

Statement of Environmental Effects

**Section 4.55(8) Modification
to Development Consent
2017/0402**

**12 Storey Mixed Use Development
1 Butler Road, Hurstville**

February 24, 2023

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1 Introduction

1. This report has been prepared as a Statement of Environmental Effects in assessment of a section 4.55(8) Modification to Development Consent 2017/0402 (**the Consent**). The Consent is for Demolition of existing building and construction of a new twelve (12) storey plus roof top, mixed use development with ground floor retail, 24 units and basement parking. The Consent was issued by the NSW Land and Environment Court on 23 October 2020 (WH Project Management Pty Ltd v Georges River Council [2020] NSWLEC 1508).
2. The subject application proposes to modify the southern fire stair egress. The approved plans provide for two separate fire stairs. This Application seeks to modify that arrangement to instead provide a consolidated fire stair in a scissor configuration. Arising from the reconfigured fire stair, the application also proposes a number of related and consequential amendments to the approved plans. These include minor reconfiguration of the ground and first floor plans to provide additional toilets, utility and storage areas within part of the area occupied by the approved eastern fire stair. Also proposed as amendment to the southern elevation, is the provision of a porous screen for wind protection which will protect the southern side of the open breezeway which, under the approved plans, is afforded wind protection by the westernmost of the two fire stairs.
3. The proposed modification otherwise retains the approved building footprint. There is no change to building height, floor space ratio (FSR), parking, communal open space or deep soil planting.
4. The modified arrangement does not result in any non-compliances with development standards contained within Kogarah Local Environmental Plan 2012 (**KLEP 2012**), State Environmental Planning Policy 65 (Design Quality of Residential Apartment Buildings) (**SEPP 65**) or any other environmental planning instrument. Similarly, the proposed modification does not introduce any non-compliances with Kogarah Development Control Plan 2012 (**DCP 2012**).
5. Within this report is a detailed assessment of the proposed modification pursuant to the matters of consideration set out within section 4.55(2) of the Environmental Planning and Assessment Act 1979 (**EP&A Act 1979**). The development as modified by the modification application is substantially the same as the approved development and is assessed as being satisfactory having regard to matters contained within section 4.15(1) of the EP&A Act 1979 as are of relevance to the modified development.

2 Description of the Relevant Land

2.1 SITE LOCATION

7. The subject site is situated on the western corner of the intersection of Ormond Parade and Butler Road, Hurstville. It is directly opposite (northern side of Ormond Parade) Hurstville Central Marketplace and Hurstville Railway Station.
8. The site's location is shown in the local context as Figure 1. An oblique aerial photograph is provided as Figure 2.



Figure 1: Site Location (Local Context)

Source: Nearmap and NSW Spatial Portal



Figure 2: Site Location (Detailed Site View Aerial Photograph)

Source: Apple Maps

2.2 SITE DESCRIPTION

9. The site is formally described as Lot 2 DP 547762. It has frontage to Butler Road of approximately 17.2m and frontage to Ormond Parade of approximately 33.m. It is irregular in shape albeit somewhat rectangular. Total site area is 468.9m².
10. The site is presently developed as a two storey retail and commercial building which occupies the whole of the site.
11. There is no existing vegetation, there are no easements and the site is fairly described as constraint free.

2.3 SURROUNDING DEVELOPMENT

12. Adjoining to the north and west and occupying the remainder of the street block bounded by Ormond Parade, Butler Road and Greenbank Street are two multi-storey buildings to a maximum of 7 storeys, which are occupied by NSW emergency services (Police and Fire and Rescue). Fire and Rescue vehicle access is from Butler Road and the whole of the Ormond Parade parking lane fronting the subject site is reserved for emergency vehicle parking. The subject site is an isolated allotment within the street block.
13. The subject site is situated on the southern side of the Hurstville CBD. Large, mixed use buildings existing in the immediate context to the northwest and south east. The following Figure 3 provides

an oblique aerial photograph depicting the site, and scale of surrounding development in the broader context.



Figure 3: Oblique Aerial Photograph Depicting the Broader Site Context

Source: Nearmap

3 Approved Development

- 14. On 23 October 2020, the NSW Land and Environment Court (**NSWLEC**) granted development consent to a 12 storey mixed use development comprising ground floor retail, 24 residential apartments over 3 levels of basement parking. Vehicular access is from Ormond Parade, adjacent the site's western boundary and thence to basement levels via a car lift.
- 15. Relevant to the subject modification application, the southern elevation of the approved development comprised two fire stairs, separated by 6.2m.
- 16. The following Figures show the Level 3 Floor Plan (typical of the fire stair arrangement for all levels) as well as the southern elevation.

