

SUTHERLAND SHIRE COUNCIL ASSESSMENT REPORT

Panel Reference	PPSSSH-40
DA Number	MA20/0232
LGA	Sutherland Shire
Proposed Development:	S4.56 modification to DA18/0323 – delete condition 19 i) consolidation and amend condition 19 ii) road dedication
Street Address:	S/P 545, S/P 9336, S/P 48254, S/P 67206 – 5 to 9 Ozone Street, Cronulla
Applicant/Owner:	Ozone Cronulla Pty Ltd
Date of DA lodgement	7 August 2020
Number of Submissions:	Nil
Recommendation:	Approval
Regional Development Criteria (Schedule 7 of the SEPP (State and Regional Development) 2011	
List of all relevant s4.15(1)(a) matters	i.e. any: - relevant environmental planning instruments - proposed instrument that is or has been the subject of public consultation under the Act and that has been notified to the consent authority - relevant development control plan - relevant planning agreement that has been entered into under section 7.4, or any draft planning agreement that a developer has offered to enter into under section 7.4 - coastal zone management plan relevant regulations e.g. Regs 92, 93, 94, 94A, 288
List all documents submitted with this report for the Panel's consideration	Appendices: - A – 5 Ozone Street Strata Plan - B – 7 Ozone Street Strata Plan - C – 9 Ozone Street Strata Plan
Report prepared by:	Bagnall M, Sutherland Shire Council
Report date	

Summary of s4.15 matters

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

Legislative clauses requiring consent authority satisfaction

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

Clause 4.6 Exceptions to development standards

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

Special Infrastructure Contributions

Does the DA require Special Infrastructure Contributions conditions (S7.24)? Yes / No / 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

REPORT SUMMARY

REASON FOR THE REPORT

This report is referred to the Sydney South Planning Panel (SSPP) as this application is a Section 4.56 to an application previously heard by the SSPP and is required to be determined by the SSPP as Council only has delegation for Section 4.55(1) and (1A) applications under this circumstance.

The original proposal (DA18/0323) was approved by the Land and Environment Court on 2 April 2019.

APPROVED PROPOSAL

The approved development 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 the site off Cecil Monro Avenue, including 70 residential spaces, 1 visitor space, 1 car wash space and 2 trades/service vehicle spaces.

PROPOSED MODIFICATION

The modification application is to amend condition 19 (Registration of Plan of Consolidation and Road Dedication) of the development consent.

THE SITE

The subject site is located on the western side of Ozone Street, Cronulla and also has frontages to Ocean Grove Avenue and Cecil Monro Avenue. It is irregular in shape and has an area of 1,592m². The land is relatively flat. It is currently occupied by three residential apartment buildings that are each three storeys in height. The site adjoins two mixed use buildings immediately to the west at 14 and 18 Gerrale Street. The locality is characterised by residential flat buildings ranging in heights of 3 – 13 storeys. The site is at the eastern periphery of the Cronulla commercial centre.

ASSESSMENT OFFICER'S RECOMMENDATION

1.0 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 02 Apr 2019 for Demolition of existing structures and construction of a residential apartment building containing ~~32~~ **38** apartments and 3 basement parking levels at S/P 545, S/P 9336, S/P 48254, S/P 67206, 5 to 9 Ozone Street, Cronulla be supported.
- B. That Development Application No. DA18/0323 for Demolition of existing structures and construction of a residential apartment building containing ~~32~~ **38** apartments and 3 basement parking levels at S/P 545, S/P 9336, S/P 48254, S/P 67206, 5 to 9 Ozone Street, Cronulla be modified as follows:

Modify consent description to the following:

- Demolition of existing structures and construction of a residential apartment building containing ~~32~~ 38 apartments and 3 basement parking levels

Modify condition 19 with the following:

19. Registration of Plan of Consolidation and Road Dedication

A. Prior to ~~Construction~~ Occupation

Prior to the issue of any ~~Construction~~ Occupation Certificate, a Plan of Subdivision must be registered with NSW Land Registry Services showing the following:

- i) Consolidation of Lot 20 DP839823, Lot D DP366048 and Lot 2 DP202936.
- ii) A 3m x 3m splay on the south-eastern corner of the site dedicated as road to Sutherland Shire Council in Stratum to improve vehicle sight lines.

ASSESSMENT OFFICER'S COMMENTARY

2.0 DESCRIPTION OF PROPOSED MODIFICATION

An application has been made under the provisions of Section 4.56 of the Environmental Planning and Assessment Act, 1979 (EP&A Act) to modify the terms of Development Consent No.DA18/0323.

