

SUTHERLAND SHIRE COUNCIL ASSESSMENT REPORT

Panel Reference	PPSSSH-118
DA Number	MA22/0137 to DA18/0323
LGA	Sutherland Shire
Proposed Development:	S4.56 modification to DA18/0323 – changes to internal layouts, parking allocations, finishes and landscaping components
Street Address:	Lots 1 to 3 S/P 9336, S/P 9336, S/P 48254, Lots 1 to 4, Lots 4 - 6 S/P 67206, S/P 67206 – 5 to 9 Ozone Street, Cronulla
Applicant/Owner:	Ozone Cronulla Pty Ltd
Date of DA lodgement	26 May 2021
Number of Submissions:	2
Recommendation:	Approval
Regional Development Criteria – Schedule 6 of the Planning Systems SEPP 2021	This application is referred to the SSPP as this application is an application made under Section 4.56 of the Environmental Planning and Assessment Act 1979 and is a modification to an application previously heard by the SSPP and approved by the Land and Environment Court. As this application is made under Section 4.56, it is required to be determined by SSPP.
List of all relevant s4.15(1)(a) matters	<ul style="list-style-type: none"> • Sutherland Shire Local Environmental Plan 2015 (SSLEP 2015). • Sutherland Shire Development Control Plan 2015 (SSDCP 2015). • State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004. • State Environmental Planning Policy (Resilience and Hazards) 2021. • State Environmental Planning Policy No. 65 – Design Quality of Residential Flat Development (SEPP 65). • State Environmental Planning Policy (Planning Systems) 2021. • Apartment Design Guide (ADG) • Section 7.11 Development Contribution Plan 2016
List all documents submitted with this report for the Panel's consideration	Appendix A – Modified Conditions of Consent. Appendix B – SEPP65 compliance table. Appendix C – ADG compliance table. Appendix D – SSDCP2015 compliance table. Appendix E – Architectural plans.
Report prepared by:	Sri Soerono – Development Assessment Planner Sutherland Shire Council
Report date	15 November 2022

Summary of s4.15 matters

Have all recommendations in relation to relevant s4.15 matters been summarised in the Executive Summary of the assessment report? **Yes**

Legislative clauses requiring consent authority satisfaction

Have relevant clauses in all applicable environmental planning instruments where the consent authority must be satisfied about a particular matter been listed, and relevant recommendations summarized, in the Executive Summary of the assessment report? **Yes**
e.g. Clause 7 of SEPP 55 - Remediation of Land, Clause 4.6(4) of the relevant LEP

Clause 4.6 Exceptions to development standards

If a written request for a contravention to a development standard (clause 4.6 of the LEP) has been received, has it been attached to the assessment report? **N/A**

Special Infrastructure Contributions

Does the DA require Special Infrastructure Contributions conditions (S7.24)? **N/A**
Note: Certain DAs in the Western Sydney Growth Areas Special Contributions Area may require specific Special Infrastructure Contributions (SIC) conditions

Conditions

Have draft conditions been provided to the applicant for comment? **No**
Note: in order to reduce delays in determinations, the Panel prefer that draft conditions, notwithstanding Council's recommendation, be provided to the applicant to enable any comments to be considered as part of the assessment report

REPORT SUMMARY

REASON FOR THE REPORT

This application is referred to the Sydney South Planning Panel (SSPP) as this application is an application made under Section 4.56 of the *Environmental Planning and Assessment Act 1979* and is a modification to an application previously heard by the SSPP and approved by the Land and Environment Court (LEC). Council only has delegation for applications made under Section 4.55(1) and (1A) in this instance. The original proposal (DA18/0323) was approved by the LEC on 2 April 2019. This consent has subsequently been modified five times through S4.56.

APPROVED DEVELOPMENT

The approved development determined by the NSW LEC, is for demolition of all existing structures and the construction of a nine storey residential apartment building containing 38 apartments. The development includes a mix of 1, 2 and 3 bedroom apartments. Three levels of basement car parking accessed from a new driveway at the south western corner off Cecil Monroe Avenue, including 71 residential spaces, 2 visitor/car wash spaces, 2 trade/service vehicle spaces, storage and services.

The development consent issued by the NSW LEC has since been modified by; MA19/0303 on 13 May 2020, MA20/0232 on 23 November 2020, MA20/0412 on 27 May 2021, MA20/0080 on 16 August 2021 and MA21/0270 on 16 December 2021.

PROPOSED MODIFICATION

The application seeks consent for modifications to a residential flat building (RFB) approved under DA18/0323. The changes involve amendments to wall cladding and removal of a green wall, increase to planter heights, amendment to the POS area and pools for units 801 and 802, amend paving at Unit G03, changes to planting mix, internal layout changes to Unit 105, 403, 504, 702, 801 and 802, minor changes to basement car parking allocations and deletion of the clothes lines below the balustrade level.

THE SITE

The site is irregular in shape with a total area of 1,592m². It has a primary eastern frontage to Ozone Street of 53.42m, a northern frontage to Ocean Grove Avenue of 30.22m and a southern frontage to Cecil Monroe Avenue of 24.37m. Its western boundary adjoining 14 & 18 Gerrale Street has a length of 56.38m, excluding a 3.06m return of a “dog leg” part way along the boundary. The site has a slight fall of just over 1m from its north-western corner (RL16.5) to its south-eastern corner (RL15.46).

The site was occupied by 3 apartment buildings, each being 3 storeys in height with car parking on the ground floor. These buildings have been demolished the building approved under DA18/0323 (and subsequent modifications) is currently under construction. There are 10 on-street parking spaces in Ozone Street directly adjacent to the site along with 3 street trees in tree “blisters”.

Adjoining site to the west are 14 Gerrale Street and 18 Gerrale Street. The former is occupied by a 4-

storey mixed use building containing ground floor commercial and apartments over. The latter is occupied by a 2 – 3 storey apartment building that has been subject to a DA (DA18/0349) that was approved by the LEC, proposing demolition of the building and construction of a mixed use development with a height of 9 storeys.

The site is located at the eastern edge of Cronulla Centre. Cronulla railway station is a 6-minute walk from the site. The site is zoned B3 Commercial Core and was “up zoned” under *Sutherland Shire Local Environmental Plan 2015 (SSLEP 2015)* from a maximum height of 6 storeys (i.e. about 18m) and floor space ratio (FSR) of 2:1 to a maximum height of 30m and FSR of 3:1. An aerial location photo, aerial site photo and zoning map are provided at **Figure 1 – 3**.

