



Residential Development Hilly Street, Mortlake Concept Plan

*Part 3A Section 75W
Modification Assessment
(MP10_0154 MOD 3)*

September 2019

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Glossary

Abbreviation	Definition
Council	City of Canada Bay
Department	Department of Planning Industry and Environment
EP&A Act	<i>Environmental Planning and Assessment Act 1979</i>
EP&A Regulation	<i>Environmental Planning and Assessment Regulation 2000</i>
EPBC Act	<i>Environment Protection and Biodiversity Conservation Act 1999</i>
EPI	Environmental Planning Instrument
ESD	Ecologically Sustainable Development
LEP	Local Environmental Plan
Minister	Minister for Planning
OEH	Office of Environment and Heritage
Proponent	Bennett Hill Development Pty Ltd
RMS	Roads and Maritime Services
RtS	Response to Submissions
Secretary	Secretary of the Department of Planning, Industry and Environment
SEPP	State Environmental Planning Policy



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1. Background

1.1 Background

This report is an assessment of a request to modify the Concept Approval (MP10_0154) for a residential development at Hilly Street, Mortlake in the Canada Bay Local Government Area.

The request has been lodged by City Plan Services on behalf of Bennett Hill Development Pty Ltd (the Proponent) pursuant to section 75W of the *Environmental Planning and Assessment Act 1979* (EP&A Act).

The proposal seeks approval to amend the Concept Approval to include two non-residential uses (a Gymnasium and a Medical Centre) and increase the permitted floor space by 510m² to accommodate those uses.

1.2 Subject site

The site is located at the Mortlake Peninsula, on the southern side of the Parramatta River (**Figure 1**). The locality is characterised by the recent redevelopment of former industrial land uses to predominantly residential uses. It contains a mix of remaining industrial buildings and some residential dwelling houses as well as recently constructed residential flat buildings up to nine storeys in height.

The site consists of three residential blocks with a total area of 30,066m². It is divided into seven precincts (**Figure 2**). The changes sought as part of this modification relate to Precinct 2. The approved development within Precinct 2 has been completed and is now occupied. Images of the development in Precinct 2 are shown in **Figures 3** and **4**.



Figure 1 | Aerial view of the site and locality (Base source: Google Maps)

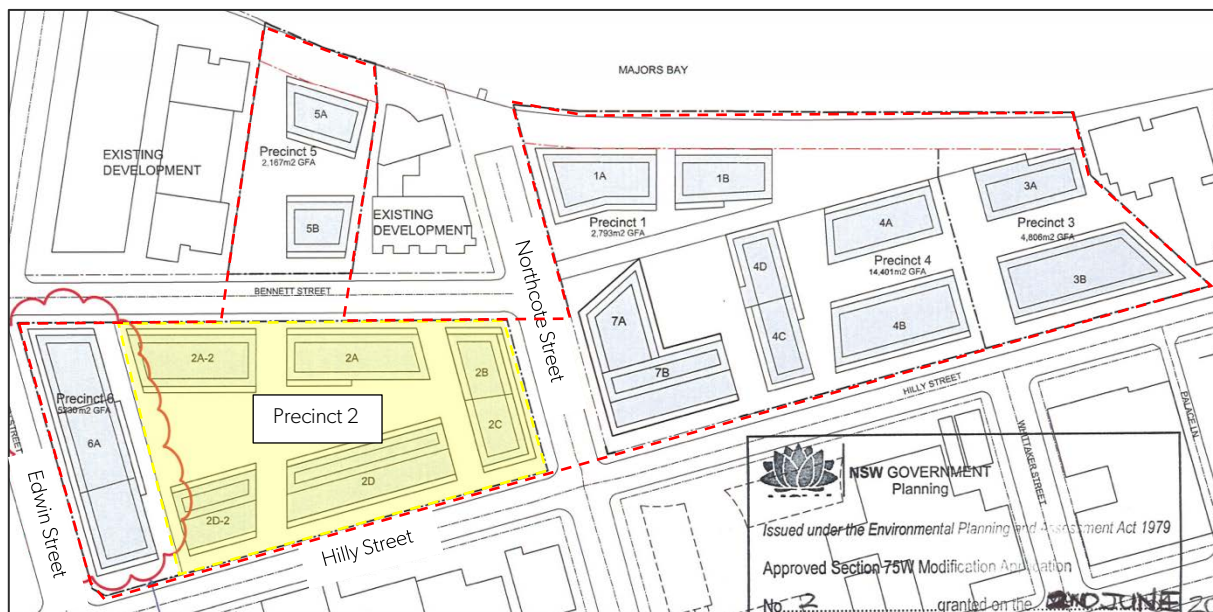


Figure 2 | Approved site layout, Precinct 2 highlighted in yellow (Base source: Mod 2 Approved Plans)

