

SUTHERLAND SHIRE COUNCIL ASSESSMENT REPORT

Panel Reference	PPSSSH-78
DA Number	DA21/0562
LGA	Sutherland Shire Council
Proposed Development	Demolition of existing structures and construction of a mixed use development with 4 level basement parking (358 car spaces), two storey podium including ground floor retail and first floor commercial, with two residential towers totalling 112 apartments.
Street Address	3 - 23 Kingsway CRONULLA NSW 2230
Applicant/Owner	Paul Bulijevic CCIG Pty Ltd, Sam's Food Bar Pty Ltd, Helen Karageorge, Jenell Milstead, Paul Milstead, LP Family Pty Ltd, GL Family Ptd Ltd, Antonietta Palumbo, John Palumbo
Date of DA lodgement	09 June 2021
Number of Submissions	30
Recommendation	Approval
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 identified as Regionally significant development under clause (2) of Schedule 6 of State Environmental Planning Policy (Planning Systems) 2021. The applicant's submission includes a Cost report, indicating that the proposed development has a value of \$53,777,000.00.
List of all relevant s4.15(1)(a) matters	<ul style="list-style-type: none"> • State Environmental Planning Policy (Planning Systems) 2021. • State Environmental Planning Policy (Resilience and Hazards) 2021. • State Environmental Planning Policy (Transport and Infrastructure) 2021. • State Environmental Planning Policy No. 65 – Design Quality of Residential Flat Development (SEPP 65). • State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004. • Sutherland Shire Local Environmental Plan 2015 (SSLEP 2015). • Sutherland Shire Development Control Plan 2015 (SSDCP 2015). • Section 7.11 Development Contribution Plan 2016 – Cronulla Centre Precinct.
List all documents submitted with this report for the Panel's consideration	Appendices: <ul style="list-style-type: none"> • A - Draft Consent Conditions • B - PAD18/0102 • C- List of objectors • D - Design Review Forum (DRF) comments • E - SEPP 65 Table • F - ADG Assessment Table • G - LEP/DCP 2015 Assessment Table

	<ul style="list-style-type: none"> H - Applicant's Clause 4.6 – Building Height Plans: <ul style="list-style-type: none"> Architectural Plans Landscape Plans
Clause 4.6 requests	Clause 4.6 request relates to clause 4.3(2) – Height of building of SSLEP 2015
Summary of key submissions	<ul style="list-style-type: none"> Traffic, access and parking concerns. Built form concerns related to building height and overshadowing. Amenity impacts related to noise, visual, privacy and construction impacts. Safety and security concerns
Report prepared by	Urbis (Clare Brown and Richard Barry) on behalf of Council
Report date	29 August 2022

Summary of s4.15 matters

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

Legislative clauses requiring consent authority satisfaction

Have relevant clauses in all applicable environmental planning instruments where the consent authority must be satisfied about a particular matter been listed, and relevant recommendations summarized, in the Executive Summary of the assessment report? **Yes**

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

Clause 4.6 Exceptions to development standards

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

Special Infrastructure Contributions

Not Applicable

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

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

Conditions

Have draft conditions been provided to the applicant for comment? **No**

Note: in order to reduce delays in determinations, the Panel prefer that draft conditions, notwithstanding Council's recommendation, be provided to the applicant to enable any comments to be considered as part of the assessment report

REPORT SUMMARY

REASON FOR THE REPORT

This application is referred to the Sydney South Planning Panel (SSPP) as the development has a capital investment value of more than \$30 million and is nominated in clause (2) of Schedule 6 State Environmental Planning Policy (Planning Systems) 2021 as Regional Development. The applicant's submission includes a Cost report, indicating that the proposed development has a value of \$53,777,000.

PROPOSAL

The application is for demolition of existing structures and construction of a mixed use development with four level basement parking (358 car spaces), two storey podium including ground floor retail and first floor commercial, with two residential towers totalling 112 apartments.

Access to Basement Level 1 and the loading dock is via Croydon Street and Basement Levels 2 and 3 is accessed via Abel Place.

THE SITE

The site is located within the Cronulla Town Centre. The site's southern boundary is the primary frontage along the Kingsway, with Croydon Street on its western boundary and Abel Place on its eastern boundary. The site has a gradual cross fall of 0.75m from north-east to south-west and has an area of approximately 5,223.4sqm

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

Development surrounding the site is of a mixed nature, comprising:

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

ASSESSMENT OFFICER'S RECOMMENDATION

1.0 THAT:

- 1.1 The proposed development is considered acceptable pursuant to the provisions of section 4.15(1)(a)(i) of the *Environmental Planning and Assessment Act 1979* and pursuant to the provisions of clause 4.6 of Sutherland Shire Local Environmental Plan 2015 (SSLEP 2015). The written submission in relation to the variation of the height of building development standard

satisfies the relevant provisions of clause 4.6 and is supported. It is recommended that the provisions of clause 4.6 be invoked and that the 30m development standard be varied to 33m (10%) in respect to this proposal.

- 1.2** The proposed development is considered acceptable pursuant to the provisions of section 4.15(1)(a)(i) of the *Environmental Planning and Assessment Act 1979*, as it satisfies clause 6.16 Urban Design – General of SSLEP 2015, as the design, bulk and scale of the building generally satisfies section 30(2) of State Environmental Planning Policy No 65 – Design Quality of Residential Apartment Development (SEPP 65) and is in keeping with the provision of high quality design and development outcomes for the urban environment of the Sutherland Shire. This is with consideration of privacy, solar access and built form outcomes.
- 1.3** That Development Application No. DA21/0562 for demolition of existing structures and construction of a mixed use development with four level basement parking, two storey podium including ground floor retail and first floor commercial at Lot 61 DP 319303, Lot 13 DP 205207, Lot 14 DP 205207, Lot 15 DP 205207, Lot A DP 314601, Lot B DP 314601, Lot 1 DP 5239, Lot 1 DP 700935, Lot 2 DP 700935, Lot 1 DP 1004748 being No.17 Kingsway, No. 13-15 Kingsway, No. 9 Kingsway, No. 11 Kingsway, No. 3 Kingsway, No. 23 Kingsway, No. 21a Kingsway, and No. 19 Kingsway, Cronulla is determined by the grant of development consent for the reasons set out in this report.

ASSESSMENT OFFICER'S COMMENTARY

2.0 DESCRIPTION OF PROPOSAL

A development application has been received for demolition of existing structures and construction of a mixed-use development comprising the following:

- Four levels of basement car parking comprising:
 - Basement Level 1 – 106 retail/commercial parking including 8 disabled parking, 6 motorcycle parking and 17 bicycle parking;
 - Basement Level 2 – 107 car parking including 91 residential parking (including 13 disabled parking and 1 car wash bay), 16 retail parking, 14 bicycle parking and 7 motorcycle parking; and
 - Basement Level 3 – 75 car parking including 45 residential parking (including 8 disabled parking and 10 tandem parking), 9 retail parking, 21 commercial parking and 20 bicycle parking;
 - Basement Level 4 – 70 residential parking spaces including 4 disabled parking, 16 tandem parking and 20 bicycle parking.
- Ground level – supermarket (1,841.13m²), liquor store and specialist retail (717.34m²) and loading dock/back of house;
- Level 1 – supermarket back of house (418.30m²), commercial (888.20m²);

- Level 1 to 8 – comprises a total of 112 residential apartments within two blocks being Block A (53 apartments) and Block B (59 apartments);
- A large communal terrace with pavilion, pool and building services located at podium level;
- Vehicle access to Basement Level 1 and a separate loading dock access are provided from Croydon Street;
- Vehicle access to Basement Level 2 and Basement Level 3 is provided from Abel Place;
- Public domain works along Kingsway and Abel Place street frontages;
- Landscape setback to the north boundary and associated landscaping; and
- Removal of trees.

The Ground Level and Level 1 areas within the podium contain a mix of retail (3,031.32m²) and commercial (888.20m²). The submitted statement of environmental effects argues that these spaces will contribute to the economic redevelopment of the immediate area and are consistent with surrounding development. A proposed supermarket at Ground Level and Level 1 is a major feature of the proposed development (2,259.43m² excluding loading area/plant rooms). The supermarket is proposed to be supported by a liquor store that will replace the existing liquor store (17 Kingsway) and a range of specialty stores fronting Kingsway to provide an activated street frontage. It is proposed that the operational hours for future commercial and/or retail tenancies will be determined as part of separate applications for fit out and use. It is proposed that the supermarket, liquor and specialty retail stores are serviced by a loading/ unloading and waste collection zone accessed from Croydon Place which connect to the loading bays at the Ground Floor and Basement Level 1. A site plan is provided in **Figure 1**.

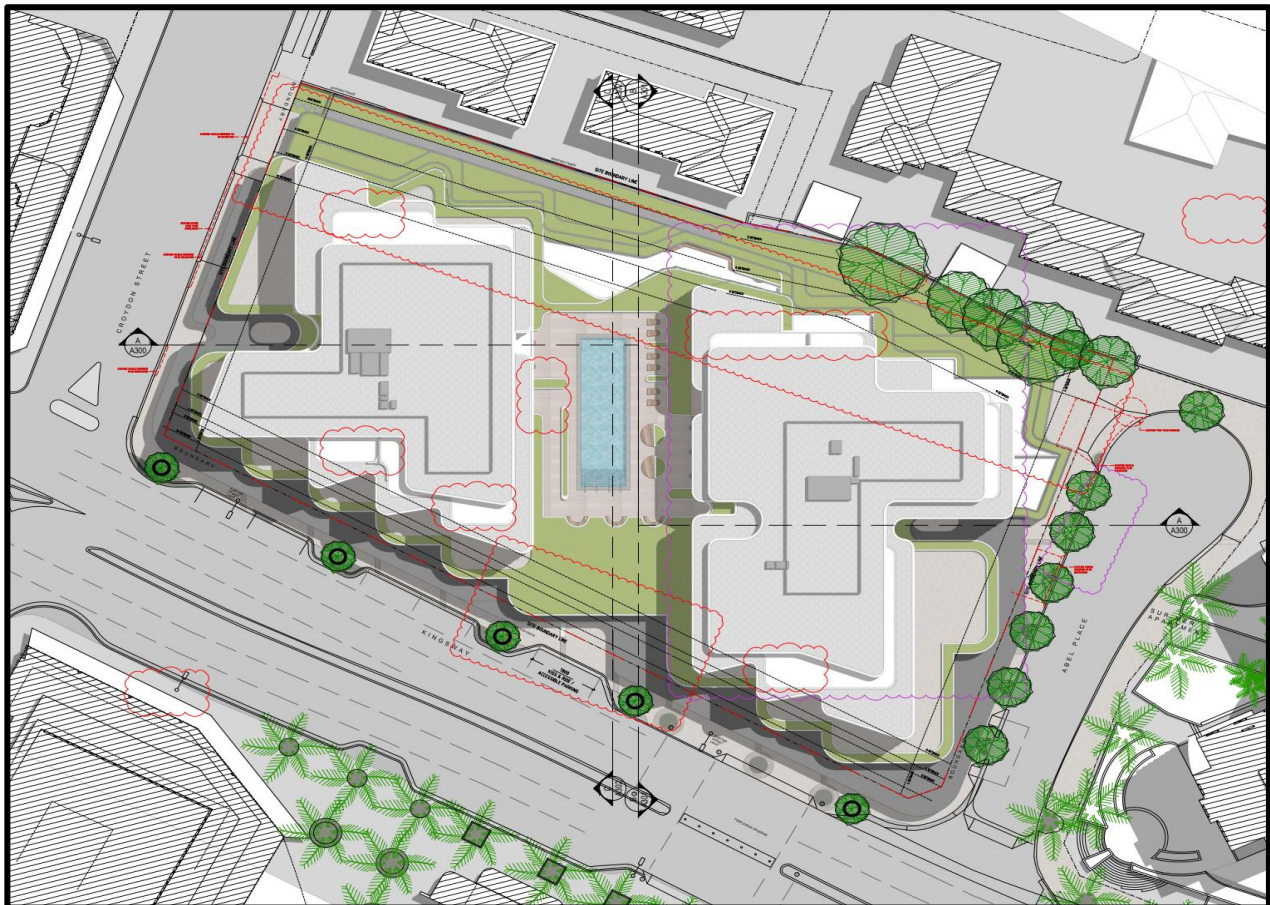


Figure 1 – Site Plan

3.0 SITE DESCRIPTION AND LOCALITY

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

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

Surrounding development comprises a mix of development types, including:

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

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



Figure 2 – Locality Plan showing the location of the subject site.

