



NSLPP MEETING HELD ON 07/06/2023

Attachments:

1. Site Plan
2. Architectural Plans
3. Judgment Helm No. 18 Pty Ltd vs North Sydney Council [2022] NSWLEC 1566
4. DA239/2021 - Conditions
5. DA239/2021 – Approved Plans

ADDRESS/WARD: 131-139 Holt Avenue, Cremorne

APPLICATION No: DA239/2021/02

PROPOSAL: Section 4.56 modification relating to development consent DA239/2021 for excavation (not including demolition) and construction of a part four-part five storey mixed use development with basement parking, and stratum subdivision.

PLANS REF: Refer to Attachment 2 - Architectural Plans

OWNER: Helm No. 18 Pty Ltd

APPLICANT: Helm Pty Ltd

AUTHOR: Michael Stephens, Senior Assessment Officer

DATE OF REPORT: 29 May 2023

DATE LODGED: 2 March 2023

SUBMISSIONS: Two

RECOMMENDATION: Approval

EXECUTIVE SUMMARY

This application made under Section 4.56 of the Environmental Planning and Assessment Act 1979 seeks consent to modify development consent DA239/2021 for excavation (not including demolition) and construction of a part four- part five- storey mixed use development with basement parking, and stratum subdivision at Nos. 131-139 Holt Avenue, Cremorne.

The application is reported to the North Sydney Local Planning Panel for determination as the application relates to a s4.56 modification which involves a new variation to a development standard by more than 10%. A public determination meeting is not required because less than 10 submissions by way of objections have been received by Council.

The proposed modifications resulting in new or varied variations to the height of building development standard in Clause 4.3 in NSLEP 2013 involve an increase to the lift overrun heights, an additional balcony roof awning, and roof details and have been considered having regard to the reason for approval of the original application and have been assessed having regard to the objectives of the development standard itself. The proposed modifications are consistent with the objectives given that the variations would not substantively alter the bulk and scale of the approved development and would not give rise to any additional material impacts on the amenity of the surrounding properties or the character of the area.

The proposed modifications are consistent with the approved development and primarily involve improvements to the layout and function of the apartments, some of which have arisen through the detailed construction documentation for the development which often occurs during the preparation of the construction certification.

The application was notified in accordance with Council's Community Engagement Protocol and two submissions objecting to the proposed modifications were received at Council. The submissions raised issues regarding the increased variations to the height of buildings development standard and increases to the bulk and scale of the approved development.

On balance the modification application is considered to be reasonable and is recommended for approval.

DESCRIPTION OF PROPOSAL

This application made under s4.56 of the Act seeks consent to modify development consent DA239/2021 relating to excavation (not including demolition) and construction of a part four- part five- storey mixed use development with basement parking, and stratum subdivision.

The proposed modifications include:

- Addition of an edge beam detail to break down the thickness of the roof edge surrounding the eastern edge the roofs over levels 3 and 4.
- Addition of a roof awning covering the approved balcony of apartment 401.
- Increases to the heights of the two lift overruns from RL97.400 to RL97.850 (+450mm) and RL100.600 to RL100.950 (+350mm), respectively, to allow for the use of a full height (2.7m) lift cabin.
- Various internal reconfigurations to all apartments to resolve NCC and structural/construction design detailing issues and improve the layout and function of the apartments.
- Modifications to the building façade treatments and fenestration to improve the external functionality of privacy screening and solar shading devices. Addition of privacy screens to various balconies.
- Modification to the commercial entry lift to improve accessibility and incorporate the lift overrun.
- Modification to the front building entry pathway to provide at grade access with a compliant ramp gradient.
- Modification to the retail back of house area to increase the GFA by 9sqm.
- Modifications to the location of skylights and roof maintenance access, and skylights.
- Modification to Condition C to specify the street tree locations.
- Modification to Conditions C27 and E15 to specify the date of the arborist report.

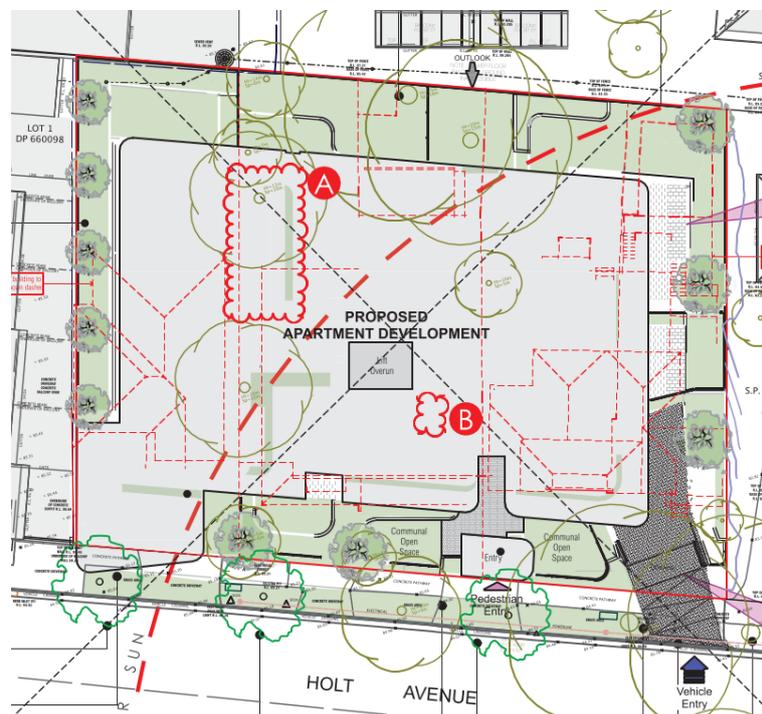


Figure 1. Proposed Site Plan



Figure 2. Proposed Southwestern Elevation



Figure 3. Proposed Northwestern Elevation



Figure 4. Proposed Northeastern Elevation

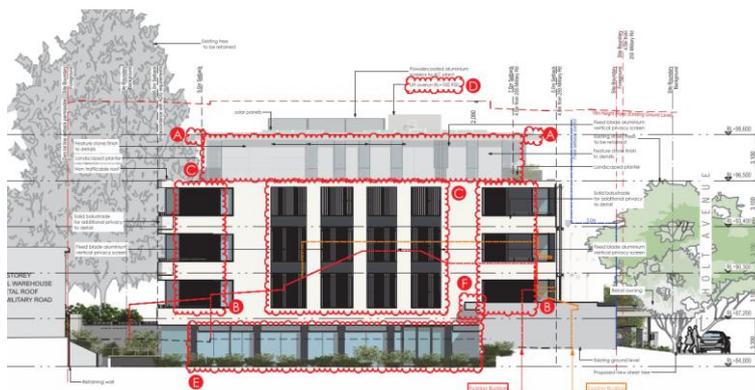


Figure 5. Proposed Southeastern Elevation



Figure 6. Render of Proposed Modified Development

Review of Determined Plans

The proposed modifications plans have been assessed against the stamped approved plans to ensure that no further changes have been made outside of the scope of the proposed modifications sought under this application.

Consent Authority

The Minister's Local Planning Panel Direction dated 30 June 2020 states that councils should make arrangements for the determination of modification applications made under Section 4.56 of the Act by the local planning panel of council staff.

The Minister's Directions also outlines the types of developments that are to be determined by the Local Planning Panel which includes Section 4.55(2) applications for modifications to consents approved by the Panel if:

- The application seeks to modify a condition imposed or modified by the Panel.
- The application meets the criteria for development application set out in the Schedules to the direction relating to conflict of interest, contentious development or departure from development standards.

