

SUTHERLAND SHIRE COUNCIL ASSESSMENT REPORT

Panel Reference	PPSSSH-131
DA Number	MA23/0006
LGA	Sutherland Shire
Proposed Development:	S4.55(2) Modification to DA21/0562 - Changes to development description, add hours of operation for a supermarket, delete design change conditions 2i), 2ii), 2iii) and 2iv), amend condition 37, and 44 and internal layout changes
Street Address:	3 - 23 Kingsway CRONULLA Lot 61 DP 319303, Lot 13 DP 205207, Lot 14 DP 205207, Lot 15 DP 205207, Lot A DP 314601, Lot B DP 314601, Lot 1 DP 5239, Lot 1 DP 700935, Lot 2 DP 700935, Lot 1 DP 1004748
Applicant/Owner:	CCIG Pty Ltd Helen Karageorge, Paul Milsted, Concetta Sorbara, Antoinetta Palumbo, Sam's Food Bar Pty Ltd, John Palumbo, Jenell A Milsted, CCIG Pty Ltd
Date of MA lodgement	3 February 2023
Number of Submissions:	6
Recommendation:	<i>Approval</i>
Regional Development Criteria	<p>The original application DA21/0562 was referred to the SSPP as it had capital investment value of more than \$30 million and is identified as Regionally significant development under clause (2) of Schedule 6 of State Environmental Planning Policy (Planning Systems) 2021.</p> <p>This s.4.55(2) modification application is referred to the SSPP as it includes modification to conditions of development consent specifically imposed by the SSPP in the original determination.</p>
List of all relevant s4.15(1)(a) matters	<ul style="list-style-type: none"> • State Environmental Planning Policy (Planning Systems) 2021. • State Environmental Planning Policy (Resilience and Hazards) 2021. • State Environmental Planning Policy (Transport and Infrastructure) 2021. • State Environmental Planning Policy No. 65 – Design Quality of Residential Flat Development (SEPP 65). • State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004. • Sutherland Shire Local Environmental Plan 2015 (SSLEP 2015). • Sutherland Shire Development Control Plan 2015 (SSDCP 2015). • Section 7.11 Development Contribution Plan 2016 – Cronulla Centre Precinct
List all documents submitted with this report for the Panel's consideration	<ul style="list-style-type: none"> • Draft Consent Conditions • List of objectors • NSW Police Response • Sydney Water Response

Report prepared by:	Evan Phillips - Senior Development Planner Sutherland Shire Council
Report date	10 July 2023

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. Section 4.6 of Chapter 4 of SEPP Resilience and Hazards 2021 -Clause 4.6(4) of the relevant LEP

Clause 4.6 Exceptions to development standards

If a written request for a contravention to a development standard (clause 4.6 of the LEP) has been received, has it been attached to the assessment report? **Not Applicable**

Special Infrastructure Contributions

Does the DA require Special Infrastructure Contributions conditions (S7.24)? **Not Applicable**
Note: Certain DAs in the Western Sydney Growth Areas Special Contributions Area may require specific Special Infrastructure Contributions (SIC) conditions

Conditions

Have draft conditions been provided to the applicant for comment? **Yes –**
Note: in order to reduce delays in determinations, the Panel prefer that draft conditions, notwithstanding Council's recommendation, be provided to the applicant to enable any comments to be considered as part of the assessment report **Conditions to be made available prior to meeting**

REPORT SUMMARY

REASON FOR THE REPORT

The original application DA21/0562 was referred to the Sydney South Planning Panel (SSPP) as it had capital investment value of more than \$30 million and is identified as Regionally significant development under clause (2) of Schedule 6 of State Environmental Planning Policy (Planning Systems) 2021. The SSPP has delegated the determination of minor Section 4.55(1) and 1A applications to Council but more substantial modifications under Section 4.55(2) are required to be determined by the SSPP.

APPROVED DEVELOPMENT

Demolition of existing structures and construction of a mixed use development with 4 level basement parking (358 car spaces), two storey podium including ground floor retail and first floor commercial, with two residential towers totalling 112 apartments (File references: DA21/0562 / PPSSSH-78).

PROPOSED MODIFICATION

The proposed modification is for changes to the development description, the addition of hours of operation for the supermarket, the deletion of design change conditions 2i), 2ii), 2iii) and 2iv), modifications to condition 37 (loading dock) and 44 (Sydney Water) of the development consent as well as internal layout changes.

THE SITE

The site is located within the Cronulla Town Centre. The site's southern boundary is the primary frontage along the Kingsway, with Croydon Street on its western boundary and Abel Place on its eastern boundary. The site is comprised of 10 allotments containing a mix of one and two storey brick commercial buildings, brick shop and residences (shop top housing) and single storey shops. All existing buildings are oriented to Kingsway. At-grade car parking is located at the rear of each allotment, accessed via Croydon Street and Abel Place adjacent to the northern boundary of the site.

ASSESSMENT OFFICER'S RECOMMENDATION

THAT:

- A. That pursuant to the provisions of Section 4.55(2) of the Environmental Planning and Assessment Act 1979, the requested modification to Development Consent No. DA21/0562 dated 13 September 2022 for demolition of existing structures and construction of a mixed use development with 3 level basement parking, two storey podium including ground floor retail and first floor commercial at No. 3 - 23 Kingsway Cronulla (Lot 61 DP 319303, Lot 13 DP 205207, Lot 14 DP 205207, Lot 15 DP 205207, Lot A DP 314601, Lot B DP 314601, Lot 1 DP 5239, Lot 1 DP 700935, Lot 2 DP 700935, Lot 1 DP 1004748) be supported.

- B. That Development Application No. DA21/0562 for demolition of existing structures and construction of a mixed use development with 3 level basement parking, two storey podium including ground floor retail and first floor commercial at No. 3 - 23 Kingsway Cronulla (Lot 61 DP 319303, Lot 13 DP 205207, Lot 14 DP 205207, Lot 15 DP 205207, Lot A DP 314601, Lot B DP 314601, Lot 1 DP 5239, Lot 1 DP 700935, Lot 2 DP 700935, Lot 1 DP 1004748) be modified in accordance with the Conditions listed in **Appendix "A"**.

ASSESSMENT OFFICER'S COMMENTARY

1.0 APPROVED DEVELOPMENT

Approval was granted on 13 September 2022 by the SSPP for the demolition of existing structures and construction of a mixed use development with 4 level basement parking, two storey podium including ground floor retail and first floor commercial, with two residential towers totalling 112 apartments. Specifically the mixed-use development comprises the following:

- Four levels of basement car parking accommodating 358 spaces (206 Residential and 152 commercial / retail);
- Ground level – supermarket, liquor store, 4 x specialist retail spaces and loading dock/back of house;
- Level 1 – supermarket back of house, 3 x commercial spaces;
- Level 1 to 8 – comprises a total of 112 residential apartments within two blocks being Block A (53 apartments) and Block B (59 apartments);
- Communal terrace with pavilion, pool and building services located at podium level;
- Vehicle access to Basement Level 1 and a separate loading dock access from Croydon Street;
- Vehicle access to Basement Level 2 - 4 from Abel Place;
- Public domain works along Kingsway and Abel Place street frontages;
- Landscape works and tree removal.

1.0 DESCRIPTION OF PROPOSED MODIFICATION

An application has been made under the provisions of Section 4.55(2) of the Environmental Planning and Assessment Act, 1979 (EP&A Act) to modify the terms of Development Consent No. DA21/0562. The specific modification sought to the approved development involves:

- 1. Updating of the development description in the Consent to correctly reference and expand upon the nature of the approved development:**

~~Demolition of existing structures and construction of a mixed use development with 3 level basement parking, two storey podium including ground floor retail and first floor commercial~~

'Demolition of existing structures and construction of a mixed use development with 4 level basement parking, two storey podium including ground floor retail, supermarket and liquor store and first floor

commercial and residential units and residential units across two x seven storey residential flat buildings.'

