

**JOINT REGIONAL PLANNING PANEL  
(Sydney East)**

<b>JRPP No</b>	<b>2011SYE092</b>
<b>DA Number</b>	<b>8.2010.18.4</b>
<b>Local Government Area</b>	<b>Mosman Municipal Council</b>
<b>Proposed Development</b>	<b>Modification of a consent comprising internal reconfiguration of the approved basement level and construction of a new basement level</b>
<b>Street Address</b>	<b>100 Glover Street</b>
<b>Applicant/Owner</b>	<b>Applicant – Mark Monk c/ Helm Pty Ltd Owner – Helm No. 3 Pty Ltd</b>
<b>Number of Submissions</b>	<b>Seven (7)</b>
<b>Recommendation</b>	<b>Approval with conditions</b>
<b>Report by</b>	<b>Duncan Livingstone, Town Planner</b>

## Assessment Report and Recommendation

**TITLE:** 100 Glover Street

**DA NUMBER:** 8.2010.18.4

**PROPOSAL:** Modification of a consent comprising internal reconfiguration of the approved basement level and construction of a new basement level

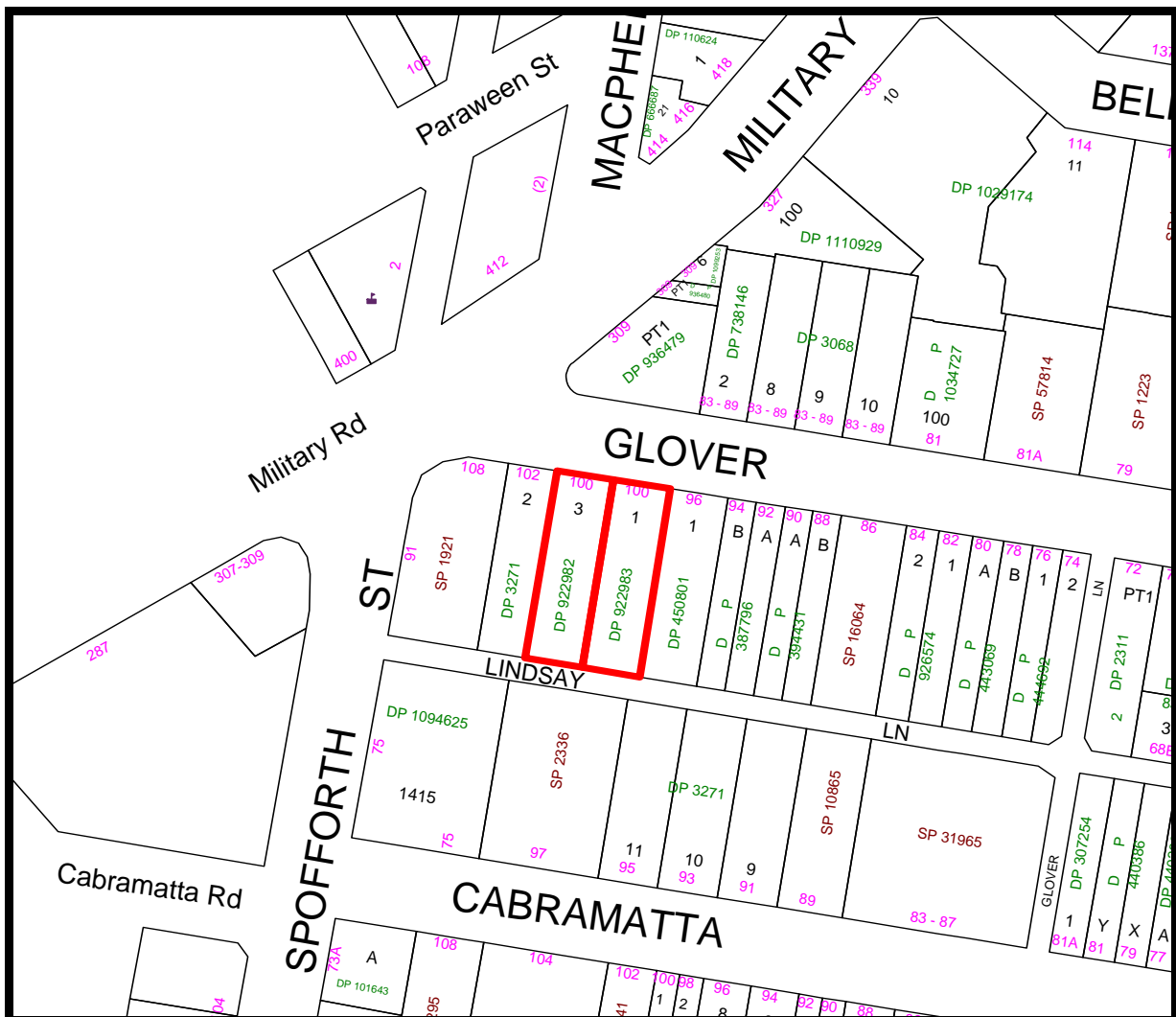
**REPORTING OFFICER:** Duncan Livingstone, Town Planner