The original application would have been referred to the North Sydney Local Planning Panel for determination because the development involved SEPP 65 development, a variation to a development standard by greater than 10%, and was contentious development because more than 10 objections were received.

However, the applicant appealed the deemed refusal of the application and therefore the Land and Environment Court was the consent authority. Should the application not have been appealed, the subject modification application would ordinarily have been lodged under Section 4.55(2) of the Act as opposed to Section 4.56 of the Act. In which case, the proposed modifications involve a further variation to the height of buildings development standard and would have required referral to the local planning panel.

Consistent with the requirements for Section 4.55(2) modifications, it is recommended that the subject modification application made under Section 4.56 of the Act be referred to the North Sydney Local Planning Panel for determination consistent with the discretion afforded to councils to do so.

STATUTORY CONTROLS

North Sydney Local Environmental Plan 2013

- Zoning – MU1 Mixed Use and R4 High Density Residential
- Item of Heritage – No
- In Vicinity of Item of Heritage – No
- Conservation Area - No

Environmental Planning and Assessment Act 1979

- s7.11 Infrastructure Contributions

SEPP No. 65 - Design Quality of Residential Apartment Development

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

State Environmental Planning Policy (Biodiversity and Conservation) 2021

State Environmental Planning Policy (Resilience and Hazards) 2021

State Environmental Planning Policy (Transport and Infrastructure) 2021

POLICY CONTROLS

North Sydney Development Control Plan 2013

Apartment Design Guide

North Sydney Local Infrastructure Contributions Plan 2020

DESCRIPTION OF LOCALITY

The subject site comprises five lots, being Lot 1 & 2 in DP 602238, Lot 1 in DP 965837, Lot 9 in DP 975041 and Lot C in DP 983569 and is known as 131-139 Holt Avenue, Cremorne. The site is located on the northeastern side of Holt Avenue towards the intersection with Military Road to the northwest.

The site is generally rectangular in shape and has a 48.2m frontage to Holt Avenue and a depth of 36.75m, equating to a site area of 1789sqm. The site has a cross-fall of approximately 3.1m from the northwest to southeast although is generally flat from front to rear with a fall towards the eastern corner of the site.



Figure 7. Aerial Image of the subject site and surrounds (Nearmap 2021)

The site is zoned part MU1 Mixed Use (No. 139 Holt Avenue) and part R4 High Density Residential (No. 131-137 Holt Avenue) and currently contains the construction site for the approved development DA239/2021, with two of the former dwellings already demolished. The previous improvements included five dwelling houses, one of which was used as a childcare centre.

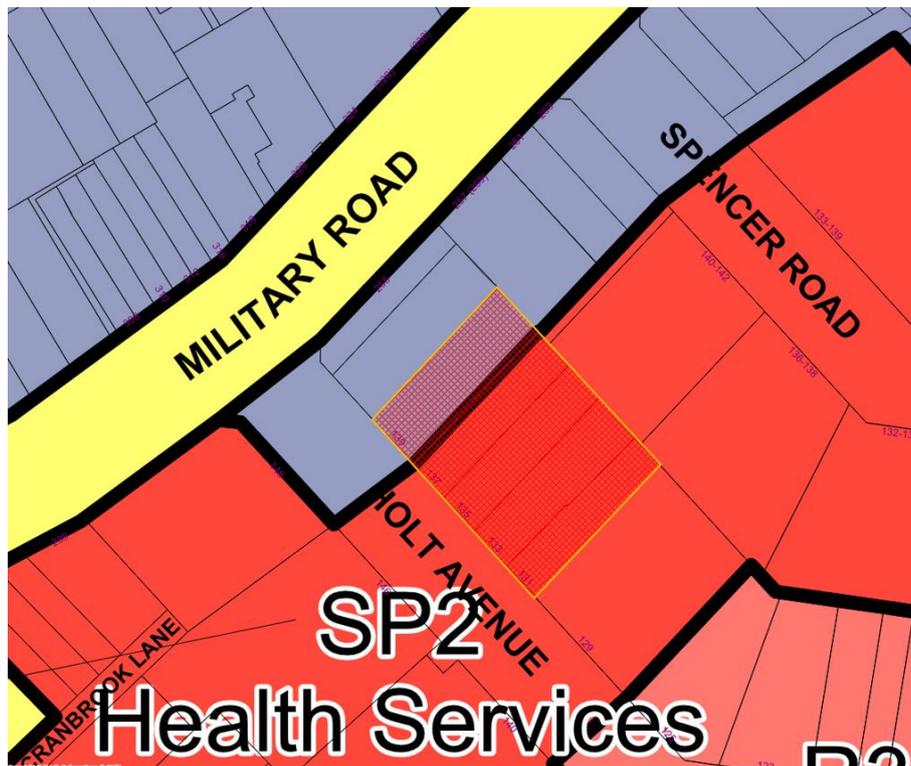


Figure 8. NSLEP 2013 Land use zoning map with the subject site shown outlined in yellow.

The surrounding development typology includes a mix of multi-unit residential development to the front, rear and southeastern side of the site and mixed use development to the northwest facing Military Road. Development along Holt Avenue decreases in density towards the east reflecting the R3 Medium Density zoning further along Holt Avenue.

The site has a maximum permitted building height of 16m and 12m reflecting the split zoning of the site as shown in *figure 9* below.

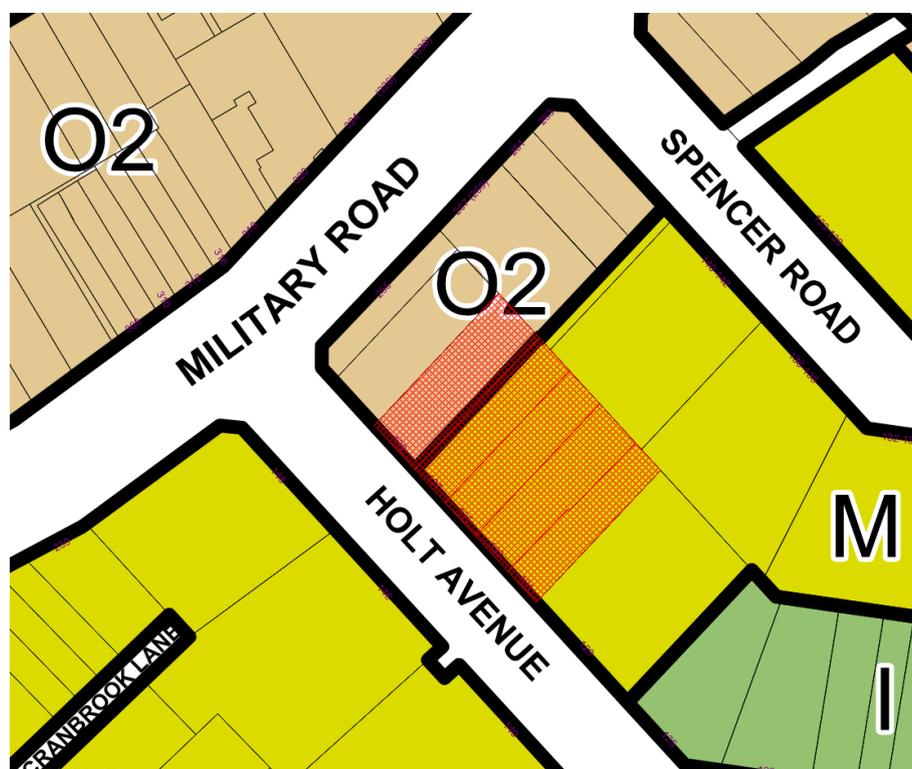


Figure 9. NSLEP 2013 Height of Buildings maps within the subject site shown crosshatched in red.

