

JRPP PLANNING REPORT - DA NO. 562/2010/JP/A

JRPP No:	2012SYW106
DA Number:	562/2010/JP/A
Local Government Area:	THE HILLS SHIRE
Proposed Development:	SECTION 96(2) MODIFICATION TO AN APPROVED MIXED USE DEVELOPMENT
Street Address:	LOT 1 DP 398482 - 2-8 JAMES STREET, CARLINGFORD
Applicant/Owner:	ATM & CPA PROJECTS PTY LTD
Number of Submissions:	NIL
Recommendation:	APPROVAL
Report by:	CLARO PATAG - DEVELOPMENT ASSESSMENT COORDINATOR

BACKGROUND**MANDATORY REQUIREMENTS**

Owner:	ATM & CPA Projects Pty Ltd	1.	LEP 2012 - Permissible with consent.
Zoning:	R1 General Residential	2.	DCP 2012 - Part D Section 12 - Carlingford Precinct
Area:	2,992.8m ²	3.	Section 79C (EP&A Act) - Satisfactory
Existing Development:	Three residential allotments containing a dwelling each and one vacant residential lot	4.	Section 96(2) (EP&A Act) - Satisfactory
		4.	Section 94 Contribution - included in the Voluntary Planning Agreement (VPA)

SUBMISSIONS**REASONS FOR REFERRAL TO JRPP**

1. Exhibition:	Yes, 43 days (due to Christmas/New Year holiday period)	1.	Section 96(2) modification
2. Notice Adj Owners:	Yes, 49 days (due to Christmas/New Year holiday period)		
3. Number Advised:	113		
4. Submissions Received:	Nil		

HISTORY

11/08/2011	Development Consent granted by the NSW Joint Regional Planning Panel to DA 562/2010/JP for the construction of an 18-storey mixed use development containing 105 residential flat units, 92m ² of ground floor retail space and 168 basement parking spaces.
28/11/2012	Subject Section 96 application lodged.
03/12/2012	Stop-the-clock letter sent to the applicant requesting submission of a detailed cost summary report.
06/12/2012 to 23/01/2013	Subject Section 96 application notified and exhibited for public comments.
17/12/2012	Letter sent to the applicant requesting additional engineering information regarding basement parking.
09/01/2013	Letter received from RailCorp requesting additional documentation from the applicant and payment of concurrence fees. The applicant was advised in writing on the same regarding this request.
11/01/2013	Letter sent to the applicant forwarding RailCorp's request for additional information.
08/02/2013	Cheque payment for concurrence fee forwarded to RailCorp.
05/03/2013	Letter (by email) received from RailCorp reiterating their previous request for additional documentation.
06/03/2013	Email sent to the applicant forwarding RailCorp's email dated 05/03/2013.
13/03/2013	Meeting held with the applicant to discuss outstanding matters including RailCorp's issues and assessment of unit sizes against SEPP 65.
02/04/2013	Additional documentation received from the applicant under cover letter dated 28 March 2013 in response to Council's previous request.
16/04/2013	Concurrence from RailCorp received advising that the concurrence conditions imposed in the original consent to remain.
18/04/2013	Letter sent to the applicant in response to additional documentation received on 2 April 2013 raising outstanding issues in relation to basement parking.
23/04/2013	Additional engineering information received.
06/06/2013	Additional information received from the applicant regarding unit size assessment against SEPP 65.

06/06/2013	Amended cover drawing received from the applicant showing correct revision numbering.
20/06/2013	Political donations disclosure submitted by the applicant.

PROPOSAL

The proposal is for a Section 96(2) modification of an approved 18-storey mixed use development containing 105 residential flat units, 92m² of ground floor retail space and 168 basement parking spaces granted by the NSW Joint Regional Planning Panel on 11 August 2011.