2. Deletion of design change condition 2

Design Changes Required

A. ~~Before Construction~~

The following design changes must be implemented:

- i) ~~The balustrade across the northern balconies at Level 7 and 8 are to be comprised of a mix of solid balustrading and translucent glazing.~~*
- ii) ~~To maximise the northern setback of Level 8, the northern balconies in both Block A and B must be amended in accordance with approved plan No. Applicant Justification: DA107 Issue D.~~*
- iii) ~~A continuous awning along the Kingsway and Croydon St to provide continuous pedestrian shelter over the width of the footpath and aligned with the kerb.~~*
- iv) ~~Public amenities are to be provided on the ground floor to serve the general public and retail commercial tenancies.~~*

3. Modification to Condition 37 to remove delivery time restriction on Sunday and Public Holidays so as to enable deliveries between 7am-9am.

Collection/Delivery of Goods

A. Ongoing

To minimise the noise impact of the commercial tenancies of the development on the residential occupants of the same development and residential properties surrounding it, the delivery and collection of goods, including garbage and recycling waste from the premises must not take place between the hours of 8pm and 7am Monday to Saturday ~~or before 9am Sunday and Public Holidays.~~

4. Modification to Condition 44 – to enable demolition prior to obtaining required approvals of Sydney Water

Sydney Water

A. Before Any Works

Prior to the commencement of any works on site, ~~including demolition~~ or excavation, the plans approved as part of the Construction Certificate must also be approved by Sydney Water. This allows Sydney Water to determine if sewer, water or stormwater mains or easements will be affected by any part of your development. Customers will receive an approval receipt which must be included in the Construction Certificate documentation.

Please refer to the web site www.sydneywater.com.au.

B. Before Occupation / Subdivision Certificate

Prior to the issue of an Occupation Certificate or a Subdivision Certificate a Compliance Certificate under Section 73 of the Sydney Water Act, 1994, must be submitted to Council by the Principal Certifying Authority. Sydney Water may require the construction of works and/or the payment of developer charges. This assessment will determine the availability of water and sewer services, which may require extension, adjustment or connection to the mains.

Sydney Water Advice on Compliance Certificates:

Sydney Water will assess the development and if required will issue a Notice of Requirements letter detailing all requirements that must be met. Applications can be made either directly to Sydney Water or through a Sydney Water accredited Water Servicing Coordinator. Please make early contact with the Coordinator, since building of water / sewer extensions can be time-consuming and may impact on other services as well as building, driveway or landscaping design.

Go to www.sydneywater.com.au/section73 or call 1300 082 746 to learn more about applying through an authorised WSC or Sydney Water.

5. Modification to the Approved Plans including

Ground floor layout changes

- Public amenities added
- Removal of separation wall
- Removal of stair press fan room

Level 1 changes

- Configuration of level 1 Supermarket BOH and storage areas

2.0 SITE DESCRIPTION AND LOCALITY

The site is located on the northern side of Kingsway and between Croydon Street to the west and Abel Place to the east. The site is regular in shape having a frontage of 97.54m to Kingsway, 46.36m western side boundary to Croydon Street and 94.66m eastern side boundary to Abel Place, and an overall area of 5,223.4m². The site has a gradual cross fall of 0.75m from north-east corner (corner of Abel Place and Kingsway RL 16.25) to the south-west corner (corner of Croydon Road and 32 Croydon Road RL 15.45).

The site is comprised of 10 allotments which are occupied by one and two storey brick commercial buildings, brick (shop top housing, and single storey shops). All existing buildings are oriented to front Kingsway. At-grade car parking is located at the rear of each allotment, accessed via Croydon Street and Abel Place adjacent to the northern boundary of the site.

Surrounding development comprises a mix of development types, including:

- Dwelling houses and residential flat buildings to the north;
- Abel Place and Quest Cronulla Beach and residential apartments (Sur-Mer) to the east;
- Kingsway and adjacent Cronulla Square shopping centre to the south; and
- Croydon Street and commercial premises to the west.

A locality plan and an aerial photo are provided below in **Figures 1 and 2**.



Figure 1 – Locality Plan showing the location of the subject site.

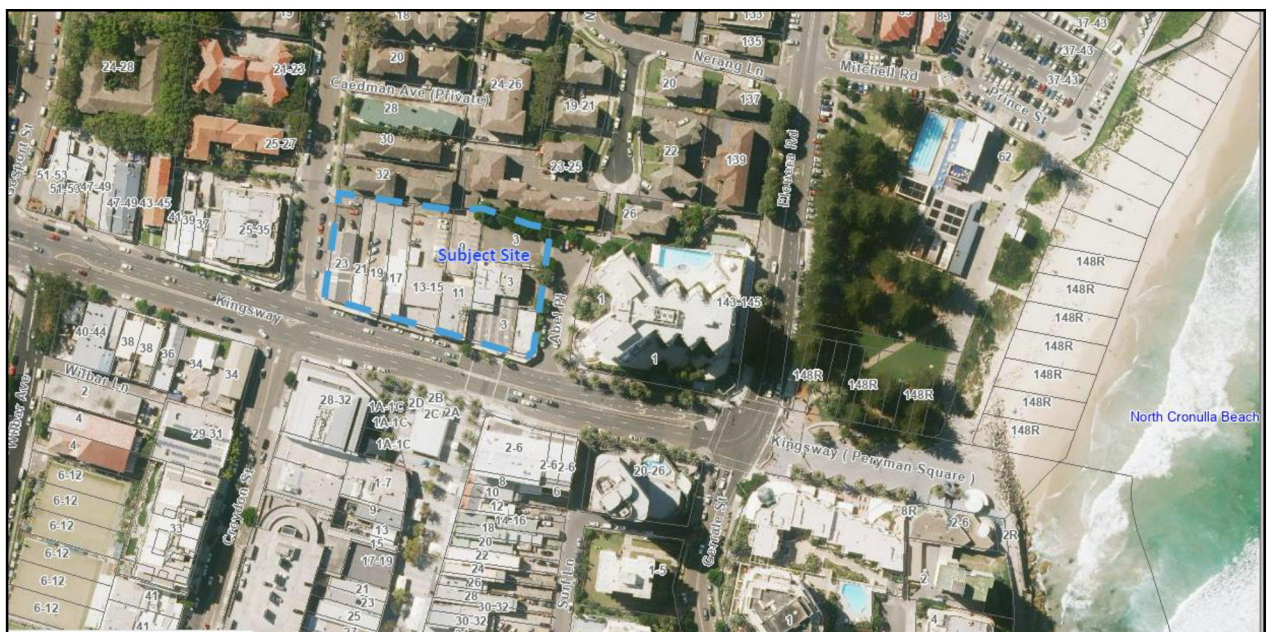


Figure 2 Aerial Photo showing the location of the subject site.

3.0 BACKGROUND

A history of the development proposal is as follows:

- A pre-application discussion (PAD18/0102) was held on 7 December 2018 regarding the development. As a result of this a formal letter of response was issued by Council dated 25 January 2019.
- DA21/0562 (PPSSSH-78) was approved by the SSPP on 13 September 2022.
- The current application was submitted on 9 September 2022.
- The application was placed on exhibition with the last date for public submissions being 17 March 2023.
- Council officers requested the following matters be addressed on the 14 May 2023.
 - Balcony design and depth
 - Awning design in the public domain
 - Adequacy of sanitary facilities
 - Hours of supermarket operation and plan of management
 - Response of Sydney Water
- Amended plans and additional information were lodged on 9 May 2023, 30 May 2023 and 2 July 2023 in response to Council's concerns which primarily included:
 - Revised balcony depths
 - Revised first floor plan
 - Revised provision of ground floor sanitary facilities
 - Submission of plan of management in support of hours of operation proposed.

A separate S4.55(1A) modification application (Council reference MA23/0088) has been lodged and is currently under assessment by Council. The modifications sought to the approved development generally as part of this application include:

- Internal layout changes to basement levels and ground floor changes resulting in a reduced GFA and increased parking provision (358 to 370).
- Adjustment of fire egress / stairs and inclusion of commercial lifts.
- Minor landscaping changes to the ground floor deep soil area.
- Rewording of associated conditions of consent.

