

ADDITIONAL SUPPLEMENTARY REPORT - 2014SYE025 (DA-24/2014)

Property: 195 Lakemba Street and 3-5 Hampden Road, Lakemba
Lot 1 DP 597005 & Lots 11A and 11B DP 6712

Proposal: Construction of a mixed use development involving the demolition (in part) of existing structures and the construction of three (3) buildings comprising of four (4) retail/commercial units, 89 residential units, basement parking, landscaping works and associated stratum subdivision

This report provides a detailed assessment of comments and changes made by the applicant in response to conditions of consent imposed on the original assessment report that was considered by the Joint Regional Planning Panel ('the Panel') on 19 August 2014 for the subject application.

This additional supplementary report is to be read in conjunction with the assessment report considered by the Panel, and supplementary report which has been prepared to address matters that were considered by the Panel to be outstanding.

In addressing the Panel's outstanding matters, the applicant has in the response submission also requested a review of some of the recommended conditions of consent.

This report provides a detailed discussion and assessment of the conditions queried by the applicant:

Previously Condition 5, now referred to as Condition 6 in the Supplementary Report

Condition 5 was originally worded as follows:

5. The applicant/developer is to submit a Phase 2 Detailed Site Contamination Investigation prior to the issuing of a Construction Certificate, in accordance with Clause 7 of SEPP 55 – Remediation of Land to confirm that the site is suitable for the proposed development.

The applicant requested that the condition be reworded so as to allow demolition works to be carried out with the detailed site investigation to occur once demolished materials have been removed allowing for relevant machinery to undertake appropriate testing for the site. The condition has been reworded generally in accordance with the applicant's request, with a change in wording to require the information to be submitted prior to the issuing of the '*relevant*' Construction Certificate. This is now referred to as Condition 6 and is to be worded as follows:

6. The applicant/developer is to submit a Phase 2 Detailed Site Contamination Investigation prior to the issuing of the relevant Construction Certificate, in accordance with Clause 7 of SEPP 55 – Remediation of Land to ascertain

whether there is any potential contamination within the soil and groundwater on the site. Should the investigation reveal that the site is contaminated, then the site is to be appropriately remediated in accordance with the recommendations of the Phase 2 Detailed Site Contamination Investigation. Once remediated, appropriate Certification is to be provided to both Council and PCA advising that the site is contamination free. In the event that the Phase 2 report reveal that the site is not contaminated, a letter is required to be submitted to both Council and the PCA advising of such.

Previously Conditions 7, 42, 61, 111, 130, 172 and 191 – now referred to as Conditions 8 and 55

Condition 7, 42, 111 and 172 (same condition repeated due to staging nature of previous conditions) were originally worded as follows:

All building operations for the erection or alteration of new buildings must be restricted to the hours of 7.00 a.m. - 5.00 p.m. Monday to Saturday, except that on Saturday no mechanical building equipment can be used after 12.00 noon. No work is allowed on Sundays or Public Holidays.

Condition 61, 130 and 191 (same condition repeated due to staging nature of previous conditions) were originally worded as follows:

No construction work outside the hours of Monday to Friday, 7.00 a.m. to 5.00 p.m. and Saturday, 7.00 a.m. to 12.00 noon, is permissible without the prior approval of Council. Noise from construction activities associated with the development shall comply with the following guidelines (from NSW Environment Protection Authority Environmental Noise Control Manual Chapter 171).

Construction periods of 4 weeks and under:

The LA10 level measured over a period of not less than 15 minutes when the construction site is in operation must not exceed the background (LA90) noise level by more than 20dB(A) when assessed to the any sensitive noise receiver.

Construction periods greater than 4 weeks and not exceeding 26 weeks:

The LA10 level measured over a period of not less than 15 minutes when the construction site is in operation must not exceed the background (LA90) noise level by more than 10dB(A) when assessed to the any sensitive noise receiver.

The applicant requested that the above conditions be reworded as they all read differently, and suggested that the hours be changed to 7.00am to 5.00pm Monday to Saturday, with no mechanical building equipment to be used after 3pm on Saturday.