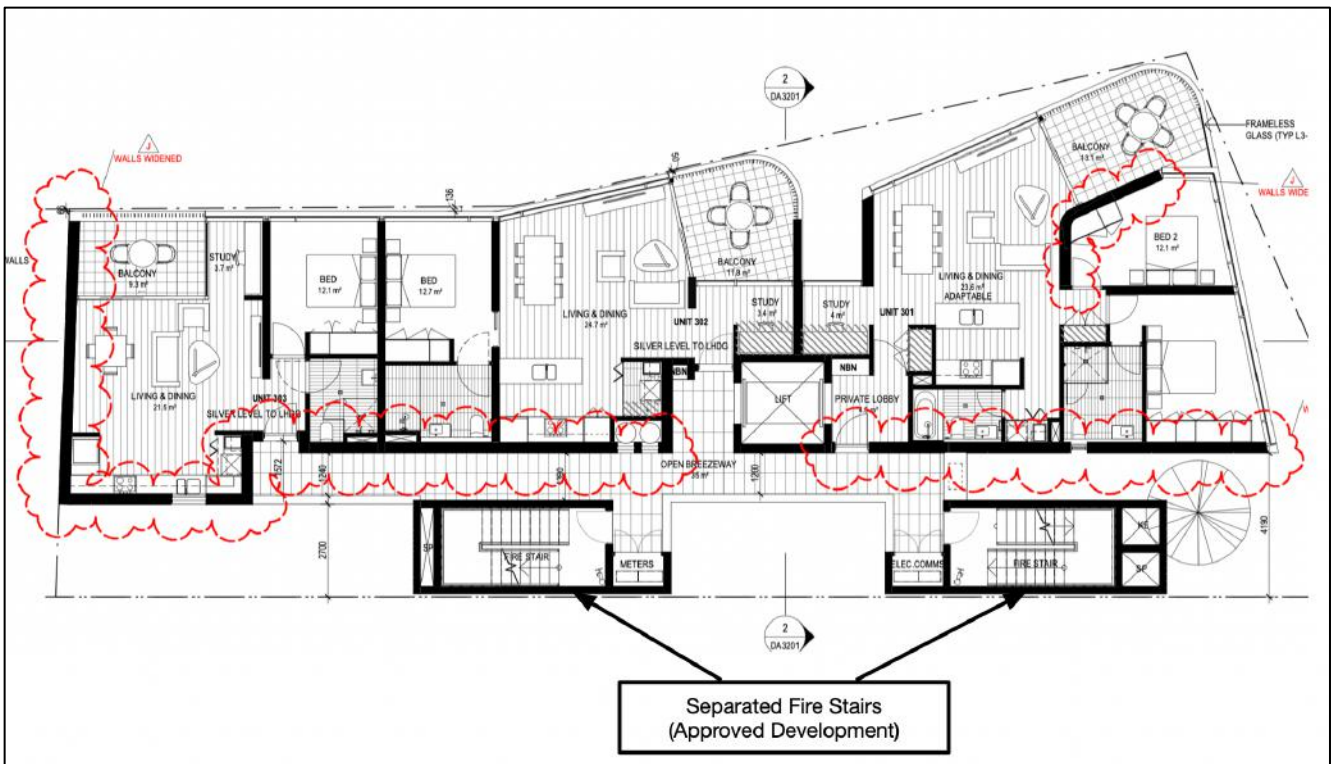


Figure 4: Level 3 Floor Plan Showing Typical Fire Stair Arrangement of the Approved Plans

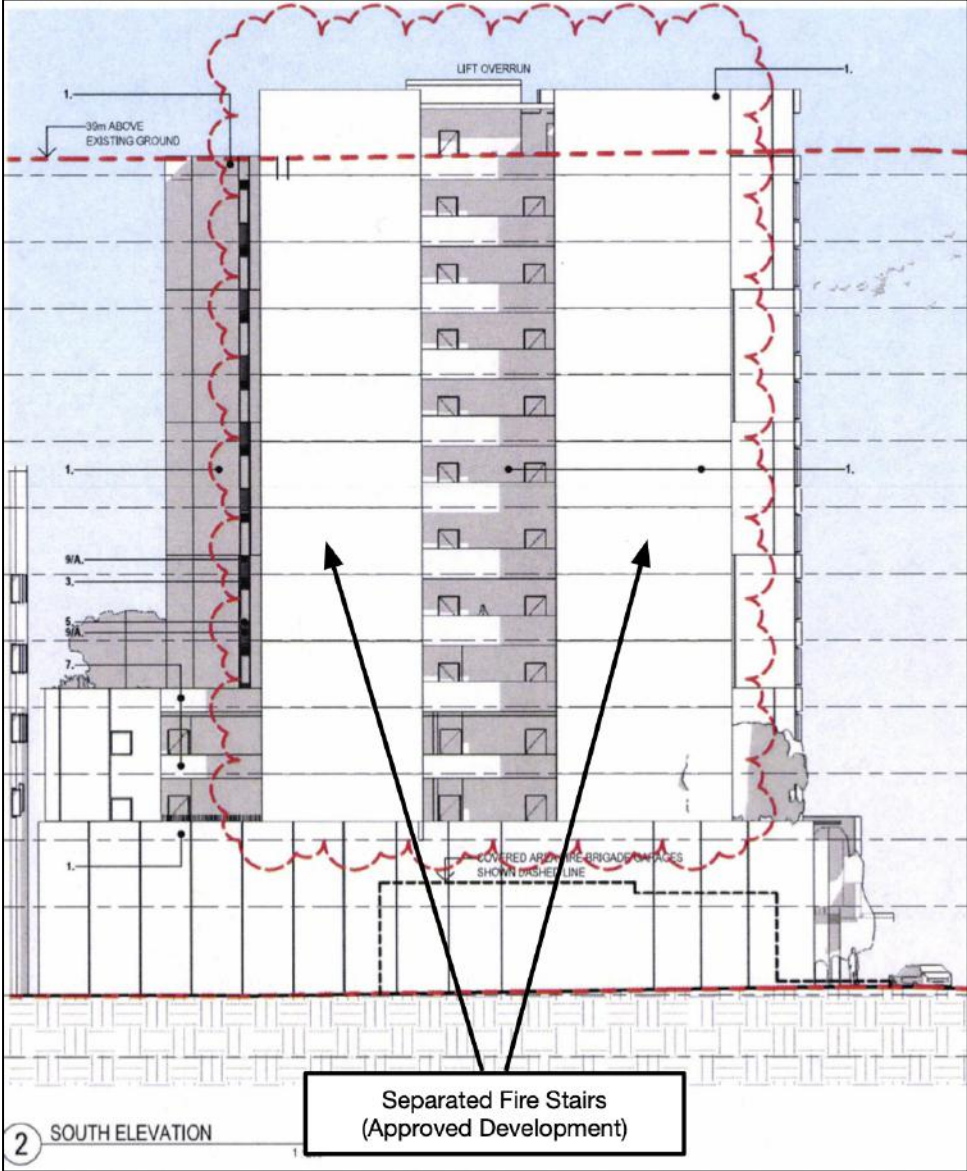


Figure 5: Southern Elevation Showing Separated Fire Stairs

4 Proposed Modification

- The subject modification proposes to consolidate the two first stairs on the southern side of the approved building, within a consolidated fire stair in scissor configuration. Figure 6 and Figure 7 show the proposed fire stair arrangement in plan view and elevation respectively.