4.0 ADEQUACY OF APPLICANT'S SUBMISSION

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

2.0 NATURE OF MODIFICATION SOUGHT

This application proposes the modification of Development Consent No. DA17/0467 pursuant to Section 4.55(2) of the EP&A Act. An assessment of the type of modification proposed has been carried out in accordance with the provisions of the Environmental Planning and Assessment Regulation 2021 (EP&AR 2021) and a Section 4.55(2) is the appropriate type of modification application on the basis of the following:

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. Further, consultation with the relevant Minister, public authority or approval bodies in respect to the modification sought by this application has been undertaken.

5.0 PUBLIC PARTICIPATION

The application was advertised and publicly exhibited from 28 February to 17/ March 2023 in accordance with the provisions of Chapter 42 of Sutherland Shire Development Control Plan 2015 (SSDCP 2015) and administrative requirements of the SSPP. A total of 752 owners of neighbouring properties were notified of the application. Council has received 6 written submissions. A summary of main issues is provided below and a full list of the locations of those who made submissions, the dates of their letters, and the issues raised, is contained within **Appendix "B"**.

- Hour of operation beyond 9pm not in keeping with existing trade within Cronulla Centre (7am to 9am adequate)
- Hours of operation including deliveries prior to 9am (Sundays / Public holidays) will present an adverse amenity impact to residences directly opposite loading dock / vehicular entry
- Increased trading hours and traffic / amenity impacts
- Air pollution and health impacts arising from vehicles.
- Objection to approved and proposed modified development in entirety
- Adequacy of traffic / loading dock management plan
- Safety issue at the intersection of Kingsway / Croyden Street and traffic / truck routes through residential back streets and not on the Kingsway.

Comment: These matters are largely addressed in the assessment component of this report and by recommended conditions of development consent where relevant (i.e. hours of operation, loading dock management, neighbourhood amenity etc). The broader suitability to the site for the development along with works external to the site and truck servicing routes were considered in the assessment of the original development application.

6.0 STATUTORY CONSIDERATIONS

The site is zoned E2 Commercial Centre under SSLEP 2015. The approved development is comprised of a number of land uses, including shop top housing, retail premises and commercial premises. All are permissible land uses within the zone with development consent.

The following environmental planning instruments (EPIs), Draft EPIs, Development Control Plans (DCPs), Codes or Policies are relevant to the assessment and determination of this application:

- State Environmental Planning Policy (Planning Systems) 2021.
- State Environmental Planning Policy No. 65 – Design Quality of Residential Flat Development (SEPP 65) and accompanying Apartment Design Guide.
- Sutherland Shire Local Environmental Plan 2015 (SSLEP 2015).
- Sutherland Shire Development Control Plan 2015 (SSDCP 2015).

The following environmental planning instruments (EPIs), Draft EPIs, Development Control Plans (DCPs) were considered and are relevant in the assessment of the original application. The subject s.4.55(2) modification application does not alter the previous assessment and the proposal remains consistent with the prior assessment and determination noting the consent authority was satisfied that the development is consistent subject to conditions of development consent imposed.

- State Environmental Planning Policy (Transport and Infrastructure) 2021.
- State Environmental Planning Policy (Resilience and Hazards) 2021.
- State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004.
- State Environmental Planning Policy (Biodiversity and Conservation) 2021.

7.0 COMPLIANCE

7.1 State Environmental Planning Policy No. 65 – Design Quality of Residential Apartment Development – Design Quality Principles (SEPP 65)

State Environmental Planning Policy No. 65 – Design Quality of Residential Flat Development (SEPP 65) and the accompanying Apartment Design Guide (ADG) apply to the proposed development. These policies seek to improve the design quality of residential flat development through the application of a series of nine design principles.

An assessment of the application with respect to the extent of modifications proposed has been undertaken having regard to the design quality principles of SEPP 65. In summary, Council's assessment identifies that the proposed modifications including revised plans submitted by the applicant with respect to the Level 8 balcony depth is acceptable. This matter is discussed in detail in the 'Assessment' section of this report. The development remains consistent with the original development assessment in terms satisfying the Design Quality Principles of SEPP 65 and remains an appropriate response to the site and its transitional built form context to surrounding development being located within the Cronulla Town Centre.

7.2 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 Council's DCP. In summary, Council's assessment identifies

that the proposed modifications including revised plans submitted by the applicant including adjustment to the balconies and setback to the northern boundary is acceptable. This matter is discussed in detail in the 'Assessment' section of this report and a table with a compliance checklist of the proposal against the relevant ADG design criteria is contained **below**.

Apartment Design Guide (ADG) –Building Key Design Criteria			
Objective	Design Criteria	Proposal	Complies
3F-1 Visual Privacy	Minimum required separation distances from buildings to the side and rear boundaries Over 25m (9+Storeys) <ul style="list-style-type: none"> 12m habitable rooms / balconies (15m + 3m zone transition) 	Apartment A8.01 – Min 9.8m B8.01 - 12.7m B8.02- 10.4m	No No No
4E-1 Private Open Spaces / Balconies	All apartments are required to have a primary balcony as follows; <ul style="list-style-type: none"> 3+ bedroom = 12m² (depth of 2.4m). 	Minimum areas / dimensions for Apartments A8.01 and B8.02 achieved	Yes

7.3 Sutherland Shire Local Environmental Plan

The proposal has been assessed for compliance against SSLEP 2015. A compliance table with a summary of the key development standards is contained below. Development standards discussed in detail in the 'Assessment' section of this report

Sutherland Shire Local Environmental Plan 2015			
CLAUSE	REQUIRED	PROPOSAL	COMPLIANCE
cl.4.3 Height of Building	30m	Building A 33.052m – top of roof plant screen 31.59m – top of roof parapet Building B 32.984m – top of roof plant screen 31.36m – top of roof parapet	No No change from approved
cl.4.4 Floor Space Ratio	3:1 (subject to bonus FSR in accordance with "Area 9") (Max 15,670.20m ²)	Approved GFA - 15,670m ² (3:1) Proposed GFA - 16,059m ² (3.07:1)	No (Increase of 389m ² / 2.49% Variation)

cl.4.6 Exceptions to development standards	Not required under Modification Application to address breach of building density development standard above.	N/A
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7.4 Sutherland Shire Development Control Plan 2015

The proposal has been assessed for compliance with SSDCP 2015. Compliance remains consistent with the Centre aims and is largely unchanged from the original assessment and approved development. A compliance table with a summary of the controls applicable to the subject modification application is provided below.

Sutherland Shire Development Control Plan 2015 – Chapter 19. (B3 Commercial Core Cronulla)			
Clause/Control	REQUIRED	PROPOSAL	COMPLIANCE
4 Streetscape and Built Form			
4.2.1	Comply with the relevant building envelope where shown on the Design Guidelines for Specific Sites	As approved	N/A
4.2.2	<p>Where a development is proposed with a building envelope which varies from the Design Guidelines for Specific Sites, the applicant must demonstrate that the outcomes from the development are as successful, or better than those that would be achieved under the Design Guideline for the Specific Site in relation to:</p> <ul style="list-style-type: none"> a. The buildings compliance with SEPP 65 including solar access, building separation and residential amenity. b. Whether the surrounding land will be able to achieve its full development potential without compromising its ability to meet SEPP 65. c. Whether solar access to footpaths, open space or the public domain is compromised. d. Whether the proposed development is as successful in 	Remains satisfactory and as approved. Refer to assessment discussion in relation to building setbacks	Acceptable

Sutherland Shire Development Control Plan 2015 – Chapter 19. (B3 Commercial Core Cronulla)