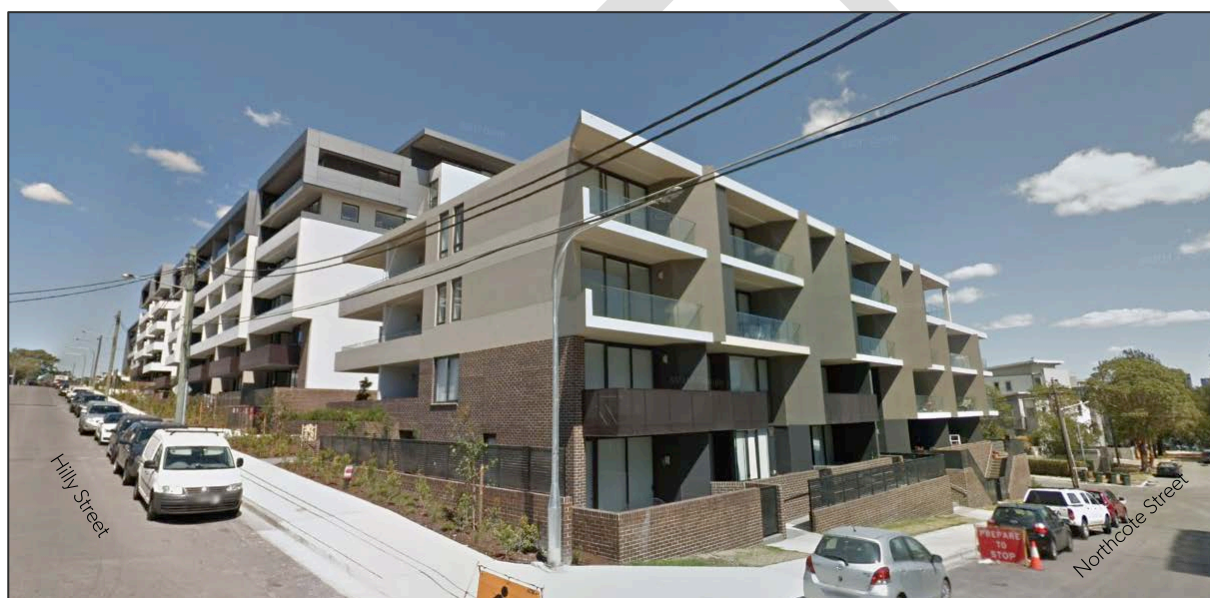


Figure 3 | Site as viewed from corner of Hilly and Northcote Streets (Base source: Google Maps)

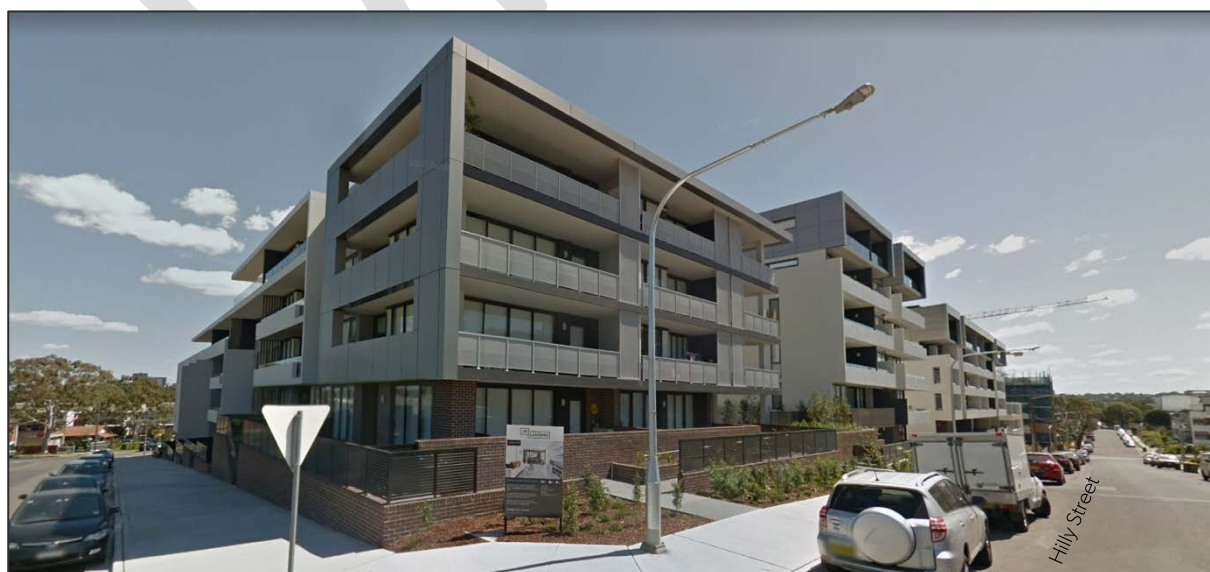


Figure 4 | Site as viewed from corner of Hilly and Edwin Streets (Base source: Google Maps)

1.3 Approval History

Concept Plan

On 10 May 2013, the then Planning Assessment Commission approved a Concept Plan (MP10_0154) for residential development on the site comprising:

- 15 Residential building envelopes ranging from three to seven storeys in height
- basement level car parking zones and car parking rates
- 5,867m² of publicly accessible open space and through site links
- a maximum GFA of 38,458m²
- pedestrian and cycle networks
- street upgrades to public roads and upgrade to stormwater and drainage systems.

