

# Statement of Environmental Effects

## Section 4.56 Modification

Address

1 and 1A Balfour Street, Linfield

Prepared on Behalf of

Builtcom Constructions

For the purpose of

Modification of an approved mixed use development

**May 2024**

## Qualifications

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This report is current at the date of the development application only.

This report is to be read in its entirety and in association with other documentation submitted as part of the Development Application.

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## 1. Executive Summary

This Statement of Environmental Effects (SEE) accompanies a Section 4.56 modification application of the *Environmental Planning and Assessment Act 1979* (EP&A Act) to DA0197/18 at 1 and 1A Balfour Street, Lindfield (formerly 376-384 Pacific Highway, 386-390 Pacific Highway and 1 Balfour Street, Lindfield). The development subject to the proposed modification is a mixed use development comprising shop top housing, supermarket, liquor store, coffee shop, offices (first floor of heritage item, car parking and associated works. The site is legally described as Lot 11 DP 1285205.

This SEE and accompanying specialist documentation describes the proposed modifications, provides an outline of the site and context, provides an environmental assessment against the provisions of Section 4.56 and the relevant provisions of the Environmental Planning and Assessment Act 1979 (EP&A Act). In particular, the proposed modifications have been assessed against the relevant provisions of the Ku-ring-gai Local Environmental Plan 2015, State Environmental Planning Policy (Housing) 2021 Chapter 4 Design of residential apartment development, the accompanying Apartment Design Guide and the Ku-ring-gai DCP.

On 29 August 2019, the Land and Environment Court (LEC) granted Approval for '*lot consolidation, demolition of the existing supermarket, partial demolition of heritage item, relocation of Balfour lane and construction of a 6 storey mixed use building comprising shop top housing including 70 apartments, supermarket, liquor store, coffee shop, offices (first floor of heritage item), car parking and associated works*'

This section 4.56 modification application seeks to modify the development consent mainly as follows:

- Modifications to the terrace associated with PH7 comprising the consolidation of the terrace into a single level and the introduction of a spa.
- Reconfigurations to the roof terrace associated with PH6 with no change to the overall area.
- Alterations and additions to the roof plant equipment and associated screening to suit user requirements.
- Height of roof top communal open space raised for waterproofing and soil depths.
- Alterations to the internal plant room and equipment at lower ground 2, lower ground 1 and level 1.
- Introduction of a roof to the stairwell overruns for fire stair 04 and 09.
- Minor changes to the external materials.
- Consolidation of the solar panel array to suit actual area requirements.
- Changes to the signage scheme to suit user requirements.
- Modification to the timing to provide GBCA green star documentation.

Many of the changes proposed are to the internal and roof top plant equipment and associated works. These changes to the servicing result from the progression of the detailed design and the evolution of user requirements particularly for the supermarket tenant. Other design changes have been implemented to improve the waterproofing and potential future maintenance burden including the introduction of roofs for the approved fire stairs.

The proposed modifications do result in a minor increase to the overall building height as most recently modified. As demonstrated in this SEE, the minor increase will have no adverse impacts to surrounding properties in relation to solar access, loss of outlook, privacy or visual bulk from that originally approved by Council.

The proposed modifications result in a development that achieves the objectives of the now E1 Local Centre zone and will contribute a high quality mixed use commercial and shop top housing development.

## 2. Introduction

### 2.1 Approval

This Statement of Environmental Effects (SEE) accompanies a Section 4.56 modification application of the EP&A Act to DA0197/18 being for a mixed-use development comprising shop top housing, supermarket, liquor store, coffee shop, offices (first floor of heritage item), car parking and associated works, at 1 & 1A Balfour St, Lindfield. The site is legally described as Lot 11 DP 1285205

On 29 August 2019, development consent was granted to DA0197/21 by the LEC under Proceedings No. 391613 which primarily consisted of:

*'lot consolidation, demolition of the existing supermarket, partial demolition of heritage item, relocation of Balfour lane and construction of a 6 storey mixed use building comprising shop top housing including 70 apartments, supermarket, liquor store, coffee shop, offices (first floor of heritage item), car parking and associated works'*

The proposed modifications do not result in any change to the number or mix of residential units or number and size of commercial tenancies. The development as proposed to be modified will retain the number of buildings storey's and overall building footprint as originally approved.

### 2.2 Background

#### MOD0117/20

On 29 October 2020, development consent was granted to MOD0117/20 by the Sydney North Planning Panel. The s4.56 modification proposed staging plans to the approved development. In summary, Stage 1 is limited to the construction of the new Balfour Lane and Stage 2 is limited to the removal of the existing Balfour Lane, demolition of the existing on-site structures and the construction of the mixed-use development.

#### MOD0219/21

On 26 July 2022, development consent was granted to MOD0219/21 by the Sydney North Planning Panel. The s4.56 application proposed 4 phases within the Stage 02 staging plan and both internal and external alterations to the approved mixed-use structure. The phases of Stage 02 were approved in Condition 1A as follows:

Stage 02 (Stage 02-04 on approved staging plans)	New mixed use building works
<b>Phase 1</b>	Early Works: <ul style="list-style-type: none"> <li>• Demolition</li> <li>• excavation shoring</li> <li>• services diversion and augmentation</li> <li>• footings/piling</li> </ul>
<b>Phase 2</b>	Structure - lower basement slab and above
<b>Phase 3</b>	Retail (Cold shell only) and retail carparking and facades: <ul style="list-style-type: none"> <li>• Lower Basement 1 and 2</li> <li>• Facades to the whole building</li> </ul>
<b>Phase 4</b>	Residential Apartments: <ul style="list-style-type: none"> <li>• associated carparking</li> <li>• podium and roof top terrace landscaping</li> <li>• public domain</li> <li>• main building surrounds and landscaping</li> </ul>

**MOD0001/23**

On 6 July 2023 development consent was granted to MOD0001/23 by the Sydney North Planning Panel. This modification application involves an amended Construction Traffic Management Plan to address the construction of the development and the restrictions that were imposed on construction vehicle movements.

**MOD0185/22**

Modification application before SNPP Modification to Land and Environment Court consent 391613 of 2018 (DA0197/18) proposing to modify three conditions of consent to reflect amendments to the plans, relevant green star provisions and allow the approved coffee shop to include a greater range of appliances, was approved on 7 July 2023.



## 3. Subject Site

### 3.1 The Locality

The subject site is located 1 and 1A Balfour Street, Linfield, within the Ku-ring-gai Local Government area.

Until recently, the site comprised of six allotments and was known as 376-384 Pacific Highway, 386-390 Pacific Highway and 1 Balfour Street, Lindfield. The site has recently been consolidated into two allotments, described as Lot 11 in DP 1257621 (1 Balfour Street) and Lot 12 in DP 152532 (1A Balfour Street). The development is located wholly within Lot 11 in DP 1257621.

The consolidated area of the development site is 5729m<sup>2</sup> and it is irregular in shape. The area of Balfour Lane is 1384m<sup>2</sup>. The approved development is now under construction as can be seen in Figure 1 and Balfour Lane has been constructed and is operating as a public road.

The former Balfour Lane provided access to Holy Family Catholic Primary School, a church and rear access to the electricity substation (No. 402 Pacific Highway) and No. 406 Pacific Highway, which is occupied by a commercial office building. The relocated Balfour Lane continues to provide access to these properties.

The north-eastern part of the site contains a heritage item which formed part of the approved development.



Figure 1 - Site Location Aerial Photograph (Source: Nearmaps)

## 4. Proposed Modifications

### 4.1 Overview

The Section 4.56 modification application seeks changes to the internal and roof plant equipment progressing from the detailed design and servicing of the development and user requirements. This results in some changes to height of the development and the extent which exceeds the maximum permitted building height. The terrace areas for PH6 and PH7 are to be reconfigured as a result of the changes to the roof plant. Minor changes are also proposed to the façade including the signage strategy. A complete list of the changes are detailed in section 4.2 of this report.

Key Statistics/Features	Approved DA	Modified Development
<b>Building Height</b>	23.16m	22.85m
<b>Number of Storeys</b>	6	6
<b>Number of Apartments</b>	70	59

### 4.2 Schedule of Amendments

The following table provides a summary of the proposed amendments, as sought by the modification application and as detailed in the architectural drawings and schedule of changes annexed to this SEE. Note that the modifications referenced below corresponds with the supporting architectural drawings and comparison drawings. Figures 2 – 5 detail the proposed elevations as compared against those most recently modified.

