



Planning &
Environment

MODIFICATION REQUEST:

Woolooware Bay Town Centre Concept Plan

MP 10_0229 MOD 1

Modification to approved building envelopes and requirements of the Concept Plan

Secretary's
Environmental Assessment Report
Section 75W of the
Environmental Planning and Assessment Act 1979

July 2014

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Published July 2014
Department of Planning & Environment
www.planning.nsw.gov.au

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1. BACKGROUND

The purpose of this report is to assess a modification application to the approved Concept Plan (MP 10_0229) for a mixed use development at the Cronulla Sharks site (now known as the Woollooware Bay Town Centre) pursuant to Section 75W of the *Environmental Planning and Assessment Act, 1979* (EP&A Act). The application seeks to amend the approved residential building envelopes, increase the area of the outdoor deck of the Club, include a requirement relating to penthouse apartments and use of rooftop areas, and modify Future Environmental Assessment Requirements (FARs).

1.1. Site Description

The site, 461 Captain Cook Drive, Woollooware, is located on the northern side of the Captain Cook Drive, approximately 20 kilometres south of the Sydney CBD. The site is located within the Sutherland Local Government Area (**Figure 1**).



Figure 1: Concept Plan site outlined in red

1.2. Previous Approvals

On 27 August 2012, the Planning Assessment Commission (PAC) approved a Concept Plan (MP 10_0229) for the mixed use development, which included:

- staging of the proposal into three stages;
- use of the site for a mixed use development with associated public open space;
- indicative building envelopes (ranging from 8-14 storeys) for the residential and retail / club precinct;
- ground and above ground car parking;
- road works to support the development;
- public pedestrian and cycle paths / boardwalks;
- landscaping areas throughout the site;
- sales and marketing facilities including display units, etc; and
- subdivision of Lot 11 DP 526492 into two allotments (**Figure 2**).



Figure 2: Approved Concept Plan layout

On 20 August 2013, the PAC approved the Project Application (MP 10_0230) for the retail / club precinct of the Woollooware Bay Town Centre - Stage 1, which included:

- partial demolition of the existing Leagues Club and other structures within the site;
- construction of a new retail centre with a full-line supermarket, food retail, mini-major tenancies, speciality retail, dining tenancies and medical and leisure uses;
- fitout of Levels 3 and 4 of the existing building for the Leagues Club;
- public domain works;
- infrastructure works providing access to the site off Captain Cook Drive;
- provision of a shuttle bus service and new bus and taxi bays on Captain Cook Drive;
- stormwater management and site remediation works;
- loading docks and on-site car parking spaces;
- development contributions; and
- stratum subdivision.

On 10 February 2014, the Stage 1 Project was modified by reconfiguring the retail and Club development on Levels 1, 3 and 4 and amending the stratum subdivision plans.

On 22 August 2013, the Joint Regional Planning Panel (JRPP) approved the first stage of the residential development on the site (Buildings E and F) which consisted of:

- the demolition of existing structures;
- construction of a 2 level podium containing car parking, communal facilities and estate management office;
- construction of 3 residential flat buildings above the podium level containing 220 dwellings; and
- provision of infrastructure and services including access roads, associated landscaping and public domain works.

2. PROPOSED MODIFICATION

The proposed modification was submitted to the department on 12 February 2014 and amended on 27 February 2014, 20 March 2014 and 16 May 2014.

In summary, the proponent seeks to modify the Concept Approval by:

- increasing the area of the Club outdoor deck area by 112m² (from 943m² to 1,055m²);
- increasing the maximum plant room height of Building F to facilitate a communal rooftop cinema;
- increasing the maximum plant height of Building D;
- increasing the maximum parapet and plant room heights of Building E1 and G;
- increasing the stepped, overall parapet height and upper level envelope of Building G;
- including a Term of Approval (ToA) to allow for the future assessment of penthouse apartments and roof top open space areas outside of the approved Concept Plan envelopes;
- modifying Future Assessment Requirements (FARs) relating to activation of frontages to allow for further consideration by the consent authority;
- including a note in Schedule 3 – FAR to clarify that only relevant FARs applicable to individual applications are considered by the consent authority during the future assessment of applications.