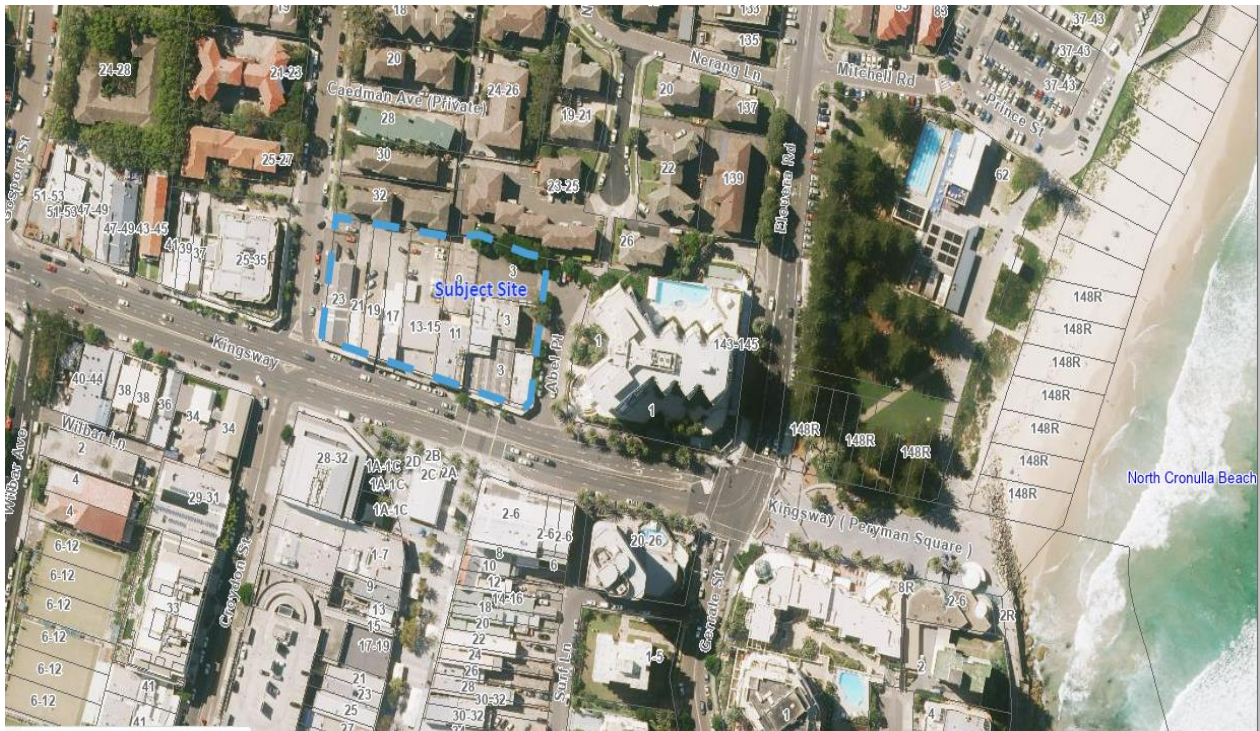


Figure 3 – Aerial Photo showing the location of the subject site.

4.0 BACKGROUND

A history of the development proposal is as follows:

- A pre-application discussion (PAD18/0102) was held on 7 December 2018 regarding the development. As a result of this a formal letter of response was issued by Council dated 25 January 2019. A full copy of the advice provided to the Applicant is contained on file / within **Appendix B** of this report with the main points contained in the letter as follows:
 - Amalgamation of the site is supported.
 - Built form and building height.
 - Shared zone thoroughfare along the northern boundary.
 - Amenity and compliance with principles of the ADG.
 - Communal open space and landscaping.
 - Potential contaminated land
 - Traffic generation and parking arrangements.
 - Waste Management.
- The subject development application was submitted on 9 June 2021.
- The application was placed on exhibition, with the last date for public submissions being 14 July 2021.
- The application was referred to the Design Review Panel (DRF) on 8 July 2021. The Panel advised that it did not support the proposed scheme as originally submitted and recommended further design development to respond to the below issues:
 - *A reconsideration of the street wall, which should be built to the street alignments with an awning providing continuous shelter to the footpaths.*
 - *A reconsideration of the built form, which should achieve a clear distinction between the street wall and a setback upper residential building.*

- *A reconsideration of built form and deep soil along the northern boundary, which should respond adequately to the impact on the adjacent sites and the change of zone, and reasonably provide for a landscape buffer.*
- Council issued a letter on 31 August 2021 requesting that the following additional information be provided within 28 days:
 - Address comments raised by Ausgrid on management of the interface with Ausgrid assets.
 - Address comments raised by the DRF in relation to built form design.
 - Address issues raised regarding landscape design, including the interface to the northern boundary and adequate deep soil planting.
 - Address potential social impacts related to the proposal for a liquor store in the area.
 - Address design and noise impacts related to the proposed pool located in the communal area.
 - Provide additional modelling related to traffic and parking and to remove the proposed loading zone on Abel Place.
 - Address engineering comments related to stormwater design, hydraulic design for hydrant boosters and the Sydney Water sewer pipeline located beneath the site.
 - Address concerns related to waste management on site and inadequacy of the proposed loading dock arrangement servicing the proposed retail spaces.
 - Provide additional information related to site contamination and geotechnical assessment.
- Amended plans were lodged on 7 October and 17 November 2021.
- The application was placed on exhibition for the second time, with the last date for public submissions being 15 December 2021.
- Council officers issued a letter on 3 March 2022 requesting that the following additional information be provided within 28 days:
 - Address comments raised by Council's Architect in lieu of referral to the DRF, to address issues related to built form design, including setbacks and non-compliant solar access.
 - Address comments raised by Council's Engineer in relation to loading and servicing of the site, including removal of the proposed loading zone on Abel Place.
 - Address comments raised by Council's Landscape Architect in relation to tree removal, podium planting and the northern landscape setback.
 - Address comments related to contamination assessment and WaterNSW.
- Additional information was submitted by the applicant with respect to hydrant booster requirements on 8 March 2022.
- Amended plans and information were lodged on 2 May 2022
- On 3 May 2022 the applicant submitted a Dewatering Management Plan.
- On 27 June 2022 the applicant submitted draft solar compliance diagrams, shadow diagrams, draft landscape plans, cross-ventilation plans and architectural plans.
- On 27 July 2022 the applicant submitted the following revised plans and information:
 - Revised Statement of Environmental Effects
 - Contamination Report
 - Remediation Action Plan
 - BASIX & NATHERS Certificate
 - Loading Dock Management Plan

- Landscape plans
- Clause 4.6 Height Variation
- Architectural plans
- Thermal performance specification
- On 8 August 2022 the Council met with the applicant to discuss concerns with the revised development in terms of the building setback to the north (Level 7), apartment layout and solar access. The same day the applicant submitted revised sketch plans for an amended apartment layout and indicated that there would be revised plans addressing the solar access non-compliance.
- On 8 August 2022 the applicant submitted final revised plans and updated BASIX plans.

5.0 ADEQUACY OF APPLICANT'S SUBMISSION

In relation to the Statement of Environmental Effects, plans and other documentation submitted with the development application and in response to requests for additional information from Council, the applicant has provided adequate information to Council to enable an assessment of the development application.

6.0 PUBLIC PARTICIPATION

The development application was advertised in accordance with the provisions of Chapter 42 of SSDCP 2015.

724 adjoining or affected owners were notified of the proposal across two separate public notification periods and as a result, a total of 30 unique submissions were received. However, three of these submissions were petition style submissions, representing 41 individuals in the first public notification period, and 51 individuals in the second public notification period.

Three of the submissions supported the development, whilst 27 submissions (inclusive of petition style submissions) were either neutral or objected to the proposed development.

A full list of the locations of those who made submissions, the date/s of their letter/s and the issue/s raised is contained within **Appendix C** of this report. The amended application the subject of this assessment report was not notified 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.

7.0 MAJOR ISSUES ARISING FROM SUBMISSIONS

The main issues identified in the submissions are as follows:

- Privacy.
- Traffic and Parking.
- Bulk/scale/design aesthetic.
- Safety
- Amenity/ disruption during construction.

- Overdevelopment.

The issues raised have been considered and are addressed in the 'Assessment' section of this report.

8.0 STATUTORY CONSIDERATIONS

The site is zoned B3 Commercial Core under SSLEP 2015. The proposed development is comprised of a number of land uses, including shop top housing, retail premises and commercial premises. All are permissible land uses within the zone with development consent

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

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

Section 7.11 / 7.12 Development Contribution Plan 2016

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

9.0 COMPLIANCE

9.1. State Environmental Planning Policy (Planning Systems) 2021

State Environmental Planning Policy (Planning Systems) 2021 identifies State and Regionally Significant development in NSW. Schedule 6 identifies the proposed development as regionally significant development as it has a capital investment of more than \$30 million. As such, the development application is referred to the Sydney South Planning Panel (SSPP) for determination.

9.2. State Environmental Planning Policy (Resilience and Hazards) 2021

Chapter 2 Coastal Management

State Environmental Planning Policy (Resilience and Hazards) 2021 seeks to balance social, economic and environmental interests by promoting a coordinated approach to coastal management consistent with the Coastal Management Act 2016. The 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. It is noted that 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 development is unlikely to cause increased risk of coastal hazards within the site or adjoining land. It is noted at this stage that Council does not have any certified coastal management programs which require consideration.

Chapter 4 Remediation of Land

Section 4.6 of Chapter 4 requires the consent authority to consider whether the land subject to the development application is contaminated; and if the land is contaminated, the consent authority must be satisfied that the site is suitable or can be made suitable (i.e. following remediation) for the proposed land use.

A search of Council's records, including historical files, has revealed that parts of the site including the south-western portion of the site (No. 23 Kingsway) was listed in Council's Contaminated Land Register as being potentially contaminated due to previous land uses including historical automotive mechanical repairs and service station.

Council has reviewed the provided Phase 1 and Limited Phase 2 Site Contamination report (as updated on 19 July 2022), the Dewatering Management Plan (as updated on 4 April 2022) and the Remediation Action Plan in consultation with the applicant. Overall, the investigation identifies that there was not widespread significant contamination of concern and there was no indicative evidence of voids, ground obstruction or the underground fuel tank infrastructure.

The investigation outlines some hydrocarbon odours and staining on the surface at No. 23 Kingsway (former service station), near a stormwater pipe. Results also indicated that soils in the fill material (i.e. to approx. 1m bgl) exceeded the residential land use criteria for TRH (Total Recoverable Hydrocarbons), metals and PAHs (Poly Aromatic Hydrocarbons). It was explained that this material would be removed during the excavation works for the creation of the basement car parking. Results of a GPR survey identified the potential presence of USTs associated with the former service station.

