



## SUTHERLAND SHIRE COUNCIL ASSESSMENT REPORT

Panel Reference	PPSSSH-70
DA Number	MA21/0080
LGA	Sutherland Shire
Proposed Development:	<b>S4.56 modification to DA18/0323</b> – involves modifying the ground floor private open space areas, minor internal changes, window modifications, change to booster location, increase in height and floor space ratio, change to façade cladding and amendments to landscaping.
Street Address:	<b>S/P 545, Lots 1 to 3 S/P 9336, Lots 1 to 4 S/P 48254, Lots 4 to 6 S/P 67206 – 5 to 9 Ozone Street, Cronulla</b>
Applicant/Owner:	<b>Ozone Cronulla Pty Ltd</b>
Date of DA lodgement	<b>17 February 2021</b>
Number of Submissions:	<b>1</b>
Recommendation:	<b>Approval</b>
Regional Development Criteria (Schedule 7 of the SEPP (State and Regional Development) 2011	This application is referred to the SSPP as this application is an application made under Section 4.56 of the Environmental Planning and Assessment Act 1979 and is a modification to an application previously heard by the SSPP and approved by the Land and Environment Court. As this application is made under Section 4.56, it is required to be determined by SSPP.
List of all relevant s4.15(1)(a) matters	<ul style="list-style-type: none"> <li>• <b>Sutherland Shire Local Environmental Plan 2015 (SSLEP 2015).</b></li> <li>• <b>Sutherland Shire Development Control Plan 2015 (SSLEP 2015).</b></li> <li>• <b>State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004.</b></li> <li>• <b>State Environmental Planning Policy No. 55 – Remediation of Land (SEPP 55).</b></li> <li>• <b>State Environmental Planning Policy No. 65 – Design Quality of Residential Flat Development (SEPP 65).</b></li> <li>• <b>State Environmental Planning Policy (Coastal Management) 2018.</b></li> <li>• <b>State Environmental Planning Policy (State and Regional Development) 2011.</b></li> <li>• <b>Apartment Design Guide (ADG)</b></li> <li>• <b>Section 7.11 Development Contribution Plan 2016</b></li> </ul>
List all documents submitted with this report for the Panel's consideration	<ul style="list-style-type: none"> <li>• <b>Appendices:</b></li> <li><b>A – Draft Modified Consent Conditions</b></li> <li><b>B –SEPP 65 Design Principles</b></li> <li><b>C - Apartment Design Guide (ADG) –Building Key Design Criteria</b></li> <li><b>D - SSDCP 2015 Compliance Table</b></li> <li><b>E - Architectural Drawings</b></li> </ul>
Report prepared by:	<b>Bagnall M, Sutherland Shire Council</b>
Report date	<b>19 May 2021</b>

**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**

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**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?  
*e.g. Clause 7 of SEPP 55 - Remediation of Land, Clause 4.6(4) of the relevant LEP*

**Yes**

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**Clause 4.6 Exceptions to development standards**

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

**N/A/licable**

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**Special Infrastructure Contributions**

Does the DA require Special Infrastructure Contributions conditions (S7.24)?

**N/A licable**

*Note: Certain DAs in the Western Sydney Growth Areas Special Contributions Area may require specific Special Infrastructure Contributions (SIC) conditions*

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**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.* **No**

## **REPORT SUMMARY**

### **REASON FOR THE REPORT**

This application is referred to the Sydney South Planning Panel (SSPP) as this application is an application made under Section 4.56 of the Environmental Planning and Assessment Act 1979 and is a modification to an application previously heard by the SSPP and approved by the Land and Environment Court (LEC). Council only has delegation for applications made under Section 4.55(1) and (1A) in this instance.

The original proposal (DA18/0323) was approved by the LEC on 2 April 2019. The consent has subsequently been modified twice through s4.56 and twice through separate development applications. At the time of writing this report, an additional modification application (MA20/0412) is currently under assessment and will be determined by the SSPP at its meeting held on 27 May 2021.

### **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 Cecil Monro Avenue, including 71 residential spaces, 2 visitor/car wash spaces and 2 trade/service vehicle spaces.

### **PROPOSED MODIFICATION**

The proposed modification to DA18/0323 involves modifying the ground floor private open space areas, minor internal changes, window modifications, change to booster location, increase in building height and floor space ratio, materials at the base of the building and amendments to landscaping.

### **THE SITE**

The site is irregular in shape with a total area of 1,592m<sup>2</sup>. 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 24.37m. Its western boundary adjoining 14 & 18 Gerrale Street has a length of 56.38m, excluding a 3.06m return of a “dog leg” part way along the boundary. The site has a slight fall of just over 1m from its north-western corner (RL16.5) to its south-eastern corner (RL15.46).

The site was occupied by 3 apartment buildings, each being 3 storeys in height with car parking on the ground floor. These buildings have been demolished and excavation for the basement has commenced. There are 10 on-street parking spaces in Ozone Street directly adjacent to the site along with 3 street trees in tree “blisters”.

Adjoining site to the west are 14 Gerrale Street and 18 Gerrale Street. The former is occupied by a 4-storey mixed use building containing ground floor commercial and apartments over. The latter is occupied by a 2 – 3 storey apartment building that has been subject to a DA (DA18/0349) that was

approved by the Land and Environment Court, proposing demolition of the building and construction of a mixed use development with a height of 9 storeys.

