

18 November 2022

2210237

John McKee
General Manager, Ku-ring-gai Council
Locked Bay 1006, Gordon NSW 2072

Dear John,

Section 4.56 Modification Application to Development Consent DA 0539/21 161-163, 167 and 169 Fox Valley Road, Wahroonga | Wahroonga Estate Central Church Precinct

This application has been prepared by Ethos Urban on behalf of Capital Corporation Wahroonga pursuant to Section 4.56 of the *Environmental Planning and Assessment Act 1979* (EP&A Act) to modify Development Consent DA0539/21 relating to Precinct B of the Wahroonga Estate at 161-163, 167 and 169 Fox Valley Road, Wahroonga.

The modifications relate to the following amendments to the approved four residential flat buildings:

- Revised façade materials to all buildings;
- Increase in floor to floor heights and overall building height (with the internal ceiling heights retained) for Buildings A, B and C;
- Revised floor plan to Buildings A and B to create additional 3 bedroom apartments and larger 3 bedroom apartments (resulting in a net reduction of eleven (11) apartment units); and
- A reduction in the Stage 1 car park (underneath Buildings A-C) by 3 car parking spaces, with the basement extent remaining the same.

This application identifies the consent, describes the proposed modifications and provides a planning assessment of the relevant matters for consideration contained in section 4.56 of the EP&A Act and is accompanied by:

- Architectural Plans prepared by Group GSA (**Appendix A**)
- Architectural Design Report prepared by Group GSA (**Appendix B**);
- BASIX Certificate prepared by Cundall (**Appendix C**);
- Access Report prepared by ABS (**Appendix D**);
- Landscape Plans prepared by Group GSA (**Appendix E**);
- Traffic Impact Assessment prepared by TTW (**Appendix F**);
- Waste Management Plan prepared by EcCel (**Appendix G**);
- BCA Assessment prepared by Private Certifiers Australia (**Appendix H**);
- Condition A8 Variation Request prepared by Ethos Urban (**Appendix I**);
- Cost Estimate prepared by Newton Fisher (**Appendix J**); and
- Bushfire Advice Letter prepared by ABPP (**Appendix K**).

This statement should be read in conjunction with the Statement of Environmental Effects (SEE) prepared by Ethos Urban dated 29 October 2021.

1.0 Consent proposed to be modified

On 31 March 2010, the (then) Minister for Planning approved a Part 3A Concept Plan for the Wahroonga Estate (MP07_0166) for the proposed expansion of the Sydney Adventist Hospital (the SAN) and a range of residential, commercial, education and religious development. The land to which the Concept Approval (as amended) applies is known as 'Wahroonga Estate' and contains the landholding by the Australasian Conference Association Limited in Wahroonga.

Development consent DA0539/21 was granted by the NSW Land and Environment Court on 15 September 2022 following conciliation conferences between the applicant and Ku-ring-gai Council for the "*demolition of the existing structures, Torrens title subdivision into 3 lots, and construction of four residential flat buildings comprising 177 apartments with basement carparking, new internal road, and associated site works including tree removal*" for 161-163, 167 and 169 Fox Valley Road, Wahroonga (the site).

2.0 The Site

The Wahroonga Estate site is irregular in shape and comprises 62.4ha. It is bounded to the north and west by the LGA boundary for Hornsby Shire Council. To the South the estate is bounded by the Comenarra Parkway, to the east it is bounded by residential dwellings along Campbell Drive and Georgina Close. The Fox Valley Road runs through the site. The site currently accommodates the Sydney Adventist Hospital (the SAN), Seventh-Day Adventist Church offices and associated administrative and training facilities, the Sydney Adventist School (approved under SSD12_5535), a number of established residential dwellings and bushland.

The consent relates to part of the Central Church Precinct (Precinct B), which includes the two detached dwellings located at 161-163 Fox Valley Road, Wahroonga and lots known as 167 and 169 Fox Valley Road, Wahroonga which are occupied by at-grade car parking, the Sydney Adventist School, the community centre, church, bushland and sports facilities.

The site to which the consent applies is legally described as follows:

- Lot 201 DP1234558 (Part);
- Lot 709 DP1222418;
- Lot 708 DP1222418 (Part);
- Lot 707 DP1222418; and
- Lot 706 DP1222418.

3.0 Proposed modifications to the consent

The proposed modifications to the development consent comprises:

- Revised façade materials to all buildings;
- Minor increase in floor to floor heights and overall building height (with the internal ceiling heights retained) for Buildings A, B and C;
- Revised floor plan to Buildings A and B to create additional 3 bedroom apartments and larger 3 bedroom apartments (resulting in a net reduction of 11 apartment units); and
- A reduction in the Stage 1 car park (underneath Buildings A-C) by 3 car parking spaces, with the basement extent remaining the same.

The proposed modifications are described in more detail below.

3.1 Modifications to the development

The following modifications are proposed to the approved development as identified in **Table 1**. The proposed changes to the unit mix are provided in **Table 2**.