Further details of the proposed modification are provided in **Appendix A**.

3. STATUTORY CONTEXT

3.1. Continuing Operation of Part 3A to Modify Approvals

Under Clause 3 of Schedule 6A of the EP&A Act, Section 75W of the EP&A Act (as in force immediately before its repeal on 1 October 2011), continues to apply for the purpose of the modification of a Concept Plan approved before or after the repeal of Part 3A.

Consequently, this report has been prepared in accordance with the requirements of Part 3A and associated regulations. The department may approve or disapprove the modification to the Concept Plan under Section 75W of the EP&A Act.

3.2. Modification of a Minister's Approval

The modification application has been lodged with the department pursuant to Section 75W of the EP&A Act. Section 75W provides for the modification of a Minister's approval including "revoking or varying a condition of the approval or imposing an additional condition of the approval".

The Minister's approval for a modification is not required if the project as modified will be consistent with the existing approval. However, in this instance, the proposal seeks to modify specific requirements of the approved Concept Plan which requires further assessment, therefore approval to modify the application is required.

3.3. Environmental Assessment Requirements

Section 75W(3) of the EP&A Act provides that the department may notify the proponent of Secretary's Environmental Assessment Requirements (SEARs) with respect to the proposed modification that the proponent must comply with before the matter will be considered by the Minister.

No additional environmental assessment requirements were issued with respect to the proposed modifications, as sufficient information was provided to the department in order to consider the application and the issues raised remain consistent with the key assessment requirements addressed in the original application.

3.4. Delegated Authority

In accordance with the then Minister for Planning and Infrastructure's delegation of 14 September 2011, the Director of Industry, Key Sites and Social Projects may determine the application as:

- the relevant local council has not made an objection;
- a political disclosure statement has not been made; and
- there are less than 10 public submissions in the nature of objections.

4. CONSULTATION AND SUBMISSIONS

In accordance with Section 75X of the EP&A Act and clause 8G of the EP&A Regulation, the department is required to make the modification request publicly available. The modification request was made available on the department's website on 19 February 2014 and referred to Sutherland Shire Council for comment (additional information also referred on 27 February 2014). Due to the nature of the proposed modification, the modification request was not exhibited by any other means.

Sutherland Shire Council

Sutherland Shire Council provided the following comments:

- no objection is raised to the proposed modifications of the approved residential building envelopes for Building E1 and G, provided that the building is capable of providing units which maximise solar access, ventilation, and general amenity and also be capable of complying with State Environmental Planning Policy No. 65 - Design Quality of Residential Flat Development (SEPP 65);
- the proposed rooftop communal area on Building F would have capacity to impact on the effectiveness of ESD measures incorporated in JRPP's approval of Building F;
- the proposed amendment to FARs may introduce ambiguity in the assessment of active frontages. Council recommends that the FARs be amended to include a reference to being deemed appropriate by Council; and
- further information should be provided relating to the proposed increase to the Club deck area.

On 20 March 2014, the proponent submitted a response to Council's submission advising that:

- a future Section 96 application is to be submitted to address Council's concerns relating to compliance with the ESD provision of the JRPP's approval for Building F;
- future DAs for Buildings E1 and G will address provisions of SEPP 65;
- the FARs relating to active frontages should include a reference to being deemed appropriate by the Consent Authority (rather than Council); and
- a future Section 75W modification to the Stage 1 Project Approval will be submitted to the department that will illustrate the increased area of the Club deck.

Council advised it has no further comments and requested that the department (as determining authority) consider the merits of the proposal.

On 16 May 2014, the proponent amended the application to increase the maximum parapet and plant room heights of Buildings E1 and G. Council raised no concerns with the proposed amendments to the building envelopes.