The site is located at the eastern edge of Cronulla Centre. Cronulla railway station is a 6 minute walk from the site. The site was “up zoned” under Sutherland Shire Local Environmental Plan 2015 (SSLEP 2015) from a maximum height of 6 storeys (i.e. about 18m) and floor space ratio (FSR) of 2:1 to a maximum height of 30m and FSR of 3:1.

An aerial photo showing the location of the site and surrounds is shown below:



## ASSESSMENT OFFICER'S RECOMMENDATION

### THAT:

- A. That pursuant to the provisions of Section 4.55(1A) of the Environmental Planning and Assessment Act 1979, the requested modification to Development Consent No. 18/0323 dated 02 April 2019 for demolition of existing structures and construction of a residential apartment building containing 38 apartments and 3 basement parking levels at Lots 1 to 3 S/P 9336, S/P 545, Lots 1 to 4 S/P 48254, Lots 4 to 6 S/P 67206, 5 to 9 Ozone Street, Cronulla, be supported.
- B. That Development Application No. DA18/0323 for demolition of existing structures and construction of a residential apartment building containing 38 apartments and 3 basement parking

levels at Lots 1 to 3 S/P 9336, S/P 545, Lots 1 to 4 S/P 48254, Lots 4 to 6 S/P 67206, 5 to 9 Ozone Street, Cronulla be modified as set out in <b>Appendix A</b> .
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## **ASSESSMENT OFFICER'S COMMENTARY**

### **1.0 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.

The specific modification sought to the approved development involves modifying the ground floor private open space areas, minor internal changes, window modifications, change to booster location, increase in building height and floor space ratio, materials at the base of the building and amendments to landscaping. The changes include the following:

#### **Ground Floor Level**

- Increase Ground Floor POS areas resulting in street setbacks of 2.5m min to Ozone Street, 3.5m to Cecil Monroe Avenue and 2.4m to Ocean Grove Road.
- Modify the ramp to stairs adjacent to the western rear boundary that provide access from the communal open space area to Ocean Grove Road.
- Minor reconfiguration of communal open space toilet and services.
- Modify ensuite of Unit G02, laundry of Unit G04 and bathroom of Unit G05.
- Delete internal doors to the main lobby entrance.
- Extend planter bed in front of Unit G04 and reduce turfed area within the front communal space area.
- Modify green wall on western side of driveway to masonry wall.
- Modify landscape plan.
- Fire hydrant booster and GM relocated from Cecil Monroe Avenue to Ocean Grove Road frontage.

#### **First Floor Level**

- Modify internal layout of Unit 101, resulting in 3 windows on the western elevation.
- Western and northern sides of service room modified to privacy screens.
- Modify ensuite of Units 102 and 105 and laundry of Unit 104.
- Modify eastern living windows of Unit 102 to sliding doors.

#### **Second Floor Level**

- Modify laundry of Unit 201, ensuite of Unit 202, ensuite and bathroom of Unit 203, ensuite and laundry of Unit 204 and ensuite of Unit 205.
- A cavity sliding door added to media/bedroom of Unit 201.

### **Third Floor Level**

- Modify ensuite of Unit 302, ensuite and bathroom of Unit 303, ensuite and laundry of Unit 304 and ensuite of Unit 305.
- A cavity sliding door added to media/bedroom of Unit 301.

### **Fourth Floor Level**

- Modify ensuite of Unit 402 and bathroom and laundry of Unit 405.
- Modify eastern living windows of Unit 402 to sliding doors.
- Align living room windows of Unit 403.
- A cavity sliding door added to media/bedroom of Unit 401.

### **Fifth Floor Level**

- Modify ensuite 502, bathroom and laundry of Unit 503, bathroom and laundry of Unit 504 and bathroom of Unit 505.
- Add fire place to Unit 505.
- Modify eastern living windows of Unit 502 to sliding doors.
- Align living room windows of Unit 503.
- A cavity sliding door added to media/bedroom of Unit 501.

### **Sixth Floor Level**

- Add sliding cavity door to media/bedroom and minor change to glazing to dining room of Unit 601.
- Modify ensuite 1 and 2, bathroom and laundry of Unit 602.
- Minor changes to ensuite 1 and 2, laundry, bath and robe of bed 3 of Unit 603.
- Align living room windows of Unit 603.

### **Seventh Floor Level**

- Add sliding cavity door to media/bedroom and minor change to glazing of dining room of Unit 701.
- Modify ensuite 1, bathroom and laundry of Unit 702.
- Delete southern window of bathroom to Unit 703.

### **Eighth Floor Level**

- Modify ensuite and robe of bed 2, ensuite of bed 1, reconfigure powder, laundry and storage area of Unit 801 and add cavity sliding door to media/bedroom.
- Modify ensuite and robe of bed 1 and delete ensuite of bed 3 within Unit 802.

### **Roof Plan**

- Addition of glazed flat roof over internal stairs to Units 801 and 802.
- Increase upper roof RL to integrate private lifts for Units 801 and 802.

- Deletion of car park exhausts.