The Concept Plan has been modified on two occasions:

Table 1 – Modifications to the Approval

Reference	Description of Modification	Status
MP10_0154 MOD 1	Inclusion of Nos 8, 10 and 12 Hilly Street into the site; an additional building envelope 4 to 7 storeys in height; increase in GFA from 38,458 m ² to 44,619 m ² , relocation of driveway access to Building 4C/ 4D.	Approved 20 November 2014
MP10_0154 MOD 2	Incorporation of Council land (former laneway and carpark) into the site; increase the size of the basement of Building 6A and increase GFA by 320 m² to 44,939m².	Approved June 2015

Development Application

On 2 December 2014 DA 513/2013 was approved by the Sydney East JRPP for:

"Construction of 15 Residential Flat Buildings comprising 142 X 1 bedroom, 240 x 2 bedroom and 48 x 3 bedroom apartments with basement parking for 748 spaces, various public domain works and provision of open space."

The DA has been modified on two occasions:

- On 7 January 2016, approval was granted for four additional apartments in Building 6A and five additional parking spaces
- On 27 July 2017, approval was granted for additional basement storage as well as additional parking under Building 2B.



2. Proposed Modification

The Proponent lodged a section 75W modification request (MP10_0154 MOD 3) seeking approval to introduce two non-residential uses within Precinct 2 and increase the GFA accordingly. The proposed uses include:

- gymnasium (373m²)
- medical Centre / Health Consulting Room (137m²).

The GFA of the development would increase by 510m² to a maximum of 16,052 m² for Precinct 2 and 45,449 m² for the overall Concept Plan Site

The additional floor space would be provided within the approved building envelopes. The proposed gym would be located within the basement level of Precinct 2 and the medical centre at the lower ground floor level of Building 2D-2 in Precinct 2. The Proponent advises these areas were approved for services and voids and therefore excluded from the definition of GFA. The service areas are no longer required as the services have been consolidated and require less space than originally anticipated.

The modification request also incorporates additional parking for the new uses at the following rates:

- Gymnasium: 4.5 spaces per 100m² (minimum)
- Medical Centre: 1 space / medical practitioner
1 space / 2 non-medical practitioner employees
1 patient space / 2 specialists

Indicative plans showing the potential future location and layout (subject to DA approval) are shown in **Figures 5** and **6**. The approximate location of the two uses, as viewed from the street is shown in **Figures 7** to **9**.

