instance. Many submissions received in relation to this DA have raised the perceived lack of visitor parking as an issue. However, best practice traffic planning suggests that the provision of visitor parking only attracts a greater volume of vehicles to congested areas. Whilst there is no specific DCP requirement for parking for service or trade vehicles for a residential development, it is recommended by design change condition that two residential spaces be converted for this specific purpose since the proposal remains numerically compliant with the DCP parking requirements. The ongoing policing of this to ensure their availability may be problematic but will primarily be up to Strata to ensure their efficacy.

Waste bins are no longer located on the street in the amended proposal and therefore Council waste trucks will not stand in the public roadway during collection. Rather, they will reverse into the site and stand within the driveway, which has been widened to 6m specifically to accommodate a waste loading area adjacent to the temporary waste bin holding area. This is reinforced by condition of consent. An additional condition has been recommended in Appendix A requiring all loading and unloading of vehicles (including removalists trucks) to also utilise the waste loading area (between

certain hours of the day, but not during Council waste collection hours) so as to further minimise traffic congestion. It is also anticipated that emergency services vehicles could, if street parking is unavailable, utilise the driveway in the event of an emergency since the driveway is 6m wide and can accommodate an HRV waste truck standing during collection whilst still allowing residents' vehicles to pass.

### **9.12 Archaeological Sensitivity**

Council records indicate that the subject site is rated medium in terms of Archaeological Sensitivity. A site inspection did not reveal any evidence of shell material or significant sandstone features within the development zone. The proposal does not warrant an Aboriginal Archaeological Study being undertaken.

## **10.0 DEVELOPMENT CONTRIBUTIONS**

The proposal will introduce additional residents to the area and would therefore generate Section 7.11 Contributions in accordance with Council's adopted Section 94 Development Contribution Plan. These contributions include:

Regional Contribution:	\$ 93,609.60
Local Contribution:	\$ 346,390.40

These contributions are based upon the likelihood that this development will require or increase the demand for regional and local recreational space and infrastructure facilities within the area. It is calculated on the basis of 32 new residential dwellings with a concession of 10 existing dwellings.

## **11.0 DECLARATIONS OF AFFILIATION, GIFTS AND POLITICAL DONATIONS**

Section 10.4 of the Environmental Planning and Assessment Act, 1979 requires the declaration of donations/gifts in excess of \$1000. In addition Council's DA form requires a general declaration of affiliation. In relation to this DA a signed declaration has been made that there is no affiliation.

## **12.0 CONCLUSION**

The proposed development is for the construction of a residential apartment building containing 32 apartments at 5, 7 and 9 Ozone Street, Cronulla. The subject land is located within *Zone B3 Commercial Core* 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.

The amended proposal is now fully compliant with relevant LEP development standards and generally compliant with relevant DCP building controls. In particular, the proposal achieves the minimum street setback requirements of the DCP and as a result will complement the existing streetscape character of the locality. The proposal also generally achieves compliance with relevant design criteria in relation to solar access to living rooms. A variation to solar access to balconies and the principal area of COS is accepted on merit given the constraints of the site, in particular an eastern boundary that is orientated slightly to the south.

The proposal will be appropriately landscaped along the Ozone Street and Ocean Grove Avenue, with three planting pockets measuring 3m x 3m (and 3.4m soil depth) along the Ozone Street frontage for canopy tree planting to mitigate the scale of the building at the street level. A condition of consent has been recommended requiring the deletion of one parking space in Basement 01 and the provision of an additional 3m x 3m planting pocket on the Ocean Grove Avenue frontage. Though the proposal falls slightly short of the ADG-required 7% deep soil zones, these planting pockets will more than adequately compensate for the shortfall.

Submissions were received from 62 households in response to public exhibition. The matters raised in these submissions are detailed at **Appendix F** and include traffic and parking, overdevelopment in Cronulla, bulk and scale, view loss and overshadowing. These matters and others have been addressed in detail both in the appendix and the body of this report.

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 recommended that Development Application No. DA18/0323 be approved subject to the conditions of consent in Appendix A.

#### **RESPONSIBLE OFFICER**

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