Council acknowledges that excavation is required for basement structures. The report shows that a vent pipe (for an underground tank of some sort) is present at the rear of No. 21 Kingsway, attached to the building. The purpose and function of this pipe work is not identified in the report. Council has reviewed the applicant provided Remediation Action Plan (RAP). The RAP outlines that remediation works will need to be undertaken during the redevelopment works should remnants from the former service station at No. 23 Kingsway, vent pipe at the rear of No. 21 Kingsway or the respective contamination be encountered. The RAP provides a framework for the work practices and environmental management techniques for the identification of any fuel infrastructure present on the site and subsequently, the appropriate fuel infrastructure and grease trap removal as well as remediation works at the site.

Council will require a Construction Environmental Management Plan (CEMP) to be prepared by a suitably qualified Civil Contractor based on the information in Council records and the information provided in the applicant supplied RAP and Site Contamination Report. Council will recommend the presence of the

Supervising Environmental Consultant during works and also for further assessment of the extent and nature of contamination to be undertaken post demolition and pre-construction in accordance with the recommendations of the applicant supplied RAP. This will provide assurance that there will be no adverse environmental impacts subject to the presence of remnants of the former service station, vent pipe or any contaminants. The recommendations made will be addressed via Council's environmental conditions of consent. The updated proposal was referred to Council's Environmental Assessment officer who concluded that the application is supported subject to the conditions of consent.

Groundwater testing undertaken by Golder Associates indicates that there is limited groundwater information available, and it is possible that perched groundwater may be encountered within the fill or at the soil / rock interface. Based on the information provided in the Geotechnical Report, the application was referred to WaterNSW as integrated development under the Water Management Act 2000, pursuant to section 4.47 of the Environmental Planning and Assessment Act 1979. WaterNSW are supportive and have issued their General Terms of Approval (GTA).

On balance of the information available and the provision of WaterNSW's GTA's, the proposed development is deemed to be able to satisfactorily manage impacts on groundwater and prepare the site suitable for development subject to the conditions of consent. In conclusion, the site is suitable for the proposed commercial building in accordance with requirements of SEPP (Resilience and Hazards) 2021.

9.3. 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.

9.4. State Environmental Planning Policy (Biodiversity and Conservation) 2021

Chapter 2 Vegetation in non-rural areas

State Environmental Planning Policy (Biodiversity and Conservation) 2021 aims to protect and preserve bushland within urban areas, recognising these areas have natural heritage value, aesthetic value and are a recreational, educational and scientific resource to the community.

No bushland vegetation will be disturbed by the proposal and as such the matters at section 2.6 require no further consideration.

Chapter 11 Georges Rivers Catchment

State Environmental Planning Policy (Biodiversity and Conservation) 2021 includes a number of aims and objectives for the environment and water quality within the catchment.

Groundwater assessment conducted by Golder Associates indicates that groundwater will be intercepted during excavation works. Consequently, the application has been referred to WaterNSW as Integrated

Development under the Water Management Act 2000. WaterNSW are supportive and have issued their GTA's.

On balance of the information available and the provision of WaterNSW GTA's, the proposed development is deemed to be able to satisfactorily manage impacts on groundwater of the Georges River catchment subject to the conditions of consent.

9.5. 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) apply to the proposed development. These policies seek to improve the design quality of residential flat development through the application of a series of nine design principles. The proposal is affected by SEPP 65. The Council's Design Review Forum (DRF) was constituted to guide the refinement of development to ensure design quality is achieved in accordance with SEPP 65. DRF comments are included in **Appendix D** to this report.

An assessment of the proposal having regard to the design quality principles of SEPP 65 is set out in **Appendix E** to this report.

9.6. Apartment Design Guide (ADG)

The applicable design guidelines for the proposed development are contained within the ADG, which is based on the 9 design quality principles set out in SEPP 65. The ADG illustrates good practice, and these guidelines are largely replicated in SSDCP 2015. A table with a compliance checklist of the proposal against the ADG design criteria is contained **Appendix F** to this report.

9.7. State Environmental Planning Policy (Transport and Infrastructure) 2021

Development with frontage to a classified road (Section 2.118)

Division 17, Subdivision 2 of the SEPP applies to land in or adjacent to road corridors or road reserves. The site has a frontage to Kingsway which is identified as a classified road on Council's Road hierarchy maps.

Before granting consent for development on land which has a frontage to a classified road the consent authority must be satisfied that certain factors have been considered. These factors include safety; efficiency of the road network; design, emission of smoke or dust from the development; nature, volume and frequency of vehicles; and the impact of traffic noise and emissions. Consequently, the application has been referred to Transport for NSW (TfNSW).

The site is accessed from the secondary (lower order) frontages (Croydon Street and Abel Place) and is not anticipated to affect the safety, efficiency or ongoing operation of the classified road. While the proposed residential apartments are considered to be sensitive to traffic noise the proposal has been designed to include built form measures, including thicker glazing, to ameliorate potential traffic noise or vehicle emissions. Adjustments are proposed to the pedestrian refuge and kerb returns at the Croydon Street and Kingsway intersection to enable Heavy Rigid Vehicles (HRV) to turn left in and out of Croydon Street without

traversing over the pedestrian refuge. TfNSW has reviewed the proposed works to the Croydon Street and Kingsway intersection and is supportive of the application subject to the required conditions of consent.

Further, a Noise Impact Assessment has been prepared by PWNA which has assessed the potential for noise intrusion from the road network on the internal amenity of the proposed development and from the development on the adjacent residential areas. Subject to the recommendation of the report implemented during construction the internal amenity of the proposal apartments should be protected as well as the surrounding locality.

9.8. 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 the proposed removal of street trees is below the threshold for the Biodiversity Offset Scheme (BOS) and biodiversity matters have been appropriately assessed via Council's LEP and DCP objectives and controls.

9.9. Sutherland Shire Local Environmental Plan 2015

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

Sutherland Shire Local Environmental Plan 2015			
CLAUSE	REQUIRED	PROPOSAL	COMPLIANCE
cl.2.7 Demolition requires development consent	Proposal includes demolition of existing structures.		Yes
cl.4.3 Height of Building	30m	Building A 33.052m – top of roof plant screen 31.59m – top of roof parapet Building B 32.984m – top of roof plant screen 31.36m – top of roof parapet	No – 10.17% No – 5.3% No – 9.9% No – 4.5%

cl.4.4 Floor Space Ratio	3:1 (subject to bonus FSR in accordance with "Area 9") (15,670.20m ²) (2.75:1 without bonus FSR)	APPLICANT: 3:1 (15,670.14m ²) CALC: 3:1 (15,670.14m ²)	Yes
cl.4.6 Exceptions to development standards	Clause 4.6 request relates to clause 4.3(2) – Height of building of SSLEP 2015		Supported as addressed in section 11.2
cl.5.10 Heritage Conservation	Proximity to a number of items of heritage significance, including the 'Cronulla Theatre' I1008		Yes
cl.6.2 Earthworks	Proposal includes excavation of 3 basement levels.		Yes
cl. 6.4 Stormwater Management	Proposal includes stormwater management		Yes
cl. 6.16 Urban Design - General	To achieve high quality design.		Yes

9.10. 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**. Non-compliances include:

- Section 4.2.1 and 4.2.3 related to streetscape and built form and consistency with the site Design Guideline;
- Section 5.3.1 and 5.3.5 related to consistency with the site Design Guideline; and
- Section 11.2.1 ,11.2.5 and 11.2.9 related to minor non-compliance with the proposed vehicle entrances located on active street frontages.

These matters are discussed in detail in the 'Assessment' section of this report.

10.0 SPECIALIST COMMENTS AND EXTERNAL REFERRALS

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

WaterNSW

The application was referred to WaterNSW as integrated development under the Water Management Act

2000, pursuant to section 4.47 of the Environmental Planning and Assessment Act 1979. WaterNSW are supportive of the proposal and have issued their General Terms of Approval (GTA).

Sydney Water

The application was referred to the Urban Growth Unit within Sydney Water for a response with respect to the existing services surrounding the site and whether any augmentation of these is required. Sydney Water advised that they are liaising with the applicant as a consequence of the unlined rock sewer which runs through the site and that conditions will be required to be met by the applicant prior to any construction. These conditions sit outside the consent process. No further advice was provided with respect to service augmentation other than that the applicant will be required to liaise with Sydney Water as part of the Building Plan Approval process.

Ausgrid

The application was referred to Ausgrid pursuant to Clause 2.48 of the Transport and Infrastructure SEPP (previously Clause 45(2) of SEPP (Infrastructure) 2007). Ausgrid provided a response advising of a number of matters including electricity supply, street lighting around the site, service mains clearance to the development, existing underground cables and construction requirements as well as with respect to the existing substation on part of the site (9-11 Kingsway). If the SSPP determines that the application should be approved, the Ausgrid matters would form part of consent conditions.

Transport for NSW

In accordance with the *State Environmental Planning Policy (Transport and Infrastructure) 2021* the application was referred to TfNSW.

TfNSW state that the development will require an adjustment to the pedestrian refuge and kerb at the Croydon Street and Kingsway intersection to enable the HRV left turn in and out of Croydon Street without traversing over the pedestrian refuge. Following a review of the HRV swept path plans, TfNSW does not raise any objections to the development subject to conditions.

In the event that a development consent was to be granted to the proposed development, TfNSW require that all buildings, structures and associated improvements are wholly within the freehold property along the Kingsway. Detailed design plans is required to be submitted to TfNSW for the design and construction of the indented parking bays on Kingsway and the modified pedestrian refuge and kerb returns at the Croydon Street and Kingsway intersection.

NSW Police Force

In accordance with the *Crime Risk Assessment – Police & SSC Protocol 2010* the application was referred to the NSW Police Force.

NSW Police acknowledge that the development includes a proposed liquor store at Ground Level. This proposed liquor store will be occupied by Mr Liquor, being a previous tenant currently located on site. NSW Police reserve the right to comment on the future DA for the fitout and use of the retail tenancy for the sale

of liquor, so that appropriate controls can be implemented to mitigate risks with a plan of management.

In the event that a development consent was to be granted to the proposed development it should be conditioned that no development consent is granted to the fit out or use of the premises for the sale of alcohol and that a separate development application is required to be submitted.

NSW Police also note the site was also previously occupied by Sting Bar, which is the subject of an On-Premises (Nightclub) liquor licence. NSW Police proposes that no part of the proposed development is permitted to be used as a 'nightclub'.

Design Review Forum (DRF)

The was considered by Council's DRF on 8 July 2021. A copy of the DRF report is contained in **Appendix D** to this report. The Panel identified it did not support the proposed scheme as originally submitted and recommended further design development to respond to the below issues:

- *A reconsideration of the street wall, which should be built to the street alignments with an awning providing continuous shelter to the footpaths.*
- *A reconsideration of the built form, which should achieve a clear distinction between the street wall and a setback upper residential building.*
- *A reconsideration of built form and deep soil along the northern boundary, which should respond adequately to the impact on the adjacent sites and the change of zone, and reasonably provide for a landscape buffer.*

Engineering (Assessment Team)

The application was referred to Council's Assessment Team Engineer who initially raised concerns with respect to the following:

- The ground floor architectural plans indicate a proposed new on-street loading bay to be provided within Abel Place in close proximity to the substation. The traffic report prepared by Varga Traffic Planning have indicated a 20.7m long loading zone is to be provided to facilitate a Medium Rigid Vehicle (MRV) sized truck to service the site.
- The proposed ground floor retail shop, liquor, cafés in the south-eastern corner of the Ground Floor have access to the waste storage room on basement level 2 and the loading dock on Basement level 1. However, it requires the tenancies to wheel their goods from the loading dock near the basement ramp to the south-eastern corner services lift. Further consideration of servicing (deliveries and waste) for the development should be undertaken as this is not a practical waste arrangement.
- The proposed loading dock on Abel Place is not supported and must be integrated into the built form with internal access to the retail, cafes & liquor shops.
- The application should be refused as it fails to provide suitable integrated servicing arrangements and efficient tenancies in accordance with the objectives of SSDCP 2015 controls 19.1.4 and 19.1.7.