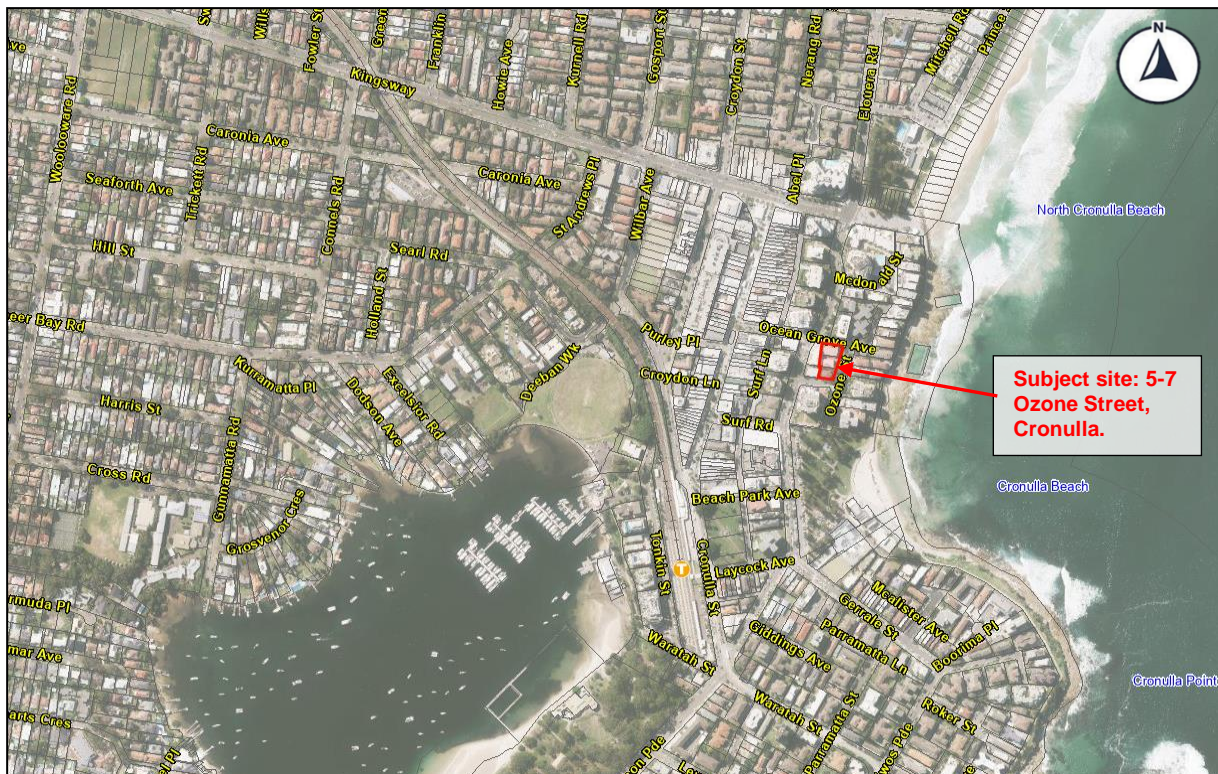


Figure 1: aerial location photo (source: Shire Maps)



Figure 2: aerial site photo (source: Shire Maps)

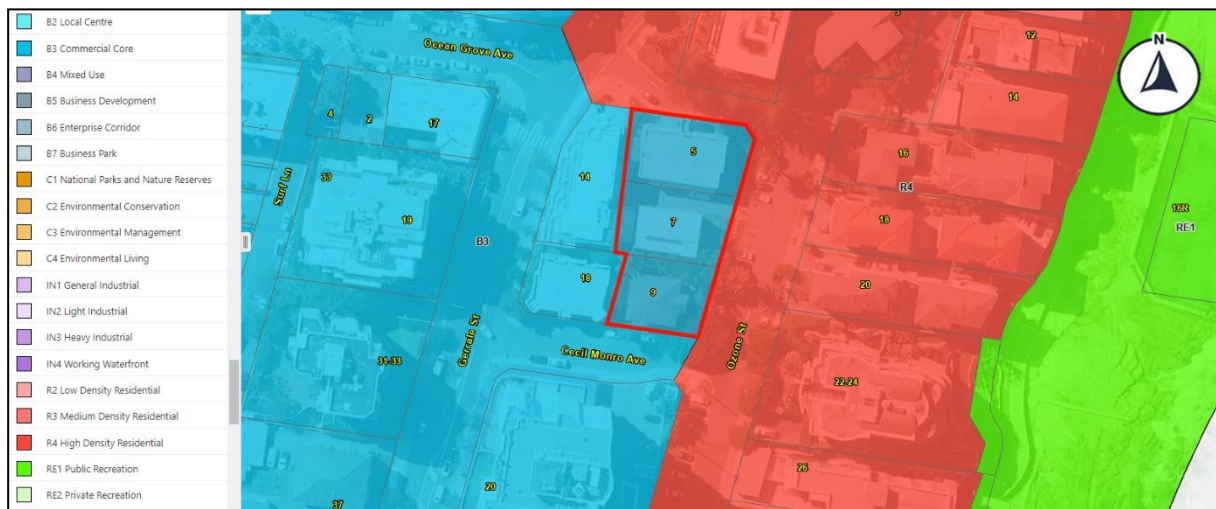


Figure 3: zoning map (source: Shire Maps)

ASSESSMENT OFFICER'S RECOMMENDATION

THAT:

- A. That pursuant to the provisions of Section 4.55(1A) of the Environmental Planning and Assessment Act 1979, the requested modification to Development Consent No. DA18/0323 dated 2 April 2019 for demolition of existing structures and construction of a residential apartment building containing 38 apartments and 3 basement parking levels (Modified – 1 November 2021) at Lots 1 to 3 S/P 9336, S/P 545, Lots 1 to 4 S/P 48254, Lots 4 to 6 S/P 67206, 5 to 9 Ozone Street, Cronulla be supported.
- B. Development Application No. MA22/0137 for changes to internal layouts, parking allocations, finishes and landscaping components, at the subject be approved, subject to the draft conditions of consent detailed in **Appendix A** of the Report.

ASSESSMENT OFFICER'S COMMENTARY

1.0 DESCRIPTION OF PROPOSAL

This application has been received seeking consent to modify a residential flat building (RFB) that was approved under DA18/0323. The following specific modification are proposed along with the reasoning as provided in the Applicant's cover letter.

Proposed Modification	Reason
1. Change the façade of boundary wall cladding,	Inability to source limestone due to Covid 19 related supply constraints.
2. Increase planter heights at ground level from 400mm to 1000mm,	Enable greater soil depth for planting in the front boundary setback and improve privacy of ground floor apartments.
3. Delete water feature from communal open space (COS),	Improve the functionality of the rear communal open space and increase planting.

4. Delete a portion of the Green Wall at western façade,	Replace with more durable material with less impact on functionality of communal open space.
5. Revised pool and design and adjacent planters,	Minimise the amount of structure required to support approved pool design and consequently reduce building bulk and scale.
6. Delete planter on western boundary adjacent to stair leading out of COS,	Required as a result of detailed fire engineering and space constraints.
7. Amend paving in front of G03,	Insufficient soil depth to sustain planting.
8. Changes to planting mix and type,	Further development of landscape design.
9. Minor internal unit layouts including <ul style="list-style-type: none"> ○ bathroom/ensuite U105, ○ laundry/bathroom U403, ○ pantry/laundry U504, ○ relate entry door and louvre window U702, ○ ensuites in U801 and U802, 	Requests by purchasers.
10. Minor changes to basement car parking unit allocation with no change to overall car parking provided,	Requests by purchasers.
11. Delete requirement to provide clothing lines on above floor balconies below balustrade due to inability to achieve BCE compliance.	Deletion of requirement to provide clothes lines on above floor balconies below balustrade due to inability to achieve BCA compliance.

Condition No.1 relating to the approved plans and Condition No.20(a)(viii) are proposed to be modified as outlined on Page 4 of the Applicant's cover letter.

A site plan and artist impression image of the development is provided at **Figure 4 – 5**.