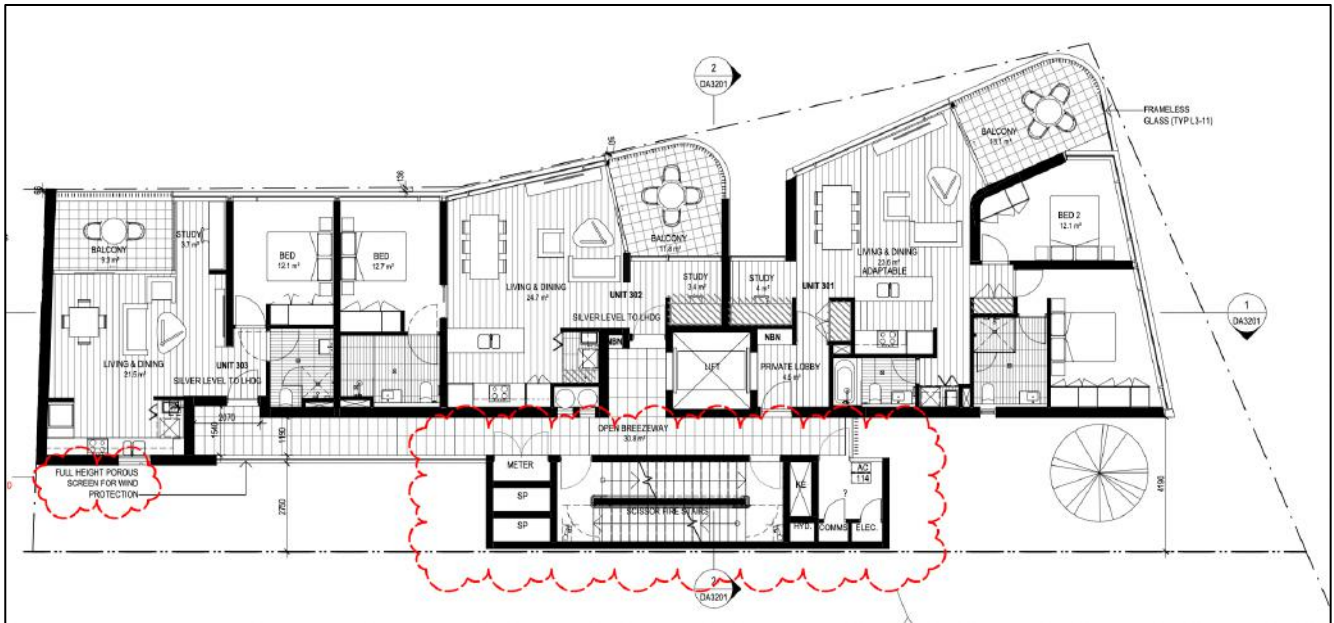


Figure 6: Proposed Consolidated Fire Stair (Level 3 Floor Plan – Typical of Fire Stair Modification)

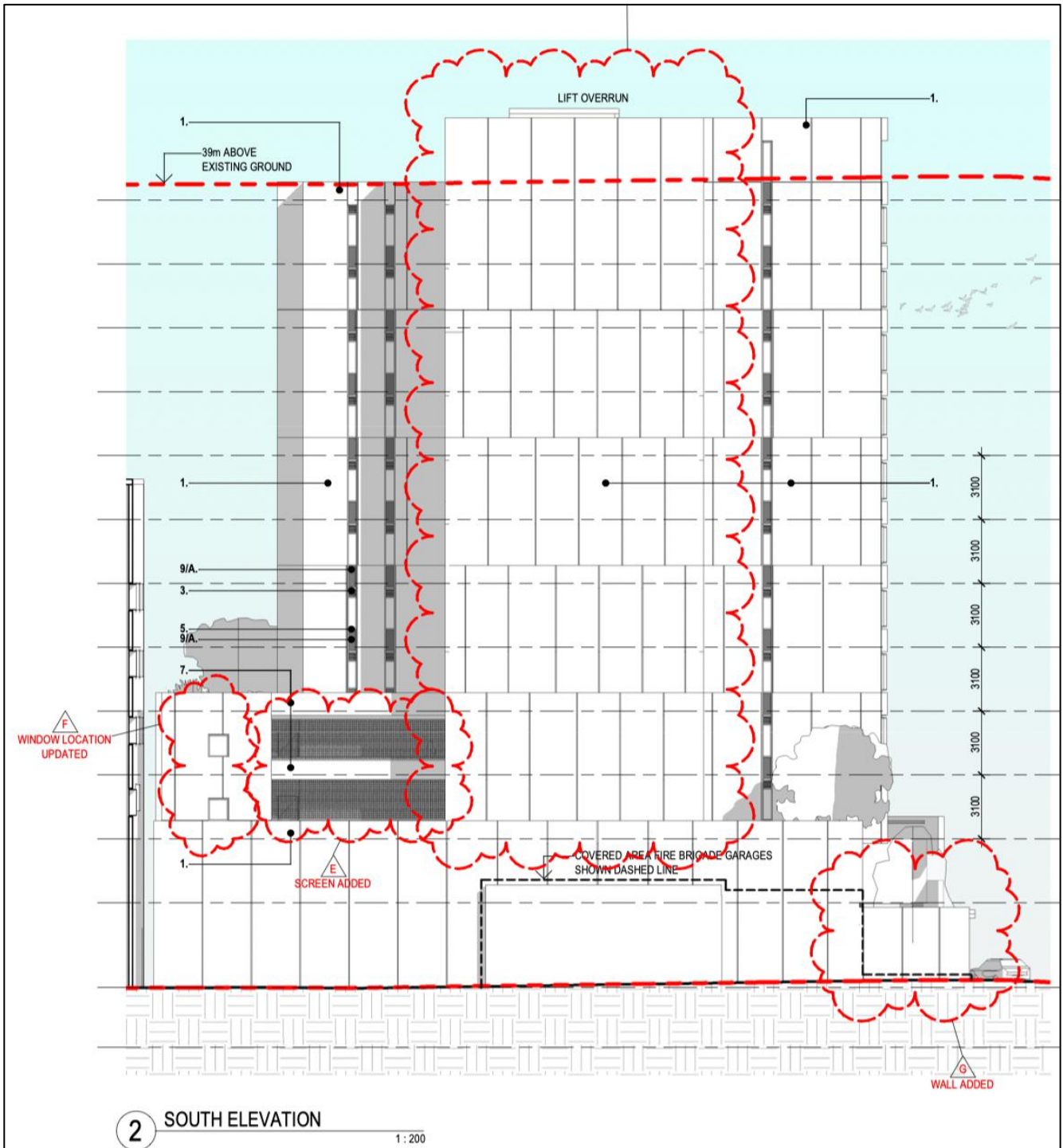


Figure 7: Proposed Consolidated Fire Stair (Southern Elevation)

18. The consolidation of the 2 approved fire stairs into a single scissor stair requires minor internal layout changes at ground and first floor. These amendments include relocation of the ground floor toilets servicing the retail tenancy, reconfiguration of utility rooms and the provision of a new storeroom to

service the ground floor retail tenancy. The approved and proposed ground floor plans are provided in juxtaposition in Figure 8.