The Section 96(2) application seeks to modify the approved mixed use scheme through the following detailed design amendments, which result in the creation of 33 additional units and an increase in the density yield from 105 to 138 residential flat units:

Basement Level 3:

- Reconfigure the parking layout to increase the number of parking spaces from 57 to 74;
- The basement level is split level with a 1:8 ramp resulting in half the basement level being raised by 1.5m;
- Replace a store room with 4 additional parking spaces at the south eastern end of the basement;
- Relocate the 2 lifts at the eastern end of the basement;
- Extend the 2 central lifts down to Basement Level 4; and
- Relocate the storage rooms around the basement to provide a total of 155m² compared with 160m² on Basement Level 4 as approved.

Basement Level 2:

- Increase the number of parking spaces from 53 to 70 spaces by reconfiguring the parking and ramp configuration;
- Other changes to reflect those in Basement Level 3; and
- The basement level is split level with a 1:8 ramp resulting in half the basement being raised by 1.5m.

Basement Level 1:

- Reduce the number of retail parking spaces from 5 to 3 spaces;
- Provide a total of 56 visitor parking spaces including 1 accessible and 1 loading space compared to 42 visitor spaces including 1 accessible space as approved;
- Provide 4 resident parking spaces compared with 15 resident spaces as approved;
- Provide 5 motorcycle parking spaces compared with 3 motorcycle spaces as approved;
- Relocate motorcycle parking spaces around the basement;
- Retain 8 bicycle parking spaces; and
- The basement level is split level with a 1:8 ramp resulting in half the basement being raised by 1.5m.

Level 1:

- Level 1 split level by 1m only to ensure that the ultimate height of the building is not altered by the split level basement;
- Relocate 2 eastern lifts and delete southern lift;

- Reduce retail floor space from 92m² to 55m² and provide a toilet and service area for the retail space;
- Delete gym and replace with 230m² of residential storage area; and
- Alter the southern section of the building in the proximity of the fire stairs, storage area and lift lobby.

Level 2:

- North eastern 3 bedroom unit converted into 2 x 1 bedroom units (now Units 10 and 11);
- Unit 12 amended by flipping the lounge room;
- The 2 Southern units converted from 2 x 3 bedroom units into 2 x 1 bedroom units and 1x 2 bedroom unit (now Units 13, 14 and 15 with one of the units being accessible);
- Provide a new internal hallway along the eastern side of the building to serve Units 13, 14 and 15;
- Alter lift location; and
- Delete southern lift

Level 3:

- 1 x 3 bedroom unit converted to 2 x 1 bedroom units
- 2 x 3 bedroom units converted to 2 x 1 bedroom units and 1 x 2 bedroom unit
- Other modification works are the same as Level 2 above

Level 4:

- 1 x 3 bedroom unit converted to 2 x 1 bedroom units
- 2 x 3 bedroom units converted to 2 x 1 bedroom units and 1 x 2 bedroom unit
- Other modification works are the same as Level 2 above

Levels 5 & 6:

- 1 x 3 bedroom unit on the northern side on each level converted to 2 x 1 bedroom units (now Units 39, 40, 48 and 49);
- Internal unit alterations;
- Alterations to lift and fire stair;
- 2 x 3 bedroom units on the south eastern side on each level converted to 2 x 1 bedroom and 1 x 2 bedroom units (now Units 45, 46, 54 and 55);
- Delete southern lift; and
- Provision of new hallway to facilitate access to Units 45, 46, 54 and 55

Level 7:

- The 2 northern units have been flipped so the 2 bedroom unit (Unit 56) is now located on the western side and the 1 bedroom unit being Unit 57 is located on the eastern side;
- The internal design of unit 58 has been flipped;
- Relocate lifts and fire stair;
- Increase size of the void on the eastern side;
- Southern unit converted from 1 x 3 bedroom unit into 2 x 1 bedroom units being Units 60 and 61;
- Delete southern lift; and
- New hallway along the eastern side of the building to facilitate access to Units 60 and 61

Levels 8-18:

- The 2 units located at the northern side have been approved as 3 bedroom units and a 2 bedroom unit. The floor plate has been amended to provide 3 x 1 bedroom units;
- The 2 bedroom units in the centre of the building has been flipped;
- The southernmost unit approved as a 3 bedroom unit has been converted into 2 x 1 bedroom units;