It is accepted that change be made to the above conditions so that the hours are more clearly stipulated, and in this regard, it is recommended that the first sentence of the latter condition above be deleted to remove any reference to hours. However, it is not accepted that the Saturday hours be extended until 3pm (as requested by the applicant) as this is likely to cause added noise impacts and disturbance onto neighbouring residents who should be allowed some relief of the impacts of

construction works during the weekend. As such, the following conditions are recommended:

Previous Conditions 7, 42, 111 and 172, is now referred to as Condition 8 and remains unchanged and is to read as follows:

8. All building operations for the erection or alteration of new buildings must be restricted to the hours of 7.00 a.m. - 5.00 p.m. Monday to Saturday, except that on Saturday no mechanical building equipment can be used after 12.00 noon. No work is allowed on Sundays or Public Holidays.

Previous Conditions 61, 130 and 191, is now referred to as Condition 55 and is to be changed to read as follows:

55. Noise from construction activities associated with the development shall comply with the following guidelines (from NSW Environment Protection Authority Environmental Noise Control Manual Chapter 171).
Construction periods of 4 weeks and under:
The LA10 level measured over a period of not less than 15 minutes when the construction site is in operation must not exceed the background (LA90) noise level by more than 20dB(A) when assessed to the any sensitive noise receiver.
Construction periods greater than 4 weeks and not exceeding 26 weeks:
The LA10 level measured over a period of not less than 15 minutes when the construction site is in operation must not exceed the background (LA90) noise level by more than 10dB(A) when assessed to the any sensitive noise receiver.

Previously Conditions 28 and 29 (Building C) - now referred to as Conditions 1(d) and 1(e)

Condition 28 originally worded as follows:

The rear balconies of Units C7.01, C7.02 and C7.03 to be reduced in depth to only 2 metres to increase the setback provided at the 3rd storey and to maintain a predominantly two storey limit at the minimum 6 metre setback requirement.

Condition 29 was originally worded as follows:

All balconies along the rear (north) elevation on the 4th, 5th, and 6th storeys of Building C, be installed with privacy screens to a total height of 1800mm using a combination of fixed and moveable panels and covering a minimum of two thirds of the length of the balconies.

The applicant provides the following comments in regard to the above recommended conditions:

We note the intent of these two conditions, which are provided to ensure compliance with Council's development control plan with respect to the building height plane and also provide increased privacy to adjoining neighbours.

We respectfully request that these two conditions be deleted as the design and layout of the proposed development provides adequate separation distances from the common boundary with No.2 and 4 Wangee Road. Referring to the architectural plans, we note that for the first four storeys of the development is setback some 6.03m from the boundary to the balcony, which then increases to 11.03m for the fifth and sixth levels.

Further to the above, it is worthy to note that as per Council's intention, a two storey element is provided by this proposal with the third level effectively stepped back at the interface with No.2 and 4 Wangee Road. This is clearly depicted in Figure 1 below illustrating a 'stepped' form, particularly where the building overlaps the side/rear boundary of No.2 and 4 Wangee Rd.

It is important to note that many of the rear balconies in this location have planter boxes to the northern edge and the slab edge of Level 8 curves away from the neighbouring properties to present a larger setback at the north-eastern corner, being the interface between Building C and No.2 and 4 Wangee Road.



These setbacks provide for half, and even more for levels 5 and 6 of the required separation distances prescribed by the Residential Flat Design Code. Therefore, when No.2 and 4 Wangee Road is developed to a similar scale, if they provide their half of the separation distance the numerical requirements of the code will be satisfied. On this basis the setbacks provided are considered appropriate for the site and its context.

In light of the above, if Council is still of the view that these conditions should still stand, then we would reluctantly agree to their imposition.

The applicant has not provided a change in the design for this part of the development. Based on the assessment of Building C against the objectives and requirements of Part 3 of CDCP 2012, as provided in the original assessment report,

and based on the nature of concerns raised by neighbouring residents, it is considered appropriate to maintain Condition 28 and Condition 29 as originally imposed. These two conditions are now referred to as Conditions 1(d) and 1(e).

Previously Conditions 95, 96 and 98 (Building B) - now referred to as Conditions 1(h), 1(i) and 1(k)

Condition 95 originally worded as follows:

All balconies along the north elevations of Building B on the 2nd, 3rd and 4th levels be installed with privacy screens to a total height of 1800mm using a combination of fixed and moveable panels and covering a minimum of two thirds of the length of the balconies.