Additional information and amended plans were requested and received from the applicant. This amended information has been assessed and Council's Assessment Team Engineer has found the amended proposal to be acceptable or able to be further refined as part of the detailed design phase, subject to the relevant conditions of consent. The concerns regarding the loading dock at Abel Place are no longer applicable as the revised development has removed the loading dock from Abel Place and will contain all loading activities on-site. If the application was recommended for approval, a condition of consent would require further design as part of the waste management plan to minimise conflict between waste bin movement and vehicular travel at Basement Level 1.

Waste Management Officer

Council's Waste Management Officer raised no objection to the approval of the application subject to conditions of consent.

Landscape Architect

Council's Landscape Architect raised no objection to the proposal subject to conditions of consent to enhance landscaping opportunities on the site with particular regard to the planting strip along the northern boundary of the site and retention of the neighbouring mature tree.

Environmental Science

Council's Environmental Science Unit initially identified the requirement for dewatering to be undertaken to construct the basement carpark which would classify the proposed development as Integrated Development under section 4.47 of the Environmental Planning and Assessment Act 1979.

In response, the applicant provided a Geotechnical Investigation, 3-23 Kingsway, Cronulla prepared by Golder Associates dated 22 September 2021 concluding the following:

Where the current proposed basement excavation is (RL 6.2m AHD), it is anticipated that groundwater seepage during excavation will occur along the soil / rock interface and open joints within the sandstone. The inflow is expected to be controlled through the use of sump pumping. For the design of retention systems, transient groundwater pressure acting on the retention system should be considered.

Following a meeting between Council's Environmental Assessment Officer and Golder Associates, the application was subsequently referred to WaterNSW. WaterNSW are supportive of the proposal and have issued their GTA. Council's Environmental Assessment Officer raised no objection to the proposal subject to WaterNSW's general terms of approval and subject to imposition of conditions of consent.

Architect

Council's architect has reviewed the subject proposal and each of the design revisions. Concerns raised with the initial design in terms of solar access compliance, building separation and apartment amenity etc. have largely been resolved. In terms of whether the development provides an appropriate transition in scale

to the north, some design changes are recommended for an acceptable stepping of the building mass at Level 8. This is addressed further in the Assessment Section of the report below.

Building Surveyor

Council's Building Surveyor initially raised a number of concerns with the proposal, largely related to the required hydrant boosters. These matters were addressed during the assessment of revised plans and information and is now satisfactory subject to imposition of conditions of consent.

Public Domain / Assets Engineers

The application was referred to Council's public domain engineers regarding the future frontage works for the proposed development. No objection is raised subject to consent conditions.

Traffic Engineers

The application was referred to Council's traffic engineers for comment. The engineers liaised closely with TfNSW to resolve the Croydon Street / Kingsway intersection design requirements. No objection is raised to the proposal subject to conditions regarding the works to this corner.

11.0 ASSESSMENT

A detailed assessment of the proposed development has been carried out having regard to the matters for consideration under Section 4.15(1) of the Environmental Planning and Assessment Act 1979. The following matters are considered relevant to this development application.

11.1. Overview

The site on which the proposed development is located is zoned B3 – Commercial Core. The proposal generally achieves the objectives of the zone by providing a range of retail, commercial and residential land uses within the Cronulla Centre, close to a high level of amenity, employment opportunities and in a location that can promote use of public transport and active transport. The proposed supermarket and specialist retail spaces present the opportunity to strengthen the existing commercial centre and support the growing population within Cronulla.

The site is identified in Section 5.3 Design guidelines for development – Kingsway bounded by Abel Place and Croydon Street (northern end of the Mall) in SSDCP 2015. The general objectives of the design guidelines are to support Section 6 – Amalgamation Requirements, including:

- 1. to guide the effective amalgamation of existing lots and prevent the isolation of land parcels from reaching their redevelopment potential while meeting the standards.*
- 2. Ensure that amalgamated land parcels allow for the development of built forms that make a positive contribution to the spatial definition of the street and create or maintain amenity for existing and future occupants.*
- 3. Ensure that efficient and safe car park and vehicle entry points can be achieved.*

The design and layout of the proposal would rely on the amalgamation of all 10 allotments that form the site

and as such the amalgamation requirements could be achieved by requiring the consolidation of all allotments prior to the issue of an occupation certificate for the proposed development.

The design guidelines in section 5.3 of the SSDCP 2015 for development of the site are as follows:

1. *Maintain the street edge building form to the Kingsway, with a two storey wall height (10m) so there is consistency along the street (Preferred Built Form Map).*
2. *Maintain solar access to the entrance of Cronulla Mall and the footpath on the southern side of the Kingsway.*
3. *Maintain an active ground floor to the Kingsway frontage (Cronulla Centre Active Street front Map).*
4. *Improve public domain frontage to the Kingsway with active uses, landscaping and pedestrian areas in accordance with the Public Domain Design Manual.*
5. *Provide a 10m wide shared zone access way along the rear of the site to provide a connection between Croydon Street and Abel Place and access to the basement car parking.*
6. *Provide 2m wide strip of deep soil landscaping to north to improve privacy and outlook between adjoin development to facilitate improved resident amenity. This is to be planted with indigenous trees in accordance with the Native Tree Selector.*



Figure 4. Kingsway Bounded by Abel Place and Croydon Street (Northern end of the Mall) – Design Guidelines in SSDCP 2015

General compliance with these planning controls is outlined in the 'Compliance' section of this report.

After undertaking a thorough assessment of the proposal against the relevant planning controls, it is acknowledged that the subject site is desirably located for the proposed mixed-use development. The form and function of the proposed building satisfactorily addresses built form controls in SSLEP 2015 related to site position, orientation and urban design; consistency with site design guidelines in SSDCP 2015; and general consistency with SEPP 65 and the ADG including building separation and solar access. This is further detailed in the following sections below.

11.2. Height of Buildings

The proposed development fails to comply with the height of building development standard. Clause 4.3(2) of SSLEP 2015 stipulates a maximum height of 30m for this site. The proposed development fails to comply with the development standard, with a maximum height of 33.052m (10.17% variation) to the top of roof plant screening.

The upper portion of Level 8 in Block A and B containing habitable space also contravene the development standard, with Block A top of roof parapet ranging between 0.290m and 0.868m above the maximum; and Block B top of roof parapet ranging between 0.026m and 0.809m above the maximum. The below diagrams show the maximum height plane and the areas of the building which protrude through the height plane.



Figure 5. SSLEP 2015 – 30m Height Plane Analysis

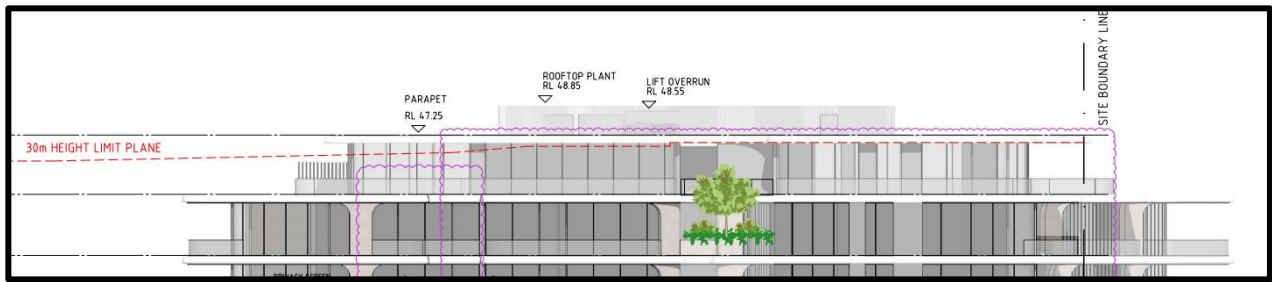


Figure 6. Section B-B – Eastern Building (Block B)

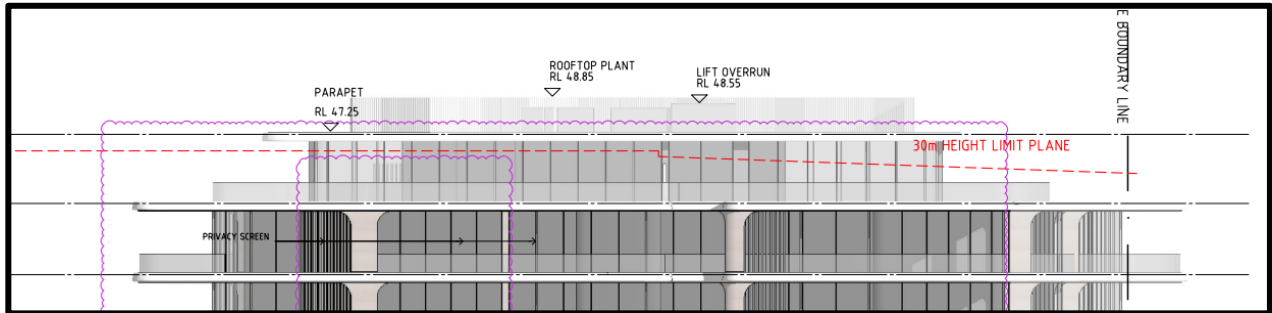


Figure 7. Section C-C – Western Building (Block A)

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 generally consistent with the desired scale and character of the street and locality in the Cronulla Centre in accordance with clause 4.3(a).

The proposed twin tower design deviates from the envisaged built form but enables a reasonable alternative solution to minimising overshadowing onto the public domain to the south, including Cronulla Mall. The development has been designed to generally comply with the minimum solar access requirements under the ADG provisions for habitable spaces and private open space within the proposed development.

The orientation of the proposed residential apartments with balconies overlooking to the north, combined with the scale and position of the residential towers in relation to the adjoining three storey apartment blocks at 32 Croydon Street, Cronulla will see mitigated privacy and visual intrusion impacts with consideration of the separation distance and the provision of landscaping. The proposed development's setback to the north will provide a satisfactory transition in building scale to the existing medium to high density residential precinct located adjacent to the northern boundary.

The applicant has lodged a written request in accordance with the requirements of Clause 4.6 of SSLEP 2015. A full copy of this request is on the file / attached to **Appendix H** and the most relevant section is reproduced below:

- *The exceedance of the height standard still allows for a development that is consistent with the existing and desired character of this part of Cronulla which is identified within Chapter 19 of the Sutherland Shire DCP - Cronulla Centre. It complies with the specific aims, including:*
 - *Provides high quality architectural design in development that is appropriate to the scale and character of the centre,*
 - *Facilitates a sensible transition between new developments and heritage items in order to give them prominence in the centre,*
 - *Achieves quality architecture in new development through appropriate composition and articulation of building elements, textures, materials and colours that respond to the building's use and locality,*
 - *Achieves development that is of an appropriate scale and context for the street and locality, which makes a positive contribution to the streetscape and the amenity of the centre,*
 - *Creates opportunities for incidental open spaces and public domain,*
 - *Creates entrances which provide a desirable and safe identity for the development and assist in visitor orientation and minimise potential conflicts between pedestrians and vehicles, and*
 - *Achieves compliance with the design guidelines specific to this site, such as maintaining a two-storey wall height to the Kingsway, maintaining solar access to the entrance of Cronulla Mall, and improving the public domain frontage to the Kingsway.*
- *The proposed height departure is in harmony with the adjoining developments to the east, across Kingsway to the south, on the corner of Kingsway and Gerrale Street and within Gerrale Street itself. The additional height will therefore not have a detrimental visual impact on the surrounding area.*
- *Appropriate attenuation/screening measures are required to the roof-top equipment to ensure that any potential noise impacts are mitigated. These contribute to the increase in height, however, are recessed from the edge of the rooftop and will generally not be seen from the public domain.*
- *As demonstrated in Figure 16, the variation of the height standard will not result in any*

unreasonable amenity impacts in terms of additional overshadowing.