The street is lined with brush box street trees, including four street trees in front of the site.

The subject site is not identified as a heritage item or located within a conservation area. There are no heritage items located within the vicinity of the site.

RELEVANT DEVELOPMENT HISTORY

Development Application **DA239/2021** for excavation (not including demolition) and construction of a part four-part five storey mixed use development with basement parking, and stratum subdivision was approved by the Land and Environment Court on 18 October 2022.

The Development Consent did not include demolition of the five existing buildings. Consent for demolition was obtained under five separate complying development certificates referenced below:

- CDC 203/2022 – 131 Holt Avenue
- CDC 206/2022 – 131 Holt Avenue
- CDC 234/2022 – 135 Holt Avenue
- CDC 235/2022 – 137 Holt Avenue
- CDC 236/2022 – 139 Holt Avenue

Modification Application **DA239/2021/2** for various modifications was lodged 2 March 2023 ('subject modification application')

Modification Application **DA239/2021/3** to remove a street tree was lodged 23 March 2023 and is being assessed concurrently.

Heritage

The subject site is no longer affected by any interim heritage order or draft heritage listing following the revocation of Interim Heritage Order IHO1/2022 on 29 July 2022 and finalisation of Planning Proposal PP7/22 which did not proceed.

RELEVANT APPLICATION HISTORY

Date	Assessment
2 March 2023	The subject modification application was lodged with Council via the NSW Planning Portal.
17 March 2023	The application was notified in accordance with Council's Community Engagement Protocol from 24 March 2023 until 11 April 2023.
5 April 2023	Following a request from the local Precinct Committee, the application was notified in accordance with Council's Community Engagement Protocol to a wider area from 14 April 2023 until 28 April 2023.

REFERRALS

Building

The modification application was referred to Council's Building Surveyors. The proposed modifications would not give rise to any further consideration regarding NCC matters no further conditions were recommended.

Landscape

The modification application was referred to Council's Landscape Development Officer who raised no objection to the proposed modifications, being minor in nature regarding landscaping issues, and confirmed that the existing conditions of consent remain satisfactory.

SUBMISSIONS

The development application was notified in accordance with Council's Community Engagement Protocol from 24 March 2023 until 11 April 2023 and 14 April 2023 until 28 April 2023. Two submissions were received and are summarised below:

- *The proposed modifications seek to further vary the height of buildings development standard. The proposed height should have been identified in the original application rather than seeking to further increase the height once an approval was granted.*
- *The increased lift overrun heights would result in additional amenity impacts for surrounding properties.*
- *Objection to any further increase to the approved building envelope.*

As less than ten submissions by way of objection were received, the application is not required to be determined by way of a public meeting of the Local Planning Panel. A copy of all submissions and a schedule of submitters have been provided to the Panel for their consideration in addition to the summary included in this report.

CONSIDERATION

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 2013

Section 4.56 Modifications by consent authorities of consents granted by the Court

- (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*

The proposed modified development is considered to be substantially the same development as the development for which consent was originally granted. The proposed modifications generally relate to improvements to the approved development to resolve NCC and structural/construction design detailing issues and enhance the amenity of the approved apartments. There are no substantive changes to uses within the approved the mixed use development or its approved built form.

- (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*

The modification application was notified in accordance with Council's Community Engagement Protocol from 24 March 2023 until 11 April 2023, with a wider notification area notified from 14 April 2023 until 28 April 2023.

- (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*

All previous submitters were notified in addition to those notified in accordance with Council's Community Engagement Protocol.

- (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.*

Two submissions were received. The issues raised in the submissions are addressed under the relevant heading below.

(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.

The proposed modifications are assessed against the matters for consideration in Subsection 4.15(1) of the Act further in this report. With regard to the reasons for the granting of the original consent in accordance with Subsection 4.56(1A), the Court's judgment has been considered (**Attachment _3**).

The judgment sets out the statutory considerations being jurisdictional requirements to the granting of consent. The proposed modifications do not give rise to any new, or would be inconsistent with any former, prerequisite to the granting of consent. Where required, additional documentation in the form of a design verification statement to satisfy Section 102 of the EP&A Regulations 2021 and an amended BASIX Certificate to satisfy SEPP (Building Sustainability Index: BASIX) 2004 has also been provided.

The judgment at paragraph 20 outlines the reasons that the written request made pursuant to Clause 4.6 in NSLEP 2013 adequately justified the variations to the height of buildings development standard, as reproduced below:

"20 The parties agree, and I am satisfied, that this written request adequately justifies the variance to the height of buildings development standard for the following reasons

- (1) The DA complies with the 16m height of building standard within the B4 Mixed Use zone, but exceeds the 12m height of building standard within the R4 High Density Residential zone. The development proposes a maximum height of 14.89m above existing ground level, which is 2.89m greater than the standard, or a variation of approximately 24%.*
- (2) The objectives of the NSLEP Zone R4 High Density Residential land use zone include providing for the housing needs of the community within a high density residential environment, providing a variety of housing types and ensuring that a reasonably high level of residential amenity is achieved and maintained. I am satisfied the DA meets these objectives.*
- (3) The objectives of cl 4.3 of the NSLEP include seeking to encourage an appropriate scale and density of development in accordance with the character of the area, enabling built form that is compatible with the size of the site, and to establishing a transition in scale to protect local amenity. I am satisfied the amended DA meets these objectives.*
- (4) The DA was amended (in December 2021) to respond to feedback provided by the Respondent, and in particular the upper-most storey of the building was set back behind the lower levels to minimise visual impacts and the perceived scale of the proposal across the site boundaries.*

- (5) *Building height associated with the lift overrun and common circulation is centrally located within the site and recedes from view from public vantage points at ground level and at the property boundaries. I am satisfied the variation to the height of building development standard brings with it no material environmental impacts or additional overshadowing."*

The proposed modification results in new or modified variations to the building height development standard and therefore should be considered with respect to the reasons given for the granting of consent. The proposed modifications are considered to be consistent with the objectives of the zone and objectives of the development standard proposed to be modified. In particular, with respect to subparagraph 20 (5), the proposed increase to the centrally located lift overruns would not significantly alter the perceived built form, having regard to the recessed location of the lift overruns, and would not give rise to any associated material environmental or additional overshadowing impacts.

The proposed modifications are considered to be consistent with the reasons for approval.

State Environmental Planning Policy (Biodiversity and Conservation) 2021

Chapter 2 – Vegetation in Non-Rural Areas

Section 2.6 of the Policy specifies that a person must not clear declared vegetation in a non-rural area of the State without consent. The Policy confers the ability for a council to declare vegetation in a Development Control Plan where consent is required to remove or impact the vegetation. Section 16 of Part B in NSDCP 2013 specifies declared trees for the purpose of the Policy which includes primarily trees over 5m in height or crown width.

The original application involved the removal of several trees and potential impact to others to undertake the proposed excavation and construction works. The proposed development was considered to satisfy the provisions of the Policy in that consent was sought for the works and that the matters in Section 16 of Part B in NSDCP 2013 were satisfied. The proposed modifications do not seek to remove any additional trees or increase the potential impact to existing trees to be retained and therefore no further consideration is required regarding this Policy.

Chapter 10 – Sydney Harbour Catchment

The subject site is not located within the Foreshores and Waterways Area as mapped in the Sydney Harbour Foreshores and Waterways DCP 2005 and is not visible from Sydney Harbour or its foreshores. The original application was found to be satisfactory, being unlikely to adversely impact the scenic quality of the foreshore, or the natural environmental processes related to the water catchment and the proposed modifications would not give rise to any additional potential impacts.