Table 1 Level by level description of the proposed modifications

Building element	Description of Proposed Modifications
Buildings A-C Basement	Amendment to the location of the garbage room, lift, lift lobby and fire stairs Removal of 3 car parking spaces, resulting in the following in the basement: <ul style="list-style-type: none"> • 219 residential • 2 car share • 36 visitor (29 on street, 7 in basement) • 9 motorcycle spaces
Building A	
Ground	Amalgamation of apartments AG01, AG02 and AG03 to provide: <ul style="list-style-type: none"> • 1x 4 bedroom apartment; and • 1x 3 bedroom apartment.
Level 1	Amalgamation of apartments A101, A102 and A103 to provide: <ul style="list-style-type: none"> • 2x 3 bedroom apartments.
Level 2	Amalgamation of apartments A201, A203 and A203 to provide: <ul style="list-style-type: none"> • 2x 3 bedroom apartments.
Level 3	Amalgamation of apartments A301, A302 and A303 to provide: <ul style="list-style-type: none"> • 2x 3 bedroom apartments.
Level 4	Amalgamation of apartments A401, A402 and A403 to provide: <ul style="list-style-type: none"> • 2x 3 bedroom apartments.
Level 5	Amalgamation of apartments A501, A502 and A503 to provide: <ul style="list-style-type: none"> • 2x 3 bedroom apartments.
Roof	Amended location of north eastern skylight and roof RLs to roof (RL 182.7), roof plant area and lift overrun (RL 184.00)
All floors	Increase in floor-to-floor heights from 3100mm to 3200mm. Internal ceiling heights remain the same.
Building B	
Ground	Amalgamation of apartments BG01, BG02 and BG06 to provide: <ul style="list-style-type: none"> • 1x 2 bedroom apartment; and • 2x 3 bedroom apartments Internal amendments to internal corridors, servicing and circulation
Level 1	Amalgamation of apartments B101, B102, B106 and B107 to provide: <ul style="list-style-type: none"> • 3x 3 bedroom apartments Internal amendments to internal corridors, servicing and circulation
Level 2	Amalgamation of apartments B201, B202 and B206 and B207 to provide: <ul style="list-style-type: none"> • 3x 3 bedroom apartments Internal amendments to internal corridors, servicing and circulation
Level 3	Amalgamation of apartments B301, B302 and B306 and B307 to provide: <ul style="list-style-type: none"> • 3x 3 bedroom apartments

Building element	Description of Proposed Modifications
	Internal amendments to internal corridors, servicing and circulation
Level 4	Amalgamation of apartments B401, B402, B406 and B407 to provide: <ul style="list-style-type: none"> 3x3 bedroom apartments Internal amendments to internal corridors, servicing and circulation
Level 5	Amalgamation of apartments B501, B502, B506 and B507 to provide: <ul style="list-style-type: none"> 3x3 bedroom apartments Internal amendments to internal corridors, servicing and circulation
Roof	Amended location of northern and north eastern skylight and roof RLs to roof (RL 182.7), roof plant area and lift overrun (RL 184.00)
All floors	Increase in floor-to-floor heights from 3100mm to 3200mm. Internal ceiling heights remain the same.
Building C	
All floors	Increase in floor-to-floor heights from 3100mm to 3200mm. Internal ceiling heights remain the same.
All buildings	
All buildings	Amendments to the façade design

Table 2 Changes in unit mix

	1 Bed		2 Bed		3 bed		4 bed		Total		Difference
	DA	S4.56	DA	S4.56	DA	S4.56	DA	S4.56	DA	S4.56	
Bld A	6	0	27	22	8	12	0	1	41	35	-6
Bld B	6	6	28	13	7	17	0	0	41	36	-5
Bld C	11	11	20	20	30	30	0	0	61	61	-
Bld E	3	3	20	20	11	11	0	0	34	34	-
	26	20 (-6)	95	75 (-20)	56	70 (+14)	0	1 (+1)	177	166	-11

3.2 Modification to conditions

The proposed modifications described above necessitate amendments to the consent conditions which are identified below. Words proposed to be deleted are shown in **~~bold strike through~~** and words to be inserted are shown in standard font.

Table 3 Modification to conditions

Plan no.	Drawn by	Dated
A0000 E Location plan & drawing list A0000 F Location plan & drawing list	Group GSA	21/06/2022 03/11/2022
A0010 G Site plan A0010 H Site plan	Group GSA	21/06/2022 03/11/2022
A2000 E Basement 2 – Building ABC A2000 F Basement 2 – Building ABC	Group GSA	21/06/2022 03/11/2022
A2001 E Basement 1 – Building ABC	Group GSA	21/06/2022

Plan no.	Drawn by	Dated
A2001 F Basement 1 – Building ABC		03/11/2022
A2002A E Basement 2 – Building E A2002A F Basement 2 – Building E	Group GSA	21/06/2022 03/11/2022
A2002B E Basement 1 – Building E A2002B F Basement 1 – Building E	Group GSA	21/06/2022 03/11/2022
A2011 E Building A – Ground A2011 F Building A - Ground	Group GSA	21/06/2022 03/11/2022
A2012 E Building A – LV 1-4 A2012 F Building A – LV 1-4	Group GSA	21/06/2022 03/11/2022
A2013 F Building A – LV 5 A2013 G Building A – LV 5	Group GSA	21/06/2022 03/11/2022
A2014 F Building A – Roof plant A2014 G Building A – Roof plant	Group GSA	21/06/2022 03/11/2022
A2015 F Building A – Roof A2015 G Building A - Roof	Group GSA	21/06/2022 03/11/2022
A2020 D Building B – Ground A2020 E Building B - Ground	Group GSA	21/06/2022 03/11/2022
A2021 D Building B – LV 1-4 A2021 E Building B – LV 1-4	Group GSA	21/06/2022 03/11/2022
A2022 F Building B – LV 5 A2022 G Building B – LV 5	Group GSA	21/06/2022 03/11/2022
A2023 F Building B – Roof plant A2023 G Building B – Roof plant	Group GSA	21/06/2022 03/11/2022
A2024 F Building B – Roof A2024 G Building B – Roof	Group GSA	21/06/2022 03/11/2022
A3000 E Elevation – Building A – North A3000 F Elevation – Building A - North	Group GSA	21/06/2022 03/11/2022
A3001 E Elevation – Building A – East A3001 F Elevation – Building A – East	Group GSA	21/06/2022 03/11/2022
A3002 E Elevation – Building A – South A3002 F Elevation – Building A – South	Group GSA	21/06/2022 03/11/2022

