

**JOINT REGIONAL PLANNING PANEL  
(East)**

<b>JRPP No</b>	<b>2011SYE130</b>
<b>DA Number</b>	<b>2010/DA-461REV6</b> <b>Section 96(2) application to modify the approved development (Development Consent No 10/DA-461)</b>
<b>Local Government Area</b>	<b>Hurstville City Council</b>
<b>Approved Development</b>	<b>Demolition of existing structures and construction of a mixed retail, commercial and residential development and associated car parking and road works</b>
<b>Proposed modification</b>	<b>Additional twenty two (22) apartments to the development and twenty eight (28) additional car spaces in basement level 5.</b>
<b>Street Address</b>	<b>11 Mashman Avenue and 7 Colvin Avenue, Kingsgrove</b>
<b>Applicant/Owner</b>	<b>Applicant/Owner: Kingsgrove Village Apartments Pty Ltd and Kingsgrove Retail Management Pty Ltd</b>
<b>Number of Submissions</b>	<b>Seven (7) submissions received</b>
<b>Recommendation</b>	<b>Refusal</b>
<b>Report by</b>	<b>Paula Bizimis – Senior Development Assessment Officer Hurstville City Council</b>

## SUPPLEMENTARY REPORT

On the 7 March 2012 the Sydney East Joint Regional Planning Panel considered the above application and resolved as follows:

- 1) *The Panel resolves unanimously to defer the determination of the application to another public meeting.*
- 2) *The Panel requests the council's planning assessment officer to prepare, by 4 April 2012, a supplementary report that deals with:*
  - a) *draft LEP 2011, which has been exhibited recently;*
  - b) *an examination of the amenity of the additional apartments under SEPP 65;*
  - c) *a consideration of non-complying height and FSR without applying SEPP 1, which should not be applied to s96 applications; and*
  - d) *the opinion of the council's traffic engineer about the application.*
- 3) *Following receipt of the supplementary report, the Panel will arrange for a further public meeting.*

In relation to point 2) the following information is provided:

### a) **Draft Hurstville Local Environmental Plan 2011**

On 18 July 2011, the Department of Planning and Infrastructure issued a section 65(2) Certificate under the Environmental Planning and Assessment Act, 1979 to permit the formal public exhibition of the draft Hurstville LEP 2011. The s.65(2) Certificate contained certain conditions which required changes to the draft HLEP 2011 Maps prior to the public exhibition of the draft LEP.

Council at its meeting on 30 November 2011 considered reports on the draft Hurstville LEP 2011 and the draft Hurstville City Centre LEP 2011 and resolved to endorse both draft LEPs for public exhibition for a period of no less than twenty eight (28) days. Hurstville City Council exhibited the draft Hurstville Local Environmental Plan (LEP) 2011 from 23 January to 29 February 2012.

Under the draft Hurstville LEP the subject site is zoned B2 Local Centre and has a maximum floor space ratio of 2:1 and height of 15m. The proposed modifications to the approved development will result in the development having a floor space ratio of 2.3:1 and a maximum height of 20.95m. This is not in accordance with the requirements of the draft LEP.

Notwithstanding this, it is considered that the status of the draft LEP is not "certain" and "imminent". At this stage, Council has not resolved to adopt the LEP and as such we do not know if the provisions of the LEP will be the same as that which is currently available and exhibited. As such it is considered that the floor space ratio requirements of the relevant development control plan apply to the application.

