

**JOINT REGIONAL PLANNING PANEL
(East)**

JRPP No	2012SYE101
DA Number	2010/DA-461REV9 Section 96(2) application to modify the approved development (Development Consent No 10/DA-461)
Local Government Area	Hurstville City Council
Approved Development	Demolition of existing structures and construction of a mixed retail, commercial and residential development and associated car parking and road works
Proposed modification	Addition of twelve (12) residential units to the development (1 x 3 bedroom unit to approved level 5 of Block C and 10 x 3 bedroom and 1 x 3 units on new level 6 of Block C)
Street Address	11 Mashman Avenue Kingsgrove
Applicant/Owner	Applicant/Owner: Kingsgrove Village Apartments Pty Ltd and Kingsgrove Retail Management Pty Ltd
Number of Submissions	Three (3) submissions received
Recommendation	Refusal
Report by	Paula Bizimis – Senior Development Assessment Officer Hurstville City Council

Assessment Report and Recommendation

ZONING	3c Business Centre
APPLICABLE PLANNING INSTRUMENTS	<ul style="list-style-type: none"> ▪ State Environmental Planning Policy No 1 – Development Standards ▪ State Environmental Planning Policy (Infrastructure) 2007 ▪ State Environmental Planning Policy No 55 - Remediation of Land ▪ State Environmental Planning Policy No 65 – Design Quality of Residential Flat Development ▪ State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 ▪ Draft State Environmental Planning Policy (Competition) 2010 ▪ Hurstville Local Environmental Plan 1994 ▪ Draft Hurstville Local Environmental Plan 2012 ▪ Hurstville Development Control Plan No. 1 – Section 2.2 Neighbour Notification and Advertising of Development Applications, Section 3.1 Car Parking, Section 3.3 Access and Mobility, Section 3.4 Crime Prevention through Environmental Design, Section 3.5 Energy Efficiency, Section 3.7 Drainage and On-Site Detention Requirements, Section 3.9 Waste Management, Section 6.10 Mashman Site, Kingsgrove
HURSTVILLE LOCAL ENVIRONMENTAL PLAN 1994 INTERPRETATION OF USE	“Demolish”, “Shop”, “Office Premises”, and “Residential Flat Building”
EXISTING DEVELOPMENT	Approved development under construction
COST OF DEVELOPMENT	\$25,377,000
REASON FOR REFERRAL TO JRPP	Section 96(2) application to approved development
FILE NO	10/DA-461:12 (2010/DA-461REV9)
HAS A DISCLOSURE OF POLITICAL DONATIONS OR GIFTS BEEN MADE?	No

EXECUTIVE SUMMARY

1. On the 19 May 2011 a deferred commencement development consent was granted to 10/DA-461 for demolition of existing structures and construction of a mixed retail, commercial and residential development and associated car parking and road works. The approved development has been modified on eight (8) occasions under Section 96(1A) and Section 96(2) of the Environmental Planning and Assessment Act (E P & A Act).
2. The current Section 96(2) application seeks permission to modify the development consent by providing an additional twelve (12) residential units to the development (1 x 3 bedroom unit to approved level 5 of Block C and 10 x 3 bedroom and 1 x 3 units on new level 6 of Block C).
3. The development, as amended does not comply with the development standards in the Hurstville Local Environmental Plan (HLEP) and the Hurstville Development Control Plan No 1 (DCP 1) with regards to floor space ratio, height, and on site car parking.
4. The application was notified/advertised to one hundred and eighteen (118) resident/owners in accordance with Council's requirements and three (3) submissions were received in reply. The issues raised in the submissions are detailed in the report.

RECOMMENDATION

THAT the application be refused for the reasons detailed in the report.

DESCRIPTION OF THE PROPOSAL

The approved development comprises four (4) building known as Blocks A, B, C, and D. The subject application seeks to modify the development consent under Section 96(2) of the Environmental Planning and Assessment Act, 1979 seeks to modify the approved development by:

- Adding 1 x 3 bedroom residential unit to approved level 5 of Block C
- Adding a new level 6 to Block C comprising 10 x 2 bedroom and 1 x 3 bedroom residential units.

The proposed amendments will result in an additional twelve (12) units to Block C and the height of Block C being increased by one (1) storey so that it is part six (6)/part seven (7) storeys.

The total number of units to the development, including those proposed, will be one hundred and thirty two (132) which comprises 14 x 1 bedroom, 96 x 2 bedroom, and 22 x 3 bedroom units. No change is proposed to the retail and commercial areas of the development.

BACKGROUND

- 19 May 11 A deferred commencement development consent was granted to 10/DA-461 by the Joint Regional Planning Panel for demolition of existing structures and construction of a mixed retail, commercial and residential development and associated car parking and road works.

- 4 Aug 11 The consent was modified (2010/DA-461REV1) under delegation by amending Condition 169 which relates to the timing of the dedication of the road widening.

- 12 Sep 11 The consent was modified (2010/DA-461REV2) under DAC Delegations by amending Conditions 2, 17, 22, 23, 24, 25, 55, 153, 173, and 175 due to amendments to the car parking area and the number of residential units.

- 10 Nov 11 An application was approved under delegation to modify the development consent (2010/DA-461REV3) by amending the car park areas and relocating the plant area (Conditions 2 and 175).

- 19 May 12 An application was approved under delegation to modify the development consent (2010/DA-461REV4) by amending Conditions 85 and 200 relating to road works.

- 19 May 12 An application was approved under delegation to modify the development consent (2010/DA-461REV5) by amending Conditions 2, 17, 22, 23, 24, 25, and 173 involving internal and external alterations.

- 30 Apr 12 An application under Section 96(2) (2010/DA-461REV6) was lodged on the 6 December 2011. The application sought permission to provide an additional twenty two (22) residential apartments to Blocks C and D and amend basement level 5 to provide additional car parking spaces. The application was approved by the Joint Regional Planning Panel for an additional twenty (20) x two (2) bedroom units (total units being one hundred and twenty (120)). The conditions of consent that were amended as part of this consent were Conditions 2, 17, 19, 22, 23, 24, 25, 153 and 173.

