

SUTHERLAND SHIRE COUNCIL ASSESSMENT REPORT

Panel Reference	PPSSSH-42
DA Number	DA20/0737
LGA	Sutherland Shire
Proposed Development	Construction of a new mixed use development consisting of 37 seniors living units and commercial tenancies
Street Address	1 Surf Road and 37 Gerrale Street, Cronulla
Applicant	Ashleigh Smith altered via formal request to Sage by Moran Pty Ltd on 08 March 2021.
Date of DA lodgement	15 September 2020
Number of Submissions	13
Recommendation	Refusal
Regional Development Criteria (Schedule 7 of the SEPP (State and Regional Development) 2011)	The application is referred to the SSPP as the development has a capital investment value of more than \$30 million and is nominated Schedule 7(2) of the State Environmental Planning Policy (State and Regional Development) 2011. The applicant's submission indicates that the proposed development has a value of \$30,747,851.00.
List of all relevant s4.15(1)(a) matters	<ul style="list-style-type: none"> • State Environmental Planning Policy (State and Regional Development) 2011. • State Environmental Planning Policy (Housing for Seniors or People With a Disability) 2004 (Seniors SEPP). • State Environmental Planning Policy (Coastal Management 2018). • State Environmental Planning Policy (Infrastructure) 2007 (Infrastructure SEPP). • State Environmental Planning Policy No. 55 – Remediation of Land (SEPP 55). • 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"> • PAD17/0020 • Design Review Forum (DRF) comments • List of Objectors and concerns • Seniors SEPP Assessment Table • SEPP 65/ADG Assessment Table • LEP / DCP 2015 Assessment Tables • Architect comments • Applicant's Clause 4.6 – Building Height • Visual Impact Assessment • GFA markup provided 26 Feb 2021 • GFA markup provided 8 Mar 2021 • Architectural Plans
Report prepared by	Teille Whiteman – Development Assessment Officer Sutherland Shire Council
Report date	09 March 2021

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?

Yes

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?

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

The application is referred to the Sydney South Planning Panel (SSPP) as the development has a capital investment value of more than \$30 million and is nominated in Schedule 7(2) of the State Environmental Planning Policy (State and Regional Development) 2011 (SEPP 2011). The applicant's submission indicates that the proposed development has a value of \$30,747,851.00.

PROPOSAL

The application is for construction of a new multi storey mixed use development consisting of 37 seniors living units and 4 ground level commercial tenancies.

THE SITE

The subject site is located on the corner of Gerrale Street, Surf Road and Surf Lane. The site is relatively flat and has an area of approximately 1746.93m².

Presently existing on the site are 2 older-style residential flat buildings, which are both 3 storeys in height. The apartment buildings are orientated to Gerrale Street, with detached garages situated at the rear, with access via Surf Lane.

Development surrounding the site is of a mixed nature comprising low-rise retail and commercial development, medium to high-rise residential development and parkland.

ASSESSMENT OFFICER'S RECOMMENDATION

THAT:

That Development Application No. DA20/0737 for construction of a new mixed-use development consisting of 37 seniors living units and 4 commercial tenancies at S/P 88548 37 Gerrale Street, Cronulla is determined by the refusal of development consent for the reasons outlined below.

1. The application is considered unacceptable pursuant to the provisions of s4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979, as the proposal is inconsistent with the objectives of Clause 4.3 of Sutherland Shire Local Environmental Plan 2015 (SSLEP 2015) and does not comply with the maximum building height development standard stipulated under Clause 4.3.

2. The application is considered unacceptable pursuant to the provisions of s4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979, as the proposal fails to satisfy Clause 6.16 Urban Design – General of SSLEP2015, as the design, bulk and scale of the building is not in keeping with the desired future character of the Cronulla Centre and locality.
3. The application is considered unacceptable pursuant to the provisions of s4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979, in that the proposal fails to satisfy the objectives and controls contained within Chapter 19 of Sutherland Shire Development Control Plan 2015 (SSDCP2015).

ASSESSMENT OFFICER'S COMMENTARY

1.0 DESCRIPTION OF PROPOSAL

The proposal entails the construction of a mixed-use development comprising the following:

- Two levels of basement car parking comprising 44 residential car spaces and 11 commercial car spaces as well as bicycle parking; services; storage; and residential waste storage. Vehicle access to the development is proposed via the northern end of the site from Surf Lane;
- Ground level - containing 4 commercial tenancies, waste management area, toilets and other plant/service areas;
- At the upper levels - 37 seniors housing apartments comprising a mix of apartments sizes and types, namely 24 x 2 bedroom units and 13 x 3 bedroom units as well as a communal outdoor area at Level 1;
- A large communal roof top terrace with pavilion, pool and building services; and
- Lane widening in Surf Lane as per their SSDCP 2015.

2.0 SITE DESCRIPTION AND LOCALITY

The subject site is located on the corner of Gerrale Street, Surf Road and Surf Lane. The site is regular in shape with a width of 38.61m and a depth of 49.695m and a total site area of 1746.93m². The land is relatively flat, with a slight fall from the north to the east.

The site is occupied by 2 older-style 3 story residential flat buildings. They are orientated to Gerrale Street, with detached garages at the rear, with access via Surf Lane.

Development surrounding the site is of a mixed nature comprising low-rise retail and commercial development, medium to high-rise residential development and parkland.

To the north, the site adjoins a 9 storey mixed use (commercial / residential) building known as 'The Belgrave' at 31 - 33 Gerrale Street. On the opposite side of Gerrale Street to the east is a 14 storey mixed use (commercial/residential) building known as 'Cecil Apartments' at 20 Gerrale Street. On the opposite side of Surf Road to the South and Surf Lane to the west are numerous 1 and 2 storey commercial buildings containing primarily retail and food tenancies addressing the street.



Subject site (outlined in yellow)



Development site in context of Cronulla locality

3.0 BACKGROUND

A history of the development proposal is as follows:

- A pre-application meeting (PAD19/0082) was held with the applicant on 10 January 2020. A full copy of the advice provided to the Applicant is contained in **Appendix "A"** of this report. The main points contained in this letter are as follows:

- The non-compliant building height is not supported;
 - Incorrect calculation of gross floor area resulting in a non-compliance with the floor space ratio development standard;
 - Vehicle access and aesthetic concerns regarding the provisions of a porte cochere style drop off zone within the subject site;
 - Underutilisation of ground floor for commercial use essential to activate the street frontages;
 - The Waste collection area to be combined with basement ramp;
 - Requirement for applicant to obtain property alignment levels from Council to ensure the proposed finished ground level is achievable and appropriate for connection into the surrounding street frontages;
 - Lane widening and land dedication to Council;
 - Reconfiguration of basement to accommodate services;
 - Amenity of future residents; and
 - View impacts to neighbours.
- A pre-application Design Review Forum (DRF) meeting (ARAP19/0002) was held on 12 March 2020.

In light of the DRF comments, an email was sent to the developer on 9 April 2020 outlining the following further issues to be considered:

- *The proposed on-site drop off zone is not a Council requirement so you will need to justify why it is a good outcome for the site, locality and street network. Issues that will need to be addressed include the functionality of the drop off zone, streetscape impacts, security/CPTED principles and the retention of sufficient ground floor area for retail uses.*
 - *Council's position on the height breach remains unchanged from the PAD letter.*
 - *Active and semi active street frontage are required so residential ground floor uses must not be the expense of commercial uses.*
 - *The proposed building setbacks are generally supported however the final plans must address potential negative impacts from non-compliances including overlooking, visual separation, visual scale and overshadowing.*
 - *The building design is to incorporate a 2 storey street wall.*
- The current application was submitted on 15 September 2020.
 - The application was placed on exhibition, with the last date for public submissions being 21 October 2020.
 - The application was reviewed by the DRF on 15 October 2020. A full copy of the advice provided to the Applicant is contained in **Appendix "B"** of this report and is outlined in Section 9 of the Assessment Report below.
 - The applicant was sent a letter requesting design changes and additional information on 18 November 2020. The main points contained in this letter are as follows:
 - The building is to be designed to comply with the height and floor space ratio developments standards;