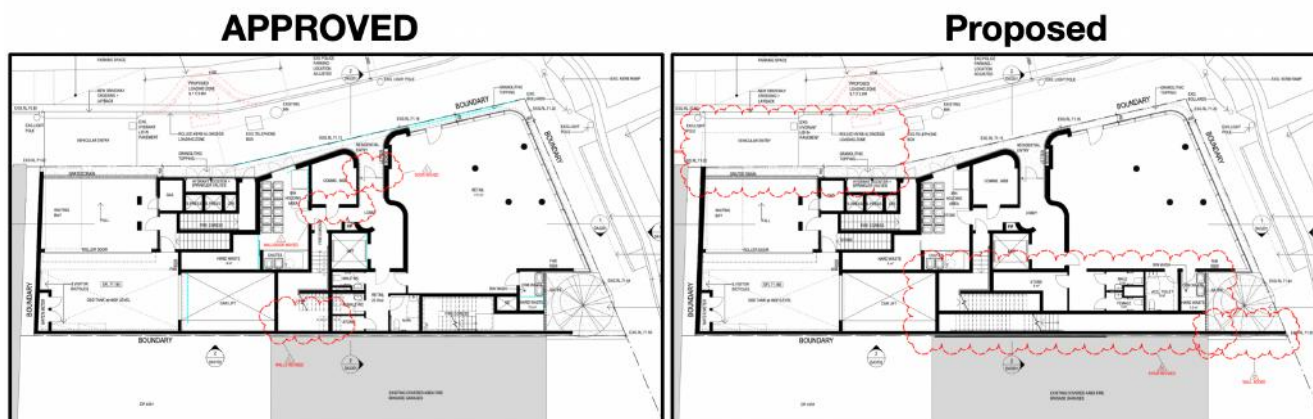


Figure 8: Juxtaposition of Approved and Proposed Ground Floor Plan

19. Similarly minor amendments are proposed at first floor level, which also include the provision of a communal property disabled accessible toilet.
20. In order to avoid any potential for wind tunnel effects arising from the longer wall of the consolidated fire stair, compared with the two shorter but separated walls under the approved arrangement, a full height porous wind screen is proposed on the western side of the proposed fire stair.
21. Additionally, the modification involves a number of other minor amendments as follows:
 - Extend the pedestrian awning presenting to Ormond Parade across the full width of the building compared with the approved plans, for which the awning terminated approximately 14m east of the site's western boundary.
 - Extend the projection of the western wall at ground level (western side of the vehicular entry) by approximately 250mm to the northern property boundary.
 - Change the materials of timber battens at ground level from "stained timber" to "non-combustible timber look grain". The colour swatch remains identical.
22. The modification application is accompanied by a Pedestrian Wind Environment Statement and a BCA Compliant Capability Assessment. The proposed modification has been designed in concert with the recommendations of the authors of those reports. Further reference to the contents and conclusions of those documents is made at Section 5.6 of this Report and form part of the environmental impacts assessment undertaken by this Practice.

5 Section 4.55 – Modification of Consents

23. The subject application is lodged pursuant to section 4.55(8) of the EP&A Act 1979. Section 4.55(8) provides:

*(8) **Modifications by the Court** The provisions of this section extend, subject to the regulations, to enable the Court to modify a consent granted by it but, in the extension of those provisions, the functions imposed on a consent authority under subsection (1A)(c) or subsection (2)(b) and (c) are to be exercised by the relevant consent authority and not the Court.*

24. Subsection (8) enables the Court to modify a consent granted by it, however it is incumbent on the Council to consult with any public authority or approval body relevant to concurrence. It is also incumbent on the Council to notify the proposed modification.
25. The proposed modification does not involve correcting a minor error etc and is not properly described as a modification involving minimal environmental impact. It is therefore a modification to which section 4.55(2) relates.

5.1 SUBSTANTIALLY THE SAME DEVELOPMENT

26. Section 4.55(2)(a) requires the Court to be satisfied that the development to which the consent as modified relates, is substantially the same development as the development for which consent was originally granted.
27. Both the original and modified developments are for a 12-storey mixed use development comprising ground floor retail and 24 residential units above three levels of basement parking. The modification does not result in any change to the building footprint, height or communal open space provision. The essence and substance of the originally approved and modified development is the same.

5.2 CONCURRENCE

Section 4.55(2)(b) requires consultation with any Minister, public authority or approval body for modifications for which concurrence formed part of the original consent. The originally approved development did not require concurrence and accordingly, section 4.55(2)(b) consultation is not required. As part of the originally approved development, comment was requested from NSW Police and NSW Fire and Rescue in respect of any potential impacts that the development may have had on emergency vehicle access arrangements. The proposed modification does not result in any change to the approved vehicular or pedestrian access arrangements. As such, referral of the modification application to NSW Police or NSW Fire and Rescue is not required.

5.3 NOTIFICATION AND PUBLIC SUBMISSIONS

28. Georges River Community Engagement Strategy 2018-2028 sets out notification requirements. In respect of modification applications, the Table on Page 30 references Part C of the Strategy. Part C (Table 1) specifies that notification is not required for modification applications made pursuant to section 4.55(1), however there is no tabulated notification requirement for other modification

application. The right hand column of Page 4 states the following in relation to general notification requirements for section 4.55 modifications:

SECTION 4.55 MODIFICATIONS

Where Council receives an application under Section 4.55 of the Environmental Planning and Assessment Act 1979 to modify a development consent where the proposed modification would have more than a minor increased impact on any neighbouring property, Council will notify: requirements for

29. The external fire stairs which are proposed to be modified present to the side elevation of the NSW Fire and Rescue emergency vehicle covered parking area. The view of that part of the neighbouring property which adjoins the approved fire stairs is provided below as Figure 9.



Figure 9: View of Southern Adjoining Development Interface with Modified Fire Stair

Source: Google Street View

30. The proposed modification will not have more than a minimal increased impact on any neighbouring property. The impact to adjoining properties is, in the opinion of this Practice, nil. Accordingly, notification of the modification is not required.

5.4 SECTION 4.15(1) MATTERS

31. Section 4.55(3) requires that in determining an application for modification, the consent authority must take into consideration matters referred to in section 4.15(1) which are relevant to the development, the subject of the application.

32. The following subsections provide an assessment of the proposed modification pursuant to those matters.

5.4.1 Any Environmental Planning Instrument

Georges River Local Environmental Plan 2021

33. At the date of original consent, the subject site was zoned B4 – Mixed Use under Kogarah Local Environmental Plan 2012 (**KLEP 2012**). At the date of the subject modification application, KLEP 2012 has been repealed by Georges River Local Environmental Plan 2021 (**GRLEP 2021**). The statement of repeal is provided at clause 1.8 of GRLEP 2021.
34. The subject site is zoned B4 – Mixed Use. Shop top housing development remains permissible in the zone. There are no aspects of the proposed modification which are contrary to the objectives of the B4 zone.