- 19 May 12 An application was approved under delegation to modify the development consent (2010/DA-461REV7) by undertaking internal and external alterations. The conditions that were modified were Conditions 2, 17, 22, 23, 24, 25, 153, and 175.

- 25 July 12 An application was approved by Council to modify the development consent (2010/DA-461REV8) to amend the construction hours. Condition 107 of the development consent was amended.

DESCRIPTION OF THE SITE AND LOCALITY

The subject site has a street address of 11 Mashman Avenue, Kingsgrove with the lot known as Lot 269 DP 1169104. The site has a site area of 7665sqm. The site has a frontage to Mashman Avenue and Colvin Avenue on most of its western boundary, a frontage to Mashman Lane on most of its eastern boundary, and adjoins the Tempe-East Hills Rail line on its northern boundary.

The site contained various industrial buildings, sheds and associated infrastructure related to the former use of the site as a pottery. The scale of the buildings varied from a large traditional saw tooth roofed styled industrial building approximately two (2)/three (3) storeys in height to smaller single storey buildings principally located along the eastern boundary of the site. These buildings have been demolished and the approved development is under construction. The new development is known as “The Pottery”.

The site is relatively flat and contains a minimal number of trees which are primarily located to the eastern side of the site. The site was listed as a heritage item of local significance in the Hurstville Local Environmental Plan.

Located to the east and adjacent to the site is the main commercial/retail precinct of Kingsgrove (Kingsgrove Town Centre). It is centralised along Kingsgrove Road, which is a 'traditional strip style' shopping centre. Buildings within this area are generally the traditional single and two (2) storey 'shop-top' style buildings some of which have been modified over time. The uses within the area vary and are typical for the strip style shopping and include a newsagency, butcher, real estate agent, delicatessen, chemist, banks and takeaway food shops.

To the south of the subject site are predominantly low density single and two (2) storey residential dwelling houses. The former Kingsgrove Police Station is located to the south east of the site on the corner of Paterson Avenue and Mashman Lane. Residential development is also located to the west of the subject site along Mashman Avenue.

Adjoining the subject site to the north along the boundary is the Tempe-East Hills Rail line. The rail line separates the site from the main industrial area of Kingsgrove, which primarily contains large industrial/commercial buildings up to five (5) storeys in height with some smaller scale buildings. The buildings also vary in age and architectural design from contemporary to the more traditional style industrial buildings.

It is noted that the lots surrounding the subject site are identified on the Register of the National Estate. The identification of these lots has no statutory effect and as such they are not considered to be heritage items.



COMPLIANCE AND ASSESSMENT

Assessment of Section 96(2) Application

Under section 96(2) of the Environmental Planning and Assessment Act an application to modify the development consent under section 96(2) can be considered as follows:

- (a) *it is 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 and before that consent as originally granted was modified (if at all), and*

Comment

The applicant has submitted the following information regarding the proposed development being substantially the same development as that for which consent was originally granted:

- *The use of the development remains a mixed use retail and residential building*
- *The basement and ground floor retail uses are not affected by the proposed modification*
- *The existing residential apartment floors of Buildings A, B, and D are not affected by the proposed changes*
- *The approved footprint of the buildings and resulting public domain is not affected by the proposed changes;*
- *The overall architectural language of the buildings is maintained as part of the proposed changes*
- *There is no increase in parking numbers*

It is considered that the proposed development is not substantially the same development as the development for which consent was originally granted.

The proposed development will be a non compliant development in terms of height and floor space ratio for the whole development and for the residential component of the development. The originally approved development complied with the floor space ratio and height requirements of the Hurstville Local Environmental Plan (HLEP) and Hurstville Development Control Plan No 1 (DCP 1). The table below details the increase to the floor area and height of the development from that originally approved:

Floor space ratio	Required	Originally approved	Most recent approval	Current Proposal
For whole development	2:1 maximum	1.99:1 (15330m ²)	2.28:1 (17467m ²)	2.43:1 (18658m ²)
Non residential component	0.5:1 minimum	0.63:1	0.63:1	0.63:1
Residential component	1.5:1 maximum	1.36:1	1.65:1	1.8:1
Height	Required	Originally approved	Most recent approval	Current Proposal
For whole development	4 storeys maximum	4 storeys with a mezzanine component to Block C and D which defines them as 5 storeys	Blocks A and B = 4 storeys Block C = 5/6 storeys Block D = 6/7 storeys	Blocks A and B = 4 storeys Block C = 6/7 storeys Block D = 6/7 storeys

As can be seen from the above table the scale of the development has increased incrementally through amendments to the approved development. Should the current application be approved, the development will have a floor area that is approximately 22% greater than that originally approved. The height of the development, when measured in metres will be up to 6m higher than that originally approved. The development was approved with a maximum height of approximately 15.6m and the proposed maximum height will now be approximately 21.9m which represents an increase in height of 40% from that originally approved.

On this basis it is considered that the scale of the proposed development is different to that originally approved and in this regard, the proposed development is not substantially the same development.

- (b) *it has consulted with the relevant Minister, public authority or approval body (within the meaning of Division 5) 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, and*

Comment

There was no requirement for the application to be referred to any other body.

- (c) *it has notified the application in accordance with:*
- (i) *the regulations, if the regulations so require, or*
 - (ii) *a development control plan, if the consent authority is a council that has made a development control plan that requires the notification or advertising of applications for modification of a development consent, and*

Comment

The application was notified in accordance with Council's requirements.

- (d) *it has considered any submissions made concerning the proposed modification within the period prescribed by the regulations or provided by the development control plan, as the case may be.*

Comment

Three (3) submissions were received in response to resident notification/advertising of the proposed development. The issues raised in the submissions are detailed in the report below under the heading entitled "Referrals, Submissions and the Public Interest".