- Functionality and aesthetic concerns regarding the vehicular drop off zone;
 - Underutilisation of ground floor for commercial use essential to activate the street frontages;
 - Building services inappropriately located with the Gerrale Street (active) frontage which should instead be integrated into the fabric of the building, addressing Surf Lane.
 - Requirement for applicant to obtain property alignment levels from Council to ensure the proposed finished ground level is achievable and appropriate or connection into the surroundings street frontages;
 - Lane widening and land dedication to Council;
 - Reconfiguration of basement to accommodate services;
 - Amenity of future residents;
 - View impacts to neighbours; and
 - General comments about the aesthetic of the building and missed opportunity for southern elevation to engage with prominent and highly visible street corner.
- Upon the applicant's request, a meeting was held on 26 November 2020 to discuss building height, lane dedication, building presentation (2 storey street wall) and ground floor planning of the development. Draft revised plans were presented to Council staff. Resolution was reached regarding the 2 storey street wall design and deletion of the drop off zone. However, Council officers still raised concerns regarding the height breach and the underutilisation of the ground floor for commercial use to activate the street frontages.
 - Council officers briefed the SSPP on 16 December 2020. The SSPP noted the following issues to be addressed by design changes and the provision of further information:
 - Justification for height breach;
 - Impacts of floor space breach on building bulk, height and scale;
 - Specific building height impacts – quantum of roof level building service elements and location extending to perimeter of building and view loss;
 - Vehicular access to Gerrale St in contravention of SSDCP 2015;
 - Scale and extent of the vehicular drop-off and service areas on active street frontages;
 - Building setbacks on various levels and impacts on residential amenity and streetscape;
 - Residential amenity and privacy between balconies.
 - The applicant submitted additional information in response to the above on 29 January 2021.
 - At the time of completing this report the issue of height remained unresolved. The applicant has sought to resolve the matter of floor space ratio via supplementary plans provided during the final preparation of this report. This is discussed in detail in the 'Assessment' section of this report.

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 generally provided adequate information to Council to enable an assessment of this application, including a written request to vary the building height development standard under Clause 4.6 of Sutherland Shire Local Environmental Plan 2015.

The applicant provided supplementary plans on 26 February 2021 and 08 March 2021 during the completion of this report to respond to concerns regarding floor space ratio compliance. The plans have impacts on the function and quality of some areas. This matter is discussed in detail in the 'Assessment' section of this report.

5.0 PUBLIC PARTICIPATION

The application was advertised in accordance with the provisions of Chapter 42 of Sutherland Shire Development Control Plan 2015 (SSDCP 2015).

282 adjoining or affected owners were notified of the proposal and submissions were received from 13 households as a result. A full list of the locations of those who made submissions, the dates of the letters and the issues raised is contained in **Appendix "C"** of this report.

These submissions raised a number of issues including inadequate car parking provision and traffic concerns, building height, built form, bulk and scale, overshadowing, overlooking, view loss and construction impacts. The issues raised have been considered and are addressed form part of in the 'Assessment' section of this report below.

Revised Plans

The applicant lodged revised plans on 29 January 2021. In accordance with the requirements of SSDCP 2015 these plans were not publicly exhibited as, in the opinion of Council, the changes being sought did not intensify or change the external impact of the development to the extent that neighbours ought to be given the opportunity to comment.

During the preparation of this report the applicant provided supplementary plans on 26 February 2021 and 08 March 2021 in response to advice the proposal still did not comply with the floor space ratio development standard. These plans did not materially change the overall form of the building.

Submission Review Panel (SRP)

As a result of the submissions received and the issues raised, the application was reviewed by Council's SRP. Concerns regarding building height, building form, view loss and privacy were considered substantive for the reasons outlined in the 'Assessment' section of this report.

6.0 STATUTORY CONSIDERATIONS

The subject land is located within Zone B3 Commercial Core pursuant to the provisions of SSLEP 2015. The proposed mixed use development contains *seniors housing* and *commercial premises* which are both permissible land uses within the zone with development consent from Council.

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

- State Environmental Planning Policy (State and Regional Development) 2011.
- State Environmental Planning Policy (Housing for Seniors or People With a Disability) 2004 (Seniors SEPP).
- State Environmental Planning Policy (Coastal Management 2018).
- State Environmental Planning Policy (Infrastructure) 2007 (Infrastructure SEPP).
- State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004.
- State Environmental Planning Policy No. 55 – Remediation of Land (SEPP 55).
- State Environmental Planning Policy No. 65 – Design Quality of Residential Flat Development (SEPP 65).
- 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.

7.0 COMPLIANCE

7.1 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.

7.2 State Environment Planning Policy (Housing for Seniors or People with a Disability) 2004 (Seniors SEPP)

State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004 (Seniors SEPP) aims to encourage the provision of housing (including residential care facilities that will increase the supply and diversity of residences that meet the needs of seniors or people with a disability; make efficient use of existing infrastructure and services; and be of good design.

The provisions of the Seniors SEPP apply to the land and Self Contained Dwelling housing for Seniors Housing. Division 4 of the plan specifically applies to Self-Contained dwellings. Chapter 3 of the policy allows for seniors housing despite the provisions of any other Environmental Planning Instrument *if the development is carried out in accordance with the policy*. However, the proposal has been not carried out in accordance with the policy. In particular, the design significantly exceeds the development standards identified in Clause 50 of the Seniors SEPP (height, density and landscaped area, among others).

State Environment Planning Policy (Housing for Seniors or People with a Disability) 2004 Clause 50		
Design Criteria	Standards that can be used to refuse application if exceeded	Proposal
Cl. 50 (a) Building Height	8m	33m

Cl. 50 (b) Building Density	0.5:1	3.09:1
Cl. 50 (c) Landscaped Area	30% landscaped	0%
Cl. 50 (d) Deep Soil	Not less than 15%	0%
Cl. 50 (e) Solar Access	Minimum of 70% of living areas and private open space to receive a minimum of 3hrs sunlight between 9am and 3pm in mid-winter.	70%
Cl. 50 (f) Private open space for infill self-care housing	There is a balcony with an area of not less than 10 square metres (or 6 square metres for a 1 bedroom dwelling), that is not less than 2 metres in either length or depth and that is accessible from a living area,	Complies
Cl. 50 (h) Parking	0.5 car spaces for each bedroom (min 44 residential spaces).	44 residential

Nonetheless, as the development is permissible within the zone and the proposal can be assessed and determined pursuant to the development controls within the SSLEP 2015 and the SSDCP 2015. As Self Contained Dwelling housing for Seniors as defined in the Seniors SEPP, standards within the SEPP (below) have been assessed where they are relevant and a compliance table is contained in **Appendix “D”** of this report.

Further to the above, if the application was recommended for approval a condition of consent would require covenant to be placed on title to restrict the use of the development in accordance with Clause 18 of the Seniors SEPP. A condition of consent would also require compliance with the multiple standards for the design of self-contained dwellings set out in Schedule 3 of the Seniors SEPP.

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

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

A site inspection identified that the site is currently occupied by a residential flat building development. A review of Council's GIS, historical aerial photos and records has shown that the property has been used for residential purposes since the 1930s. A search of Council's contaminated land register specifies that the site is not potentially contaminated.

In conclusion, the site is suitable for the proposed residential and commercial use of the site in accordance with the requirements of SEPP 55.

7.4 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. The proposal achieves the minimum performance levels / targets associated with water, energy and thermal efficiency.

7.5 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) seek to improve the design quality of residential apartment development through the application of a series of 9 design principles. The application is affected by SEPP 65 as it is a 10 storey mixed use development containing 37 dwellings. The proposal requires improvement having regard to the 9 design principles as detailed in **Appendix “E”** to this report. These matters may be addressed via deferred commencement conditions if the application is to be approved.

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. DRF comments are included in **Appendix “B”** to this report.

7.6 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 proposal against the ADG design criteria is contained in **Appendix “F”** to this report. For the most part the proposal is satisfactory with the key ADG criteria.

7.7 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 mixed use 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.

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

The north-eastern corner of 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 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.

The subject site is located on the eastern fringe of the Cronulla Town Centre in an already urbanised area. There will be no adverse impact on existing safe access to and along the nearby foreshore, beach or headland as a result of the proposal. Overshadowing from the development falls largely on the adjoining roads, with a small portion affecting the adjacent Cronulla Park in the late afternoon. No matters of cultural or built environment heritage are impacted and the visual amenities of the coast and views of the foreshore are maintained. Council is therefore satisfied that the development has been designed, sited and can be managed to avoid any adverse impact detailed in Clause 14(1).

7.8 State Environmental Planning Policy (Infrastructure) 2007

Development likely to affect an electricity transmission or distribution network (clause 45)

Division 5, Subdivision 2 of the Infrastructure SEPP relates to development that has the potential to impact on electricity supply. The subject application involves development carried out immediately adjacent to an electricity substation.

Council notified Ausgrid of the proposal and invited them to provide comments about the potential safety risks. Ausgrid have advised that they have no objection to the approval of the application subject to conditions of consent.

7.9 Biodiversity Conservation Act 2016

The Biodiversity Conservation Act 2016 and the Biodiversity Conservation Regulation 2017 outlines the framework for assessment and approval of biodiversity impacts for development that requires consent under the Environmental Planning and Assessment Act 1979.