Principal Development Standards

35. While principal development standards are not strictly applicable to section 4.55 Modifications [Gann v Sutherland Shire Council [2008] NSWLEC 1228 (20 June 2008)] consideration of the principal development standards contained within Part 4 of the LEP is informative of merit considerations for which consideration is required pursuant to section 4.15(1)(b), (c) and (e) of the *Environmental Planning and Assessment Act 1979*.
36. The only principal development standard which is relevant to the proposed modification is clause 4.4 – floor space ratio (**FSR**). The subject site is contained within Area 4, and FSR Category Y. The FSR development standard is 4.5:1. Clause 4.4B (3) additionally applies to land within Area 4. The effect of that clause is to require that consent must not be granted to development within Area 4 unless the non-residential FSR is 1:1.
37. By its terms, clause 4.4 is not intended to apply to a modification application. This much is made clear, because clause 4.4B(4) begins with the words ‘Development consent must not be granted for’.
38. A development consent may only be ‘granted’ in response to a development application. A modification application is legally distinct from a development application (Peter Duffield and Associates Pty Ltd v Canada Bay Council [2002] NSWLEC 168). The provision in clause 4.4B(4) is not legally capable of being applied to the modification of a development consent — as it is not the ‘Grant’ of consent (Peter Duffield at [33]-[35]).
39. At the date of original consent, the FSR development standard was 4.5:1 under clause 4.4 of KLEP 2012, however there was no minimum requirement for non-residential floor space. The approved development complies with the 4.5:1 FSR development standard (WH Project Management Pty Ltd v Georges River Council [2020] NSWLEC 1508, Paragraph [7(2)]).
40. Plan DA2103 of the Approved Plans specifies a retail area of 142.5m² which includes an area of 25.5m² back of house retail floor space in the form of store room and amenities. The approved development plans do not calculate the area of the lobby. As “non-residential floor space”

combined area of the lobby and retail areas is 160.1m². Hence the FSR of the non-residential floor space of the approved development is 0.34:1

41. The modified proposal provides 149.9m² non-residential floor space, a reduction in area from the original approval of 10.2m², resulting in a 0.32:1 non-residential floor space for the modified development.
42. The objective of clause 4.4B of GRLEP 2021 is:
 - (1) *The objective of this clause is to encourage an appropriate mix of residential and non-residential uses in order to ensure a suitable level of non-residential floor space is provided to promote employment and reflect the hierarchy of the business zones.*
43. The objective seeks to protect retail hierarchy and promote employment opportunity.

Effect on Employment Generation and Retail Hierarchy

44. Georges River Council has prepared a Commercial Centres Strategy (February 2020). The map on Page 14 and the table on page 15 of the Strategy identifies Hurstville City Centre as the largest of the two strategic centres within the Local Government Area (the other being Kogarah Town Centre).
45. Table 2 of the Strategy identifies that by 2036, an additional 77,335m² of retail floor space is required to be provided within the Hurstville City Centre.
46. Section 3.1.4 of the Strategy provides detailed analysis of non-residential versus residential floor space mix. Assumptions for the analysis are said at page 18, to be based on The Hurstville City Centre Urban Design Strategy ("HCCUDS") adopted by Council in 2018.
47. That section analyses two scenarios for distribution of residential and non-residential floor space. The first scenario is referred to as the "unconstrained capacity scenario". It was the baseline scenario which analysed the existing floor space proportions which was observed within each of the centres. Table 4 of the Strategy shows that within the Hurstville City Centre the proportion of non-residential to residential floor space was 36% to 64% (respectively).
48. The second scenario analysed the then existing LEP controls which were said to be 0.5:1 minimum non-residential FSR in the Hurstville City Centre. Note that such control did not in fact apply to land within the Hurstville City Centre which was south of the railway line (where the subject site is located). That was land within the Kogarah LGA, however minimum non-residential floor space within Kogarah LGA only applied to land within the Kogarah City Centre.
49. Nevertheless, the Strategy predicted that under those controls, the existing LEP provisions would deliver a proportion of 24% non-residential floor space and 76% residential floor space (a decline of 12% non-residential floor space compared within the existing baseline).
50. Table 6 of the Strategy showed that if the existing controls were not amended, there would be a projected undersupply of non-residential floor space of some 108,570m² by 2036.
51. The analysis lead to the following recommendation, at page 19 of the Strategy:

The consistent undersupply of employment floor space across all centres demonstrates that as demand grows in these centres there will be insufficient capacity to provide essential services

for the growing population. A review of the minimum non-residential FSR requirement is required in LEP 2020 to address the shortfall in meeting this demand.

52. It is in the context of that strategic planning background therefore, that the merit assessment of the proposed reduction in non-residential floor space, contemplated by the current proposal, must be undertaken.
53. Figure 10 shows land within Hurstville City Centre which is zoned B3 or B4 and which is in Area 4 (subject to clause 4.4B(4)).



Figure 10: Area 4 Land within Hurstville City Centre (Excluding Roads)

54. By GIS calculation, the total area of land within the B4 and B3 zones (excluding roads) is = 39,9434m² and the total area of land within Area 4 is 23,4219m².
55. Area 4 controls pursuant to clause 4.4B(4) of GRLEP 2021 have been imposed to redress a predicted shortfall in non-residential floor space by 2036 of 108,570m².
56. The planning assumption therefore, is that compared with the former controls, Area 4 would deliver an additional 108,570m². Compared with the area of Area 4 land, the added non-residential floor space delivered by the control can be expressed relative to total land area to which the clause applies as $108.570 / 234219 = 0.00046$ (i.e. clause 4.4B(3) would deliver 0.00046sqm additional non-residential floor space per square metre of site area compared to the scenario where clause 4.4B(3) did not apply).
57. This expression of the control's efficacy assumes all land within Area 4 will be redeveloped by 2036, which of course extremely unlikely to be the case. However, it is an important metric because it allows a proper understanding of how the proposed reduction in 10.9sqm non-residential floor space rests, within the context of the strategic planning outcome which was intended to be delivered by the introduction of clause 4.4B(4) into GRLEP 2021.

58. Given the area of the subject site, clause 4.4B(3) anticipates an additional 0.22m² non-residential floor space compared with the modelled scenarios which informed the control.
59. That the proposed modification will reduce non-residential floor space by 10.9m² results in an outcome which is 11.12m² less than the planned outcome when globally applied to Area 4 land.
60. Relative to the predicted shortfall of 108,570m², the proportional significance of the proposed modification to non-residential floor space is 0.1%.
61. In assessment of this impact, it relevant that what is proposed is a modification to an existing approval which itself was not subject to the provisions of clause 4.4B(3).
62. On this basis, and having placed into proper context, the non-residential floor space reduction relative to the strategic planning intent, the modification as proposed will not derogate from the attainment of the objectives of clause 4.4B(3). The extent of non-residential floor space reduction proposed is so minor that it has no discernible impact on the delivery of the planning intention. Further, that the reduction is associated with a modification application to an original approval for which the control did not apply removes any potential for cumulative impacts arising from precedent.
63. Having regard to the above, such extremely minor reduction in non-residential floor space as proposed, is satisfactory on merit and will not cause harm to the employment generation and retail hierarchy protection outcomes which form the objective of the control. In any event, as explained earlier, clause 4.4B(4) is, by its own terms, intended to be applied when a development consent is **granted**, rather than when it is **modified**.
64. Additionally with regard to FSR, we record that the proposed modification does not increase the GFA of the development compared with the original approval. The originally approved development proposed breezeways between the fire stairs and the building proper. The breezeways were enclosed at either end by balustrades of a height less than 1.39m. Accordingly, they were not spaces which met the definition of "gross floor area" and where therefore correctly excluded from that calculation.
65. The modified development involves the same end closure of the breezeways. The difference between the originally approved development and the proposed modification relative to breezeways is twofold; the length and second the additional wind protective enclosure. The breezeways at Levels 2 and above as approved and proposed area shown in the following Figure 11.