Level	Description of Modifications
Basement (DA01-1 Rev B)	<ul style="list-style-type: none"> <li>Increased rain water tank footprint</li> <li>Reduced and reconfigured fire tank footprint</li> <li>Relocated retail switch room to Lower Ground 2 – room repurposed for sewer and stormwater pit</li> </ul>
Lower Ground 2 (DA01-2 Rev D)	<ul style="list-style-type: none"> <li>Gas meter relocated</li> <li>Added sprinkler booster to Balfour Lane</li> <li>Relocated retail switch room from Basement level</li> </ul>
Lower Ground 1 (DA01-3 Rev D)	<ul style="list-style-type: none"> <li>Gas meter relocated</li> <li>Cold water pump room added (relocated from basement)</li> <li>Services room added behind Lifts 1 &amp; 2</li> <li>Extended blade wall beyond fire stair for shielding</li> </ul>
Upper Ground (DA01-4 Rev D)	<ul style="list-style-type: none"> <li>Window relocated to Coles back of house area</li> </ul>
Level 1 (DA01-5 Rev D)	<ul style="list-style-type: none"> <li>Adjusted waste room, fan room &amp; retail switch room - cars relocated to suit, no net loss</li> <li>Additional fan room &amp; storage cages relocated to suit, no net loss</li> </ul>
Level 3 (DA01-7 Rev D)	<ul style="list-style-type: none"> <li>Relocated solar panels to Level 4 roof</li> </ul>
Level 4 (DA01-8 Rev D)	<ul style="list-style-type: none"> <li>Increased external terrace area to PH07 and introduction of a spa</li> <li>Added Coles smoke exhaust and enclosure</li> <li>Added roof to Fire Stair 04</li> <li>General communal roof height increased to allow for waterproofing &amp; soil depths</li> <li>Parapet heights increased for fall protection and soil depths</li> <li>Additional glazing to Common Rooms to increase solar access and amenity</li> </ul>
Roof (DA01-9 Rev C)	<ul style="list-style-type: none"> <li>Increased extent of roof and parapet over PH07 external terrace</li> <li>Increased extent of 1800mm high plant louvre enclosure</li> <li>Reconfiguration of PH06 roof terrace, area maintained</li> <li>Low plant elements relocated to southern zone of northern roof</li> </ul>



	<ul style="list-style-type: none"> <li>• Parapet to Pacific Highway frontage increased from RL115.350 to RL116.150</li> <li>• Increased plant zone perimeter to allow for Coles chiller equipment;</li> <li>• Added roof to Fire Stair 09</li> </ul>
Signage (DA01-10 Rev C)	<ul style="list-style-type: none"> <li>• Updated Coles &amp; Liquourland signage to all frontages</li> <li>• Under awning sign added to Balfour Street</li> <li>• Updated signage schedule</li> </ul>
Elevations (DA02-1 Rev C)	<ul style="list-style-type: none"> <li>• Updated Coles signage to Pacific Highway &amp; Balfour Street frontages</li> <li>• Updated roof plant louvre enclosure</li> <li>• Parapet heights increased for fall protection and soil depths</li> <li>• Updated window breakup and stepped sill for buildability and waterproofing</li> </ul>
Elevations (DA02-2 Rev C)	<ul style="list-style-type: none"> <li>• Window to Coles back of house area relocated</li> <li>• Under awning sign added to Balfour Street</li> <li>• Increased lift overrun height</li> <li>• Revised precast façade panel break up</li> <li>• Increased louvre area over residential entry ramp</li> <li>• Updated roof plant louvre enclosure</li> <li>• Parapet heights increased for fall protection and soil depths</li> <li>• Added sprinkler booster to Balfour Lane</li> </ul>



Figure 2 – Proposed East and South Elevations (Source: Rothelowman)



Figure 3 – Approved MOD0219/21 East and South Elevations (Source: Rothelowman)

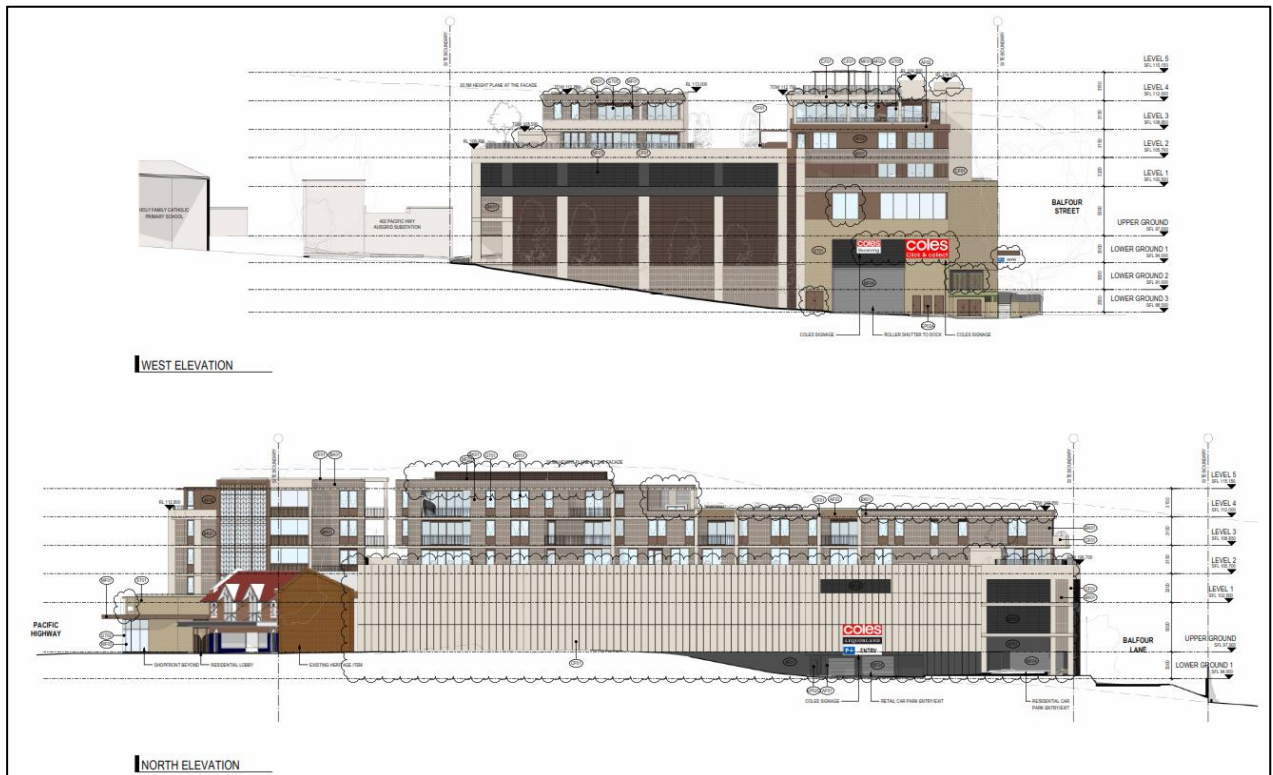


Figure 4 – Proposed West and North Elevations (Source: Rothelowman)

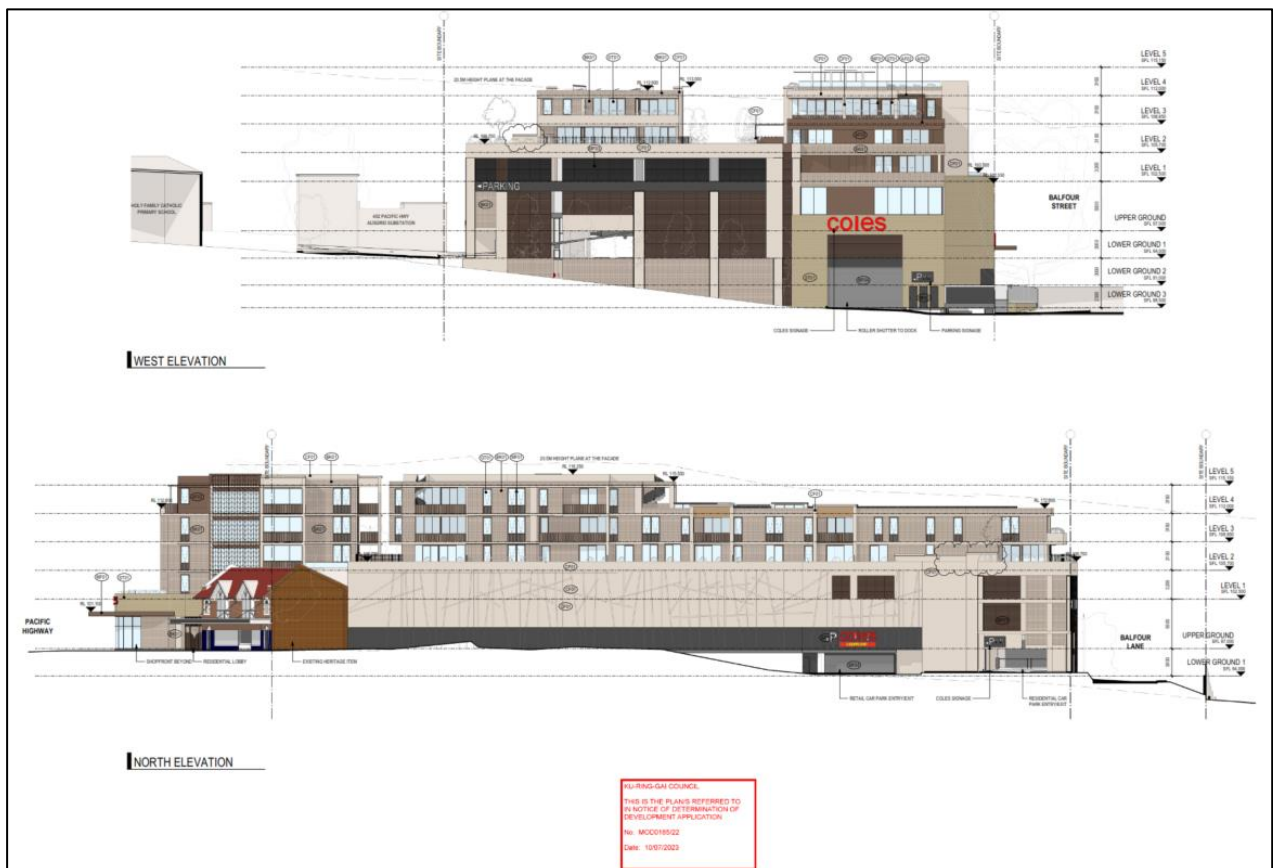


Figure 5 – Approved MOD0185/22 West and North Elevations (Source: Rothelowman)

#### 4.3 Modification to Conditions

##### **Condition 1 Approved plans and documentation**

Condition 1 is proposed to be amended as follows:

...  
*Except where amended by the s4.56 (MOD XXX) plans and documentation endorsed with Council's stamp as listed below and except where amended by other conditions of this Development Consent:*

<b>Section 4.56 (MODXXX) Plans</b>		
<b>Plan no.</b>	<b>Drawn by</b>	<b>Dated</b>
<i>Architectural Plans</i>		
DA-01-1 Basement Plan (Rev B)	Rothelowman	27 November 2023
DA-01-2 Lower Ground 2 (Rev D)	Rothelowman	27 November 2023
DA-01-3 Lower Ground 1 (Rev D)	Rothelowman	27 November 2023
DA-01-5 Level 1 (Rev D)	Rothelowman	27 November 2023
DA-01-7 Level 3 (Rev D)	Rothelowman	27 November 2023
DA-01-8 Level 4 (Rev D)	Rothelowman	27 November 2023
DA-01-9 Roof Plan (Rev C)	Rothelowman	27 November 2023
DA-01-10 Signage (Rev C)	Rothelowman	27 November 2023
DA-02-1 Elevations (Rev C)	Rothelowman	27 November 2023
DA-02-2 Elevations (Rev C)	Rothelowman	27 November 2023
DA-03-1 Sections (Rev C)	Rothelowman	27 November 2023
<i>Landscape Plans</i>		
L-101 Upper Ground Level	Arcadia	5 December 2023
L-102 Level 1 & 2	Arcadia	5 December 2023
L-103 Level 3	Arcadia	5 December 2023
L-104 Level 4	Arcadia	5 December 2023
L-400 Plant Schedule	Arcadia	5 December 2023
L-401 Upper Ground Level	Arcadia	5 December 2023
L-402 Upper Ground Level	Arcadia	5 December 2023
L-403 Upper Ground Level	Arcadia	5 December 2023
L-404 Upper Ground Level	Arcadia	5 December 2023
L-405 Level 1 and 2	Arcadia	5 December 2023
L-406 Level 1 and 2	Arcadia	5 December 2023
L-407 Level 1 and 2	Arcadia	5 December 2023
L-408 Level 1 and 2	Arcadia	5 December 2023
L-409 Level 3	Arcadia	5 December 2023
L-410 Level 3	Arcadia	5 December 2023
L-411 Level 4	Arcadia	5 December 2023
L-412 Level 4	Arcadia	5 December 2023
L-601 Landscape Details	Arcadia	5 December 2023
L-701 Landscape Specification	Arcadia	5 December 2023
<b>Section 4.56 (MODXXX) Documents</b>		<b>Dated</b>
BASIX Certificate 1419881M_04		6 December 2023

**Condition 110 Compliance with BASIX Certificate (Modified – MODXXX)**

Condition 110 is proposed to be amended as follows:

*Prior to the issue of the relevant Occupation Certificate for Stage 02, the Principal Certifier shall be satisfied that all commitments listed in the approved BASIX Certificate (referred to under Condition No 1) have been complied with.*

*Reason: Statutory requirement.*

**Condition 114 green star rating – occupation certificate – Stage 02 (Modified – MODXXX)**

Condition 114 (c) is proposed to be amended as follows. The remainder of the condition is to remain as currently drafted.

**114 green star rating – occupation certificate – Stage 02 (Modified – MOD0219/21, MOD 0185/22, MODXXX)**

...

*c) Within 9 months of the relevant Occupation Certificate for Stage 02 being issued, the Owner is to submit to Council a copy of the GBCA green star - Interiors v1.3 certificate confirming the achievement of a 4 (or greater) green star rating for the supermarket fitout, or equivalent.*



## 5. Assessment Under S4.56

Development Application No.0197/21 was granted approval by the Land and Environment Court (LEC) on 29 August 2019. As a consent granted by the LEC, Section 4.56 of the EP&A Act is the appropriate section to modify the consent:

### **4.56 Modification by consent authorities of consents granted by the Court**

*(cf previous s 96AA)*

*(1) A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the Court and subject to and in accordance with the regulations, modify the development consent if—*

*(a) it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which the consent was originally granted and before that consent as originally granted was modified (if at all), and*

*(b) it has notified the application in accordance with—*

*(i) the regulations, if the regulations so require, and*

*(ii) a development control plan, if the consent authority is a council that has made a development control plan that requires the notification or advertising of applications for modification of a development consent, and*

*(c) it has notified, or made reasonable attempts to notify, each person who made a submission in respect of the relevant development application of the proposed modification by sending written notice to the last address known to the consent authority of the objector or other person, and*

*(d) it has considered any submissions made concerning the proposed modification within any period prescribed by the regulations or provided by the development control plan, as the case may be.*

*(1A) In determining an application for modification of a consent under this section, the consent authority must 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. The consent authority must also take into consideration the reasons given by the consent authority for the grant of the consent that is sought to be modified.*

*(1B) (Repealed)*

*(1C) The modification of a development consent in accordance with this section is taken not to be the granting of development consent under this Part, but a reference in this or any other Act to a development consent includes a reference to a development consent as so modified.*

*(2) After determining an application for modification of a consent under this section, the consent authority must send a notice of its determination to each person who made a submission in respect of the application for modification.*

*(3) The regulations may make provision for or with respect to the following—*

*(a) the period after which a consent authority, that has not determined an application under this section, is taken to have determined the application by refusing consent,*

*(b) the effect of any such deemed determination on the power of a consent authority to determine any such application,*

*(c) the effect of a subsequent determination on the power of a consent authority on any appeal sought under this Act.*

*(4) (Repealed)*

### 5.1 Substantially the Same Development

The Council can be satisfied that the application is substantially the same development as development for which consent was originally granted for the reasons outlined below.

Undertaking both a qualitative and quantitative assessment (as required by relevant case law – see, for example, *Moto Projects (No. 2) Pty Ltd v North Sydney Council* [1999] NSWLEC 280) of the proposed design modifications as compared with the original consent, illustrates that the proposed development is substantially the same development to that which was originally approved, as summarised below.

In support of the application we have submitted both a set of architectural plans that compares the development as proposed to be modified with the original consent (see Appendix 8) and with the consent as previously modified (MOD0219/21, see Appendix 2). We acknowledge and have undertaken the test presented by

s4.56(1)(a), that is to consider whether the development as proposed to be modified is substantially the same as that which was *originally granted*. However, we also find it instructive to detail the modifications in the context of the previous substantive modification of which the modifications sought are more incremental in nature.

- The nature and character of the development remains the same, in that it is a mixed use development with commercial ground floor uses, shop top housing and car parking. There are no changes proposed to the commercial uses or their associated tenancies;
- There is an actual reduction in the number of residential apartments originally approved from 70 apartments to 59 apartments.
- The visual character of the development remains essentially and materially the same, in that:
  - The number of building storeys remains unchanged at 9 storeys;
  - There is no significant change to the building footprint as approved; and
  - The external appearance of the buildings remains essentially the same in terms of finishes, textures, aesthetics / architectural styling and does not result in any additional material impact;
- Changes that have been made to the finishes does include the north elevation. A precast wall colour “CF03” has been introduced which is a darker tone relative to the adjacent wall and slab colour “CF01” providing more depth and differentiation. To a large extent this façade remains largely obscured by the adjoining substation building and established street trees;
- The compatibility of the development within the local site context and its associated amenity impacts to neighbouring development remains essentially the same;
- While the proposed development exceeds the maximum building height development standard there is an actual reduction in the maximum height of the building. As originally approved the development measured 23.16m, an exceedance of the height standard by 2.66m, whereas the development as proposed to be modified measures 22.85m, an exceedance of only 2.35m;
- Expand the open space / terrace area for penthouse PH06 and PH07 at Level 4. Particularly the changes proposed to the terrace associated with PH07 will not result in any significant additional overlooking opportunity to sensitive receivers, overshadowing nor acoustic impacts. It has been offset from the building edge and is adjacent to the electricity substation building;
- Introduce an open space / terrace area associated with the penthouse PH07 at Level 5. This has resulted in a minor increase in the height of the parapet at this location by 0.8m. The changes proposed will not result in any significant additional overlooking opportunity to sensitive receivers, overshadowing nor acoustic impacts.
- Changes to the rooftop terrace garden at Level 4 including an increase to its overall area, reconfiguration, amenities, and landscaping;
- Modifications to the rooftop plant equipment and enclosures will result in a minor overall increase in height however this remains below the building height originally approved. Furthermore, the structures have been designed to minimise their visibility from adjoining properties and the public domain;
- The total landscaped area remains virtually the same. It is proposed to expand the roof top plant equipment on the south eastern corner of the southern building which will result in a minor reduction in roof top landscaping. Whereas landscaping will be increased on the northern building with additional raised planter bed. This is considered to be a nominal overall change;
- Modification of the timing to provide the GBCA green star certification, increasing from the current 3 months, post issue of the relevant Occupation Certificate, to a period of 9 months. This is in line with advice received from our ESD consultant with regard to the time taken with regard to preparation and approval of the required certification;
- The internal amenity of the approved apartments is essentially the same. Moreover, the modified development will result in improved amenity outcomes with the consolidation of the open space area / terrace for unit PH07. The terrace area for unit PH06 will be modified in response to changes to the roof plant equipment, resulting in improved solar access; and
- The development, as modified, continues to achieve compliance with the key ADG amenity and design criteria as demonstrated by the supporting Design Verification Statement.

## 5.2 Notification and Submissions

Any submissions received by Council in response to this s4.56 modification application are required to be considered under Section 4.15 of the Environmental Planning & Assessment Act 1979.