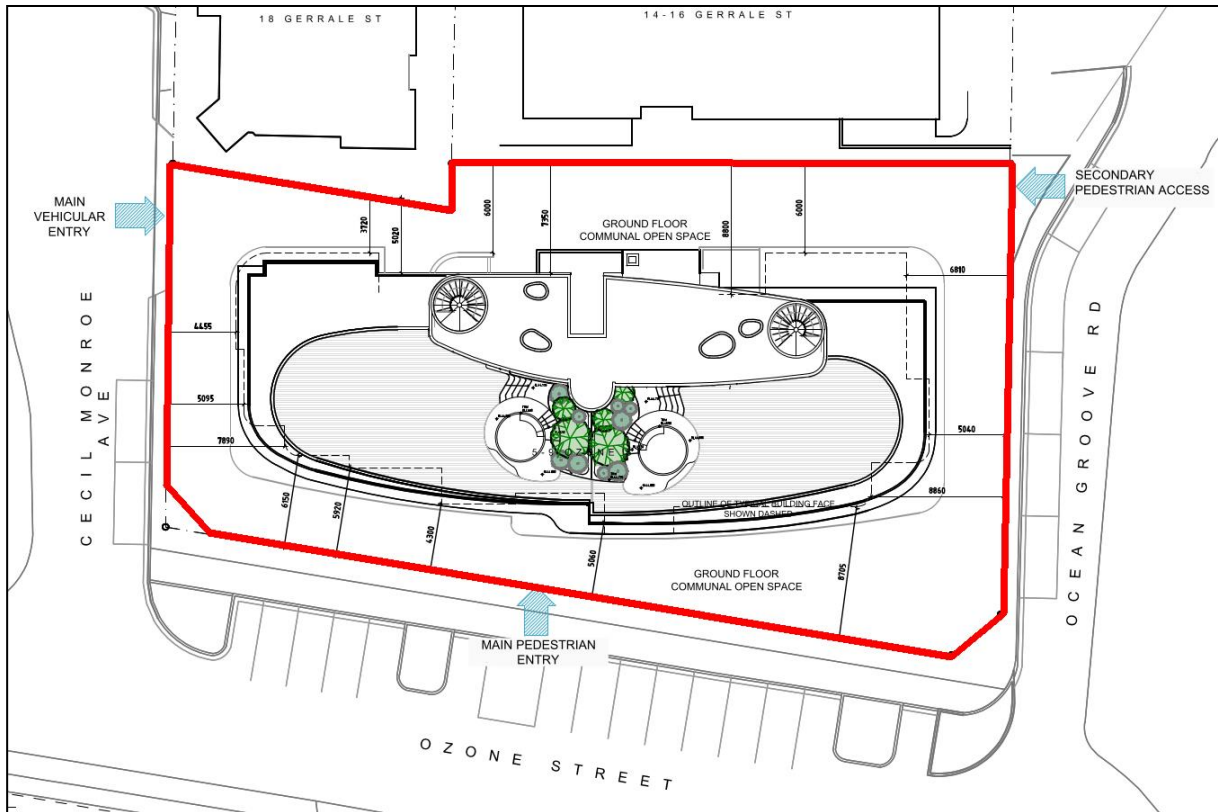


Figure 4: site plan (source: Applicant's revision 1 plans)



Figure 5: artist impression as viewed from Ozone Street (source: Applicant's revision 1 plans)

2.0 APPROVED DEVELOPMENT

Development Consent No.DA18/0323 issued on 2 April 2019 by the LEC granted approval for the demolition of all existing structures and the construction of a nine storey residential apartment building containing 38 apartments. The development includes a mix of 1, 2 and 3 bedroom apartments. Three levels of basement car parking accessed from a new driveway at the south western corner off Cecil Monroe Avenue, including 71 residential spaces, 2 visitor/car wash spaces, 2 trade/service vehicle spaces, storage and services.

The development consent issued by the NSW LEC has since been modified by; MA19/0303 on 13 May 2020, MA20/0232 on 23 November 2020, MA20/0412 on 27 May 2021, MA20/0080 on 16 August 2021 and MA21/0270 on 16 December 2021.

The detailed development assessment report in relation to this development under Section 4.15 of the EP&A Act is attached to Development Application file No.DA18/0323 and the subsequent modification applications. At present the development is under construction.

3.0 BACKGROUND

A history of the development proposal is as follows:

- DA18/0323 was considered by SSPP on 21 November 2018 and the panel agreed to defer the determination for the following reasons:
 1. *The adverse impacts of the development, in particular view loss, have been addressed as per the relevant considerations in the LEP.*
 2. *The amended design addresses the comments of Council's Design Review Forum (DRF) at their meeting on 25 October 2018. This submission is to be reconsidered by the DRF and their comments along with an updated Design verification statement be provided to the Panel.*

An amended report, including the applicant's submissions be prepared by Council is to be submitted to the Panel for their reconsideration of the application.
- An appeal was lodged with the LEC and the development application was approved on 2 April 2019.
- MA19/0303 was submitted increasing the number of units from 32 to 38 (resulting in some changes to conditions of consent) and was determined by way of approval by the SSPP on 13 May 2020.
- MA20/0232 was submitted to modify condition 19 relating to the registration of the plan of consolidation and road dedication and was determined by way of approval by the SSPP on 2 April 2019.
- DA20/0606 was submitted to amalgamate units 702 and 703 to create one unit and was determined under delegation on 14 December 2020.
- DA20/0614 was submitted for alterations and amalgamation of units 403/404 and 502/503 and was determined under delegation on 14 December 2020.
- MA20/0412 was submitted 17 February 2021 seeking to make internal changes to the three

basement levels of the building. This application was determined by SSPP at its meeting held on 27 May 2021.

- MA21/0080 was submitted on 9 March 2021 to modify the ground floor private open space areas, minor internal changes, window modifications, change to booster location, increase in height and floor space ratio, change to façade cladding and amendments to landscaping. This application was determined by SSPP at its meeting held on 17 June 2021.
- MA21/0270 was submitted on 17 August 2021 to amalgamate units 403/404, 502/503 and 702/703. This application was determined by SSPP at its meeting held on 16 December 2021.
- The current application was submitted on 26 May 2022.
- The application was placed on exhibition with the last date for public submissions being 21 September 2022. Two submissions were received during the assessment of this application.

4.0 ADEQUACY OF APPLICANT'S SUBMISSION

In relation to the Statement of Environmental Effects, plans and other documentation submitted with the application or after a request from Council, the applicant has provided adequate information to enable an assessment of this application.

5.0 NATURE OF MODIFICATION SOUGHT

This application proposes the modification of Development Consent No. DA18/0323 pursuant to Section 4.56 of the EP&A Act. Section 4.56 states:

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.*

An assessment of the type of modification proposed has been carried out in accordance with the provisions of the Environmental Planning and Assessment Regulation 2000 (EP&AR 2000) and a Section 4.56 is the appropriate type of modification application.

6.0 PUBLIC PARTICIPATION

The application was advertised in accordance with the provisions of Chapter 12 of Sutherland Shire Development Control Plan 2015 (SSDCP 2015). 310 adjoining or affected owners were notified of the proposal and 2 submissions were received from the following properties:

Address	Date of Letter/s	Issues
20 Ozone Street Cronulla	12 September 2022	1,2,3,4,5,6,7
3/14 Gerrale Street Cronulla	13 September 2022	6,7

Issue 1: The height should be reduced given the impact of overshadowing

Comment: The modification application does not propose to modify the approved height of the building. The height and overshadowing impacts of the RFB have been considered acceptable under previous applications for this development.

Issue 2: Construction of the building is occurring past 7pm.

Comment: The permitted hours of operation are detailed within Condition No.42, which stipulates building and demolition till 6pm Monday to Friday and 3pm on Saturdays. There is also the opportunity for concrete pours to occur on 13 occasions up until 8pm Monday to Friday.

Issue 3: Construction works are littering and loitering in the street.

Comment: Construction management of the site is to be carried out in accordance with conditions of consent.

Issue 4: Development should increase car parking spaces

Comment: The proposed development does not seek to amend the number of car parking spaces. The number of car parking spaces approved for the development is compliant with SSDCP2015 parking rates.

Issue 5: Increase Landscaped Area

Comment: The reduction of landscaped area at the frontage of Unit G03 is not supported and the landscaped areas and planter beds across the site will generally remain consistent with the previous approvals.

Issue 6: Decrease the built form

Comment: The proposal does not seek to increase any additional GFA with the proposed modification.

Issue 7: The low percentage of units sold off the plan indicate that the development is not desirable.

Comment: The sale of units is not a consideration under the Environmental Planning and Assessment Act 1979.

Issue 8: The landscaped areas and trees will not be planted.

Comment: Conditions of consent are contained within the approval that require these works to be completed in accordance with the approved plans and inspected prior to the Occupation Certificate being issued.

Issue 9: Noise from the use of the communal area.

Comment: The proposed modification seeks to delete the water feature within the communal area and the remainder of the communal area will remain as previously approved. No unreasonable or excessive noise is expected to arise from the communal area.

7.0 STATUTORY CONSIDERATIONS

The subject land is located within Zone *B3 Commercial Core* pursuant to the provisions of Sutherland Shire Local Environmental Plan 2015. The proposed modification does not change the permissibility of the approved development (residential flat building) which is a permissible land use within the zone with development consent from Council.

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

- Sutherland Shire Local Environmental Plan 2015 (SSLEP 2015).
- Sutherland Shire Development Control Plan 2015 (SSDCP 2015).
- State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004.
- State Environmental Planning Policy (Resilience and Hazards) 2021.
- State Environmental Planning Policy No. 65 – Design Quality of Residential Flat Development (SEPP 65).
- State Environmental Planning Policy (Planning Systems) 2021.
- Apartment Design Guide (ADG)

Section 7.11 Development Contribution Plan 2016

- Section 7.11 Development Contribution Plan 2016 – Cronulla Centre Precinct.