Other Considerations Relevant to a Section 96(2) Application

Although the proposed development is not considered to be substantially the same development, an assessment of the other considerations relating to the application is made.

In determining an application for modification of the development consent, the relevant matters referred to in Section 79C(1) must be taken into consideration. The following is a discussion of matters under Section 79C as being relevant to the current Section 96 application:

1. Environmental Planning Instruments

Hurstville Local Environmental Plan 1994 (HLEP)

The subject site is zoned 3(c) Business Centre and the proposed development, being a modification of an approved development is permissible in the zone with the consent of Council.

The objectives of this zone are:

- (a) To maintain a commercial and retail focus for larger scale commercial precincts*
- (b) To allow for residential development in mixed use buildings, with non-residential uses on at least the ground level and residential uses above, so as to promote the vitality of business centres, and*
- (c) To provide opportunities for associated development such as parking, service industries and the like.*

It is considered that the proposed development does not meet objective (a) of the zone as the provision of additional residential floor area results in the development not complying with the maximum floor space ratio requirements of the HLEP and DCP 1. In this regard the proposed development does not reflect the development anticipated by the controls as the residential component is greater than that permitted. The zone of the subject site is 3(c) Business Centre and the commercial and retail focus of the development is eroded with the provision of additional residential floor area to the development.

The relevant clauses of the HLEP that apply to the proposed development are as follows:

Clause 13 – Floor space ratios

Clause 13(2A)(d) of the Hurstville Local Environmental Plan states that:

- (d) if the buildings are on the land shown edged heavy black on Sheet 1 of the map marked “Hurstville Local Environmental Plan 1994 (Amendment No 71)”:*
 - (i) the maximum floor space ratio overall is 2:1, and*
 - (ii) the minimum floor space ratio for the exclusively non-residential component is 0.5:1, and*
 - (iii) the maximum floor space ratio for the exclusively residential component is 1.5:1.*

The proposed development compares with the floor space ratio requirements as follows:

Floor space ratio	Required	Proposed	Complies
For whole development	2:1 maximum	2.43:1	No
Non residential component	0.5:1 minimum	0.63:1	Yes
Residential component	1.5:1 maximum	1.8:1	No

The proposed development will result in a non compliance with the maximum floor space ratio requirements of the HLEP with regards to the whole development and the residential component of the development.

The applicant has submitted the following statement in support of the variation to the floor space ratio:

There are no specific objectives for the floor space ratio development standard embodied in Clause 13 of the HLEP.

However, it is considered that the underlying objectives of the development standard are:-

- to control the bulk and scale of any development to ensure amenity impacts on adjoining residential properties are minimised or ameliorated;
- to ensure built form outcomes are consistent with the desired future character of the locality envisaged in the planning instruments; and
- to provide a degree of consistency in the bulk and scale of new buildings in the locality.

In this context it is appropriate to identify that 3525m² of the overall floor space ratio of 2.43:1 is located below the ground level of the site, thereby not contributing to the bulk and scale of the building massing on the site. In terms of what is perceived to be the scale of the development, it is in the order of 1.8:1, approximately 10% less than the maximum permitted on the site through Clause 13(2A)(d).

A similar circumstance was considered in the Land & Environment Court Appeal Proceedings *Citadel Property Group (Sutherland) Pty Limited v. Sutherland Shire Council* [2009] NSWLEC 1082. The proposal was for a commercial building at 686-696 Old Princes Highway, Sutherland including a large (4000m²) supermarket located over 2 basement levels.

In a discussion on whether the supermarket floor space formed part of the floor space ratio on the site, Commissioner Bly, at paragraphs 22 and 23 of his judgment stated:-

- “22. Broadly speaking these objectives are concerned to ensure that the impact of the building, including its bulk and scale would not adversely impact upon the character and amenity of the surrounding area. In this regard I do not see how applying a floor space ratio to hidden basements is of any assistance in achieving these objectives.
23. Hence I accept Mr Ball’s approach of excluding basements (including the lower ground floor area) in his calculation of gross floor area and floor space ratio. Consequently no issue of non-compliance with floor space ratio arises.”

The same scenario exists with the proposed development for alterations and additions to the approved development.

In terms of perceived or actual bulk and scale of the development reflected in the four approved buildings, the addition of a further 1191m² of floor area will, using the reasoning of Commissioner Bly in *Citadel*, only increase the FSR of the approved development from 1.81:1 to 1.97:1 still well within the maximum FSR permitted on the site.

Furthermore, the location of the additional floor area on Buildings C has been designed such that shadows generated by the additional built form will remain within the shadow outline cast by the approved development, thereby ensuring no change to the status of amenity impacts on residential dwellings to the south.

In the circumstances it is considered that the proposed additional floor area of 1191m² on Buildings C satisfy the underlying objectives detailed above.

Section 5(a) of the Environmental Planning and Assessment Act, 1979 states:-

“5. The objects of this Act are:

(a) to encourage:

- (i) the proper management, development and conservation of natural and artificial resources, including agricultural land, natural areas, forests,

- minerals, water, cities, towns and villages for the purpose of promoting the social and economic welfare of the community and a better environment,*
- (ii) the promotion and coordination of the orderly and economic use and development of land.”*

The proposal satisfies the objectives of s.5(a)(i) and (ii) of the Environmental Planning and Assessment Act by ensuring that there are no adverse environmental, social or economic impacts to the community arising from the proposed additional 1191m² of floor area on Building C of the approved mixed use development and its non-compliance with the floor space ratio standard under Clause 13(2A)(d) of the Hurstville LEP 1994, as amended.