### 5.3 Reasons given for grant of consent

Development Application No.0197/21 was granted approval by the Land and Environment Court (LEC) on 29 August 2019. The reasons for the Court granting consent to the development application included:

- *The proposal is permissible under B2 Local Centres zone under the KLEP (Local Centres) 2012.*
- *Commissioner Walsh stated “the applicant’s written request pursuant to Clause 4.6 of the KLEP (Local Centres) 2012 seeking to justify the breach of the height of buildings development standard pursuant to Clause 4.3 of LEP 2012, dated February, has been considered and I have formed the necessary opinion of satisfaction under Clause 4.6 (4) of the KLEP 2012. Consequently, the Applicant’s written request is well founded and is upheld.”*
- *The development complies with the floor space ratio standard at Clause 4.4 of the KLEP.*
- *Appropriate consideration has been given to earthworks (Clause 6.1 of the KLEP), and stormwater and water sensitive urban design (Clause 6.2 of the KLEP).*
- *The proposal meets the requirements in regard to ground floor development in business zones under Clause 6.6 of the KLEP.*
- *The development complies with the requirements of the minimum street frontages for lots in business zone provision at Clause 6.7 of the KLEP.*
- *The development complies with the provision of SEPP 65- Design Quality of Residential Apartment Development and prepared a design verification statement in satisfaction of clause 50(1AB) of the Environmental Planning and Assessment Regulation 2000.*
- *Pursuant to SEPP (Building Sustainability Index: BASIX) 2004, a BASIX certificate has been submitted. In combination with the conditions of consent, this satisfies the requirements of that instrument.*
- *Consideration has been given as to whether the subject site is contaminated as required by cl 7(1) of State Environmental Planning Policy No 55 - Remediation of Land. A phase 1 Environmental Site Assessment Report prepared by Geo-Logix dated 14 May 2018 in respect of the suitability of the site for the proposed use. This report recommends that further investigatory works to assess the presence or otherwise of contamination should be completed as a pre-construction certificate consent condition. The Commissioner of the Court was satisfied in regard to Clause 7(1) of SEPP 55.*

The proposed modifications remain consistent with the reasons for the granting of consent by the Court. The modifications have been assessed against the matters that are of relevance to the application being considered in section 4.15(1) of the EP&A Act. The proposal is found to remain consistent with the relevant environmental planning instruments, development control plan and policies. Specifically, the proposal remains consistent with the objectives of the now E1 Local Centre zone within the Ku-ring-gai LEP 2015.

We note that the application does seek to modify aspects of the development which will result in changes to the overall height of the development and continues to exceed the maximum permitted building height. This largely relates to alterations to the roof plant equipment, associated screening and roof for the fire stair overruns. There are otherwise minor changes to the height of the rooftop parapets due to an increase in soil depth and fall protection. However, as outlined in section 5.1 there is an overall reduction in the maximum building height as originally approved from 23.16m to 22.85m.

As discussed in section 6.1.1, the proposed building remains appropriate for the site and will not result in unacceptable environmental impacts. The components of the development that exceed the maximum building height are generally offset from the building edge and are unlikely to be viewed from the public domain or from an adjoining property. Shadow diagrams prepared by Rothelowman demonstrate that there is no significant increase in overshadowing to adjoining development. It is considered that the variation to the building height remains well founded.

In support of the application is a detailed Design Verification Statement prepared by Rothelowman that addresses the design as proposed to be amended. The design principles within Chapter 4 Design of residential apartment development of the now Housing SEPP have been considered along with the objectives and relevant design criteria within the Apartment Design Guide.

## 6. Environmental Assessment

In determining an application for modification of a consent under section 4.56, the consent authority must take into consideration the relevant matters referred to in section 4.15 of the Environmental Planning and Assessment (EP & A) Act 1979.

Accordingly, Knight Frank Town Planning has undertaken an assessment of the proposal against the relevant environmental planning legislation and guidelines to identify potential environmental impacts and mitigation measures.

The following sections address the relevant matters for consideration as listed in Section 4.15 of the EP & A Act 1979.

### 6.1 Assessment of Planning Controls

This SEE includes an assessment of the proposal in terms of the matters for consideration as listed under Section 4.15 Evaluation of the EP&A Act and should be read in conjunction with specialist documentation appended to this report, as outlined on the contents page of this report.

The proposed amended modification application has been assessed against the following relevant environmental planning instruments and development control plan:

- State Environmental Planning Policy (Housing) 2021 – Chapter 4;
- State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004;
- State Environmental Planning Policy (Industry and Employment) 2021 – Chapter 3;
- Ku-ring-gai Local Environmental Plan 2015;
- Ku-ring-gai Development Control Plan;

#### 6.1.1 State Environmental Planning Policies

##### *State Environmental Planning Policy (Housing) 2021*

The Housing SEPP (previously SEPP 65) was introduced to improve the design quality of residential apartment development in NSW. The design quality of residential apartment development is of particular significance for environmental planning given the economic, environmental, cultural and social benefits of high-quality design.

Pursuant to clause 147(1) of the Housing SEPP, development consent must not be granted, and a development consent modified, unless the consent authority has considered:

- (a) *the quality of the design of the development, evaluated in accordance with the design principles for residential apartment development set out in Schedule 9,*
- (b) *the Apartment Design Guide,*
- (c) *any advice received from a design review panel within 14 days after the consent authority referred the development application or modification application to the panel.*

Supporting this modification application is an architectural package prepared by Rothelowman, which includes a detailed Design Verification Statement that considers how the modified development has been designed consistent with the design quality principles consistent with the provisions of clause 102 of the Environmental Planning and Assessment Regulation 2021.

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

Refer to the accompanying amended BASIX Certificate contained with **Appendix 7**. This confirms that the development, as proposed to be modified, is capable of complying with BASIX requirements.

##### *State Environmental Planning Policy (Industry and Employment) 2021*

The relevant provisions of Chapter 3 (Advertising and Signage) of the SEPP are applicable, namely those pertaining to 'business identification signage'. An assessment of the signage against the Schedule 5 Assessment Criteria of the SEPP has been carried out in the table below. Otherwise, the proposed amendments to the signage scheme are considered to remain consistent with the aims and objectives of the SEPP as detailed at cl 3.1.

<b>SEPP (Industry and Employment) 2021</b>	
<b>Clause</b>	<b>Response</b>
<p><b>3.6 Granting of consent to signage</b>  <i>A consent authority must not grant development consent to an application to display signage unless the consent authority is satisfied—</i>  <i>(a) that the signage is consistent with the objectives of this Chapter as set out in section 3.1(1)(a), and</i>  <i>(b) that the signage the subject of the application satisfies the assessment criteria specified in Schedule 5.</i></p>	<p>It is considered that the proposed signage is consistent with the objectives of this Chapter and that the signage satisfies the assessment criteria specified in Schedule 5. See assessment below.</p>
<p><b>Schedule 5 Assessment Criteria</b></p> <p><b>1 Character of the area</b></p> <ul style="list-style-type: none"> <li><i>Is the proposal compatible with the existing or desired future character of the area or locality in which it is proposed to be located?</i></li> <li><i>Is the proposal consistent with a particular theme for outdoor advertising in the area or locality?</i></li> </ul> <p><b>2 Special areas</b></p> <ul style="list-style-type: none"> <li><i>Does the proposal detract from the amenity or visual quality of any environmentally sensitive areas, heritage areas, natural or other conservation areas, open space areas, waterways, rural landscapes or residential areas?</i></li> </ul> <p><b>3 Views and vistas</b></p> <ul style="list-style-type: none"> <li><i>Does the proposal obscure or compromise important views?</i></li> <li><i>Does the proposal dominate the skyline and reduce the quality of vistas?</i></li> <li><i>Does the proposal respect the viewing rights of other advertisers?</i></li> </ul>	<p><b>1 Character of the area</b></p> <p>The proposed signage is considered to be compatible with the existing and desired future character of the area. The proposed business identification signage is compatible with the signage theme for the area with a range of on-building and some under awning signage proposed.</p> <p><b>2 Special areas</b></p> <p>The site is located along the Pacific Highway with an adjoining local listed heritage item. Flush on-building signage is proposed at this location at the same location as originally approved with similar dimensions. Colours and signage change have been modified to suit the branding of the tenant. This is considered appropriate and will not further impact upon the heritage item, high density residential land to the north and south nor the Pacific Highway corridor.</p> <p><b>3 Views and vistas</b></p> <p>The proposed signage will not obscure or compromise important views, dominate the skyline or reduce the quality of vistas in the locality. Generally flush on-building signage is proposed. A small under awning sign is proposed along Balfour St which does not project beyond the awning.</p>