8.0 STATUTORY COMPLIANCE

The following sections contain an assessment of the application having regard to the relevant statutory planning instruments outlined above.

8.1 State Environmental Planning Policy (Resilience and Hazards) 2021

Chapter 2 Coastal Management (previously SEPP (Coastal Management) 2018)

Chapter 2 of the Resilience and Hazards SEPP seeks to balance social, economic and environmental interests by promoting a coordinated approach to coastal management consistent with the Coastal Management Act 2016. Chapter 2 of the Resilience and Hazards SEPP applies to land within the coastal zone across NSW. All foreshore land within the Sutherland Shire is identified as being within the coastal zone, in some instances the coastal zone extends beyond waterfront properties. In addition, much of the Sutherland Shire foreshore is identified as being within the coastal environment area and the coastal use area. Before granting development consent on any land within the coastal zone the consent authority must be satisfied that the proposed development is not likely to cause increased risk of coastal hazards on that land or other land. Council is satisfied that the proposed is unlikely to cause increased risk of coastal hazards on that land or other land. It is noted at this stage Council does not have any certified coastal management programs which require consideration.

The subject site is within the coastal zone and is also identified on the Resilience and Hazards SEPP map as coastal use area.

Development on land within the coastal use area (clause 2.11)

The site is identified as being land within the “coastal use area” on the Resilience and Hazards SEPP map. This requires the consent authority to consider certain factors and be satisfied of certain requirements before development consent is granted. Specifically the consent authority must consider whether the proposed development is likely to cause an adverse impact on existing, safe access to and along the foreshore, beach, headland or rock platform for members of the public, including persons with a disability; overshadowing, wind funneling and the loss of views from public places to foreshores; the visual amenity and scenic qualities of the coast, including coastal headlands; Aboriginal cultural heritage, practices and places, and cultural and built environment heritage.

These factors have been considered in the assessment of this application and Council is satisfied that the proposed modifications do not conflict with Clause 2.11 of the SEPP.

Chapter 4 Remediation of Land (Previously SEPP 55)

Chapter 4 of State Environmental Planning Policy (Resilience and Hazards) 2021 (Resilience and Hazards SEPP) requires Council to consider whether the land subject to the development proposal is contaminated; and if the site is contaminated, Council must be satisfied that the site is suitable or can be made suitable (i.e. following remediation) for the proposed land use.

An assessment of the history of the site and adjoining land pursuant to the provisions of the SEPP (previously SEPP 55) was undertaken with DA18/0323. This assessment concluded that the site is suitable for the proposed use subject to various consent conditions. The subject modification does not

change this earlier assessment or any of the applicable consent conditions.

8.2 State Environmental Planning Policy (Planning Systems) 2021

State Environmental Planning Policy (Planning Systems) 2021 identifies State and Regionally Significant development in NSW. Schedule 6 of the SEPP identifies this application as regionally significant development as it has a capital investment of more than \$30 million. The original application was considered by the SSPP before being determined by the LEC. As this application is a Section 4.56 it is required to be determined by the SSPP as Council only has delegation for Section 4.55(1) and (1A) applications.

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

State Environmental Planning Policy (Building Sustainability Index) 2004 (BASIX) aims to establish a scheme to encourage sustainable residential development across New South Wales. A revised BASIX Certificate (1187435M) has been submitted with the modified application. The Certificate indicates that the revised development will generally achieve the minimum performance levels / targets associated with water, energy and thermal efficiency.

8.5 State Environmental Planning Policy No. 65 – Design Quality of Residential Flat Development (SEPP65)

State Environmental Planning Policy No. 65 – Design Quality of Residential Flat Development (SEPP 65) and the accompanying Apartment Design Guide (ADG) seeks to improve the design quality of residential flat development through the application of a series of 9 design principles. The approved development constituted development to which SEPP 65 applies and was assessed accordingly.

Sutherland Shire Council engages its Design Review Forum (DRF) to guide the refinement of development to ensure design quality is achieved in accordance with SEPP 65. The original DA18/0323 was reviewed by the DRF on a number of occasions prior to its determination. An assessment of the proposal having regard to the design quality principles of SEPP 65 is set out in **Appendix B** to this report and Council has determined that the proposed modifications does not contribute to any significant change or compliance with the 9 design principles from what has already been approved.

8.6 Apartment Design Guide (ADG)

The applicable design guidelines for the proposed development are contained within the ADG, which is based on the 9 design quality principles set out in SEPP 65. The ADG illustrates good practice and these guidelines are largely replicated in SSDCP 2015. A table with a compliance checklist of the against the ADG design criteria is contained **Appendix C** to this report, and Council has determined that the proposed modifications do not conflict with the ADG criteria.

8.7 Sutherland Shire Local Environmental Plan 2015

The proposal has been assessed for compliance against SSLEP 2015. A compliance table with a summary of the applicable development standards is contained below and compliance remains unchanged from the previous MA21/0270 approval.

Sutherland Shire Local Environmental Plan 2015			
Standard/Control	Required	Approved / Proposed	Complies? (% Variation)
Sutherland Shire Local Environmental Plan 2015			
Building Height (Clause 4.3)	30m	30.63m Unchanged from the previously approved MA21/0270.	No – 2.1% variation
Floor Space Ratio (Clause 4.4)	3:1 (4,776m ²)	3.02:1 (4,810.8m ²) Unchanged from the previously approved MA21/0270.	No – 0.7%

8.8 Sutherland Shire Development Control Plan 2015

The proposal has been assessed for compliance with SSDCP2015. A compliance table with a summary of the applicable development controls is contained in **Appendix D**. Compliance with the development controls contained with SSDCP2015 are generally unchanged from the previous modification application approval.

9.0 SPECIALIST COMMENTS AND REFERRALS

The application was referred to the following internal specialists for assessment.

9.1. Engineering

The application was referred to Council's Development Assessment Engineer who reviewed the proposal and provided the following comments:

- The site is zoned B3 and table 1 in Chapter 36 "Vehicular Access Traffic Parking and Bicycles" of SSDCP2015 requires a parking rates at a minimum of 1 space and maximum of three spaces per dwelling.
- Car parking allocation is specified in Condition 46 of DA18/0323 and the subsequent modifications.
- A total of 71 residential car parking spaces are provided within the basements and have been identified to be allocated to particular units. The number of residential car parking spaces is unchanged by this proposal, however the car parking allocation within the basement has not provided Unit G02 with any basement parking.
- As a result, Condition No.46 is recommended to be modified to specify that each residential unit must be provided with a minimum of 1 car parking bay.

9.2. Landscape Architect

The application was referred to Council's Landscaped Architect who reviewed the proposal and provided the following comments:

- The following aspects of the modification application are acceptable:
 - Height of planter wall and fences to the bin holding area to rise to 1500mm.
 - Planter bed width increased between the fire hydrant booster and G04 to 1 metre wide.
 - Boundary walls finished in sandstone and height raised to a maximum of 1m.
 - Water feature deleted from western courtyard/communal area.

- Increased pool and planter depths to the roof terrace area.
- The following aspects of the modification application are not acceptable:
 - The deletion of the west facing Green Wall facing 14 and 18 Gerrale Street RFB's
 - Extended paving in front of G03
- The deletion of the green wall from the western façade of the COS courtyard will cheapen the quality of the space provided for communal usage. It should be kept to soften the visual amenity of the area, reduce noise to the users of this space and those living adjacent to it, as well as, provide improved amenity to the neighbours of the site at 14 and 18 Gerrale Street.
- The increased paved area in front of Unit G03 combined with Council footpaths and increased boundary wall height make the pedestrian entry to the building appear to be quite harsh. The approved landscaping at the eastern front of Unit G03 should remain.

9.3. Building Surveyor

The application was referred to Council's Building Surveyor who reviewed the proposal and provided the following comments:

- The proposed fire hydrant booster assembly location will require a radiant heat shield. The elevation plan does not accurately represent the size of the required radiant heat shield (it will likely be taller and wider).

An existing Condition no.3 outlines that no radiant heat shield is approved by this consent, and that a performance solution to not provide a radiant heat shield in accordance with AS2419.1-2005 or AS2419.1:2017 will need to form part of the Construction Certificate. Should a performance solution not be achievable, it is expected that the Applicant will need to lodge a subsequent modification application to design and construct a radiant heat shield.