- Increase size of the eastern void;
- Delete southern lift; and
- Hallway extended to facilitate pedestrian access to the 2 southern 1 bedroom units

Roof plan:

Roof plan has been altered to accommodate an increase in the void area and the roof over the balcony of the northern units has been amended

The table below shows a comparison of the approved scheme against the modified scheme in terms of unit mix, parking allocation, building height and floor space ratio:

APPROVED	PROPOSED
105 units	138 units
3 x 1 bedroom units	80 x 1 bedroom units
54 x 2 bedroom units	48 x 2 bedroom units
92m ² of retail floor space	55m ² of retail floor space
123 resident parking spaces 42 visitor parking spaces 8 retail parking spaces Total of 173 parking spaces plus 4 motorcycle parking spaces	148 resident parking spaces 56 visitor parking spaces 13 retail parking spaces Total of 207 parking spaces plus 5 motorcycle parking spaces
Maximum building height: 54.3 metres	Maximum building height: 54.3 metres
FSR - 4.0:1	FSR - 4.0:1

The following conditions of the Development Consent are proposed to be modified as result of this modification application:

- Condition 1 – to reflect the amended set of plans;
- Condition 5 – to reflect the revised number of parking spaces;
- Condition 10 – to reflect the NSW Police recommendations;
- Condition 32C – to reflect the revised number of bins as a result of the additional units.
- Condition 42A – to add a paragraph regarding monetary contributions for the additional 33 dwellings; and
- Condition 58 – to reflect the revised BASIX Certificate number.

ISSUES FOR CONSIDERATION

1. Compliance with The Hills Local Environmental Plan 2012

The approved mixed use development which is the subject of this Section 96 application satisfies the objectives of the Hills Local Environment Plan 2012 and R1 General Residential zone. The development is most appropriately defined as a “mixed use development” which is permissible with consent in the zone. The proposed modification to the approved development does not propose to alter the use and therefore continues to comply with The Hills Local Environment Plan 2012.

2. Compliance with LEP 2012 (LEP Mapping Restrictions)

The proposal has been assessed against the LEP 2012 Map Sheets as follows:-

LEP 2012 MAPPING - DEVELOPMENT STANDARDS

STANDARD	REQUIRED	PROPOSED	COMPLIANCE
Floor Space Ratio	4.0:1	4.0:1 (unchanged)	Yes
Allotment Size	No requirement for mixed use development	Site area is 2,992.8m ² . Despite its size, the Carlingford Precinct DCP has envisaged the subject site and adjoining sites (Nos. 10 & 12 James Street) can be developed in their own right.	N/A
Building Height	57m	54.3m (same height as originally approved)	Yes
LEP 2012 MAPPING – SITE RESTRICTIONS			
RESTRICTION		ASSESSMENT DETAIL	
Is the site a heritage listed item or within a heritage conservation area?	No	If yes, address Clause 5.10 of LEP 2012 and confirm what level of significance it is? (e.g. local, regional or state).	N/A
Is the site affected by land reservation or acquisition? (e.g. road widening, open space, trunk drainage etc)	No	If yes, what is the affectation and address Clauses 5.1 and 5.1(a) of LEP 2012.	N/A
Is the site affected by Sheet CL1_001 (e.g. acid sulphate soils and natural biodiversity mapping)	No	If yes, what is the affectation and address Clauses 7.1 and 7.4 of LEP 2012.	N/A
Is the site affected by Sheet CL2_002 (e.g. foreshore building line, land slide risk, urban releases and key sites)	No	If yes, what is the affectation and address Part 6 and Clauses 7.5, 7.6 & 7.8 of LEP 2012.	N/A

3. Compliance with DCP 2012 Part D Section 12 – Carlingford Precinct

The proposed modification has been assessed against the relevant development standards and objectives of DCP 2012 Part D Section 12 – Carlingford Precinct which shows that the development as modified is substantially the same development as originally approved and continues to achieve compliance with the Key Site Block 4: 2-12 James Street development controls under clause 5.2.1 with the exception of minimum apartment size standards in clause 4.6.2(f) which serve as a guide for the developments in southern Precinct (south of Post Office Street). The development as modified remains compliant with the required building height, floor space ratio, building site coverage, vehicle access points and circulation, car parking requirements, distribution of uses within the building, SEPP 65 compliance and deep soil planting. The proposed development continues to conform to the conceptual built form controls in Figure 13 and dimensional built form controls in Figure 14 of Key Site Block 4: 2-12 James Street.