Council by Development Consent No. DA18/0323 issued on 2 April 2019 granted approval for demolition of existing structures and construction of a residential apartment building containing 38 apartments and 3 basement parking levels on the subject property.

The modification is to change the timing of the registration of the plan of consolidation and road dedication required under condition 19 (Registration of Plan of Consolidation and Road Dedication) of DA18/0323 to enable this to be completed prior to the occupation certificate. The specific modification sought to the approved development includes the following:

- *Amend condition 19(i) and (ii) relating to consolidation of allotments and requiring a 3m x 3m splay on the south eastern corner of the site to allow a plan of subdivision to be registered with NSW Land Registry Services prior to the issue of an occupation certificate instead of the issue of a construction certificate.*
- *Delete condition 19(i) from the consent, as the condition refers to land which are unrelated to the development consent.*

3.0 APPROVED DEVELOPMENT

Approval was granted 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 the site off Cecil Monro Avenue, including 70 residential spaces, 1 visitor space, 1 car wash space and 2 trade/service vehicle spaces.

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. At present the development is under construction.

4.0 Site Description and Locality

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 Monro Avenue of 24.375m. Its western boundary adjoining 14 & 18 Gerrale Street has a length of 56.38m, excluding a 3.06m return of a “dog leg” part way along the boundary. The site has a slight fall of just over 1m from its north-western corner (RL16.5) to its south-eastern corner (RL15.46). (Refer to Figures 2 and 3 for location and aerial photographs for the site.



Figure 1 – Site Location



Figure 2 – Site

The site is currently occupied by 3 detached apartment buildings. Each building is 3 storeys in height, containing car parking on the ground floor and residential apartments within the two storeys over. There are 5 trees on the site and a further 2 that straddle the street boundary of Cecil Monroe Avenue. Directly adjacent to the site on Ozone Street are ten parking spaces angled at 90 degrees to the kerb, interspersed by two large palm trees and a third smaller tree.

Adjoining the site immediately to the west are two sites with street addresses of 14 Gerrale Street and 18 Gerrale Street. The former is occupied by a 4-storey mixed use building known as “Mare Blu” containing ground floor commercial and apartments over. The latter is presently occupied by a 3 storey apartment building, known as “Angelo House” that has been subject to a DA (DA18/0349) that was refused on 1 October 2019, proposing demolition of the building and construction of a mixed use development with a height of 9 storeys plus rooftop communal open space and swimming pool.

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

The site is surrounded by residential apartment buildings and mixed use developments of varying scale. “The Cecil Apartments” directly to the south at 20 Gerrale Street is the largest nearby building at 14 storeys high, with the ground floor containing the residential lobby and commercial tenancies that face Gerrale Street. Of particular note, the basement levels of The Cecil Apartments extend below the road pavement Cecil Monroe Avenue up to the southern boundary of the subject site. This is because Cecil

Monro Avenue was originally private land but was dedicated as public roadway upon construction of The Cecil Apartments in the late 1980s.

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

5.0 BACKGROUND

A history of the development proposal is as follows:

- A pre-application discussion (PAD) was held on 28 November 2017.
 - The original application was considered by SSPP on 21 November 2018 and the panel agreed to defer the determination for the following reasons: (Appendix B)
 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 Land and Environment Court and the development application was approved on 2 April 2019.
 - MA19/0303 was submitted increasing the number of units from 32 to 38 and was determined by the SSPP on 13 May 2020.
 - The current modification application was submitted on 7 August 2020.
 - The application was placed on exhibition, with the last date for public submissions being 2 November 2020.

6.0 NATURE OF MODIFICATION SOUGHT

This application proposes the modification of Development Consent No. DA18/0323 pursuant to Section 4.6 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 2000 (EP&AR 2000) and a Section 4.56 is the appropriate type of modification application.

7.0 PUBLIC PARTICIPATION

As the application involves modification under Section 4.56 of the EP&A Act, the application has been notified in accordance with the Sutherland Shire Development Control Plan 2015 (DSSDCP 2015). 295 adjoining or affected owners were notified of the proposal and no submissions were received.

8.0 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 development, being a *residential flat building*, 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:

- State Environmental Planning Policy (Coastal Management) 2018
- State Environmental Planning Policy (State and Regional Development) 2011
- State Environmental Planning Policy No. 55 (Remediation of Land) (SEPP 55)
- State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004.
- State Environmental Planning Policy No. 65 – Design Quality of Residential Flat Development (SEPP 65).
- Apartment Design Guide (ADG)
- Sutherland Shire Local Environmental Plan 2015 (SSLEP 2015).
- Sutherland Shire Development Control Plan 2015 (SSDCP 2015).
- Section 7.12 Development Contribution Plan 2016 - Sutherland Shire.