5. ASSESSMENT

The key issues in the department's assessment are:

- modifications to the approved building envelopes;
- inclusion of a requirement for penthouse apartments and use of rooftop areas;
- modification to the approved club deck area;
- modification to Future Environmental Assessment Requirements (FAR); and
- inclusion of a Note in Schedule 3 relating to consideration of relevant FARs.

5.1. Modification to Building Envelopes

As a result of further design development and the identification of more efficient use of space, the proponent seeks to modify the approved residential building envelopes D, E1, F and G. The detail and consideration of the proposed change to each of the envelopes are set out below.

Building D

The proponent seeks to increase the plant height of Building D by 0.5 metres. Council provided no comments on the modification to Building D. The department notes that the minor increase of 0.5 metres will not be discernable in the overall context of the site, and raises no objections to this minor increase in height.

Building E1

The proponent seeks to increase the parapet height of the northern portion of Building E1 by 3.2 metres to match the approved plant height of RL 50.85. It is also proposed to increase the plant height by 0.75 metres. The proponent advised that the increase is sought to accommodate an additional level of apartments.

Council does not raise any concerns with the increases in heights of Building E1, subject to the proponent demonstrating in future development applications the buildings have adequately considered the provisions of SEPP 65.

The department notes that the approved height of Building E1 is in the order of 12 storeys, being RL 47.65 to the parapet and RL 50.85 to the top of plant. The increase in the parapet height will read as an additional storey resulting in a 13 storey building (over a 2 storey) podium when viewed from the north.

Building height was a key issue in the department's assessment of the Concept Plan application. The department has considered the proposed increase in height and supports the increased parapet height on the basis that:

- Building E1 is located within the centre of the residential precinct and is not considered to impact upon areas outside of the precinct;
- adjoining buildings to the north (Building G) and east (Building B) are 12 storeys (above a 2 storey podium) which is a similar height to that proposed;
- minor additional shadowing impacts occur only within the development;
- visual impacts are minimal when considering the distance to the nearest residential properties to the south and southwest;
- the uppermost level of apartments can be designed as a lighter and subservient component of the building that may incorporate rooftop private open space and assist in screening plant;
- the increase in height is unlikely to affect the ability to achieve a good level of residential amenity in accordance with SEPP 65, noting that FAR 5 requires that future applications demonstrate compliance with SEPP 65 and the accompanying Residential Flat Design Code (RFDC); and
- the detailed design of the additional storey can be considered by Council in a future development application.

In addition, the originally approved plant height was considered to be of an appropriate height and bulk which in terms of the overall development had an acceptable impact upon the locality. An increase of 0.75 metres is considered minor in the context of the overall scale of the building and is unlikely to result in adverse visual impacts.

On this basis, the proposed increases in the parapet and plant heights are supported.

Building F

The proponent seeks to increase the approved plant height of Building F by 1.15 metres to cater for the inclusion of a rooftop cinema which, if approved, would require the provision of a lift to the rooftop.

Council supports the amendments to Building F to provide additional communal areas including rooftop cinema, however raised concern that the use of this space would impact on the ability to comply with the ESD measures imposed on the JRPP approval of the DA for Building F.

Council has advised that a condition was imposed on this consent requiring that photovoltaic (PV) cells to power services provided within the communal areas, be provided to the maximum capacity permitted by the available roof areas. The approval of a rooftop cinema on Building F would reduce the amount of roof area available to accommodate PV cells.

The proponent has advised that it would lodge a Section 96 application seeking the detailed approval of the rooftop communal areas. It is also intended that this application would demonstrate that the intent of Condition 29 could be achieved and that the provision of the communal area does not impede the ability of the proposal to comply with this condition.

The department notes the details of this application would be assessed at the discretion of Council which may include the details of ESD measures provided for the building.

The department supports the principle of the use of the rooftop area for a communal purpose and notes that Council may also consider the detailed design and parameters concerning the use of any cinema type function as part of any future application. On this basis the increase in plant height is supported.