The assessment of the development has revealed that the Biodiversity Offset Scheme (BOS) threshold is not triggered and biodiversity matters have been appropriately assessed via Council's LEP and DCP objectives and controls.

7.10 Sutherland Shire Local Environmental Plan 2015

The proposal has been assessed for compliance against Sutherland Shire Local Environmental Plan 2015. A compliance table with a summary of the applicable development standards is contained below:

Sutherland Shire Local Environmental Plan 2015			
CLAUSE	REQUIRED	PROPOSAL	COMPLIANCE
cl.4.3 Height of Building	30m	Top of screen around service area – 33m Pavilion Roof – 31.64m Pool fence - 31.06m	No (10% variation)
cl.4.4 Floor Space Ratio	3:1 (5238m ²)	3:1 (5238m ²) Supplementary plans were submitted on 8 March 2021 in response to concerns raised that the amended plans submitted on 29 January 2021 exceeded the standard by 134m ² (2.56% variation). See discussion in the 'Assessment' section of this report.	Yes

7.11 Sutherland Shire Development Control Plan 2015

The proposal has been assessed for compliance with SSDCP 2015. A compliance table with a summary of the applicable development controls is contained in **Appendix “G”** to this report.

7.12 Draft Environmental Planning Instruments

Draft State Environmental Planning Policy (Remediation of Land) (Draft Remediation of Land SEPP

The draft Remediation of Land SEPP seeks to repeal and replace SEPP55 in relation to the management and approval pathways of contaminated land. The draft SEPP was exhibited between January and April 2018. New provisions will be added which will:

- require all remediation work carried out without the need for development consent to be reviewed and certified by a certified contaminated land consultant,
- categorise remediation work based on the scale , risk and complexity of the work, and
- require environmental management plans relating to post remediation, maintenance and management of on-site remediation measures to be provided to Council.

The site and proposal has been assessed against the provisions of SEPP55 and likelihood of contamination is low. The proposal is satisfactory with regard for the provisions of draft *Remediation of Land SEPP*.

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:

Ausgrid

The application was referred to Ausgrid pursuant to clause 45 of the State Environmental Planning Policy (Infrastructure) 2007 as the development is immediacy adjacent to a substation at 31 - 33 Gerrale Street, Cronulla. Ausgrid raised no objection to the approval of the application subject to conditions of consent.

Design Review Forum (DRF)

The application was considered by Council's DRF on 15 October 2020. A copy of the DRF report is contained in **Appendix "B"** to this report and includes the following recommendations:

- A 2 storey street wall with attached awning should be constant all around the site, built to the DCP setback lines shown on the plans.
- The tower footprint including balconies should be within the DCP setback lines shown on the plans.
- Ground level active street frontage should be built to the street alignment along the setback line without being eroded, except proportionately for the entry to the foyer.
- The site area outside of the street frontage should be consolidated with the public domain without built up planters.
- The drop-off driveway should be deleted and ground level frontage taken up by services minimised.
- All built elements on the roof should be set back 4m from the perimeter and well integrated in the roof design.
- Consideration should be given to a simplification of east and west tower facades and improving privacy between balconies

In response to the above, the applicant has amended the plans to remove the drop-off driveway area. Further design development has also occurred with respect to the 2-storey street wall. However, the other issues raised by the DRF have not been addressed.

The revised plans have been reviewed by Council's Architect who raised significant concerns regarding the development in terms of safety, practicality and streetscape. A copy of the Council's Architect comments is contained in **Appendix "H"** to this report.

Engineering (Assessment Team)

Council's Assessment Team Engineer has raised the following concerns about the proposed basement layout and design:

- The proposed residential car parking spaces on the northern side of the basement ramp are impractical and not user friendly for mobility impaired people to access the lifts.
- Disabled space no. 26 in Basement Level 2 is a tandem space. It is unclear how a resident will access this space.
- The basement access and the internal basement ramps should be relocated to be adjoining the northern boundary/basement wall with the waste collection moved to adjoin the core on the ground and Basement Level 1 floors.
- The blade wall within Surf Lane adjoining the loading dock on the northern boundary must be reduced in length to finish at the panel lift door to retain sight distances from the driveway to the north.

Other than the concerns above, Council's Assessment Team Engineer raised no objection to the approval of this application subject to numerous conditions of consent.

Public Assets

Council's Public Assets Engineer raised no objection to the approval of this application subject to a condition of consent requiring the future lodgement of a Detailed Frontage Works application under the Roads Act 1993. The detailed frontage works required include the establishment of a shared zone along Surf Lane, upgrading the public domain on all frontages and stormwater connection to Council's existing stormwater system. These works are consistent with Council's Public Domain Design Manual (PDDM) and Public Domain Technical Manual (PDTM).

Landscape Architect

Council's Landscape Architect raised no objection to the proposal subject to conditions of consent to enhance landscaping opportunities on the site. This includes the preparation of a revised set of landscape plans to match the amended architectural plans provided on 29 January 2021.

Waste Management Officer

Waste Management Officer raised no objection to the proposed waste management subject to conditions of consent.

Environmental Science

Council's Environmental Science Unit initially identified the potential for dewatering to construct the basement carpark which would classify the application as Integrated Development.

In response, the applicant provided a Geotechnical Letter, 37 Gerrale St Cronulla by Morrow dated 22 January 2021 concluding the following:

"On the basis of the current geotechnical investigation it is possible to conclude that no groundwater table is present within the proposed depth of excavation. Dewatering will not be required for the proposed excavation. The proposed works will not intercept an "aquifer" according to the definitions contained within the DPI Aquifer Interference Policy and licensing of the works with WaterNSW is not required under the DPI Aquifer Interference Policy."

Council's Environmental Assessment Officer deems this to be a reasonable response, but suggested a precautionary condition of consent requiring the relevant approvals to be obtained from WaterNSW if ground water was unexpectedly intercepted during excavation.

Environmental Health

Council's Environmental Health Unit raised no objection to the approval of the application subject to conditions of consent.

Building Surveyor

Council's Building Surveyor who raised no objection to the approval of the application subject to conditions of consent.

9.0 ASSESSMENT

A detailed assessment of the application has been carried out having regard to the matters for consideration under Section 4.15(1) of the Environmental Planning and Assessment Act 1979.

9.1 Overview

The subject site is located in Zone B3 Commercial Core which encourages a wide range of uses to strengthen the viability of existing commercial centres through increased economic activity, employment and resident population. The specific Cronulla Centre Strategy is outlined in Chapter 19 of the SSDCP 2015. The Strategy encourages the redevelopment of sites to provide shops and cafes at the ground floor to enliven the pedestrian environment with residential units above.

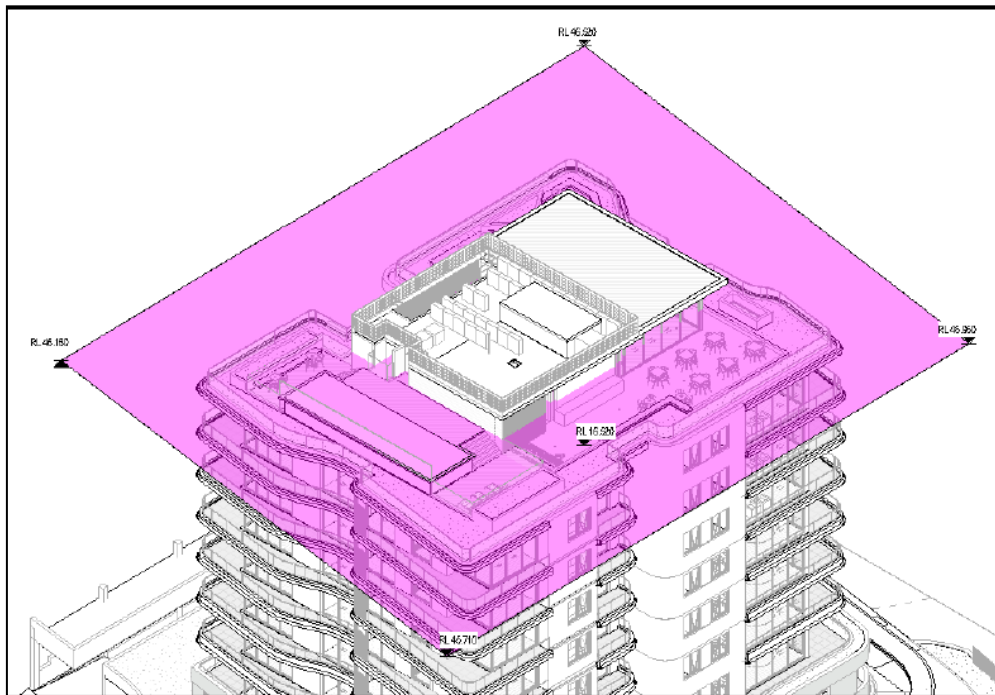
The desired form and function of such redevelopment is established through relevant local planning controls in the SSLEP 2015 and SSCP 2015. State Environmental Planning Instruments also guide the redevelopment of sites, the most relevant for this application being SEPP 65 and the Seniors SEPP. General compliance with these planning controls is outlined in the 'Compliance' section of this report above.