Clause/ Control	REQUIRED	PROPOSAL	COMPLIANCE
	terms of its transitional relationships to surrounding development, and in particular any heritage items in the vicinity of the site.		
4.2.8	The building form must be articulated to avoid large expanses of unbroken wall, and to visually reduce bulk.	Satisfactory	Yes
5. Design Guidelines for Specific Sites			
Kingsway bounded by Abel Place and Croydon Street (northern end of the Mall)			
6. Amalgamation Requirements			
10. Landscape			
11. Active Frontages			
11.2.6	Continuous awnings must be provided along shop fronts and active street frontages. Awnings are to be designed to maintain street canopy trees that form part of the landscape character of the locality.	Awnings are proposed as an integrated part of the proposal and are incorporated within the ground level building articulation.	Yes
12. Building and Site Layout			
12.2.2	All loading, unloading and manoeuvring of vehicles shall take place within the curtilage of the site, and vehicles are to enter and exit the site in a forward direction at all times.	Satisfactory	Yes
15. Visual and Acoustic Privacy			
15.2.1	Locate, orientate and design new development to ensure adequate visual privacy between buildings, and between buildings and adjacent private open space.	Satisfactory	Refer to assessment
16. Safety and Security			
17. Parking			
17.2.1	Car parking shall be provided in accordance with the following table: Residential Flat Building / Shop Top Housing Minimum 1 space per unit		

Sutherland Shire Development Control Plan 2015 – Chapter 19. (B3 Commercial Core Cronulla)			
Clause/ Control	REQUIRED	PROPOSAL	COMPLIANCE
	Maximum 3 spaces per unit No visitor parking (minimum 112 / maximum 336)	206 residential spaces	Yes – consistent with DA approval.
	Office and Business Premises 1 space per 30m ² GFA 888m ² = Minimum 30 spaces Retail Premises 1 space per 30m ² GFA 3412m ² = minimum 114 spaces Total Commercial - 144 spaces	21 commercial spaces 131 supermarket/retail spaces 152 spaces collective	No – allocation however consistent with DA approval. Yes Yes
	Total Car Parking - Minimum 256	Total of 358 car parking spaces:	Yes
18. Late Night Trading (discussed in assessment below)			
19. Waste Management Requirements			

8.0 SPECIALIST COMMENTS AND EXTERNAL REFERRALS

The application was referred to the following internal and external specialists for assessment and the following comments were received:

9.1. NSW Police

In accordance with the *Crime Risk Assessment – Police & SSC Protocol 2010* the application was referred to the NSW Police. No objections to the proposed modification application have been raised. A full copy of this response is included as **Appendix “C”** of this report.

Sydney Water

The application was referred to the Urban Growth Unit within Sydney Water as the modifications include removal of 'demolition' from Condition 44 to allow for the commencement of demolition works as soon as possible prior to obtaining Sydney Water's approval. Due to the risk of damaging the 1070x1500 unlined trunk rock sewer traversing the property which is a critical Sydney Water asset that

forms part of the Cronulla Carrier, Sydney Water objects to the removal of 'demolition' from Condition 44. A full copy of this response is included as **Appendix "D"** of this report and the condition is recommended by Council to be retained as per the terms of the original approval.

Architect

Council's Architect has reviewed the proposal with respects to the deletion of design change conditions 2A(i) and (ii) which relate to the location of level 8 terraces and the material composition of balustrading to level 7 and 8. He is not supportive of the removal of the design change condition under condition 2A(ii) but the removal of the solid balustrading requirement under condition 2A(i) is able to be removed. A summary of the recommendations is provided below

- No objection to the removal of solid balustrading is raised in terms of materiality and the impact on the architectural merit of the development. Translucent glazing should be included to the level 7 and 8 balconies.
- The location of the balustrading and extent of terracing on level 8 will result in a building that breaches the ADG setback requirements significantly and will not provide an acceptable transition in scale to the north that is appropriate for this site. Levels 7 and 8 sit above 25m. According to the ADG, the standard setback for habitable rooms and balconies is 12m and 6m for non-habitable rooms. Further, the ADG requires an additional 3m where there is an adjoining zone that allows for lower density residential development, such as in this case. Therefore, the standard setback of 12m for habitable rooms and balconies is to be increased to 15m and the 6m setback for non-habitable spaces is to be increased to 9m. This additional setback requirement has not been considered nor acknowledged.
- The applicant's sight lines does not provide any new compelling information and also fail to show the required ADG setback with the additional 3m requirement. The sections do show that there is a benefit to peeling away elements from the edges of level 8 to bring them back closer to where they should be along this zone boundary (as evident in section 01). If drawn correctly, would show a reduced field of view, and, therefore, a benefit to implementing the design changes).
- The applicant's concern that the placement of the usable portion of the terrace relative to internal living areas is a poor amenity outcome is not a compelling argument as this can be rectified by a revised layout for the unit A801)

Planning Comment: The amendments made to the proposal during the course of assessment in response to concerns raised along with the associated planning merits are further discussed in the assessment component of this report.

Public Domain

Council's Public Domain Engineers have reviewed the proposal and do not support the removal of the requirement for the continuous awning for all weather pedestrian protection over the public footpath. Revised design criteria has been advised and this matter is further discussed in the assessment component of the report.

Landscape Architect

Council's Landscape Architect raised no objection to the proposal and has confirmed that the awning alignment required by Council's Public Domain Engineers is appropriate to facilitate room to plant the *Araucaria columnaris* 'Cook Pines' along the Kingsway within the road reserve.

Engineering

Council's development engineers raised no objection to proposed modifications and advises that there are no changes required to conditions relating to engineering matters.

Building Surveyor

Council's Building Surveyor has reviewed the proposal with respect to the relocation of sanitary facilities to the ground floor as per the development consent and BCA compliance. The submitted compliance letter provides a comprehensive breakdown of occupant numbers and sanitary facilities and demonstrates that sufficient sanitary facilities have been provided.

Environmental Health

Council's Environmental Health Officer has reviewed the proposal with respects to hours of operation (including loading dock) and neighbourhood amenity. The submitted acoustic report has provided satisfactory recommendations to minimise noise disturbance and no objections to the proposal have been raised subject to on-going compliance with the report recommendations.

Waste Management Officer

Council's Waste Management Officer raised no objection to proposed modifications and advises that there are no changes required to conditions relating to ongoing waste management.

9.0 ASSESSMENT

A detailed assessment of the application has been carried out having regard to the matters for consideration under Section 4.15 of the EP&A Act. The following matters are considered important to this application.

9.1 Building Density

The application proposes an increase to the gross floor area of the development as a result of internal layout changes to the ground floor. A significant quantum of floor space was excluded in the original Development Application as back of house loading / plant services adjoining the supermarket. The proposal retains a loading area adjacent to the loading dock / service lift and along with back of house / storage on Level 1. The approved GFA for the development is 15,670.1m² (3:1) and the proposed increase in GFA is 16,059.71m² (3.07:1 / 2.49%). Below is an extract of the GFA calculation plans of the ground floor detailing the increase in supermarket floor area and reduction in the back of house loading / plant services (refer **Figures 3 and 4**).