Building G

The proponent seeks to modify Building G as follows:

- increased length of a portion of the upper level envelope by 7 metres toward the western side of the boundary and refinement of the eastern façade (extending the building envelope length from 43.5 metres to 51.5 metres);
- increased building envelope width at lower levels by 3 metres (from 21 metres to 24 metres); and
- increased height of parapet of the northern component of the building by 3.2 metres and an associated increase to the plant height by 1.25 metres (to cater for an additional level of apartments).

Council does not raise any concerns with the increase in height and building envelope amendments for Buildings G (**Figure 3** and **4** provide a comparison between approved and proposed amendments), subject to the proponent demonstrating in future development applications the buildings have adequately considered the provisions of SEPP 65.

The department has considered the proposed modifications to the length and width of the envelope and the increased height below:

Increased length and width of the building envelope

Although the building envelope is proposed to be extended by approximately 7 metres towards the western boundary (comparing **Figure 3** and **4**), the department notes that the nearest residential properties are located approximately 400 metres to the southeast and southwest of the site. In this regard, the proposed building envelope is not likely to cause any negative impacts in relation to view loss, privacy or residential amenity.

The department also considers that the amended envelope will provide greater opportunities for building articulation along the western façade, which is to be considered by Council during the assessment of the future application for this residential building.

The modification to the eastern façade is also supported as it provides greater opportunities for development within the boundaries than the previously approved envelope, which provided a sharp diagonal corner.

In regard to Council's concerns over compliance with SEPP 65 and the RFDC, the department notes that the proposed 24 metre envelope includes areas of approximately 2 metres in depth to the north and south to cater for balconies. This has the effect of reducing the actual building depths to approximately 20 metres or less, which while greater than the recommended 18 metre maximum building depth under the RFDC provides opportunities for varying apartment layouts on either side of an internal corridor.