State Environmental Planning Policy No. 65 - Design Quality of Residential Apartment Development

In accordance with Section 102 of the Environmental Planning and Assessment Regulations 2021, the subject modification application made under section 4.56(1) of the Act is to be accompanied by a design verification statement. The design verification was prepared by the same architect who designed the original development and has satisfactorily addressed the Design Quality Principles in Schedule 1, the objectives in the ADG, and verified that the modifications do not diminish or detract from the design quality of the original development or compromise the design intent of the original development.

The proposed modifications are evaluated in accordance with the Design Quality Principles in Schedule 1 of the Policy.

Principle 1: Context and neighbourhood character

The proposed modifications are generally minor in nature and would not significantly alter the character of the approved development. The proposed modifications to the external privacy and solar shading devices responds to the site context having regard to the north-westerly aspect of some apartments.

Principle 2: Built form and scale

The proposed modifications generally retain the built form and scale of the approved development. The proposed introduction of an edge beam detail, whilst incrementally adding to the bulk of the building, would do so inconsequentially and would assist in breaking down the perceived thickness of the roof edge detail. The proposed increase in the height of the lift overruns would also have an inconsequential affect on the overall built form and scale of the development. The lift overruns are located centrally within the roof form adjacent to the fifth storey element. Similarly, the proposed additional awning over the balcony of apartment 401 is obscured behind other building elements and would not be visible from the public domain.

Principle 3: Density

The proposed modifications would not alter the density of the approved development.

Principle 4: Sustainability

The proposed modifications would not detract from the sustainability outcomes of the development. The minor modifications to the privacy and solar shading devices would improve the thermal comfort control of those apartments.

Principle 5: Landscape

The proposed modifications retain the landscaped character of the approved development.

Principle 6: Amenity

The proposed modifications would marginally increase the high level of residential amenity of the approved apartments by facilitating improvements to the internal layout and configuration of the apartments and refining the privacy and solar shading devices.

Principle 7: Safety

The proposed modifications would not detract from the safety and security of the approved development.

Principle 8: Housing diversity and social interaction

The proposed modifications would not detract from the housing diversity or opportunities for social interaction within the approved development.

Principle 9: Aesthetics

The proposed modifications would not detract from the aesthetics of the approved development. The introduction of the edge beam details would break down the perceived thickness of the roof edge. The proposed changes to external privacy and solar shading devices are consistent with the approved design of the building. The proposed modifications would refine the aesthetics of the approved development without altering the design intent.

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

A revised BASIX Certificate has been submitted. Condition C45 is to be amended accordingly.

State Environmental Planning Policy (Transport and Infrastructure) 2021

The subject site is located in proximity to Military Road which is identified as a busy road with respect to Section 2.120 of the Policy. The subject site is not directly adjacent to, although is in proximity to the road and therefore the potential for road noise should be considered. The proposed modifications would not detract from the comfort of the approved apartments with respect to road noise and vibration given the relative minor nature of the modifications. Condition C35 requires the development to be constructed to achieve satisfactory noise comfort levels within apartments.

North Sydney Local Environmental Plan 2013

Permissibility

Standard Instrument (Local Environmental Plans) Amendment (Land Use Zones) Order 2022 (Amending Order) was made on 30 November 2022. On 26 April 2023 the former Business and Industrial zones were repealed and consequently, the former B4 Mixed Use zone is now identified as MU1 Mixed use.

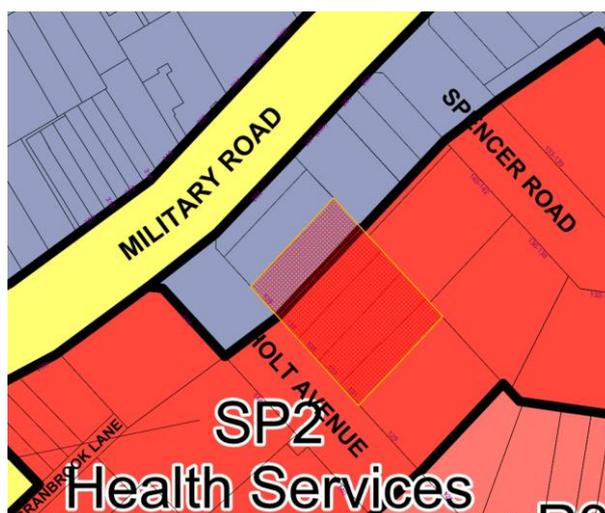


Figure 10 . NSLEP 2013 Land use zoning map with the subject site shown outlined in yellow.

The subject site is zoned partly MU1 Mixed Use (formally B4 Mixed Use) and partly R4 High Density Residential. The original application involved a mixed use development containing a neighbourhood shop and shop top housing on the portion of the land zoned MU1 Mixed Use and residential flat building on the remaining portion of the land zoned R4 High Density Residential. The development was configured such that each component of the mixed use development would be located only on land where that use is permitted. Of note, there is ancillary vehicle access to the neighbourhood shop loading, storage and parking areas located within the basement that is accessed through the portion of the basement and driveway located on the portion of the land zoned R4 High Density Residential. However, a neighbourhood shop is also a permitted use in the R4 zone and therefore is also permissible.

The proposed modification application retains the approved configuration of uses and therefore continues to conform with zoning of the land.

Objectives of the zone

The objectives of the **MU1 Mixed Use zone** are stated below:

- *To encourage a diversity of business, retail, office and light industrial land uses that generate employment opportunities.*
- *To ensure that new development provides diverse and active street frontages to attract pedestrian traffic and to contribute to vibrant, diverse and functional streets and public spaces.*
- *To minimise conflict between land uses within this zone and land uses within adjoining zones.*
- *To encourage business, retail, community and other non-residential land uses on the ground floor of buildings.*
- *To create interesting and vibrant mixed use centres with safe, high quality urban environments with residential amenity.*
- *To maintain existing commercial space and allow for residential development in mixed use buildings, with non-residential uses concentrated on the lower levels and residential uses predominantly on the higher levels.*

The proposed modifications would not detract from the attainment of the objectives of the zone.

The objectives of the **R4 High Density Residential zone** are stated below:

- *To provide for the housing needs of the community within a high density residential environment.*
- *To provide a variety of housing types within a high density residential environment.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*
- *To encourage the development of sites for high density housing if such development does not compromise the amenity of the surrounding area or the natural or cultural heritage of the area.*
- *To ensure that a reasonably high level of residential amenity is achieved and maintained.*

The proposed modifications would not detract from the attainment of the objectives of the zone.

Clause 4.3 - Height of buildings

The subject site has a maximum permitted building height of 16m (MU1 Mixed Use zoned land) and 12m (R4 High Density Residential zoned land) pursuant to clause 4.3(2) in NSLEP 2013.

The approved development included variations to the development standard as identified in the table below. The additional proposed variations are identified in the table below shown in **Bold**.