The form and massing of the additional floor area on the site is influenced by the characteristics of the site and the scale of the surrounding development, namely:-

- *The height and bulk of the Court-approved 5-storey mixed use development, directly adjoining the subject site to the east, provides a visual screen to the subject site from Kingsgrove Road and the railway station;*
- *The additional building mass has been located on Building C which adjoin the commercial area and railway line respectively, thereby minimising any potential for additional overshadowing impacts on adjoining dwellings in Paterson Avenue, Colvin Avenue and Mashman Avenue;*
- *The removal of the subterranean floor area (supermarket) from the floor space ratio calculations, as it does not contribute to the height, bulk and scale of the development, would result in a complying development in terms of the floor space ratio development standard.*

In terms of bulk and scale of the proposed alterations and additions to the approved development, the proposal is consistent with the built form outcomes envisaged under the relevant planning instruments.

In the circumstances, it is considered that compliance with the development standard would hinder attainment of the objectives of s.5(a)(i) and (ii) of the Environmental Planning and Assessment Act.

On the basis of the above, it is considered that compliance with the floor space ratio development standard is considered unreasonable and unnecessary in the circumstances of this case as the impacts of the non-compliance will have minimal consequences on the amenity of adjoining dwellings in terms of overshadowing and privacy. The proposed additional floor area to Buildings C will be consistent in bulk and scale with the adjoining building to the east and not have any adverse streetscape impacts when viewed from Kingsgrove Road.

Furthermore, as 20% of the floor area which forms part of the FSR calculations is located below ground level, the perceived bulk and scale will be actually less than that considered appropriate under Clause 13 of the Hurstville LEP 1994.

Furthermore, the non-compliance with the floor space ratio standard will have minimal impacts on the amenity of adjoining dwellings nor on the streetscape of the Kingsgrove Town Centre. The location of the additional floor area on Buildings C adjacent to the railway line and commercial area ensures that it will not contribute adversely to the amenity of residents of Paterson and Colvin Avenue.

The fact that the above ground built form of the approved and proposed development will only

achieve a perceived FSR of 1.97:1, well within the maximum of 2:1, ensures that the bulk and scale is consistent with that envisaged by the planning instruments and in the circumstances of this case the non compliance can be supported.

Comment

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 three (3) additional storeys being provided to the approved development.

Compliance with the development standard does not hinder the attainment of the objects of s.5(a)(i) and (ii) of the EP&A Act as it is considered that the proposed development does not promote "the social and economic welfare of the community and a better environment" and "coordination of the orderly and economic use and development of land."

The proposed development results in a development that does not comply with the floor space ratio requirements which is not consistent with the development anticipated by the development standards. As such the proposed development does not promote the orderly and economic use and development of the land as it provides floor area beyond the maximum requirements which results in a larger development in terms of bulk and scale. In addition to this, the proposed development erodes the commercial focus of the development in the context of it being in a commercial zone.

The proposed development does not result in a development that promotes the social and economic welfare of the community and a better environment. The additional residential floor area intensifies the use of the site and results in a larger development which does not result in any tangible social or economic benefit to the community or a better environment.

For the above reasons the variation to the floor space ratio control can not be supported.

Clause 15A – Height restrictions for land within zones Nos 3(a) and 3(c)

Clause (1A) of the Hurstville Local Environmental Plan states that:

- (1A) *Consent may be granted for development for the purposes of the erection of a building that exceeds 2 storeys in height on the land shown edged heavy black on Sheet 2 of the map marked “Hurstville Local Environmental Plan 1994 (Amendment No 71)” but only if:*
- (a) *the building will not exceed the number of storeys shown on that map in respect of that land, or*
 - (b) *the consent authority is satisfied that the proposed development:*
 - (i) *constitutes no more than a minor variation to the height limits indicated on that map, and*
 - (ii) *is not inconsistent with the aims of Hurstville Local Environmental Plan 1994 (Amendment No 71).*

The subject site is identified on the map marked “Hurstville Local Environmental Plan 1994 (Amendment No 71)” as having a maximum height of four (4) storeys.

The additional storey to Block C of the development will result in the height of the development being a maximum seven (7) storeys. The increase to the height of the development from that originally approved is shown in the table below:

Height	Required	Originally approved	Most recent approval	Current Proposal
For whole development	4 storeys maximum	4 storeys with a mezzanine component to Block C and D which defines them as 5 storeys	Blocks A and B = 4 storeys Block C = 5/6 storeys Block D = 6/7 storeys	Blocks A and B = 4 storeys Block C = 6/7 storeys Block D = part 6/part 7 storeys

The applicant has submitted the following justification for the variation to the height:

The proposed additions to level 5 and one additional level to Building C results in Building C being 6 storeys in height thereby not complying with the development standard in Clause 15A.

There are no specific objectives for the number of storeys development standard embodied in Clause 15A of the HLEP.

However, it is considered that the underlying objectives of the development standard are:-

- *to control the bulk and scale of any development to ensure amenity impacts on adjoining residential properties are minimised or ameliorated in terms of overshadowing and loss of privacy;*

- *to ensure built form outcomes are consistent with the desired future character of the locality envisaged in the planning instruments; and*
- *to provide a degree of consistency in the height, bulk and scale of new buildings and to minimise visual intrusion;*
- *to ensure visual impact of buildings is minimised when viewed from the street and the public domain.*

Section 5(a) of the Environmental Planning and Assessment Act, 1979 states:-

“5. The objects of this Act are:

(b) to encourage:

- (j) the proper management, development and conservation of natural and artificial resources, including agricultural land, natural areas, forests, minerals, water, cities, towns and villages for the purpose of promoting the social and economic welfare of the community and a better environment,*
- (ii) the promotion and coordination of the orderly and economic use and development of land.”*

The proposal satisfies the objectives of s.5(a)(i) and (ii) of the Environmental Planning and Assessment Act by ensuring that there are minimal adverse environmental, social or economic impacts to the community arising from the proposed additional level on Buildings C of the approved mixed use development and its non-compliance with the number of storeys standard under Clause 15A of the Hurstville LEP 1994, as amended.