<p><b>4 Streetscape, setting or landscape</b></p> <ul style="list-style-type: none"> <li>• <i>Is the scale, proportion and form of the proposal appropriate for the streetscape, setting or landscape?</i></li> <li>• <i>Does the proposal contribute to the visual interest of the streetscape, setting or landscape?</i></li> <li>• <i>Does the proposal reduce clutter by rationalising and simplifying existing advertising?</i></li> <li>• <i>Does the proposal screen unsightliness?</i></li> <li>• <i>Does the proposal protrude above buildings, structures or tree canopies in the area or locality?</i></li> <li>• <i>Does the proposal require ongoing vegetation management?</i></li> </ul> <p><b>5 Site and building</b></p> <ul style="list-style-type: none"> <li>• <i>Is the proposal compatible with the scale, proportion and other characteristics of the site or building, or both, on which the proposed signage is to be located?</i></li> <li>• <i>Does the proposal respect important features of the site or building, or both?</i></li> <li>• <i>Does the proposal show innovation and imagination in its relationship to the site or building, or both?</i></li> </ul> <p><b>6 Associated devices and logos with advertisements and advertising structures</b></p> <ul style="list-style-type: none"> <li>• <i>Have any safety devices, platforms, lighting devices or logos been designed as an integral part of the signage or structure on which it is to be displayed?</i></li> </ul> <p><b>7 Illumination</b></p> <ul style="list-style-type: none"> <li>• <i>Would illumination result in unacceptable glare?</i></li> <li>• <i>Would illumination affect safety for pedestrians, vehicles or aircraft?</i></li> <li>• <i>Would illumination detract from the amenity of any residence or other form of accommodation?</i></li> <li>• <i>Can the intensity of the illumination be adjusted, if necessary?</i></li> <li>• <i>Is the illumination subject to a curfew?</i></li> </ul> <p><b>8 Safety</b></p>	<p><b>4 Streetscape, setting or landscape</b></p> <p>The amended signage scheme remains of an appropriate scale, proportion and form having regard to the local context and setting. Some additional signage is proposed along the south elevation which will improve communication to users of the site including both vehicles and pedestrians. Signage is well integrated into the building design and responds well to the architectural cues. The signage remains appropriate for local centre of this scale.</p> <p><b>5 Site and building</b></p> <p>The proposal is considered to be compatible with the scale, proportion and other characteristics of the site. The signage has due regard for the architecture of the building and its architectural elements. The amended scheme will introduce some signage that was not contemplated by the original approval. This includes an under awning sign on the south elevation and a new 'Coles Click &amp; Collect' sign at the vehicular access point.</p> <p><b>6 Associated devices and logos with advertisements and advertising structures</b></p> <p>N/A – No advertisement or advertising structure proposed</p> <p><b>7 Illumination</b></p> <p>Illuminated signage was proposed as part of the original approval. Signage on the southern elevation will introduce modified signage which is to be illuminated. The more substantive Sign 4 will have the letters of the sign illuminated only. The proposed signage is capable of complying with AS 4282-2019 Control of the Obtrusive Effects of Outdoor Lighting and will not detract from the amenity of the nearby R4 High Density Residential zone.</p> <p><b>8 Safety</b></p>
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<ul style="list-style-type: none"> <li>• Would the proposal reduce the safety for any public road?</li> <li>• Would the proposal reduce the safety for pedestrians or bicyclists?</li> <li>• Would the proposal reduce the safety for pedestrians, particularly children, by obscuring sightlines from public areas?</li> </ul>	<p>The proposed signage will not reduce public safety for any public road, pedestrians or bicyclists by virtue of its siting and location relative to nearby driveways, roads, footpath areas and traffic signals. The signage in certain locations will provide clear communication for both vehicles and pedestrians and will generally improve navigation to the site.</p>
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### Ku-ring-gai Local Environmental Plan 2015

The Ku-ring-gai Local Environmental Plan 2015 (the LEP) is the relevant Environmental Planning Instrument that applies to the subject modified development proposal. The proposed modified development is assessed in detail against the provisions of the LEP, as relevant to the scope of modifications, within the table below.

Ku-ring-gai LEP 2015			
Clause	Provision	Response	Complies
<b>4.3 Height of buildings</b> Maximum height of building = 20.5m	<i>(1) The objectives of this clause are as follows—  (a) to ensure that the height of buildings is appropriate for the scale of the different centres within the hierarchy of Ku-ring-gai centres,  (b) to establish a transition in scale between the centres and the adjoining lower density residential and open space zones to protect local amenity,  (c) to enable development with a built form that is compatible with the size of the land to be developed.</i>	<p>The building was approved with a maximum building height of 23.16m which did not comply with the maximum permitted building height.</p> <p>The modification would result in the building having a maximum building height of 22.85m, which is less than the original approval height of 23.16m.</p>	No
<b>4.4 - Floor space ratio (FSR)</b> Maximum total FSR - 2.5:1 Maximum commercial premises FSR Area 4– 1.2:1	<i>(1) The objectives of this clause are as follows—  (a) to enable development with a built form and density that is compatible with the size of the land to be developed, its environmental constraints and its contextual relationship,  (b) to provide for floor space ratios compatible with a range of uses,  (c) to ensure that development density is appropriate for the scale of the different centres within Ku-ring-gai,  (d) to ensure that development density provides a balanced mix of uses in buildings in the employment and mixed use zones.</i>	<p>As approved the development had a total FSR of 1.89:1 with a commercial FSR of 0.87:1.</p> <p>The development does seek any change to the gross floor area of the development and therefore the FSR of the development will not change.</p>	Yes
<b>5.10 – Heritage Conservation</b>	<i>(1) Objectives The objectives of this clause are as follows—  (a) to conserve the environmental heritage of Ku-ring-gai,  (b) to conserve the heritage significance of heritage items and heritage conservation areas, including associated fabric, settings and views,</i>	<p>The site contains a local listed heritage item described as 'Commercial building-Churchers Restaurant' Item No.148. The heritage item formed part of the approved development resulting in works to the building and the</p>	Yes

Ku-ring-gai LEP 2015			
Clause	Provision	Response	Complies
	<i>(c) to conserve archaeological sites, (d) to conserve Aboriginal objects and Aboriginal places of heritage significance.</i>	<p>use of the first floor as office premises. No changes to the heritage item are proposed.</p> <p>There will be minor changes to the façade of the mixed use building including the break up of the pre-cast concrete panel on the north elevation. It is considered that the modifications sought are minor in nature and will not further impact upon the significance of the heritage item.</p>	

### Building Height

Clause 4.3 of the Ku-ring-gai Local Environmental Plans 2015 provides for a maximum building height for the site of 20.5m.

This Section 4.56 modification application seeks to vary the height of buildings development standard by a maximum of 2.35m or 11.46%. The proposed modification will result in a maximum building height of 22.85m. The development as approved provided a variation to the height of building development standard with a maximum building height of 23.16m or a 13% variation from the maximum permitted height of 20.5m.

The modification application seeks to vary the approved building height with a maximum building height of 22.85m, which is an actual reduction from the development originally approved. **Figure 6** demonstrates the overall encroachment into the maximum permitted building height, not the maximum height that was approved. The greatest encroachment is by the smoke exhaust enclosure, followed by the proposed roof to fire stairwell 04, both located at the south-western corner of the building, and the plant enclosure at the south-eastern corner of the building. The proposed encroachments largely relate to servicing requirements for the building and user requirements, details of which are provided in the table below.

Component	Proposed RL	Height Exceedance
1. Parapet Heights	112.75 RL	0.93m
2. Roof to Fire Stair 04	114.05 RL	2.25m
3. Smoke Exhaust Enclosure	114.3 RL	2.35m
4. Roof and Parapet over Ph07	115.55 RL	0.86m
5. Common Room Heights	115.45 RL	0.77m
6. Roof Stair 09	117.7 RL	1.47m
7. Plant Enclosure for Chiller Equipment	117.05 RL	1.98m



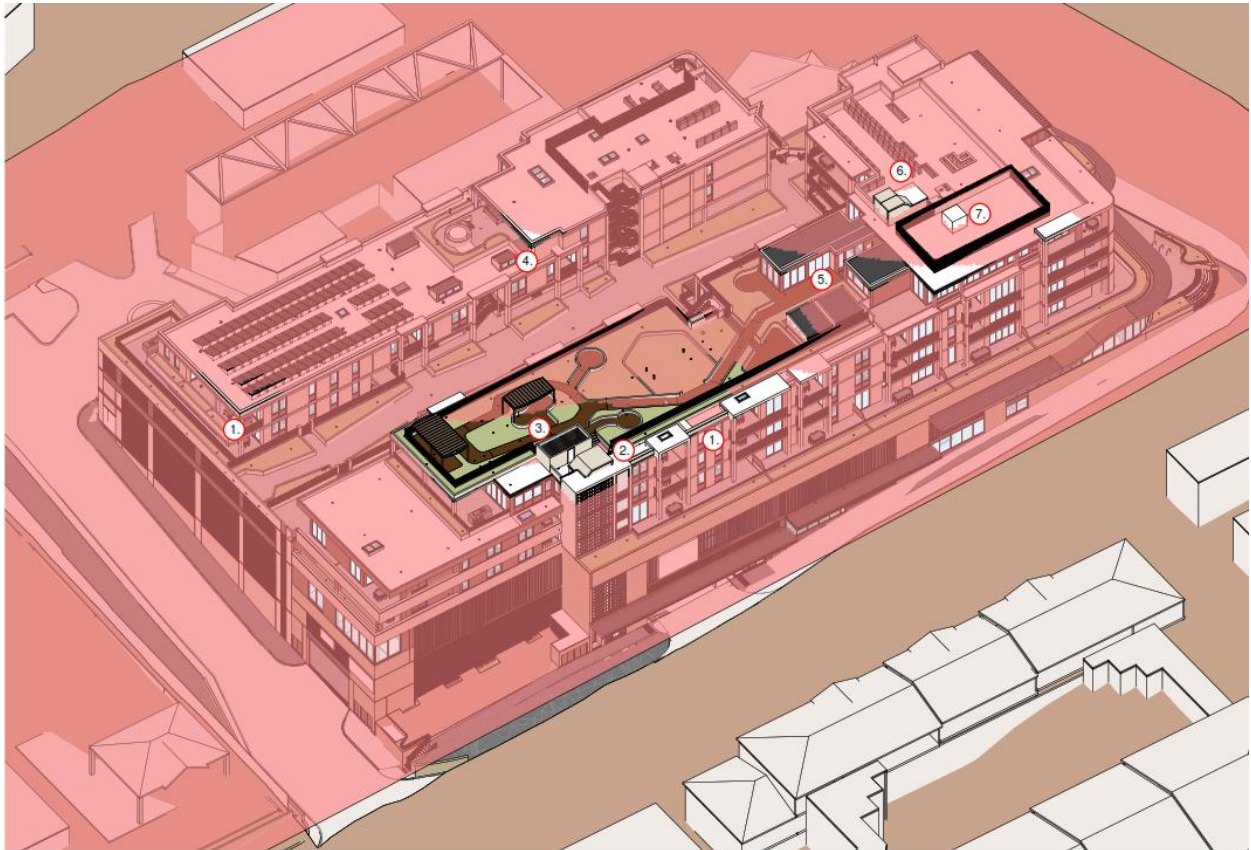


Figure 6 – Proposed Height Blanket (Source: Rothelowman)