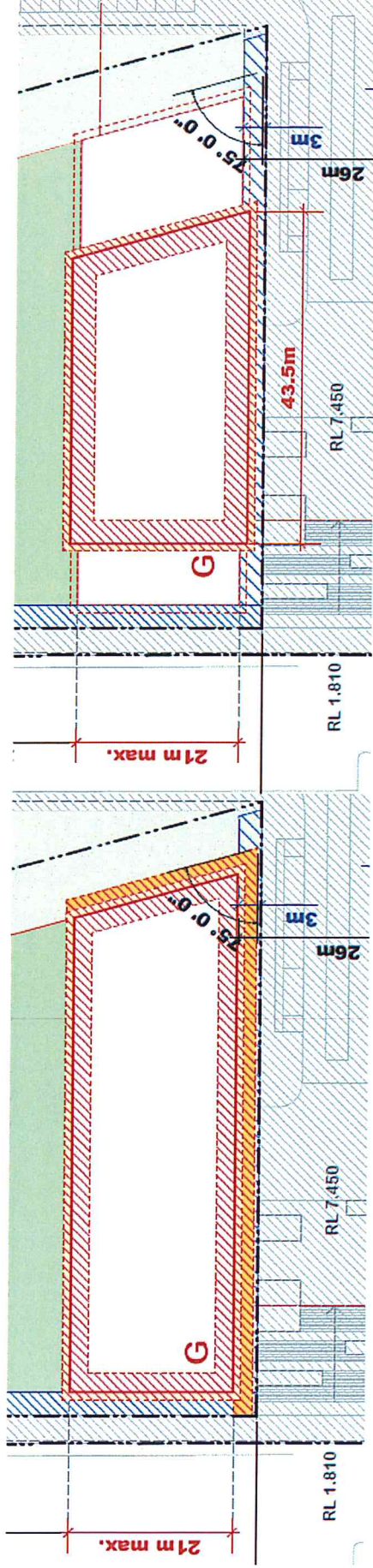


Figure 3: Approved lower (left) and upper (right) level envelope of Building G

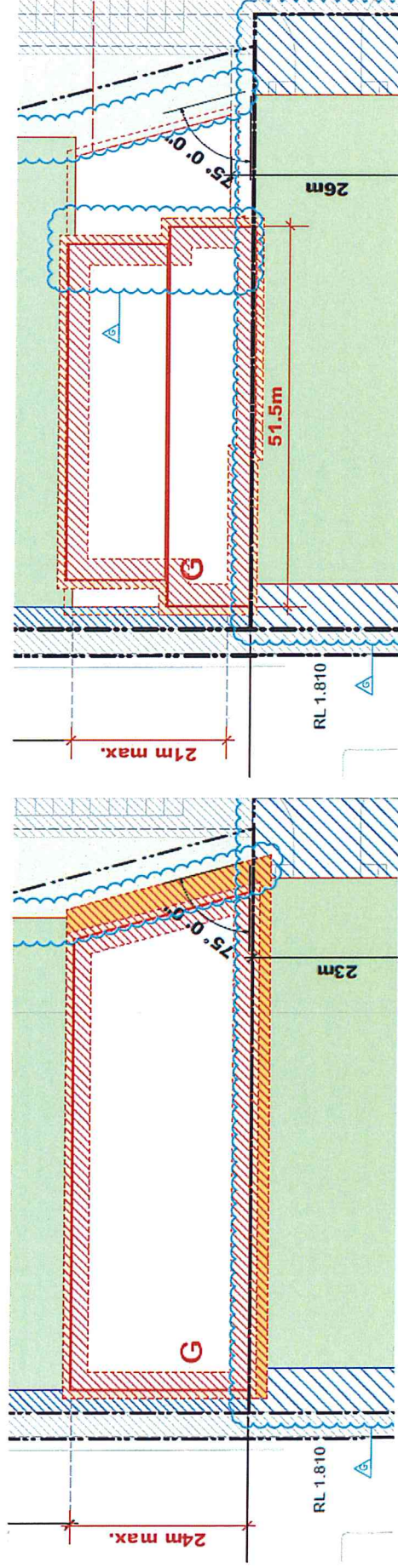


Figure 4: Proposed lower (left) and upper (right) level envelope of Building G (Source: Proponent's addendum information)

The proponent has submitted an indicative floor plan for Building G which demonstrates that the proposed revised building envelope will result in improved residential amenity (than the approved envelope) in terms of solar access, aspect and cross ventilation (**Figure 5**).