As noted above, the proposed modification requires a variation to the apartment size standard, and is addressed below:

Apartment Size

During the assessment of the original Development Application, the minimum apartment size standard in the Carlingford Precinct DCP was one of the Precinct-wide built form controls under clause 4 which applied to development sites across the Precinct but not to the key sites which include the subject site (identified as Block 4: 2-12 James Street). The 6 key sites within the Carlingford Precinct have specific built form controls under clause 5 except for the unit size standards, hence the original development scheme was only assessed against the rules of thumb and guide on page 69 of the Residential Flat Design Code. Later amendments to the DCP resulted in the inclusion of the key sites to be assessed against other relevant precinct-wide built form controls not specified in the relevant Key Site built form controls, which include the minimum apartment unit sizes.

The proposed modification is now assessed against the minimum unit size standard under clause 4.6(f), which shows that 4 one bedroom units do not comply with the minimum standards as they have an internal floor area of 62m². See Table below showing compliance with the minimum unit size standards.

Unit Type	≥65m²	<65m²	≥90m²	<90m²	≥110m²	<110m²	Total
1 Bedroom	76 units	4 units	N/A	N/A	N/A	N/A	80 units
2 Bedroom	N/A	N/A	48 units	Nil			48 units
3 bedroom	N/A	N/A	N/A	N/A	10 units	Nil	10 units
Total	76	4	48	-	10	-	138 Units

Clause 4.6(f) provides the following:

“The following minimum areas are a guide for the developments in southern Precinct (south of Post Office Street) for a maximum of 10% of the total number of units within any individual development:

- 1 bedroom apartment 65m²
- 2 bedroom apartment 90m²
- 3 bedroom apartment 110m²”

The applicant has provided a written justification to this standard relying upon the Rule of Thumb and minimum apartment size standards in the Residential Flat Design Code under SEPP 65, as follows:

The proposal includes the conversion of approved Units 22 and 24 on Level 5 and 6 into 4 x 1 bedroom units (Units 39, 40, 48 and 49) where these 1 bedroom units have an internal area of 62m². These four units are 1 bedroom cross through units as they have both north and south facing balconies. The table on page 69 of the RFDC defines these units as Type 03.02 1 bedroom cross through units. The minimum internal area for this form of 1 bedroom unit is 50m² with balcony area of 8m². The balconies of these 4 units have a combined area of 28.3m². These units comfortably comply with the table on page 69 of the RFDC and will have a high level of amenity as they will receive sunlight throughout all the day due to the north facing balconies and receive complete cross flow ventilation. The minor non-compliance with Council's DCP is for 4 of the 80 one bedroom units (5% of the 1 bedroom units) which are 3m² less than the 65m² minimum which is 4.7% less than Council's requirement.

The 4 x 62m² 1 bedroom cross flow units exceed the minimum requirements of table on page 69 of the RFDC. The northern aspect of these units will ensure that the units receive solar access all day and are full cross flow units. Accordingly these units will have a high degree of amenity and are worthy of approval.

4. Compliance with SEPP 65 – Residential Flat Design Code

The applicant for purposes of this modification application has re-assessed the new unit mix against SEPP 65's Residential Flat Design Cod (RFDC), as follows:

"The table at page 69 for apartment types varies from the rule of thumb in terms of the area for 1, 2 and 3 bedroom apartments. It is also noted that the table on page 69 only includes 2 bedroom corner units and 2 bedroom cross through units and not single aspect 2 bedroom units, and only one type of 3 bedroom apartment is provided.