10.0 ASSESSMENT

Following a detailed assessment of the application having regard to the Heads of Consideration under Section 79C(1) of the Environmental Planning and Assessment Act 1979 and the provisions of relevant environmental planning instruments, development control plans, codes and policies, the following matters are considered important to this application.

10.1 Proposed Modifications

The following specific modifications numbered 1 to 11 are proposed:

1. Change the façade of boundary wall cladding

The approved development was modified under MA21/0080, approving changes to the façade materiality from sandstone textured cladding along the façade and boundary wall to limestone. This modification seeks to revert back to the sandstone material due to issues sourcing the limestone. The location of this cladding is identified at **Figure 6**.



Figure 6: colours and materials scheduled (source: Applicant's revision 1 plans)

This modification is considered acceptable as there are no adverse impacts arising from the change in material and the colours/tones still relate and integrate with the buildings design.

2. Increase planter heights at ground level from 400mm to 1000mm

The planter height along the ground level facing Ozone Street and Ocean Grove Street are proposed to increase from 400mm as required by existing Condition No.20.A(xix) and Condition No.53.A(iii), to 1m in height. This modification was also proposed under MA21/0080 but was not accepted.

The modification application seeks to increase the height to 1m due to “purchaser feedback regarding privacy and amenity impacts”. The proposed landscape treatment to be provided with the development, once established, will provide the individual ground floor units with adequate privacy screening without compromising the streetscape with an excessively high retaining wall structure.

The site is located within the B3 Commercial Zone, however the locality is predominantly residential, comprised largely of residential flat buildings in a landscape setting. Therefore, to minimise the visual impact of the development when viewed from the street and to allow the development to relate and fit comfortably within the streetscape and residential context, the existing conditions which restricts the retaining walls at the street frontages to a maximum of 400mm will remain and the planting that will border the building and unit POS areas will provide adequate privacy from the street.

3. Delete water feature from communal open space (COS)

The water feature located at the south-western corner of the rear communal space (circled blue) was approved under DA18/0323 and subsequent modification applications, is proposed to be deleted by this subject modification application. The approved ground floor plan and the proposed MA22/0137 are provided below for comparison.

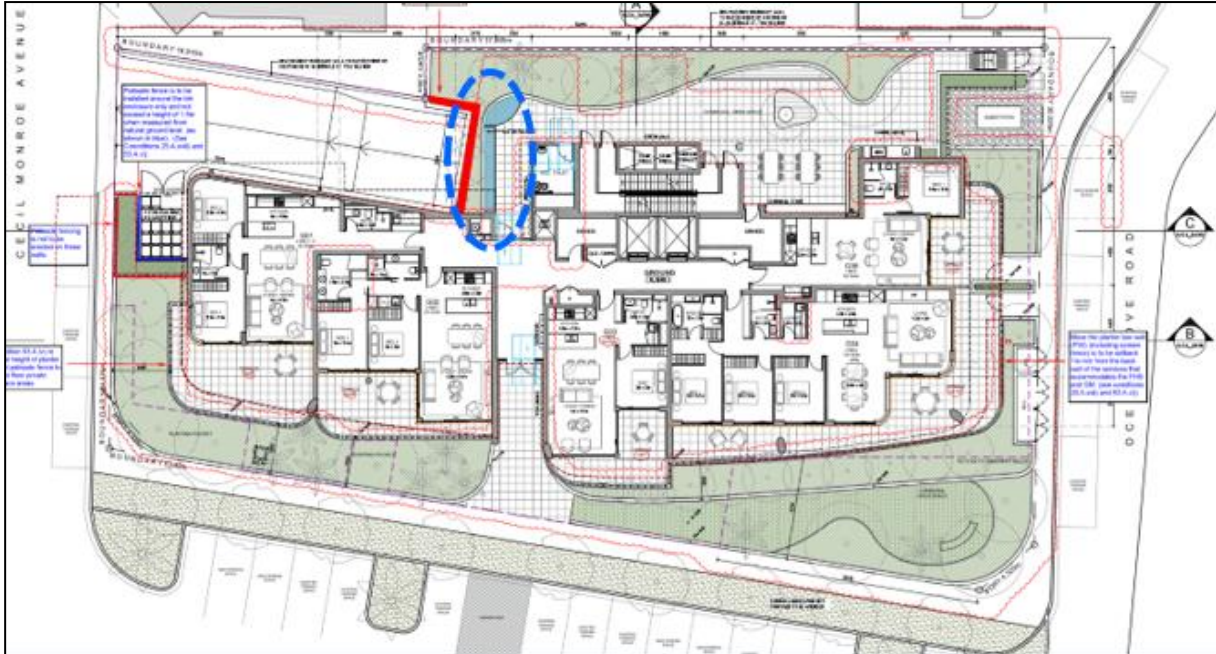


Figure 7: MA21/0080 approved ground floor plan (source: MA21/0080 approved plans)

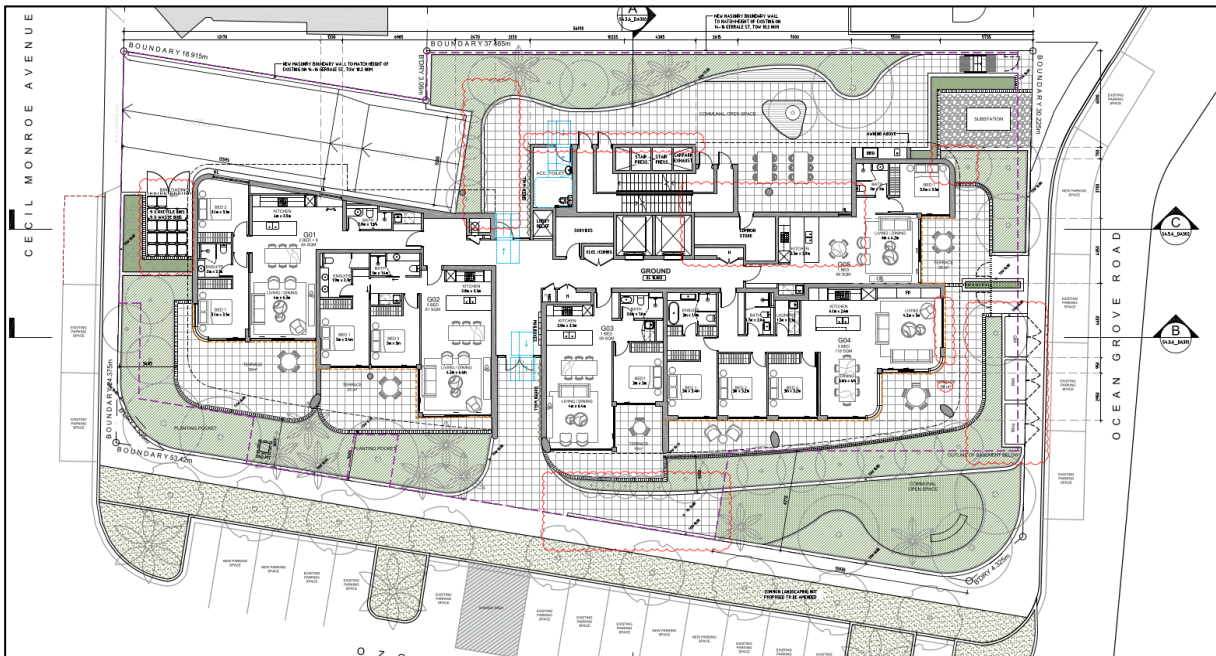


Figure 8: proposed ground floor plan (source: Applicant's revision 1 plans)

No objection is raised to the deletion of the water feature from the communal open space area.

4. Delete a portion of the Green Wall at western façade

The green wall along the ground floor and first floor western façade is proposed to be removed and replaced with the surrounding western external façade material. The location of the approved green wall is shown at **Figure 9**. The removal of the green wall is intended to reduce maintenance in the future with ongoing pruning and watering a factor for the wall to be removed.

The approved green wall and proposed deletion of this feature at the western elevation are provided below at **Figure 10 – 11** for comparison.