After undertaking a thorough assessment of the proposal against the relevant planning controls, Council acknowledges that the subject site is desirably located for the proposed seniors housing and commercial development. However, the form and function of the building fails to satisfactorily address various planning controls, which the applicant has been made aware of on numerous occasions (see 'Background' section of this report). The culmination of these issues results in a development that cannot be supported, particularly as Council believes there are reasonable design solutions to facilitate the approval of the development. This is detailed in the report below.

9.2 Height of Buildings

Clause 4.3 Height of Buildings of SSLEP 2015 stipulates a maximum height of 30m for this site. The proposed development fails to comply with the development standard for height, with a maximum height of 33m (10% variation) to the top lift overrun, roof top services and roof services screening.

The top half of the pavilion and pool fence also contravene the development standard with a maximum building height of 31.64m and 31.06m respectively. It is noted that all other roof top structures including balustrades, planter boxes and pool area (deck) comply with the maximum height limit. The diagram below shows the maximum height plane and the areas of the building which protrude through the height plane.



Building height plane

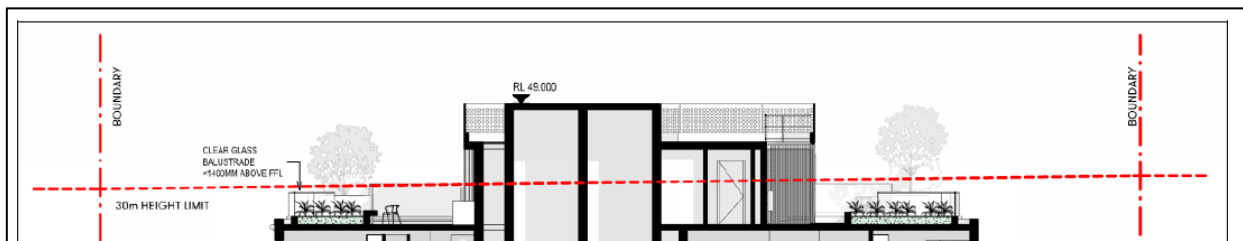


Figure 5. Section of Building (Source: Scott Carver, 2021)



Figure 6. Section of Building (Source: Scott Carver, 2021)

Section through building showing building height

The objectives of the height of buildings development standard set out in Clause 4.3 (1) of SSLEP 2015 are as follows:

- (a) *to ensure that the scale of buildings:*
 - (i) *is compatible with adjoining development, and*
 - (ii) *is consistent with the desired scale and character of the street and locality in which the buildings are located or the desired future scale and character, and*
 - (iii) *complements any natural landscape setting of the buildings,*
- (b) *to allow reasonable daylight access to all buildings and the public domain,*
- (c) *to minimise the impacts of new buildings on adjoining or nearby properties from loss of views,*

- loss of privacy, overshadowing or visual intrusion,*
- (d) *to ensure that the visual impact of buildings is minimised when viewed from adjoining properties, the street, waterways and public reserves,*
- (e) *to ensure, where possible, that the height of non-residential buildings in residential zones is compatible with the scale of residential buildings in those zones,*
- (f) *to achieve transitions in building scale from higher intensity employment and retail centres to surrounding residential areas.*

The proposed development is located within zone B3 Commercial Core. The objectives of this zone are as follows:

Zone B3 Commercial Core

- *To provide a wide range of retail, business, office, entertainment, community and other suitable land uses that serve the needs of the local and wider community.*
- *To encourage appropriate employment opportunities in accessible locations.*
- *To maximise public transport patronage and encourage walking and cycling.*
- *To strengthen the viability of existing commercial centres through increased economic activity, employment and resident population.*
- *To create an attractive, vibrant and safe public domain with a high standard of urban design and public amenity.*
- *To enhance commercial centres by encouraging incidental public domain areas that have a community focus and facilitate interaction, outdoor eating or landscaping.*
- *To provide for pedestrian-friendly and safe shopping designed to cater for the needs of all ages and abilities.*

The applicant has lodged a written request in accordance with the requirements of Clause 4.6 of SSLEP 2015 as well as a legal review of the Clause 4.6 Request. A copy of both of these documents is contained in **Appendix “I”** to this report. The most relevant section of the clause 4.6 written request is reproduced below:

- “▪ *The proposed development is entirely consistent with the underlying objective or purpose of the development standard as demonstrated in Section 4.1;*
- *The proposed development is entirely consistent with the underlying objective or purpose of the B3 Commercial Core Zone, as demonstrated in Section 4.2;*
- *The proposed non-compliance would result in a built form and land use, which is permitted at the Site (i.e. Seniors Housing);*
- *The visual impacts when viewed from adjoining properties and the public domain result in impacts considered to be in the low to negligible ranges and consistent with the evolving character of Cronulla;*
- *Provides, with a level of flexibility to the maximum building height development standard, for a better planning outcome through the provisions of a more consistent approach to building heights within the surrounding precinct;*

- *The Proposal would have the perceived appearance of a nine (9) storey building when viewed from the street level, which is consistent with the existing built form adjoining the Site;*
- *The visual impact of the height variation from the public domain has been minimised through the elements exceed the prescribed maximum building height being setback and the articulation of the façade to reduce the bulk and scale of the built form;*
- *The proposed development would lead to a superior public domain outcome as a result of the street front activation along Gerrale Street, Surf Road and Surf Lane;*
- *The proposed development represents a superior ESD outcome for the Site;*
- *The proposed development would not create a significant visual or overshadowing impact for surrounding sensitive land users. Limiting the building height to a strict 30m compliance would have a negligible impact on any such impacts to surrounding sensitive land users;*
- *The proposed development would not give rise to any measurable environmental impacts when compared to compliant development;*
- *Strict compliance with the building controls would unreasonably restrict the potential to develop the Site to its full potential;*
- *The proposed development is consistent with the desired and future character of the Site and will not result in measurable or unreasonable environmental or amenity impacts; and*
- *Reducing the building height to achieve a compliant building height would not deliver any measurable environmental or amenity benefits.”*

The applicant has been advised since the pre DA meeting that the building should be designed to comply with the building height development standard. The main issue with the height breach is the extent of the additional building mass above the height limit, being the entire building core, access and plant areas (footprint of approximately 150m²) plus the pavilion (approximately 106m²) and the pool fence. This is being driven by the applicant's desire to utilise a significant majority of the roof top area for communal facilities.

It is acknowledged that there may be justification for some roof top elements in this location where the breach may be subsumed by the form of the building and its surrounds. This could require a more compact approach to the layout. However, in this circumstance there is competition on the roof to accommodate a very large pavilion, vast areas of plant to a point where some elements are also required to be located higher than pavilion roof which itself breaches the height limit. Further to this, the roof top structures could be setback further from the edges of the building to be less visible from the street and adjoining buildings, including the glass balustrading and pool fence. The glass balustrades around the edge of the building are currently not a desirable architectural outcome as they fail to provide a solid band/visual terminus to the top of the building. Additionally, any screening required around rooftop plant areas should be a recessive feature rather than a 'stand out' feature and focal point.

The applicant has identified that a height breach was approved for the mixed use building nearing completion at 49 - 51 Gerrale Street, Cronulla (DA17/0885). The height breach approved for this site was up to 1.53m for roof top structures encompassing plant area and access to private rooftop pools. It is noted that the roof top structures were almost compliant with the height limit on the western side of the building, with the height breach increasing due to the topography of the land.

For these reasons above, compliance with the building height is not unreasonable or unnecessary as the development fails to meet the objectives of the building height development standard and the land use zone. In particular, the building height does not *ensure that the visual impact of the building is minimised when viewed from adjoining properties, the street and public reserves*. This is essential for development to be consistent with the land zone objective for developments *to create an attractive, vibrant and safe public domain with a high standard of urban design and public amenity*.

Given the extent of the breach and the drivers being essentially an inwardly focused activity space for residents there is insufficient environmental planning grounds to support a variation to the height development standard in this regard. It cannot be seen as “a better outcome” for development in this particular circumstance.

The proposed variation is to a development standard relevant to the local area and does not raise any matters of State or regional environmental planning significance.

In conclusion, the variation to the height development fails to satisfy all relevant parts of Clause 4.6 and therefore cannot be supported.