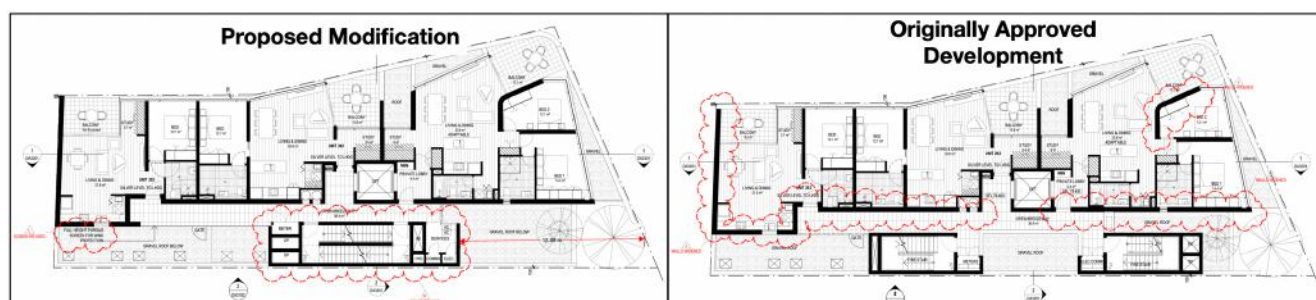


Figure 11: Comparison of Approved and Proposed Breezeway Design

66. Noting that the width of the breezeway is identical in both proposals, the difference in terms of length is:

| Originally Approved | Proposed Modification | Difference |
|--|---------------------------------|--|
| Two breezeways of 7.24m and 7.94m in length, separated by 6.25m. Total breezeway length is 15.18m. | One breezeway of 11.42m length. | Total breezeway length is reduced by 3.76m. The length of any single breezeway is increased by 3.48m. |

67. The extent and nature of the change does not cause the proposed modified breezeway to become gross floor area, in either function or form.
68. With respect to the wind protection enclosures, we observe that they do not provide any structural function to the building, they are perforated to allow visual permeability; and they are made of light weight materials. Given those characteristics, the proposed wind protection enclosures are best described as “screens” and not “walls”. As screens, they do not enclose floors and therefore does not cause the areas behind them to become gross floor area. The exclusion of outdoor areas enclosed by screens from gross floor area is non-controversial. Balconies are routinely provided with screens above a standard balustrade for acoustic and privacy reasons, or in the case of winter gardens, for climate amenity reasons.
69. Having regard to the above analysis, neither the proposed modified fire stair arrangement nor the introduction of wind protection screens cause the originally approved GFA excluded breezeways to become calculable GFA in the modified proposal.

Additional Local Provisions

70. Clause 6.10 sets out design excellence provisions. Pursuant to clause 6.10(3)(b) design excellence provisions apply to development within the 4B – Mixed Use zone if the building concerned is 3 or more storeys or greater than 12m in height or both. The approved development is both and hence clause 6.10 would apply if a development consent was being granted. Subclause 4 requires that consent must not be **granted** unless the building exhibits design excellence. As discussed earlier, this indicates that the provision is not intended to apply to a modification application. Nonetheless, for completeness, we consider the proposed modification in the light of matters for consideration relevant to design excellence are set out at subclause 5. We provide the following comments relevant to each of those matters:

(a) whether a high standard of architectural design, materials and detailing appropriate to the building type and location will be achieved,

Comment

71. The modification involves no change to approved materials, save for the proposed porous screen for wind protection at levels 2 and 3 and the replacement of stained timber battens at ground level to non-combustible stained timber look battens. The porous screens are of suitable quality to match the southern elevation of the building. The change in batten material does not result in any change to the architectural language or expression delivered by the development.
72. The modified consolidated fire stair in scissor arrangement results in no detectable changes to the building's presentation to Butler Road at ground and first floor. At those levels, the amended is behind the eastern boundary interface treatment (gates at ground level and a wall at first floor). At levels above first floor, the change in presentation of the building, when viewed from Butler Road is that the eastern edge of the fire stairs will be recessed 12.1m back from the property boundary, compared with the approved plans where the easternmost fire stair is recessed 6.8m from the property boundary. The eastern elevation of the fire stairs under both proposals is necessarily a blank wall. Whilst screen cladding is proposed under the approved and modified plans, the greater recess of less attractive elements of the building is a superior architectural outcome. Accordingly, the modification is more demonstrative of design excellence than the approved development in that regard.
73. The provisions of the full length pedestrian awning as proposed also delivers improved amenity to the public domain and is consistent improved design excellence of the proposed modification.

(b) whether the form and external appearance of the development will improve the quality and amenity of the public domain,

Comment

74. For the reasons described above, the modified proposed results in improvements to the quality and amenity of the public domain compared to the approved development.

(c) whether the development detrimentally impacts on view corridors,

Comment

75. There are no impacts on views

(d) how the development addresses the following matters—

| Matter | Comment |
|---|---|
| <i>(i) the suitability of the land for development,</i> | The modification has no effect on the suitability of the land for the development; |
| <i>(ii) existing and proposed uses and use mix,</i> | The modification does not involve any change to land uses and mix. The minor reduction in non-residential floor space is addressed above. |

| | |
|---|--|
| <i>(iii) heritage issues and streetscape constraints,</i> | There are no heritage or streetscape constraints. The modification causes no impact in either regard. |
| <i>(iv) the relationship of the development with other development (existing or proposed) on the same site or on neighbouring sites in terms of separation, setbacks, amenity and urban form,</i> | The relationship of the amended southern elevation to other development is a non-sensitive void space over the Fire and Rescue emergency vehicle parking area. The modification causes no impact on the southern adjoining development, nor any potential it may have for redevelopment. |
| <i>(v) bulk, massing and modulation of buildings,</i> | There are no material differences between the approved development and the modified development relevant to these metrics. |
| <i>(vi) street frontage heights,</i> | No change. |
| <i>(vii) environmental impacts such as sustainable design, overshadowing and solar access, visual and acoustic privacy, noise, wind and reflectivity,</i> | Detailed assessment of overshadowing and wind impacts is provided at Section 5.6 below. The modification does not result in any adverse impacts of the nature referenced within this subclause. |
| <i>(viii) pedestrian, cycle, vehicular and service access and circulation requirements, including the permeability of pedestrian networks,</i> | No change. |
| <i>(ix) the impact on, and proposed improvements to, the public domain,</i> | No change. |
| <i>(x) achieving appropriate interfaces at ground level between the building and the public domain,</i> | Ground level interface is improved by the proposed awning extension at Ormond Parade |
| <i>(xi) excellence and integration of landscape design,</i> | No change. |
| <i>(xii) the provision of communal spaces and meeting places,</i> | No change. |
| <i>(xiii) the provision of public art in the public domain,</i> | No change. |

| | |
|---|------------|
| <i>(xiv) the provision of on-site integrated waste and recycling infrastructure,</i> | No change. |
| <i>(xv) the promotion of safety through the application of the principles of crime prevention through environmental design.</i> | No change. |

76. Having regard to the above, the modified proposal delivers improved design excellence compared with the originally approved development.