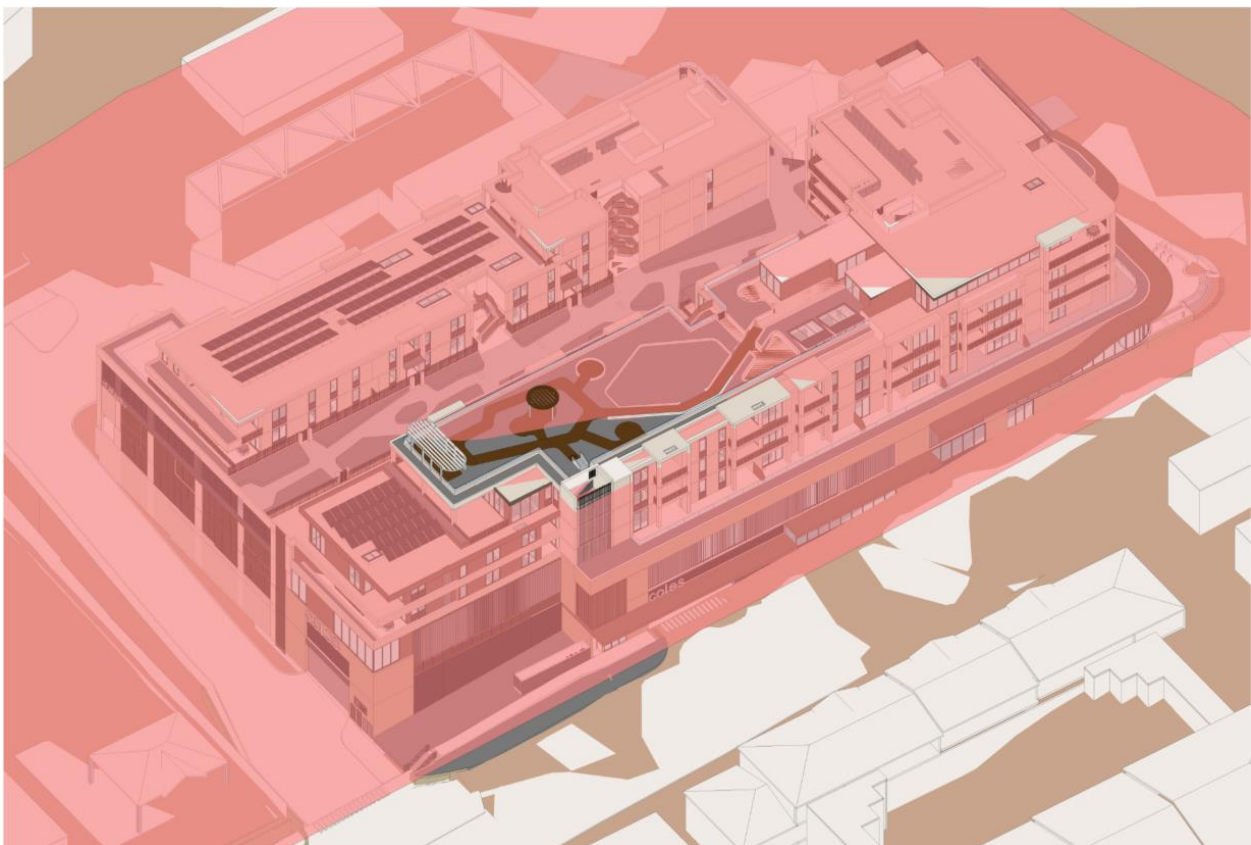


Figure 7 – Approved Height Blanket MOD 0219/21 (Source: Rothelowman)

This SEE demonstrates that strict compliance with the maximum height of building control of 20.5m is unreasonable and/or unnecessary in the circumstance where the proposed development has been designed to be compatible with the height, bulk and scale of the emerging and desired future character of the locality.

The nature and scale of the encroachment as originally approved related to areas along the south-eastern extent of the building that exceeded the height standard by up to 2.66m. The encroachments comprised edge planters, residential cores, lift over-runs and acoustic louvres.

The proposed modifications to the building result largely from the introduction of stairwell overruns, which benefit approved stairwells, and additional plant enclosure and equipment. The proposed height encroachment being less than that originally approved by the LEC, is considered to be minor in nature and with limited opportunity to view from the public domain or adjoining properties – see **Figure 6**. Structures are generally offset from the building edge and where feasible resulting in limited external impacts on the adjoining and surrounding properties, in terms of solar access, views or visual privacy.

Strict compliance with the height of buildings development standard remains unreasonable or unnecessary and compliance with the development standard would achieve no greater planning outcome. Overall, it is considered that there are sufficient environmental planning grounds to justify the proposed variation as follows:

- The height of the development is appropriate with regard to the scale of the centre.
- Balfour Lane to the west of the development allows for an appropriate transition in bulk to the lower density residential zones beyond. Land to the south across Balfour St comprises a high-density residential zone.
- The uppermost built form and structures are setback from the building edge and adjoining properties, such that there would be limited opportunity to view from the public domain or from adjoining properties.
- The proposed exceedances of the maximum permitted building height include a plant enclosure for chiller equipment that will benefit the supermarket. While the structure exceeds the permitted building height it has been further setback from the buildings edge minimising the opportunity to discern the structure from the public domain or an adjoining property. In this way it recedes into the building envelope of the approved development.
- Stairwell overruns to fire stair 04 and 09 have been introduced to benefit the approved stairwells. This has been included to mitigate against the ingress of water and remove the need for an engineering solution. The overrun is substantially setback from the building edge and any impacts will be internalised.
- The amended design introduces a smoke exhaust and enclosure on the rooftop to benefit the supermarket tenancy. Exceedances from the building height were originally considered at this location and the proposed structure has been generally offset from the building edge. There may be some potential to view the exceedance from the west and south however this will be limited. Given the scale of the structure and its relationship with the building architecture the overall impact will be minor.
- In support of the application are shadow diagrams prepared by Rothelowman which considers the impact of overshadowing from the development as previously modified and as proposed to be modified – see **Figures 8 and 9**. This demonstrates that while the development will result in a minor increase in overshadowing from the previous modification it remains less overall than originally approved. Those residential uses to the south retain adequate solar access with Balfour Street acting as a buffer.
- With a minor increase in height there will be no material change to the views enjoyed from the adjoining properties than as originally approved.
- It has been demonstrated that there will be no unacceptable environmental impacts arising from the proposed variations to the height of buildings development standard. The shadow diagrams demonstrate that the extent of overshadowing is less than that generated by the original approval. The supporting plans demonstrate that the proposed height variations will not result in any significant visual amenity impacts on the streetscape or neighbouring properties.

The proposed modifications result in the orderly and economic development of the site and continues to achieve a high-quality urban design outcome.



Notwithstanding the numerical non-compliance, the proposed development achieves the objectives of the height of buildings development standard and the objectives of the E1 Local Centre zone. The proposal remains compatible with the existing and desired built context, does not result in significant external amenity impacts on adjoining properties and therefore demonstrates that there is no public benefit to be achieved in maintaining the development standard.

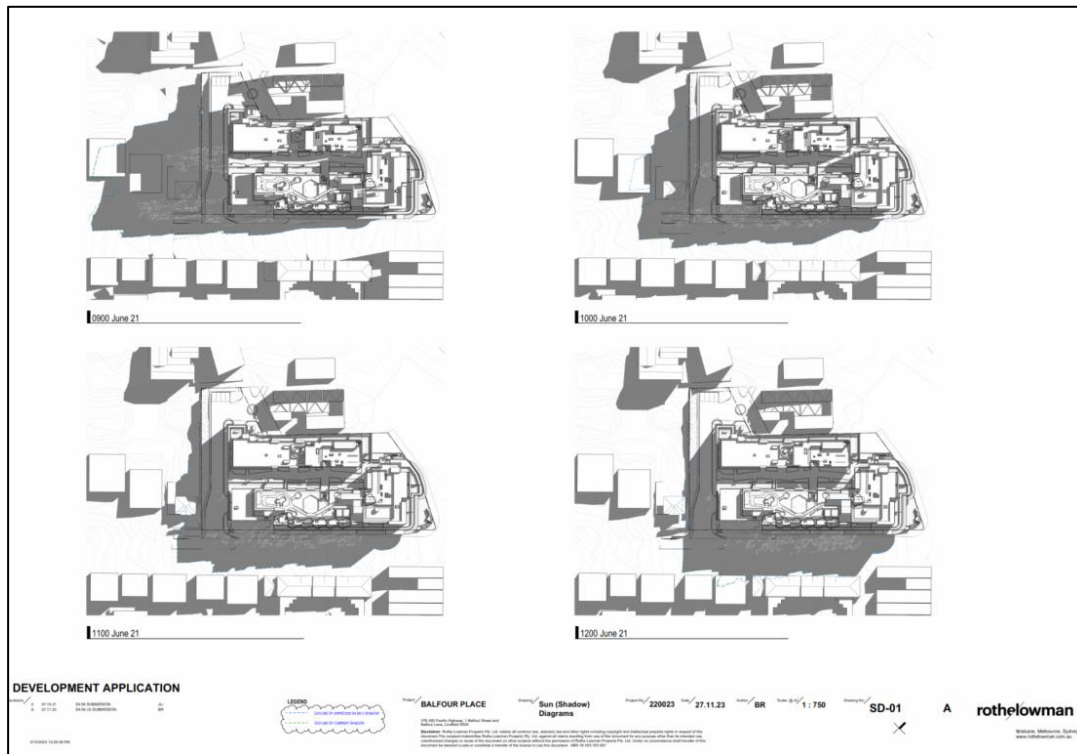


Figure 8 - Shadow Diagram Approved & Proposed (Source: Rothelowman)



Figure 9 - Shadow Diagram Approved & Proposed (Source: Rothelowman)

### *The Ku-ring-gai DCP*

The relevant parts of the Ku-ring-gai DCP 2022 (DCP) that the modification application has been assessed against are set out and addressed below.