Plan no.	Drawn by	Dated
A3003 F Elevation – Building A – West A3003 G Elevation – Building A – West	Group GSA	21/06/2022 03/11/2022
A3010 E Elevation – Building B – North A3010 F Elevation – Building B – North	Group GSA	21/06/2022 03/11/2022
A3011 E Elevation – Building B – East A3011 F Elevation – Building B – East	Group GSA	21/06/2022 03/11/2022
A3012 E Elevation – Building B – South A3012 F Elevation – Building B – South	Group GSA	21/06/2022 03/11/2022
A3013 E Elevation – Building B – West A3013 F Elevation – Building B – West	Group GSA	21/06/2022 03/11/2022
A3020 E Elevation – Building C – North A3020 F Elevation – Building C – North	Group GSA	21/06/2022 03/11/2022
A3021 F Elevation – Building C – East A3021 G Elevation – Building C – East	Group GSA	21/06/2022 03/11/2022
A3022 E Elevation – Building C – South A3022 G Elevation – Building C – South	Group GSA	21/06/2022 03/11/2022
A3023 E Elevation – Building C – West A3023 F Elevation – Building C – West	Group GSA	21/06/2022 03/11/2022
A3030 E Elevation – Building E – North A3030 F Elevation – Building E – North	Group GSA	21/06/2022 03/11/2022
A3031 E Elevation – Building E – East A3031 F Elevation – Building E – East	Group GSA	21/06/2022 03/11/2022

Plan no.	Drawn by	Dated
A3032 E Elevation – Building E – South A3032 F Elevation – Building E – South	Group GSA	21/06/2022 03/11/2022
A3033 E Elevation – Building E – West A3033 F Elevation – Building E – West	Group GSA	21/06/2022 03/11/2022
A3040 D Elevation – Overall – North A3040 E Elevation – Overall – North	Group GSA	21/06/2022 03/11/2022
A3100 E Section – Overall A3100 F Section – Overall	Group GSA	21/06/2022 03/11/2022
A3101 E Section – Building A A3101 F Section – Building A	Group GSA	21/06/2022 03/11/2022
A3102 E Section – Building B A3102 F Section – Building B	Group GSA	21/06/2022 03/11/2022
A3103 E Section – Building C A3103 F Section – Building C	Group GSA	21/06/2022 03/11/2022
A3104 E Section – Building E A3104 F Section – Building E	Group GSA	21/06/2022 03/11/2022
A3105 E Section 02 – Building E A3105 F Section 02 – Building E	Group GSA	21/06/2022 03/11/2022
A3202 E Section detail – Typical northern façade A3202 F Section detail – Typical northern façade	Group GSA	21/06/2022 03/11/2022
A8300 E Material & finishes A8300 F Material & finishes	Group GSA	21/06/2022 03/11/2022
A9100 D Platinum apartment layout A9100 E Platinum apartment layout	Group GSA	21/06/2022 03/11/2022
A9101 D Platinum apartment layout A9101 E Platinum apartment layout	Group GSA	21/06/2022 03/11/2022
A9102 D Platinum apartment layout A9102 E Platinum apartment layout	Group GSA	21/06/2022 03/11/2022
Landscape Plans		

Plan no.	Drawn by	Dated
L-0001 H Master Plan L-0001 K Master Plan	Group GSA	15/06/2022 02/11/2022
L-0003 H Fence Strategy L-0003 K Fence Strategy	Group GSA	15/06/2022 02/11/2022
L-2003 H General arrangement plan L-2003 K General arrangement plan	Group GSA	15/06/2022 02/11/2022
L-2004 F General arrangement plan L-2004 G General arrangement plan	Group GSA	15/06/2022 02/11/2022
L-3003 F Planting Plan L-3003 G Planting Plan	Group GSA	15/06/2022 02/11/2022
L-3004 F Planting Plan L-3004 G Planting Plan	Group GSA	15/06/2022 02/11/2022
L-3201 H Plant Schedule – Building A B C L-3201 K Plant Schedule – Building A B C	Group GSA	15/06/2022 02/11/2022
L-4001 E Section L-4001 F Section	Group GSA	15/06/2022 02/11/2022
Documents		
Accessibility Report prepared by Accessible Building Solutions, Issue B-C		20 June 2022 1 November 2022
Basix certificate No. 914197M_05 914197M_06		23 June 2022 4 November 2022
Basix certificate No. 1221329M_04 No.1221329M_05		23 June 2022 4 November 2022
Design Verification Statement prepared by Group GSA		23 June 2022 3 November 2022
Traffic and Car Parking Assessment prepared by TTW (Parts 1 and 2 Rev 6-8)		17 June 2022 2 November 2022
Waste Management Plan prepared by EcCell, Version 5 6		27 July 2021 31 October 2022

3.3 Reason for modification

The proposed modifications are required to facilitate design changes to the unit mix of the approved development to facilitate an increase in larger apartments with better internal amenity which result in a reduction of the total number of units provided. These changes to unit mix have come about as a result of COVID-19 and an emerging trend in the real estate market favouring larger apartments both in terms of overall area and additional bedrooms. This proposed modifications result in a net reduction of 11 units provided by the whole development.