State Environmental Planning Policy 65 (Design Quality of Residential Apartment Development).

77. The principal effect of SEPP 65 to the assessment of development applications for residential apartment development (including shop top housing) is to take into consideration to the nine design quality principles contained within Appendix 1 of the instrument and the provision of the Apartment Design Guide (ADG).
78. The nine design quality principles are:
- *Principle 1: Context and neighbourhood character*
 - *Principle 2: Built form and scale*
 - *Principle 3: Density*
 - *Principle 4: Sustainability*
 - *Principle 5: Landscape*
 - *Principle 6: Amenity*
 - *Principle 7: Safety*
 - *Principle 8: Housing diversity and social interaction*
 - *Principle 9: Aesthetics*
79. The proposed modification generally involves no impact or effect relevant to these principles. However, we observe the following relevant matters.
- The modified, consolidated fire stair in scissor stair arrangement involves less material than the originally approved separate first stairs. The reduce volume of building material translates to lower embodied energy for the modified proposal compared to the approved development. It is therefore superior by reference to Principle 4.
 - The wind mitigation aspects of the amendment are not limited to mitigating additional impacts of the proposal compared with the approved. Rather, the wind analysis report provides a full assessment of both the approved and modified proposals. Irrespective of

the proposed modification, the Ormond Parade awning extension is a recommendation which will deliver improve amenity to the public domain compared with the approved development. Given that the modified proposal incorporates these recommended wind mitigating features, the modification is superior to the approved development having regard to Principle 6.

- The additional recessing of the fire stair elements from the Butler Road public domain represents a minor aesthetic and built form improvement compared with the approved development. Accordingly, the proposal is superior to the approved development having regard to Principles 2 and 9.

80. There are no aspects of the proposed modification which are additionally relevant to design guidance matters contained within the ADG.

Other State Environmental Planning Policies

81. The subject site is within the Georges River catchment. At the date of original consent, the relevant environmental planning instrument relevant to the Georges River Catchment was Deemed SEPP, Greater Metropolitan Regional Environmental Plan No. 2 – Georges River Catchment. That instrument has now been incorporated into SEPP (Biodiversity and Conservation) 2021 as Chapter 6. There are no provisions within that Chapter which are relevant to the subject application.
82. State Environmental Planning Policy (Building Sustainability Index) 2004 (**SEPP BASIX**) applies to the proposed development. There are no aspects of the proposed modification which enliven the need for a new BASIX Certificate.
83. State Environmental Planning Policy (Transport and Infrastructure) 2021 applies to the subject site. There are no aspects of the proposed modification which enliven matters relevant to that SEPP.

5.4.2 Any Development Control Plan

84. Georges River Development Control Plan 2021 (**DCP 2021**) applies to the proposed modification. There are no aspects of the proposal which introduce any non-compliance with the provisions of the same. We note the following additional assessment comments.
- Objective (h) of clause 3.11.1 (Energy and Water Efficiency) is to “Reduce the environmental impact from building materials through reduction, re-use and recycling of materials, resources and building components”. Through consolidation of two stairs to a single scissor configuration fire stair, the proposed modification involves a reduction in building materials compared with the originally approved development. The modified development is consistent with the objective of Objective (h).
 - Part 7 of DCP 2021 sets specific controls for development within Business Precincts. The proposed modification is consistent with the streetscape objectives and controls contained within clause 7.1.2(1). In particular, the modification delivers an additional recess to the eastern elevation of the fire stair element. The additional setback from Butler Road provides a modest streetscape improvement compared within the originally approved development.

- Clause 7.1.2(2) sets objectives and controls in relation to setbacks. The proposed modification is equally consistent with the objectives and controls of that clause and delivers a modestly improved outcome relative to the approved development.
- Clause 7.1.3 (1) goes to design excellence. This issue has been addressed above in respect of clause 6.10 of GRLEP 2021. The proposed modification is consistent with the DCP provisions for the same reasons as expounded above in respect of GREP 2021 Additional Local Provisions.
- Clause 7.1.3(2) deals with building façades. The proposed modification results in minimal change to the composition and materiality of the approved development. The modified proposal provides a modest improvement through the continuation of the Ormond Parade awning and through the additional recess of the fire stair element.
- Clause 7.1.3(3) provides specific controls for awnings. The proposed awning extension to Ormond Parade complies with the objectives and controls. To the extent that objectives (a) and (b) go to pedestrian amenity, the proposed full length awning provides greater servitude to the objectives of the clause compared with the approved development.
- Clause 7.1.3(6) deals with materials and finishes. The minor amendments to the same proposed as part of the modification application is consistent with the objectives and controls of that clause.

5.5 SECTION 4.15(1)(IIIA) TO (IV)

85. There are not matters contained within these subsections of the Act which are relevant to the proposed modification.

5.6 LIKELY IMPACTS OF THE DEVELOPMENT

86. Compared with the approved development, the modified development involves the following potential impacts:

- Streetscape;
- Wind effects;
- BCA and fire egress safety;
- Environmental impacts attributable to embodied energy of building materials.

87. The following addresses each of those matters in the above order.

5.6.1 Streetscape Impacts

88. The streetscape impacts are minor but positive, for the reasons described previously within this report (Sections 5.4.1 and 5.6.1).

5.6.2 Wind Impacts

89. At project inception of the modification application, it was identified that the consolidation of the fire stairs had the potential to change wind speeds along the pedestrian breezeways at all

residential levels. Each of the fire stairs as originally approved were approximately 6m in length and separated by a distance of approximately 9.5m. The length of the consolidated fire stair in scissor arrangement as proposed is approximately 12.5m.