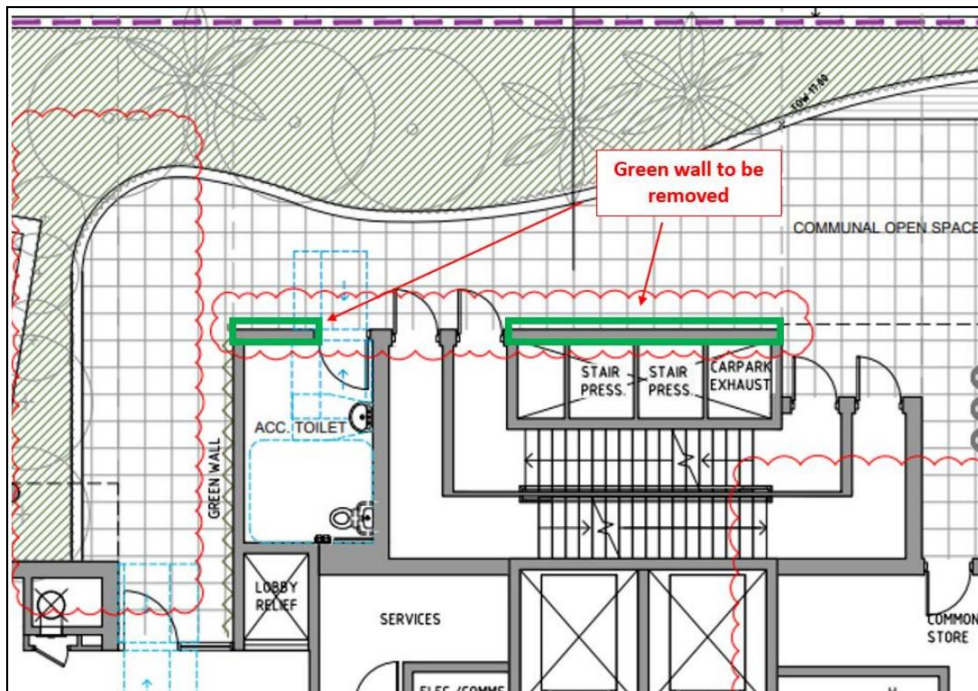


Figure 9: ground floor green wall – western elevation (source: Applicant's MA22/0137 cover letter)



Figure 10: Approved western elevation showing green wall (source: MA21/0080 approved plans)

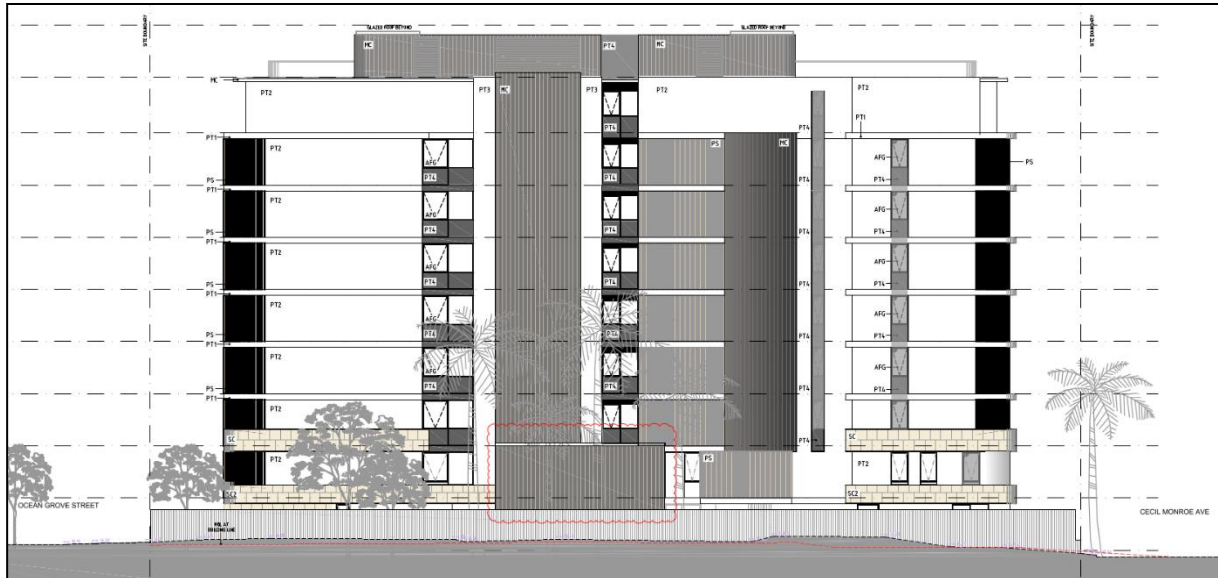


Figure 11: Proposed western elevation deleting the green wall (source: Applicant's revision 1 plans)

The deletion of the green wall from the western façade of the COS area is not accepted, as the green wall contributes to breaking up the bulk of the building and deleting this would decrease the quality and visual interest of the COS area. The approved green wall softens the hard surfaces of the western elevation and provides improved amenity to users of the COS as well as when viewed from the neighbouring properties at 14 and 18 Gerrale Street.

5. Revised pool and design and adjacent planters, (pools reduced to plunge)

The modification application seeks to reduce the size of the two pools to minimise the structure required to support the two large pools approved in the original development consent. The proposed change introduces two spa/plunge pools opposite each other at the centre of the building, as opposed to two 30kl recreational pools. The approved pools in comparison to the proposed plunge pools are shown below at **Figure 12 – 13**.

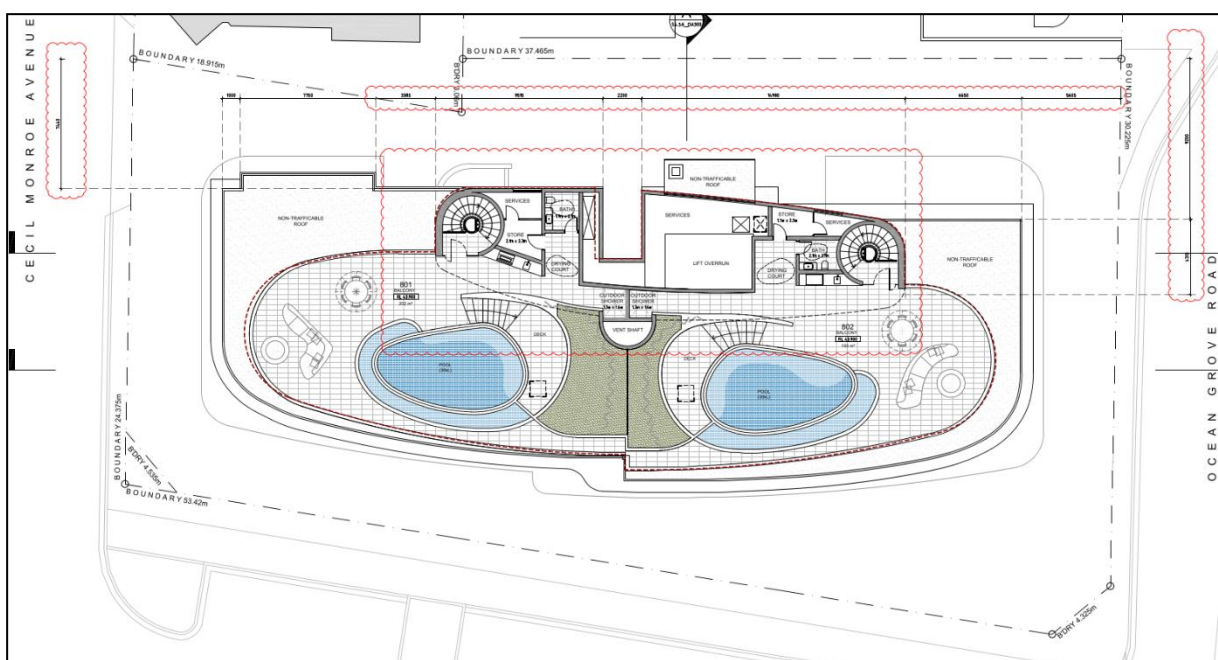


Figure 12: MA21/0080 approved rooftop / pool area (source: MA21/0080 approved plans)