Figure 3: Original Ground Floor Plan and area excluded from GFA calculation

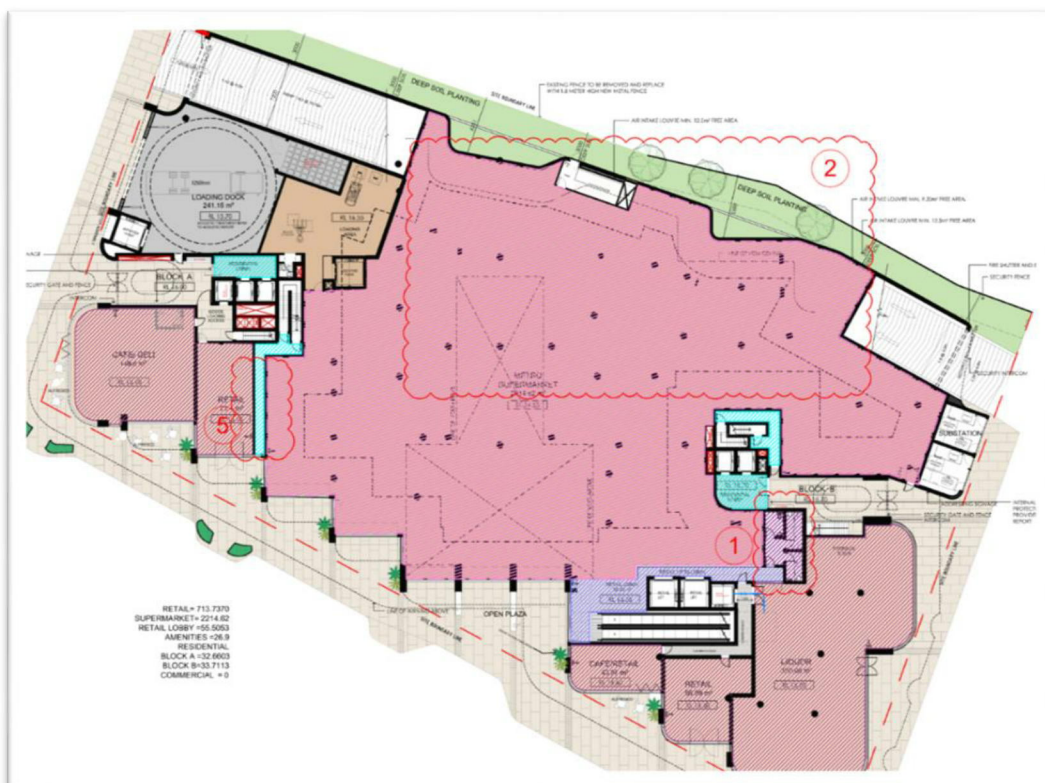


Figure 4: Modified Ground Floor Plan and area included from GFA calculation

An assessment of the proposal against the objectives of the building density development standard has been undertaken and the modified development is considered to be acceptable. The increase in GFA is located wholly within the approved building envelope and does not result in any changes to the bulk or scale or external visual appearance of the development. The loading dock continues to comply

with the relevant standards and will not be impacted by the change in size and sufficient / compliant car parking is maintained with the associated increase in internal supermarket floor area.

9.2 Urban Design and Visual Privacy

The application seeks to Delete Condition 2A(i) &(ii) which specifies the following:

- *The balustrade across the northern balconies at Level 7 and 8 are to be comprised of a mix of solid balustrading and translucent glazing.*
- *To maximise the northern setback of Level 8, the northern balconies in both Block A and B must be amended in accordance with approved plan No. Applicant Justification: DA107 Issue D.*

As Levels 7 – 8 are over 25m in height, the required setback is 15m from the northern boundary in accordance with the ADG (i.e. 12m + 3m zone boundary setback for habitable spaces) and the above conditions were originally imposed to maximise this setback and to improve the visual relationship / privacy between properties. In the original determination commentary, the SSPP noted that:

“Notwithstanding the site constraints, appropriate conditions have been imposed notably,..... Increased setbacks from neighbouring properties to the north and landscaped areas to improve privacy and amenity”.

The approved Development Application plans detailing the design changes is provided in **Figures 5** and **8** below.