### b) **The amenity of the additional apartments under SEPP 65**

The additional apartments have been assessed against the "Rules of Thumb" of the Residential Flat Design Code and generally complies except in the building separation between Block C and D. The applicant has provided a table with the rules of thumb and accompanying diagrams. The

information provided in the table and diagrams has been examined and checked against the submitted plans and are correct. The table and diagrams have been attached to this report as they better illustrate the application of the rules of thumb. The following additional comments are made:

- The separation of Block C and D does not comply with the rules of thumb. The applicant is proposing to provide privacy screens to the affected apartments as a means of reducing privacy and noise impacts between the affected apartments. The proposed privacy screens are shown on the accompanying diagrams.
- The building separation between Block D and the adjoining existing development at 9 Mashman Ave complies with the rules of thumb however, there may be privacy impacts from the balconies that are located on the western elevation adjoining the side boundary of 9 Mashman Ave. The diagrams submitted do not show treatment of these balconies to reduce any potential privacy impacts.
- A storage area is provided to each apartment which is located in the basement car parking area which is 8m<sup>3</sup>. Each apartment also has storage provided in the form of bedroom cupboards.
- The resultant overshadowing from the additional height to the development is not significantly greater than that for the approved development. The public plaza is overshadowed by the approved development and this was acknowledged and accepted in the original application.

**c) A consideration of non-complying height and FSR without applying SEPP 1**

It is acknowledged that the provisions of State Environmental Planning Policy No 1 – Development Standards (SEPP 1) does not apply to s96 applications. As such a merit assessment is to be undertaken with regards to the proposed floor space ratio and height which does not comply with the standards contained in the Hurstville Local Environmental Plan or Hurstville Development Control Plan No 1.

A merit assessment of the floor space ratio and height was undertaken in the assessment of the application, albeit, the discussion of these issues was primarily located within the SEPP 1 section of the report. Notwithstanding this, the comments made in relation to the proposed floor space ratio and height remain relevant and are as follows:

**Floor space ratio**

The proposed development has been assessed against the floor space ratio requirements contained in the Hurstville Local Environmental Plan (HLEP) and Hurstville Development Control Plan No 1 (DCP 1) and complies as follows:

<b>Floor space ratio</b>	<b>Required</b>	<b>Proposed</b>	<b>Complies</b>
For whole development	2:1 maximum	2.3:1 (current approval 2:1)	No
Non residential component	0.5:1 minimum	0.6:1 (no change to current approval)	Yes
Residential component	1.5:1 maximum	1.7:1 (current approval 1.39:1)	No

The HLEP does not identify objectives for the floor space ratio requirements, however Section 6.10.3 Development and Design Controls of DCP 1 does identify the objectives for floor space

ratio that apply specifically to the subject site. As such it is considered appropriate to consider these objectives. The objectives are as follows:

- *To define the allowable development density to ensure that development is in keeping with the desired future scale of the site and the local area.*
- *To define the allowable development density to ensure that development does not detrimentally impact on local traffic.*
- *To encourage balconies and terraces within the development.*

The proposed development does not comply with the first objective as the proposed floor space ratio of the development does not reflect the allowable development density. As such the proposed development is not in keeping with the future scale of the site which is anticipated by the floor space ratio controls as the additional floor space results in a larger development in terms of bulk and scale.

The applicant's submission that the floor area of the supermarket should not be considered in the floor space calculations is not agreed with. The supermarket is located underground however it contributes to the intensification of the site. The supermarket is in fact, the most intense non residential use of the development having a floor area of 3535sqm (of a total 4792sqm). It is also the largest contributor of non residential vehicle generation to the site. The approved development was defined as a traffic generating development under State Environmental Planning Policy (Infrastructure) 2007. This was triggered by the development having over 4000sqm of commercial floor area (3535sqm of which is for the supermarket). Although the supermarket is located underground its floor area can not be dismissed because it is not apparent external to the building.

The floor space ratio controls have been specifically adopted for the subject site and its context in relation to the adjacent residential areas. The proposed development does not introduce or identify any specific site circumstances that justify a departure from the height controls that apply to the subject site. The proposed departure from the development standard results in a larger development in terms of bulk and scale which is not consistent with that envisaged by the controls. The additional floor area to the building is apparent as it results in up to two (2) additional storeys being provided to the approved development.