9.3 Floor Space Ratio

On the 26 February 2021 and the 8 March 2021 the applicant provided the supplementary plans contained within **Appendix “K”** and **Appendix “L”** to this report in response to Council’s concerns regarding compliance with the floor space ratio development standard. These plans included the removal of the roof to the residential waste collection area and uncovered the rooftop access corridor area to achieve compliance with the floor space ratio development standard.

This response has resulted in a poorer outcome in terms of amenity for future occupants of the development and the neighbouring building to the north. Of particular concern is the waste collection area that is now exposed to the air and units located directly above it. From an amenity perspective this area should be enclosed both in terms of noise and containment of odours. Whilst the floor space ratio has been resolved from a technical perspective the poor amenity that has resulted is undesirable and is not supported given the impact on units located directly above it. The roof over the waste area should remain. The matter of floor space ratio should be resolved via other means or alternatively, the waste storage area should be relocated in a more appropriate location.

Having regard to the access corridor on the roof it is also a poorer outcome where the covered access to the pavilion has been removed for the sake of numerical compliance with the floor space ratio standard.

Given that the overall extent of structures on the roof is not supported, this response to achieve compliance whilst a poorer amenity outcome, is somewhat academic given this area in itself requires further redesign.

9.4 Active street frontages

An objective of Zone B3 Commercial Core is to enhance commercial centres by encouraging incidental public domain areas that have a community focus and facilitate interaction, outdoor eating or landscaping. To achieve this the SSDCP 2015 identifies Gerrale Street and Surf Road as active street frontages. Active street frontages are locations where retail shop fronts and building entries address the street, building entries are positioned and pedestrians circulate along the street lengths, accessing shops and services. Surf Lane is identified as a semi-active frontage. Semi-active frontages are locations where retail and commercial ground floor uses are preferred but optional.

From the pre DA stage, Council and the DRF recommended the activation of Surf Lane but raised concern that the ground floor building services and residential uses diminished opportunity for greater activation of Gerrale Street. The applicant considers that the proposed retail frontages are sufficient and locating another retail space in the north-eastern corner of the site is illogical due to the bus shelter. The applicant also argues that the ground floor services cannot be further rationalised due to functionality requirements and will not detract from the streetscape through the incorporation of decorative screens and planting in front of these servicing areas.

The applicant's response is not considered adequate for a development on such a prominent corner site. There is clearly an opportunity to reconfigure and internalise the ground floor services to provide additional retail frontage in Gerrale Street. This could be achieved by potentially utilising clearance above the basement ramp, reducing the size of the ground floor waste area or relocating the resident's cinema and lounge to the Level 1 void above the resident's lounge. This would allow another retail space to be positioned next to the currently proposed northern-most retail space, and which would not be obscured by the bus shelter. This would also continue the pedestrian path and awning further along the Gerrale Street frontage as required by the SSDCP 2015.

The DRF were of the view that the ground level active street frontage should be built to a nil setback as per the SSDCP 2015 controls. However, the proposed setbacks were deemed appropriate for the site to allow for outdoor seating as approved further to the north at 19 Gerrale Street. It is noted that the development at 19 Gerrale Street accommodates outdoor seating without raised planter boxes, establishing a barrier free transition between the public and private domain. This is Council's preference for the subject site. Level transitions between the public domain and the entire ground floor is also essential to create a barrier free pedestrian environment. However, this cannot be confirmed as the applicant has not obtained property alignment levels as requested on numerous occasions.

More glazing to shopfronts would also be a desirable outcome to increase visual interest, provide borrowed light and surveillance to the street. Fire exits also need to be better designed as they provide opportunity for concealment along the Surf Lane and Gerrale Street frontages, which is inconsistent with the CPTED principles.

Resolution of the above issues is deemed reasonable and would achieve a more active street frontage as desired by the Cronulla Centre Strategy.

9.5 Building form

The subject site is located on a visually prominent street corner within the Cronulla Centre with an address to Gerrale Street, Surf Road and Surf Lane. The desired building envelope and form is established by planning controls in SSLEP 2015 and the SSDCP 2015. The proposed building form has been developed to be generally consistent with these controls as outlined in the 'Compliance' section of this report. However, variations are proposed to setback controls in the ADG and SSDCP 2015 as discussed below.

ADG Separation and setback requirements

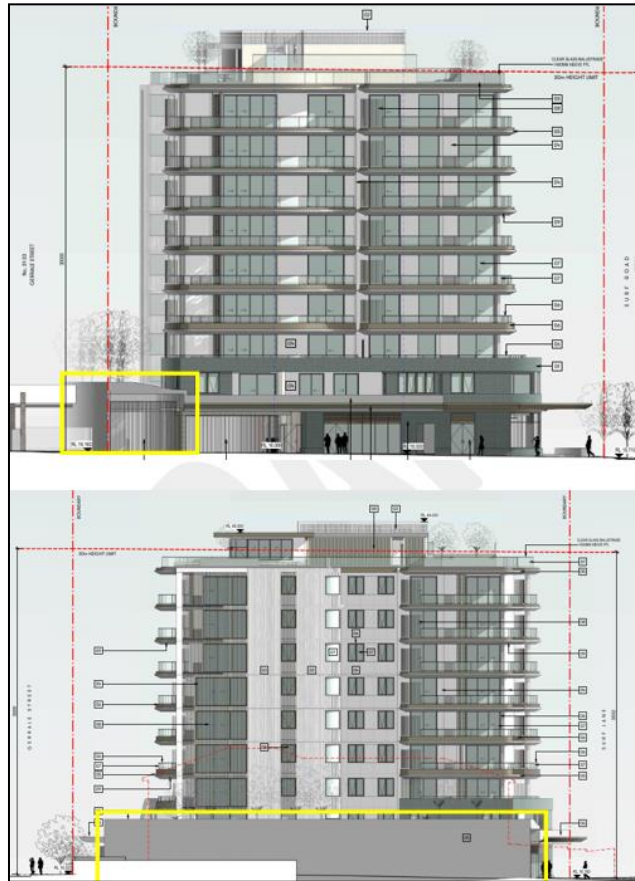
Section 2F of the ADG specifies minimum distances between buildings to guide an appropriate urban form and enhance the amenity of apartments and open space. The building does not comply with the prescribed separation distances from Levels 5 – 9 as the building is only setback 6m from the northern boundary, instead of the required 9m. The applicant claims that the reduced setbacks are a consequence of the need to accommodate for the reduced building footprint resulting from the dedication of the laneway / road widening required by the SSDCP 2015 (see section 10.12 below).

Notwithstanding the northern setback breach, the proposed built form is generally appropriate in its context, being located in the Cronulla Commercial Core and reflective of other similarly large buildings constructed or currently under construction in the immediate area.

SSDCP 2015 setback requirements

The south-eastern and north-western upper level balconies encroach into the 6m setback required by the SSDCP 2015, by approximately 1m. Council is generally supportive of the 1m setback variation for the visually lightweight balcony structures as the encroachments are somewhat offset by other sections of the balcony which adopt greater than the required setbacks. Notwithstanding this, the architectural expression of the south-eastern corner of the building is a somewhat disappointing outcome as it reads as the 'side' elevation of a building instead of engaging with the visually prominent street corner.

The proposed building also fails to comply with the 3m setback requirement to Surf Lane. This is a result of the proposed waste/loading dock and the open podium terraces to apartments 104 and 105. The encroachment of the waste/loading dock isn't supported as it will restrict sightlines from the northern adjoining driveway and will be visually intrusive within the streetscape. The waste/loading dock will be visually intrusive within Surf Lane as it is up to 5.5m in height and sits forward of the bulk of the building. The increased height above the waste collection point also detracts from the desired 2 storey street wall to which Council already has design concerns. A snapshot of the relevant elevation plans are provided below.



Surf Lane Elevation (top image) and Northern Side Elevation (bottom image)

Further to the setback encroachment detailed above, concern is raised about the visual prominence of the 5.5m high white blank wall that extends along most of the northern boundary. This will be visible from Surf Lane and Gerrale Street, albeit somewhat screened by the adjoining properties podium level and podium planting as shown in the photos below. The northern boundary wall is not an acceptable interface with the neighbouring property and fails to result in an adequate relationship with the established ground level context of the neighbouring development. Earlier versions of the architectural plans did not express a wall of the scale currently proposed.



Photo of northern adjoining property from Gerrale Street (left) and Surf Lane (right)

Considering the above, further design evolution is required to resolve concerns with the building form.

9.6 Residential amenity

The relevant state and local planning controls aim for buildings to be designed to provide good amenity for the future residents as is assessed in the 'Compliance' section of this report.