The proposed increase in floor to floor heights arise as a result of the detailed design requiring additional ceiling area to provide the required servicing. It is noted that the approved floor to ceiling heights do not change.

The proposed façade changes result in a high quality design comprising of brick, paint finish, louvres and glazing. The design philosophy remains similar than that originally approved, albeit with minor differences to the palette of materials.

4.0 Substantially the same development

Section 4.56(1)(a) of the EP&A Act states that a consent authority may modify a development consent if “it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which consent was originally granted and before that consent as originally granted was modified (if at all)”.

The development, as proposed to be modified, is substantially the same development as that originally approved in that it:

- Continues to provide four residential flat buildings largely within the building envelopes approved under the Concept Approval (as modified),
- Results in greater residential amenity through the provision of larger apartments and a greater number of 3 and 4 bedroom apartments, and results in an overall reduction in the total number of approved apartments;
- Results in a negligible reduction 1m² of Gross Floor Area (GFA) across the four buildings;
- Does not amend the siting of existing approved built form;
- Results in a minor increase (60cm) to the overall building height to Buildings A and B as follows:
 - The roof height increases from RL 182.1 to RL 182.7;
 - The skylight height increases from RL 182.5 to RL 183.1;
 - Plant height increases from RL 183.4 to RL 184.0; and
 - The lift overrun increases from RL 185.1 to RL 185.7.
- Does not increase the extent of the approved basement, with amended parking numbers consistent with the requirements of the Concept Approval (as modified); and
- Results in minor amendments to the façade which continue to provide a high quality design similar to that originally approved.

Amended architectural plans and design report are prepared by Group GSA in **Appendix A and B** respectively.

Table 4 Comparison between the proposed, as modified development and the original approval

Element	Original approval Development consent	Proposed modification	Difference
Building height	Maximum of 185.1 (lift overrun) Roof height of 182.1	Maximum of 185.7 (lift overrun) Roof height of 182.7	+60cm
GFA	17 834m ²	17 833m ²	-1m ²
Unit mix			
1 bed	26	20	-6
2 bed	95	75	-20
3 bed	56	70	+14
4 bed	0	1	+1
Total	177	166	-11
Car parking spaces (Buildings A-C)			
Residential	222	219	
Car share	2	2	
Visitor	36 (7 basement, 29 at grade)	36 (7 basement, 29 at grade)	
Motorcycle	9	9	
Total			-3

Element	Original approval Development consent	Proposed modification	Difference
Car parking spaces (Building E)		No change	N/A
Residential	53		
Care share	0		
Visitor	9		
Motorcycle	6		
Total car parking spaces	322	319	-3

5.0 Planning assessment

Section 4.56(1A) of the EP&A Act requires a consent authority to take into consideration such of the matters referred to in section 4.15(1) as are of relevance to the development the subject of the application and the reasons given by the consent authority for the grant of the original consent.

The planning assessment of the proposed modified development remains generally unchanged with respect to the above matters. The following matters however warrant further assessment.

5.1 Compliance with Relevant Strategic and Statutory Plans and Policies

The DA's consistency and compliance with the relevant strategic and statutory plans and policies is located in Table 4 below.

Schedule 2 of the Environmental Planning and Assessment (Savings, Transitional and Other Provisions) Regulation 2017 (Transitional Regulation 2017) sets out the applicable planning framework where a Part 3A Concept Approval is approved and in force. These provisions allow for development consents approved under Part 3A to remain active and outlines the future approval pathway for detailed applications resulting from Part 3A Concept Approvals.

The following extract is from Schedule 2 Clause 3B of the Transitional Regulation 2017 which applies to development for which a concept plan has been approved under Part 3A, before or after the repeal of Part 3A. The following applies whether or not the project or any stage of the project is or was a transitional Part 3A project:

- if Part 4 applies to the carrying out of the development, the development is taken to be development that may be carried out with development consent under Part 4 (despite anything to the contrary in an environmental planning instrument),
- if Part 5 applies to the carrying out of the development, the development is taken to be development that may be carried out without development consent under Part 4 (despite anything to the contrary in an environmental planning instrument),
- any development standard that is within the terms of the approval of the concept plan has effect,
- 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
- a consent authority may grant consent under Part 4 for the development without complying with any requirement under any environmental planning instrument relating to a master plan,
- the provisions of any environmental planning instrument or any development control plan do not have effect to the extent to which they are inconsistent with the terms of the approval of the concept plan,
- this clause applies instead of section 75P (2), but any direction, order or determination made under section 75P (2) in connection with the concept plan continues to have effect.

Accordingly, any provisions of any environmental planning instrument and the Ku-Ring-Gai Development Control Plan are of no effect to the extent that they are inconsistent with the Concept Approval (as amended). A complete assessment of the proposal against the Concept Approval (as amended) is provided at **Section 5.3** and **Appendix I**.