Ku-ring-gai DCP		
Clause	Provision	Response
<b>Part 8 - Mixed use development</b>		
8A.3 - Building Setbacks	<b>Street setbacks</b> 1 In B1, B2 and B4 zones, mixed use buildings are required to be built to the street alignment with a zero setback, except when variations are stated in Part 14 Urban Precincts and Sites. These variations facilitate building articulation, modulation, the provision of landscaped setbacks and the development of appropriate building forms. Setbacks within B1 zones warrant merit consideration.	The development maintains the street setbacks as originally approved.
	<b>Side and rear setbacks</b> 3 In B1, B2 and B4 zones, mixed use buildings are generally not required to provide side and rear setbacks, except where variations are required as specified in Part 14 Urban Precincts and Sites of this DCP. These variations are designed to facilitate building articulation, modulation and the provision of new or widened streets and throughsite pedestrian walkways.	The development maintains the side and rear setback as approved.
8B.3 Bicycle Parking and Support Facilities Provision	1 Secure bicycle parking spaces and storage are to be provided on site at the following rates for retail and commercial uses: i) 1 bicycle locker per 600m <sup>2</sup> of GFA for staff; and ii) 1 bicycle parking space (in the form of a bicycle rail) per 2500m <sup>2</sup> GFA for visitors.  2 Secure bicycle parking spaces and storage are to be provided on site at the following rates for residential component: i) 1 bicycle parking space per 5 units or part thereof for residents within the residential car park area; and ii) 1 bicycle parking space per 10 units (in the form of a bicycle rail) for visitors in the visitor car park area.  3 Retail or commercial development is to provide employees with 1 shower cubicle with ancillary change rooms per 10 bicycle spaces, including a minimum of 1 shower each for both females and males. Signs to showers are to be provided at bicycle parking locations.	As approved the development provided for bicycle parking in excess of Council requirements with 38 spaces provided (as modified) whereas only 18 spaces are generated by the development (12 for residents and 6 for visitors). The proposal now provides for 41 spaces.

Ku-ring-gai DCP		
Clause	Provision	Response
	4 All on-site bicycle parking spaces and storage are to be designed to AS2890.3	
8C.8 Communal Open Space	<p><b>Residential Components</b></p> <p>8 A minimum of 10m<sup>2</sup> of communal open space per dwelling is to be provided. This can be provided on the podium or roof area. Note: Roof top communal open space(s) may be required in circumstances where a ground level or podium level communal open space cannot meet performance requirements.</p> <p>9 At least one single area of Primary communal open space for the residents is to be provided with the following requirements:</p> <ul style="list-style-type: none"> <li>i) a minimum area of 80m<sup>2</sup>; and</li> <li>ii) a minimum dimension of 8m; and</li> <li>iii) access to direct sunlight for at least two hours between 9am and 3pm on 21st June, to at least 50% of the space, and</li> <li>iv) directly accessible from the internal common circulation/lobby area.</li> </ul>	<p>The proposed modifications will result in a minor decrease in the amount of communal open space at the roof top level owing to the change to the plant equipment. This is limited to the introduction of the proposed smoke exhaust at the south western part of the building. The amount of communal open space comprises circa 650m<sup>2</sup> of open rooftop area and a 45.8m<sup>2</sup> common room.</p> <p>Whereas Council's DCP only requires 590m<sup>2</sup> of communal open space.</p> <p>In support of the application are amended landscape plans which detail the proposed treatment to the communal open space among other landscaped areas.</p> <p>The communal open space is considered to remain of a high quality and continues to comply with Council's controls and ADG requirements.</p>
8C.14 Visual Privacy	<p><b>Residential Component</b></p> <p>5 Buildings are to be designed to ensure privacy for residents of the development and of the neighbouring site as stipulated in SEPP 65 Apartment Design Guide Part 3F - Visual Privacy</p>	<p>Privacy for residents of the development and of nearby properties will be maintained.</p> <p>The proposed reconfiguration and consolidation of the terrace for PH07 to one level maintains a substantive setback from the building edge. While an elevated spa is proposed to benefit the occupants of PH07, it is considered that the potential for overlooking of adjoining properties is nominal.</p> <p>Minor adjustments are proposed to the terrace for PH06 which result in the terrace shifting further north to the building edge. Given the adjoining property is utilised for the purpose of an electricity substation it is considered that there will be no change to the privacy impacts at this elevation.</p>
8C.15 Acoustic Privacy	<p>5 Noise reduction measures to achieve these outcomes may include, but are not limited to the following design criteria:</p> <ul style="list-style-type: none"> <li>i) incorporating appropriate noise shielding or attenuation techniques into the design</li> </ul>	<p>The terrace for unit PH07 will be modified to consolidate into one level rather than being spread across two levels. A spa has also been introduced for private use.</p>

Ku-ring-gai DCP		
Clause	Provision	Response
	<p>and construction of the building. In particular, noise shielding will be required between uses, walls and floors;</p> <p>ii) using noise barrier planning principles such as using the building mass to shield noise (eg using podiums to shield noise from below); and locating non-habitable rooms towards the noise source and habitable rooms oriented to quieter areas on the site; minimising the size and number of windows and balconies oriented to the noise source. Note: Refer to Part 20 Development Near Rail Corridors and Busy Roads.</p> <p>iii) enclosing plant rooms;</p> <p>iv) locating plant in basements;</p> <p>v) minimising the amount of shared walls between apartments, commercial occupancies and/or plant;</p> <p>vi) locating building services (laundries/storage areas) and circulation zone apartment entries away from noise sensitive areas (ie. bedrooms) to provide a buffer from noise generators, such as traffic, mechanical plant equipment, and service and loading vehicle entries (see Figure 8C.15-2);</p> <p>vii) recessing balconies and fitting sound absorption materials (see Figure 8C.15-3);</p> <p>viii) fitting out building services, (including plant, piping and ducting) with appropriate acoustic insulation; (comment delete as it is required by BCA);</p> <p>ix) replacing conventional roof design with eaves by a flat roof with parapets where requirements for weather protection are otherwise achieved;</p> <p>x) using solid core doors, thicker window glass, double glazing, baffles to openable windows.</p>	<p>The design has been amended to include raised landscape planter beds around the perimeter with the terrace area further setback from the building edge. It is considered that the area has been appropriately designed and is able to be managed to mitigate potential acoustic impacts on nearby sensitive receivers.</p>
<b>Part 12 Advertising and Signage</b>		
12.3 Identification Signs – Business	<p><b>Business Zones</b></p> <p>1 A maximum of two business identification signs are permitted for each shopfront (e.g. one under awning sign and one top hamper sign).</p> <p>2 A co-ordinated presentation of signs is required where there are multiple occupancies or uses within a single building development. New buildings containing more than one ground floor tenancy are to provide signs co-ordinated in colour, size and design to be suspended under the awning.</p>	<p>The proposed modifications to the signage scheme is generally consistent with those planning controls.</p> <p>There remains a coordinated approach to signage for the development with the Coles supermarket being the principal commercial tenant. The approach to signage will improve the communication to both vehicles and pedestrians and remains a proportionate and appropriate response to the development.</p>

Ku-ring-gai DCP		
Clause	Provision	Response
	<p>3 Under awning signs are to:</p> <ul style="list-style-type: none"> <li>i) be either illuminated or non-illuminated;</li> <li>ii) be limited to one per shopfront;</li> <li>iii) not exceed 2.5m in length;</li> <li>iv) be erected in a horizontal location at right angles to the building façade;</li> <li>v) have a minimum clearance of 2.6m to the underside of the sign, measured from the ground/pavement level;</li> <li>vi) be separated by at least 3m from other under awning signs;</li> <li>vii) not project beyond the awning fascia; and</li> <li>viii) be set back at least 600mm from the face of the kerb.</li> </ul>	
12.7 Illumination of Signs	<p><b>Non-Residential and Mixed Use Buildings</b></p> <p>For mixed use developments, the requirements below apply only to the non-residential portion of mixed use development.</p> <p>1 Illuminated signs may be considered subject to specific controls such as the inclusion of automatic timing devices, to turn lights on/off at times designated by the Council;</p> <p>2 Illumination is to be concealed within, or integral to, the sign through use of neon or an internally lit box, or by sensitively designed external spot-lighting;</p> <p>3 Illuminated signs are to use LED diode technology or a lighting source of equivalent or higher efficiency;</p> <p>4 Illumination is not to be hazardous or a nuisance to pedestrians or vehicular traffic and not to produce any light spill;</p> <p>5 Cabling to signs are to be concealed.</p> <p>6 Consideration is to be given to avoid the use of illuminated red, green and amber colours in proximity to signalised intersections, to avoid the likelihood of motorist misinterpretation.</p>	<p>Illuminated signage formed part of the application as approved. While the modified signage scheme will expand the illuminated signage it will remain compliant with Council's controls.</p> <p>Illumination is integrated into the signage with internal illumination and the illumination of letters only where appropriate.</p> <p>Illumination is not considered to be hazardous such that it would impact on the safe operation of the Pacific Highway nor the local streets. The signage to the Pacific Hwy is proposed to change little.</p> <p>While the signage includes red elements this is a fundamental aspect of the well known Coles branding. The illumination will however focus on the lettering which is a white colour.</p>