Condition 96 originally worded as follows:

The balconies associated with Unit B6.01, B6.02 and B6.03 be reduced to a maximum depth of 2m to increase the separation distance and provide an approximate 6.2m setback to the boundary.

Condition 98 originally worded as follows:

The eastern part of the balcony for Unit B6.03 at the upper level (adjacent to Bedroom 2 and 3) is to be deleted as it encroaches on the setback requirements and causes privacy impacts.

The applicant provides the following comments in regard to the above recommended conditions:

We note the intent of these three conditions, which are provided to ensure compliance with Council's development control plan, increase separation distances and also provide increased privacy to adjoining neighbours.

Again we respectfully ask for these three conditions to be deleted as the design and layout of the development has provided appropriate separation distances and afforded good levels of privacy to adjoining properties, noting that to the north, the site adjoins a school which is highly unlikely to be redeveloped for residential purposes. On this basis, the reduced northern balcony depths for Units 601, 602 and 603 at the upper level; and requirement for provision of privacy screens for all balconies along the northern elevations of the second, third and fourth levels of Building B are in our view not warranted.

In terms of the eastern boundary of Unit 603, we are of the view that this balcony does not pose a privacy concern as it:

- *Serves Bedrooms 2 and 3, being 'low use' rooms;*
- *Is setback 5.4m from the common boundary; and*
- *Is not of a size which can accommodate outdoor furniture, noting it is a secondary balcony to the main northern balcony provided.*

We are optimistic that Council will agree with the above, particularly with the regard to the northern balconies of Units 601 – 603. However, if Council is still of the view that these conditions should still stand, then we would again reluctantly agree to imposition of Conditions 95, 96 and 98.

The applicant has not provided a change in the design for this part of the development. Based on the assessment of Building B against the objectives and requirements of Part 2 of CDCP 2012, as provided in the original assessment report, and based on the nature of concerns raised by neighbouring residents and the sensitive interface of this part of the development with a school site, it is considered appropriate to maintain Condition 95, 96 and 98 as originally imposed. These three conditions are now referred to as Conditions 1(h), 1(i) and 1(k).

Previously Conditions 160, 161 and unnumbered condition before Condition 160 (Building A) - now referred to as Conditions 1(n), 1(o) and 1(p)

Condition before Condition 160 originally worded as follows:

The balconies of Units A4.01, A4.05, A5.01, A5.05, A6.01 and A6.04 are to be deleted. The 'B2' rooms in each of these two units are to become balconies. Units A4.01, A4.05, A5.01, A5.05, A6.01 and A6.04 will become 'one bedroom' units.

Condition 160 originally worded as follows:

All balconies for Units A4.01, A4.05, A5.01, A5.05, A6.01 and A6.04 are to be installed with privacy screens to a total height of 1800mm using a combination of fixed and moveable panels and covering a minimum of two thirds of the length of the balconies.

Condition 161 originally worded as follows:

The balconies of Unit A6.02 and A6.03 (on the fourth storey) must be reduced in depth so that they have a maximum depth of 2 metres (this relates to the balconies of Unit A6.02 and A6.03).

The applicant provides the following comments in regard to the above recommended conditions:

These three conditions require:

- *The deletion of the southern balconies to Units 401, 405, 501, 505, 601 and 604. With the second bedroom of these units to become the balcony area;*
- *Provision of privacy screens to the above balconies; and*
- *For the balconies of Units 602 and 603 (northern elevation) that they be reduced to a maximum depth of 2m.*