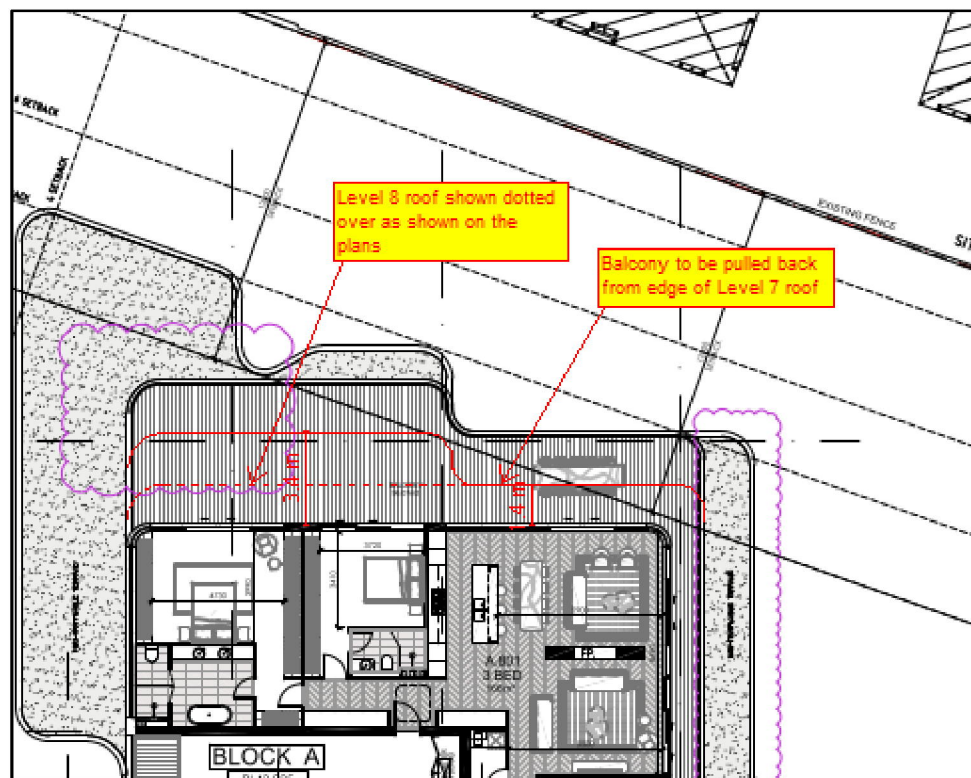


Figure 5: Approved balcony depth Apartment A8.01

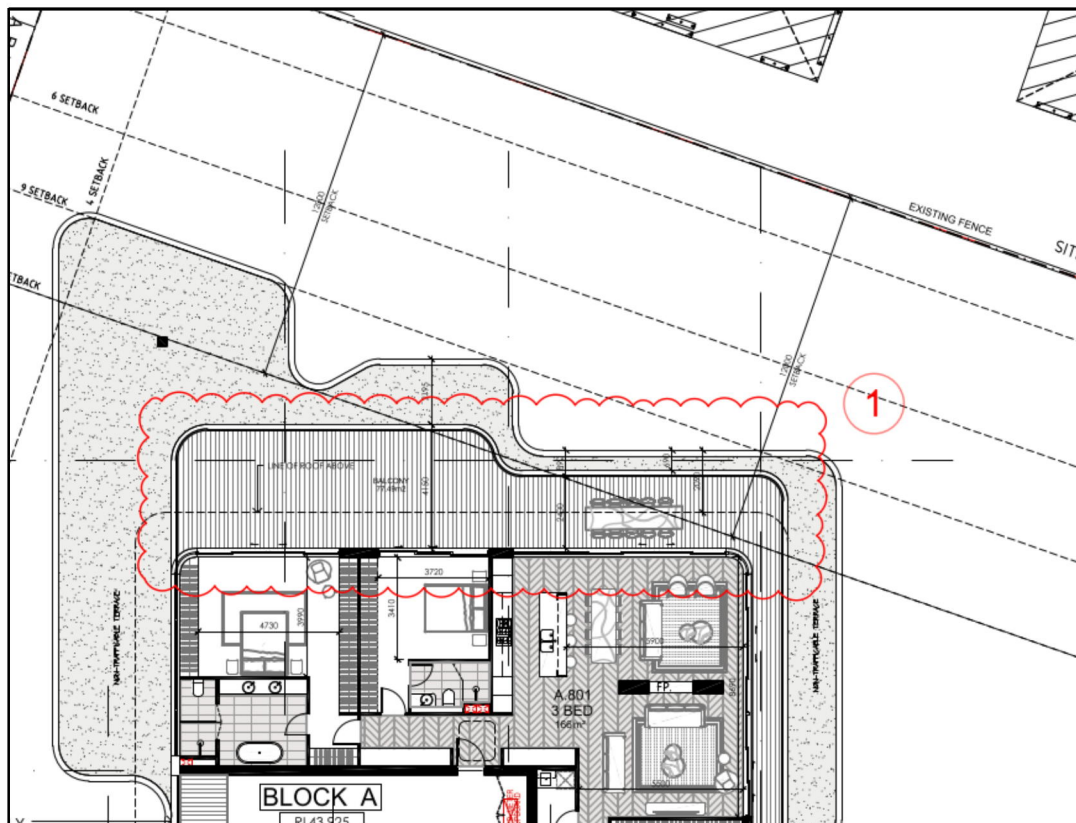


Figure 6: Revised balcony depth Apartment A8.01

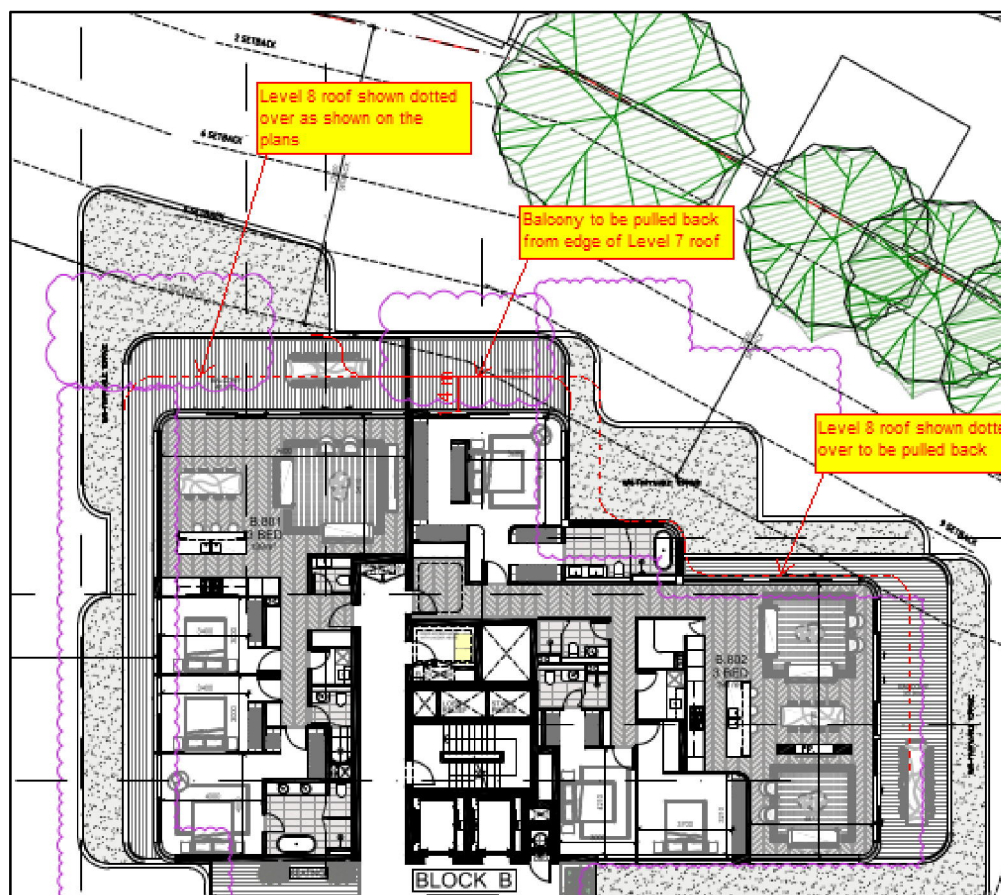


Figure 7: Approved balcony depths / roof Apartments B8.01 and B8.02

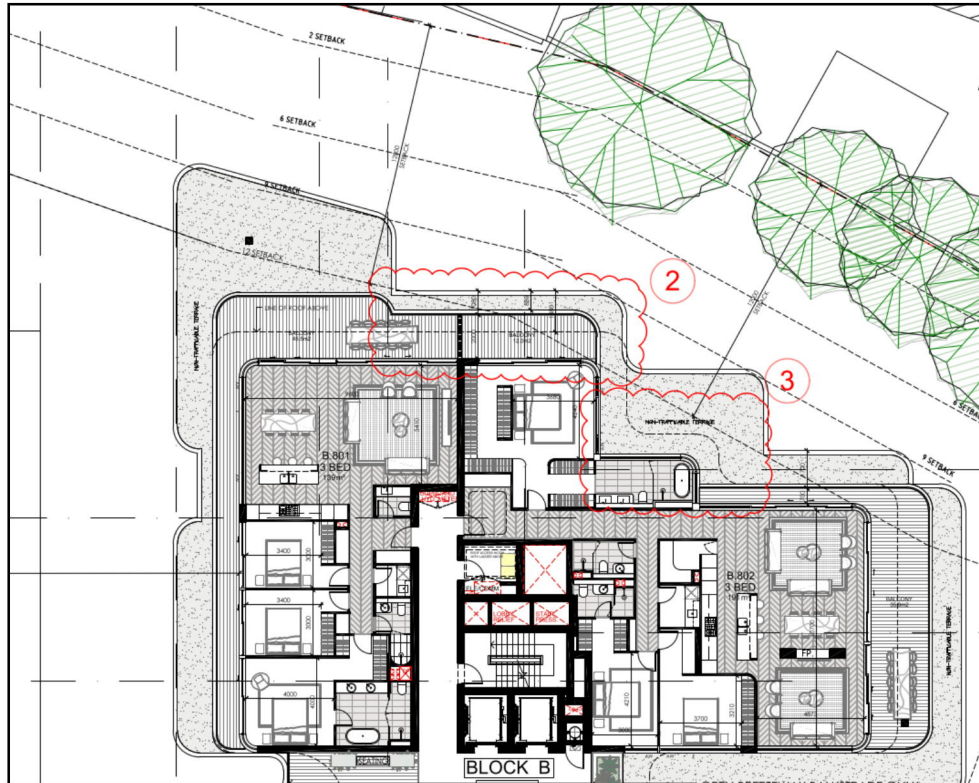


Figure 8: Revised balcony depths / roof Apartments B8.01 and B8.02

The scaling back of the built form at the upper level to the northern boundary (i.e. increased setbacks to the trafficable balcony / balustrade edge of Apartments A8.01 and B8.01. / B8.02) is required to be provided to a reasonable degree to remain consistent with the relevant objectives / ADG requirements. The extent of the condition does however present a function / amenity issue to apartment A8.01 given the 1.4m limited dimension adjacent to the living space (noting 2.4m dimension is required by ADG). In response to concerns raised, the applicant has submitted revised plans whereby a compliant 2.4m depth is provided which enables the balustrade to be setback from the building edge approximately equal to its respective height.

The approach of setting back the balustrade from the building edge in this manner (including when carried also forward of the bedrooms of A8.01 and B8.02) both sufficiently increases the usable external space and serves the intent of scaling back the upper level built form encroaching within the ADG setback requirement improving both the amenity and the visual interface with the adjoining R3 – High Density Residential Lands. The reinstatement of the eave adjacent to apartment B8.02 is complimentary to the visual appearance and aesthetic of the development, and in the absence of any significant impact, is considered to be acceptable.

In terms of materiality, no objection is raised to the removal of the requirement for solid balustrading / mix material composition relating to levels 7 and 8. The visual amenity / relationship to adjoining properties is anticipated to remain satisfactory, particularly given the height above both the existing and any anticipated future development on the adjoining lots to their respective 16m maximum height. The transparent composition of the balustrading reduces the bulk and scale of the development, and the placement of solid barriers could be perceived to disrupt the balanced / sculptural building form.

The diagrams below (**Figures 9 and 10**) depict the retention of transparent glazing and the changes in aesthetic / form of the development should the condition of development consent be maintained.



Figure 9: Levels 7 and 8 with transparent glazing



Figure 10: Levels 7 and 8 with solid balustrading / mixed material composition.