	Building Element	Control	Height	Variation
B4 Mixed use zoned land (No. 139 Holt Avenue)				
A.	Southern corner of Level 3 roof	16m	13.90m	Complies
B.	Northern corner of Level 3 roof		13.70m	Complies
R4 High Density Residential zoned land (Nos. 131-137 Holt Avenue)				
C.	Level 4 lift overrun	12m	14.89m	+2.89m (24%)
	Level 4 lift overrun (s4.56)		15.24m	+3.24m (27%)
D.	Level 3 lift overrun		11.69m	Complies
	Level 3 lift overrun (s4.56)		12.04m	+0.04m (0.3%)
E.	Southern corner of Level 3 roof		11.65m	Complies
F.	Eastern corner of Level 3 roof		12.65	+0.65m (5.5%)
G.	Northeastern side of Level 3 roof		11.18m	Complies
H.	Level 4 balcony balustrade		11.9m	Complies
I.	Level 4 balcony roof awning (s4.56)		14.15	+2.15m (18%)

The original application was supported by a written request to vary the development standard pursuant to Clause 4.6 in NSLEP 2013 which the Court found meet the jurisdictional prerequisites to grant development consent. Consistent with the findings by Justice Lloyd in *Gann & Anor v Sutherland Shire Council* [2008] NSWLEC 157, the modification of a development consent which results in a new or modified variation to a development standard, does not require a request for variation to the development standard to be made under Clause 4.6 of the Standard Instrument LEP. This is because the modification of a consent under S4.56, which is a stand-alone provision, is distinguished from the granting of development consent as outlined in Subsection 4.46(1C) and therefore Clause 4.6 is not enlivened for the proposed modifications.

The proposed modified development is considered substantially the same development and the proposed new or varied variations to the height of buildings development standard are therefore assessed in the context of the approved development, including the original written justification to vary the development standard, and the objectives of the development standard proposed to be varied.

It is noted that the proposed modification involves no increase in yield or density and that the variation in height arises from the finalisation of the detailed design of the lift services.

The objectives of the height of buildings development standard are addressed below.

- (1)(a) to promote development that conforms to and reflects natural landforms, by stepping development on sloping land to follow the natural gradient,

The proposed modifications would not substantively alter the bulk and scale of the approved development which step down in scale from the northwest adjacent to the Military Road corridor towards the southeast which is more residential in character. The proposed increase to the height of the lift overruns or roof awning would not alter the appearance of the building as it relates to the slope of the land.

- (1)(b) to promote the retention and, if appropriate, sharing of existing views,

Having regard to the assessment made under the original application which did not reveal any potential view impacts, the proposed modifications are unlikely to have any additional impacts on views enjoyed from surrounding properties. The proposed modifications are largely consistent with the approved built form, and where the height of the building is proposed to be increased, relates to the lift overruns and an extension of the approved roof form which would be backdropped or obscured by other built elements or are minor in nature.

- (1)(c) to maintain solar access to existing dwellings, public reserves and streets, and to promote solar access for future development,

The proposed modifications are generally contained within the existing building envelope, except for the proposed balcony roof awning, lift overruns and roof edge beam. The proposed roof awning and lift overruns would cast additional overshadowing which would fall across the approved surrounding roof form of the subject development and would not adversely impact any of the surrounding properties.

The addition of the edge beam surrounding the roof form at the eastern corner of the building would result in marginal, although negligible, additional overshadowing to the adjoining residential flat building to the south (No. 129 Holt Avenue).

- (1)(d) to maintain privacy for residents of existing dwellings and to promote privacy for residents of new buildings,

The proposed modifications, relating to non-complying elements, are structural elements and would not give rise to any potential additional privacy impacts.

(1)(e) to ensure compatibility between development, particularly at zone boundaries,

The proposed modifications would not substantively alter the bulk and massing of the development. The proposed roof awning would not cause any additional material amenity impacts is considered to be compatible with the approved development, and the surrounding development.

(1)(f) to encourage an appropriate scale and density of development that is in accordance with, and promotes the character of, an area.

The proposed modifications would not substantively alter the scale or density of the development and remains consistent with the character of the area.

The proposed balcony awning adjoins, and is subservient to, a complying portion of the building. The proposed covered balcony remains an open on two sides and would not result in any additional floor space and would not detrimentally contribute to the massing of the upper most level. The roof awning structure would be located behind the approved entry corridor when viewed from the public domain and would not be visible from the street. Where visible from surrounding properties to the east, the structure would be backdropped by the approved apartment on this level, which complies with the applicable 16m development standard for that portion of the site, and given the location and open nature of the roof structure, would not substantively add to the bulk and massing of the development.

Clause 4.4A – Non-residential floor space ratio

The subject site has a minimum required non-residential floor space ratio of 0.5:1 pursuant to Clause 4.4A in NSDCP 2013. The approved development complied with the development standard, achieving 220sqm of non-residential floor space, equating to an FSR of 0.5:1. The proposed modifications incorporate an addition 9sqm of retail floor space and therefore would increase the FSR to 0.52:1.

Clause 5.10 – Heritage conservation

This clause was satisfied with respect to the original application. The proposed modifications do not give rise to any further consideration with respect to heritage conservation.

Clause 6.10 – Earthworks

This clause was satisfied with respect to the original application. The proposed modifications do not give rise to any further consideration with respect to earthworks.

Clause 6.12 – Residential flat buildings

This clause was satisfied with respect to the original application. The proposed modifications do not give rise to any further consideration with respect to site isolation.

POLICY CONTROLS

Apartment Design Guide (ADG)

The proposed development has also been considered against the Apartment Design Guide and is generally compliant as detailed in the table below:

Amenity	Design Criteria	Comment	Compliance
2C- Building Height	<p><i>Consider the height of surrounding buildings that are unlikely to change (such as contributory and heritage items)</i></p> <p><i>Development should respond to desired future scale and character.</i></p>	The proposed modifications include additional variations to the height of buildings development standard which have been assessed having regard to the development standard in Clause 4.3 in NSLEP 2013 above. The proposed modifications would not substantively alter the bulk and scale of the approved development when viewed in the streetscape and are considered acceptable.	Acceptable
2F - Building Separation	<p><i>Minimum separation distances for buildings are: Up to four storeys (approximately 12 m):</i></p> <ul style="list-style-type: none"> • <i>12 m between habitable rooms/balconies (6m to boundary)</i> • <i>9 m between habitable and non-habitable rooms (4.5m to boundary)</i> • <i>6 m between non-habitable rooms (3m to boundary)</i> 	There are no changes proposed to the approved building separation.	Acceptable
3D- Communal Open Space	<p><i>Communal open space has a minimum area equal to 25% of the site.</i></p> <p><i>Developments achieve a minimum of 50% direct sunlight to the principal usable part of the communal open space for a minimum of 2 hours between 9 am and 3.00 pm on 21 June (mid-winter)</i></p> <p><i>Communal open space is designed to allow for a range of activities, respond to site conditions and be attractive and inviting</i></p> <p><i>Communal open space is designed to maximise safety</i></p>	There are no changes proposed to the approved communal open space area.	Acceptable
3E - Deep Soil Zones	<p><i>Deep soil zones are to meet the following minimum requirements:</i></p> <ul style="list-style-type: none"> • <i>3 m minimum width</i> • <i>Minimum 7% of the site area</i> <p><i>Design Guidance 15% of the site where the site area is greater than 1,500 sqm</i></p>	There are no changes proposed to the approved provision of deep soil.	Yes