There is the potential for both visual and aural privacy impacts as a result of the lack of separation between balconies for individual apartments. This is particularly of concern on the Gerrale Street elevation (levels 2 to 4), which currently relies on privacy screens to separate the balcony areas. Further consideration should also be given to the proximity of high use kitchen and living room areas next to adjoining apartment's bedrooms, including apartments 101 and 105. It is also noted that there is also potential noise conflict between the Level 1 communal open space area and the adjoining apartments. This communal open space was better located on the south-eastern corner of the building as originally proposed.

The quality of residential of apartments 202, 302, 402 and 502 could also be improved by reducing the depth of the open plan living, dining and kitchen area and resolving the recessed location of the second bedroom. Natural light and air to these apartments is already comprised being single aspect apartments, recessed underneath protruding balconies above.

The privacy screens shown on the living room windows to the north-eastern stack of apartments should be designed prevent overlooking without restricting solar access into living rooms which are capable of receiving good solar access.

The above concerns may be resolved via architectural treatment, layout adjustment or acoustic attenuation.

9.7 Amenity of surrounding residential and commercial buildings

The relevant state and local planning controls aim for buildings to be designed to not detrimentally impact the amenity of neighbouring properties.

Specific concerns raised in the objections include overlooking, noise, and overshadowing and view loss. These are discussed below.

Overlooking and noise

The neighbouring property to the north is most affected by the development due to the limited building setbacks. Objective 3F-1 of the ADG requires Levels 5 – 8 to be setback 9m from the side boundary and Level 9 and the roof terrace to be setback 12m from the side boundary. The proposed building maintains a 6m setback to the northern boundary for the full height of the development. Council is generally supportive of the setback for Levels 5 – 8 as privacy impacts are mitigated through apartment orientation towards the street and utilising privacy screens where necessary. However, the non-compliant roof terrace setback is not supported. The size and capacity of the roof top terrace has the potential to result in adverse aural and visual privacy impacts for the neighbouring property (The Belgrave).

Privacy impacts to the east are mitigated through the building separation afforded by Gerrale Street. To the south and west are less sensitive commercial buildings, separated from the proposed development by Surf Road and Surf Lane respectively. These commercial buildings have the potential for built form to a scale similar to that proposed and would likely incorporate residential apartments at the upper levels. Consideration has been given to this potential future development applying ADG setbacks and DCP envelopes as detailed below.

Privacy impacts from the proposed building to the potential future development on the southern side of Surf Road are deemed acceptable as compliant ADG building separation will be achieved through the width of Surf Road and the building setbacks required by SSDCP 2015.

Privacy impacts from the proposed building to the potential development on the western side of Surf Lane are deemed acceptable as deemed as compliant ADG building separation will be largely achieved through the width of Surf Lane and the building setbacks required by SSDCP 2015. It is noted that the north-western corner of the building encroaches 1m into the SSDCP 2015 Surf Lane setback reducing the buildings separation. This is acceptable as this encroachment is largely for a 'secondary balcony' space which will be used less than the 2.895m deep balcony on the northern side of the building. Privacy screens could be imposed on the balcony, but this would restrict a view corridor enjoyed from "The Belgrave" apartments (as discussed below).

Overshadowing

Ch. 19 (B3 Commercial Core – Cronulla) within SSDCP 2015 does not specify any minimum requirements for solar access for neighbouring residential, commercial properties or the public domain. Instead it relies on the objectives and built form controls to achieve amenity standards. These objective largely focus on maintaining solar access to public open space and Cronulla Mall more rather than commercial tenancies and footpaths.

Objections received during the neighbour notification period raised the issue of overshadowing of the adjoining commercial tenancies to the west, as well as the communal open space to "The Cecil Apartments" at 20 Gerrale Street Cronulla. A discussion of these impacts is included below.

Commercial tenancies and the public domain

The commercial tenancies to the west of the site are impacted by the shadow cast from the proposed building. The shadow diagrams provided with the application show that the retail tenancies and offices to the west are overshadowed until 9:30am by the residential building to the north of the site, rather than the proposed building. These tenancies then receive solar access until 12pm when they are overshadowed by their own built form. The

At mid-winter, the commercial tenancies to the south of the subject site are most affected by the shadow cast from the proposed development. These tenancies will maintain some solar access throughout the day as the shadow from the building moves from west to east.

To the east of the site are various west facing shopfronts, recessed under deep awnings. At mid-winter, the building will cast shadow on these tenancies from 2pm.

It is also noted that the north-western corner of Cronulla Park is overshadowed by the development from 2pm at mid-winter. This is not the main section of the park and does not contain play equipment. The size of the park relative to the extent of overshadowing will still ensure opportunities for park users to enjoy afternoon sun close to the foreshore.

The Cecil Apartments – podium communal open space

The proposed building does not cast shadow on the podium communal open space until 3pm in mid-winter. Whilst the communal open space is mostly affected by the shadow cast from its own building it does however receive some solar access between 12pm and 3pm.

Further to the above assessment, it is noted that the overshadowing of the surrounding properties is inevitable given the scale and density allowable by the local planning controls rather than this being a consequence of a specific non-compliance with the planning controls.

Natural ventilation to the adjoining apartment building

An objection received raised concern that the built form would restrict airflow into the apartments to the north of the subject site. A professional assessment of this has not been undertaken, however it is likely that the built form would not prevent adequate ventilation to apartments through windows located on multiple elevations of the building.

9.8 View loss

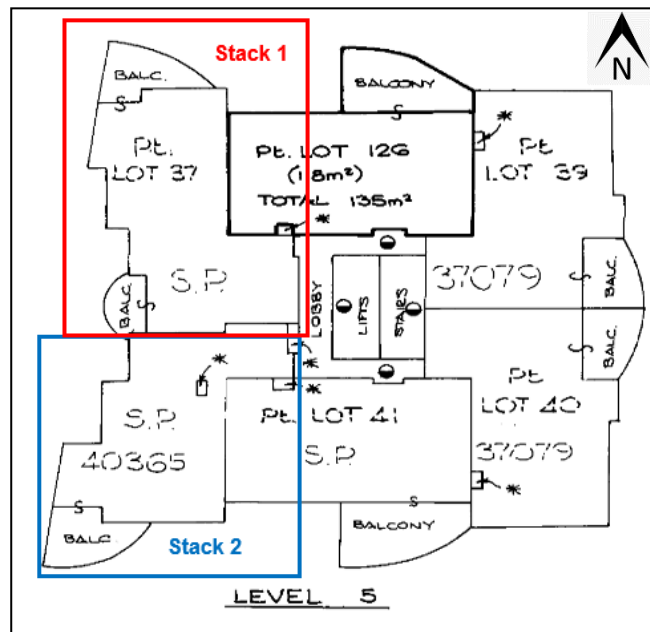
The issue of view loss has been raised in multiple submissions from owners of apartments at 20 Gerrale Street ('The Cecil Apartments') and 31 -33 Gerrale Street ('The Belgrave'). In response to these submissions, the applicant has provided a Visual Impact Assessment Report prepared by Hatch Roberts Day, contained in **Appendix "J"** to this report

The following is an assessment of the view loss in accordance with the planning principle established by Senior Commissioner Roseth in *Tenacity Consulting v Warringah* [2004] NSWLEC 140. For clarity, the assessment is split up into the two affected residential apartment buildings.

20 Gerrale Street ("The Cecil Apartments")

Step 1 - The first step is the assessment of views to be affected

There are approximately 26 apartments on Levels 1 to 13 with openings in the western elevation of "The Cecil Apartments". The apartments are aligned in two vertical apartment "stacks", namely Stack 1 (north-western corner) and Stack 2 (south-western corner). Refer to Figure overleaf.



Indicative floor plan of "The Cecil Apartments"

The Stack 1 apartments have predominately north facing primary balconies and living room windows and west facing kitchen windows, bedroom windows and secondary balcony spaces. The Stack 2 apartments have predominately south facing balconies and living room windows and west facing kitchen windows, bedroom windows.

The views to be affected are water and land-water interface views of Gunnamatta Bay which is located over 300m to the west over the Cronulla Centre.



The following photos show the views from the objector's apartments.



Level 6 – Stack 1 – Photo taken from secondary bedroom balcony



Level 10 – Stack 1 – Photo taken from kitchen window



Level 13 – Stack 2 – Photo taken from balcony looking west

Step 2 – The part of the property the views are obtained

The affected views are generally obtained from west facing balconies in Stacks 1 and 2 in both a sitting and standing position. In many apartments the water views are also obtained from the kitchen and bedroom windows. These views are more pronounced when standing but can also be observed when sitting in a number of apartments.

The affected views vary on vantage point (i.e. “stack” and elevation above ground). It is noted that the applicants ‘View Loss Analysis’ show that no views are currently obtained from residential levels 1 – 4. This appears to be correct given the existing built form on the subject site and beyond in the Cronulla Town Centre between the Cecil Apartments and Gunnamatta Bay.