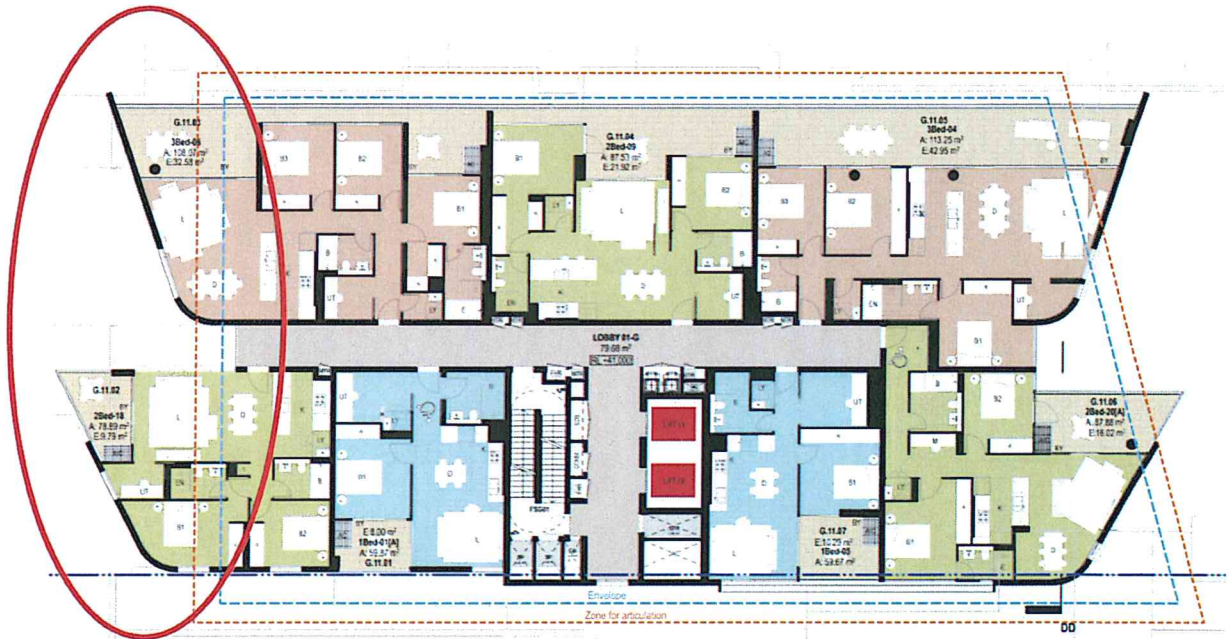


Figure 5: Indicative floor plan of Level 11 of Building G (Source: Proponent's addendum information). The red circle illustrates the part of the proposal which is outside of the approved building envelope (Figure 3). The building envelope is proposed to be modified as indicated to include this area (Figure 4).

As stated above, FAR 5 requires that future applications demonstrate compliance with SEPP 65 and the accompanying RFDC. The proponent will therefore need to demonstrate in future applications that the amenity of apartments within Building G has been addressed.

Increased parapet and plant height

The department notes that the approved height of Building G is RL 47.65 to the parapet and RL 50.85 to the top of plant (same as Building E1). The increase in the parapet height will read as an additional storey resulting in a 13 storey building (over a 2 storey podium) when viewed from the north.

The department has considered the proposed increase in height and supports the revised parapet height on the basis that:

- the additional height is located predominantly on the northern component of the building;
- the adjoining building to the south (Building E1) is the same height to that proposed;
- shadowing impacts occur only within the development and onto the southern component of Building G, which may either be plant area or a rooftop garden;
- visual impacts are minimal when considering the 400 metre distance to the nearest residential properties (off-site) to the south and southwest;
- the uppermost level of apartments can be designed as a lighter and subservient component of the building that may incorporate rooftop private open space and assist in screening plant;
- the increase in height is unlikely to affect the ability to achieve a good level of residential amenity in accordance with SEPP 65, noting that FAR 5 requires that future applications demonstrate compliance with SEPP 65 and the accompanying Residential Flat Design Code (RFDC); and

- the detailed design of the additional storey can be considered by Council in a future development application.

In addition, the originally approved plant height was considered to be of an appropriate height and bulk which in terms of the overall development had an acceptable impact upon the locality. An increase of 1.25 metres is considered acceptable in the context of the overall scale of the building and is unlikely to result in adverse visual impacts.

On this basis, the proposed modifications to Building G are supported.

5.2. Inclusion of Penthouse Apartments and Use of Rooftop Areas Requirements

The proponent seeks to include a Term of Approval to be considered during the assessment of all future buildings within the residential precinct. The department notes that this would apply to Buildings A, B, C, D noting that Buildings E and F have been approved the JRRP, while Building E1 and G envelopes are proposed to be similarly modified as part of this application.

The ToA provides opportunities for variations to be considered outside of the approved Concept Plan envelopes during future applications to be considered by Council and is proposed as follows:

A8. Penthouse Apartments and Use of Rooftop Areas

Minor variations to the maximum parapet height are acceptable in future applications for residential development, but only for the following reasons:

- **provision of private/communal open space on rooftop areas; and**
- **provision of apartments.**

When considering if a variation is minor, the consent authority is to be satisfied that:

- **no portion of the building exceeds the maximum plant height;**
- **the protrusion is well integrated into the design of the building;**
- **where possible the protrusion is to screen plant material; and**
- **the variation does not result in any adverse environmental impacts such as significant overshadowing or an adverse visual impact.**

The proponent notes that the requirement is applicable only when open space or apartments are contained wholly within the maximum plant height limit for the building and is intended to provide flexibility to enable plant to be screened by apartments where appropriate to facilitate the use of rooftop spaces.