The development proposal provides 11 different unit types and are described below:

Unit type

T1	1 bedroom 65m ² single aspect
T2	1 bedroom 65m ² single aspect
T3	2 bedroom 90m ² corner apartment
T4	2 bedroom 90m ² single aspect unit
T5	1 bedroom 65m ² single aspect accessible apartment
T6	1 bedroom 65m ² corner apartment
P5	1 bedroom 62m ² single aspect unit
T7	2 bedroom plus study 90m ² single aspect apartment
T9	2 bedroom 90m ² corner apartment
T12	1 bedroom 68m ² corner apartment
T13	1 bedroom 65m ² single aspect unit

The table on page 69 of the RFDC indicates that 3 bedroom units should have an internal area of 124m² whilst the rule of thumb provides a floor area of 95m². The section 96 application seeks to reduce the number of 3 bedrooms units from 48 to 10. The 3 bedroom units that remain have not been amended and were approved with an internal floor area of 110m².

All the two bedroom units have a floor area of 90m² which is equal to or exceeds the internal area of 3 of the 4 examples of the 2 bedroom units on page 69 of the RFDC.

The proposed development has a large variety of unit types which all meet the minimum apartment area provided in the Rule of Thumb on page 69 for the promotion of housing affordability.

It is important to note the commentary to be read with the table on page 69 which states:

"This table and the accompanying illustrations provide information on a variety of unit types. Dimensions, areas and furniture layouts are included. These examples are a comparative tool for recognising well-organised, functional and high quality apartment layouts."

The proposed apartments include furniture layouts which include dining room tables, lounge chairs, coffee tables, beds, kitchen layouts and bathroom layouts. It is considered that the unit layouts provided in the development proposal are satisfactory as they include the same type of furniture included in the examples referred to in the table at page 69 of the RFDC in a well-organised and functional layout.

It is considered that the variety of Unit Types provided are significantly greater than the minimum unit sizes provided in the rule of thumb, however the Unit Types vary from those shown in the table on page 69 to an extent that it is not possible to make a direct comparison between the 3 bedroom apartment and 2 bedroom apartments provided in this development application. The 1 bedroom single aspect units are contemplated in the table and 76 of the 80 one bedroom units comply with the 63.4m² minimum with the remaining 4 having an internal area of 62m². The two bedroom units have an internal area of 90m² which exceeds or is equal to 3 of the 4 examples for 2 bedroom units on page 69 of the RFDC. The 3 bedroom units were approved in the original scheme and have not been amended.

The section 96 application has sought to reduce the number of 3 bedroom units by converting some of the 3 bedroom units into 2 x 1 bedroom units. As there is no increase in the proposed floor area as the same building envelope is proposed there was no ability to increase the size of these 1 bedroom units to comply with the 65m² 1 bedroom unit size in the Carlingford DCP. The proposal includes the conversion of approved Units 22 and 24 on Level 5 and 6 into 4 x 1 bedroom units (Units 39, 40, 48 and 49) where these 1 bedroom units have an internal area of 62m². These four units are 1 bedroom cross through units as they have both north and south facing balconies. The table on page 69 of the RFDC defines these units as Type 03.02 1 bedroom cross through units. The minimum internal area for this form of 1 bedroom unit is 50m² with balcony area of 8m². The balconies of each of these 4 units have a combined area of 28.3m² (north and south balconies). These units comfortably comply with the table on page 69 of the RFDC and will have a high level of amenity as they will receive sunlight throughout all the day due to the north facing balconies and receive complete cross flow ventilation. The minor non-compliance with Council's DCP is for 4 of the 80 one bedroom units (5% of the 1 bedroom units) which are 3m² less than the 65m² minimum which is 4.7% less than Council's requirement.

The 4 x 62m² 1 bedroom cross flow units exceed the minimum requirements of table on page 69 of the RFDC. The 28.3m² balconies will more than compensate for the minor apartment size non-compliance with the Carlingford Precinct DCP. The northern aspect of these units will ensure that the units receive solar access all day and are full cross flow units. Accordingly these units will have a high degree of amenity and are worthy of approval.

It is therefore the opinion of DFP that the apartment sizes respond appropriately to the aims of the RFDC in that there are a variety of Unit Types and furniture layouts to demonstrate that these apartments are well organised and functional."