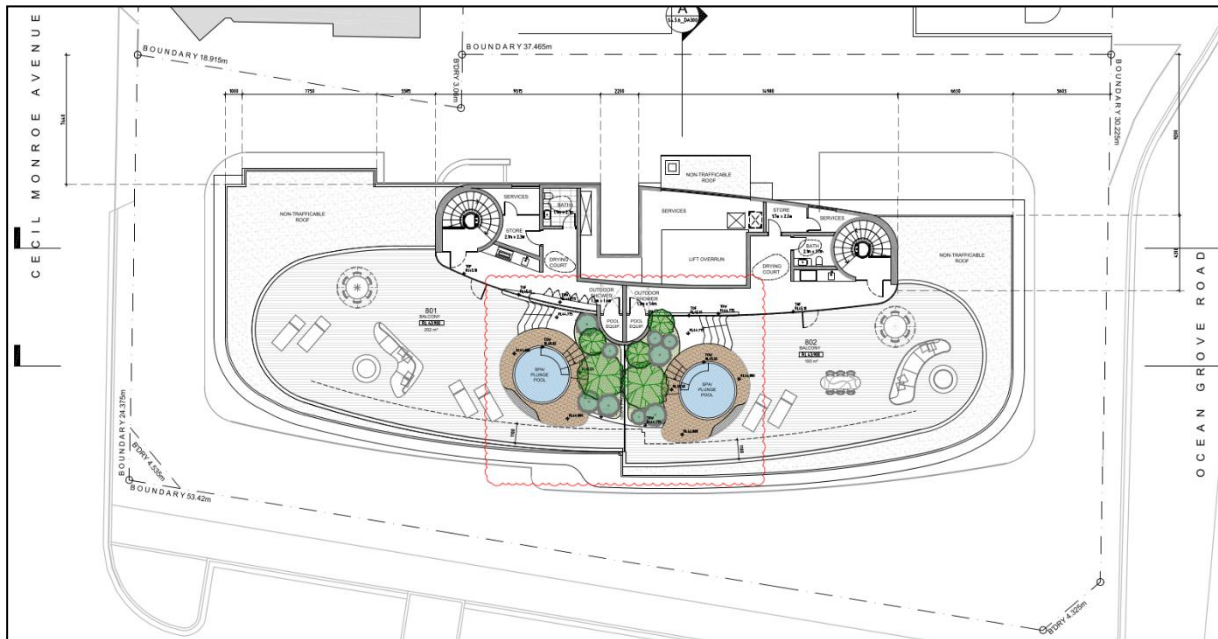


Figure 13: proposed rooftop / pool area (source: Applicant's revision 1 plans)

The redesign of the two pools promotes greater connectivity along the rooftop balcony and includes the planting of trees and small shrubs to provide some natural shade on the rooftop. The reduced size of the pool also reduces the visual impact and bulk of the roof terrace features when viewed from neighbouring elevated properties. This aspect of the modification is acceptable.

6. Delete planter on western boundary adjacent to stair leading out of COS

The application proposes the deletion of a narrow planter bed along the western boundary adjacent to the stair egress.. **Figure 14 – 15**, identify the location of this narrow planter bed as circled in blue.



Figure 14: MA21/0080 approved landscape treatment along the stairs (source: MA21/0080 approved plans)

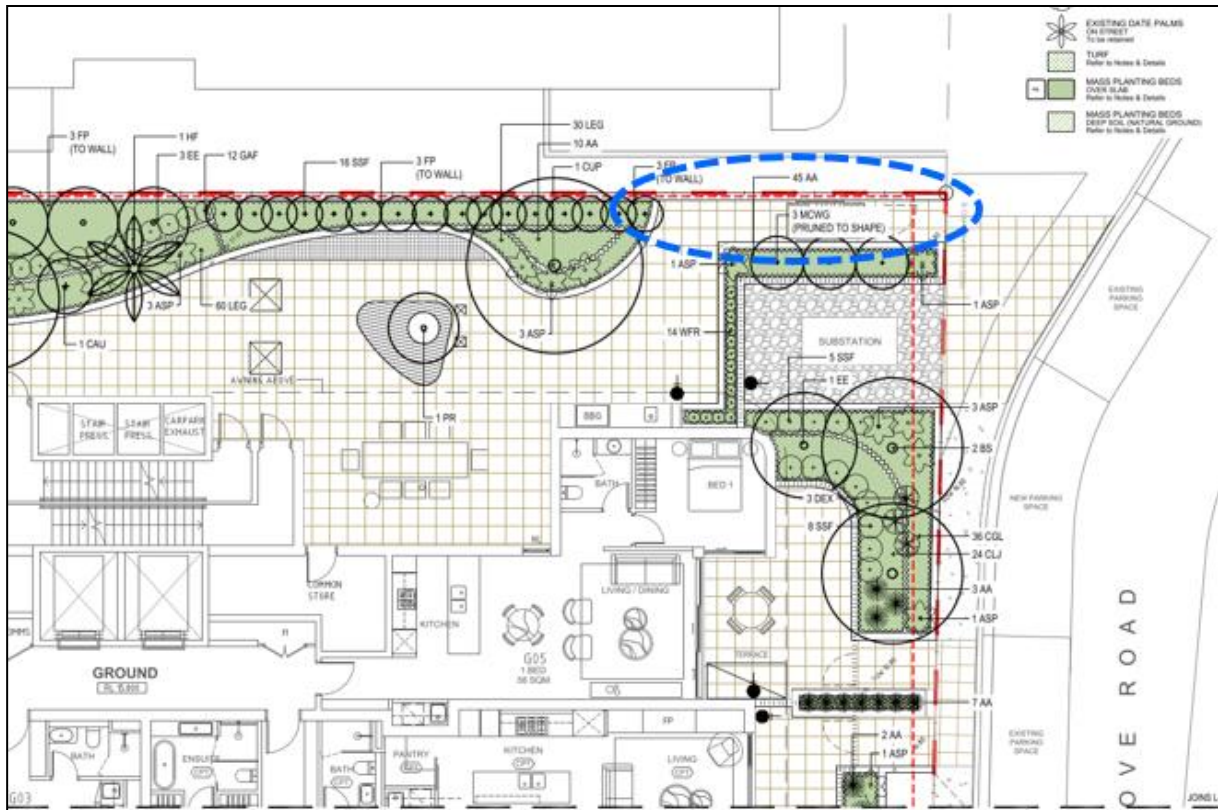


Figure 15: proposed landscape treatment along the stairs (source: Applicant's revision 1 plans)

Given the narrow width of the approved planter bed, no objection is raised to the removal of the planter bed as a planter bed will be retained adjacent to the substation that will soften the pedestrian entrance when viewed from the street. Deletion of this planter from the proposal is acceptable

7. Amend paving in front of G03

The application proposes to remove landscaping adjacent to the Unit G03 POS area, to be replaced with hard stand titles, as shown in **Figure 16 – 17**.