### Height

The HLEP and DCP 1 require the maximum height of the development to be 4 storeys. The approved development has a height of four storeys, however a mezzanine level has been provided to part of Block C and D which results in that part of the development being five (5) storeys in height. The extent of this variation was limited to the proposed mezzanine which provides the second bedroom of nine (9) townhouses which face the railway line.

The current proposed development will result in one (1) additional storey to Block C and two (2) additional storeys to Block D. This will result in Block C being part five (5)/part six (6) storeys high and Block D being part six (6)/part seven (7) storeys high.

The HLEP does not identify objectives for the height requirement, however Section 6.10.3 Development and Design Controls of DCP 1 does identify the objectives for height that apply specifically to the subject site. As such it is considered appropriate to consider these objectives. The objectives are as follows:

- *To provide a vibrant mixed use development that takes advantage of its proximity to the Kingsgrove Commercial Centre to the east.*

- *To ensure that height of the development responds to the desired scale and character of the adjacent residential areas to the west and south.*
- *To allow reasonable daylight access to all developments and the public domain.*
- *To increase amenity of the development by taking advantage of long distance views from the site while avoiding overlooking to adjacent residential areas*

It is considered that the proposed development is not consistent with the first and second objective above. The proposed development provides additional residential floor area to the development which erodes the focus of the commercial component of the development. The location of the subject site within a commercial zone and in close proximity to the Kingsgrove Commercial Centre justifies the development having a commercial focus. The provision of additional residential units to the site intensifies the residential component of the development beyond that envisaged by the controls.

The height of the proposed development, being seven (7) storeys at its highest, does not respond to the desired scale and character of the adjacent residential areas. The adjacent residential areas have a height limit of two (2) storeys and the maximum height of four (4) storeys for the subject site was considered to be an appropriate height as a transition to the Kingsgrove Commercial Centre. The proposed height of the development does not respond to the adjacent residential areas as it provides a stark contrast to the two (2) storey height limit.

In its context the proposed development is excessive in height and does not respond to the adjacent residential area which has a two (2) storey height limit. The five (5) storey development approved by the Court referred to by the applicant in the Statement of Environmental Effects has a direct frontage to Kingsgrove Road, is within the Kingsgrove Commercial Centre and adjoins the railway station. In contrast, the subject site is located behind the Kingsgrove Commercial Centre with no direct frontage to Kingsgrove Road. The subject site sits directly adjacent to residential areas with access being via local roads or laneway. Notwithstanding this, the proposed development seeks a height of up to seven (7) storeys which is higher than the Kingsgrove Road site and any other approved development in the Kingsgrove Commercial Centre.

The additional height to the development is a direct result of the additional residential floor area proposed to the development. This results in a larger development which does not result in any tangible public benefit.

The height controls have been specifically adopted for the subject site and its context in relation to the adjacent residential areas. The proposed development does not introduce or identify any specific site circumstances that justify a departure from the height controls that apply to the subject site.

The submission by the applicant that *as 20% of the floor area which forms part of the building mass is located below ground level, the perceived bulk and scale of the development will be actually less than that considered appropriate under Clauses 13 and 15A of the Hurstville LEP 1994*, is not agreed with. The perceived bulk and scale of the development will be greater than that originally approved due to the additional two (2) storeys proposed to the building. The additional height is apparent to the development. The floor space ratio and height controls do not work independent of each other, but rather, form a suite of controls for the development. Even if the supermarket floor area was removed from the floor space calculations, the development would still be of a height and bulk that is greater than that proposed by the development controls.

**d) Council's Traffic Engineer**

The application was referred to Council's Manager – Infrastructure Planning for comment. He has advised that there will be no significant traffic impact on the road network as a result of the proposed additional 22 residential units at that site and that the Traffic Section raises no objections to the proposed Section 96 Application provided that the overall development complies with off-street parking requirements as stipulated in Council DCP.

The proposed development complies with the requirements of Council's DCP 1 and the relevant Australian standards in terms of number of car parking spaces, dimensions of car spaces and aisle widths, etc.