## **Materials**

- The base of the building to be finished in limestone cladding.
- Privacy screens added to the north-western corner of balcony's to Units 105, 205, 305, 405, 505, 603 and 703. (as per condition 53 of the development consent)

## **2.0 APPROVED DEVELOPMENT**

Development Consent No. DA18/0323 issued on 2 April 2019 by the LEC, 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 detailed development assessment report in relation to this development under Section 4.15 of the EP&A Act is attached to Development Application file No DA18/0323 and the subsequent modification applications (refer Background in Section 4.0 below).

At present the development is under construction.

## **3.0 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:
  1. *The adverse impacts of the development, in particular view loss, have been addressed as per the relevant considerations in the LEP.*
  2. *The amended design addresses the comments of Council's Design Review Forum (DRF) at their meeting on 25 October 2018. This submission is to be reconsidered by the DRF and their comments along with an updated Design verification statement be provided to the Panel.*

*An amended report, including the applicant's submissions be prepared by Council is to be submitted to the Panel for their reconsideration of the application.*

- An appeal was lodged with the LEC and the development application was approved on 2 April 2019.
- MA19/0303 was submitted increasing the number of units from 32 to 38 (resulting in some changes to conditions of consent) and was determined by way of approval by the SSPP on 13 May 2020.
- MA20/0232 was submitted to modify condition 19 relating to the registration of the plan of consolidation and road dedication and was determined by way of approval by the SSPP on 2 April 2019.
- DA20/0606 was submitted to amalgamate units 702 and 703 to create one unit and was determined under delegation on 14 December 2020.

- DA20/0614 was submitted for alterations and amalgamation of units 403/404 and 502/503 and was determined under delegation on 14 December 2020.
- MA20/0412 was submitted 17 February 2021 seeking to make internal changes to the three basement levels of the building. This application was determined by SSPP at its meeting held on 27 May 2021.
- The current modification application was submitted on 9 March 2021 to modify the ground floor private open space areas, minor internal changes, window modifications, change to booster location, increase in height and floor space ratio, change to façade cladding and amendments to landscaping. .
- The application was placed on exhibition, with the last date for public submissions being 9 April 2021.

#### **4.0 NATURE OF MODIFICATION SOUGHT**

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

##### **4.56 Modification by consent authorities of consents granted by the Court (cf previous s 96AA)**

- (1) *A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the Court and subject to and in accordance with the regulations, modify the development consent if—*
  - (a) *it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which the consent was originally granted and before that consent as originally granted was modified (if at all), and*
  - (b) *it has notified the application in accordance with—*
    - (i) *the regulations, if the regulations so require, and*
    - (ii) *a development control plan, if the consent authority is a council that has made a development control plan that requires the notification or advertising of applications for modification of a development consent, and*
  - (c) *it has notified, or made reasonable attempts to notify, each person who made a submission in respect of the relevant development application of the proposed modification by sending written notice to the last address known to the consent authority of the objector or other person, and*
  - (d) *it has considered any submissions made concerning the proposed modification within any period prescribed by the regulations or provided by the development control plan, as the case may be.*
- (1A) *In determining an application for modification of a consent under this section, the consent authority must take into consideration such of the matters referred to in section 4.15(1) as are of relevance to the development the subject of the application. The consent authority must also take into consideration the reasons given by the consent authority for the grant of the consent that is sought to be modified.*
- (1B) *(Repealed)*



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

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

## 5.0 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 (SSDCP 2015).

345 adjoining or affected owners were notified of the proposal and 6 submissions were received as set out below:

Address	Date of Letter/s	Issues
1302/20 Gerrale Street	29 March 2021	1, 2, 3
402/20 Gerrale Street	30 March 2021	2, 4,
403/19-21 Gerrale Street	31 March 2021	5
601/20 Gerrale Street	31 March 2021	2, 5, 6, 7
20 Gerrale Street	26 April 2021	1, 5, 7
603/19-21 Gerrale Street	30 March 2021	2, 5, 7, 8, 9, 10

The issues raised in these submissions are as follows:

### Issue 1: 'Planning Creep'

*Comment:* The provisions of the EP & A Act 1979 (as amended) allow for any number of modification applications to the approved development, provided such modifications are made pursuant to s4.56 of the Act. The key test with each modification application is that the consent authority must be '*satisfied that the development to which the consent as modified relates is substantially the same development as the development for which the consent was originally granted and before that consent as originally granted was modified (if at all).*'

The subject development has presently been modified by two applications MA19/0303 and MA20/0232. A further modification MA21/0412 was approved by the SSPP in May 2021. Two separate development applications (DA20/0606 and DA20/0614) each changing various components of the development have also been granted consent.

It is Council's view that the changes proposed as part of the subject application will result in a development which is substantially the same as the development for which consent was granted (prior to any of the above modifications).

Issue 2: *Private open space versus streetscape landscaping*

*Comment:* See Assessment Section of the report below.

Issue 3: *Rooftop Services – visual Impact*

*Comment:* See Assessment Section of the report below.

Issue 4: *Jurisdictional Issue (LEC versus modification application)*

*Comment:* Section 4.56 of the EP & A Act 1979 enables the modification of LEC issued consents, with the consent authority being the SSPP. The applicant has utilised these provisions to modify the development approved by the LEC, with two previous applications and a pending application considered by the SSPP.

Issue 5: *Building Height*

*Comment:* See Assessment Section of the report below.

Issue 6: *Change in lift design*

*Comment:* See Assessment Section of the report below.

Issue 7: *Increase in Gross Floor Area and breach of FSR Control*

*Comment:* See Assessment Section of the report below.

Issue 8: *Notification of previous application*

*Comment:* An objector was concerned that they were not correctly notified of a previous modification application (MA20/0232). A review of this file indicates they were included in the list of affected properties notified of the application. The same process has occurred with MA19/0303, MA20/0412 and the subject application, consistent with the requirements of Chapter 42 of SSDCP 2015.

Issue 9: *Not substantially the same development*

*Comment:* 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.

Issue 10: *Non-compliant solar access*

*Comment:* See Assessment Section of the report below.

### **Submission Review Panel (SRP)**

As a result of the submissions received, the issues raised were reviewed and it was determined that given the nature of the submissions, referral to Council's SRP was not required in this instance.

## **6.0 STATUTORY CONSIDERATIONS**

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

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

- Sutherland Shire Local Environmental Plan 2015 (SSLEP 2015).
- Sutherland Shire Development Control Plan 2015 (SSLEP 2015).
- 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).
- State Environmental Planning Policy (Coastal Management) 2018.
- State Environmental Planning Policy (State and Regional Development) 2011.
- Apartment Design Guide (ADG)

### **Section 7.11 Development Contribution Plan 2016**

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

## **7.0 STATUTORY COMPLIANCE**

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

### **7.1 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.

#### **7.2 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. The original application was considered by the SSPP before being determined by the LEC. As this application is a Section 4.56 it is required to be determined by the SSPP as Council only has delegation for Section 4.55(1) and (1A) applications.

#### **7.3 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.

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

#### 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. A revised BASIX Certificate (879217M\_02) has been submitted with the modified application. The Certificate indicates that the revised development will generally achieve the minimum performance levels / targets associated with water, energy and thermal efficiency.

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

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

Sutherland Shire Council engages its Design Review Forum (DRF) to guide the refinement of development to ensure design quality is achieved in accordance with SEPP 65. The original DA18/0323 was reviewed by the DRF on a number of occasions prior to its determination. The subject modification application is substantially the same as that reviewed by the DRF and there is no requirement to refer this back to the DRF.

An assessment of the proposal having regard to the design quality principles of SEPP 65 is set out 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 against the ADG design criteria is contained **Appendix “C”** to this report.

#### 7.7 Sutherland Shire Local Environmental Plan 2015

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

Standard/Control	Required	Approved	Proposed	Complies? (% Variation)
<b>Sutherland Shire Local Environmental Plan 2015</b>				
Building Height (Clause 4.3)	30m	30m	30.63m	No – 2.1% - view loss analysis in report to assess the impact
Floor Space Ratio (Clause 4.4)	3:1 (4,776m <sup>2</sup> )	3:1 (4,776m <sup>2</sup> )	3.02:1 (4,810.8m <sup>2</sup> ) (applicant calculations)  (Council calculations in accordance with original development application)	No – 0.7%

## 7.8 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 “D”**.

## 7.9 Draft Environmental Planning Instruments

### *Draft State Environmental Planning Policy (Environment) (draft Environment SEPP)*

The draft Environment SEPP seeks to simplify the NSW planning system and reduce complexity without reducing the rigour of considering matters of State and Regional significance. The draft SEPP was exhibited between October 2017 and January 2018. The SEPP effectively consolidates several SEPPs including SEPP19, SEPP (Sydney Drinking Water Catchment), and GMREP2 and remove duplicate considerations across EPIs. Relevant considerations have been taken into account against the in-force EPIs in this report.

### *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 original DA18/0323 has been assessed against the provisions of SEPP 55 and relevant conditions of consent imposed. The proposed modification application makes no change to the development, which would change this earlier assessment. The proposal is satisfactory with regard to the provisions of draft *Remediation of Land SEPP*.

## 8.0 SPECIALIST COMMENTS REFERRALS

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

### **Building Officer**

The application was referred to Council’s Building officer who advised of the following:

- *The roof terrace structures, being classed as non-habitable structures, can be built with a floor to ceiling height with a minimum height of 2.1 metres.*
- *The pool fencing should be constructed around the perimeter of the actual pool surrounds to separate non-ancillary areas from the pool. These are the areas that are not directly linked to use of the pool (i.e. lounges, table and chair areas).*

- *The Fire Hydrant Booster cannot be located within 10 metres of the electricity substation kiosk. It is also required to be in view of the main pedestrian entry point. The building has sprinkler protection so a Fire Sprinkler Booster would also be required.*

### **Landscape Architect**

The application was referred to Council's Landscape Officer who provided the following comments:

- *The request to change the tree species is supportable as is the planting to the garbage bin holding area.*
- *The use of Green-walls is generally supported, however, more detail is required to fully understand what is proposed.*
- *The creation of a turfed, gated and slightly isolated communal open space to the front boundary is not supported, nor is the removal of creeper proposed to the driveway entry wall.*
- *There is questionable benefit for relocating the fire hydrant booster and gas meter at the expense of the garden screening width to G04's courtyard.*

To address the matters raised by the landscape architect, conditions are recommended addressing planting/turf at the front of the site to continue from the communal open space south to the pathway into the entrance of the building, planting to hang over the basement entrance and setting the wall/fence of GO4 back from the services proposed on Ocean Grove Road. These matters have been discussed further in the 'Assessment Section' of the report.

### **Architect**

The application was referred to Council's Architect who advised that he has no issue with respect to the internal design changes. In terms of the proposed external changes, limestone cladding is acceptable as it is a similar colour but a finer, flat finish as opposed to the rough texture of sandstone.

In order to reduce the building height previous suggestions of a lower roof height to the terrace level services and stairs (as these are non-habitable areas and can have a lower 2.1m ceiling height). The 3.3m proposed height is not required. The height of the proposed lift overrun appears more than usual seeing that it doesn't (yet) serve access to the terrace level.

The architect also questioned whether the carpark exhaust outlet at the back of the lift complies with the required separation distances to habitable areas, i.e. the terrace level swimming pool for example.

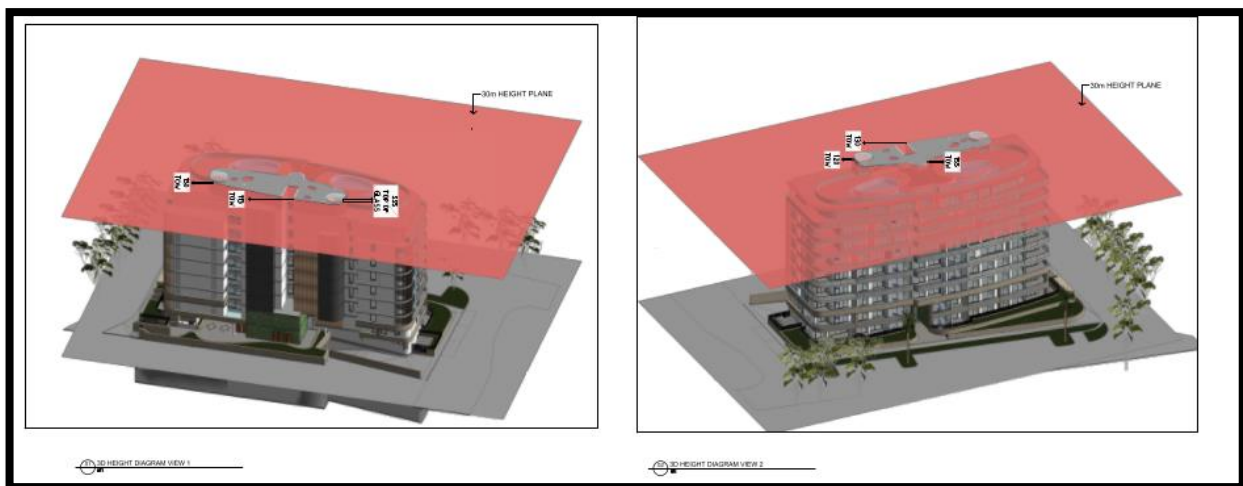
The applicant provided additional information confirming the stair pressurisation intake is to be within the retaining wall of communal open space at the rear and the car park supply air intake is to be in the western wall facing the driveway (This is discussed in the 'Assessment Section' of the report). With regards to the height of the roof terrace level, reducing the flooring to ceiling height from 2.3 to 2.1m will bring it closer to numerical compliance and a condition has been included requiring the ceiling height to be reduced. (Building Height has been addressed in the Assessment Section)

## 9.0 ASSESSMENT

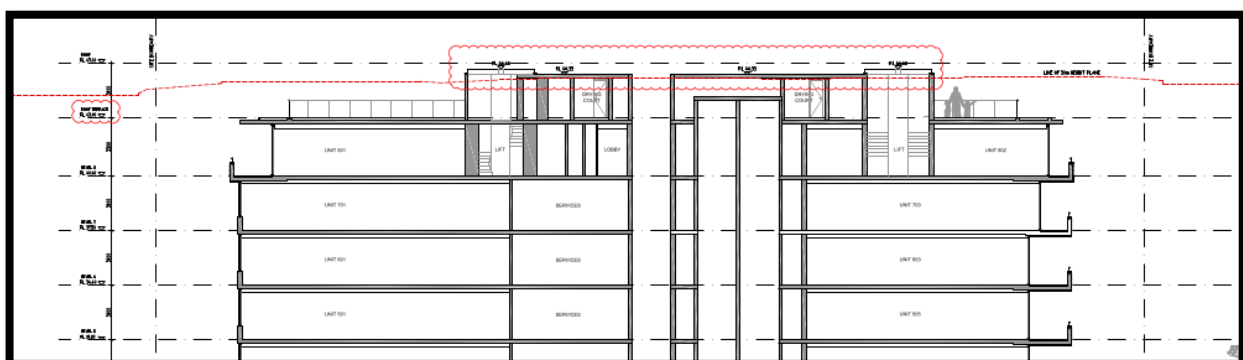
A detailed assessment of the application has been carried out having regard to the matters for consideration under Section 4.15 of the EP&A Act. The following matters are considered important to this application.

### 9.1 Building Height

The proposed development fails to comply with the development standard for height. Clause 4.3(2) of SSLEP 2015 stipulates a maximum height of 30m for the site. The proposal seeks a building height of 30.63m which exceeds the maximum height by 630mm, resulting in a 2.1% variation. The roof elements that exceed the building height standard is the upper roof (RL46.35) and glass roof (RL46.65) over the internals stairs of units 801 and 802.