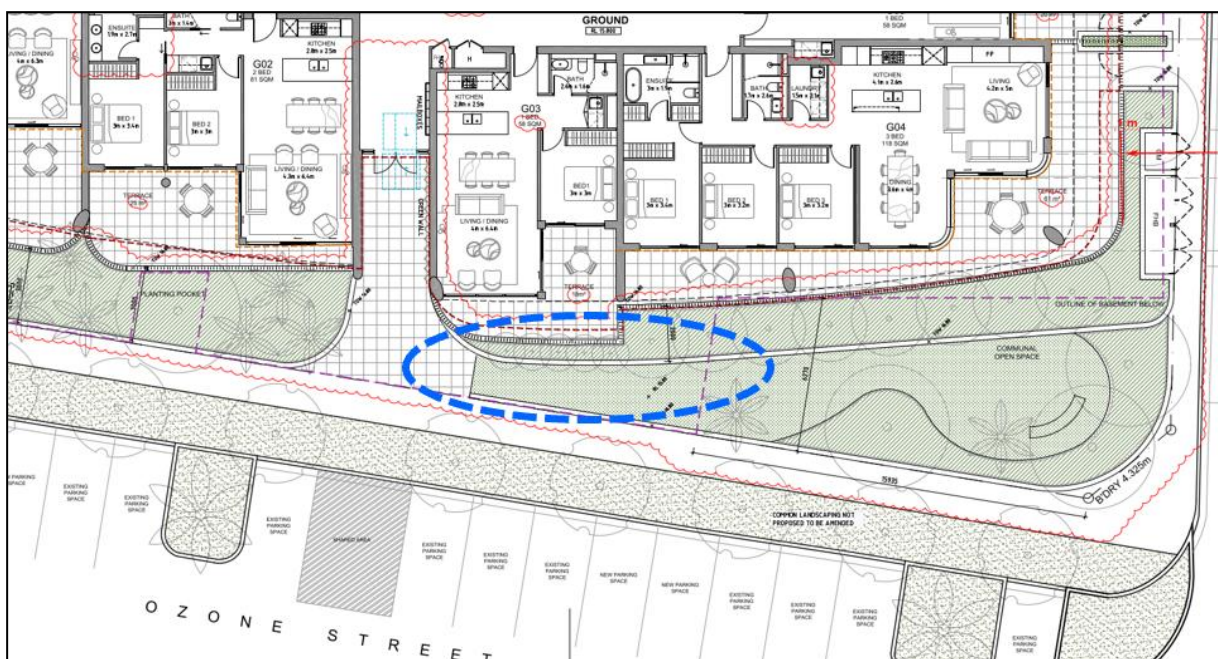


Figure 16: MA21/0080 approved landscape treatment at Unit G03 (source: MA21/0080 approved plans)

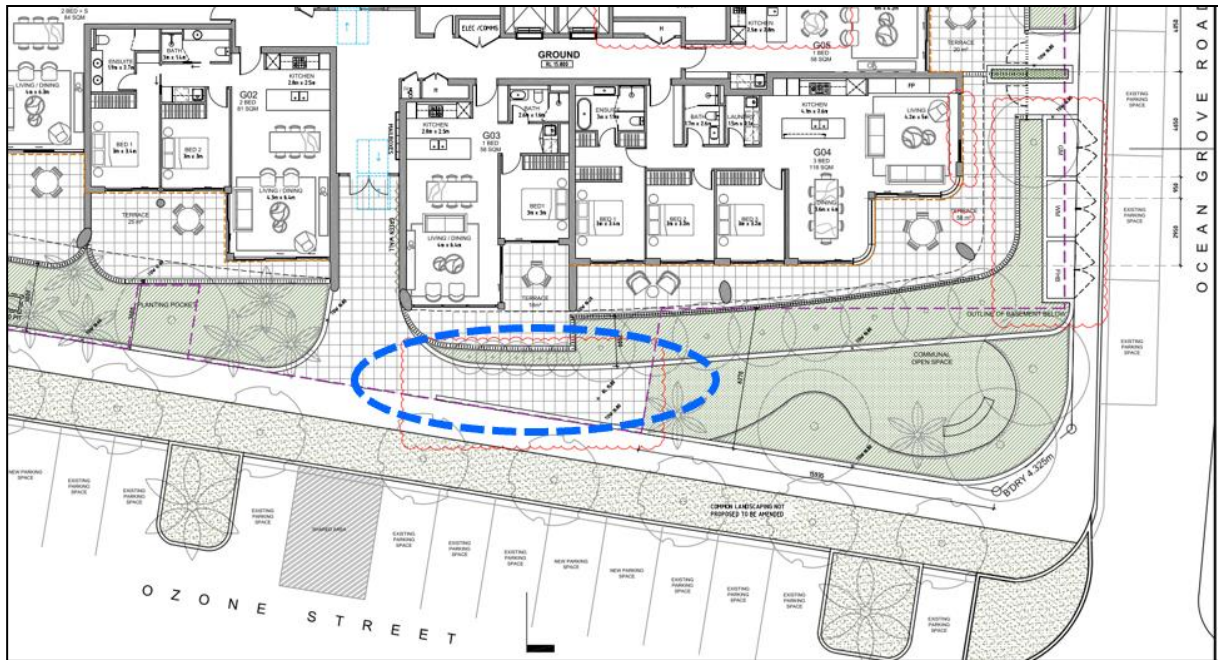


Figure 17: proposed landscape treatment at Unit G03 (source: Applicant's revision 1 plans)

The modification to the landscape design would diminish the streetscape and landscaped character and would result in a harsh interface when viewed from the street and surrounding properties. This aspect of the modification is not supported and this area will remain as landscaped area as approved under MA21/0080.

8. Changes to planting mix and type

The modification seeks to make the following changes from that approved under MA21/0080:

- delete *Waterhousea Floribunda* Weeping Lily Pily feature tree,
- add *Dracaena Draco* Dragon Tree exotic feature tree,
- add *Plumeria Rubra* Frangipani exotic feature tree,
- add new shrubs and ground covers of *Philodendron Xanadu* Xandu, *Westringia Fruticosa* Coastal Rosemary, *Gardenia Augusta Florida* Gardenia, *Ficus Pumila* Climbing Fig.

The location of tree and shrub planting has been slightly modified, however the locations proposed are acceptable. The number of trees proposed to be planted across the site has increased from 24 to 36 trees. The proposed changes to the planting mix and types have been simplified and are acceptable.

9. Minor internal unit layouts including; bathroom/ensuite U105, laundry/bathroom U403, pantry/laundry U504, relocate entry door and louvre window U702, ensuites in U801 and U802.

Minor internal changes are proposed to units 105, 403, 504, 702, 801 and 802. These changes do not result in any changes to the approved GFA, privacy, overlooking or compliance with the controls contained within SSDCP2015 or design criteria contained within the ADG. The changes are proposed to increase the residential amenity and usability for future residents of the individual units. These changes are acceptable.

10. Minor changes to basement car parking unit allocation with no change to overall car parking provided

The proposal results in minor changes to the basement car parking allocation at Basement 3 and Basement 2 levels (as well as the storage units). The majority of the changes to allocation are acceptable, except for the Basement Level 3 – tandem spaces at the south-western corner of Basement 3 are to be reallocated from Unit G02 to Unit 205. This results in Unit 205 having 3 allocated car parking spaces and Unit G02 having no allocation parking. This is not accepted as each residential unit must be provided with a minimum of one car parking space. Condition 46 is to be modified requiring each residential unit to be allocated a minimum of one car parking space.

11. Delete requirement to provide clothing lines on above floor balconies below balustrade due to inability to achieve BCE compliance

Condition 20 requires each unit above the ground floor must be provided with a clothes line on a balcony located below the balustrade height. Each balcony to the upper floor units is capable of accommodating a portable clothes airer for future occupants and therefore amendment to this condition is acceptable.

11.0 DEVELOPER CONTRIBUTIONS

Due to the applications nature, the proposed development will not require or increase the demand for local and district facilities within the area. Accordingly, it does not generate any Section 7.11 Contributions. Section 7.11 / 7.12 contributions were levied on the original DA18/0323 and recalculated under MA21/0270 based on 35 proposed residential flat units with a concession for 10 existing residential flat units. This equated to the following contributions:

Infrastructure & Facilities	Contribution Required
Local open space and public domain works	\$385,098.50
Regional open space	\$114,901.50

12.0 DECLARATION OF AFFILIATION

Section 147 of the Environmental Planning and Assessment Act, 1979 requires the declaration of donations/gifts in excess of \$1000. In addition Council's development application form requires a general declaration of affiliation. In relation to this development application no declaration has been made.

13.0 CONCLUSION

The subject land is located within Zone *B3 Commercial Core* pursuant to the provisions of SSLEP 2015. The proposed modification does not change the permissibility of the approved residential flat development, which is a permissible land use within the zone with development consent.

In response to public exhibition, 2 submissions were received. The matters raised in these submissions have been discussed within this report and the matters raised are addressed via conditions of consent as existing or are irrelevant to the modification application.

The modifications proposed to the approved development are supported except for the removal of the green wall and additional paving in front of unit G03. The other minor changes will unlikely result in unacceptable visual and amenity impacts when viewed from surrounding properties and the streetscape and therefore is recommended for approval with conditions

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

The application has been assessed having regard to the matters for consideration under Section 4.15 of the EP&A Act, together with the provisions of SSLEP2015 and all relevant Council DCPs, Codes and Policies. Following detailed assessment it is considered that the modification application No.22/0317 can be supported.