- *The proposed development complies with the solar access and ventilation requirements of the ADG and does not prevent any adjoining site from also receiving adequate solar access and ventilation.*

Council has previously advised that breaches of the maximum building height may be accepted for minor building elements such as lift overruns or mechanical plants and services if they are centrally located and not visible from a standing position on surrounding roads or public spaces. The floor to ceiling heights in the scheme and the intrusion of habitable space above the 30m development standard will range from 0.026m and 0.86m between Building A and Building B which will result in minimal environmental impacts.

The applicant has identified that a height breach was approved for the mixed use building at 1 Kingsway, Cronulla (Northies and Rydges Hotel). These sites were granted additional height on the basis of the tourism uses (pre-SSLEP 2015) with this height not being the 'norm' across the Cronulla Centre. Notwithstanding this, the buildings do reflect the established built form adjacent the site, with Cronulla Northies hotel being 16 storeys and the Cronulla Rydges hotel being 12 storeys. The immediate surrounding area has undergone recent approval for 9 to 10 storey mixed use and residential developments including 18 Gerrale St, 5-9 Ozone St and 49-57 Gerrale St. Subsequently the proposal will integrate with the established character and height form in the area. The applicant has identified that with consideration of the site's topography and the proposed building design, the exceedance of the building height will be focused on the northern end of the building and with consideration of the 8.6m street wall height and upper level setback, the exceedance will be generally undiscernible from the public domain.

For the reasons above, compliance with the building height is unreasonable or unnecessary and the proposal meets the objectives of the building height development standard. In particular, the proposed building design addresses the need to *minimise the impacts of new buildings on adjoining or nearby properties from loss of privacy, overshadowing or visual intrusion or ensure that the visual impact of buildings is minimised when viewed from adjoining properties, the street, waterways 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.*

In considering the extent of non-compliance with the height of building control it is also relevant to have regard to the nature of any the other built form outcomes, relevant development controls and design guidance. As discussed below the proposal generally complies with key elements such as building separation. These matters are discussed in further detail below. As such there, is sufficient environmental planning grounds to support a variation to the height of building development standard for the proposed scheme as it can be seen as "a better outcome" for the 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.

The variation to the height of building development standard is supported.

11.3. Building Form

The subject site is located on a visually prominent street within the Cronulla Centre, opposite Cronulla Square shopping mall, with frontage to Kingsway, Croydon Street and Abel Place. The desired building envelope and form is established by planning controls in SSLEP 2015 and the SSDCP 2015. The proposed built form is generally consistent with the site specific design guidelines as shown in Section 11.1, which includes *a two storey wall height (10m) so there is consistency along the street [Kingsway]; an active ground floor to the Kingsway frontage (Cronulla Centre Active Street front Map); a 10m wide shared zone access way along the rear of the site to provide a connection between Croydon Street and Abel Place and access to the basement car parking.* The proposed development will maintain a 2 storey street wall height which provides the appropriate human scale at the public domain and the lower height of the podium will reduce the bulk of its form. The deviation from the 10m street wall height, SSDCP 2015 provision, is supported.

The proposal's consistency with the requirements in the ADG is discussed below.

ADG Separation 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 proposed development generally complies with the nominated separation distances within the site and to development on adjoining sites, that includes an additional 3m setback as required by 2F of the ADG as the site adjoins a different zone having a lower density.

The following non-compliances are identified for the purpose of this proposal:

- Level 2 requires a 9m setback (6m + 3m zone boundary setback). The proposal encroaches into this setback at a number of points along the podium level at the edge of the balcony at B.201. The minor area of the balcony that encroaches into the setback is not large enough to be habitable. The north setback will generally result in a separation distance of 18m from the neighbouring buildings which will provide adequate visual privacy.



Figure 8. Level 2 (Block B)

- Levels 3 – 6 are between 12m and 25m in height and are required to be setback 12m from the boundary (9m + 3m zone boundary setback) for habitable spaces, 9m between habitable and non-habitable and 7.5m between non-habitable spaces. Most of the spaces facing the northern site boundary are habitable and include balconies, living rooms and bedrooms so the 12m setback applies.

The proposed development at Block A and Block B are designed with balconies generally setback 9m from the boundary with key living areas including living rooms generally being setback 12m, except for the east most units in each respective block which are built out to the 12m setback.

The applicant identified the provision of screening on the northern façade of the north-eastern units of Block A and Block B that are built up to a 9m setback.

The applicant identified that the orientation of the site means that the encroachment into the 12 metre setback does not result in any overshadowing impacts along the rear boundary. The applicant identifies that neighbouring development to the north, 32 Croydon Street, does not feature any private open space areas along their southern boundary. The applicant has also identified that the landscaping at the northern setback as well as the privacy screening at the north-eastern units will provide privacy for both the occupants of the subject site as well as the neighbouring residents.

With consideration of the elements listed above, Council considers that the proposed setback will provide acceptable visual privacy and will provide an appropriate transition in scale along this interface.

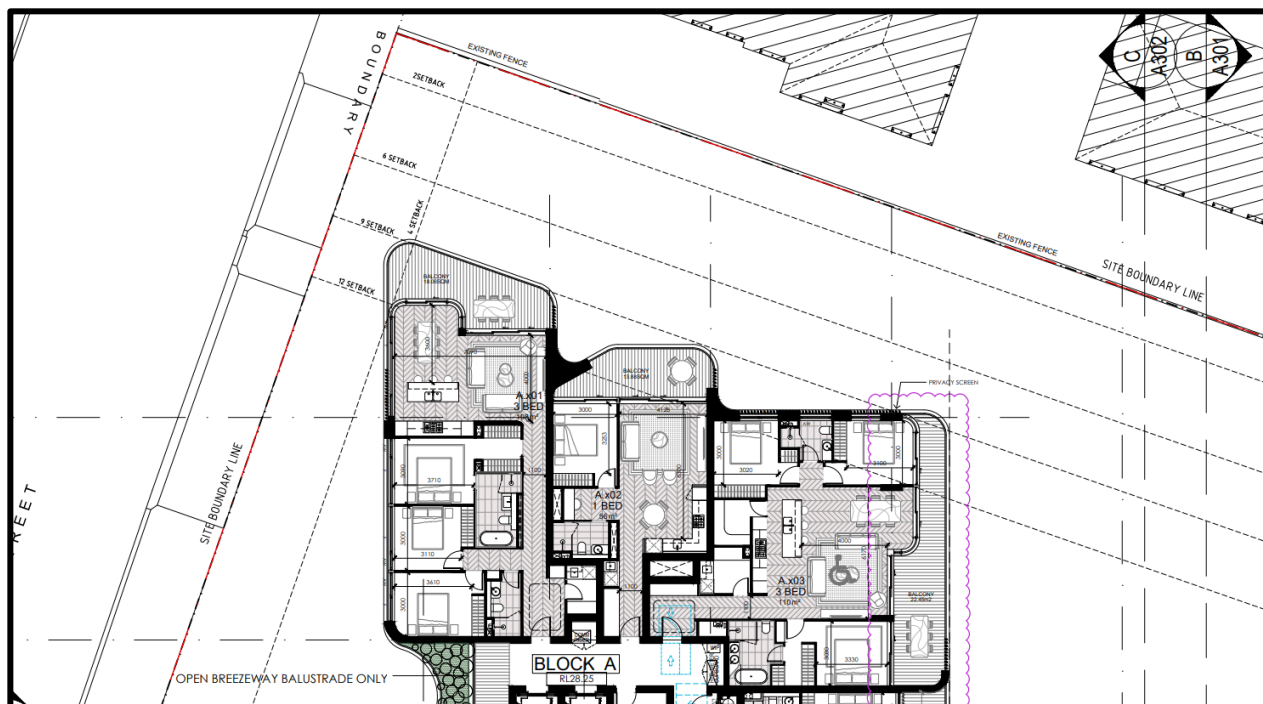


Figure 9. Block A – Level 3

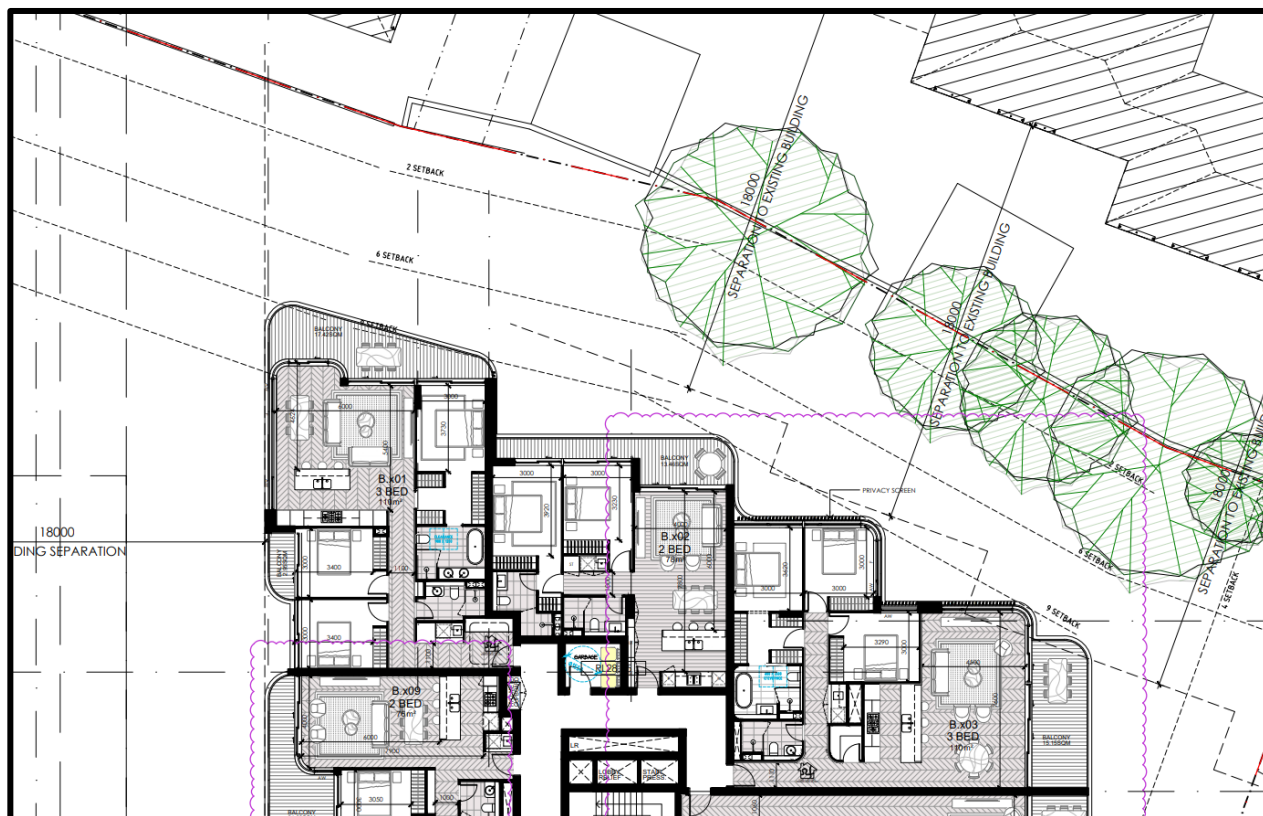


Figure 10. Block B – Level 3

- Levels 7 – 8 are over 25m in height and are required to be setback 15m from the boundary (12m + 3m zone boundary setback) for habitable spaces, 12m between habitable and non-habitable and 9m between non-habitable spaces. The spaces along the northern end of the buildings are generally habitable spaces so a 15m setback applies. Level 7 of the proposed building maintains the general

setbacks achieved at levels 3 to 6 with the majority of principal living areas, including living rooms, being setback around 12m and the habitable balconies and living areas being generally setback 9m.