**LODGEMENT DATE:** 7 July 2011 (Downtime 0 days)

**OFFICER'S RECOMMENDATION:** Approval with conditions

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### LOCALITY MAP



# EXECUTIVE SUMMARY

The main issue with this modification application is non-compliance with the floorspace ratio development standard. The proposal will achieve an FSR of 2.33:1. The originally approved development achieved an FSR of 1.99:1. The statutory FSR is 2:1.

The application received seven (7) submissions from neighbouring properties, five (5) of which were in support of the additional car parking spaces.

The assessment has found the proposed modifications to be reasonable. The increase in floorspace ratio arises from the new basement level which does not contribute to the perceived bulk or building scale. the external appearance of the development is unaltered.

The applicant relies on legal advice based on case law as to the modification satisfying the requirements of Section 96 of Environmental Planning and Assessment Act, 1979 (the Act). Having reviewed the advice, it is agreed that the development remains substantially the same as that originally granted consent and accordingly the application has been assessed pursuant to Section 96(2) of the Act.

The modification application is recommended for approval, subject to conditions.

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## REPORT

### 1.0 DESCRIPTION OF THE LOCALITY AND THE SITE

The site is located on the southern side of Glover Street, between Military Road and Glover Lane. The site comprises two allotments legally known as Lot 1 and Lot 3 in DP 922983. The combined site is rectangular in shape with frontages of 29.26m to Glover Street and Lindsay Lane. The site falls 1.5m to the south at an average gradient of 3.2%. The site also contains an approximate 1m cross fall to the east.

The site presently contains a three storey commercial building with basement car parking accessed from Lindsay Lane. Surrounding development consists of commercial premises to the west and north of the site associated with the Cremorne Business Centre and residential development to the south and east of the site including single storey dwellings and residential flat buildings of varying heights. Photographs of the subject site and locality are provided within **Annexure A**.

### 2.0 BACKGROUND

The relevant background development history of the site has been researched, and is provided below.

On 12 December 1985 Development Application 142/85 comprising demolition of two single storey commercial buildings and construction of a new three storey commercial office building with basement car parking was approved, subject to conditions.

On 12 August 1986 Development Application 161/86 comprising demolition of two single storey commercial buildings and construction of a new three storey commercial office building with basement car parking was approved. According to Council records this consent amended Development Consent No. 142/85.

On 15 October 1986 Development Application 351/86 comprising a new three storey commercial office building with basement level car parking was approved, subject to conditions.

On 21 July 2010 Development Application 8.2010.18.1 (JRPP Reference 2010SYE018) comprising demolition of the existing commercial building, retention of basement and construction of a new four (4) storey multiple dwelling containing 35 dwellings and 47 car spaces was approved by the Joint Regional Planning Panel (Sydney East), subject to conditions.

On 26 May 2010 a Modification Application to Consent No. 8.2010.18.1 (JRPP Reference 2011SYE010) comprising change in number of dwellings from 35 to 29, changes to dwelling mix, internal configuration, building envelope and façade was approved, subject to conditions (8.2010.18.2)

### **3.0 DESCRIPTION OF THE PROPOSAL**

The modification application consists of the following:

#### *Basement Level*

- Internal reconfiguration including revised location of visitor car parking spaces, disabled car parking spaces, plant rooms, storage areas, changes to number and dimensions of car spaces and a vehicular ramp and internal stair to the new basement level.

#### *New Basement Level 2*

- New car parking level comprising 20 car spaces, plant rooms, storage areas, bicycle spaces, motor cycle spaces, internal stair, lifts and vehicular access ramp.

Plans depicting the extent of the proposal are provided within **Annexure B**.

No concurrent approvals are sought under the *Local Government Act 1993*.

### **4.0 APPLICABLE PLANNING CONTROLS**

The following planning policies and control documents are of relevance to the development and were considered as part of the Section 96(2) and Section 79C assessment and form the basis of the Section 5.0 Planning Assessment:

- Deemed SEPP - Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005
- State Environmental Planning Policy (Major Development) 2005
- State Environmental Planning Policy No. 55 - Remediation of Land
- State Environmental Planning Policy No. 65 - Design of Residential Flat Development
- State Environmental Planning Policy (Infrastructure) 2007
- Mosman Local Environmental Plan 1998
- Draft Mosman Local Environmental Plan 2010
- Mosman Business Centres Development Control Plan
- Notifications Development Control Plan
- Mosman Transport Development Control Plan
- Mosman Section 94 Development Contributions Plan 2006

### **5.0 PLANNING ASSESSMENT**

## 5.1 NUMERIC CONTROLS SUMMARY TABLE

### 5.1.1 Mosman Local Environmental Plan 1998

LEP Controls	Control	Proposed	Compliance
Zoning	3(a2) Cremorne Business		
Site Area		1406m <sup>2</sup>	N/A
Gross Floor Area		3278m <sup>2</sup>	
Floorspace Ratio	2 : 1	2.33 : 1	No

### 5.1.2 Mosman Business Centres Development Control Plan

There are no specific numeric controls within the Mosman Business Centres Development Control Plan which are of relevant to the subject application.

### 5.1.3 Draft Mosman Local Environmental Plan 2010

DRAFT LEP CONTROLS	Control	Proposed	Compliance
Floor space ratio	2 : 1	208 : 1	No

## 5.2 STATE & LOCAL ENVIRONMENTAL PLANNING INSTRUMENTS

### 5.2.1 Deemed SEPP - Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005

The deemed SEPP applies to the entire Mosman Municipal Council area identified on the Sydney Harbour Catchment Map. The site is not identified:

- (a) within the Foreshores and Waterways Area;
- (b) as a strategic foreshore site;
- (c) as a heritage item;
- (d) within the wetlands protection area;

and therefore only Part 1 is applicable. Part 1 identifies aims of the plan from (a) to (h). The aims set out in Part 1 of the deemed SEPP have been considered and the application is consistent with these aims.

### 5.2.2 State Environmental Planning Policy (Major Development) 2005

The provisions of State Environmental Planning Policy (Major Development) 2005 apply to the proposed development as the capital investment value is in excess of \$10 million. In accordance with the requirements of Section 13B (1) (a) of the SEPP, the application is defined as 'regional development' and the determining authority is the Joint Regional Planning Panel (Sydney East Region).

### 5.2.3 State Environmental Planning Policy No. 55 - Remediation of Land

Under clause 7(1) (a) of State Environmental Planning Policy No. 55 – Remediation of Land, consideration has been given as to whether the land is contaminated. There is no history to suggest that the site is contaminated. The application does not require further consideration under clause 7(1) (b) and (c) of SEPP 55.

#### **5.2.4 State Environmental Planning Policy No. 65 - Design of Residential Flat Development**

SEPP 65 applies to the development. This Policy aims to improve the design quality of residential flat buildings in New South Wales. The modification application enhances provision for parking and storage and accordingly contributes to the design quality objectives of the SEPP. No changes are proposed to the configuration of the residential units and the performance of the development against the SEPPs Design Principles and the Rules of Thumb within the Residential Flat Design Code remains satisfactory.

#### **5.2.5 State Environmental Planning Policy (Infrastructure) 2007**

The site contains an Energy Australia electricity substation within its north eastern corner. The development maintains this substation. In accordance with Clause 45(b)(ii) and Clause 45(2)(a) and (b) of the SEPP, Council has given written notice (dated July 20, 2011) to the electricity supply authority (Energy Australia) inviting comments on the application. To date no response from Energy Australia has been received.

The applicant has not sought to modify or delete the conditions originally recommended by Energy Australia which are contained within the consent.

#### **5.2.6 Mosman Local Environmental Plan 1998 (MLEP 1998)**

##### Zoning and Permissibility

The site is zoned 3(a2) Cremorne Business.

The proposed works are for the purpose of a 'multiple dwelling' and are permissible with Council's consent pursuant to the development control table at Clause 16.

Subject to conditions, the development satisfies zone objectives.

The works are also permitted pursuant to Section 96(2) of the Act, it being noted that:

- (a) the development remains substantially the same as that for which consent was originally granted;
- (b) aspects of the proposed modification do not relate to conditions imposed by Energy Australia in their capacity as an approval body;
- (c) the application was notified in accordance with Council's Notifications DCP; and
- (d) seven (7) submissions received have been addressed at Section 7.0 of this report.

##### Floorspace Ratio

The modifications result in 474m<sup>2</sup> of additional gross floor area derived from the new basement storage areas and seven (7) new car parking spaces within the new basement level.

In accordance with Council policy, car parking in excess of specified requirements is calculable as floorspace. The additional gross floor area increases the FSR from the originally approved 1.99:1 to 2.33:1.

The increased floorspace ratio is assessed as reasonable for the following reasons:

- The additional floor area is located within the basement levels of the development and will not be discernible from the public domain.
- The perceived bulk and scale of the development is unaltered.
- Subject to conditions, the additional excavation arising from the modifications will not adversely impact neighbouring properties.

### Height

MLEP 1998 does not prescribe a numeric development standard in relation to height for development within the 3(a2) Cremorne Business Zone. The relevant objectives for height limits are provided within Clause 18(1) of MLEP 1998 and are discussed below.

#### *18(1)*

- (a) to ensure that buildings resulting from new development are compatible with existing buildings in terms of height and roof form to produce a cohesive streetscape, and*
- (b) to provide opportunities for higher buildings in suitable locations to achieve the Council's residential strategy and provide employment opportunities.*

The additional basement level does not alter the previously assessed and approved performance of the development against the Clause objectives. The multiple dwelling remains compatible in height with existing buildings.

### Foreshore Scenic Protection Area

The modifications will not be visible from the public domain.

### Contaminated Sites

There is no history to suggest that the site may be contaminated, for the purposes of this assessment the site is not contaminated and no remediation of land is necessary.

### Excavation

MLEP 1998 indicates that consent of Council is required where a development has the effect of materially altering the shape or natural form of the land and as part of a development, control should be made of soil erosion, sedimentation, tree loss and drainage impacts associated with landform modification.

Subject to conditions requiring geotechnical endorsement for the works, the modifications are satisfactory.

Conditions are included in the recommendation to ensure that effective measures are used to minimise soil erosion and sedimentation loss resulting from the proposed development.

### Heritage

The site does not contain a heritage item and is not within a heritage conservation area. The site is located within the vicinity of 92-94 Glover Street, a pair of semi detached dwellings which are heritage items of local significance as stated within Schedule 2 of MLEP 1998.

The additional basement level will not affect the setting or character of 92 – 94 Glover Street.

## Aboriginal Heritage

The site is not known to contain an Aboriginal object or Aboriginal place nor is it in an area known to be sensitive to the discovery of Aboriginal objects or Aboriginal places.

### **5.2.7 Draft Mosman Local Environmental Plan 2010 (Draft MLEP 2010)**

The Draft MLEP 2010 was on public exhibition from 15 October 2009 to 4 December 2009.

The subject site is zoned B2 Local Centre under the provisions of Draft MLEP 2010.

The proposed works are for the purpose of a 'residential flat building' and would be permissible with consent pursuant to the land use table of Draft MLEP 2010.

An assessment against the principal development standard of Draft MLEP 2010 relating to floor space ratio is provided in Section 5.1.3 of this report.

The site is not a heritage item and is not within a heritage conservation area pursuant to Schedule 5 of Draft MLEP 2010.

Draft MLEP 2010 was referred to the Department of Planning on 3 August 2010. As at the date of this report the Department has not indicated when and if the plan will be adopted in its current form.

## **5.3 DEVELOPMENT CONTROL PLANS AND POLICY CONSIDERATIONS**

### **5.3.1 Mosman Business Centres Development Control Plan (MBCDCP)**

#### *Section 4 – Desired Character*

#### Section 4.6 – Cremorne Business

The proposal is consistent with the desired character and the objectives of the Cremorne Business Centre contained within Section 4.6 of MBCDCP in that:

- The modifications maintain the approved use of the site as a multiple dwelling which contributes to the mixed use character of the area.
- The changes to parking maintain rear lane vehicular access which is desired within the business centre.

### **5.3.2 Mosman Transport Development Control Plan (MTDCP)**

Section 1.7 of the MTCDP states:

*In circumstances where a site is being fully redeveloped or extensively changed (i.e. where an existing building is demolished and replaced by a new building or where greater than 50% of the building fabric is being demolished) the proposal should be designed to comply with the relevant provisions of this Transport DCP. That is, car parking credits do not apply in circumstances where a building is extensively changed or demolished.*

As the modification is associated with a complete redevelopment of the site, the proposal is expected to satisfy all relevant provisions of the MTDCP.

## Vehicular Access



The site has frontage to Glover Street and a secondary frontage to Lindsay Lane. In accordance with the desired character of the Cremorne Business Centre contained with Section 4.6 of MBCDCP, rear lane vehicular access is encouraged. The modifications maintain this requirement.

### Car Parking

Section 2 of the MTDCP requires that parking facilities should be provided in accordance with the rates and requirements specified in table 2.2 of MTDCP. The relevant minimum car parking requirements for the modified development is outlined in the table below.

Type of Space	Rate	No. of required spaces	No. of approved spaces	No. of proposed Spaces	Complies
Car Parking Spaces	1 space per each 1 bedroom dwelling	10 spaces			
	1.2 spaces per each 2 bedroom dwellings	6 spaces			
	1.5 spaces per each 3 bedroom dwelling	21 spaces			
		37 spaces	37 spaces	44 spaces	Yes
Visitor spaces	1 visitor space per 4 dwellings	7.25 spaces	7 spaces	7 spaces	Yes
<b>Total</b>			44 spaces	51 spaces	Yes

The applicant has submitted a revised traffic report which concludes that the additional 2 vehicle movements from the new car spaces would not be noticeable. In addition the report also concludes that the traffic generation from the development would be similar to the existing commercial development on site.

The traffic impacts and parking provision are assessed as satisfactory.

### **5.3.3 Mosman Section 94 Development Contributions Plan 2006**

The modifications do not necessitate an additional Section 94 contribution. The approved dwelling mix and number of dwellings does not change.

### **5.4 ENVIRONMENTAL PLANNING AND ASSESSMENT REGULATION 2000**

Applicable regulation considerations were taken into account with the original approval and dealt with by conditions of consent. The proposed modification does not necessitate change to any of these matters.

### **6.0 COMMENTS FROM COUNCIL DEPARTMENTS OR STATE AUTHORITIES**

Council's Development Engineer has recommended an additional condition relating to geotechnical and structural measures involved in the proposed excavation. This condition is included in the recommendation.

Energy Australia did not provide comment in relation to the subject application. Refer to Section 5.2.5 of this report.

## **7.0 PUBLIC NOTIFICATION AND SUBMISSIONS**

The application was notified between 19 July 2011 and 3 August 2011.

Seven (7) submissions were received from or on behalf of the following properties:

- 60 Glover Street (submission of support);
- 66A Glover Street (submission of support);
- 72 Glover Street (submission of support);
- 7/81A Glover Street (submission of support);
- 90 Glover Street (submission of support);
- 79 Cabramatta Road; and
- 84 Glover Street.

Matters raised within public submissions (objections) and commentary on those matters is summarised below:

- The additional excavation and associated works will create unacceptable traffic congestion.

Comment: A condition of consent is included in the recommendation requiring the applicant to submit a Construction Management Plan prior to the issuing of the Construction Certificate to ameliorate impacts on the surrounding traffic network.

- The proposed additional car parking does not encourage the use of public transport.

Comment: The site and surrounds are well serviced by public transport. The provision of additional parking on site does not of itself mean that residents will not utilise public transport.

## **8.0 CONCLUSION**

The proposed modifications have been assessed against all relevant statutory controls and planning policies. The application is recommended for approval, subject to conditions.

## **9.0 APPLICATION DETAILS**

The applicant is Mr. Mark Monk of Helm Pty Ltd. The owner is Helm No.3 Pty Ltd. The estimated value of works is \$12,249,502.00.

No disclosures with respect to the Local Government and Planning Legislation Amendment (Political Donations) Act 2008 have been made.

## **RECOMMENDATION**

That Modification of Consent Application No.8.2010.18.1 be approved pursuant to Section 96(2) of the *Environmental Planning and Assessment Act 1979* subject to the following:

- A1. Amend the development description as follows:

*Demolition of existing commercial building, part retention of existing basement and addition of a new basement level, construction of a new four (4) storey multiple dwelling incorporating 29 dwellings and 51 car spaces.*

A2. Amend condition No. 1 as follows:

#### **APPROVED PLANS AND DOCUMENTATION**

- The development must be carried out in accordance with the following stamped approved plans and documentation, except where amended by later conditions of consent:

<b>Plan Nos.</b>	<b>Date of plan</b>	<b>Prepared by</b>
Survey – Reference No. 090808 Issue A, Sheet 1 of 2 Sheets, and Survey Reference No. 090808, Sheet 2 of 2 Sheets	11 September 2009	Denny Linker & Co
da00 – Revision B, 10 – Revision B, da11 – Revision B, da12 – Revision B, da13 – Revision B, da14 – Revision B, 15 – Revision B, da16 – Revision B, da21 – Revision B, da22 – Revision B, da31 – Revision B, da32 – Revision B, and da81 – Revision A.	7 June 2010	Crone Partners Architecture Studios,
Sk01 – Revision C	7 June 2010	Oculus
SW-000 Issue 01, SW-100 Issue 01, SW-101 Issue 01, SW-102 Issue 01, SW-103 Issue 01, SW-104 Issue 01, SW-105 Issue 01, SW-106 Issue 01, SW-107 Issue 01, SW-108 Issue 01, and SW-109 Issue 01	27 January 2010	Steve Paul & Partners

<b>Document title</b>	<b>Date of document</b>	<b>Prepared by</b>
Statement of Environmental Effects	December 2009	Sk Design
Design Verification Statement	10 December 2009	Bob Stepheson of Crone Partners Architecture Studios
Arborist Assessment	September 2009	Botanics, Tree Wise People Pty Ltd
Noise Traffic Assessment – Version A	November 2009	Wilkinson Murray Pty Ltd
Building Code of Australia Report	1 December 2009	McKenzie Group Consulting Pty Ltd

Document title	Date of document	Prepared by
Traffic Report	November 2009	Colston Budd Hunt & Kafes Pty Ltd
BASIX Certificate	12 November 2009	Applicant
Assessor Energy Certificate (ABSA)	11 November 2009	Applicant
Waste Management Plane	14 January 2010	Anna Williamson
Letter from sk Design	9 June 2010	Stephane Kerr of sk Design
Letter from Colston Budd Hunt & Kafes Pty Ltd	4 June 2010	Tim Rodgers of Colston Budd Hunt & Kafes Pty Ltd
Crime Prevention Through Urban Design Report	June 2010	Elton Consulting

As amended (8.2010.18.2)

Plan Nos.	Date of plan	Prepared by
S96.01 – Issue C, and S96.03 – Issue C.	22 March 2011	PCA Architects
S96.02 – Issue C.	15 March 2011	PCA Architects
S96.04 – Issue B, S96.05 – Issue B, S96.06 – Issue B, S96.08 – Issue B, S96.09 – Issue B, S96.10 – Issue B, S96.19 – Issue B, S96.23 – Issue B, and S96.31 – Issue B.	22 December 2010	PCA Architects
L-001 – Revision B, L-002 – Revision B, and L-003 – Revision B.	20 December 2010	Oculus
HDA01/P3 – Amendment P3, HDA02/P3 – Amendment P3, HDA03/P3 – Amendment P3, HDA04/P3 – Amendment P3, HDA05/P3 – Amendment P3, HDA06/P3 – Amendment P3, HDA07/P3 – Amendment P3, and HDA08/P3 – Amendment P3.	21 December 2010	Wipps – Wood Consulting

Document title	Date of document	Prepared by
Planning Report	December 2010	Ingham Planning Pty Ltd.
Design Verification Statement	21 December 2010	Peter Conley – PCA Architects
Arborists Assessment	October 2010	Botanics, Tree Wise People Pty Ltd.
BCA Capability Report	16 December 2010	Vic Lilli & Partners
BASIX Assessment	20 December 2010	Efficient Living Pty Ltd
Assessor Certificate	20 December 2010	Association of Building Sustainability Assessors (ABSA)
BASIX Certificate	20 December 2010	Efficient Living Pty Ltd
Letter from Colston Budd Hunt & Kafes Pty Ltd	8 December 2010	Colston Budd Hunt & Kafes Pty Ltd

<b>Document title</b>	<b>Date of document</b>	<b>Prepared by</b>
CPTED – Update Report	December 2010	Elton Consulting
Traffic Noise Assessment – Version A	November 2010	Wilkinson Murray (Sydney) Pty Ltd
Waste Management Plan	21 December 2010	Mark Monk

As amended (8.2010.18.4)

<b>Plan Nos.</b>	<b>Date of plan</b>	<b>Prepared by</b>
S96.36 – Issue C, and S96.37 – Issue C.	14 July 2011	PCA Architects

<b>Document title</b>	<b>Date of document</b>	<b>Prepared by</b>
Letter from Helm Pty Ltd	6 July 2011	Mark Monk of Helm Pty Ltd
Letter from CB Richard Ellis	2 June 2011	David Milton of CB Richard Ellis
Planning Report	July 2011	Ingham Planning Pty Ltd
Traffic Report	6 July 2011	Colston Budd Hunt & Kafes Pty Ltd
Geotechnical Report	23 March 2011	Jeffery and Katauskas Pty Ltd

A3. Addition of the following condition:

### **Excavation, Backfilling and Support for Neighbouring Buildings**

10A. Geotechnical and Structural measures in accordance with the Jeffery and Katauskas Pty Limited report (Ref.24590Srpt.rev1 dated 23 March 2011) are to be undertaken to ensure no damage occurs to the neighbouring properties. Any recommendations arising from further investigations during the course of works are also to be incorporated, provided the existing basement area and elements shown to be retained are retained.

(xviii). If you are unsatisfied with this determination, Section 97AA of the Act gives you the right of appeal to the Land and Environment Court within 6 months of the determination date.

(xix) Section 96AB of the Act provides for an applicant to request Council to review its determination of a modification application excepting applications made on behalf of the Crown or applications in respect of designated development, integrated development or a complying development certificate. The request for review must be made within 6 months of the date of determination or prior to appeal being heard by the Land and Environment Court. A decision on a review may not be further reviewed under section 96AB.

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## **ANNEXURES**

**Attachment A - Photographs of the site and surrounds**

**Attachment B - Plans of the Proposal**