<p>3F - Visual privacy</p>	<p><i>Separation between windows and balconies is provided to ensure visual privacy is achieved. Minimum required separation distances from buildings to the side and rear boundaries are as follows:</i></p> <table border="1" data-bbox="432 488 815 703"> <thead> <tr> <th>Building Height</th> <th>Habitable rooms and balconies</th> <th>Non-habitable rooms</th> </tr> </thead> <tbody> <tr> <td>Up to 12m (4 storeys)</td> <td>6m</td> <td>3m</td> </tr> <tr> <td>Up to 25m (5-8 storeys)</td> <td>9m</td> <td>4.5m</td> </tr> </tbody> </table>	Building Height	Habitable rooms and balconies	Non-habitable rooms	Up to 12m (4 storeys)	6m	3m	Up to 25m (5-8 storeys)	9m	4.5m	<p>There are no changes proposed to the approved building separation.</p>	<p>Acceptable</p>
Building Height	Habitable rooms and balconies	Non-habitable rooms										
Up to 12m (4 storeys)	6m	3m										
Up to 25m (5-8 storeys)	9m	4.5m										
<p>3G - Pedestrian Access and Entries</p>	<p><i>Building entries and pedestrian access connects to and addresses the public domain Access, entries and pathways are accessible and easy to identify</i></p>	<p>The proposed modifications include changes to the front entry of the building to provide a ramp in place of the approved staircase which would improve the accessibility of the development.</p>	<p>Yes</p>									
<p>3H - Vehicle Access</p>	<p><i>Vehicle access points are designed and located to achieve safety, minimise conflicts between pedestrians and vehicles and create high quality street-scapes</i></p>	<p>There are no changes proposed to the approved vehicle access arrangements.</p>	<p>Yes</p>									
<p>3J - Bicycle and Car parking</p>	<p><i>For development in the following locations:</i></p> <ul style="list-style-type: none"> • <i>on sites that are within 800 metres of a railway station or light rail stop in the Sydney Metropolitan Area; or</i> • <i>on land zoned, and sites within 400 metres of land zoned, B3 Commercial Core, B4 Mixed Use or equivalent in a nominated regional centre</i> <p><i>the minimum car parking requirement for residents and visitors is set out in the Guide to Traffic Generating Developments, or the car parking requirement prescribed by the relevant council, whichever is less.</i></p> <p><i>The car parking needs for a development must be provided off street</i></p> <p><i>Parking and facilities are provided for other modes of transport</i></p>	<p>There are no changes proposed to the approved car and bicycle parking arrangements.</p>	<p>Yes</p>									

Amenity	Design Criteria		
4A - Solar and daylight access	<i>Living rooms and private open spaces of at least 70% of apartments in a building receive a minimum of 2 hours direct sunlight between 9.00 am and 3.00 pm at mid-winter in the Sydney Metropolitan Area and in the Newcastle and Wollongong local government areas</i>	A total of 16/22 (72%) apartments would receive adequate solar access to living rooms and private open space areas which complies with this requirement.	Yes
4B - Natural ventilation	<p><i>All habitable rooms are naturally ventilated.</i></p> <p><i>The layout and design of single aspect apartments maximises natural ventilation.</i></p> <p><i>The number of apartments with natural cross ventilation is maximised to create a comfortable indoor environment for residents - At least 60% of apartments are naturally cross ventilated</i></p>	A total of 14/22 (63%) apartments are naturally cross ventilated which complies with this requirement.	Yes
4C - Ceiling Heights	<i>Ceiling height achieves sufficient natural ventilation and daylight access - Minimum 2.7 m (habitable rooms), 2.4 m for second floor where it does not exceed 50% of the apartment area.</i>	There are no changes proposed to the approved internal ceiling heights.	Yes
4D 1 - Apartment size and layout	<p><i>Apartments are required to have the following minimum internal areas: 50 m² (1B), 70 m² (2B), 90 m² (3B)</i></p> <p><i>Additional bathrooms increase the minimum internal area by 5 m² each A fourth bedroom and further additional bedrooms increase the minimum internal area by 12 m² each</i></p> <p><i>Every habitable room must have a window in an external wall with a total minimum glass area of not less than 10% of the floor area of the room. Daylight and air may not be borrowed from other rooms</i></p>	<p>The proposed modifications to the internal configuration of several apartments are intended to improve the layouts and functionality of the apartments.</p> <p>The internal floor area and configurations of the apartments would continue to comply with these requirements.</p> <p>The apartments generally exceed these requirements.</p>	Yes
4D 2 - Apartment size and layout	<ol style="list-style-type: none"> <i>1. Habitable room depths are limited to a maximum of 2.5 x the ceiling height</i> <i>2. In open plan layouts (where the living, dining and kitchen are combined) the maximum habitable room depth is 8m from a window</i> 	All apartments would continue to comply with these requirements.	Yes
4D 3- Apartment size and layout	<ol style="list-style-type: none"><i>1. Master bedrooms have a minimum area of 10m² and other bedrooms 9m² (excluding wardrobe space)</i>	All bedrooms would continue to comply with these requirements.	Yes

	<p>2. Bedrooms have a minimum dimension of 3m (excluding wardrobe space)</p> <p>3. Living rooms or combined living/dining rooms have a minimum width of:</p> <ul style="list-style-type: none"> • 3.6 m for studio and 1 bedroom apartments • 4 m for 2 and 3 bedroom h 		
4E - Private open space and balconies	<p>All apartments are required to have primary balconies as follows: Studio apartments – 4 m² 1 bedroom apartments – 8 m², minimum depth 2 m 2 bedroom apartments 10 m² minimum depth 2 m 3+ bedroom apartments 12 m² minimum depth 2.4 m</p> <p>The minimum balcony depth to be counted as contributing to the balcony area is 1.0 m</p> <p>2. For apartments at ground level or on a podium or similar structure, a private open space is provided instead of a balcony. It must have a minimum area of 15 m² and a minimum depth of 3 m</p> <p>Primary private open space and balconies are appropriately located to enhance liveability for residents.</p> <p>Private open space and balcony design is integrated into and contributes to the overall architectural form and detail of the building.</p> <p>Private open space and balcony design maximises safety.</p>	There are no changes proposed to the approved balconies and courtyards.	Yes
4F - Common circulation and spaces	<p>1. The maximum number of apartments off a circulation core on a single level is eight</p>	There are no changes proposed to the number of apartments on each level.	Yes
4G - Storage	<p>Studio apartments- 4 m³ 1 bedroom apartments- 6 m³ 2 bedroom apartments- 8 m³ 3+bedroom apartments- 10 m³</p>	There are no changes proposed to the storage areas provided within the building development.	Yes

Overall, the proposal is satisfactory having regard to the design criteria specified in the Apartment Design Guide.

North Sydney Development Control Plan 2013

NORTH SYDNEY DEVELOPMENT CONTROL PLAN 2013 PART B - SECTION 1 - Residential Development		
	Complies	Comments
1.2 Function		
Section 1.2.1 - Mixed residential population	Yes	There are no changes proposed to the approved unit mix.
Section 1.2.2 - Universal Design and Adaptable Housing	Yes	There are no changes proposed to the provision of adaptable housing.
Section 1.2.3 - Maintaining residential accommodation	N/A	The provisions relating to the retention of residential accommodation were considered for the original application and are not relevant to the proposed modification application. There is no change to the number of apartments within the approved development.
Section 1.2.4 - Maintaining affordable housing	N/A	The provisions relating to the retention of affordable rental housing were considered for the original application and are not relevant to the proposed modification application.
1.3 Environmental criteria		
Section 1.3.1 - Topography	Yes	There are no changes proposed to the siting of the development or extent of excavation. The approved form of the building which steps down the slope of the land towards the southeast would be retained.
Section 1.3.6 - Views	Yes	Having regard to the assessment made under the original application, the proposed modifications are unlikely to cause any additional impacts on views enjoyed from surrounding properties. The proposed modifications are largely consistent with the approved built form, and where the height of the building is proposed to be increased relates to the lift overruns and an extension of the approved roof form which would be backdropped or obscured by other built elements.
Section 1.3.7 - Solar access	Yes	<p>The proposed modifications are largely contained within the existing building envelope and would not result in any material additional overshadowing to adjoining properties.</p> <p>The proposed increase to the height of the lift overruns and proposed extension of the roof form over the balcony of apartment 401 would cause additional overshadowing which would be contained within the extent of overshadowing caused by the approved development between 9:00am to 3:00pm in mid-winter given that these structures are set back from the edges of the roof of the level below.</p> <p>The proposed introduction of an edge beam detail surrounding the southern side of the roof form would result in negligible additional overshadowing to the adjoining residential flat building to the south (No. 129 Holt Avenue). There would not be any significant additional overshadowing caused by this design detail.</p>
Section 1.3.8 - Acoustic privacy	Yes	The proposed modifications would not give rise to any additional acoustic privacy impacts. The proposed modifications to the internal layouts of apartments and associated window fenestration are relatively minor and would be inconsequential to the amenity of the surrounding properties.
Section 1.3.9 - Vibration	Yes	The proposed modifications would not give rise to any potential additional vibration impacts. Condition C33 would address the potential vibration impacts of plant and equipment.