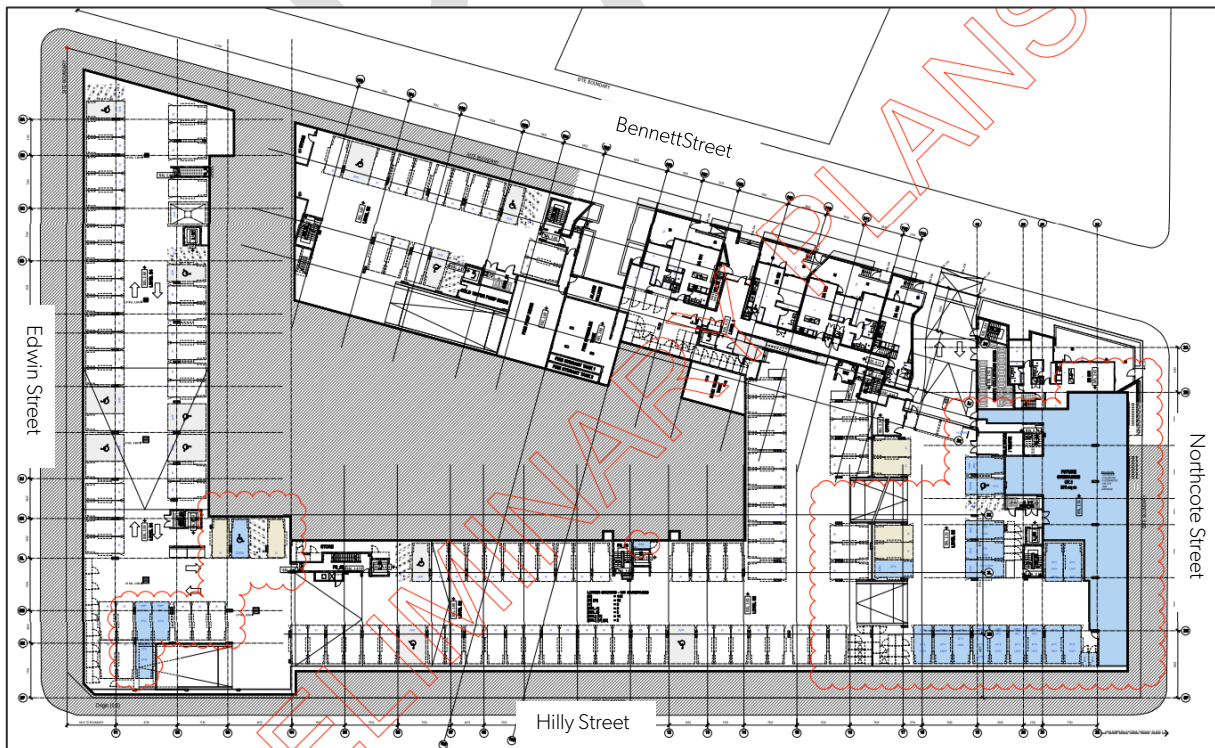


Figure 5 | Indicative DA Basement Plan indicating location of Gymnasium (Base source: Modification Request)



Figure 6 | Indicative Level 0 Plan indicating location of Medical Centre (Base source: Modification Request)

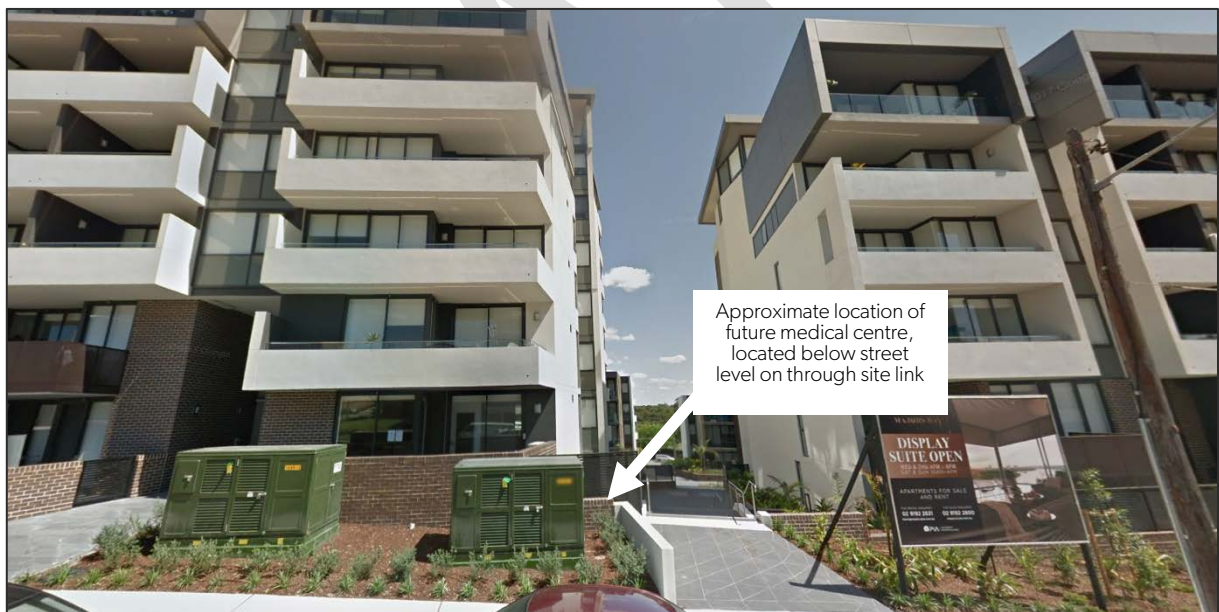


Figure 7 | Through site link viewed from Hilly Street indicating location of the medical centre (Base source: Google Maps)