Council provided no comments on the proposed inclusion of the ToA. The department notes that Council has previously supported variations to the parapet height outside of the approved envelope during the assessment of Building E.

The approved parapet and plant heights of the Buildings A, B, C and D are outlined in the following table:

<i>Building</i>	<i>Height in storeys (max)</i>	<i>Parapet height</i>	<i>Plant height</i>
A	7 storeys + 2 storey podium	RL 32.15	RL 35.35
B	12 storeys + 2 storey podium	RL 47.65	RL 50.85
C	2 storeys + 1 storey podium	RL 13.55	N/A
D	6 storeys + 2 storey podium	RL 29.05	RL 32.25

The proposal seeks to increase the parapet height up to the maximum plant height, resulting in a maximum increase of 3.2 metres. This additional height, could potentially contain an additional storey of apartment floor space within each building. The department notes that the

impacts of the additional height across Buildings A to D are likely to be similar to that assessed for Buildings E1 and G (refer to **Section 5.1**).

The department has considered the proposed increase in height and notes the following key points:

- the buildings are located on the eastern component of the residential precinct with the additional heights less than the approved heights of the other buildings on the western component;
- the increase to Building A will potentially read as a 8 storey building (over a 2 storey podium) from Captain Cook Drive. The additional storey in this location is considered visually acceptable and provides a variation in building heights along this frontage (noting that Building E and F are 6 and 7 storeys (over 2 storey podiums) respectively);
- the increase in height to Building B will result in a building the same height as Buildings E1 and G which are considered acceptable in the context of the residential precinct and its central location within the site;
- the increase to Building C will potentially read as a 3 storey building (over a 2 storey podium) and is not expected to have any adverse visual impacts given its low scale compared to adjoining buildings and central location on the site;
- the increase to Building D will potentially read as a 7 storey building (over a 2 storey podium) which is the same height as Building H resulting in a uniform height when viewed from Woollooware Bay;
- overshadowing from any increase in height of the buildings would be predominantly on other buildings on the site, with the exception of Building A that would overshadow Captain Cook Drive;
- the uppermost level of apartments can be designed as a lighter and subservient component of the building, may incorporate rooftop private open space and assist in screening plant; and
- the detailed design of the additional storey can be considered by Council in a future development application.

On this basis, the department is satisfied that the increased height of Buildings A-D is acceptable. In addition, the proposed ToA enables Council to consider future variations to the maximum parapet height (up to a maximum of 3.2 metres) on merit and will ensure that the impact of any variation does not negatively impact upon the surrounding locality.

The department therefore supports the inclusion of the proposed ToA.

5.3. Modification to Club Deck Area

The proponent seeks to increase the maximum area of the outdoor deck of the Club from 943m² to 1,055m² (an increase of 112m²). The department notes that the Stage 1 Project approved a deck area associated with the Club component of 940m². An increase of the Club deck by 115m² (approximately 12%) is not considered to negatively impact upon the design and use of the Club and will provide a greater outdoor area for use by members and visitors to the Club.

Council requested further information in relation to the proposed increase in the Club deck. The proponent responded that it will provide this detail in a future Section 75W modification to the Stage 1 Project Approval.

Although the detail of the club deck is relevant to the Stage 1 Project Approval, the department has considered the impacts of the additional floor space particularly in relation to the riparian zone provided between the approved retail / club building and Woollooware Bay. The proponent has advised that the additional deck floor space is a result of improved efficiencies in the design of the approved deck / building relationship and also that the deck is not envisaged to be moved closer to Woollooware Bay.

The department considers that the expansion of the deck is unlikely to result in any additional impacts given that:

- the proposed deck is not envisaged to protrude into the riparian zone between the building and the foreshore that was a key element in the suitability of the retail / club building; and
- the additional floor space is a result of improvements to the efficiency of the deck and its relationship with the retail / club uses.

The department notes that a modification request seeking an amendment to the Stage 1 Approval will be submitted to address the increase in the deck area, which will include detailed plans and referral to Council for comment. On this basis, the department raises no objections to the minor increase in the deck area within the Concept Approval and the amendment is supported.