Section 1.3.10 - Visual privacy	Yes	The proposed modifications would not give rise to any additional visual privacy impacts. The proposed modifications to the internal layouts of apartments, associated window fenestrations and external privacy treatments are consistent with the approved development and are relatively minor in nature. The proposed modifications include additional privacy screens for some apartments which would further improve the privacy between the apartments and surrounding properties.
1.4 Quality Built Form		
Section 1.4.5 - Siting	Yes	There are no changes proposed to the siting of the building.
Section 1.4.6 - Front Setback	Yes	There are no changes proposed to the front setback.
Section 1.4.6 - Setbacks (Side and Rear) Section 1.4.4 - Laneway	Yes	There are no changes proposed to the building setbacks. The proposed additional roof awning over the balcony of apartment 401 complies with the BHP setback provision measured from the rear boundary.
Section 1.4.7 - Form, massing and scale	Yes	There is no substantive change to the form, massing and scale of the development.
Section 1.4.8 - Built form character	Yes	The proposed modifications would not significantly alter the built form, character of the development. The proposed changes to external privacy treatments and solar shading devices are consistent with the approved façade design.
Section 1.4.9 - Building entry	Yes	There are no changes proposed to the location of the building entry, however, the front entry path has been redesigned to provide a ramped entry in place of the approved stairs which would improve the accessibility of the development.
Section 1.4.10 - Roofs	Yes	There are no changes proposed to the roof form. The introduction of an edge beam detail would break down the perceived thickness of the roof edge.
Section 1.4.12 - Colours and materials	Yes	There are no changes proposed to the approved materials and finishes schedule.
Section 1.4.13 - Balconies - apartments	Yes	There are no changes proposed to the approved balconies and courtyards.
Section 1.4.14 - Front fences	Yes	There are no changes proposed to the approved front fence.
1.5 Quality urban environment		
Section 1.5.1 - High quality residential accommodation	Yes	These provisions largely mirror the ADG requirements and are considered to be satisfactorily achieved as outlined above (Refer to ADG compliance table above).
Section 1.5.3 - Safety and security	Yes	There are no changes proposed that would detract from the safety or security of the development.
Section 1.5.4 - Vehicle Access and Car Parking	Yes	There are no changes proposed to the vehicle access or car parking arrangements.
Section 10.2.1 – Parking Rates	Yes	There are no changes proposed to the number of parking spaces or allocation to units.
Section 1.5.5 - Site Coverage Section 1.5.6 - Unbuilt Area and Landscaped Area	Yes	The proposed modifications would not alter the level of compliance with the relevant site coverage, unbuilt upon area or landscaped areas. The proposed modifications are essentially contained within the existing building envelope. The minor changes to the front entry pathway to remove the approved stair arrangement would marginally increase the landscaped area and reduce unbuilt upon area.
Section 1.5.9 - Private and Communal Open Space	Yes	There are no changes proposed to the approved communal open space or private open space arrangements
Section 1.5.12 - Garbage storage	Yes	There are no changes proposed to the approved waste management arrangements or facilities.
Section 1.5.13 - Site Facilities	Yes	There are no changes proposed to the approved site facilities. A replacement tree is proposed to be relocated to improve the access to the fire hydrant booster.
1.6 Efficient use of resources		
BASIX	Yes	A valid revised multi-dwelling BASIX certificate has been provided.

Part C - Section

The subject site is located within the **Murdoch Neighbourhood** of the **North Cremorne Planning Area**.

The proposed modifications would not detract from the character of the areas having regard to the desire future character and desired built form identified in Sections 5.5.2 and 5.5.3 of the character statement of Part C in NSDCP 2013.

SECTION 7.11 CONTRIBUTIONS

The development consent was subject to a condition requiring payment of a development contribution levied under Section 7.11 of the Act, calculated in accordance with Council's Infrastructure Contributions Plan.

The proposed modifications would increase the retail component by 9sqm and therefore the contribution for the commercial component is to be adjusted to account for the minor increase in workers (from 4.0 to 4.2 workers). There is no change to the number or size of dwellings and therefore the contribution for the residential component would remain unchanged. The calculation is made using the July 2022 CPI value which applied at the time consent was granted. The monetary contribution would be indexed at the time of payment to account for any subsequent CPI increases.

The levy would provide a contribution for the public amenities/ services detailed in column A below and, for the amount detailed in column B below:

A	B (\$)
Open space and recreation facilities	\$194,760.71
Public domain	\$107,153.14
Active transport	\$6,115.90
Community facilities	\$39,118.60
Plan administration and management	\$5,190.60
The total contribution is	\$352,338.95

The total contribution payable is **\$352,338.95**, an increase of \$661.52. Condition C43 is recommended to be amended accordingly.

ALL LIKELY IMPACTS OF THE DEVELOPMENT

All likely impacts of the proposed development have been considered within the context of this report.

ENVIRONMENTAL APPRAISAL

CONSIDERED

- | | |
|--|-----|
| 1. Statutory Controls | Yes |
| 2. Policy Controls | Yes |
| 3. Design in relation to existing building and natural environment | Yes |

4.	Landscaping/Open Space Provision	Yes
5.	Traffic generation and Carparking provision	Yes
6.	Loading and Servicing facilities	Yes
7.	Physical relationship to and impact upon adjoining development (Views, privacy, overshadowing, etc.)	Yes
8.	Site Management Issues	Yes
9.	All relevant s4.15(1) considerations of Environmental Planning and Assessment (Amendment) Act 1979	Yes

SUBMITTERS CONCERNS

The development application was notified in accordance with Council's Community Engagement Protocol from 24 March 2023 until 11 April 2023 and 14 April 2023 until 28 April 2023.

- *The proposed modifications seek to further vary the height of buildings development standard. The proposed height should have been identified in the original application, rather than seeking to further increase the height once an approval was granted.*

Whilst ideally the need to achieve certain internal heights should have been addressed in the original application, the proposed modifications have been assessed having regard to the reasons for approval of the original application, including the written justification for the height variations, and the potential impacts of the modifications.

- *The increased lift overrun heights would result in additional amenity impacts for surrounding properties.*

The relatively minor increases to the height of the respective lift over runs would not give rise to any additional amenity impacts. Overshadowing caused by the increased height would be consistent with the overshadowing caused by the approved development given that the lift overruns are located centrally within the building footprint and are recessed back from the level below.

- *Objection to any further increase to the approved building envelope.*

The proposed modification that would alter the building envelope have been considered in the context of the approved development and the relevant development controls, such as site coverage and setbacks, intended to control the building envelope. The proposed modifications would not substantively alter the bulk and scale of the approved development and would not give rise to any additional material impacts on the amenity of the surrounding properties or the character of the area.

SITE SUITABILITY

The subject site is considered to be suitable for the proposed development.

PUBLIC INTEREST

There are no matters raised in which approval of the application would not be in the public interest.