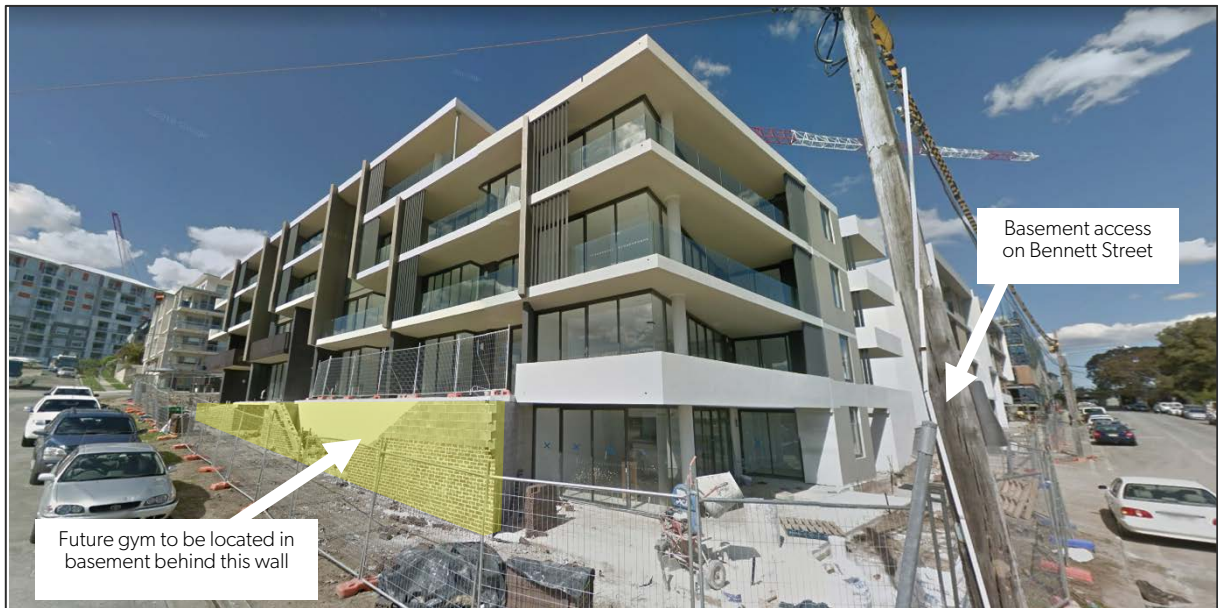


Figure 8 | Site as viewed from Northcote Street indicating approximate location of the gym (Base source: Google Maps)



Figure 9 | Basement access viewed from Bennett Street (Base source: Google Maps)



3. Statutory Context

3.1 Modification of the Minister's Approval

The concept plan was originally approved under Part 3A of the EP&A Act. This means the project satisfied the definition of a 'transitional Part 3A project' under clause 2(1) Schedule 2 to the Environmental Planning and Assessment (Savings, Transitional and Other Provisions) Regulation 2017 (STOP Regulation), which came into effect on 1 March 2018.

Under the ST&OP Regulation, the power to modify transitional Part 3A projects under section 75W of the Act, as in force immediately before its repeal on 1 October 2011 is being wound up – but as the request for this modification was made before the 'cut-off date' of 1 March 2018, the provisions of Schedule 2 (clause 3) continue to apply. Consequently, this report has been prepared in accordance with the requirements of Part 3A and associated regulations, and the Minister (or his delegate) may approve or disapprove the carrying out of the project.

The Department of Planning, Industry and Environment (Department) is satisfied the proposed changes are within the scope of section 75W of the EP&A Act, and do not constitute a new application. The scope to modify Part 3A Approvals under Section 75W is broad and includes the ability to incorporate additional land uses not previously considered in the original approval. In addition, the provisions of Canada Bay LEP 2013 do not strictly apply to the Part 3A approval and as such gyms and medical centres may be approved on the site even though they would otherwise be prohibited under the LEP. The Department is satisfied the application is within the scope of Section 75W, as:

- the changes are minor, affecting only 1% of the total floor space
- no changes to the approved building envelopes are proposed
- the proposed uses are not dissimilar to other commercial uses which are permitted on the site
- the overall character of the development and its presentation to the surrounding area would not materially change and would remain as primarily residential.

3.2 Approval Authority

In accordance with the Minister's delegation, the request may be determined by the Executive Director, Compliance, Key Sites and Industry Assessments as:

- Council did not object to the application
- a political donations disclosure statement has not been made in respect of this or any previous related application and
- less than 25 public submissions were received objecting to the modification.



4. Engagement

4.1 Department's Engagement

The Department placed the modification request on its website and notified adjoining landholders and relevant State and local government agencies in writing, between 10 November and 24 November 2017. The Department received a total of 14 submissions, comprising a submission from Council and 13 public submissions.

4.2 Council's Submission

The City of Canada Bay did not object to the modification request, but raised the following concerns:

- the proposed land uses are inconsistent with the Concept Plan which only approved residential uses
- the proposed land uses are prohibited in the R1 General Residential zone
- lack of presentation to the streetscape, particularly the medical centre which would be below street level
- lack of disabled access to the medical centre
- ability of the constructed building to adequately ameliorate noise from the uses.

4.3 Public Submissions

Thirteen public submissions were received, all objecting to the proposal. Key issues raised in submissions included:

- noise impacts
- security impacts
- parking impacts
- traffic Impacts
- access Issues
- building management impacts and impacts to strata fees
- the area is already well serviced by gyms and medical centres
- the basement area is already approved for storage and parking
- owners consent has not been provided.