9.0 COMPLIANCE

9.1 State Environmental Planning Policy (Coastal Management) 2018

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

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

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

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

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

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

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

9.2 State Environmental Planning Policy (State and Regional Development) 2011

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

9.3 State Environmental Planning Policy No. 55 (Remediation of Land) (SEPP 55)

SEPP 55 requires a consent authority to consider whether the land is contaminated and, if so, whether the land will be remediated before the land is used for the intended purpose.

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

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

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

State Environmental Planning Policy (Building Sustainability Index) 2004 (BASIX) aims to establish a scheme to encourage sustainable residential development across New South Wales. BASIX certificates accompany the development application addressing the requirements for the proposed building. An amended BASIX Certificate has been submitted with the amended proposal. The proposal generally achieves the minimum performance levels / targets associated with water, energy and thermal efficiency. State Environmental Planning Policy No. 65 – Design Quality of Residential Apartment Development – Design Quality Principles

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

State Environmental Planning Policy No. 65 – Design Quality of Residential Flat Development (SEPP 65) and the accompanying Apartment Design Guide (ADG) seeks to improve the design quality of residential flat development through the application of a series of 9 design principles. The proposal is subject to assessment under the provision of the SEPP.

9.6 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 Council's DCP. The proposed modification does not modify the approved built form and therefore a compliance checklist against the ADG design is not required.

9.7 Sutherland Shire Local Environmental Plan 2015

An assessment for compliance against Sutherland Shire Local Environmental Plan 2015 has not been carried out and therefore a compliance checklist against the applicable development standards is not required.

9.8 Sutherland Shire Development Control Plan 2015

An assessment for compliance against with SSDCP2015 has not been carried out and therefore a compliance checklist against the applicable development standards is not required. A compliance table with a summary of the applicable development controls is contained in Appendix "D".

10.0 SPECIALIST COMMENTS

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

Development Engineer

Council's Engineer considered the proposal and advised the following:

'The consolidation of the allotments will be required before any Strata can be issued. The intention of requiring the consolidation early in the process is to prevent any BCA or occupation certificate (OC) issues for the applicant at the end of the process. No objection to changing this to OC.'

For the ease of the applicant it was proposed that the consolidation and land dedication happen at the same time. If the applicant is requesting that this change to before OC then no objection is raised. The concern of Council is that applicants often leave the lodgement of the subcert for the road dedication to the last minute and then place pressure for the application to be released quickly.'

11.0 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.

11.1 Proposed Modification

The modification is to change the timing of the registration of the plan of consolidation and road dedication required under condition 19 of DA18/0323 to enable this to be completed prior to the occupation certificate. The applicant has requested this as *deferral of the subdivision until occupation certificate stage will enable the land tax payment to be more closely aligned with the receipt of revenue from the sale of the apartments without affecting the development in any way or creating additional risk for Council*. The specific modification sought to the approved development includes the following:

- *Amend condition 19(i) and (ii) relating to consolidation of allotments and requiring a 3m x 3m splay on the south eastern corner of the site to allow a plan of subdivision to be registered with NSW Land Registry Services prior to the issue of an occupation certificate instead of the issue of a construction certificate.*

The intention of requiring the consolidation early in the process is to prevent any BCA or occupation certificate (OC) issues for the applicant at the end of the process. No objection is raised to modifying condition 19 to allow the plan of subdivision to be registered with NSW Land Registry Services prior to the issue of any occupation certificate.

- *Delete condition 19(i) from the consent, as the condition refers to land which are unrelated to the development consent.*

This condition is correct, as the existing strata plans sit over the lots referred to in condition 19(1) (see Annexures A, B and C for copies of strata plans). Removal of condition 19(i) is not required.

No objection is raised to amending condition 19 to allow the plan of subdivision to be registered with the NSW Land Registry Services prior to the issue of an occupation certificate and therefore is recommended for approval.

12.0 DEVELOPER CONTRIBUTIONS

Due to its nature, the proposed development, as modified, will not require or increase the demand for public facilities within the area. Accordingly, it does not generate any Section 7.11 / 7.12 contributions.

13.0 DECLARATIONS OF AFFILIATION, GIFTS AND POLITICAL DONATIONS

Section 10.4 of the EP&A Act 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.

14.0 CONCLUSION

The subject land is located within Zone *B3 Commercial Core* pursuant to the provisions of SSLEP 2015. The proposed development, being a *residential flat building*, is a permissible land use within the zone with development consent.

In response to public exhibition, no submissions were received.

The modification to change the timing of the registration of the plan of consolidation and road dedication required under condition 19 of DA18/0323 is acceptable.

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 MA20/0232 can be supported.

RESPONSIBLE OFFICER

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