In summary, the relevant urban design matters contained within SEPP 65, the ADG, Clauses 6.16 and 6.17 of SSLEP 2015 and SSDCP2015 have been considered in the assessment of the application. The revised plans submitted by the applicant are considered to be acceptable and the Conditions 2A(i) and (ii) are recommended to be deleted.

9.3 Public Domain

The application seeks to delete Condition 2A(iii) of the Development Consent which requires a continuous awning along the Kingsway and Croydon Street to provide continuous pedestrian shelter

over the width of the footpath and aligned with the kerb. This is primarily to maintain the indents at entry points, which whilst defines the entries from a wayfinding perspective and is complementary of the overall aesthetic / composition of the development, fails to provide an appropriate outcome for the public within the public domain. The indents to the awning are depicted in **Figure 11** below.

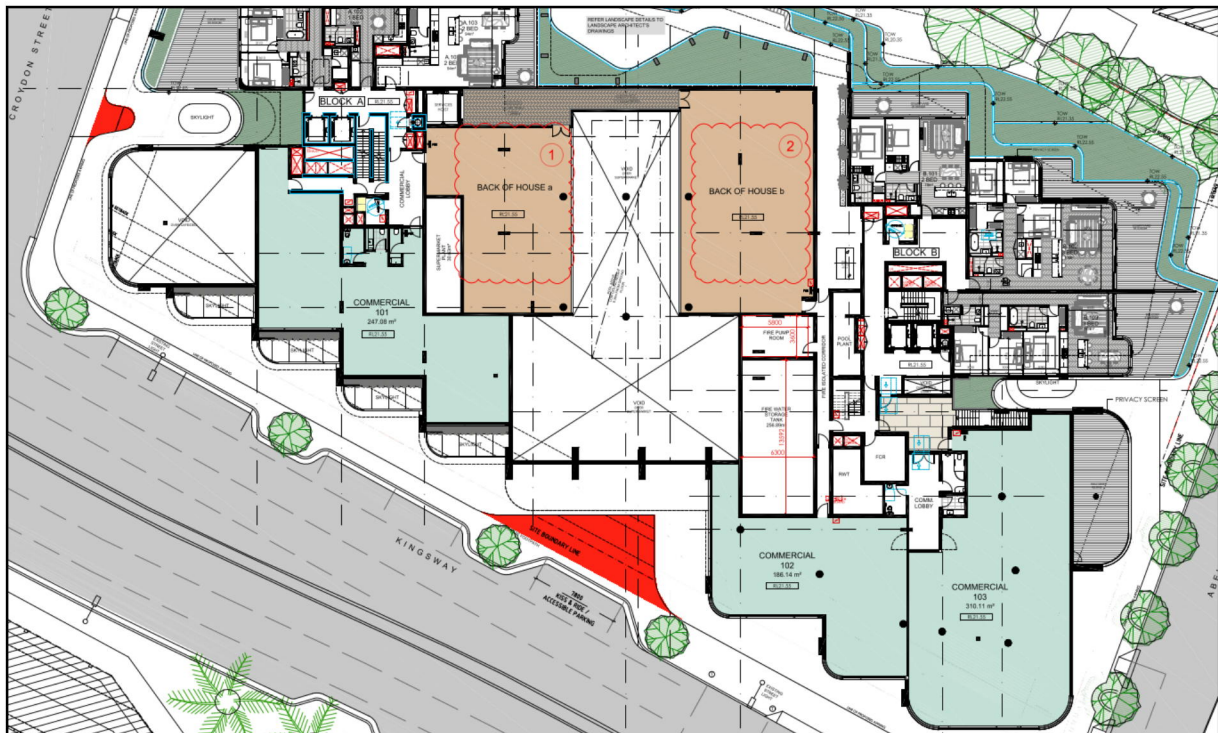


Figure 11: Proposed location of awning indents along Kingsway and Croyden Street.

Consistent with the condition of consent and Chapter 19, 11.2.6 of SSDCP 2015 which requires continuous awnings to be provided along shop fronts and active street frontages, Council's Public Domain team have confirmed the requirement for a continuous awning for all weather pedestrian protection over the public footpath. The design details of the condition have been further reviewed however and a revised design specified to ensure an appropriate outcome in the public domain and to ensure adequate room for the future plantings of *Araucaria columnaris* 'Cook Pines' along the Kingsway. The design is described and depicted in Council's diagram below (refer **Figure 12**), noting that indents to the awning are not supported and this remains a matter of contention in the assessment of the application.

- A continuous awning is to be provided over the footpath and aligned with the kerb along Kingsway with a width 2m.
- A continuous awning to be provided over the footpath and aligned with the kerb along Croyden St with a width 2m (the awning is to terminate before the driveway down ramp).
- A continuous awning is to be provided over the footpath and aligned with the kerb along Abel Place (with no awning 'cut-outs' for trees and awning is to curve back into the building and terminate at the southern edge of the Ausgrid substation location being the northern edge of the building B lobby).