5.4. Modification to Future Environmental Assessment Requirements (FAR)

The proponent seeks to modify FARs (2, 3 and 17) relating to activation of frontages to:

- Captain Cook Drive;
- Woollooware Road;
- the riparian zone;
- tidal creek adjacent to the western grand stand;
- Solander Fields; and
- the boulevard within the residential precinct.

Following comments from Council, the proponent has sought that these frontages be activated where deemed appropriate by the consent authority. The FARs are therefore sought to be amended as follows:

2. *Future applications for the Retail and Club Precinct shall ensure that the frontages to Captain Cook Drive, Woollooware Road and the riparian zone are activated at ground level **where deemed appropriate by the consent authority** and demonstrate sufficient articulation to the satisfaction of the consent authority.*
3. *Future applications for the Residential Precinct shall ensure that the frontages to Captain Cook Drive, tidal creek adjacent the western grand stand, Solander Fields and the riparian zone are activated at ground level **where deemed appropriate by the consent authority**, including individual direct street address for all ground floor units, and demonstrate sufficient articulation to the satisfaction of the consent authority.*
17. *Future applications shall demonstrate the treatment of the boulevard within the Residential Precinct to ensure that this area is activated through the day **where deemed appropriate by the consent authority**.*

The department notes that the existing FARs requires activation of all frontages at the ground level. It may not be possible to activate entire frontages as required by the FARs due to the location of services, car parking entrances or other spaces not capable of activation.

It is therefore considered reasonable to allow for the consent authority to further consider the extent and location of activation along these frontages on its merits.

5.5. Inclusion of a Note in Schedule 3

The development of the site is intended to be approved and constructed in stages. The proponent seeks to modify the Concept Approval to include a note to ensure that FARs are implemented by the consent authority relative to the individual applications. At present, the consent authority may interpret that all FARs are to be satisfied in all or any future applications.

The proponent seeks to include a note at the end of Schedule 3 – FARs to ensure that only relevant FARs are considered in the assessment of individual applications.

The department does not raise any concerns with the inclusion of a note in Schedule 3 to reinforce that only relevant FARs applicable to individual applications should be applied. The following note is recommended:

Note: Future Environmental Assessment Requirements within Schedule 3 only apply to future applications where relevant to the development proposed in that application. The relevance of the requirements are to be determined by the consent authority.

Council did not raise any concerns with this inclusion. This aspect of the modification is therefore supported.

6. CONCLUSION AND RECOMMENDATION

The department has assessed the application on its merits and the proposed modification is considered to be reasonable. The department is satisfied that the proposed amended building envelopes will not negatively impact residential properties to the south of the site and are supported.

The inclusion of an additional Term of Approval and modifications to Future Assessment Requirements are supported as this provides greater opportunities for appropriately designed buildings to be constructed within approved envelopes while maintaining opportunities for discussion with Council for any minor variations.

Having regard to the above, the department is satisfied that the proposed modifications are acceptable, subject to the recommended conditions. It is therefore recommended that the Director of Industry, Key Sites and Social Projects, as delegate for the Minister for Planning:

- **consider** the findings and recommendations of this report;
- **approve** the modification request, subject to conditions; and
- **sign** the attached modifying instrument (**Tag A**).


Prepared by: Mark Brown
Senior Planner - Key Sites and Social Projects

Endorsed by:

A Watson 14/7/14

Amy Watson
Team Leader
Key Sites and Social Projects

Approved by:

 14/7/14
Daniel Keary
Director
Industry, Key Sites and Social Projects

APPENDIX A MODIFICATION REQUEST

See the department's website at

http://majorprojects.planning.nsw.gov.au/index.pl?action=view_job&job_id=6400

APPENDIX B SUBMISSIONS

See the department's website at

http://majorprojects.planning.nsw.gov.au/index.pl?action=view_job&job_id=6400

APPENDIX C RECOMMENDED MODIFYING INSTRUMENT