HOW THE COMMUNITY VIEWS WERE TAKEN INTO CONSIDERATION

The application, and subsequent amended application was notified in accordance with Council Community Engagement Protocol from 24 March 2023 until 11 April 2023 and 14 April 2023 until 28 April 2023. The issues raised in submissions have been addressed above in this assessment report.

CONCLUSION + REASONS

The modification application meets the requirements of Section 4.56 of the Act and the assessment has taken into consideration reasons for approval of the original application and the matters for consideration outlined in Section 4.15(1) of the Act, which have been satisfied. The proposed development is permissible, meets the development standards and relevant provisions of NSLEP 2013, except for the height of buildings development standard in Clause 4.3, and is generally in accordance with the objectives of the ADG and NSDCP 2013.

The proposed modifications resulting in new or varied variations to the height of building development standard in Clause 4.3 in NSLEP 2013 have been considered having regard to the reason for approval of the original application and have been assessed having regard to the objectives of the development standard itself. The proposed modifications are consistent with the objectives given that the proposed modifications would not substantively alter the bulk and scale of the approved development and would not give rise to any additional material impacts on the amenity of the surrounding properties or the character of the area.

The proposed modifications are consistent with the approved development and primarily involve improvements to the layout and function of the apartments, some of which are derived from the detailed construction documentation of the development which usually occurs in the preparation of the construction certificate.

The application is therefore considered reasonable and is recommended for approval.

RECOMMENDATION

PURSUANT TO SECTION 4.16 OF ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979 (AS AMENDED)

THAT the North Sydney Local Planning Panel, exercising the functions of Council, as the consent authority, under Section 4.56 of the EP&A Act grant consent to modify Development Consent DA239/2021 for excavation (not including demolition) and construction of a part four-part five storey mixed use development with basement parking, and stratum subdivision on land at No 131-139 Holt Avenue, Cremorne only so far in so:

A. Impose Condition A development in accordance with Plan (S4.56 Modifications)

Plan Nos.	Issue	Description	Prepared by	Dated
DA.02	E	Site Plan	Brick Architecture "HELM"	12 May 2023
DA.10	D	Ground Floor Plan		12 May 2023
DA.11	C	Level 1		27 January 2023
DA.12	C	Level 2		27 January 2023
DA.13	D	Level 3		27 January 2023
DA.14	D	Level 4		27 January 2023
DA.15	C	Roof Level		27 January 2023
DA.19	C	Elevation - South		27 January 2023
DA.20	C	Elevation - West		27 January 2023
DA.21	D	Elevation - North		27 January 2023
DA.22	D	Elevation - East		27 January 2023
DA.23	D	Section A-A		27 January 2023
DA.24	D	Section B-B		27 January 2023
DA.25	D	Section C-C		27 January 2023
DA.45	B	Section D-D		27 January 2023
DA.54	B	Section E-E		27 January 2023
DA.55	B	Section F-F		27 January 2023
DA.35	C	Adaptable Apartments 1		27 January 2023
DA.36	C	Adaptable Apartments 1		27 January 2023

B. Amend conditions C27, C43, C44, C45 and E15.

Tree Protection Measures to be shown on Construction Drawings

C27 The tree protection measures contained in the arborist report prepared by Arborist Network, dated **19 March 2021**, shall be shown clearly on the Construction Certificate drawings. Plans and specifications showing the said tree protection measures must be submitted to the Certifying Authority for approval prior to the issue of any Construction Certificate. The Certifying Authority must ensure the construction plans and specifications submitted, referenced on and accompanying the issued Construction Certificate, fully satisfy the requirements of this condition.

Stormwater and other utilities shall not be directed through the TPZ of any protected tree where possible, but where not feasible are to be approved by the Project Arborist and installed using non-invasive excavation methods that are to be undertaken only under the supervision of the Project Arborist, with no roots greater than 40mm to be severed.

Plans and specifications showing the stormwater routing measures must be submitted to

the Certifying Authority for approval prior to the issue of Construction Certificate CC1.

(Reason: To ensure that appropriate tree protection measures are shown on construction drawings)

Section 7.11 Development Contributions

C43. A monetary contribution pursuant to the provisions of Section 7.11 of the Environmental Planning and Assessment Act 1979, in accordance with the North Sydney Council's Contribution Plan for the public amenities/services detailed in column A below and, for the amount detailed in column B below, must be paid to Council.

A	B (\$)
Open space and recreation facilities:	\$194,760.71
Public domain:	\$107,153.14
Active transport:	\$6,115.90
Community facilities:	\$39,118.60
Plan administration and management:	\$5,190.60
Total:	\$352,338.95

Indexation

The monetary contribution required under this consent will be indexed at the time of payment in accordance with quarterly movements in the Consumer Price Index (All Groups Index) for Sydney as published by the Australian Bureau of Statistics.

Timing of Payment

The contribution must be paid to Council prior to issue of any Construction Certificate.

Deferred payments will not be accepted.

A copy of the North Sydney Contribution Plan can be viewed at North Sydney Council's Customer Service Centre, 200 Miller Street, North Sydney or downloaded via Council's website at www.northsydney.nsw.gov.au.

(Reason: To provide for local infrastructure identified in the North Sydney Council Local Contributions Plan 2020)

Security Deposit/Guarantee Schedule

C44. All fees and security deposits/guarantees in accordance with the schedule below must be provided to Council prior to the issue of any Construction Certificate:

Security deposit/ guarantee	Amount (\$)
Street Tree Bond (on Council Property)	\$50,000.00
Infrastructure Damage Bond	\$72,000.00
Drainage Construction Bond	\$100,000.00
Engineering Construction Bond	\$43,000.00
Others	

TOTAL BONDS	\$265,000.00
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Note: The following fees applicable

Fees	
Section 7.11 Contribution	\$352,338.95
TOTAL FEES	\$352,338.95

The security required by the above schedule must be provided by way of a deposit with the Council; or other such guarantee that is satisfactory to Council (such as a bank guarantee). Any guarantee provided as security must name North Sydney Council as the nominated beneficiary and must not be subject to an expiry date.

(Reason: Compliance with the development consent)

BASIX Certificate

C45. Under clause 97A(3) of the Environmental Planning and Assessment Regulation 2000, it is a condition of this development consent that all the commitments listed in BASIX Certificate No. **1189674M_03**, dated **27 February 2023** for the development are fulfilled. Plans and specifications complying with this condition must be submitted to the Certifying Authority for approval prior to the issue of Construction Certificate CC3. The Certifying Authority must ensure that the building plans and specifications submitted, referenced on and accompanying the issued Construction Certificate, fully satisfy the requirements of this condition.

(Reason: To ensure the proposed development will meet the Government's requirements for sustainability and statutory requirements)

Protection of Trees

E15 All trees required to be retained, as part of this consent must be protected from any damage during construction works in accordance with AS4970-2009. All recommendations contained within the tree report prepared by Arborist Network dated **19 March 2021** must be implemented for the duration of the works.

In the event that any tree required to be retained is damaged during works on the site, notice of the damage must be given to Council forthwith.

Notes:

- a. If the nominated tree is damaged to a significant degree or removed from the site without prior written approval being obtained from Council, the issuing of fines or legal proceedings may be commenced for failure to comply with the conditions of this consent.
- b. An application to modify this consent pursuant to Section 4.55 of the Environmental Planning and Assessment Act 1979 will be required to address the non-compliance with any of the conditions of consent relating to the retention of nominated trees, and Council may require tree replenishment.

(Reason: Protection of existing environmental infrastructure and community assets)

Michael Stephens
SENIOR ASSESSMENT OFFICER

Robyn Pearson
TEAM LEADER ASSESSMENTS

Stephen Beattie
MANAGER OF DEVELOPMENT SERVICES

Date:

