

JRPP No:	Item 1 (2010SYE040)
DA No:	DA435/09/2
PROPOSED DEVELOPMENT	Modify Approved Development Consent DA435/09 for a mixed use building including the deletion of the southern courtyard, increase in number of apartments, various internal and external modifications, deletion of the 1.2m laneway setback to Abbott Lane and deletion of a number of conditions.
APPLICANT:	Platino Properties Pty Ltd
REPORT BY:	Lara Huckstepp, Acting Team Leader, North Sydney Council

Assessment Report and Recommendation

EXECUTIVE SUMMARY

This application seeks to modify the approved mixed use building at No.520 Miller Street including the deletion of the southern courtyard, increase in the number of apartments from 36 to 41, deletion of the Laneway setback to Abbott Lane and the deletion of a number of conditions.

The proposed modifications generally revert back to the originally submitted development scheme which was rejected by Council's Design Excellence Panel. The Panel raised major concerns with the amenity of the apartments and the reliance on light wells to create large floor plates with only one lift. The proposal does not have regard to the rules of thumb under the Residential Flat Design Code (RFDC) that are intended to generate a better design of apartment buildings with regard to amenity. The Panel considered the density to be excessive and recommended that the floor plate should be reshaped to allow for building and apartment depths more in line with the RFDC which provide better ventilation and amenity to the apartments. The Panel also considered that multiple lift cores should be provided. **The proposed modification fails to satisfy the provisions of SEPP 65 and the RFDC and cannot be supported.**

The proposed deletion of the 1.2m Laneway setback to Abbott Lane is contrary to NSDCP 2002 and is not supported as it would result in poor pedestrian safety and an inadequate setback from the proposed lower ground floor west-facing residential apartments to the Laneway.

For reasons set out in this report, the deletion of Conditions C1 (Ground Floor Blade Walls along Abbott Lane); Condition C3 (Roller Shutters); Condition C9 (Street Lighting); Condition C38 (Noise from Plant); and Condition C41 (Noise and Vibration from Road and Rail) are not agreed for deletion and should stand in place.

Following a review of the applicant's submission, no objection is made to the deletion of Condition C24 (External Colours and Finishes); Condition C37 (Storage of Hazardous or Toxic Material); Condition E14 (Removal of Extra Fabric); and Condition G16 (Asbestos Clearance Certificate).

DESCRIPTION OF PROPOSAL

The proposal involves the modification of Development Consent DA435/09 which allowed the construction of a mixed use building at No.520 Miller Street, Cammeray. In detail, the amendments include:

- Deletion of the southern courtyard and lightwell.
- Provision of additional five (5) apartments (Note: 36 apartments were approved and 41 apartments are now proposed).
- Minor internal and external changes.
- Deletion of 1.2m Laneway setback to Abbott Lane.
- Construct electrical substation within the Palmer Street elevation.
- Deletion of the following conditions:

Condition C1 (Ground Floor Blade walls along Abbott Lane)

Condition C3 (Roller Shutters)

Condition C9 (Street Lighting)

Condition C24 (External Colours and Finishes)

Condition C37 (Storage of Hazardous or Toxic Material)

Condition C38 (Noise from Plant)

Condition C41 (Noise and Vibration from Road and Rail)

Condition E14 (Removal of Extra Fabric)

Condition G16 (Asbestos Clearance Certificate)

STATUTORY CONTROLS

North Sydney LEP 2001

- Zoning – Residential D
- Item of Heritage - No
- In Vicinity of Item of Heritage - No
- Conservation Area - No
- FSBL - No

S94 Contribution

Environmental Planning & Assessment Act 1979

SEPP No. 1 Objection

SEPP No. 55 - Contaminated Lands

SREP (2005)

Local Development

POLICY CONTROLS

DCP 2002

DESCRIPTION OF LOCALITY

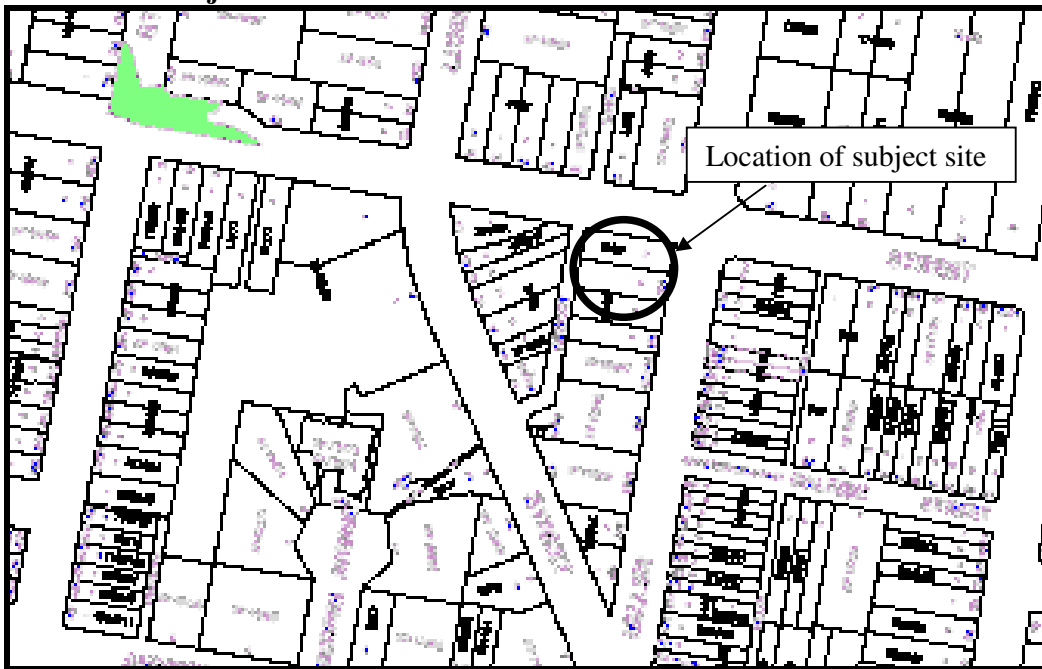
The subject site is formally identified as Lot 10 in DP3102 and Lots B & C in DP102431 and is located on the western side of Miller Street on the south-western side of the intersection with Palmer Street. Abbott Lane is located adjacent to the rear (western) boundary of the site. The site is rectangular in shape with a frontage to Miller Street of 35.4m and a frontage to Palmer Street of 36.6m. The site comprises an area of approximately 1288m². The site drops between 3m and 4m from the eastern boundary to the

western boundary.

The subject site previously contained a disused service station and motor vehicle repair workshop which has since been demolished.

The site forms part of the Cammeray Village Centre and is located at its northern end. Commercial and retail development is located to the south of the site and on the opposite side of Miller Street. Residential buildings are located to the immediate north and west of the site.

Location of Subject Site



RELEVANT HISTORY

On 7 April 2010 Development Application DA435/09 was approved by the Joint Regional Planning Panel. This approval allowed the construction of a part 4 / part 5 mixed use building with two basement levels consisting of 655 square metres of retail space, 36 apartments, rooftop communal facilities and parking for 57 vehicles at 520 Miller Street, Cammeray.

It is noted that at this meeting, the Council Officer did not support the proposed development application for the following reasons:

1. **Building Height** – The proposal results in a breach of Clause 17 NSLEP 2001 (Building Height) and the submitted SEPP No.1 Objection is not considered to be well-founded or worthy of support in this instance.
2. **Podium Setback** – The proposal results in a non-compliance with the podium and setback controls along the Miller Street (eastern) elevation result in excessive bulk and scale, and an overbearing impact upon the surrounding Cammeray Village Neighbourhood.
3. **Residential Density** – The proposal results in a density that is in excess of the development yield expected on that site as set out in the North Sydney Residential Development Strategy. This excessive density is considered to compromise residential amenity of a number of apartments.
4. **Overdevelopment of the site** – The proposal represents an overdevelopment of the site.
5. **Precedent** – The proposal is considered likely to set an undesirable precedent in the Cammeray Village Neighbourhood.
6. **Public Interest** – The proposal is not in the public interest.'

The subject modification was submitted to Council on 8 July 2010.

REFERRALS

Building

The application has not been assessed specifically in terms of compliance with the Building Code of Australia (BCA). Council's standard condition relating to the compliance with the BCA continues to stand in place. Should further amendments be necessary to any approved plans to ensure compliance with the BCA, then a further Section 96 application to modify the consent may be required.

Design Excellence Panel

The proposed development scheme is similar to that originally proposed by the applicant. The proposal was considered by the Design Excellence Panel at the time the application was originally lodged with Council. The originally submitted scheme proposed 42 apartments and the modified scheme proposes 41 apartments. As such, the following comments from the Design Excellence Panel held on 3 March 2010 continue to be relevant to the modification application:-

*'Panel Members: **Peter Webber; David Chesterman; Philip Graus; Russell Olsson.**
Council staff: **Geoff Mossemeneer (chair), Lara Huckstepp.**
Proponents: **George Revay (architect), Kerry Gordon (planner), Jonathon Lieb**
(development manager).*

A site inspection was carried out by the Panel and Council staff prior to the meeting.

This proposal is a development application that will be determined by the Joint Regional Planning Panel due to the cost of works involved.

The Proposal:

The proposal involves the erection of a mixed use development over five levels consisting of 673m² of retail space, 42 apartments, roof top communal facilities with basement parking for 57 vehicles accessed from Abbott Lane

The architect George Revay provided a presentation of the proposal and was available for questions and discussion with the Panel. At the request of the applicant, the Panel was provided with an Analysis report relative to overshadowing, solar access and natural ventilation prepared by Steve King.

Panel Comments:

Comments on the proposal are under the headings of the ten design quality principles set out in SEPP 65 to cover the issues that arise.

Context:

The Panel notes that the corner site is located at the end of the Cammeray Village shopping strip with lower density development to the north, residential apartments under construction to the west and mixed use development to a similar height to the south. The siting of the building was generally considered satisfactory. The height of the building was consistent with mixed use development to the south with the proposed roof top facilities setback from the boundaries. The building has a 3m setback to Palmer Street, however, the Panel considered the landscaping

within the 3m setback should be at or near the level of the footpath and not elevated planter boxes. Any front fence should be an open palisade or picket fence to allow transparency and a view of the landscape behind

Scale:

The panel considers that the proposed building has an acceptable scale in relation to the adjoining development to the south and west. The height of the building was acceptable. The Panel noted that the proposed roof top facilities, whilst generally above the height control, are setback from the boundaries and do not add to the scale of the building.

Built Form:

The Panel considers that the proposed articulation of the building to Palmer Street and Abbott Lane produces an appropriate physical relationship with the neighbouring development to the west.

The Panel considers that the built form must also relate to the building's purpose which is predominantly residential. The dimensions of the building do not satisfy the rule of thumb recommendations under The Residential Flat Design Code (RFDC) where building depths should range from 10m – 18m to support natural ventilation and natural lighting of internal areas. The building dimensions of 32m x 32m (glass to glass) are well outside that range, and will lead to an excessively bulky built form and poor internal amenity.

The number of apartments accessible off a double loaded corridor should be limited to eight and multiple cores should be provided when there are 14 apartments on one floor and ten on another relying on one lift and one entrance. The Panel is not convinced that the proposed building having depths of over 30m can provide for an acceptable amenity for the residents. The Panel suggests that the building be designed to reduce the building depth which may involve making the shape of the building from first floor level up into a "U" shape or "L" shape building. The additional articulation to the building could be made on the lane side of the site.

Density:

The Panel notes that the Council's DCP identifies an expected dwelling yield under its Residential Development Strategy of 22 apartments for this size site for a 5 storey building in a residential zone and having regard for the Residential D landscape requirements, this density could possibly be increased by up to 50%. The proposal seeks a density of 42 apartments and to achieve the density, a series of small light wells are proposed to provide for a large floor plate and excessive building depth. The Panel considers the proposed density to be excessive and the floor plate needs to be reshaped to allow for building depths more in line with the RFDC to allow for better ventilation and amenity to the apartments. A reshaping of the floor plates is likely to result in a loss of around 9 apartments which would be more in line with the appropriate dwelling yield for the site.

Resource, energy and water efficiency:

The Panel noted that some dwellings rely on light wells for cross ventilation and natural lighting and the depth of single aspect apartments exceed the recommended depths under the RFDC. The proposal contains a number of bedrooms and living rooms that open onto light wells. The RFDC states that light wells are to be prohibited as a primary source of daylight in habitable rooms. The Panel does not support the extensive use of light wells in the development and considers that light wells should be a secondary light source for non habitable areas.

Landscape:

The Panel notes the basement carpark covers the entire site and no deep planting areas are proposed. The Panel recommends that the 3m setback on Palmer Street is landscaped at or near footpath level and that elevated planters along Palmer Street are avoided. Additional planting is proposed in the courtyard recommended in this review, on upper terraces and on the roof.

Amenity:

The Panel considered the amenity of the dwellings to be unsatisfactory with regard to the extensive use of light wells to bedrooms and living rooms. As discussed above, the floor plate needs to be reshaped to minimise the need for light wells and improve the cross ventilation and solar access to the apartments. Natural light and ventilation should also be provided where possible to lift lobbies and access corridors.

The Panel has had access to the expert report by Dr King, but remains unpersuaded that the amenity of the units in relation to sunlight and ventilation is acceptable on a site of this nature.

Provision should be made for privacy screening between units in Abbott Lane at the northern end of units in the block presently under construction on the opposite side of the lane.

If the main entry were to be located in Miller Street as suggested above, residents would need to walk up only three levels instead of four as presently planned, or down one to the bottom levels of units, at times when the elevator(s) are out of action. The lowest units could also be accessed directly from street level, and with some reconfiguration all three could well have individual “front door” access via private courtyards. In this situation and depending upon the total number of units there may be a better case for provision of only a single lift.

Safety and security:

The Panel considered that multiple cores should be provided when there are 14 apartments on one floor and ten on another relying on one lift and one entrance. The Panel felt that residential access from Miller Street would be more convenient and safer than from Palmer Street

Aesthetics:

Materials and finishes were discussed at the meeting and appear generally satisfactory.

Social Dimensions:

The Panel commends the proposal for communal space on the roof area. The Panel recommends that the inclusion of a small enclosed area would enhance the value of this space in cold/windy conditions.

Conclusion:

The proposal is not supported. The Panel has major concerns with the amenity of the apartments and the reliance on light wells to create excessively large floor plates with only one lift. The proposal does not have regard to the rules of thumb under the RFDC that are intended to generate a better design of apartment buildings with regard to amenity. The Panel considers the proposed density to be excessive and the floor plate needs to be reshaped to allow for building and apartment depths more in line with the RFDC to allow for better ventilation and amenity to the apartments. The Panel considered that multiple cores should also be provided’.

Planning Comment: Of particular importance, during the assessment of the originally submitted development application, the applicant was advised of the Design Excellence Panel comments and through a series of piecemeal amendments, the applicant undertook significant amendments to the application which included a large southern courtyard over three levels and a reduction in apartments on the site to 36. In my view, the proposal remained marginal at best and further refinement was warranted

which led to a recommendation for refusal. This scheme was subsequently approved by the JRPP.

The subject modification effectively seeks to revert back to the original scheme which was rejected by the Design Excellence Panel and which is considered a poor urban form with marginal internal amenity. As the Panel is aware, the Design Excellence Panel is comprised of 4 independent highly regarded members who have concluded that the development fails to satisfy the provisions of SEPP 65, RFDC and good design principles.

SUBMISSIONS

Adjoining properties and the Bridgeview / Plateau Precinct were notified of the proposed development between 16-30 July 2010. The application was advertised within the Mosman Daily on 15 July 2010. No submissions were received in relation to the development application.

CONSIDERATION

The proposal is required to be assessed having regard to the following matters.

Section 96(2) of the Environmental Planning and Assessment Act 1979 enables a consent authority to modify a development consent upon application being sought by the applicant or any person entitled to act on the consent, provided that the consent authority:

- is satisfied that the development to which the consent as modified relates is substantially the same development;
- has consulted the relevant Minister, public authority or approval body in respect of a condition imposed as a requirement of a concurrence to the consent or in accordance with the general terms of an approval proposed to be granted by the approval body and that Minister, authority or body has not, within 21 days after being consulted, objected to the modification of that consent;
- has notified the application in accordance with the regulations and has considered any submissions made concerning the proposed modification; and
- in determining the application for modification, has taken into consideration such matters referred to under Section 79C(1) as are relevant.

Therefore, Council's assessment of the application to modify the subject development consent must consider the following issues:

1. Is the proposed development as modified substantially the same development approved by the Joint Regional Planning Panel?

No. It is considered that the amended design results in unsatisfactory residential amenity and an unacceptable Laneway setback. The proposed development is not substantially the same development as that approved by the Panel.

2. Whether the application required the concurrence of the relevant Minister, public authority or approval body and any comments submitted by these bodies?

No concurrence is required.

3. Whether any submissions were made concerning the proposed modification.

No submissions were received in relation to the proposed development.

4. **Any relevant considerations under Section 79C(1) of the Environmental Planning and Assessment Act 1979.**

Each proposed modification is considered as follows:-

DELETE THE SOUTHERN COURTYARD AND LIGHTWELL; PROVISION OF ADDITIONAL FIVE (5) APARTMENTS (NOTE: 36 APARTMENTS WERE APPROVED AND 41 APARTMENTS ARE NOW PROPOSED) AND MINOR INTERNAL AND EXTERNAL CHANGES.

Planning Comment: As set out in the Design Excellence Panel referral section of this report, the modified plans generally revert back to the original development plans which were rejected by the Design Excellence Panel. The primary concerns of the Panel as set out in their comments included:-

- The excessive building depth of 32m x 32m is well outside the range required by the RFDC of 10m-18m. This excessive building depth is considered to result in a bulky built form and poor internal amenity for apartments.
- The number of apartments accessing a single lift core is well in excess of that proposed by the RFDC which sets a maximum of 8 apartments per floor. The modified development proposes 14, 10 and 9 apartments accessing the single lift core at first, second and third floor levels respectively.
- In order to achieve the proposed density, a series of small light wells are proposed to provide for large floor plates and excessive depth. The floor plates need to be reshaped to allow for building depths more in line with RFDC which would provide for better ventilation and amenity to apartments.
- The extensive use of light wells in the development is not supported given that light wells should provide a secondary light source for non-habitable areas only. The light wells proposed will serve a number of bedrooms, living areas and studies.
- Despite the expert report by Dr King, it continues to be considered that the amenity of units in relation to sunlight and ventilation is unacceptable on a site of this nature.

The Design Excellence Panel have concluded that ‘*The proposal is not supported. The Panel has major concerns with the amenity of apartments and the reliance on light wells to create excessively large floor plates with only one lift. The proposal does not have regard to the rules of thumb under the RFDC that are intended to generate a better design of apartment buildings with regard to amenity. The Panel considers the proposed density to be excessive and the floor plate needs to be reshaped to allow for building and apartment depths more in line with the RFDC to allow for better ventilation and amenity to the apartments. The Panel considered that multiple cores should also be provided.*

The applicant submitted amended plans to overcome the concerns of the Design Excellence Panel. The amenity concerns were not an issue raised in my assessment of the proposal approved by the JRPP due to the changes made by the applicant.

The subject modification closely reverts back to the proposed development which was rejected by the Design Excellence Panel. The resultant development would be an over-development of the site, resulting in poor amenity for the occupants of the building. The design of each level has compromised apartment amenity in order to maximise the number of apartments provided. **The proposal fails to address the provisions of the RFDC, SEPP65 and as such, cannot be**

supported.

DELETE APPROVED 1.2M LANEWAY SETBACK TO ABBOTT LANE.

Planning Comment: The applicant proposes the deletion of the 1.2m setback to Abbott Lane. This setback was required by Council during the assessment of the original development application to comply with Council's Laneway Control set out in Section 7.3 (x) of the North Sydney Development Control Plan 2002 as follows:

'Set back all new and rebuilt fences and structures 1.2m the laneway alignment and landscape the setback with appropriate low maintenance plants.'

The applicant amended their plans accordingly and approval was subsequently granted. The proposal to revert back to the zero Laneway setback is unacceptable due to the pedestrian safety and appropriate setbacks of the western lower ground floor apartments to the Laneway.

There is no footpath located adjacent to the subject site on the Abbott Laneway frontage. The approved development is considered to increase pedestrian traffic around the subject site and in particular by the occupants of the building. The removal of this approved 1.2m setback would result in likely safety risks to pedestrians and cannot be supported. It is noted that Abbott Laneway provides for two-way traffic and is limited in width to 5.5m.

The zero building setback is also considered to provide inadequate separation from the proposed lower ground floor west-facing apartments to the Lane. The deletion of this setback results in bedrooms and living rooms of these apartments located immediately adjacent to the roadway at a similar level to the cars without any form of buffer. This arrangement and lack of setback cannot be supported.

NEW ELECTRICAL SUBSTATION WITHIN THE PALMER STREET ELEVATION.

Planning Comment: The proposed electricity sub-station is provided within the 3m setback on Palmer Street adjacent to the new entry for the apartments. This is considered to be an unsightly location. It is considered that the substation would be more appropriately located within Abbott Lane adjacent to the vehicular entry and garbage area. Importantly, should this substation be located within the Abbott Lane frontage, it should be located behind the 1.2m setback.

The concerns relating to the location of this electricity substation are on visual impact. It is considered reasonable that this substation could be better located within the new development than the location proposed by the applicant.

DELETE CONDITION C1

Ground Floor Blade Walls along Abbott Lane

C1. The blade wall located along Abbott Lane (southern end of elevation) at footpath level on the boundary with No.514 Miller Street, shall be deleted to allow for the flow of (future) pedestrians to adjacent sites. A structural column may be provided. A minimum clearance of 2.4m shall be provided.

The Certifying Authority must ensure that the building plans and specifications submitted by the applicant, referenced on and accompanying the issued Construction Certificate, fully satisfy the requirements of this condition.

(Reason: *To comply with the Development Control Plan 2002 and to allow for pedestrian access along Abbott Lane*)

Planning Comment: The deletion of this condition is related to the 1.2m Laneway Setback which is not supported by Council Officers for reasons set out in this report.

The requirement to delete the blade wall along the southern end of the Abbott Lane Elevation at ground level is to facilitate future pedestrian access to the adjoining site at No.514 Miller Street. This adjoining site has not been recently developed and currently contains commercial development. This condition is reasonable and deletion of condition C1 is **not** supported.

DELETE CONDITION C3

Roller Shutters

C3. *The proposed roller shutter door/intercom/security access point to the driveway shall be moved to ensure it is set back at least 12 metres from the boundary line to allow for the two vehicles to queue wholly on site. The Certifying Authority must ensure that the building plans and specifications submitted by the applicant, referenced on and accompanying the issued Construction Certificate, fully satisfy the requirements of this condition.*

(Reason: *Parking/Traffic Management*)

Planning Comment: The modified plans detail the roller shutters being set back 12m from the boundary and addresses the requirement of this condition. This condition does not impose any additional requirements other than to reinforce this setback, which was not detailed on the approved plans. The setback from these roller shutters is an essential safety requirement and this condition is recommended to stand in place. There is concern that the setback could be altered in the preparation of the Construction Certificate with a private certification allowing a lesser setback. This condition is reasonable and deletion of condition C3 is **not** supported.

DELETE CONDITION C9

Street Lighting

C9. *The applicant shall provide appropriate under awning street lighting along the length of the Miller Street frontage and the Abbott Lane frontage.*

The applicant shall provide replacement street lighting to the Palmer Street frontage if the current street lighting does not comply with all current standards. All street lighting shall be provided in accordance with Council's requirements and specifications. The applicant shall contact Energy Australia with regards to street lighting requirements.

The Certifying Authority must ensure that the building plans and specifications submitted by the Applicant, referenced on and accompanying the issued Construction Certificate, fully satisfy the requirements of this condition.

(Reason: *To provide infrastructure that facilitates the future improvement of the streetscape by relocation of overhead lines below ground*)

Planning Comment: Council's Engineer recommended imposition of this condition of consent. It should be noted that the draft condition originally proposed by Council required the applicant to upgrade the street lighting to the north, east and west elevations. The applicant put forward a

case that under awning lighting would be provided to the eastern (Miller Street) and western (Abbott Lane) frontages and as such, this requirement to upgrade the street lighting if required was limited to the Palmer Street frontage.

The imposed condition requires the applicant to upgrade the street lighting only to Palmer Street in the event that existing street lighting is found to be non-compliant with current standards. There is considered to be a clear nexus for the upgrade of this street lighting. The applicant has located its only residential entry to the apartment building along the Palmer Street frontage and the development would directly benefit from the upgrade in street lighting.

This condition is reasonable and deletion of this condition C9 is **not** supported.

DELETE CONDITION C24

External Colours and Finishes

C24. The external colours and finishes shall match those as existing and/ or be compatible with surrounding development. The Certifying Authority must ensure that the building plans and specifications submitted by the Applicant, referenced on and accompanying the issued Construction Certificate, fully satisfy the requirements of this condition.

Reason: To ensure that the completed colours and finishes of the works are compatible with surrounding development)

Planning Comment: This is standard condition and does not require any amendments to the approved colour scheme. However, given that the colour scheme forms part of the approval, no objection is made to the deletion of condition C24.

DELETE CONDITION C37

Storage of Hazardous or Toxic Material

C37. To ensure hazardous and toxic materials are not a threat to the environment they must be stored in accordance with WorkCover Authority requirements. All tanks, drums and containers of toxic and hazardous materials shall be stored in a bunded area. The bund walls and floors shall be constructed of impervious materials and shall be of sufficient size to contain 110% of the volume of the largest tank plus the volume displaced by any additional tanks within the bonded area.

The Certifying Authority must ensure that the building plans and specifications submitted by the Applicant, referenced on and accompanying the issued Construction Certificate, fully satisfy the requirements of this condition.

(Reason: To ensure the environmental health and safety of the public and workers)

Planning Comment: This is a standard condition. Action in relation to this condition is only required should any tanks, drums or containers of toxic materials be found to exist on the site. However, conditions already imposed relating to remediation of the site would adequately address this issue. As such, no objection is made to the deletion of condition C37.

DELETE CONDITION C38

Noise from Plant

C38. *A certificate from an Acoustic Engineer, who is a member or eligible to be a member of the Association of Australian Acoustical Consultants, must be submitted to the Certifying Authority certifying that the lifts, mechanical ventilation and air-conditioners will not exceed more than 5dB(A) above the background level during the day and evening and not exceeding the background level at night (10.00pm to 6.00 am) when measured at the boundary of the property, and will comply with the Environment Protection Authority Industrial Noise Policy.*

The Certifying Authority must ensure that the building plans and specifications submitted by the Applicant, referenced on and accompanying the issued Construction Certificate, fully satisfy the requirements of this condition.

(Reason: To comply with best practice standards for residential acoustic amenity)

Planning Comment: This condition was recommended by Council's Environmental Health Officers to ensure that all plant located within the building will be capable of complying with the relevant noise standards. The requirement for the applicant to address this issue at the construction certificate stage rather than occupation is considered to be reasonable. The deletion of condition C38 is **not** supported.

DELETE CONDITION C41

Noise and Vibration from Road and Rail

C41. *To minimise the impact of noise from the adjoining major road or rail corridor on the occupants of the building it shall be acoustically designed and constructed to meet the requirements of the applicable Australian Standard and the Environment Protection Authority's Environmental Criteria for Road Traffic Noise (1999).*

Certification from an appropriately qualified Acoustic Engineer who is a member or eligible to be a member of the Association of Australian Acoustical Consultants that these acoustic and vibration design requirements have been met shall be provided to the Certifying Authority for approval with the Construction Certificate.

(Reason: To ensure a suitable level of residential amenity not affected by excessive noise and vibration from surrounding activities)

Planning Comment: The applicant requests that this condition be deleted for reasons stated that it duplicates Condition C40. Condition C40 sets acoustic privacy levels required for residential development including requirements for acoustic separation to be provided between dwellings.

The subject condition C41 requires compliance with the Environmental Protection Authority's Environmental Criteria for Road Traffic Noise (1999) which sets acoustic controls for new developments with particular regards to road noise. Miller Street is a state road with a traffic volume of greater than 15,000 cars daily and as such, is considered to be an arterial road as defined by the EPA criteria. It is considered to be a reasonable requirement for the building to be designed having regard to these guidelines and is a standard condition imposed for developments of this nature. The deletion of condition C41 is **not** supported.

(K) DELETE CONDITION E14

Removal of Extra Fabric

E14. Should any portion of the existing building, trees, or curtilage of the site which is indicated on the approved plans to be retained be damaged for whatever reason, all the works in the area of the damaged portion are to cease and written notification given to Council. No work is to resume until the written approval of Council is obtained. Failure to comply with the provisions of this condition will result in the Council taking further action including legal proceedings if necessary.

(Reason: To ensure compliance with the terms of this development consent)

Planning Comment: This is a standard condition. Given that all buildings on the site are proposed to be or have been demolished, no objection is made to the deletion of Condition E14.

(L) DELETE CONDITION G16

Asbestos Clearance Certificate

G16. Prior to issuing any Occupation Certificate for building works where asbestos based products have been removed or altered, an asbestos clearance certificate signed by an appropriately qualified person (being an Occupational Hygienist or Environmental Consultant) must be submitted to the Principal Certifying Authority (and a copy forwarded to Council) for the building work which certifies the following:-

- a) The building/land is free of asbestos; or*
- b) The building/land has asbestos that is presently deemed safe.*

The certificate must also be accompanied by tipping receipts, which detail that all asbestos waste has been disposed of at an approved asbestos waste disposal depot. If asbestos is retained on site the certificate must identify the type, location, use, condition and amount of such material.

Note: Further details of licensed asbestos waste disposal facilities can be obtained from www.dec.nsw.gov.au.

(Reason: To ensure that building works involving asbestos based products are safe for occupation and will pose no health risks to occupants)

Planning Comment: This is a standard condition. However, conditions already imposed relating to remediation of the site would adequately address this issue. As such, no objection is made to the deletion of condition G16.

ENVIRONMENTAL APPRAISAL

CONSIDERED

1.	Statutory Controls	Yes
2.	Policy Controls	Yes
3.	Design in relation to existing building and natural environment	Yes
4.	Landscaping/Open Space Provision	Yes
5.	Traffic generation and Carparking provision	Yes
6.	Loading and Servicing facilities	Yes
7.	Physical relationship to and impact upon adjoining development (Views, privacy, overshadowing, etc.)	Yes
8.	Site Management Issues	Yes
9.	All relevant S79C considerations of Environmental Planning and Assessment (Amendment) Act 1979	Yes
10.	Section 89 LGA 93 including Clause 12 Consideration of Local Government (Approvals) Regulation 1993	Yes

CONCLUSION

The proposed modifications generally revert to the originally submitted development scheme which was rejected by the Design Excellence Panel. The Panel raised major concerns with the amenity of the apartments and the reliance on light wells to create large floor plates with only one lift. The proposal does not have regard to the rules of thumb under the Residential Flat Design Code (RFDC) that are intended to generate a better design of apartment buildings with regard to amenity. The Panel considered the density to be excessive and recommended that the floor plate should be reshaped to allow for building and apartment depths more in line with the RFDC which provide better ventilation and amenity to the apartments. The Panel also considered that multiple lift cores should be provided. **The proposed modification fails to satisfy the provisions of SEPP 65 and the RFDC and cannot be supported.**

The proposed deletion of the 1.2m Laneway setback to Abbott Lane is contrary to NSDCP 2002 and is not supported as it would result in poor pedestrian amenity and an inadequate setback from the proposed lower ground floor west-facing residential apartments to the Laneway.

For reasons set out in this report, the deletion of Conditions C1 (Ground Floor Blade Walls along Abbott Lane); Condition C3 (Roller Shutters); Condition C9 (Street Lighting); Condition C38 (Noise from Plant); and Condition C41 (Noise and Vibration from Road and Rail) are not agreed for deletion and should remain in place.

Following a review of the applicant's submission, no objection is made to the deletion of Condition C24 (External Colours and Finishes); Condition C37 (Storage of Hazardous or Toxic Material); Condition E14 (Removal of Extra Fabric); and Condition G16 (Asbestos Clearance Certificate).

Should the Panel be minded to approve the modification application, Conditions C48 and C49 should be amended to impose additional developer contributions pursuant to Section 94 of the EP&A Act 1979 to allow for the five (5) additional apartments proposed.

RECOMMENDATION

Pursuant to Section 96 of the Environmental Planning and Assessment Act 1979:

- A. **THAT** the Joint Regional Planning Panel resolve not to modify its development consent DA435/09 dated 7 April 2010 in respect of a proposal to construct a part 4/ part 5 storey mixed use building with two basement levels consisting of 655sqm of retail space, 36 apartments, rooftop communal facilities and parking for 57 vehicles on land described as 520 Miller Street, Cammeray under the provisions of Section 96 of the Environmental Planning and Assessment Act for the following reasons:
- 1) The modified proposal represents an overdevelopment of the site, results in an unacceptable building depth and results in poor residential amenity with particular regard to light and ventilation contrary to the provisions of the Residential Flat Design Code and SEPP 65.
 - 2) The modified proposal deletes the 1.2m Abbott Lane setback which results in poor pedestrian safety and an inadequate setback from the proposed lower ground floor west-facing residential apartments to the Laneway, contrary to Section 7.3(x) of the North Sydney Development Control Plan 2002.

Lara Huckstepp
A/TEAM LEADER

Stephen Beattie
MANAGER DEVELOPMENT SERVICES