Height Blanket show non compliant portions of the building.



Top of Section C showing the portions of the building exceeding the maximum building height.

Height of building is defined in SSLEP 2015 as follows:

**building height** (or **height of building**) means:

- (a) *in relation to the height of a building in metres—the vertical distance from ground level (existing) to the highest point of the building, or*



- (b) *in relation to the RL of a building—the vertical distance from the Australian Height Datum to the highest point of the building, including plant and lift overruns, but excluding communication devices, antennae, satellite dishes, masts, flagpoles, chimneys, flues and the like.*

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 objectives of the B3 Zone are:

- *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.*

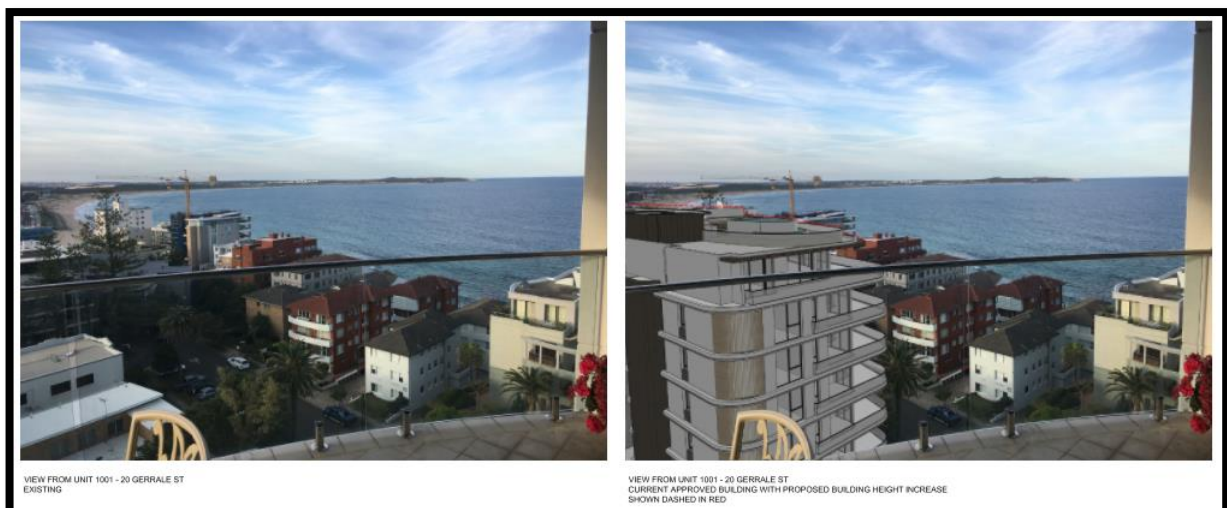
The proposal is for a residential flat building that will provide a mix of 1, 2 and 3 bedroom units in a commercial zone that will be accessible for the ageing population. The unit layouts have been designed to take advantage of the orientation and views without unacceptably impacting on the amenity of adjoining properties.

The information provided indicates the additional height is required to *integrate private lift specifications for units 801 and 802 and glazed roof over the internal stairs of units 801 and 802. Glazed roof is required by lift manufacturer for weather protection and to enable provision of warranty*". With regards to the height of the roof terrace level, reducing the flooring to ceiling height from 2.3 to 2.1m will bring the height closer to numerical compliance and therefore a condition has been included requiring the roof level to be reduced to RL46.15.

The height will not likely exacerbate the bulk and scale of the building form when viewed from surrounding properties and the street as the non compliant sections of the building is adequately setback from the boundaries of the site and toward the centre of the site and therefore will unlikely change the visual impact of the building form. The proposal is considered acceptable in terms of impacts on adjoining or nearby properties from loss of views, overshadowing or visual intrusion and is recommended for approval.

## 9.2 Views

The modifications sought retain the approved building footprint, however proposed with an increase in height of the roof and new glazed roof over the internal stairs. The applicant provided photos from 3 units at 20 Gerrale Street (The Cecil Apartments) to demonstrate the increase in height will not have a significant impact on views to be retained with the approved development.



View from unit 1001/20 Gerrale Street (plan SK002 – View impact analysis sketch) with the red hatched line showing the increase in height.

The view impact from the increase in height is considered to be minor and will unlikely result in significant or unacceptable impacts when viewed from surrounding properties.

### 9.3 Floor Space Ratio

The proposed development fails to comply with the development standard for floorspace ratio. Clause 4.4 of SSLEP 2015 stipulates a maximum floorspace ratio 3:1(4,776m<sup>2</sup>) for this site. The proposal seeks a floorspace ratio of 4,810.8m<sup>2</sup> which exceeds the maximum floorspace ratio by 34.8m<sup>2</sup>, resulting in a 0.7% variation. The increase in floorspace ratio is due to minor internal changes, alignment of windows and the enclosure of the internal stairs from units 801 and 802 to the private roof terraces.