The application was reviewed by Council's architect who has raised the following concerns:

- The floor plans show that most of the spaces facing the northern boundary are either bedrooms, balconies or living rooms which are all habitable and there is one bathroom which is non-habitable. The small area of the building where the bathroom is in Block A is compliant with the increased setback requirement. The other parts of the building which are habitable are not compliant and have a varying setback from 8.4m to 11.3m for Block A and between 8.6m and 12m for Block B.
- From the point of view of visual privacy, bedrooms are reasonably dealt with by the inclusion of privacy screens where the bedrooms sit closer than 12m from the boundary. In terms of balconies, there is no privacy screening proposed and all balustrades are shown as clear glazing. This is less problematic where balconies are angled to the boundary for 4 of the 6 apartments that face the boundary, however, the north western apartments of both blocks have their balconies parallel to the boundary and fully exposed to the northern boundary with no treatment to alleviate visual privacy issues.
- A mix of solid balustrading and translucent glazing to balustrades together with an increased balustrade height of 1.2m may provide some level of additional protection for northern neighbours from seated positions to both the angled and parallel balconies.
- The stepped façade provides some relief to the building mass due to the modulating setback while the space between buildings above the podium will provide views of the sky and through site views to the south from future development to the north.
- The sections do not accurately show the position of Level 8 relative to the roof of Level 7 below. If represented accurately, they would show that the walls and roof of Level 8 step back from the footprint and roof of Level 7 below. This is generally acceptable, although there are areas where balconies and roofs on Level 8 are as close as 9m from the boundary. Consideration has been given to a way in which the building could be further stepped back at Level 8 to achieve some stepping of the built form at the highest level and provide improved privacy.

The applicant has identified that the encroachment to the 15m setback at Level 7 and Level 8 will result in an acceptable outcome with consideration of the northern setback landscaping and the lack of any private open space areas at the southern boundary of the neighbouring dwellings. Further to the above, if the application was recommended for approval, a condition of consent would require the balustrade across the northern balconies at Level 7 and 8 be comprised of a mix of solid balustrading and translucent glazing to provide additional protection for the neighbouring properties to the north. This will be applied to both the angled and parallel balconies. The concern raised by Council's architect regarding the positions of Level 8 relative to Level 7 are accurately demonstrated in the latest architectural drawings and therefore, do not need to be updated for accurate

representation. A condition of consent would also require the balconies at Level 8 be amended to feature an increased northern setback in accordance with Figure 13 and Figure 14 below so as to provide the appropriate privacy outcome while maintaining compliance with the ADG requirements for private open space.

Subject to the conditions of consent, the proposed development and contravention to the ADG numerical requirements is considered to provide the appropriate level of privacy and is supported.

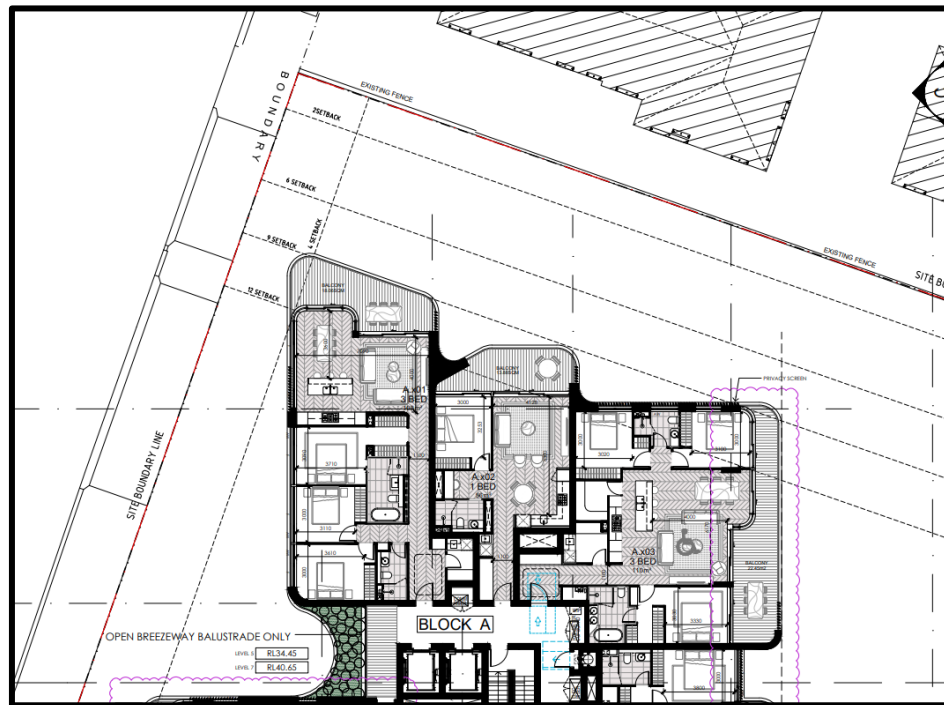


Figure 11. Block A – Level 5 – 7

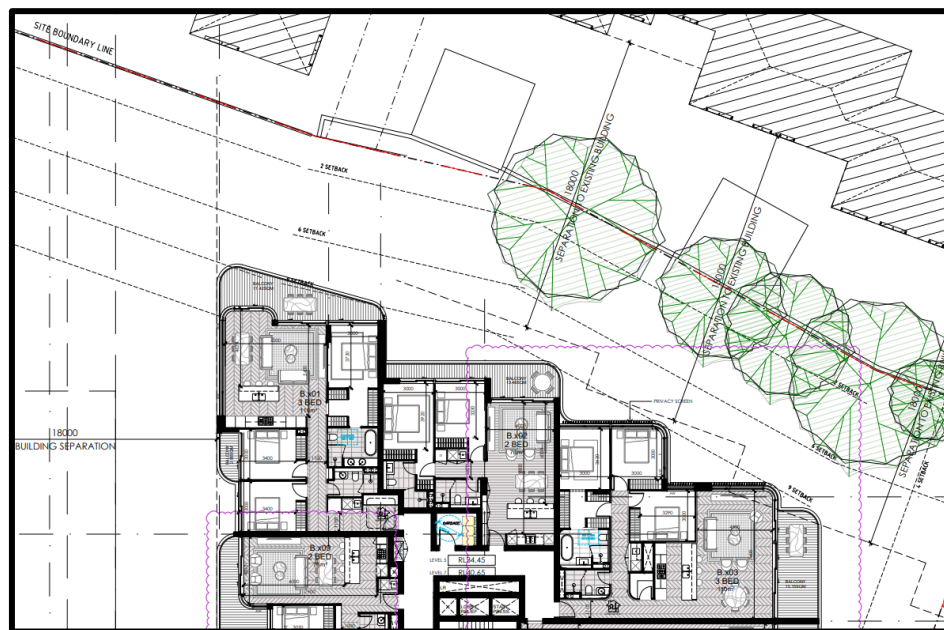


Figure 12. Block B – Level 5 - 7

from window to window. The balconies in the centre of Block A and B intrude into the 24m separation distance. As only 1 floor is applicable to this built form provision, the overall built form outcome achieves the desired proportionality and amenity. The applicant has identified that the central portion of the balcony is not the primary private open space as the main balcony areas are located to the northern and southern ends of the floorplate. As such, the appropriate level of privacy can be supported by the proposed building design. The proposed separation distance can be justified and the variation is supported.

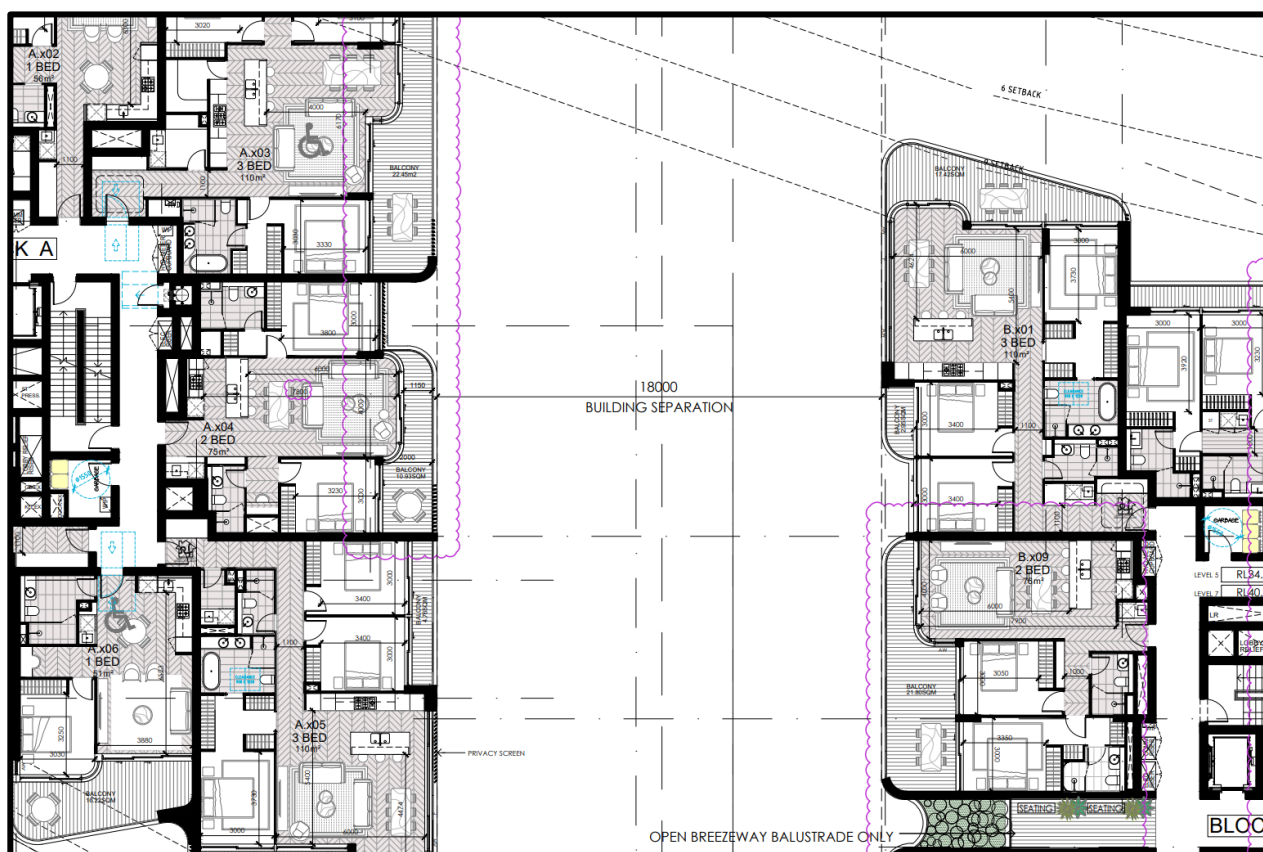


Figure 15. Centre of Site Between Block A and Block B – Level 5 - 7

Based on the above, the proposed built form is supported.

Solar access

The proposed development has been designed to facilitate 82 of 112 apartments (or 73.21%) of units to achieve a minimum of 2 hours direct sunlight between 9am – 3pm at mid-winter to the private open space and living room. This is consistent with the ADG requirements for at least 70% of apartments to achieve this level of solar access. The solar modelling was prepared by PBD Architects which demonstrates that the scheme complies with the ADG provisions. This includes Block A which is modelled to achieve 73.6% and Block B will achieve 72.9% of apartments facilitating the required amount of solar access. The proposal will result in 21.43% of apartments receiving no solar access during this period. This minor non-compliance is considered acceptable with consideration of the exceedance in the requirement for the number of apartments that receive 2 or more hours of sunlight during the relevant period.