Comment:

Clause 30A of SEPP 65 provides that a consent authority must not refuse consent to a development application for the carrying out of residential flat development on any of the following grounds:

*(a) **ceiling height:** if the proposed ceiling heights for the building are equal to, or greater than, the minimum recommended ceiling heights set out in Part 3 of the Residential Flat Design Code,*

*(b) **apartment area:** if the proposed area for each apartment is equal to, or greater than, the recommended internal area and external area for the relevant apartment type set out in Part 3 of the Residential Flat Design Code."*

The proposed development as modified complies with the required ceiling height and apartment area set out in the Residential Flat Design Code. The proposed modification is considered satisfactory in this regard.

5. Section 96(2) of the Environmental Planning and Assessment Act, 1979

Given the increase in number of residential units from 105 to 138 dwellings, the proposed modification has been assessed against the Section 96(2) provisions of the Environmental Planning and Assessment Act, 1979. The matters for consideration under Section 96(2) of the Act are as follows:

"A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to and in accordance with the regulations, modify the consent if:

(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

(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

(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

(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."

The proposed modification results in additional 33 units being provided on the site and an additional half a basement of car parking which increases the number of car parking spaces from 173 to 207 spaces, however the amendments to the residential floors are wholly contained within the approved building envelope. In this regard, the additional units are generally created by converting 3 bedroom units into 2 x 1 bedroom units. As this occurs across the 17 residential floors, 33 additional units are provided.

There will be minor visual changes to the approved building with the main difference being the provision of two balconies along the James Street frontage where previously one existed for each of the converted 3 bedroom units and the amendments to the ground floor to reduce the retail component.

The applicant has cited several judgements made by the NSW Land & Environment Court in relation to whether or not a modification constitutes a development which is *"substantially the same as that originally approved"*.

In *Vacik Pty Ltd v Penrith City Council* (unreported 24 February 1992), Stein J stated (in relation to S.102, now referred to as Section 96):

"In my opinion substantially when used in the section means essentially or materially or having the same essence."

In *Moto Projects (No.2) Pty Ltd v North Sydney Council* (1999) 106 LGERA 298, Bignold J made the following observations:

"The requisite factual finding obviously requires a comparison between the development, as currently approved, and the development as proposed to be modified. The result of the comparison must be a finding that the modified development is "essentially or materially" the same as the (currently) approved development...and...the comparison involves an appreciation, qualitative as well as quantitative, of the developments being compared in their proper contexts."

In *Michael Standley & Associates Pty Ltd v North Sydney Council* (unreported), Lloyd J found in respect of an application to modify a consent under s.102(1) of the then Environmental Planning and Assessment Act, 1979:

"...the questions posed by subs (1)(a) and S102 is not whether a component or part of a proposed development is substantially the same as the approved development. The question is whether the development as proposed to be modified is substantially the same development. That is a different question. It is not difficult to envisage a component part of a proposed building being substantially different from the same component part of an approved building but at the same time both buildings could be described as being substantially the same development. The question is whether the proposed development, viewed as a totality, is substantially the same as the approved development."

In considering *Tipalea Watson Pty Ltd v Ku-ring-gai Council* (203) NSWLEC 253, Bignold J concluded:

"...that the nature and description of the approved development necessarily involves some flexibility in matters of design which are referable to the relevant conditions, but this result does not preclude the undertaking of a meaningful comparison as required by S.96(2)(a)."

and

"The modifications do not result in a development that is significantly different in terms of architectural appearance and character from the originally approved development."

and

"The modified development will create some changes in the external appearance of the approved development but such changes could not be said to create more than

"modifications" to the originally approved development...they do not radically transform the originally approved development."

and

"The effect of the proposed modifications is to enhance the particular features of the approved development..."

Comment:

It is apparent from the above cited Court judgements that the main consideration is whether the proposed mixed use development, when viewed in totality, is substantially the same as that originally approved even if the proposed modifications alter to some extent the external appearance and internal layout of the development.

As outlined in the proposal, whilst the list of amendments appears large, the vast majority of these amendments are reflected across either the basement levels or the residential levels. The changes in the lift positions require amendments on every floor and the additional units require additional car parking despite the gross floor area of the residential area not increasing.