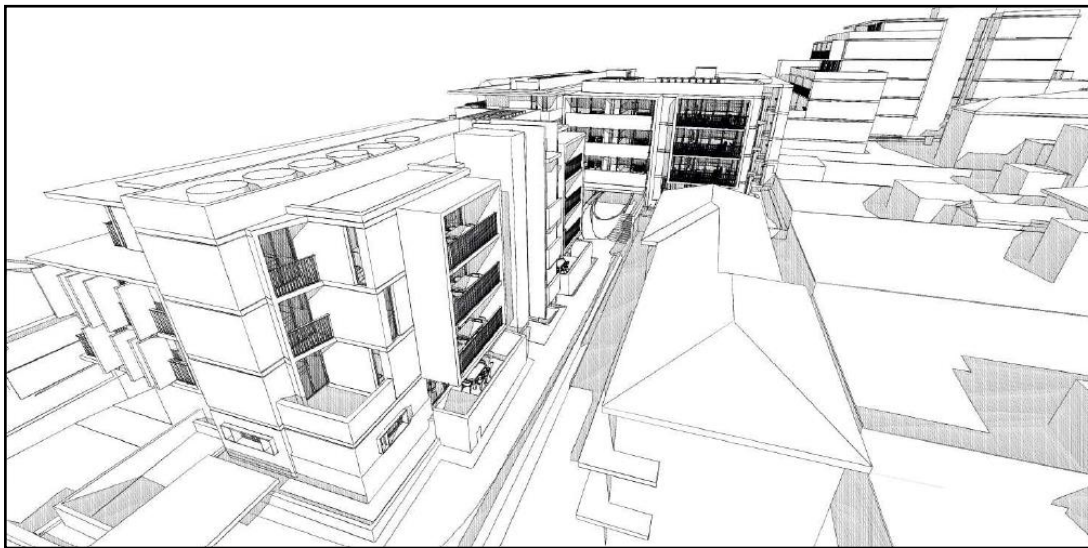
The provision of privacy screens to the above noted balconies is in our view not necessary as adequate separation is provided between the development

and the units at No.1 Hampden Road. Noting that from the third level upwards Units 501, 505, 601 and 604, the outlook from these units is over the roof of No.1 Hampden Road. Again, if Council does not agree with this view, we reluctantly agree to provide privacy screens to current location of these balconies.

With regard to the northern balconies of Units 602 and 603, we see no merit to reduce the balcony depth of these units to a maximum of 2m. We strongly believe that the 4m setback provided from the side boundary to these balconies, coupled with the adjacent 3.5m access driveway to the school site provides an appropriate separation distance of 7.5m to the next adjoining residential property.

We strongly object to the deletion of the southern balconies to Units 401, 405, 501, 505, 601 and 604 and for the second bedroom to become the balcony area for these units. The development is compliant with the side setbacks prescribed by Council's development control plan, noting a 4m minimum side setback is prescribed. The development as submitted provides a setback of 4.565m from the edge of the balcony to the southern side boundary, which then increases to an 8.165m setback. These setbacks are greater than the Council DCP.

Figure 2: Existing southern elevation of Building A



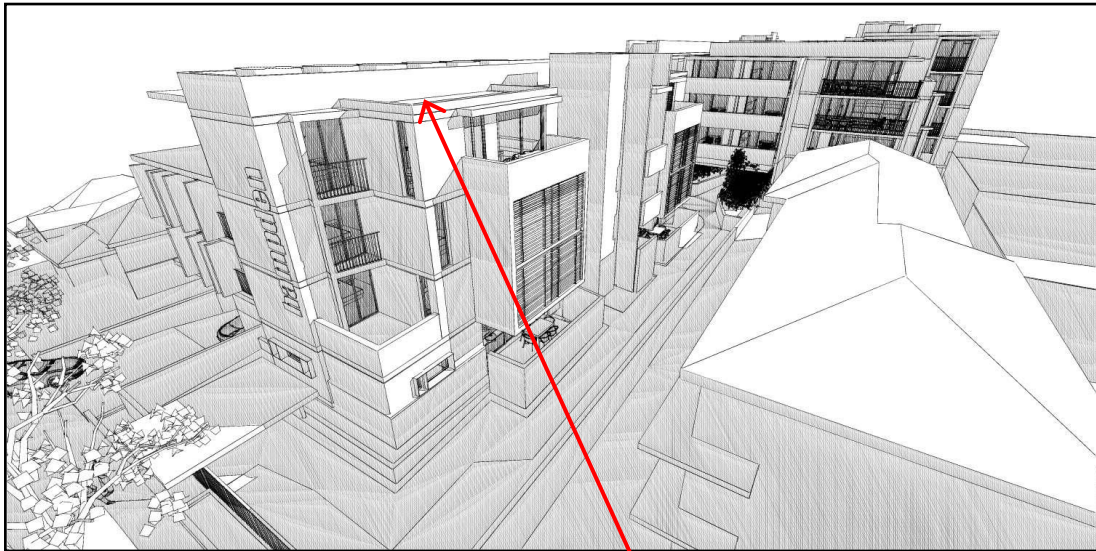
Referring to Figure 2 above, this shows the existing southern elevation of Building A. In comparison, Figure 3 on the following page provides an image of proposed minor amendments to the southern elevation of Building B showing removal of the balcony roof at the topmost level and provision of privacy screens to the second and third levels.