The objectives of the FSR development standard are as follows:

- (1) *The objectives of this clause are as follows—*
- (a) *to ensure that development is in keeping with the characteristics of the site and the local area,*
  - (b) *to ensure that the bulk and scale of new buildings is compatible with the context of the locality,*
  - (c) *to control development density and intensity of land use, taking into account—*
    - (i) *the environmental constraints and values of the site, and*
    - (ii) *the amenity of adjoining land and the public domain, and*
    - (iii) *the availability of infrastructure to service the site, and*
    - (iv) *the capacity of the road network to accommodate the vehicular and pedestrian traffic the development will generate, and*
    - (v) *the desirability of retaining the scenic, visual, and landscape qualities of the area.*

The objectives of the B3 Zone are:

- *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 proposed development includes minor amendments to service areas and the internal layout with regards to the ensuite, laundry and bathrooms of some units and the enclosure of internal stairs within units 801 and 802. These stairs are now enclosed and not common to all users of the building and therefore are required to be calculated towards floor area. The modifications sought are contained within the approved building footprint and therefore will not exacerbate the bulk and scale of the approved building form when viewed from the surrounding properties and the street.

#### **9.4 Solar Access**

The apartment design guide (ADG) recommends that living and private open spaces of at least 70% of apartments in a building should receive a minimum of 2 hours of direct sunlight between 9am and 3pm at mid-winter. The modification sought requests to change the family/study room to a media/bedroom within units 201, 301, 401, 501, 601. The approved development was non compliant with solar access with 22 out of 38 apartments (57%) receiving 2 hours of solar access to both their living and private open space areas and therefore units 201, 301, 401, 501, 601 relied on the family/study rooms as a secondary living area to receive solar access.

The design guidelines for solar access encourages buildings to be designed *maximising a northerly aspect and minimise the number of single south aspect apartments*. In addition, the ADG states that where *significant views are orientated away from the desired aspect for direct sunlight* achieving compliant solar access may not be possible. The building has been designed with units taking advantage of either a northerly or easterly aspect, resulting in only 9 units with a south easterly aspect. The rooms are requested to be modified to give flexibility for future occupants and therefore may still be used as secondary living spaces. In this particular case, given the sites orientation and that most units will have either a northerly or easterly aspect with views the proposal is acceptable.

#### **9.5 Streetscape / Landscaping**

The modifications sought include modifying various aspects on the ground level and include the following:

##### *POS Areas*

The ground floor private open space areas are proposed to be increased in size extending into the front landscape setback, resulting in setbacks of 2.5m min from Ozone Street, 3.5m from Cecil Monro Avenue and 2.4m from Ocean Grove Road. Whilst the site is located in the B3 Commercial Core zone, the site is surrounded by predominantly residential development and therefore should complement the residential context. The reduced landscape setbacks will be capable of accommodating planting that will contribute to the streetscape and will also screen the private open space areas. However, to increase the density of planting along the three frontages of the site, a condition is recommended requiring a total of 385 shrubs within the landscape setback.

#### *Fire Hydrant Booster and GM*

The fire hydrant booster and GM is to be relocated from Cecil Monro Avenue to Ocean Grove Road in front of unit GO4 because it is not possible to extend the fire main within Cecil Monro Avenue. To provide a larger landscape buffer between the services and the private open space of GO4, a condition is recommended requiring the northern wall of the private open space of unit G04 to be setback 1m from the back wall of the services.

#### *Front North Eastern Communal Open space*

The revised landscape plan shows paving with a gate in front of the private open space of unit GO3. To ensure the front landscape is landscaped and to provide screening to unit G03, a condition is recommended requiring the planting bed and turf to continue south from the communal open space area to the front building entrance pathway.

#### *Green Wall on western side of the driveway*

A green wall was approved on the western side of the driveway. This green wall is proposed to be removed and replaced with a masonry wall, as '*footing for wall and edge of slab combined width required for driveway does not allow the soil depth and width required to sustain plant life*'. The green wall was to soften the visual impact of the driveway when viewed from Cecil Monroe Avenue, as a landscape setback was not provided to the driveway. Therefore, to soften the visual impact of the basement entrance, a condition is recommended requiring 11 star jasmine creepers to be planted above the driveway entrance to drape over the wall.

#### *Base of the Building*

Condition 53.A.ii) requires *the ground floor level (base of the building) is to be finished in sandstone cladding*. The modification application proposes to finish the base in limestone cladding. The change in finish is acceptable.

#### *Front Fence*

High palisade fencing is proposed with the wall of the ground floor private open space areas, around the southern side of the temporary bin holding area and the north western end of the communal open space areas. The private open space areas are proposed to move forward on the site and therefore to ensure the fencing and landscaping sits comfortably within streetscape, a condition is recommended requiring the combined height of the wall and palisade fence to be no greater than 1.5m in height above the finished terrace levels and to be erected only around the bin enclosure (not along the front boundary on Cecil Monro Avenue).