Step 3 – Assessment of the extent of the impact

Stack 1: Views of Gunnamatta Bay are currently gained from residential Levels 5 to 13. These views are predominantly from the kitchen window, bedroom windows and balconies. The view from the kitchen and bedroom windows located on the northern side of the western elevation of the building will be blocked by the development. Views from secondary bedroom balconies and the associated bedroom will be restricted by the proposed development. This view loss will be most prevalent below Level 10 as only a narrow view corridor from the secondary balconies to Gunnamatta Bay over Surf Road and 2 Surf Road will be retained. This view corridor is only temporary as 2 Surf Road is yet to be redeveloped to maximise the development potential allowed by SSLEP 2015. This is demonstrated in the photographs below.



Level 7 - view impact analysis from the Visual Impact Assessment Report



Level 10 - view impact analysis from the Visual Impact Assessment Report

It is noted that these apartments currently enjoy views from living room windows and primary balconies to the east and north. These views consist of water views of the ocean and the land and water interface, including North Cronulla Beach, Elouera Beach, Wanda Beach and the coastline as it continues away towards Boat Harbour and the Kurnell peninsula. However, these views will be lost or restricted by the recently approved development applications for the redevelopment of properties directly to the north (namely residential flat buildings at 5 – 9 Ozone Street and 18 Gerrale Street).

Considering the above, the additional view loss from the proposed development below Level 10 is considered to be severe as only a temporary view corridor will be maintained from a secondary balcony and bedroom window. Above Level 10 the view loss is considered to be moderate as some view is retained over the top of the proposed building. However, it is acknowledged that the Gunnamatta Bay view is a borrowed view over the top of another site with underutilised potential.

Stack 2: Views of Gunnamatta Bay are currently gained from residential Levels 5 to 13. These views are gained from the kitchen windows, bedroom windows and the balcony. The view impact is greatest below Level 10 as only a narrow view corridor (albeit greater than the Stack 1 apartments) to Gunnamatta Bay will be retained over Surf Road and 2 Surf Road. This view corridor is only temporary as 2 Surf Road is yet to be redeveloped to maximise the development potential allowed by SSLEP 2015.



Level 9 - view impact analysis from the Visual Impact Assessment Report

It is noted that the apartments currently enjoy unrestricted views from living room windows and from the balcony to the south. These views consist of water views of the ocean and the land and water interface being Cronulla Park and Beach.

Considering the above, the additional view loss due to the development is considered to be minor.

Step 4 - The reasonableness of the proposal that is causing the impact

The expectation to retain views across the subject site from The Cecil Apartments is unrealistic. The Cecil Apartments is situated approximately 300m from the foreshore of Gunnamatta Bay, setback behind multiple underutilised properties. Views currently obtained are over the top of under-utilised sites, which in the context of the town centre zoning and applicable planning controls, cannot feasibly be retained without significantly impacting on the development potential of these sites.

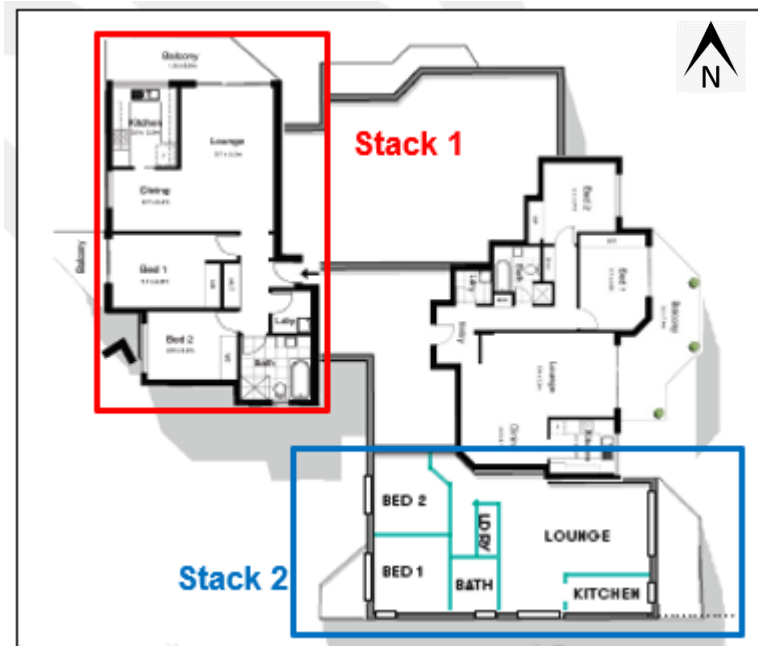
The proposal is non-compliant with the setback controls and maximum building height development standard. However, the Visual Impact Assessment contained within **Appendix “J”** shows that a compliant scheme does not result in the retention of the affected views. The retention of the existing views is not easily resolved and would reduce the development potential of the subject site and surrounding sites.

Considering the above, the view loss impact from the development is considered to be reasonable.

31 -33 Gerrale street ('The Belgrave').

Step 1 - The first step is the assessment of views to be affected

There are approximately 16 apartments on Levels 1 to 9 with openings in the southern elevation of The Belgrave. The affected apartments are generally located in two vertical apartment “stacks”, namely Stack 1 (north-western corner) and Stack 2 (south-eastern corner). Refer to Figure below.



Indicative Floorplan of The Belgrave apartments

The Stack 1 apartments have predominately north facing balconies and living room windows as well as west and south facing kitchen windows, bedroom windows and secondary balconies. The Stack 2 apartments have predominately east facing primary balconies and living room windows and south and west facing kitchen windows, bedroom windows and secondary balcony spaces.

The views affected by the development are water and land-water interface views including Gunnamatta Bay (approximately 300m) and Cronulla Park, Cronulla Beach and distant ocean views to the south-east.



The following photos were provided by the objector and show the views currently gained from the roof top area over the subject site.



Photos provided by objector – Views to south-east of Cronulla Park, Cronulla Beach and distant ocean



Photos provided by objector – Views to south and west Gunnamatta Bay

Step 2 - Consider from what part of the property the views are obtained

The affected views from “The Belgrave” apartment building are those from windows and balconies located on the south, east and west elevations of the building. The windows on the southern elevation of the building are most impacted by the development and are located in bedrooms, bathrooms and living areas (secondary window).



Southern elevation of The Belgrave Apartments taken from Surf Lane (left) Indicative floor plan (right)

Council has not gained access into the “The Belgrave” apartment building, however it is assumed that the extent of views vary on vantage point (i.e. “stack” and elevation above ground). It is also assumed that the views are best gained from a standing position, but are also achieved when sitting in many of the apartment’s apartments depending on vantage point (i.e. “stack” and elevation above ground).

Step 3 - Assess the extent of the impact

Stack 1 – Views towards Gunnamatta Bay will be largely retained, especially from the west facing balcony and windows. It is also noted that some apartments on the upper levels may gain views to the north and the east which are not impacted by the proposed development. However, these views are likely to be restricted by recently approved developments on the eastern side of Gerrale Street and Ozone Street.

As such, the view impact is considered to be minor as these views are gained over the side boundary of the subject site and views towards Gunnamatta Bay will be retained.

Stack 2 – Oblique views of Cronulla Beach, Cronulla Park, distant ocean and Gunnamatta Bay gained from the south facing bedroom and bathroom windows are most impacted by the proposed development. It is likely that the oblique view gained from the secondary living room window will be retained over the proposed Gerrale street setback. However, existing views will be best retained from windows and balconies on the front and rear elevation of the building.

As such, the view loss is considered to be minor as the most impacted views are gained over the side boundary of the subject site and are gained from a bedroom and a bathroom window. Views will also be retained from windows and balconies on the front and rear elevations of the building.

Further to the above assessment it is noted that the objector from this building raised concern about view loss from the roof top area of the building which they own. View corridors to the east and west will be retained over the proposed Gerrale Street and Surf Lane site setbacks. As such, the view impact is considered to be minor.

Step 4 - The reasonableness of the proposal that is causing the impact

The expectation to retain the entire view of Gunnamatta Bay over the side boundary of the subject site is unrealistic. Particularly as the views are obtained over the top of under-utilised sites, which in the context of the town centre zoning and applicable planning controls, cannot feasibly be retained without significantly impacting on the development potential of these sites. It is more reasonable to retain the view corridor to Cronulla Beach, distant ocean and Gunnamatta Bay from the eastern and western elevations of the building.

It is noted that the proposed development relies on variations to the maximum permitted building density and envelope controls including building height and setbacks. These issues are addressed elsewhere in this report and for various reasons certain elements are not supported by Council officers. However, the extent of view loss is largely the result of a compliant built form permitted by the current planning controls, as opposed to the non-compliant elements of the proposed development.