Plan	Comments
SEPP 65 Design Quality of Residential Apartment Development	A Design Verification Statement prepared by Group GSA that addresses the Design Quality Principles in Schedule 1 of SEPP 65 is included at Appendix B as required by Clause 28 Subclause (2)(b). Consideration of the NSW Apartment Design Guideline is additionally set out at Section 5.3 .
State Environmental Planning Policy (Transport and Infrastructure) 2021	<p>As the development will result in more than 200 car parking spaces, the proposal is traffic generating development for the purpose of clause 2.122 of the Transport and Infrastructure SEPP and referral to Transport for NSW (TfNSW) is required.</p> <p>TfNSW did not raise any issues with respect to car parking numbers in the assessment of the approved DA and the approved and proposed numbers are consistent with the rates in the Concept Approval (as amended). The proposed modifications result in a net reduction of 3 car parking spaces due to the revised unit mix and as such the changes are minor in nature with respect to traffic and parking impacts.</p> <p>As such, we are of the opinion that the modification application does not require referral to TfNSW.</p>
SEPP (BASIX)	A BASIX Report is located at Appendix C as required by Clause (6) Subclause (1)(a). This assessment concludes that the proposal is consistent with the outcomes and provisions of the SEPP.
Local Planning Instruments and Controls	
	<p>Clause 4.3 – Height of Buildings</p> <p>The maximum building height for the site under KLEP 2015 ranges from a 14.5m maximum along the Fox Valley Road frontage to 20.5m metres.</p> <p>The proposed maximum building heights are:</p> <ul style="list-style-type: none"> • Building A: RL 185.7 • Building B: RL 185.7 • Building C: RL 185.7 • Building E: RL 177.8 <p>The proposed maximum building heights comply with the maximum height permitted under the Concept Approval (as amended). As the Concept Approval (as amended) prevails over other environmental planning instruments to the extent of inconsistencies, Clause 4.3 Height of Buildings of the KLEP 2015 does not apply.</p>
	<p>Clause 4.4 – Floor Space Ratio</p> <p>The site has a maximum FSR of 0.24:1 under the KLEP 2015.</p> <p>The Concept Approval (as amended) includes a maximum dwelling limit, within an approved building envelope, rather than a maximum floor space requirement. The proposal seeks approval for 166 apartments (a reduction in 11 apartments) which complies with the maximum dwelling limit of 200.</p> <p>As the Concept Approval (as amended) prevails over other environmental planning instruments the extent of inconsistencies, Clause 4.4 Floor Space Ratio of the KLEP 2015 does not apply.</p>
Ku-ring-gai Council Development Control Plan 2021 (DCP 2021)	The DCP 2021 has been adopted as a policy for the purposes of assessing development applications lodged under KLEP 2015. The DCP established objectives and development parameters, some of which are overridden by the Concept Approval (as amended). Where relevant, the proposal is consistent with the objectives and provisions of the DCP 2021, are set out below.
7B.1 Car Parking Provision	Residential and visitor parking rates are in accordance with the Concept Approval (as modified). Refer to Section 5.2.5 for further information.
7C.4 Apartment Mix	A mix of one (12%), two (44%), three (43%) and four (1%) bedroom apartments have been provided. All apartments have been designed to Silver Level and 15% of apartments are designed to Platinum Level. The Access Report in Appendix D confirms that all proposed apartments are visitable.

Plan	Comments
7C.6 Building Form and Facades	The proposed built form is carefully articulated and modulated and the selection of external materials and finishes reflect aspects of the existing context, while creating a contemporary identity of its own. The proposed facades maintain a similar design philosophy to that originally approved, being brickwork with brickwork detailing. Architectural treatments to all the façades provide visual interest whilst the provision of a variety of materials and finishes to each building ensures a consistent visual presentation across the development. Refer to the Architectural Drawings (Appendix A) and Design Report (Appendix B) for further detail.
7C.8 Top Storey Design and Roof Form	The proposed building envelope and roof form are largely consistent with and utilise the building envelopes set out in the Concept Approval (as modified). The building envelopes approved under the Concept Approval prevail over these DCP provisions.

5.2 Compliance with Concept Approval MP 07_0166

The Concept Approval (as amended) includes conditions relating to the nature of the project, project modifications, ongoing assessment and mitigation measures. Compliance with the relevant matters are discussed below.

5.2.1 Condition A3 - Gross Floor Area

The Concept Approval (as amended) does not limit gross floor area (GFA) for residential uses. The proposal is consistent with this condition.

5.2.2 Condition A4 - Maximum Number of Dwellings

Condition A4 (Dwellings) of the Concept Approval (as amended) specifies the maximum number of dwellings for each precinct. The Central Church precinct (Precinct B) was granted consent for a maximum of 200 residential flat building dwellings and 9 dwelling houses. The development as proposed to be modified includes 166 apartments and zero houses and is consistent with Condition A4. The proposed modifications seek to increase the number of 3 and 4 bedroom apartments provided to better cater for the current market demands whilst generally maintaining the approved building envelopes. This results in a net reduction of 11 apartments provided by the development.

5.2.3 Condition A8 – Building Envelopes

All four buildings are below the maximum height limits established under the Concept Approval (as amended). **Table 5** provides an assessment of the proposed development against the Concept Approval (as amended).

Table 5 *Building Height Assessment*

Building	Proposed Maximum RL	Concept Approval Maximum RL	Compliance
A	185.70	185.70	Y
B	185.70	185.70	Y
C	185.70	185.70	Y
E	177.80	177.80	Y

One minor variation to the concept approval envelope is proposed, which relates to the balustrade of the private open space of Unit C310. This balustrade protrudes above the maximum building height prescribed by Condition A8 of the Concept Plan (as modified). The proposed variation is minor, and results in a single balustrade of 26.8m in length exceeding the approved building envelope height by just 0.75m. The proposed variation does not seek to increase the maximum height of the top floor of the building and is isolated to a single instance involving the balustrade to private open space to Unit 310 in Building C. As such, no habitable built form is located over the height plane. The proposed variation will not result in any adverse impacts with respect to bulk and scale, overshadowing or privacy.

A variation request accompanies this application in **Appendix I** which justifies the variation.

5.2.4 Condition B1 - Urban Design and Streetscape

Condition B1 Urban Design sets out design considerations for future development applications to ensure that an appropriate built form outcome is achieved. The requirements outlined in this condition have been addressed in **Table 6** below.