Loading and unloading for retail spaces

The proposed development goods lifts supporting the retail shop, liquor outlet and cafes will provide access to the waste storage room on Basement Level 2 and the loading dock on Basement Level 1. The proposed layout of the goods lifts and the floorplan will allow the transfer of goods to be directly facilitated, providing practical servicing (deliveries and waste).

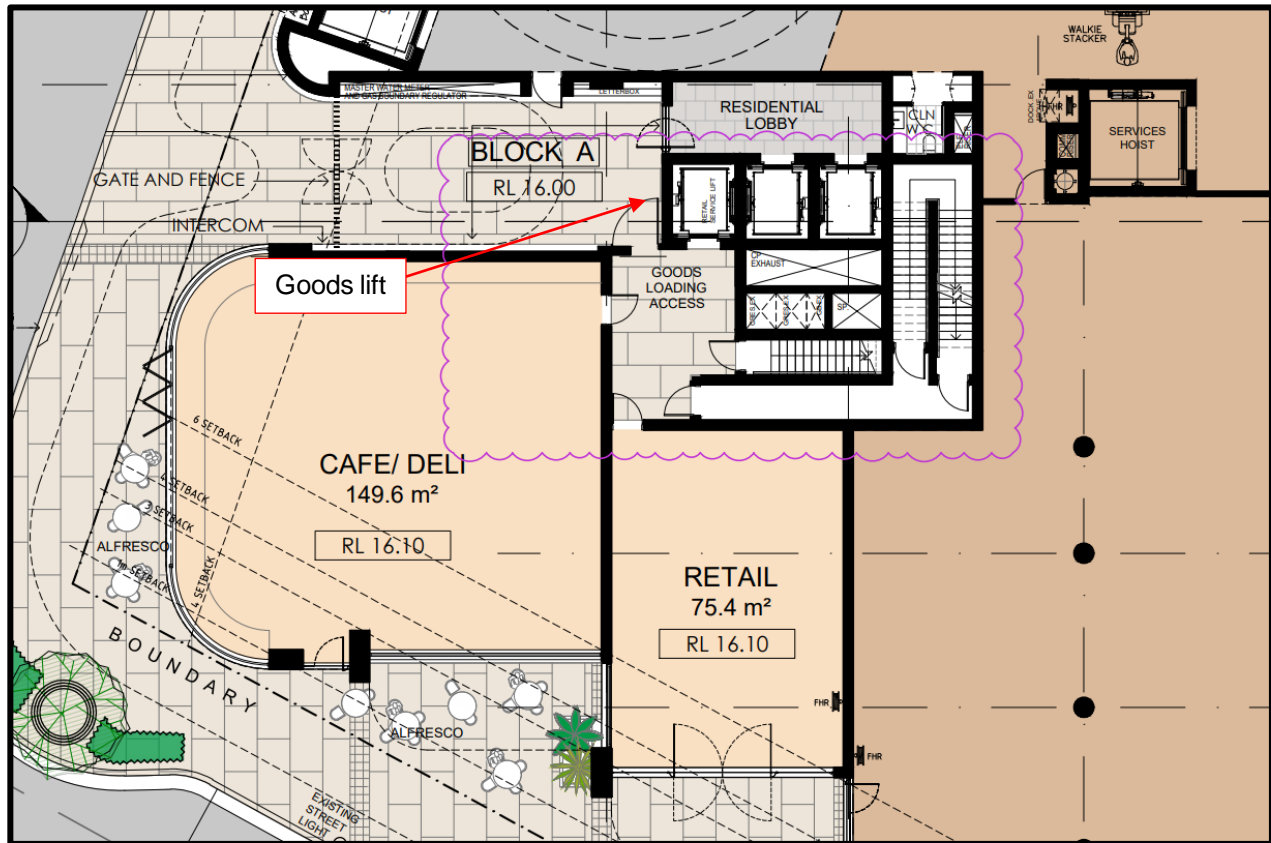


Figure 16. Block A – Ground Floor: Goods lift to Basement Level 1

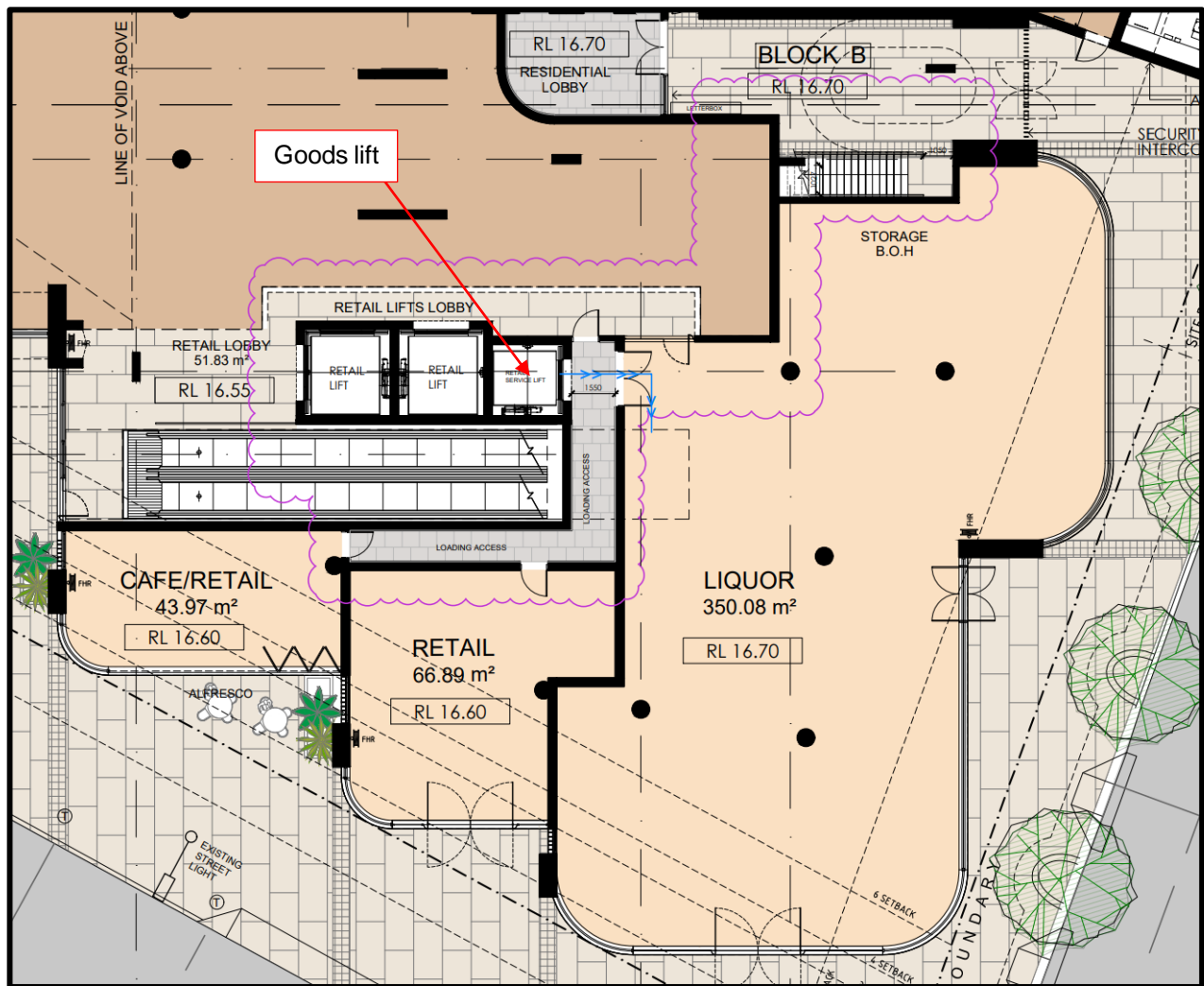


Figure 17. Block B – Ground Floor: goods lift to Basement Level 1

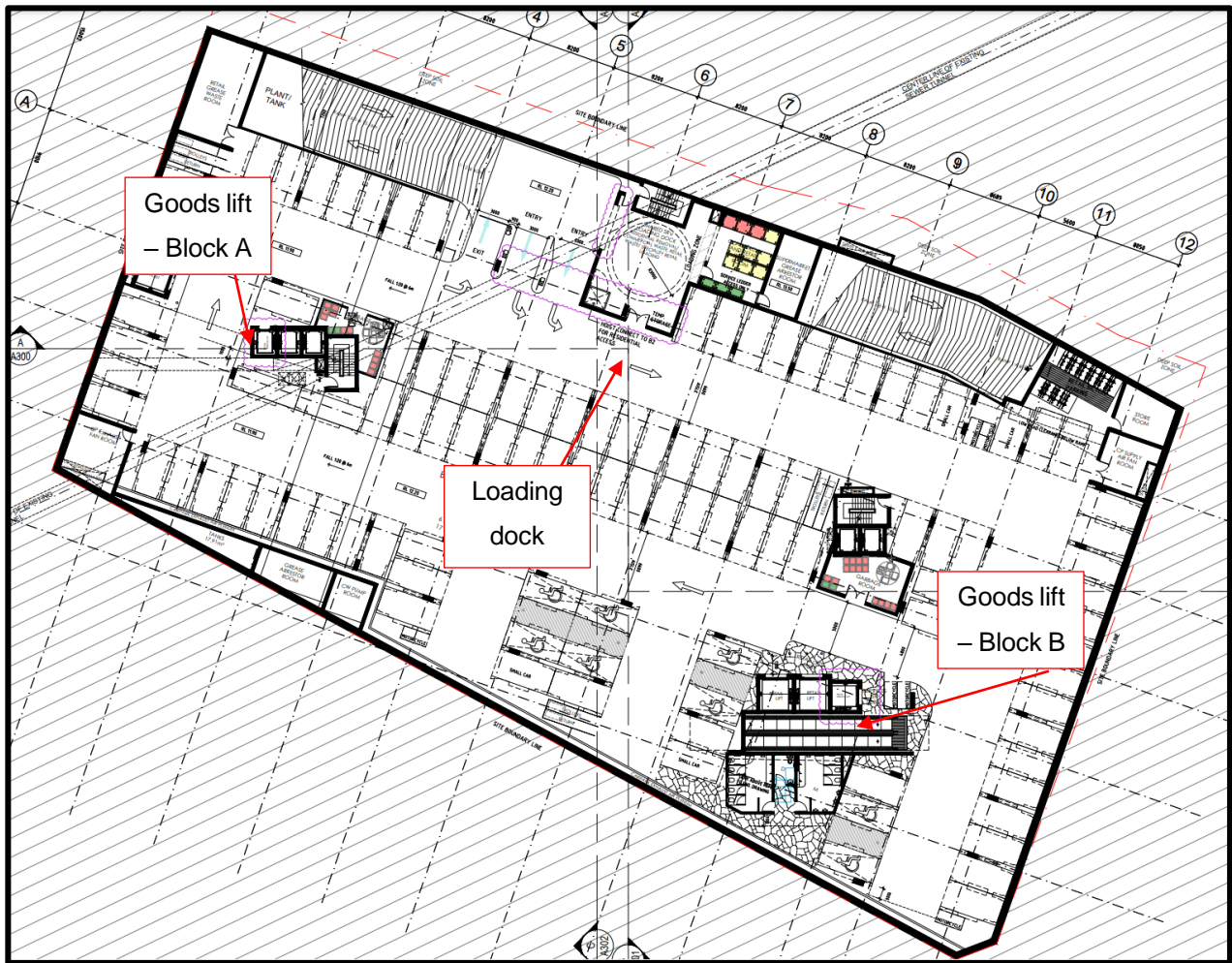


Figure 18. Basement Level 1: Loading Dock

The applicant identifies that the retail/commercial tenancies will be adequately serviced by the Basement Level 1 loading dock which can accommodate a 6.4m long Small Rigid Vehicle (SRV). The liquor store and supermarket will be serviced by a range of commercial vehicles up to and including MRV and HRV trucks which will be supported by the ground floor loading dock.