It is also acknowledged that the proposed lightweight balcony design allows for a greater extent of the objectors views to the south-east and south-west to be retained. In the event an approval was granted, a condition should be imposed requiring the open style of these balconies be retained into the future.



Comparison of view impact analysis from the Visual Impact Assessment Report

Considering the above, the view loss impact from the development is considered to be reasonable.

9.9 Streetscape presentation of building services

Due to functionality and budget constraints the electricity substation is located in north-eastern corner addressing Gerrale Street. This is not the best outcome for the site or the streetscape, but is generally supported being located next to the neighbouring properties substation kiosk, is setback from the street and is obscured by decorative screening and planting. However, this screening and planting may not be achievable as the Service Location Assessment Report by ADP Engineering dated 27 January 2021 notes that Ausgrid requires unimpeded access to the kiosk. Removal of these elements will have undesirable impacts on the streetscape. For this reason, to improve the visual amenity of the public domain along Gerrale Street, building services should be integrated into the fabric of the building within Surf Lane.

Concern is also raised about the visual impact of the fire hydrant booster within Gerrale Street which is not screened from the street or grouped with other services in the north-eastern corner of the site. The best outcome would be for the hydrant booster to be incorporated into the fabric of the building, ideally within Surf Lane.

Resolution of these issues would improve the interface of the building with the public domain.

9.10 Vehicle access and parking

The original scheme included a vehicular drop off zone which connected Surf Lane to Gerrale Street. This drop off zone was to be used for picking up residents, waste collection and loading. This has been removed in the latest plans to resolve aesthetic and operational concerns raised by Council, SSPP and DRF.

The revised scheme shows all vehicle access via Surf Lane, being a basement driveway/ramp and a separate waste collection/loading zone abutting the boundary with 31-33 Gerrale Street. The applicant has been advised that it is Council preference for the waste truck area and basement entry point to be combined to resolve ground floor planning concerns. The applicant has not adopted this due to safety and functionality reasons detailed in the Safety in Design Advice – Waste Collection and Servicing prepared by Scott Carver dated 11 January 2021. This reasoning is acceptable but the positioning of the basement access ramp and the waste area results in the issues outlined below.

The residential parking spaces to the north of the basement ramps (indicated by the yellow box in the image below) will be difficult to manoeuvre into and require potentially mobility impaired people to travel over 30m to the lift core past the main basement entry ramp and multiple retail car spaces. This is an unacceptable outcome, especially as the Safety in Design Advice – Waste Collection and Servicing prepared by Scott Carver emphasises the need for uncomplicated vehicle access for the retirement living offer to ensure the safety of residents.



Level 1 and Level 2 Basement Plans

To resolve this, the driveway access ramp and internal ramps should be located along the northern boundary. This would require waste/loading bay to be relocated to the south, next to the building core which would present opportunity for a more rational waste management system for residents and retail uses.

Swapping the basement driveway and waste storage room does present a design issue as 4.5m head clearance is required within the waste loading area in order to accommodate waste vehicles. This would not work with the current building design as an apartment is located above this space. It is noted that the current waste loading bay achieves the minimum head clearance required but does not have a desirable streetscape outcome as discussed in Section 10.4 of this report.

Considering the above, further improvements to the basement and ground floor plan are considered to be reasonable under the circumstances to ensure safe and functional vehicle access, parking and waste management. These adjustments are also likely to resolve the matter of the open waste facility directly below apartments 101 and 105.

9.11 Traffic and car parking

The proposal provides on-site car parking which is compliant with SSDCP 2015 for both the residential and commercial tenancies. As such, the development is not considered to result in any unreasonable impacts on the availability of street parking.

In terms of traffic generation, the development will increase vehicle movements within the surrounding streets due to the nature of the development. However, the vehicle movements were anticipated as a result of the rezoning of the site under SSLEP 2015 and the proposed development is generally within density limitations set by the instrument. Council's engineers consider that no new traffic measures are required to be implements as a result of the proposal.

9.12 Road widening

The SSDCP 2015 specifies that 3m road widening is required along the Surf Lane frontage in order to continue the widening of the lane which has already commenced with the development to the north at 31-33 Gerrale Street. This will fundamentally improve the pedestrian connectivity in the centre and vehicular movements.



SSDCP 2015 Road widening map

The required 3m road widening is identified on the architectural plans, however the developer has not entered into formal negotiations with Council regarding the dedication of the land. The applicant has informed Council that the developer is willing to finalise negotiations for the final land dedications subject to confirmation that Council is in support of the revised ground floor plan and negligible contravention to the building height development standard for the purpose of non-habitable floor space.

As such, this issue remains unresolved, however is not a reason for refusal as the architectural plans show a compliant building setback to enable the required road widening.

9.13 Acid Sulfate Soils

The subject site is identified as within 'Class 5' Acid Sulfate Soils Maps and the provisions of Clause 6.1 are applicable. The objectives of this Clause are to ensure that development does not disturb, expose or drain acid sulphate soils and cause environmental damage.

Within Class 5, the trigger under SSLEP 2015 is works within 500m of adjacent Class 1, 2, 3 or 4 land that is below 5m AHD and by which the watertable is likely to be lowered below 1m AHD on adjacent Class 1, 2, 3 or 4 land.

The proposal involves excavation for two of basement. The floor level for the basement will be 9.5mAHD and as such there is unlikely to be an impact on the water table in adjacent Class 1, 2, 3 or 4 ASS land.

9.14 Earthworks

The proposal includes considerable site excavation and earthworks and Clause 6.2 of SSLEP 2015 requires certain matters to be considered in deciding whether to grant consent. These matters include impacts on drainage; future development; quality and source of fill; effect on adjoining properties; destination of excavated material; likely disturbance of relics; impacts on waterways; catchments and sensitive areas and measures to mitigate impacts. The relevant matters have been considered and the application is acceptable subject to conditions of consent.

9.15 Stormwater Management

Clause 6.4 requires Council to be satisfied of certain matters in relation to stormwater management prior to development consent being granted. These matters include maximising permeable surfaces; on-site stormwater retention minimising the impacts on stormwater runoff. These matters have been addressed to Council's satisfaction subject to conditions of consent.

9.16 Urban Design (Residential Buildings)

Clauses 6.16 and 6.17 of SSLEP 2015 contain certain matters of consideration relating to urban design. The relevant matters have been considered as a part of the assessment of the application and the proposal is not acceptable for the reasons discussed above.

9.17 Heritage

The site is not identified as containing any heritage items and is not located within a heritage conservation area under the SSLEP 2015. However, the Site is located within proximity to a number of items of heritage significance, including Item No. 1023: Cronulla Beach and Cronulla Park at 20R-38R Gerrale Street and Item No. 1048: School of Arts at 4-8 Surf Road. The proposed development is predominately contained within the building envelope envisaged for the site by the local planning controls and will not detrimentally impact the heritage significance of these items.

9.18 Archaeological Sensitivity

Council records indicate that the subject site is rated medium in terms of Archaeological Sensitivity. A site inspection did not reveal any evidence of shell material or significant sandstone features within the development zone. The proposal does not warrant an Aboriginal Archaeological Study being undertaken.

10.0 DEVELOPMENT CONTRIBUTIONS

If the proposed development gains approval from the SSPP, it will introduce additional residents to the area and as such will generate Section 7.11 Contributions in accordance with Council's adopted Section 7.11 Development Contribution Plan. These contributions include:

Regional Contribution:	\$86,100.00
Local Contribution:	\$53,900.00

These contributions are based upon the likelihood that this development will require or increase the demand for regional and local recreational space and infrastructure facilities within the area. It has been calculated on the basis of 37 new residential units with a concession of 30 existing apartments.

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 no declaration has been made.

12.0 CONCLUSION

The subject land is located within Zone B3 Commercial Centre pursuant to the provisions of Sutherland Shire Local Environmental Plan 2015. The proposed mixed use development containing *seniors housing* and *commercial premises* is a permissible land use within the zone with development consent.

In response to public exhibition, 13 submissions were received. The matters raised in these submissions have been considered and discussed in the report above.

Council acknowledges that the subject site is a desirable location for the proposed seniors housing and commercial uses. This report identifies a number of design matters that may be able to be resolved via a few design changes. A rationalisation of the basement access and waste facility may serve to resolve a number of different issues. However, the breach of the height standard remains a significant issue. It serves as the primary reason why the application is not supported in its current form. The culmination of these issues results in a development that cannot be supported, particularly as Council believes there are reasonable design solutions, which have not been adopted

The application has been assessed having regard to the matters for consideration under Section 4.15 of the Environmental Planning and Assessment Act 1979. The application will result in any significant impact on the environment or the amenity of nearby residents. Following assessment, Development Application No. 20/0737 cannot be supported for the reasons outlined in this report.

RESPONSIBLE OFFICER

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