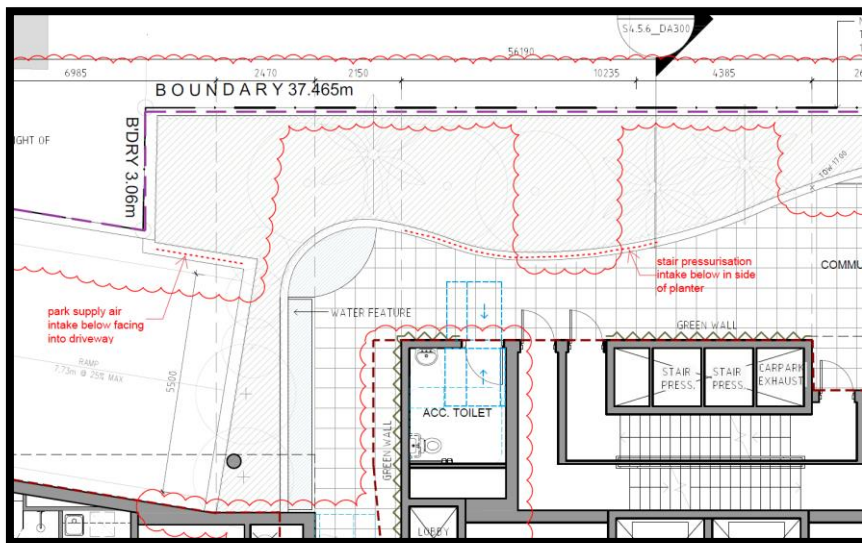
### *Front Boundary Wall*

A front boundary wall to be finished in sandstone cladding and varying in height is shown on the architectural and landscape plans. To allow the landscaping within the street setback to relate and fit comfortably within the streetscape and residential context, condition 53.A.iii) of the consent requires the wall to be no greater than 400mm in height when measured from natural ground level. This condition is to be retained.

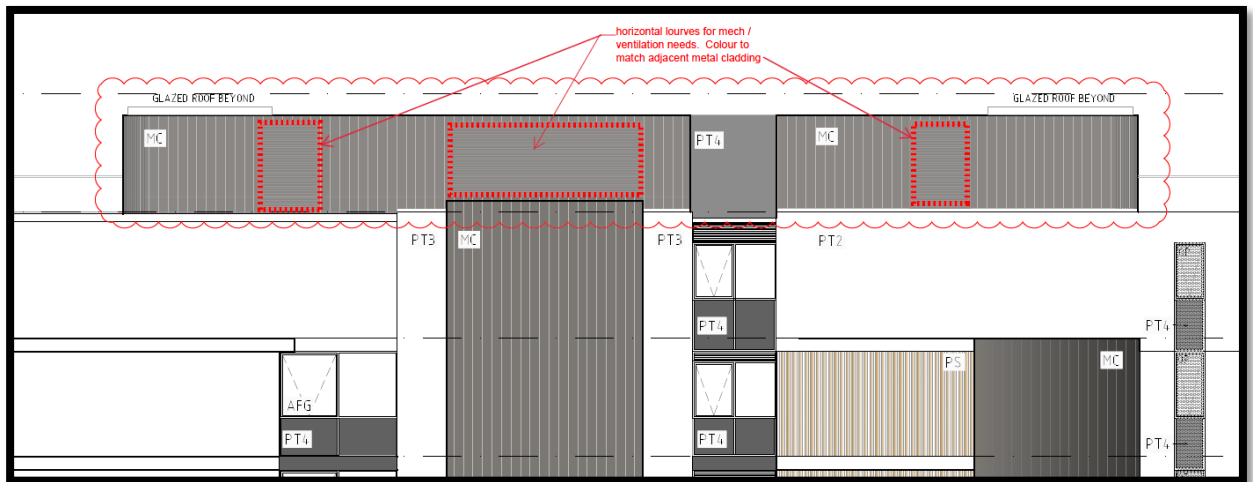
The site is located within the B3 Commercial Zone, however is surrounded by predominantly residential development. Therefore, to minimise the visual impact of the development when viewed from the street and to allow the development to relate and fit comfortably within the streetscape and residential context, conditions are recommended addressing landscaping and fencing/walls provided with the development.

### **9.6 Carpark Intake Grille**

The carpark intake grille has been deleted from the garden bed in the western communal open space area. The grille has been relocated to the western wall facing the driveway and to the side of the planter bed. The mechanical ventilation will not be placed on the roof and is to be provided behind the grilles/louvres on the west elevation, as shown in the following diagrams:



Section of the ground floor plan showing car park supply intake and stair pressurisation intake.



Western elevation showing location of mechanical ventilation

## 10.0 DEVELOPER CONTRIBUTIONS

Section 7.11 contributions were levied on the original DA18/0323. The proposed modification does not increase the demand for public facilities and therefore the Section 7.11 contributions remain unchanged.

## 11.0 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, a declaration has been made that there is no affiliation.

## 12.0 CONCLUSION

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

The application was placed on public exhibition and submissions were received from 6 households. The matters raised in these submissions have been discussed in this report.

The proposal includes a variation to the maximum permitted building height and density under SSLEP 2015. These variations have been discussed and are considered acceptable.

The proposed modification represents a similar building footprint that was approved by the Land and Environment Court despite the increase in height and floorspace ratio. The internal changes and minor modifications to the ground floor private open spaces, fencing and landscaping will unlikely result in unacceptable impacts on surrounding properties and the streetscape, in terms of bulk and scale and is recommended for approval with conditions.

This application satisfies the requirement that the development to which the consent as modified relates will remain substantially the same development as that originally granted consent. Further, there is no necessity for consultation with any Minister, public authority or approval body in respect to the modification sought by this application.

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 MA21/0080 can be supported.

#### **RESPONSIBLE OFFICER**

The officer responsible for the preparation of this Report is the Manager, Major Development Assessment, who can be contacted on 9710 0333.