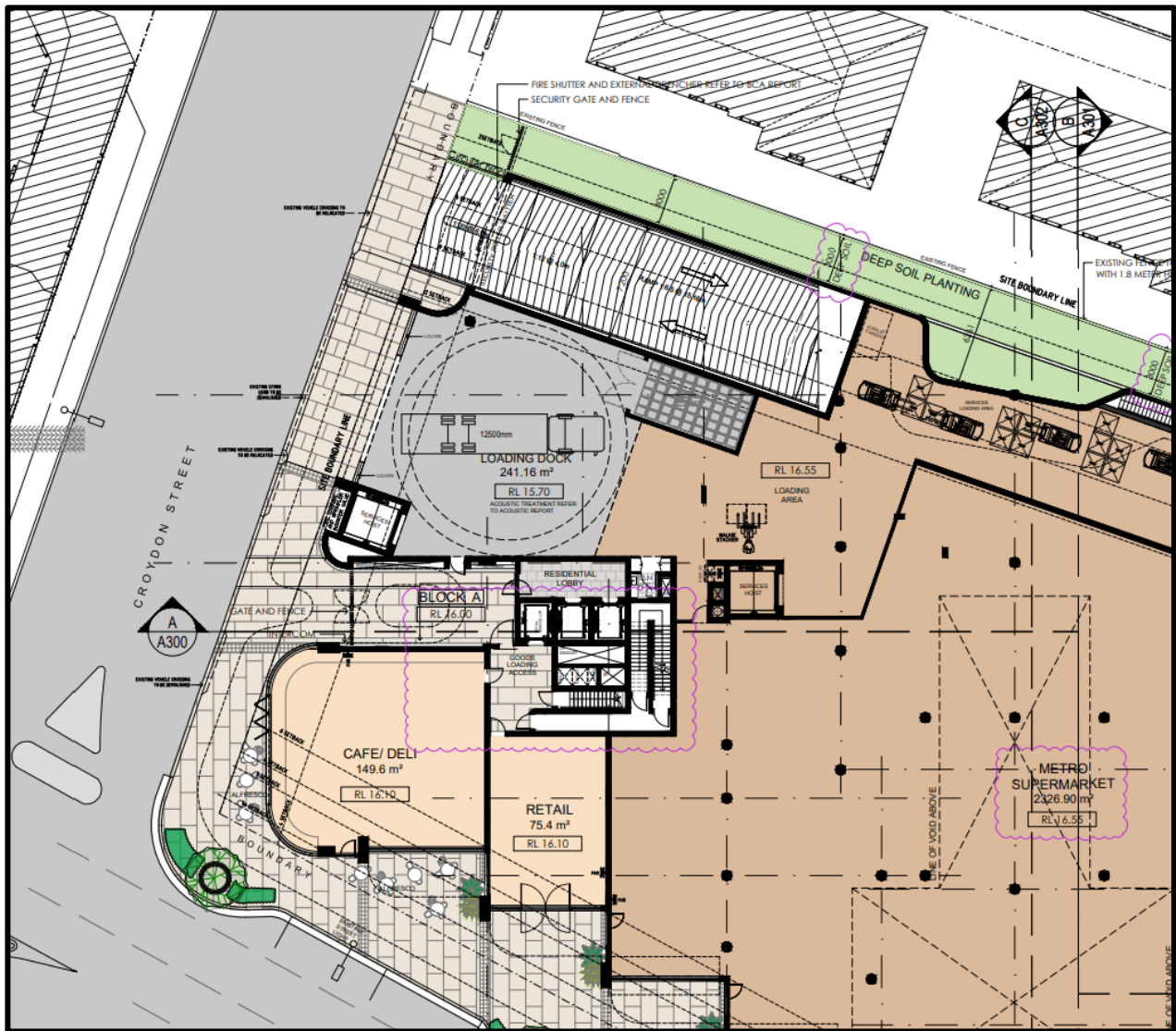


Figure 19. Proposed Loading Dock at Ground Floor

11.4. Urban Design – General

Clauses 6.16 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 acceptable for the reasons discussed above.

Clause 6.16 of SSLEP 2015 requires consideration of the following:

- (1) *In deciding whether to grant development consent for any development, the consent authority must consider the following—*
 - (a) *the extent to which high quality design and development outcomes for the urban environment of Sutherland Shire have been attained, or will be attained, by the development,*
 - (b) *the extent to which any buildings are designed and will be constructed to—*
 - (i) *strengthen, enhance or integrate into the existing character of distinctive locations,*

neighbourhoods and streetscapes, and

- (ii) contribute to the desired future character of the locality concerned,*
- (c) the extent to which recognition has been given to the public domain in the design of the development and the extent to which that design will facilitate improvements to the public domain,*
- (d) the extent to which the natural environment will be retained or enhanced by the development,*
- (e) the extent to which the development will respond to the natural landform of the site of the development,*
- (f) the extent to which the development will preserve, enhance or reinforce specific areas of high visual quality, ridgelines and landmark locations, including gateways, nodes, views and vistas,*
- (g) the principles for minimising crime risk set out in Part B of the Crime Prevention Guidelines and the extent to which the design of the proposed development applies those principles.*

(2) In this clause, Crime Prevention Guidelines means the publication, Crime prevention and the assessment of development applications (ISBN 0 7347 0184 5), published by the NSW Department of Urban Affairs and Planning in 2001.

11.5. Traffic and 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 LEP. Council's engineers consider that no new traffic measures are required to be implemented as a result of the proposal, with the exception of the median and kerb on the corner of Croydon St and Kingsway.

11.6. 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.

The proposal involves excavation for four levels of basement. The Geotechnical Report prepared by Golder Associates, 22 September 2021 identifies that where the current proposed basement excavation is RL 6.2m AHD. It is anticipated that groundwater seepage during excavation will occur along the soil/ rock interface and open joints within the sandstone. The inflow is expected to be controlled through the use of sump

pumping. Based on the information provided in the Geotechnical Report, the application was referred to WaterNSW as Integrated development under the Water Management Act. WaterNSW are supportive of the proposal and have issued their GTA's.

11.7. Earthworks

The proposal includes significant earthworks for the construction of the four level basement 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.

It is possible that any approval granted could be conditioned to require the presence of the Supervising Environmental Consultant during works and also for further assessment of the extent and nature of contamination to be undertaken post demolition and pre-construction.

Council will require that a CEMP be prepared by a suitably qualified Civil Contractor based on the information in Council records and the information provided in the applicant supplied RAP and Site Contamination Report. Council will recommend the presence of the Supervising Environmental Consultant during works and also for further assessment of the extent and nature of contamination to be undertaken post demolition and pre-construction in accordance with the recommendations of the applicant supplied RAP. This will provide assurance that there will be no adverse environmental impacts subject to the presence of remnants of the former service station, vent pipe or any contaminants. The recommendations made will be addressed via Council's environmental conditions of consent. The updated proposal was referred to Council's Environmental Assessment officer who concluded that the application is supported subject to the conditions of consent.

Groundwater testing undertaken by Golder Associates indicates that there is limited groundwater information available and it is possible that perched groundwater may be encountered within the fill or at the soil / rock interface. Based on the information provided in the Geotechnical Report, the application was referred to WaterNSW as integrated development under the Water Management Act 2000, pursuant to section 4.47 of the Environmental Planning and Assessment Act 1979. WaterNSW are supportive and have issued their GTA's.

On balance of the information available and the provision of WaterNSW's General Terms of Approval, the proposed development is deemed to be able to satisfactorily manage impacts on groundwater and prepare the site suitable for development subject to the conditions of consent.

11.8. 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 in the Civil Design Plans prepared by Greenview Consulting and subject to conditions

of development consent.

11.9. Heritage

Clause 5.10 requires Council to be satisfied of certain matters in relation to heritage conservation. The site is not identified as containing any heritage items and is not located within a heritage conservation area under SSLEP 2015. However, the site is located within proximity to a number of items of heritage significance, including the 'Cronulla Theatre' I1008. The relationship between the proposed development and heritage items have been assessed by the applicant's heritage consultant (Heritage 21) and concludes and the proposed development will not detract from the heritage significance of the Cronulla Theatre. These matters have been addressed to Council's satisfaction.

The lower levels of the proposed development are expressed as a podium helping it to relate to the established streetscape. The height and scale of the proposed building is generally consistent with the current planning framework for the Cronulla Centre and compatible with the scale of newer buildings in the centre. It is noted that the proposed development will be lower than "Northies" which is immediately to its east.

The landmark qualities of the heritage listed theatre at 2-6 Cronulla St (Item 1008) stem from its location at the top of Cronulla Street being the primary retail strip of Cronulla. The building's main façade faces Cronulla Street which is otherwise generally two storeys in scale. This allows the theatre to have its landmark role within the centre. The Kingsway façade of the theatre is a secondary façade with less detailing and presence.

The proposed building is sited on the opposite side of the Kingsway. This means that it is physically separated by a four lane road and two wide footpaths. This gives an effective separation of 30 metres. The extent of separation allows the theatre to retain its landmark qualities in Cronulla Street and also when viewed from the Kingsway. As such the proposed development does not compromise the heritage significance of the building at 2-6 the Kingsway Cronulla (Item 1008.) The proposed development does not conflict with any of the management strategies described in the inventory sheet.

With respect to the heritage listed item at 8-12 Cronulla Street (item 1009), this item sits within the two storey streetscape of Cronulla Street and provides a contributory setting to Cronulla Theatre. While the proposed development would be visible across the Kingsway from the terminus of the mall, it will not detract from the two storey scale of Cronulla Street nor diminish the significance or contribution of the item. The proposed development does not conflict with any of the management strategies described in the inventory sheet.

While the proposed development is in the visual catchment of the Masonic Lodge (item 1034) at 43-45 the Kingsway, it is well removed. It will not compromise the setting of the item and is not in conflict with any of the identified management strategies recorded in the inventory sheet.

In conclusion, there are no adverse heritage consequences from the proposed development on heritage items in Cronulla as listed in SSLEP 2015.

11.10. Archaeological Sensitivity

Council records indicate that the subject site is rated low in terms of Archaeological Sensitivity. The proposal is seeking to redevelop an existing urban site located in an existing town centre with high ground disturbance. Council determines there is a low likelihood of impact on any archaeological sensitive items.

12.0 DEVELOPMENT CONTRIBUTIONS

If approved, the proposed development 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:	\$ 597,133.60
Local Contribution:	\$1,642,866.40

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 112 new residential units.

13.0 DECLARATIONS OF AFFILIATION, GIFTS AND POLITICAL DONATIONS

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

14.0 CONCLUSION

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

The application was placed on public exhibition and 30 submissions were received from 99 households (3 submissions were petition style). The matters raised in these submissions have been discussed in this report and include:

- Privacy.
- Traffic and Parking.
- Bulk/scale/design aesthetic.
- Safety
- Amenity/ disruption during construction.
- Overdevelopment.

The application has been assessed having regard to the matters for consideration under Section 4.15 of the Environmental Planning and Assessment Act 1979. As identified in section 1, the proposed development is supported as it will result in a positive land use outcome and acceptable amenity of nearby residents as a result of:

- Appropriate built form and scale with consideration of the acceptable overshadowing outcome and interface with the human scale at the public domain;
- Consistency with the building height objectives under clause 4.3 and consistency with the provisions of Clause 4.6;
- Inconsistency with building separation requirements under SEPP 65 and 2F and 3F of the ADG, is supportable as it will result in an acceptable outcome on privacy and visual intrusion subject to the conditions of consent; and
- Consistency with minimum solar access requirements under SEPP 65 and 4A-1 of the ADG for 70% of apartments to receive a minimum of 2 hours sunlight between 9am and 3pm during mid-winter.

Following assessment, Development Application No. DA21/0562 is supported for the reasons outlined in this report.

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