Ku-ring-gai DCP		
Clause	Provision	Response
<b>Part 14E.1 Linfield Local Centre Context</b>		
14.E.4 Setbacks	1 All development within the Lindfield local centre, as outlined in Figure 14E.4-1, is to be designed to support and enhance the planned future character of the centre. This is to be done through the Setback requirements for each Precinct as stipulated in this DCP.	The approved setbacks for the development as required for the Linfield Local Centre have been maintained.
14E.5 Built Form	1 All development within the Lindfield local centre, as outlined in Figure 14E.5-1, is to be designed to support and enhance the planned future character of the centre. This is to be done through the Built Form requirements for each Precinct as stipulated in this DCP.	The development remains consistent with the built form controls for this site as identified in 14E 5-1 – Built Form Plan. The street wall height and requirement for an upper level setback to the boundaries with the Pacific Highway and Balfour St is generally maintained.
14E.7 Precinct L1: Balfour Street Retail Area	<p>6 Buildings are to be designed in accordance with this Development Control Plan, Figure 14E.7-5, and as follows:</p> <ul style="list-style-type: none"> <li>i) Create a consistent 3 storey (11.5 metres) street wall that is built parallel to the street alignment of Pacific Highway and Balfour Street.</li> <li>ii) All levels above the street wall height are to have a 4 metre setback.</li> <li>iii) The maximum building height of a development adjacent to new Balfour Lane is to be 4 storeys.</li> <li>iv) Provide active street frontages to the Pacific Highway and Balfour Street.</li> <li>v) Orientate residential buildings on the retail podium so that they maximise the distance from the substation and maximise the northern aspect.</li> <li>vi) Provide roof gardens on the podium for screening apartments from the neighbouring substation and roof top building services.</li> <li>vii) Design a corner building with distinct articulation that defines the intersection of the Pacific Highway and Balfour Street.</li> <li>viii) Integrate the Heritage Item and adapt for re-use (refer to specific heritage controls in Part 20 Heritage and Conservation Areas</li> </ul>	The development as proposed to be modified remains generally consistent with the planning controls that apply to the Balfour Street Retail Area. The development proposes terraces and roof top communal open space consistent with the planning controls (v) & (vi). It is considered that an appropriate treatment is achieved to the electricity substation to the north resulting in a high degree of amenity for residents.
<b>Part 23 General Building Design and Sustainability</b>		
Part 23.2 Green Buildings of the DCP	<p><b>Buildings less than 2000m<sup>2</sup> gross floor area</b></p> <p>2 All new buildings that are less than 2000m<sup>2</sup>, or the non-residential components of mixed-use buildings that are less than 2000m<sup>2</sup>, are to provide the following documentation at Development Application (DA) stage:</p>	The proposed development contains non residential GFA of between 2,000m <sup>2</sup> and 5,000m <sup>2</sup> . This requires that all new buildings are to achieve a 4 Star Green Star ('Best Practice') Design Rating.

Ku-ring-gai DCP		
Clause	Provision	Response
	<p>i) Ecologically Sustainable Design (ESD) Report: - prepared by a GBCA Accredited Professional, verifying that the elements/systems included in the development will, in the view of that professional, result in buildings with an ESD level equivalent to a 4, 5 or 6 Star Rating under the GBCA Green Star - Design &amp; As Built rating tool.</p> <p>ii) Annotated Development Application (DA) Drawings: - clearly indicating the elements/systems described in the ESD Report, including the requirements in 23.2(1) of this section.</p> <p>iii) A signed Statement of Commitment from the applicant to develop and implement the elements/systems described in the ESD Report into the Construction Certificate (CC) stage and final built form.</p> <p>Note: Applicants are advised to consult with a GBCA Accredited Professional at the onset of the design process to ensure the building supports ESD principles at the outset. Refer to <a href="http://www.gbca.org.au">www.gbca.org.au</a> for a list of Green Star Accredited Professionals.</p> <p>Note: Approved DAs will have a Condition of Consent requiring the applicant to include the following documentation as part of their CC submission:</p> <p>i. An updated ESD Report by the applicant's Green Star Accredited Professional describing elements/systems incorporated to maintain the ESD principles that were approved at DA.</p> <p>ii. A Checklist Table of each ESD system/element included in the ESD Report to clearly state systems incorporated (refer to 23R.3 of this Part for example of Checklist);</p> <p>iii. Annotated CC Drawings clearly indicating elements/systems described in the ESD Report.</p>	<p>In this instance it is sought to modify the conditions of consent such that a copy of the GBCA green star certification is to be submitted to Council within 9 months of the relevant Occupation Certificate, as it relates to the supermarket fitout.</p> <p>We have been advised by our ESD consultant that Green Star requires the finalisation of As Built documentation, including the close-out of commissioning for all systems. This can be reasonably expected to be completed within 3-4 months of Occupancy Certificate.. This process allows for all contractors to satisfactorily close out all outstanding items. The project must then be compiled and submitted to the GBCA. This process may take 1-2 months. The GBCA take 6 weeks for Round 1, the team need 1 month to finalise round 2. Round 2 takes 4 weeks with the GBCA. As such, the minimum period that can be committed to by the project team would be 9 months from OC.</p>

## 7. Section 4.15 Relevant Considerations

The following section addresses the relevant *Matters for Consideration* to be taken into consideration by a consent authority when determining a modification application, pursuant to Section 4.56 of the *Environmental Planning and Assessment Act 1979*.

### 7.1 Section 4.15 (1)(a)(i) The Provisions of any Environmental Planning Instrument

The relevantly applicable provisions of Chapter 4 of State Environmental Planning Policy (Housing) 2021, State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 and Council's LEP have been examined above in this SEE and the proposal is considered to be consistent with those provisions.

### 7.2 Section 4.15 (1)(a)(ii) The provisions of any Draft Environmental Planning Instrument

There is no Draft EPI that of relevance to the development being considered.

### 7.3 Section 4.15 (1)(a)(iii) Any Development Control Plan

The relevantly applicable provisions of The Ku-rin-gai DCP have been examined above in this SEE and the proposal is considered to be generally consistent with those provisions.

### 7.4 Section 4.15 (1)(a)(iia) Any Planning Agreement that has been entered into or any Draft Agreement

The development as proposed to be modified will have no implications for any planning agreement that has been entered into.

### 7.5 Section 4.15 (1)(a)(iv) The Regulations

The relevant matters listed under clause 61 of the EP&A Regulation 2021 have been considered and the proposed modified development is not inconsistent with these matters.

### 7.6 Section 4.15 (1)(b) The likely impacts of that development

#### **Built Environment Impact**

As discussed in this SEE, the modifications do not result in any significant adverse internal or external amenity impacts with regard to loss of outlook, solar access, overshadowing or privacy, beyond that approved by way of the original development consent. Modifications to the rooftop terrace for the penthouse apartments will improve their amenity while continuing to appropriately mitigate their impact, specifically through the consolidation on one level (for PH07). The modified development provides for the required building services and plant equipment to support the proposed uses.

The modified development continues to satisfactorily address the design quality principles within Schedule 9 of the Housing SEPP as well as satisfactorily responding to the relevant design criteria of the ADG. In this regard, the subject application is supported by a Design Verification Certificate and ADG Compliance Table prepared by Rothelowman.

### 7.7 Section 4.15 (1)(c) The Suitability of the Site for the Development

The development, as amended, is substantially the same development as that assessed and approved by Council. In this regard, the suitability of the site as assessed (and deemed suitable for the development) in the original application is unchanged.

### 7.8 Section 4.15 (1)(d) Any submissions made

Any submissions made to Council during the notification and advertising period would be evaluated during the application assessment phase. Knight Frank Town Planning would welcome the opportunity to be able to respond to any issues that may be raised.

#### 7.9 Section 4.15 (1)(e) The Public Interest

A high-quality design is proposed which responds to and respects adjoining development and land uses. The proposal remains compatible with the existing and future desired character of the Linfield Local Centre, with the delivery of a mixed-use development comprising residential and commercial uses that will contribute towards its orderly and economic development. The proposal is consistent with the objectives of the relevant planning controls and will not result in any significant adverse impacts upon the environment or amenity of the surrounding area.

## 8. Conclusion

The relevant matters for consideration under Section 4.15 Evaluation of the Environmental Planning and Assessment Act 1979 have been addressed in this Statement of Environmental Effects and the proposed modified development has been found to be consistent with the objectives and requirements of the relevant planning provisions.

Importantly, the proposed modified development has been found to not result in any significant adverse impacts on the environment or the amenity of the surrounding area. The development remains consistent with the objectives of the E1 Local Centre zone. The proposed mixed-use development will provide for a range of uses within the Lindfield Local Centre which will contribute towards its orderly and economic development.

In terms of the extent of modification proposed, the nature and character of the development remains the same as that originally approved by the Land and Environment Court in that a shop top housing development with ground floor commercial tenancies is being maintained. The same number and mix of apartments is being maintained as originally approved. The development also retains the same number of storeys and footprint.

Accordingly, the application is considered to be 'substantially the same development' in accordance with Section 4.56 of the EP & A Act 1979. Therefore, it is considered that the proposed modified development is suitable for the subject site and that the modification application should be approved.