Table 6 Assessment against Condition B1 Urban Design

Condition B1 Requirement	Response
Future development applications are to be generally consistent with the following indicative elements of the approved Concept Plan, unless it can be satisfactorily demonstrated to the consent authority that a superior built form and/or urban design outcome can be achieved with an alternative layout, while remaining consistent with the terms of approved and intent of the approved Concept Plan:	The detailed design is generally consistent with the Concept Approval (as amended).
(a) Building footprints	The locations of the building footprints for buildings A, B, C and E are not proposed to change.
(b) Asset Protection Zone widths	The proposal does not change the approved Asset Protection Zones widths.
(c) Internal road location	The proposal does not change the internal road locations.
(d) Detention basin location	The proposal does not amend the location of detention basins.
Buildings are to be sited to avoid critically/endangered ecological communities, achieve balance between cut and fill, minimise earthworks, provided adequate solar access and minimise impacts on privacy and overshadowing of residential uses within and surrounding the site, in accordance with SEPP 65 (State Environmental Planning Policy No 65 – Design Quality of Residential Flat Development) and the Residential Flat Design Code.	The locations of the building footprints for buildings A, B, C and E are not proposed to change.
Development site at the intersection of The Comenarra Parkway and Fox Valley Road is to provide activation at ground level to both street frontages, and is to address both street frontages and the intersection, and respond to the intersection's, location forming a gateway to the precinct.	Not applicable.
Buildings with frontage to Fox Valley must have an active street frontage and provide a setback of at least 10 metres from the street front boundary.	The approved siting, height and envelope of Building E fronting Fox Valley Road is not proposed to change.

5.2.5 Condition B9 - Car Parking

Condition B9(1) Car Parking of the Concept Approval (as amended) establishes the car parking rates for the Central Church Precinct (Precinct B). A comparison of the Concept Approval car parking rate requirements and the proposed parking provision is provided at **Table 7** below.

Table 7 Car Parking Requirements

Type	Concept Approval Parking maximum rates as amended	Maximum Provision	Approved Provision (Buildings A-E)
1-bedroom	1 space per dwelling	26	275
2-bedroom	1.25 spaces per dwelling	119	
3- bedroom	2 spaces per dwelling	112	

Type	Concept Approval Parking maximum rates as amended	Maximum Provision	Approved Provision (Buildings A-E)
Total Residential		257	275
Visitors	1 space per 4 dwellings	45	45
Car Share	1 space per 90 dwellings or part thereof	2	2
Total		304	322

Type	Concept Approval Parking maximum rates as amended	Maximum Provision	Proposed Provision (Buildings A-E)	Change compared to approval
1-bedroom	1 space per dwelling	20	272	-6
2-bedroom	1.25 spaces per dwelling	94		-25
3- bedroom	2 spaces per dwelling	140		+28
Total Residential		254	272	-3
Visitors	1 space per 4 dwellings	45	45	-
Car Share	1 space per 90 dwellings or part thereof	2	2	-
Total		301	319	-3

The proposal complies with the Concept Approval (as amended) rates for visitor and car share spaces. The proposal will exceed the Concept Approval (as amended) rates by a small margin of 18 residential parking spaces across the four buildings.

It should be noted that the Concept Approval (as amended) assessed the impacts of providing car parking for 200 residential apartments and found those impacts to be satisfactory. 200 apartments with an equivalent unit mix to the proposed scheme would result in approximately 318 residential car parking spaces and 50 visitor parking spaces, resulting in approximately 368 total spaces.

The proposed number of units (166) and parking spaces (319) are within the approved limits for the precinct and are therefore within the previously acceptable limits for traffic generation. On this basis, a non-compliance with the exact Concept Approval (as amended) rates is considered to be negligible.

Further, the existing approval (DA 0539/21) sought 11 additional units and 3 additional spaces under the same parking rates when compared to this current application. This application exceeded the same amended rates by a similar margin of 20 spaces, the impacts of which were also found to be acceptable.

No change to the access arrangements and driveways are proposed and the basement extent remains the same.

Further discussion in relation to traffic and parking impacts are provided in **Section 5.4** below.

5.3 Residential Amenity

The proposed development has been designed to provide all dwellings with a high quality of internal amenity and outlook as well as considering concerns relating to privacy that arose from community consultation (with particular consideration given to the relationship with the Wahroonga Adventist School). As outlined in the Design Report prepared by Group GSA provided at **Appendix B**, the proposal has been designed in accordance with the nine principles of SEPP 65. An assessment of the proposal's consistency with the objectives and design criteria of the ADG is provided in **Table 8**.

Table 8 Assessment of the proposal's consistency with the objectives of the ADG

Part 3 Siting the Development

3D Communal and Public Open Space*Objective*

An adequate area of communal open space is provided to enhance residential amenity and to provide opportunities for landscaping

Y

Design Criteria

Communal open space has a minimum area equal to 25% of the site

Y
(6,935m², 39.12%)
No change proposed

Developments achieve a minimum of 50% direct sunlight to the principal usable part of the communal open space for a minimum of 2 hours between 9 am and 3 pm on 21 June (mid winter)

Y

3E Deep Soil Zones*Objective*

Deep soil zones provide areas on the site that allow for and support healthy plant and tree growth. They improve residential amenity and promote management of water and air quality.