4.4 Response to Submissions

Following the notification of the modification request, the Department placed copies of all submissions received on its website and requested the Proponent provide a response to the issues raised. On 25 July 2018, the Proponent provided a RtS. Further supplementary information was also provided on 21 December 2018, 4 April 2019 and 1 August 2019. The RtS and supplementary information outline how key issues raised in public submissions may be dealt with in the assessment of future DAs. The Department made the RtS and supplementary information publicly available on its website and referred the RtS to Council, but no further submissions were received.



5. Assessment

In assessing the merits of the proposal, the Department has considered:

- the modification request and associated documents
- the Environmental Assessment and conditions of approval for the original Concept Plan
- all submission received on the proposal and the Proponent's RtS
- relevant environmental planning instruments, policies and guidelines
- the requirements of the EP&A Act.

The Department considers the key assessment issues associated with the proposal are:

- suitability of proposed uses
- traffic and parking impacts.

All other assessment issues are considered in **Section 5.3**.

5.1 Suitability of the proposed additional uses

Council raised concern about the proposed land uses being inconsistent with the Concept Approval which only assessed and approved residential development on the site. It also noted that the proposed uses, defined as a *'recreation facility (indoor)'* and a *'health services facility'* are prohibited in the R1 General Residential zone under the Canada Bay LEP 2013.

Public submissions raised concerns that the uses are not appropriate as they would result in a range of amenity impacts and are not needed as the area is already well serviced by both gyms and medical centres.

In response, the Proponent advised the application would not materially change the existing approval or compliance with the existing terms of approval. Further, the Proponent considers the proposal is acceptable as the proposed uses would be compatible with both the building and the locality, are similar to other uses permitted on the site and given the minor scale of the proposal would not result in any significant amenity impacts.

The Department considers the proposal is acceptable as the proposed gym and medical centre are not dissimilar to other commercial uses which are permitted on the site. The Department notes that the R1 General Residential zone permits commercial premises such banks, shops, restaurants and hairdressers on the site. In addition, the site is located within 65 metres of the B1 Neighbourhood Centre zone which permits both medical centres and indoor recreation facilities. In this context, the Department considers the provision of a gym and a small medical centre would not be dissimilar to the range of uses already permitted in the area.

The Department has also considered the potential environmental and amenity impacts associated with the proposal below in **Sections 5.2** and **5.3**. The Department considers the impacts associated with the proposed uses would be similar to those expected with other commercial uses already permitted on the site and subject to appropriate future assessment requirements, amenity impacts can be appropriately managed and mitigated as part of future development applications.

The Department also considers the proposed uses would provide benefits to the local community through the provision of additional health services and amenities in an otherwise under-utilised space in the building. Further, the Department is satisfied the site has sufficient services and infrastructure available to meet the demands arising from the proposed uses.

Overall, the Department is satisfied the proposed uses are acceptable as they are not dissimilar to other commercial uses already permitted on the site, would not result in any significant environmental or amenity impacts and would provide additional services and facilities to the local community.

5.2 Traffic and Parking Impacts

Traffic

Public submissions raised concerns with the potential traffic impacts associated with the new uses, noting that the surrounding roads are already congested during the peak hour.

The Proponent submitted a traffic assessment which considered the impact of the additional uses. Based on established RMS traffic generation rates, the additional uses are predicted to generate approximately 26 peak hour vehicle trips over and above that previously approved. As this represents less than one vehicle trip every two minutes during peak hour, the traffic assessment concludes the development is not expected to result in any noticeable impacts on the surrounding road network. The assessment also notes that traffic generation would be less than that expected by the RMS traffic generation rates given the small scale of the proposed gymnasium. Further, given the site is situated on a peninsula, it does not experience significant through traffic and a high number of patrons are expected to walk to and from the site.

The traffic impacts of the overall development were carefully considered in the assessment of original approval and subsequent modifications, and it was found that the development of the site would not result in unacceptable traffic impacts to the local road network. The Department has considered the traffic assessment submitted with the modification request and is satisfied that the additional uses would be minor in scale and would not result in any significant traffic generation or impacts on the operation of the local road network. The Department also notes that the extent of any impacts would be less than what could be expected under the current controls which permit commercial and retail uses on the site. The Department is therefore satisfied the proposal would not result in any significant traffic impacts on the surrounding road network.

Parking

Canada Bay Council's Development Control Plan (DCP) provides the following parking requirements relevant to the subject application:

- Gymnasiums: 7.5 spaces per 100m² gross floor area (desirable)*
4.5 spaces per 100m² gross floor area (minimum)
- Medical Centres: 1 space for each medical practitioner, plus*
1 space for each 2 non-medical practitioner employees, plus
1 patient space for every 2 specialists

Parking rates are proposed to be incorporated into the Concept Approval consistent with these rates, but adopting the minimum rate for gymnasiums only, on the basis that it is expected that a significant portion of patrons would be within walking distance of the gym as described above.