Referring to Figure 3 on the following page, we have provided an image which removes the covered component to the topmost level of each balcony. In addition we have provided privacy screens to levels two and three where there is an interface with No.1 Hampden Road. Privacy screens are not provided to

the topmost balconies as the outlook from these levels is over the roof of No.1 Hampden Road, rather than northern elevation of this residential flat building.

We also submit that from a built form and design aspect that the retention of the balconies in this location provides visual relief and articulation along this elevation which is needed to break up the appearance of Building A.

Figure 3: Proposed changes - southern elevation of Building A



This parapet element is the portion of the building casting the shadow in this location, rather than the small eave provided over the balcony. On this basis, there is no amenity impact by this component of the building.

Therefore as Figure 3 demonstrates, in terms of amenity, there is no additional impact created by keeping these balconies in this location given there is no additional shadow created by the balcony elements along this elevation. The shadow cast is from the top of the parapet wall above Bedroom Two. Therefore, even if we were to comply with the condition as suggested by Council, this element would cast the same shadow onto No.1 Hampden Road, which is no different to Figure 3 above and hence our request to retain these balconies.

By way of note, the Residential Flat Design Code does allow for building separation distances to be varied, provided daylight access, urban form, visual and acoustic privacy has been satisfactorily achieved. As noted in this letter, based on changes depicted in Figure 3 overshadowing is reduced to No.1 Hampden Road, noting that urban form, visual and acoustic privacy has also been satisfactorily achieved. Therefore the fine tuning of the design along the southern elevation of Block A is considered appropriate.

The above could be achieved via a condition of consent, no different to the ones being recommended.

- In regard to the unnumbered condition before Condition 160 (now Condition 1[n]), relating to the deletion of the balconies of Units A4.01, A4.05, A5.01, A5.05, A6.01 and A6.04 and changing the 'B2' rooms in each of these to become balconies, the applicant has provided a revised design which removes the covered component to the topmost levels of the balconies for Unit A6.01 and A6.04 and has proposed to install privacy screens to the balconies of the lower units being Unit A4.01, A4.05, A5.01, and A5.05. The measures proposed by the applicant aim to address the shadowing and privacy impacts raised as part of the assessment of the original design. It is accepted that the revised design helps to improve access to sunlight to the adjoining property at 1 Hampden Road and minimise privacy impacts between existing and future adjoining neighbours. In this regard, it is recommended that the unnumbered condition before Condition 160 (now Condition 1[n]) is to be deleted. It is noted however, that despite comments made by the applicant that no privacy screens should be required for the two top units (being Unit A6.01 and A6.04), it remains our recommendation that privacy screens should be installed given that there would still likely be views from these balconies onto adjoining balconies (see point below).
- In regard to Condition 160 (now Condition 1[o]) relating to the balconies for Units A4.01, A4.05, A5.01, A5.05, A6.01 and A6.04 and requiring the installation of privacy screens, it is considered appropriate to maintain this condition as it is given that it aims to protect the privacy of the existing residents of 1 Hampden Road and future residents of the subject Building A. The recommended privacy screens will minimise privacy impacts between balconies that will be directly opposite the north facing balconies of 1 Hampden Road. In this regard, Condition 160 (now Condition 1[o]) is to remain as it is.
- In regard to Condition 161 relating to the balconies of Units 602 and 603 in Building A, it is accepted that the depth of balconies can remain the same without the need to reduce their depth, given the ample overall separation distance to the next residential property. It is considered that reducing the depth of these two balconies by an approximate 800mm each is not necessary in this instance and the applicant's request to delete this Condition is accepted. In this regard, Condition 1(p) in the revised conditions in the Supplementary Report is to be deleted.