Y

Design Criteria

Deep soil zones are to meet the following minimum requirements:

Y
No change proposed

Site Area	Minimum Dimensions	Deep Soil Zone (% of site area)
Less than 650m ²	-	7%
650m ² – 1,500m ²	3m	
Greater than 1,500m ²	6m	
Greater than 1,500m ² with significant existing tree cover	6m	

3F Visual Privacy*Objective*

Adequate building separation distances are shared equitably between neighbouring sites, to achieve reasonable levels of external and internal visual privacy.

Y

Design Criteria

Separation between windows and balconies is provided to ensure visual privacy is achieved. Minimum required separation distances from buildings to the side and rear boundaries are as follows:

Y
No change proposed

Building Height	Habitable rooms and balconies	Non-habitable rooms
Up to 12m (4 storeys)	6m	3m
Up to 25m (5-8 storeys)	9m	4.5m
Over 25m (9+ storeys)	12m	6m

3K Bicycle and Car Parking*Objective*

Car Parking is provided based on proximity to public transport in metropolitan Sydney and centres in regional areas

Y

Design Criteria

For development in the following locations:
on sites that are within 800 metres of a railway station or light rail stop in the Sydney Metropolitan Area; or
on land zoned, and sites within 400 metres of land zoned, B3 Commercial Core, B4 Mixed Use or equivalent in a nominated regional centre

Refer discussion at
Section 5.2.5

The minimum car parking requirement for residents and visitors is set out in the Guide to Traffic Generating Developments, or the car parking requirement prescribed by the relevant council, whichever is less.

The car parking needs for a development must be provided off street.

Part 4 Designing the Buildings

4A Solar and Daylight access

Objective

To optimise the number of apartments receiving sunlight to habitable rooms, primary windows and private open space

Design Criteria

Living rooms and private open spaces of at least 70% of apartments in a building receive a minimum of 2 hours direct sunlight between 9 am and 3 pm at mid winter in the Sydney Metropolitan Area and in the Newcastle and Wollongong local government areas.

Y
75%
(originally 74%)

A maximum of 15% of apartments in a building receive no direct sunlight between 9 am and 3 pm at mid winter.

Y
15%

4B Natural Ventilation

Objective

The number of apartments with natural cross ventilation is maximised to create a comfortable indoor environment for residents

Y

Design Criteria

At least 60% of apartments are naturally cross ventilated in the first nine storeys of the building. Apartments at ten storeys or greater are deemed to be cross ventilated only if any enclosure of the balconies at these levels allows adequate natural ventilation and cannot be fully enclosed.

Y
67%
(originally 60%)

Overall depth of a cross-over or cross-through apartment does not exceed 18m, measured glass line to glass line.

N/A

4C Ceiling Height

Objective

Ceiling height achieves sufficient natural ventilation and daylight access

Y

Design Criteria

Measured from finished floor level to finished ceiling level, minimum ceiling heights are:

Y
No change proposed

Minimum ceiling height	
Habitable rooms	2.7m
Non-habitable	2.4m
For 2 storey apartments	2.7m for main living area floor 2.4m for second floor, where its area does not exceed 50% of the apartment area
Attic spaces	1.8m at edge of room with a 30 degree minimum ceiling slope

These minimums do not preclude higher ceilings if desired.

4D Apartment Size and Layout

Objective

The layout of rooms within an apartment is functional, well organised and provides a high standard of amenity

Y

Design Criteria

Apartments are required to have the following minimum internal areas:

Y

Apartment Type	Minimum internal area
Studio	35m ²
1 bedroom	50m ²
2 bedroom	70m ²
3 bedroom	90m ²

Design Criteria	Proposal															
The minimum internal areas include only one bathroom. Additional bathrooms increase the minimum internal area by 5m ² each. A fourth bedroom and further additional bedrooms increase the minimum internal area by 12m ² each.																
Every habitable room must have a window in an external wall with a total minimum glass area of not less than 10% of the floor area of the room. Daylight and air may not be borrowed from other rooms.	Y External glazing to all habitable rooms is greater than the minimum 10% required.															
<i>Objective</i> Environmental performance of the apartment is maximised	Y															
<i>Design Criteria</i> Habitable room depths are limited to a maximum of 2.5 x the ceiling height.	Y															
In open plan layouts (where the living, dining and kitchen are combined) the maximum habitable room depth is 8m from a window.	Y															
<i>Objective</i> Apartment layouts are designed to accommodate a variety of household activities and needs	Y															
<i>Design Criteria</i> Master bedrooms have a minimum area of 10m ² and other bedrooms 9m ² (excluding wardrobe space).	Y															
Bedrooms have a minimum dimension of 3m (excluding wardrobe space).	Y															
Living rooms or combined living/dining rooms have a minimum width of: 3.6m for studio and 1 bedroom apartments 4m for 2 and 3 bedroom apartments	Y															
The width of cross-over or cross-through apartments are at least 4m internally to avoid deep narrow apartment layouts.	Y															
4E Private Open Space and Balconies																
<i>Objectives</i> Apartments provide appropriately sized private open space and balconies to enhance residential amenity	Y															
<i>Design Criteria</i> All apartments are required to have primary balconies as follows:	Y															
<table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th>Dwelling Type</th> <th>Minimum Area</th> <th>Minimum internal area</th> </tr> </thead> <tbody> <tr> <td>Studio apartment</td> <td>4m²</td> <td>-</td> </tr> <tr> <td>1 bedroom apartment</td> <td>8m²</td> <td>2m</td> </tr> <tr> <td>2 bedroom apartment</td> <td>10m²</td> <td>2m</td> </tr> <tr> <td>3+ bedroom apartment</td> <td>12m²</td> <td>2.4m</td> </tr> </tbody> </table>	Dwelling Type	Minimum Area	Minimum internal area	Studio apartment	4m ²	-	1 bedroom apartment	8m ²	2m	2 bedroom apartment	10m ²	2m	3+ bedroom apartment	12m ²	2.4m	
Dwelling Type	Minimum Area	Minimum internal area														
Studio apartment	4m ²	-														
1 bedroom apartment	8m ²	2m														
2 bedroom apartment	10m ²	2m														
3+ bedroom apartment	12m ²	2.4m														
The minimum balcony depth to be counted as contributing to the balcony area is 1m.																
For apartments at ground level or on a podium or similar structure, a private open space is provided instead of a balcony. It must have a minimum area of 15m ² and a minimum depth of 3m.	Y															
4F Common Circulation and Spaces																
<i>Objective</i> Common circulation spaces achieve good amenity and properly service the number of apartments	Y															
<i>Design Criteria</i> The maximum number of apartments off a circulation core on a single level is eight.	Y															
For buildings of 10 storeys and over, the maximum number of apartments sharing a single lift is 40.	N/A															