It is considered when viewed in totality that the development remains substantially the same as that originally approved given that there will be very little change to the front elevation of the building, no change in the residential floor area and a reduction in the amount of retail floor space.

There is no concurrence or general terms of approval required from another approval body for this type of development, nor does it require the concurrence of any Minister.

The proposed modification was notified to surrounding properties including previous objectors and also advertised in the local paper. No submissions were received to the application.

In view of the above, it is considered that the development as modified is considered to be substantially the same development as originally approved.

SUBDIVISION ENGINEERING COMMENTS

No objection is raised to proposed modifications. No amendment to the original engineering conditions is required as a result of the proposed modification.

TRAFFIC MANAGEMENT COMMENTS

No objection is raised to proposed modifications. No amendment to the original traffic conditions is required as a result of the proposed modification.

TREE MANAGEMENT COMMENTS

Council's Principal Traffic & Transport Coordinator has reviewed the proposed modification and raised no objection. It was advised that the increase in total traffic generation will have minimal impact on the surrounding road network.

HEALTH & ENVIRONMENTAL PROTECTION COMMENTS

No objection is raised to proposed modifications. No amendment to the original health conditions is required as a result of the proposed modification.

WASTE MANAGEMENT COMMENTS

No objection is raised to proposed modifications subject to Condition No. 32C being modified to reflect the revised number of garbage, recycling and garden organic bins as a result of the additional number of units.

SECTION 94 COMMENTS

Council's Section 94 officer has reviewed the proposed modification and advised that in accordance with the Voluntary Planning Agreement (VPA), the applicant will be required to pay for the additional units in accordance with the rates shown in the VPA for 1, 2 and 3+ bedroom units, which is clearly set out in the VPA. In agreeing to the VPA, the applicant has agreed to pay for additional units in accordance with these rates, which need to be adjusted for CPI at the time of payment.

NSW RAILCORP

No objection is raised to the proposed modification and advised that the concurrence conditions imposed in the original development consent still stand.

ROADS & TRAFFIC AUTHORITY COMMENTS

No objection is raised to the proposed modifications.

NSW POLICE COMMENTS

The Section 96 application was referred to NSW Police for comments and no objections to the proposal were raised subject to a number of Crime Prevention Through Environmental Design (CPTED) factors that should be considered in addition to the previous comments outlined in their letter dated 26 October 2009 which was attached to the original consent as Appendix "B" including a condition requiring submission of a separate development application for the fit out of the retail shop on the ground floor.

CONCLUSION

The Section 96 application has been assessed against the heads of consideration under Sections 79C and 96(2) of the Environmental Planning and Assessment Act, 1979, Local Environmental Plan 2012 and Development Control Plan 2012 and is considered satisfactory.

The development as modified will remain substantially the same as originally approved. The additional 33 units do not alter the approved building footprint and ridge height and do not breach the maximum building height and floor space ratio in LEP 2012. No submissions were received during the exhibition period. The proposed variation to the Carlingford Precinct DCP's floor area requirement for 4 x 1 bedroom units is supported as it exceeds the recommended internal and external floor areas in the Residential Flat Design Code of SEPP 65.

Approval is recommended subject to the relevant conditions of consent being modified to reflect the proposed changes.

IMPACTS:

Financial

A Voluntary Planning Agreement (VPA) has been submitted by the applicant in the original application that outlined the proposed works in kind, monetary contributions and land dedication in lieu of contributions pursuant to Contributions Plan No.14 – Carlingford Precinct. The VPA has been exhibited and adopted by Council on 12 July 2011. As a result of this modification, the applicant is required to pay for the additional units in accordance with the rates shown in the VPA for 1, 2 and 3+ bedroom units, which is clearly set out in the VPA.

Hills 2026

The proposal as modified responds to the revitalisation of the Carlingford Precinct which is an integral component of Council's Residential Direction and response to the State Government's North West Sub-Regional Strategy. The proposal provides a good mix of housing which is an environmentally sustainable form of residential development and would protect and enhance the character of the locality and the Shire as a whole.