The form and massing of the additional floor area on the site is influenced by the characteristics of the site and the scale of the surrounding development, namely:-

- *The height and bulk of the Court-approved 5-storey mixed use development, directly adjoining the subject site to the east, provides a visual screen to the subject site from Kingsgrove Road and the railway station*
- *An additional storey has been located on Building C which adjoin the commercial area and railway line, thereby minimising potential for additional overshadowing impacts on adjoining dwellings in Paterson Avenue and Colvin.*

In terms of height, bulk and scale of the proposed modifications to the approved development, the proposal is consistent with the built form outcomes envisaged under the relevant planning instruments and approved in proceedings before the Land & Environment Court.

In the circumstances, it is considered that compliance with the development standard would hinder attainment of the objectives of s.5(a)(i) and (ii) of the Environmental Planning and Assessment Act.

On the basis of the above it is considered that compliance with the number of storeys development standard is considered unreasonable and unnecessary in the circumstances of this case as the impacts of the non-compliance will have minimal adverse consequences on the amenity of adjoining dwellings in terms of overshadowing and privacy. The proposed additional storey to Building C will be consistent in bulk and scale with the adjoining building to the east and not have any adverse streetscape impacts when viewed from Kingsgrove Road.

Furthermore, 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.

It is noted that the built form of the approved and proposed development will maintain an unchanged height and scale of the buildings adjacent to single and two-storey dwellings in Mashman, Colvin and Paterson Avenues (Buildings A and B) and that the additional level is located adjacent to the railway line and the commercial development ensures that there will be minimal adverse amenity impacts on its neighbours and the height, bulk and scale is consistent with that envisaged by the planning instruments and other consents granted by the Court on the adjoining site (215-231 Kingsgrove Road).

Comment

The additional storey to Block C of the development will result in the height of the development being a maximum seven (7) storeys. 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.

For the above reasons the variation to the height control can not be supported.

State Environmental Planning Policy (Infrastructure) 2007

The application was not required to be referred to NSW Roads and Maritime Services (formerly RTA). The application was however referred to Council's Traffic Section for comment. Council's Senior Traffic Engineer has advised that the proposed development can not be support due to the proposed non compliance with Council's on site car parking requirements. This is discussed in the report below under the heading entitled "Development Control Plans".

State Environmental Planning Policy No 55 - Remediation of Land (SEPP 55)

The proposed amendments to the development do not impact the development's compliance with the requirements of SEPP 55.

State Environmental Planning Policy No 65 – Design Quality of Residential Flat Development (SEPP 65)

The subject planning instrument is applicable as the proposed development satisfies the definition of a residential flat building as prescribed under the SEPP. Further to the design quality principles and referral to the Design Review Panel, Clause 30(2) of SEPP 65 also requires residential flat development to be designed in accordance with the Department of Planning's publication entitled Residential Flat Design Code.

There are a number of guidelines and rules of thumb contained in the Residential Flat Design Code which accompanies SEPP 65 that are applicable to the proposed development. These provide a meaningful and quantifiable assessment of the merits and deficiencies of the proposal, when assessed against SEPP 65 and in turn inform whether the design quality principles contained in SEPP 65 are addressed.

Clause 50 of the Environmental Planning and Assessment Regulation 2000 requires that an application that relates to a residential flat building be accompanied by a Design Verification Statement from a qualified designer stating that the design quality principles as set out in Part 2 of the SEPP 65 are achieved for the development. The Design Verification Statement submitted with the application states that the residential development was designed by Mr Michael Gaston,

a registered architect, and that it was designed in accordance with the Design Quality Principles of SEPP 65.

The following table outlines compliance with the Residential Flat Design Code, where relevant to the additional residential units proposed, and the referral received from the Design Review Panel is discussed below the table:

STANDARD	OBJECTIVE	PROVIDED	COMPLIANCE
BUILDING HEIGHT	Ensure future development responds to desired future scale and character of street and local area	Proposed development does not respond to the desired future scale and character of street and local area under the current controls	No
BUILDING SEPARATION	<p>Up to 4 storeys/12m: -12m between habitable rooms -9m between habitable rooms and balconies or non-habitable rooms -6m, no habitable rooms to non habitable rooms</p> <p>May be varied in response to site and context constraints. For lesser distances, must demonstrate that daylight access, urban form and visual and acoustic privacy is satisfactorily achieved.</p>	-Separation between Block D and C generally complies as terrace has 12m separation.	Yes
FLOOR SPACE RATIO (FSR)	To ensure that the development is in keeping with the optimum capacity of the site and the local area. FSR is not specified in the Design Code.	Proposed FSR is not consistent with the current controls	No
APARTMENT LAYOUT	<p>-Maximum depth from window of single aspect apartment 8.0m</p> <p>-The back of a kitchen should be no more than 8 metres from a window.</p> <p>-Width of cross-over apartments more than 15 metres deep should be a minimum of 4 metres.</p>	<p>-83% of units are dual aspect. 1 single aspect apartment greater than 8m in depth</p> <p>-100% of units have back of kitchen less than 8m from a window.</p> <p>-N/A</p>	<p>No</p> <p>Yes</p>
APARTMENT MIX	To provide a diversity of apartment types, which cater for different household requirements now and in the	The proposal incorporates a diversity of mixture in the size of the units, and provision of 2 and 3 bedroom units	Yes

	future		
BALCONIES	Primary balconies to be a minimum of 2 metres in depth.	All units have primary balcony with minimum 2m depth	Yes
CEILING HEIGHTS	Mixed use building: Residential buildings/floors -habitable rooms minimum 2.7m -non habitable rooms minimum 2.25m	Residential floors = 3.05m	Yes
INTERNAL CIRCULATION	Maximum of 8 units to be accessible from a double loaded corridor.	Maximum number of units off corridor are 6	Yes
STORAGE	To provide adequate storage for every day household items within easy access of the apartment 1br = 6m ³ 2br = 8m ³ 3br = 10m ³	2br = 8m ³ 3br = 10m ³	Yes
DAYLIGHT ACCESS	-Min 70% of units receive min 3 hrs of solar access -Max 10% units southerly aspect	-75% of units receive minimum 3 hours direct sunlight -0% of units have a south aspect.	Yes Yes
NATURAL VENTILATION	-60% of residential units should be naturally cross ventilated. -25% of kitchens should have access to natural ventilation.	-83% of units naturally cross ventilated -16% of kitchens have access to natural ventilation	Yes No

The proposed units do not comply with the Residential Flat Design Code in terms of floor space ratio, height, depth of the single aspect unit, and the number of kitchens which have access to natural ventilation. The variation proposed to the floor space ratio and height has been discussed previously in this report and is not supported.