Final parking numbers would be determined at the DA stage based on the design of the gym and medical centre, but a preliminary assessment by the Proponent indicates that based on the proposed rates, the uses are likely to require approximately 21 spaces (17 for the gym and 4 for the medical centre). Indicative plans were provided with the modification request and supplementary information to demonstrate that the parking could be accommodated within the existing basement of the building, noting that across the Concept Plan site there is currently a surplus of 64 parking spaces compared to the number of spaces required under the Concept Plan car parking rates.

Public submissions raised concern that there would be a shortfall of parking for the proposed uses, noting visitor basement parking and on-street parking is already in short supply. Other submissions raised concerns that the

proposal could result in changes to basement areas already approved for parking and storage under the existing DA approved by Council.

The Department notes that parking rates for the residential development, including residential visitor parking, are set by the Concept Approval and there is no proposal to modify these requirements. The Department also notes that in assessing any future application to incorporate a gym or medical centre, Council will need to be satisfied that any appropriate residential carparking and storage in accordance with requirements is retained. A future assessment requirement has been recommended to ensure required residential parking and storage is retained.

The Department considers that Council’s DCP provides appropriate guidance in terms of the likely demand for parking associated with the proposed uses in the locality and therefore recommends that the DCP rates should be incorporated into the Concept Approval, including the ‘desirable’ rate for gymnasiums. This would not preclude adoption of the minimum rate as sought by the Proponent where it can be demonstrated in the future DA that no adverse impacts would arise. However, it would allow for flexibility in the assessment of the future application of the gym, enabling Council to ensure appropriate parking is provided to meet demand based on a more detailed analysis of the operation and size of the gym, available at the DA stage.

Subject to incorporation of Council’s DCP controls for parking, the Department is satisfied the modification would not result in unacceptable parking impacts. The relevant future assessment requirement has been updated in the recommendation accordingly.

5.3 Other Assessment Issues

Table 4 | Summary of other issues raised

Issue	Findings	Recommendation
Additional Floor Space	<ul style="list-style-type: none">The proposal would increase GFA by 510 m² to a total of 16,052 m² for Precinct 2 and 45,449 m² for the Concept Plan site (an increase of 1 %). The FSR would increase from 1.49:1 to 1.51:1. This exceeds the FSR control of 0.75:1 which would otherwise apply to the site under Canada Bay LEP 2013.The Department considers the increase in floor space is minor and would be acceptable in this case as:<ul style="list-style-type: none">The additional floor space would be located entirely within the existing building envelopes and would not affect the bulk, scale, height, or built form of the developmentthe additional floor space would not result in unacceptable traffic or amenity impacts as described in Sections 5.2 and 5.3.the additional floor space makes use of surplus or under-utilised space to provide additional uses which can service local residents and promote the orderly and economic use of the land.The Department is therefore satisfied the additional floor space is minor and it would not result in any significant visual, amenity or traffic impacts.	No additional future assessment requirements or amendments necessary.
Streetscape	<ul style="list-style-type: none">Council raised concern about the presentation of the proposed uses to the streetscape, and in particular the positioning of the medical centre below the level of Hilly Street so that it would have no presentation to the streetscape.The Department notes the site is not within an area identified as requiring active street frontages and there is no requirement for the proposed uses to have a direct frontage to the street. While the medical centre would be below Hilly Street, the entrance would likely be visible from the through site link.Overall, the streetscape is unlikely to materially change compared to the existing development as approved. Further, streetscape, public domain, activation and surveillance matters can be considered in detail as part of the assessment of any future development applications. In addition, the Department recommends a future assessment be imposed to ensure that modifications that are visible from outside the building would be designed to integrate with the existing building and activate the public domain where appropriate and possible.	A Future Assessment Requirement is recommended to ensure that modifications that are visible from outside the building will be designed to integrate with the existing building and activate the public domain where appropriate and possible.