90. To the north of the fire stair and breezeway is the building proper. Accordingly, in wind behaviour terms, the modification involves the change from 2 x 6m wind tunnels separated by about 10m, to 1 x 12.5m long wind tunnel.
91. To understand the impacts of any potential change in wind behaviour on the amenity of the pedestrian breezeways, Wind Tech Consultants were asked to provide a wind impact assessment of the approved and proposed drawings. That assessment is submitted under separate cover. The nature of the analysis was not strictly an assessment which identified additional impacts caused by the proposed modification. Rather, it quantified impacts of both the approved and proposed developments in relative isolation from one another. This method revealed that the approved development would deliver an adverse wind impact to pedestrian amenity at the western side of the building fronting Ormond Parade. Irrespective of the proposed modification, Wind Tech Consultants have recommended that the Ormond Parade awning be extended across the full width of the building. It is for that reason that the subject modification includes that proposed amendment.
92. In respect of the reconfigured fire stairs, Wind Tech Consultants have identified that the pedestrian wind environment under the approved development was less than optimal on the western side of the westernmost fire stair. A full height porous screen is recommended for that location under the approved configuration. Similar recommendations are made for levels 4 to 11 and roof level.
93. The assessment of the proposed modification shows the same recommendations as still being required in essentially all of the same locations accounting for the proposed fire stair reconfiguration.
94. Having regard to the detailed wind impact assessment undertaken by Wind Tech Consultants, it is fair to say that the proposed modification results in either no additional wind impacts or else negligible additional wind impacts compared with the approved development. However, the analysis indicates that the approved development did not deliver optimal wind impact mitigation. The modified proposal seeks to correct that situation. Accordingly, the modified development will deliver reduced wind impacts compared with the approved development.

5.6.3 BCA and Fire Egress Safety

95. Accompanying the subject application is a BCA Compliance Compatibility Report prepared by BCA Logic. The assessment does not identify any concerns related to the proposed fire stair reconfiguration. Rather, the primary issue which has been identified is that in the intervening time between the grant of consent and present, there have been changes to the BCA. The assessment sets out 13 items which will require further attention at Construction Certificate Stage.
96. There are no matters raised within those 13 items which would cause the modified consent to be unworkable or require further modification. However, as a consequence of the need for those matters to be addressed within CC Plans, a cautionary note has been added to the modification application plans as described with Section 4 of this Report. In particular relevant to clause 19 of the Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021, the Construction Certificate Plans which reflect the additional 13 items would not result in

“relevant building work plans and specifications” being other than “consistent with the development consent”.

5.6.4 Environmental impacts attributable to embodied energy of building materials

97. The perimeter of each of the separate fire stairs under the approved development is approximately 17.1m. Hence the approved development provides fire stairs with 34.2m of wall length per level or 446m over the whole development.
98. The consolidated fire stair in scissor arrangement results in a total perimeter of 30.7m (including door openings). Accordingly, there is a building materials efficiency gain of 3.5 m of wall length per level (45.5m wall length over the whole development).
99. Whilst not of significant environmental consequence, it is helpful for conceptualisation purposes, to consider that a 45.5m wall, to 3.1m height, if constructed of bricks, would require some 14,000 bricks¹ or about 50 tonnes of construction material. This means that the development as modified will result in a saving of these 14,000 bricks or 50 tonnes of construction material.
100. The modified development can therefore be said to represent an improvement over the approved development with regard to embodied energy impacts.

5.7 SUITABILITY OF THE SITE, SUBMISSIONS AND PUBLIC INTEREST

101. The modification application is satisfactory in all respects having regard to Section 4.15(1)(c), (d) and (e) of the Act.

6 Part 5, Division 1 of the Environmental Planning and Assessment Regulation 2021

102. The following provides a record of assessment of the proposed modification relevant to Part 5 of EPA Regulation 2021.
 - The modification application is properly made relevant to section 98.
 - The modification application is lodged on the planning portal and is consistent with the requirements of section 99.
 - The content of the modification application accords with the requirements of section 100.
 - The modification is accompanied by a design verification statement in accordance with section 102.

¹ Assumes 76mm x 230mm bricks with 10mm coping and double brick construction

7 Conclusion

103. This report provides a detailed assessment of a Section 4.55(8) Modification to Development Consent 2017/0402 granted by the NSW LEC by Order of 23 October 2020.
104. The assessment demonstrates that the modified proposal is substantially the same as the originally approved development.
105. In general terms, the modified proposal results in a superior development to the originally approved development, when assessed against the applicable environmental planning instrument and DCP controls and objectives.
106. The most significant issue arising from the modification application is that it results in a reduction in non-residential floor space of approximately 10.2m². Whilst not applicable to the originally approved development application, Clause 4.4B of GRLEP 2021 would apply to the subject site if a new development consent were sought. That clause requires (of a new development consent) a minimum non-residential floor space equivalent to 1:1 FSR. The originally approved development does not satisfy that requirement (which was introduced since the consent was granted), with 0.34:1 non-residential floor space being provided in the approved scheme.
107. However, the introduction of a new planning control which seeks minimum non-residential floor space might be considered a relevant matter for consideration under Section 4.15(1) of the Act, which in turn, is a matter for consideration for the modification application pursuant to section 4.55(3) of the Act. The modification application will increase the extent of non-compliance with the newly introduced clause relative to the originally approved development. Having said this, as explained earlier, by its own terms the development standard is not intended to apply to modification applications.
108. While clause 4.4B of GRLEP 2021 is a development standard, a request for variation to the development standard pursuant to clause 4.6 is not required because section 4.55 is a statutory source of power in its own right such that any 4.6 request would be otiose (*North Sydney Council v Michael Standley and Associates (1988) 43 NSWLR 468, 480-481*).
109. Notwithstanding the above, this assessment has provided a detailed analysis of the impacts (specific and cumulative) of the proposed reduction in non-residential floor space. The objectives of clause 4.4B seek to encourage employment opportunity and protect retail hierarchy. The clause was inserted into the LEP following the identification of a future shortfall in non-residential floor space within the Hurstville City Centre in the Commercial Centres Strategy 2020.
110. The effect of clause 4.4B on the future of the Hurstville City Centre has been analysed by GIS processes. By that analysis, the effect of the modification on the planned increase in non-residential floor space within Hurstville City Centre is a 0.1% under-delivery.
111. In the context of this impact, the modification as proposed will deliver a number of benefits, albeit of varying significance and weight. Of those however, wind impact analysis undertaken as part of the modification application has identified that the originally approved development would result

in suboptimal wind impacts within the development itself, and within the public domain. The modification application will correct those elements of the originally approved development.

112. Having regard to the assessment set out above, the modified proposal involves an extremely minor exacerbation of impacts relative to employment and retail hierarchy, however that impact is off-set by demonstrable improvements to pedestrian amenity and a reduction in the material consumed in the course of construction.
113. Having considered all statutory and policy provisions relevant to the proposal and applying weight to impacts and benefits, the modified proposal is a desirable amendment to the originally approved development. It is respectfully submitted to the Court with this author's recommendation for approval.

Signed,



David Haskew (B.T.P Hons 1)
Senior Partner
HDC Planning

8 Attachments

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Appendix A

CV of David Haskew

Appendix A

CV of David Haskew