The applicant has provided a response to the other matters as part of the response to the issues raised by the Design Review Panel. The applicant has also provided an assessment of compliance entitled *Summary Expert Opinion, Amenity Compliance, Overshadowing, Solar Access and Cross Ventilation* (prepared by Steven King Architect, dated 13 November 2012). The report is attached in its entirety to this report. The report concludes that the proposed units present no issues in terms of their compliance with the requirements of the Residential Flat Design Code for overshadowing, solar access and cross ventilation.

Design Review Panel (DRP)

The application was referred to the DRP who provided comments on the proposed development. The comments provided by the DRP, the applicant, and development assessment officer are as follows:

Recommendation of the Panel:

The Panel strongly recommends the application not be supported for the reasons outlined below.

1. Context

DRP comment

Under the current approved proposal it is acknowledged that the mixed use development and open public square is positive for the local context. However, this has already been acknowledged in the approval of the existing scheme. The approved scheme on the adjoining property on the east, currently under construction, will be adversely impacted by this additional height.

Applicant's comment

The proposed development relates well to its context being development that:

- Is located adjacent to East Hills Line rail corridor, Kingsgrove Station and Kingsgrove Road.
- Increased heights and densities are encouraged in centres and in accessible locations in close proximity to public transport nodes.
- The built form in terms of bulk and scale reflects that of the adjoining site immediately to the east, the commercial office building to the north and the scale of building proposed on the opposite side of Kingsgrove Road (under Rockdale Council's Draft LEP/DCP). The proposed additional level on Building C will have negligible impact on the adjoining five storey development to the east (215-231 Kingsgrove Road (currently under construction) in terms of solar access, overshadowing or privacy. The physical separation between the eastern façade of building C and the development to the east varies from 10 to 14 metres which satisfies the relevant building separation controls in the RFDC. Refer also to attached summary expert opinion report prepared by Steve King which addresses solar access, overshadowing and cross ventilation impacts.

2. Scale

DRP comment

The scale as already approved exceeds height and density requirements for the locality. The subject building is already dominant in relation to adjoining development and public spaces within the local context. There is no justification for any increase to the approved height and scale.

Applicant's comment

As outlined above and in the Steve King report, the proposed development relates well to its context and the proposed additional level to building C will have negligible adverse impact on the adjoining properties and public spaces in terms of solar access and overshadowing. The additional level is located on the eastern edge of the site away from the smaller scale residential properties to the west and south in order to minimise its' impact on adjoining properties; it is adjacent to the railway line and is consistent with the increased bulk and scale of the proposed commercial developments to the north and on the opposite side of Kingsgrove Road. The façade design displays a high degree of articulation and high quality materials which will provide a positive contribution to the streetscape.

3. Built Form

DRP comment

The approved scheme exceeds the recommended building width according to the RFDC. The additional storey proposed will exacerbate the adverse impact that this width creates. The deletion of the stepped profile to the southern elevation has negative implications on the surrounding development.

Applicant's comment

Building C varies in width between 16.9 and 18.3 metres (measured from window to window glass line). It is noted, as with the original approved design, that strict compliance with the building width 'Rule of Thumb' can be varied where it is shown that satisfactory daylight access and ventilation is achieved. There is only very minor additional overshadowing of the rear yards of the properties to the south and southeast. Refer to attached summary expert opinion report prepared by Steve King which addresses solar access, overshadowing and cross ventilation impacts.

4. Density

DRP comment

The Panel advises the density as already approved exceeds the LEP standard of 2:1. The subject proposal will further increase the non compliance to approximately 2.43:1 (over 20%). There is no additional public benefit arising from the proposal which would justify this further variation to the standard.

Applicant's comment

The development is consistent with the above ground FSR of the adjoining site and mixed use zone on the opposite side of Kingsgrove Road (Rockdale DLEP adopted on 30/3/11 mixed uses zone, FSR 2:1 and height 19 metres). It is also important to note that 0.63:1 (3,525 m²) of the overall FSR is located below ground level and thereby does not contribute to the bulk and scale of the development. The proposed building will sit comfortably within its context, is consistent with the proposed future development outcomes for the precinct, the façade design will provide a positive contribution to the streetscape and the public piazza and retail facilities of the development will be of significant public benefit.

5. Resource, energy and water efficiency

DRP comment

No comment.

6. Landscape

DRP comment

The apparent bulk of the proposal is likely to adversely affect the character of the approved open space.

Applicant's comment

The proposed development provides over 1,500 m² of landscaped public open space. Additionally each dwelling is afforded private open space by way of courtyards, gardens or balconies. The additional level to Building C will have a negligible additional overshadowing of the public open space as noted in the attached summary expert opinion report prepared by Steve King. The proposed landscaping of the public plaza (trees, seating, lighting, etc) and the design of the retail shopfronts/awnings which surround the plaza will create a desirable 'human scale' which will be further enhanced by the high degree of articulation and high quality materials of the residential apartment facades above.

7. Amenity

DRP comment

It is noted that the proposal as approved does not satisfy the requirements of the RFDC in terms of solar access and cross ventilation. The additional units now proposed would also not satisfy the standards. The additional height will have adverse impact in relation to overshadowing and visual impact on the public open space, Block B and properties to the south and south east. Apart from mid winter overshadowing in the plaza, this proposal will increase overshadowing at other times of the year.