Issue	Findings	Recommendation
Access	<ul style="list-style-type: none"> Council and public submissions raised concern that the medical centre could only be accessed via stairs and therefore could not provide appropriate disabled access. Other public submissions raised concerns that the gym would only be accessible from the carpark and not the footpath, presenting access issues for pedestrians. Concern was also raised about the medical centre not being directly accessible from the car park. The Proponent has advised that disabled access issues will be resolved under any future DA and may require incorporation of a chairlift from Hilly Street to the front entrance and controlled access to a disabled parking space in the basement adjacent to the lift servicing the medical centre. The Department considers that safe and equitable access must be provided to the proposed uses for all persons from both the footpath and the parking associated with the use. The Department therefore recommends a future assessment requirement requiring future applications to demonstrate appropriate and equitable access can be provided to the proposed uses from the car park as well as for pedestrians approaching the site on foot. Subject to this future assessment requirement, the Department is satisfied the modification would not result in any impacts in any unacceptable access issues. 	A Future Assessment Requirement is recommended requiring appropriate and equitable access be provided to the proposed uses from the car park as well as for pedestrians approaching the site on foot.
Security	<ul style="list-style-type: none"> Public submissions raised concerns that the modification would result in security impacts as the currently secure residential carpark would be able to be accessed by members of the general public and as a result of increased use of publicly accessible areas on the site. In response, the Proponent advised that security measures would be resolved at the DA stage but are likely to include a security gate and shutters separating the commercial parking from the residential parking area, with an intercom / swipe card to allow access between the two areas if required, such as for staff and disabled customers to the medical centre. The Department is satisfied that security arrangements can be appropriately resolved as part of any future DA and has recommended a Future Environmental Assessment Requirement requiring the Proponent to demonstrate appropriate safety and security measures can be provided. 	A Future Assessment Requirement is recommended requiring demonstration of appropriate safety and security measures.
Noise	<ul style="list-style-type: none"> Council raised a concern with the ability of the constructed building to adequately ameliorate noise from the use of the gymnasium with the surrounding residential apartments. Public submissions also raised concern with the potential for noise impacts from the proposed uses. In response, the Proponent provided additional information from its acoustic consultant which confirmed that subject to appropriate acoustic insulation and operating measures, noise from the use could be appropriately controlled. The Proponent advised that any future DA will be accompanied by a detailed vibration and acoustic assessment and there is no reason to consider that the noise impacts could not be satisfactorily addressed. The Department considers that acoustic impacts and any necessary amelioration measures, including where necessary, any upgrades to the building construction, limits on hours of operation, or other matters, is a matter for assessment at the detailed DA stage. A FAR has been recommended to require future applications to demonstrate that the proposed uses would not result in any unacceptable noise or vibration impacts to residences. 	A future assessment requirement has been recommended to require future applications to demonstrate that the proposed uses would not result in any unacceptable noise or vibration impacts to residences.
Building Management	<ul style="list-style-type: none"> Public submissions raised concerns that the proposal would result in building management issues related to cleaning, rubbish removal, repair and maintenance. A related concern is that the associated costs may be borne by owners in strata fees. Waste management is a matter that would be considered as part of the assessment of any future DA. However, other internal building management arrangements are private matters between the individual owners and the body corporate or strata managers and are not considered relevant to the assessment of the Concept Plan modification. The Department is satisfied there are no building management issues which would preclude the proposed modification. 	No additional future assessment requirements or amendments necessary.

Issue	Findings	Recommendation
Owner's consent	<ul style="list-style-type: none"> Public submissions raised concern that owners consent, specifically from the Body Corporate, not being provided. The Department notes the Proponent subsequently provided consent from the Body Corporate for lodging the application. 	No additional future assessment requirements or amendments necessary.



6. Evaluation

The Department has assessed the proposed modification and supporting information in accordance with the relevant requirements of the EP&A Act. The Department's assessment concludes that the proposal is acceptable as:

- the proposed uses would not be dissimilar to the range of commercial uses already permissible on the site under the Canada Bay LEP 2013
- the proposed additional uses would be accommodated within the existing building envelope and therefore would not result in any adverse built form impacts
- the proposal would allow for the economic use of otherwise under-utilised space in the building to provide additional services for occupants of the building and other local residents, consistent with the objects of the EP&A Act
- the traffic impacts of the additional uses would be minor and would not materially impact operation of the local road network
- all other potential impacts including parking, noise, security, streetscape or other impacts would be considered in further detail by Council during the assessment of future development applications.

Consequently, the Department considers the site is suitable for the proposal and the proposal is in the public interest. The Department therefore recommends the modification be approved subject to conditions.



7. Recommendation

It is recommended that the Executive Director, Compliance, Key Sites and Industry, as delegate of the Minister for Planning:

- **considers** the findings and recommendations of this report; and
- **accepts and adopts** all of the findings and recommendations in this report as the reasons for making the decision to grant approval to the application;
- **modify** the consent MP10_0154
- **signs** the attached approval of the modification (**Appendix C**).

Recommended by:

Silvio Falato
Team Leader
Regional Assessments

Recommended by:

Anthony Witherdin
Director
Regional Assessments



8. *Determination*

The recommendation is: **Adopted** by:

Anthea Sargeant
Executive Director
Compliance, Key Sites and Industry
as delegate of the Minister for Planning.

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Appendices

The following supporting documents and supporting information to this assessment report can be found on the Department's website at:

Appendix A – Environmental Assessment

http://majorprojects.planning.nsw.gov.au/index.pl?action=view_job&job_id=8798

Appendix B – Submissions

http://majorprojects.planning.nsw.gov.au/index.pl?action=view_job&job_id=8798

Appendix C – Notice of Modification

http://majorprojects.planning.nsw.gov.au/index.pl?action=view_job&job_id=8798

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