4G Storage

Objective Y
Adequate, well designed storage is provided in each apartment

Design Criteria Y
In addition to storage in kitchens, bathrooms and bedrooms, the following storage is provided:

Dwelling Type	Minimum Area
Studio apartment	4m ²
1 bedroom apartment	6m ²
2 bedroom apartment	8m ²
3+ bedroom apartment	10m ²

At least 50% of the required storage is to be located within the apartment.

5.4 Landscaping

The approved landscape design is only changed to reflect the amended extents of private open space, which is most apparent at ground level, and an amended design to the approved fencing. The landscape design philosophy remains the same as that originally approved. Revised landscape plans are provided in **Appendix E**.

5.5 Traffic and Parking Impacts

Taylor Thompson Whitting (TTW) has prepared a revised Traffic Impact Assessment (**Appendix F**) which reassesses the proposed development as modified. In consideration of that the changes proposed to the approved development relate to a reduction of 11 residential apartments, reduction of 3 car parking spaces from the basement beneath Building A-C, a change in façade materials, and a change to floor to floor heights, the traffic and parking implications are considered to be minimal.

Furthermore, it should also be noted that no change to the following approved elements is proposed:

- Car share and visitor parking spaces;
- Basement level parking beneath building E;
- The connecting access road from Fox Valley Road to Building A-C; and
- The 29 on-street parking spaces along the approved access road.

Accordingly, in regard to the wider traffic generation implications as already approved, the TTW report confirms the improved intersection network adjacent to the site will have sufficient capacity for the traffic by the project and will operate at a satisfactory Level of Service. Furthermore, with specific reference to the car and bicycle parking provisions, it is also confirmed that the proposed development, as modified, will:

- provide car parking that exceeds the Concept Plan parking rate requirement by 18 spaces;
- all proposed bicycle parking spaces meet the requirements of Section 7B2; and
- the parking facilities, roadways and ramps have been designed in accordance with AS2890.1.

5.6 Operational Waste Management

An updated Operation Waste Management Report has been provided by EcCell (**Appendix G**) to support the proposed modified development.

5.7 Accessibility

Accessible Building Solutions has undertaken a review of the proposed plans as assessed the modified development against the following:

- Access provisions of the BCA;
- Access to Premises Standard;
- AS1428 accessibility standards;

- AS2890.6 for car parking;
- AS17835.12 for lifts;
- SEPP 65 – Part 4Q; and
- Ku-Ring-Gai Council's DCP provisions.

The Accessibility Report is provided at **Appendix D**, and confirms that the proposed development can achieve compliance with the access provisions of the BCA, SEPP 65 and the Liveable Housing Guidelines.

5.8 Building Code of Australia

A BCA statement has been prepared by Private Certifiers Australia in **Appendix G** which confirms that the findings of the original BCA report remain valid and does not require updating in light of the proposed modifications. As such, the proposal remains compliant with the BCA.

5.9 Bushfire

A bushfire advice letter has been prepared by ABPP in **Appendix K** which confirms that the amended façade design do not change the approved bushfire protection measures undertaken in the original DA 0539/21. As a result, the bushfire impacts of the proposed amendments are negligible.

6.0 Conclusion

This modification application seeks the following design amendments to the four residential flat buildings approved in Precinct B of the Wahroonga Estate:

- Revised façade materials to all buildings;
- Increase in floor to floor heights and overall building height (with the internal ceiling heights retained) for Buildings A, B and C;
- Revised floor plan to Buildings A and B to create additional 3 bedroom apartments and larger 3 bedroom apartments; and
- A reduction in the Stage 1 car park (underneath Buildings A-C) by 3 car parking spaces, with the basement extent remaining the same.

The proposed modifications are required to facilitate design changes to the unit mix of the approved development to facilitate an increase in larger apartments with better internal amenity which have resulted from market changes following COVID-19. The design philosophy to the façade remains similar than that originally approved, albeit with minor differences to the palette of materials.

In accordance with section 4.56 of the EP&A Act, Council may modify the consent as:

- the consent, as proposed to be modified, is substantially the same development as that originally approved
- The proposal remains compliant with the Concept Approval (as modified) and consistent with SEPP 65 and the ADG; and
- The proposal presents minimal impacts to its surrounds when compared to the original approval

In light of the above, we therefore recommend that the proposed modification is supported by Council.

We trust that this information is sufficient to enable a prompt assessment of the proposed modification.

Yours sincerely,



Justin Tse
Urbanist
(02) 9956 6962
JTse@ethosurban.com



Michael Oliver
Director
(02) 9956 6962
Moliver@ethosurban.com