RECOMMENDATION

The Section 96(2) application be approved subject to the following conditions.

1). Condition 1 **be deleted** and **replaced** as follows:

"1. Development in Accordance with Submitted Plans

The development being carried out in accordance with the approved plans and details, stamped and returned with Development Consent No. 562/2010/JP, as amended by the following plans and details, stamped and returned with this Section 96 consent (except where amended by other conditions of consent).

REFERENCED PLANS AND DOCUMENTS

DRAWING NO.	DESCRIPTION	REVISION	DATE
S96 01	Drawing List, BASIX & Summary	C	28 May 2013
S96 02	Basement 03 Plan	B	25 January 2013
S96 03	Basement 02 Plan	B	25 January 2013
S96 04	Basement 01 Plan	B	25 January 2013
S96 05	Level 01 Plan	C	28 May 2013
S96 06	Level 02 Plan	A	28 May 2012
S96 07	Level 3 & 4 Typical Plan	A	28 May 2012
S96 08	Level 5 & 6 Typical Plan	A	28 May 2012
S96 09	Level 7 Plan	A	28 May 2012
S96 10	Level 8-18 Typical Plan	A	28 May 2012
S96 11	Roof Plan	A	28 May 2012
S96 12	Section A	B	25 January 2013
S96 13	North Elevation	B	25 January 2013
S96 14	West Elevation	A	4 April 2012
S96 15	South Elevation	A	4 April 2012
S96 16	East Elevation	A	4 April 2012

No work (including excavation, land fill or earth reshaping) shall be undertaken prior to the issue of the Construction Certificate, where a Construction Certificate is required."

2). Condition 5 **be deleted** and **replaced** as follows:

5. Provision of Parking Spaces

The provision and maintenance thereafter of 207 off-street car parking spaces and 5 motorcycle spaces.

3). Condition 10 **be deleted** and **replaced** as follows:

"10. NSW Police Recommendations

The applicant shall have regard to the recommendations by the NSW Police attached as Appendix "B" to this consent and dated 28 March 2013 which relate to a number of Crime Prevention Through Environmental Design (CPTED) factors that are in addition to the comments outlined in their letter dated 26 October 2009 in terms of surveillance, access control and territorial reinforcement with the exception of traffic matters outlined

in the letter which are addressed separately as separate conditions in the original consent."

4). Condition 32C **be deleted** and **replaced** as follows:

"32C. Domestic Waste Management

Construction of the garbage and recycling bin storage area is to be in accordance with Council's "Bin Storage Facility Design Specifications" as attached to this consent. Storage facility is to be provided for a minimum of 16 x 1100 litre bulk garbage bins, 26 x 240 litre recycling bins and 2 x garden organics bins."

5). Condition 42A **be deleted** and **replaced** as follows:

42A. Planning Agreement Obligations

Submission of a certificate from Council confirming that:

- (a) all payments under the Planning Agreement have been paid;*
- (b) all other obligations under the Planning Agreement have been satisfied; and*
- (c) the developer is not in breach of its obligations under the Planning Agreement.*

Council will promptly issue this certificate at the request of the applicant or, if the certificate cannot be issued, provide a notice identifying the outstanding payments, obligations or breach.

The applicant shall pay the required monetary contributions for the additional 33 dwelling units as a result of this modification consent (Development Consent No. 562/2010/JP/A) prior to issue of any Construction Certificate."

6). Condition 58 **be deleted** and **replaced** as follows:

"58. Compliance with BASIX Certificate

Under clause 97A of the Environmental Planning and Assessment Regulation 2000 it is a condition of this development consent that all commitments listed in BASIX Certificate Nos. 264672M_03 and 437354M dated 07 August 2012 be complied with."

ATTACHMENTS

1. Locality Plan (1 page)
2. Aerial Photo (1 page)
3. Floor Plans (4 pages)
4. Elevation Drawings (3 pages)
5. Copy of NSW Police letter dated 28/3/2013 (Appendix 'B') (5 pages)
6. Copy of Previous Report to JRPP dated 11 August 2011 (80 pages)