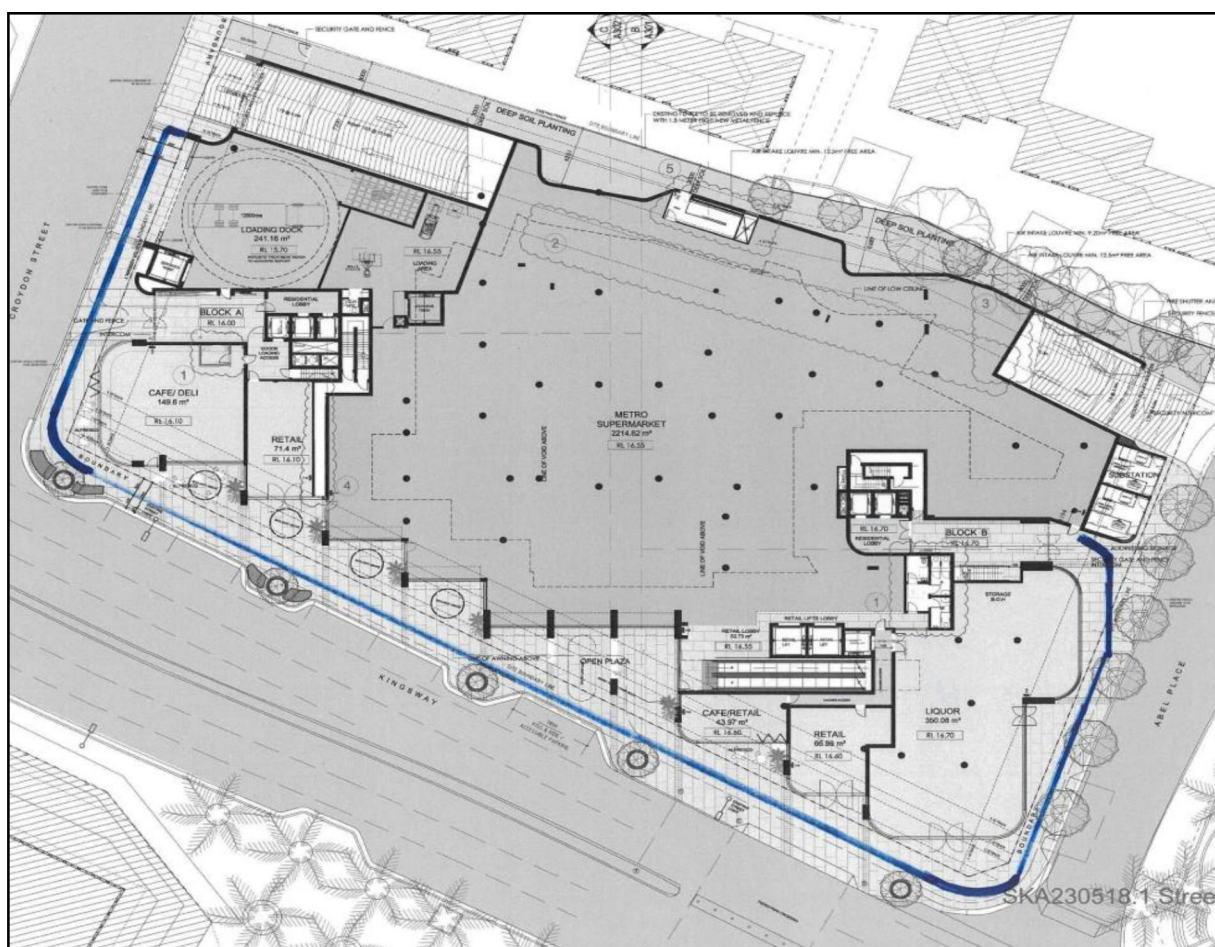


Figure 12: Council's awning design

9.4 Sanitary Facilities

Condition 2A iv) of the Development Consent requires public amenities are to be provided on the ground floor to serve the general public and retail commercial tenancies. The revised ground floor plan (refer **Figure 13**) details sanitary facilities to the ground floor of the development consistent with the terms of the approval. Following a request, a comprehensive breakdown of occupant numbers by a suitably qualified building surveyor and demonstration of compliance with the BCA has been submitted. This has been reviewed by Council and is acceptable. The condition of development consent is recommended to be imposed requiring sanitary facilities to be adjusted in line with the consultants' diagram / recommendations.

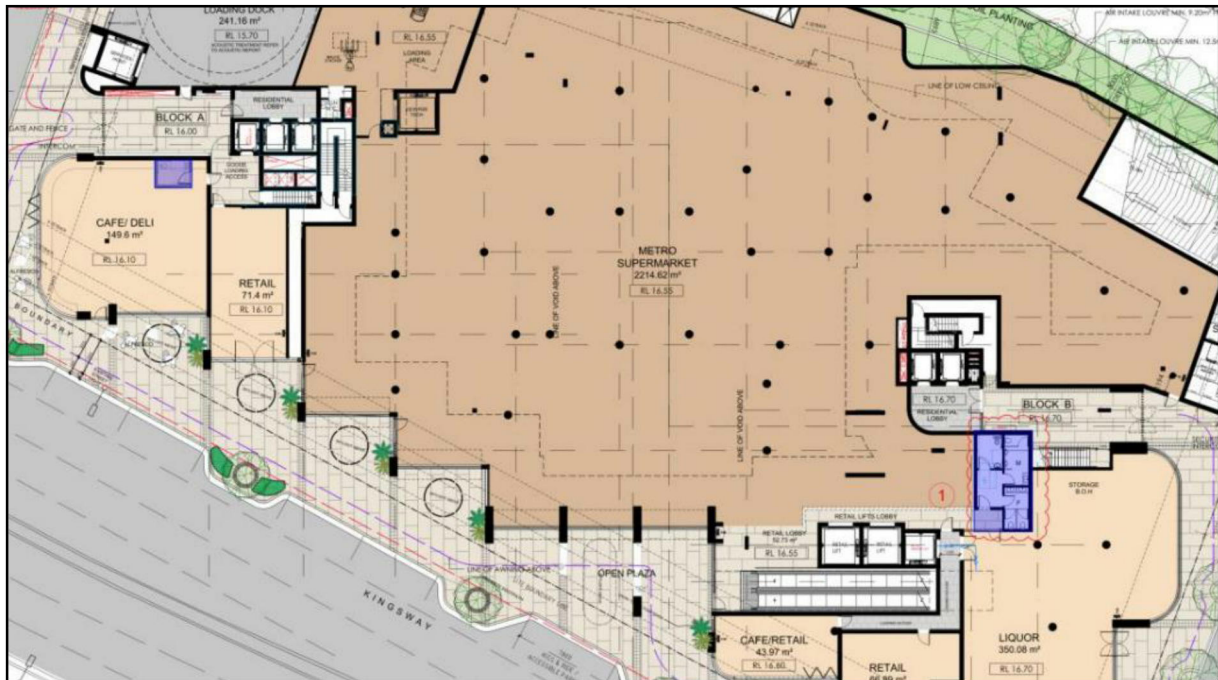


Figure 13: Revised location and design of sanitary facilities

9.5 Hours of Operation / Loading Bay and Neighbourhood Amenity

The modification application, whilst not seeking approval for the fit-out of the space, seeks to specify hours of operation for the supermarket (Harris Farm) being 7am-12am Monday to Sunday. It is noted that a separate approval pathway / consent is required to be obtained prior to the first use of any of the non-residential tenancies in the development (Condition 52). The development consent does however detail hours of operation and operational parameters for the loading dock and future liquor shop and whilst hours of operation for the supermarket would typically be specified as part of a future detailed development application, can thus be considered in this subject modification.

The site is located within an 'Intermediate Activity Area' under Chapter 37 of SSDCP 2015. Intermediate activity areas are characterised as mixed residential and commercial use areas with the potential to accommodate a range of lower impact late night trading premises. They are intended to function as a transition zone by providing a lesser intensity of use. This is generally achieved by applying more stringent operating hours. The diagram below (**Figure 14**) depicts the sites location on the northern fringe of the Cronulla Late Night Trading Policy Area.

supermarket so as to adequately protect the amenity of the surrounding neighbourhood (e.g. noise management (garbage / loading), safety and security / CPTED, complaint procedures, shopping trolley management, cleaning operations, waste, referencing of the loading dock management plan etc). The implementation and on-going compliance with the PoM is considered appropriate given the scale of the land use and the sites interface with surrounding residential land uses. A suitable condition of consent is recommended in **Appendix A** adopting the PoM.

Notwithstanding the above, it is noted that the car park entries are opposite mixed use buildings and in close proximity to residences. Due to this interface and given concerns have been raised in submissions from the surrounding neighbourhood, a trial / reviewable condition could be imposed for operating hours between 10pm – 12am should the Panel deem this to be appropriate in the context of the site circumstance.

The application also seeks to modify Condition 37 to remove delivery time restriction on Sunday and Public Holidays so as to enable deliveries between 7am-9am. An acoustic report addressing neighbourhood amenity and outlining loading dock acoustic mitigations measures has been submitted which is considered to be acceptable subject to conditions of development consent. It is further noted that the proposal accords to the Department of Planning and Environment Extended Business Hours Noise Guide dated February 2023 for exempt operating and trading hours.

10.0 DEVELOPER CONTRIBUTIONS

Section 7.11 contributions were levied on the original Development application. The proposed modification does not increase the demand for regional and local recreational space and infrastructure facilities within the area from that as approved and as such 7.11 contributions remain unchanged.

11.0 DECLARATIONS OF AFFILIATION, GIFTS AND POLITICAL DONATIONS

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

12.0 CONCLUSION

The subject land is located within Zone E2 Commercial Centre pursuant to the provisions of SSLEP 2015. The proposed development, being a mixed use development, is a permissible land use within the zone with development consent.

In response to public exhibition, 6 unique submissions were received. The matters where applicable to the assessment of the current modification application, have been discussed in the assessment report.

Following assessment, including amendments / submission of additional information by the applicant, the proposal is largely supported subject to deleted, modified or additional conditions of development consent.

The introduced changes are considered relatively minor and in keeping with the approved built form and external appearance of the development with no detrimental additional impact to adjoining properties or the public domain. The proposal adequately maintains consistency with relevant Policies and Standards and the future operation of the supermarket space / loading dock is not anticipated to adversely impact upon the amenity of the surrounding properties to any unacceptable degree. Council remains of the view that the all-weather protection of the public way fronting the site for pedestrian benefit should be maintained in accordance with the terms of the approval.

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. Further, consultation with the relevant Minister, public authority or approval bodies in respect to the modification sought by this application has been undertaken.

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 SSLEP 2015 and all relevant Council DCPs, Codes and Policies. Following detailed assessment it is considered that the modification application can be supported.

RESPONSIBLE OFFICER

The officer responsible for the preparation of this Report is Evan Phillips- Senior Development Officer

Author: Evan Phillips; Senior Development Officer

Report endorsed by Ben Latta, Development Assessment and Certification Manager