Applicant's comment

The design of the additional apartment level in Building C provides a high level of internal amenity for future occupants which will comply with the relevant RFDC requirements. All of the additional apartments will have good solar access and natural ventilation as well as appropriate visual and acoustic privacy with little or no adverse impact on the public space, block B apartments or properties to the south and south east. In all cases the additional floor/apartments to block C will have negligible additional overshadowing impacts. Refer attached summary expert opinion report prepared by Steve King which addresses solar access, overshadowing and cross ventilation impacts.

8. Safety and Security

DRP comment

No comment.

9. Social Dimensions

DRP comment

No comment.

10. Aesthetics

DRP comment

The additional bulk of the building has detrimental aesthetic impact. The incremental change to the building has a negative impact on the character of the local context at close and distant scale. The deletion of the stepped profile to the southern elevation has negative implications on the surrounding development.

Applicant's comment

The external treatment of the building reflects an architectural design, which meets the aesthetic objectives of Principle 10. The proposal will provide a design outcome that is consistent with the future character of the area as established within the site specific design requirements. There is only very minor additional overshadowing of the rear yards of the properties to the south and southeast. Refer to attached summary expert opinion report prepared by Steve King. The proposed building will sit comfortably within its context, is consistent with the proposed future development outcomes for the precinct and the façade design will provide a positive contribution to the streetscape.

Development Assessment Officer's comment

The issues relating to floor space ratio and height have been discussed at length previously in this report and are not supported. With regards to the issues of overshadowing, solar access, and ventilation, the assessment made by Steven King have been considered and not disputed.

State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004

A BASIX Certificate has been submitted with the application which is satisfactory.

2. Draft Environmental Planning Instruments

Draft State Environmental Planning Policy (Competition) 2010

Draft State Environmental Planning Policy (Competition) 2010 has been considered in the assessment of this report.

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.

The status of the draft Hurstville LEP 2012 (it was changed to the year 2012 by the Department of Planning and Infrastructure recently) is considered to be “certain” and imminent”. Notwithstanding this, the draft LEP contains a savings provision whereby the controls apply only to development applications lodged after the LEP’s gazettal date. At the writing of this report, the LEP had not been gazetted. The controls of the draft LEP do not apply to the proposed development however they have to be considered in the assessment of the application.

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 for the subject site. The proposed modification to the approved development will result in the development having a floor space ratio of 2.43:1 and a maximum height of 21.9m which is not in accordance with the controls of the draft LEP. The issues of floor space ratio and height have been discussed previously in this report and the variation to these controls is not supported.

3. Development Control Plans

Hurstville Development Control Plan No 1 (DCP 1) applies to the subject site. The proposed development has been assessed against the relevant requirements of DCP 1 that apply to the proposed development. The proposed development does not comply with the requirements relating to floor space ratio and height which are the same as the development standards of the Hurstville Local Environmental Plan. The non compliance with the floor space ratio and height requirements have been discussed previously in the report.

Section 3.1 – Car Parking and Section 6.10 Mashman Site, Kingsgrove

Under the requirements of DCP 1 seventeen (17) car spaces are required to be provided on site for the proposed additional twelve (12) residential units (fourteen (14) for the units and three (3) for visitor spaces).

The applicant proposes to allocate these spaces from the retail car spaces provided on site. This will result in a shortfall of seventeen (17) on site car spaces which are required to be provided to the retail floor area of the proposed development. The applicant proposes to reduce the parking provided to the Woolworths Supermarket which has been approved in the development.

The applicant has submitted justification for this in a statement prepared by Traffix Traffic and Transport Planners (reference: 10 171L01v02, dated 15 October 2012). The statement is summarised as follows:

The approved development provides 263 retail parking spaces across all basement levels. Of these 263 spaces, 52 are currently provided for staff within the private car park (basement level 4). The remaining 211 public parking spaces are provided within basements 1-3 in accordance with Council's DCP and will not be affected as part of this application.

It is proposed that 17 of the 52 employee spaces be reallocated to the proposed additional residential parking requirement. This would result in compliance with Council's DCP for the residential use. This arrangement is considered acceptable based on the following:

- *The reduction in employee parking is in accordance with government policy to promote alternative modes of transport through measures such as parking restraint. In this regard, the site is located within 100 metres of Kingsgrove Railway Station and is highly accessible to the extensive bus services along Kingsgrove Road. Accordingly, it is anticipated that a high proportion of staff would use these alternative transport modes, thereby reducing parking demands to a level below the recommended DCP rate.*
- *The reduction in employee parking will have no negative effect on the public car park provided for supermarket and retail visitors as all parking associated with this reallocation is located within the private car park (basement level 4) accessed via Colvin Avenue.*
- *Notwithstanding the above, a comparison of the DCP and RMS parking requirements has been undertaken... Application of the RMS parking rates to the 1,076m² of retail area, 3,096m² of supermarket and 430m² office area results in a parking requirement of 191 spaces compared with 263 spaces (DCP requirement). It is noted that Council's DCP is applicable across the entire LGA and takes no account of the location of the site with exceptional access to public transport (bus and rail) as well as a broad range of other services within the commercial centre. The parking provision for all retail and commercial areas comply with the requirements of the RMS and generally complies with Council's DCP rates. This slight departure as noted above, will promote alternative modes of transport for employees.*

Development Assessment Officer's comment

The variation to the car parking for the supermarket employees is not supported. Although it is likely that some employees will use public transport to travel to and from work it is unlikely to be high given that the approved hours of operation of the supermarket are until 12 midnight, seven days a week. As such those employees with shifts that end after the supermarket closing hour of 12 midnight are unlikely to travel on public transport.

Although the subject site is close to Kingsgrove Railway Station on site car parking for the development is important given that there is no alternative public car parking areas in the vicinity of the subject site. The roads immediately surrounding the subject site, being Kingsgrove Road and Mashman Lane have limited parking times and "no standing" parking restrictions, respectively. The on street parking available for long periods of time is in the residential zones which immediately adjoin the subject site. As such it is likely that any shortfall in the on site car parking will result in employees/staff and others visiting the subject site parking in the residential areas which immediately adjoin the site. Residents have advised that this is an increasing problem with commuters and other shoppers parking in the residential area to avoid the parking restrictions around the Kingsgrove commercial centre. It is therefore considered that the

proposed development may result in adverse impacts to the amenity of the adjoining residential areas in terms of traffic generation.

4. Impacts

Natural Environment

The proposed development has no apparent adverse impact to the natural environment.

Built Environment

The proposed development does not comply with the floor space ratio and height requirements and results in a development that is higher and larger than that envisaged by the planning controls. In its context to the adjacent residential areas that have a two (2) storey height limit, the proposed development is excessive in height and scale. The proposed development is also higher than any other development approved for the Kingsgrove Commercial Centre which the subject site is located behind. The proposed bulk and scale of the development is not consistent with the future desired character of the area and is therefore considered to have an adverse impact on the built environment.

Social Impact

The proposed development is likely to result in adverse impacts to the adjoining residential areas in terms of traffic noise and generation from car parking which has been displaced from the development.

Economic Impact

The proposed development has no apparent economic impact.

5. REFERRALS, SUBMISSIONS AND THE PUBLIC INTEREST

Resident

The application was notified in accordance with Council's requirements and three (3) submissions were received in reply. The issues raised in the submissions are as follows:

Issues:

- The proposed development excessively exceeds the height limit for Block C
- The proposed development is an overdevelopment of the site and will exacerbate the current situation if approved.
- There is visual and spatial impact of the additional storey
- There will be an increase in overshadowing from the proposed development
- The proposed development will result in additional traffic congestion and impacts to the surrounding streets. There are already issues with commuter parking in the residential streets and people not adhering to parking restrictions.
- Increasing the height of Block C will change the spatial experience with the public plaza. The sense of space has changed from a 4 storey courtyard to a 7 storey enclosure. If the development is approved, the balconies should be setback further to minimise the visual impact.
- The development has been creeping higher over time and there is no justification for additional height.

Development Assessment Officer's Comment

The issues raised in the submissions as summarised above, are noted. As detailed in the report the proposed development is not supported as it results in excessive floor space ratio and height. In

addition to this the proposed development will result in seventeen (17) on site car parking spaces which are allocated to the approved supermarket being allocated to the proposed additional residential units. This is not supported as it is likely to result in adverse impacts to the surrounding residential area in terms of traffic generation.

Council Referrals

Senior Traffic Engineer

Council's Senior Traffic Engineer has advised that she can not support the proposed development due to the proposed non compliance with Council's on site car parking requirements.

Team Leader – Subdivision and Development

Council's Team Leader – Subdivision and Development has advised that any changes proposed to the allocation of onsite car parking spaces has to be reflected in the approved strata plans for the development.

External Referrals

Design Review Panel

The comments of the DRP have been discussed previously in this report.

CONCLUSION

The application seeks permission to modify an approved mixed retail, commercial and residential development with the addition of twelve (12) residential units. The proposed development has been assessed against the requirements of the relevant planning instruments and development control plans and does not comply in terms of floor space ratio, height and on site car parking spaces. The applicant has submitted justification for the variations however the proposed variations can not be supported for the reasons detailed in the report.

The application was presented to the Design Review Panel who does not recommend approval of the application based on the bulk and scale of the development and amenity of the residential units. Three (3) submissions were received to the application and these have been addressed in the report. The application is recommended for refusal for the reasons detailed below.

RECOMMENDATION

Pursuant to the provisions of Section 96 of the Environmental Planning and Assessment Act, as amended, the application (known as 2010/DA-461REV9) to modify Development Consent No 10/DA-461 granted on 19 May 2011, as amended, for the demolition of existing structures and construction of a mixed retail, commercial and residential development and associated car parking and road works on Lot 269 DP 1169104 and known as 11 Mashman Ave Kingsgrove be refused for the following reasons:

1. Pursuant to the provisions of Section 96(2) of the Environmental Planning and Assessment Act, 1979 the proposed development is not substantially the same development for which consent was originally granted.
2. The proposed development does not satisfy objective (a) of Zone No 3(c) Business Centre Zone contained in the Hurstville Local Environmental Plan as it does not maintain a commercial and retail focus.

3. The proposed development is unsatisfactory, as it does not comply with the provisions of Clauses 13 and 15A of the Hurstville Local Environmental Plan with regards to the floor space ratio and height of the development.
4. The proposed development is unsatisfactory, as it does not comply with the objectives of Section 6.10.3 for floor space ratio and height of the Hurstville Development Control Plan No 1.
5. The proposed development is unsatisfactory, as it does not comply with the requirements of Section 6.10.3 for floor space ratio and height of the Hurstville Development Control Plan No 1.
6. The proposed development is unsatisfactory, as it does not comply with the requirements of Section 3.1 Car Parking and 6.10 Mashman Site, Kingsgrove for on site car parking of the Hurstville Development Control Plan No 1 which is likely to result in adverse impacts to the adjoining residential developments in terms of traffic generation.
7. The proposed development is not consistent with the Design Quality Principles 1, 2 and 4 of State Environmental Planning Policy No 65 – Design Quality of Residential Flat Development.
8. Having regard to the above non-compliances with Council's development standards of the Hurstville Local Environmental Plan and Hurstville Development Control Plan No 1 the proposed development is unsatisfactory and represents an overdevelopment of the subject site.
9. The proposed development is unsatisfactory, providing an undesirable and unacceptable impact on the streetscape and adverse impact on the surrounding built environment.
10. Having regard to the previous reasons noted above and the number of submissions received by Council against the proposed development, approval of the development application is not in the public interest.